Under the Radar: Legislative Intent to Silence Critical Race Theory

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Under the Radar: Legislative Intent to Silence Critical Race Theory

A Dissertation

Presented to the Faculty of the

College of Education and Social Work

West Chester University

In Partial Fulfillment of the Requirements for

the Degree of

Doctor of Education

By

Meg Hazel

May 2023
Dedication

This dissertation is dedicated to my family for their constant love and support throughout this journey. To my wife, Jenn—there is no way I can express my gratitude for all you did for me during this process. When I first mentioned applying, you didn’t hesitate—you told me to go for it. You have always believed in me and made me feel smart enough to tackle all the reading and writing in this program. You gave the time I needed to read and write, took care of our house and puppy, made sure I had no distractions, cooked dinner, packed me snacks for class, and so much more. You kept me sane and focused and were my biggest cheerleader. I love you!

To my sister and brother-in-law—you have always been supportive of my crazy ideas, including this one. You have always been protective of me. Thank you for helping me out when I needed it most and thank you for allowing me to be myself. I love you!

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To my mom—I miss you every day. Though you aren’t here anymore, I still have the note you sent when I was accepted into the program: “I’m so proud of you.” I wish you were here to celebrate with me, but I know you are watching over me. I love you!

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Abstract

Critical Race Theory (CRT) in public education is a hotly contested issue across the nation. Since 2020, multiple legislators in several states have introduced legislation that would ban the instruction of CRT in public universities. This qualitative study explored Discourse models supported and upheld by these bills along with Whitelash strategies used to promote them. I examined 53 bills proposed by lawmakers, most of which contained lists of phrases usually called “divisive concepts” or “discriminatory concepts” that professors were prohibited from discussing in their classrooms. In addition, I analyzed 26 statements made by supporters of the bills that provided justification for the anti-CRT bans. Along with Critical Discourse Analysis, I used Discourse model tools developed by Gee (2005, 2014) and legal analysis to complete the study. Four Discourse models supported by the bills and statements emerged from the data: Neoliberalism, Nationalism, Colorblindness, and Law as Morality. These Models revealed a growing tendency to use the powers of the government to excise the tenets of CRT from educational systems and to deny the existence of systemic racism in the US. The legal analysis exposed issues that may result if the bills are enacted. This study also discovered eight strategies of Whitelash used in the bills and justification statements: Legitimation, Denial, Fear, Legal Maneuvers, Rhetorical Versatility, Persuasion, Prophesying, and White Innocence. These strategies were used to endorse and bolster the Discourse models. Recommendations for future research include application of the findings to examine future bills that may be proposed affecting classroom instruction in public universities. This study contributes to the understanding of Whitelash strategies used by lawmakers to support legislation.

Keywords: Critical Race Theory, Discourse models, Whitelash, legislation, qualitative
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Chapter 1

In some countries, the government has tight control over what is taught in their nation’s universities (Lyer, 2019). For example, higher education students in China are encouraged to report their professors for instruction of items counter to the official mandates of the government, and classrooms are constantly monitored through video and other electronic surveillance (Ruth & Xiao, 2019). In Turkey, all research at public universities must be approved by the Ministry of National Education (Sahin & Kesik, 2020). In Hungary, a diminishing democracy, government limitations control the Academy of Sciences and gender studies programs are no longer recognized (Ryder, 2022). In the United States, being told what we can read, learn, and teach seems antithetical to the purpose of higher education system and some of the core values of the nation. Instead, many U.S. scholars have argued that the goal of higher education is the fostering of critical thinking and the development of knowledgeable, well-rounded democratic citizens (Brown, 2015; Butler, 2017; Giroux, 2014; Reichman, 2021; Zook, 1947).

Unfortunately, recent bills proposed by state legislators seem to aim at just the opposite: mandating what can be taught about race across the K-20 spectrum, including in university and college classrooms.

Higher education, law, and race are forever connected in the United States (Bell, 1980; Ladson-Billings, 1998; Leonardo, 2020). The earliest universities in the United States were private institutions bankrolled by religious organizations and tuition (Geiger, 2005). Professors were called to train up other younger, White men in moral living, and they had total control over the curriculum (Wilder, 2013). Over time, the university’s purpose has evolved from furthering the Christian religion and “civilizing” future leaders into serving the material, agricultural, and political needs of the country (Ford, 2017). One of these material needs was labor, and early universities served as the place where White men made

\[\text{1 Like Cabrera and Corces-Zimmerman (2017), in this dissertation I will “capitalize all uses of White and Whiteness to emphasize the systemically privileged nature of this social identity (White) and racialized discourse (Whiteness)” (p. 312). I will also “capitalize descriptors of minoritized groups (e.g., Black, Students of Color, etc.) to emphasize the centrality of these social identities in a racialized society” (p. 312). However, I will not change the capitalization used in quotations from other sources.}\]
connections and deals for human trafficking in the form of slavery, which was regulated and codified in the laws of the colonies (Wilder, 2013; Wieck, 1977). Even after importing and enslaving humans ceased in the United States, leaders at prestigious universities continued to use People of Color in the daily operations of serving them and the students (Harris, et al., 2019; Wilder, 2013).

After a few decades, the federal government took steps toward racial progress for People of Color in higher education (Ford, 2017; Giroux, 2014; Ross, 1990b). The President’s Commission on Higher Education, in 1947, made clear its support for equal opportunity for all and stated while “the law of the land” is one way to achieve this, the other way is through education. In other words, law and education were positioned as the means to achieve racial equality in the democracy: the law providing equal justice and education being “necessary to give effect to the equality prescribed by law” (Zook, 1947, para. 2). Therefore, education, law, and race relations are intertwined in U.S. history: first by early colonies validating slavery through their laws, secondly by educational institutions affirming racism and race-laws through the use of slavery, then by the declaration of the necessity for equality supported by law and education, and finally to today’s influx of state bills and laws that dictate discussions of race in higher education.

The trend of passing legislation dictating university curriculum and pedagogy, what some call “educational gag orders,” is growing every year (Friedman & Tager, 2021). More state lawmakers are introducing bills advocating the banning of books, discussion of LGBTQ issues, and other curriculum-related control. The most recent trend is to eliminate Diversity, Equity, and Inclusion offices and initiatives from public universities (Charles, 2023). This legislative interference is not new (Scott, 2017), and some are fighting against these bills (Chemerinsky et al., 2020; Crenshaw, 2022). Therefore, it is important to understand what these laws and bills actually state and what kinds of activities they would prohibit.
Since 2020, legislators in multiple states have introduced educational reform bills, some of which have become laws, that limit how and what educators teach in their classrooms (Anderson & Svriuga, 2022; Crenshaw, 2021; Young & Tager, 2022; Tripp & Goldstein, 2021; UCLA School of Law, n.d.). Most of these bills are aimed at grades K-12, but a growing number are aimed at postsecondary instruction (Young & Tager, 2022; UCLA School of Law, n.d.). The majority of the bills prohibit the teaching of “divisive concepts,” which include items such as: one race or sex is inherently superior to another race or sex (Ala. HB8, 2022); this state or the United States is fundamentally racist or sexist (Miss. HB437, 2022); and an individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously (S.C. HB4799, 2022). Some explicitly ban the instruction of Critical Race Theory or The 1619 Project, a collection of writings and other expressions that reframes U.S. American history in the legacy of slavery (Okla. HB2988, 2022; Silverstein, 2019). To date, seven states—Florida, Idaho, Iowa, Mississippi, Oklahoma, South Dakota, and Tennessee—have passed laws limiting what university professors can teach in their classrooms regarding race, gender, or other class characteristics (Pen America, n.d.-b.).

Therefore, legislators, who likely have no experience in the realm of higher education, are using their authority to exercise control over both curriculum and pedagogy. These laws will prohibit students from learning what politicians deem unfit, even though some of the proponents of these laws cannot define CRT—the very concept they are trying to eliminate from curriculum (Kendi, 2021). This attack against CRT is revealed in a quote from Christopher Rufo, conservative activist, who stated the following about the efforts to discredit CRT: “We will eventually turn it [i.e., CRT] toxic, as we put all of the various cultural insanities under that brand category. ... We have decodified the term and will recodify it to annex the entire range of cultural constructions that are unpopular with Americans” (Jaleel, 2021, para. 4). In short, legislators are denying students the right to study and take up this particular lens with which to critique and analyze the world and to consider the values of that viewpoint. The laws threaten to
erase history, take away the autonomy of scholars, and slam the door on a perspective that does not support current conservative understandings of history, race, and the perpetuation of race-based inequalities. Wilma Mankiller, former Principal Chief of the Cherokee Nation, claimed “[w]hoever controls the education of our children controls our future” (Hill, 1999). Therefore, it is necessary to closely examine these laws, bills, and justification statements to reveal what they aim to control and what they aim to create.

**Rationale for Study**

From January 2021 to October 2022, 192 state bills were proposed that would prohibit the teaching of “divisive concepts” or Critical Race Theory in primary, secondary, or post-secondary schools (Pen America, n.d.-b). Danielle Holley, former Dean of Howard University School of Law and scholar of law affecting higher education and diversity efforts, recently gave a speech regarding the educational reform laws (Watson Institute, 2022). She explained that the legislators who were introducing these laws were inspired by President Trump, who condemned Nikole Hannah Jones’ *1619 Project* and issued memos and orders against CRT and other “divisive concepts” (Exec. Order No. 13950, 2020; Watson Institute, 2022). However, some of these laws would do more than prohibit certain employee trainings, as the Executive Order stated. They would also dictate what would be said and what could be taught by university faculty in every level of education: from the undergraduate through the doctorate (Watson Institute, 2022). In addition, some of the laws provide for bounties for turning in a professor who violates the ban. Some also call for fines or termination of such faculty (Friedman & Tager, 2021; Ky. HB706, 2022; Va. HB781, 2022).

For the purposes of this study, I will use the terms “bills” and “laws” interchangeably, though they are not the same. Bills are proposed laws, brought by an individual representative or a group, that must go through a process of approval in both bodies of the legislature (the House of Representatives and the Senate), before being sent to the head of state (in these cases, the Governor) for final approval.
or veto (Schulman, 2009). If the head of state signs the bill, it becomes a law. Depending on the state’s constitution, if the bill is vetoed, it can still become a law if enough legislators vote in the affirmative (Schulman, 2009). This study focuses on the content and context of these bills, some of which have already become law or may become law in the future.

Supporters of the bills have stated they are protecting students from being punished for their opinions, CRT instruction creates more division between students, CRT teaches hate, and that it “aims to murder the souls of white children” (Hill, 2021; see also Flaherty, 2021). For example, Georgia Governor Brian Kemp, in his State of the State Address, justified banning CRT because it will “divide our kids along political lines, push partisan agendas, and indoctrinate students from all walks of life” (2022). Many of the bills are touted as “anti-CRT” bills but have no references to CRT: the governor of South Dakota specifically stated in a justification statement that “[n]o student or teacher should have to endorse Critical Race Theory in order to attend, graduate from, or teach at our public universities,” but the bill she signed doesn’t have the words “critical,” “theory,” or “Critical Race Theory” in the text (Reilly, 2022, para. 12; Noem, 2021; SB1012, 2022). Instead, most of the bills focus on a list of items that cannot be discussed in university classrooms.

Critical Race Theory scholars have declared the bills are not representative of CRT: that the proponents cite ill-informed or false definitions of CRT, and red herrings are inserted into the list of divisive concepts “to fan embers of racial resentment into flames of outrage and opposition” (Crenshaw, 2021; Hamilton, 2022, p. 64; Kendi, 2021). Critical Race Theory is a way of viewing society through a racial lens, attempting “to understand how a regime of white supremacy and its subordination of People of Color have been created and maintained in America,” and looks at the inconsistencies of legal doctrine with regard to race and the policies created and maintained by systemic racism (Crenshaw et al., 1995, p. xiii). Some opponents of the bills maintain they have nothing to do with CRT. Adam Harris (2021), a scholar of racial inequality in higher education, explained the confusion in The Atlantic:
The theory soon stood in for anything resembling an examination of America’s history with race.

Conservatives would boil it down further: Critical race theory taught Americans to hate America.

Today, across the country, school curricula and workplace trainings include materials that defenders and opponents alike insist are inspired by critical race theory but that academic critical race theorists do not characterize as such. (para. 9)

The language of these bills and laws matter. According to Fairclough, language “is socially shaped, but it is also socially shaping” (Fairclough, 1993, p.134). While societal norms and beliefs can be reflected in the law, as critical race theorists posit, the law itself can also create and further what people believe (Gee, 2005). In other words, the text of these bills may be mirroring what the proponents believe, but more importantly, it may be a reflection of what the proponents want others to believe. In addition, this language could dictate what citizens are allowed to say for many years, advancing the influence of the text.

**Problem Statement**

One of the first laws in the United States, the First Amendment, espouses all should have the right to free speech and association (U.S. Const. amend. I). It is a right guaranteed to all individuals. Most speech is “protected,” which means individuals are free to say what they want at any time. Lawyers and scholars have expressed varying theories for the purpose of having such a right, including individual exploration or fulfillment, checks on the power of government and furthering democracy, and truth-seeking (Blasi, 1977; Chemerinsky, 2017; Tsesis, 2015). The concept of truth-seeking is predicated on the marketplace of ideas and holds exposure to different ideas and controversy is necessary for knowledge (Kasper, 2019; Russomanno, 2018). Without this exposure, citizens will not have the opportunity to reconsider and analyze their own opinions once faced with evidence supporting a contrary view (Chemerinsky & Gillman, 2017). When varying outlooks are unleashed, the opinion considered most valid will be reinforced and promoted, leading to the discovery of “truth”
(Russomanno, 2018; Chemerinsky & Gillman, 2017). Understood and implied by this right is the underlying assumption that there is no prohibition against certain thoughts and ideas that form the basis of speech.²

Exposure to uncomfortable ideas and disagreeing opinions must be allowed for truth-seeking to take place (Whittington, 2019). The overarching problem behind the action of the legislators in these educational reform bills is that they purport to control information—to end exposure to ideas. This appears to flout the First Amendment to the Constitution, which states no laws shall be passed by Congress curtailing free speech (U.S. Const. amend. I). Indeed, the United States was founded as a country based on the freedoms enumerated in the First Amendment (Dabhoiwalwa, 2021). It is a serious issue for the government to assert control over the speech of any citizen, but to dictate the speech of educators goes beyond the restrictions that prohibit speaking slander, threats, or fighting words (Papandrea, 2017; Tsesis, 2019). These bills impact academic freedom, which is the traditional right of educators to have freedom to “teach, research, and discuss topics that may be objectionable to outside authorities and political groups without fear of censorship, job loss, or other reprisals” (Berger, 2014, p. 266). In essence, the bills purport to end academic freedom regarding CRT.

Lawmaking as a tool of control functions not only to punish, but to communicate what is not acceptable in societies. It “has the power to authorize and legitimate—indeed, to produce—a set of social institutions and practices” (Litowitz, 2000, p. 530). In the case of the education reform bills, the lawmakers assert some ideas are unacceptable, so the ideas must be erased from collective memory. The bills do this by stating that certain ideas, related to what the crafters call CRT, should not be taught in classrooms, used in trainings, or even communicated in certain instances (Pa. HB1532, 2021; Tenn. HB2417, 2022).

² The proposed bills do not conform to the marketplace of ideas. Many of them prohibit instruction that would cause any individual to “feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race or sex” (AL HB8).
More broadly, education of the public is part of building a nation (Spring, 2012). Homogenization of the citizens and having a common purpose and identity occurs through indoctrination of common values, the teaching of a common language, and through patriotic instruction in schooling (Alesina, et al., 2021). However, receiving an education is more than acquiring knowledge and developing a national identity: in a democracy, citizens need education to be able to question their governors, their actions, and their reasons for decisions (Brown, 2015). Citizens (and their representatives) need to be well-rounded, educated, and thoughtful to have governance for individual advancement and for the common good (Giroux, 2014). The production of individuals that can think critically has been a primary goal of higher education for centuries (Hutcheson, 2011).

On the other side of this coin is that those in power in a democracy will use education to maintain the power structure that supports their interests (Alesina, et al., 2021). Control over citizens through education has occurred in multiple cultures throughout history, including autocracies, monarchies, and democracies (Alesina et al., 2021; Spring, 2012). In other words, the government can use education to mold its citizens, establish norms, and encourage attitudes, allowing the rulers to maintain, change, or invent through laws imposed to influence future generations. Crenshaw (2022) summarized the current educational reform bills as: “a strategy to seize power for a century” (p. 1721).

Purpose of Study

The purpose of this study was to examine the content and scope of U.S. state-level postsecondary educational reform bills, laws, and justification statements that particularly target CRT and related concepts. I identified Discourse models that uphold and are reflected by these bills and justification statements and examine the strategies and tactics used by the proponents of these bills to foster passage. I focused on the January 2021 to October 2022 period, as the proposal of these laws began in earnest after the protests supporting Black lives in 2020. Statements were limited to legislative
documents, reports, and media appearances made by political supporters of the bills and laws because I examined the statements made to encourage passage of the bills, not opposition.

I reviewed not only the text of the proposed laws, but also justification statements given by lawmakers in state governments (which includes legislators, governors, and lieutenant governors) in support of these laws, to understand the content and context. According to Gee (2005), the use of language in context (that is, to execute an idea or identity) are discourses. In contrast, Discourses, with a capital D, are the use of discourse and other items (such as style, attitude, clothing, interactions, etc.) to form identity and meaning (Gee, 2005). Discourses are revealed in language and social interaction, reflect ideologies, and are constantly being created and re-created (Fairclough, 1993). Therefore, language in the context of legislation has a particular importance in not only reflecting the identity of the writer, but because the analysis of legal language is often dependent on the intent of the writer (Easterbrook, 1988).

In law, the words that are used to create laws and write case opinions are chosen very carefully—an entire case can turn on whether there is an “or” vs. “and,” a missing oxford comma, the presence of a list, or a term of art (Sinclair, 1985). The language of laws and the specific words used are interpreted by the courts through a process called statutory construction (Easterbrook, 1988). According to Judge Bernard Meyer (1987), the intent of the legislature can be difficult to discern, and “vagaries of language are but a part of the problem” (p. 167). This study aims to take a deep dive into the words and phrases chosen by the lawmakers in the bills and justification statements to ascertain which, if any, Discourse models are validated.

**Research Questions**

This study examined the proposed bills, some which are now laws, in state legislatures across the United States. Since public universities are sponsored and partially funded by their state government, these laws could have real impact on faculty members, including their pedagogy, content,
and speech in the classroom, and therefore have real impact on student learning and critical thinking. I investigated these laws and their justification through the following research questions:

1) What is the content and scope of U.S. state-level postsecondary educational reform bills and laws that particularly target CRT and related concepts that have been proposed in the past three years?

2) What are the Discourse models (the widespread societal beliefs, values, and current power dynamics) that are communicated by these laws and bills and related justification statements of the laws as voiced by political supporters and sponsors in legislative documents, official reports, and media appearances?

3) How do these bills and laws and related justification of the laws uphold and reinforce these Discourse models?

The first question was necessary because laws are proposed by individual legislators in different states. Therefore, while some are almost identical, there was variation among the proposed laws and bills, and it was important to investigate this variance. The first question examined the capacity of these laws and how they will function in practice. The second and third question answered how these laws confirm and sustain current Discourse models, particularly those revolving around race. In other words, I examined the language of the laws and the justification statements to see if they supported and/or propagated current societal beliefs, values, and current power structures through a critical race and neoliberal lens.

Rationale for Methods

It was important that the documents, including laws, bills, and justification statements, be critically dissected so hidden meanings or agendas could be exposed outright. The qualitative analysis in this study looked at the content of the documentation and the purported justification for their proposal.
The first question was answered using simple descriptive analysis. I organized the laws and bills based on their content and described any commonalities and categories that arose from the content. It is important to note that only bills speaking to the instruction of university students were examined, and within these bills, only the parts that would affect classroom communication. Some of the laws included portions related to K-12 education, contractors, staff training, consequences for violations, and methods for bringing a complaint, among other things. These portions were not analyzed discursively since this study focused on the legislative bills and laws that proposed to limit the dissemination of knowledge by university faculty to their students. However, I addressed the additional issues related to higher education using the database from UCLA’s (n.d.) CRT Forward Tracking Project, which includes aggregated information about the bills regarding these areas. Not including these issues in the analysis will allow for a more robust examination of the classroom communication portion, but it limited the understanding of the mechanisms that were used to enforce the provisions.

The method that was used to answer the second research question—to identify the Discourse models that are communicated by the bills and justification statements—was Critical Discourse Analysis (CDA) as described by Gee (2005), with emphasis on how the language relates to power dynamics in the wider society (Fairclough, 1993). This is fitting for legal documents, such as laws, which are carefully scrutinized for language. The words chosen “reflect a certain way of viewing the world and are colored by [the] author’s intentions, directed at those who could recognize and interpret the chosen cues” (Shin & Ging, 2019, p. 167). Therefore, it was important for me to examine how the words chosen may reveal current Discourse models.

The method used to answer the third research question was also CDA. Here, I expanded on the Discourse models revealed in the second research question to illustrate how the language in the bills and justification statements may foster a specific ideology, along with meanings or themes that might
be inferred from the text. This close-examination technique was effective at discerning latent content from legal documentation.

**Positionality**

As a classically trained lawyer, I understand the purpose and scope of individual rights, especially free speech rights. I have spent much of my career researching free speech rights and academic freedom in education and know that it is an area with much conflict. My law review note discussed the implications of social media on free speech rights in education. Much of my time in private practice was spent giving presentations to local school districts on the speech rights of faculty and students. I instructed South Carolina Bar members and school board members across the state. Therefore, what an educator can and cannot say in the classroom has always been of interest to me.

Now, this topic is important to me as a faculty member. I was an instructor for the Wharton School at the University of Pennsylvania, where I taught communication through persuasion. In that course, I taught undergraduate students the techniques used in persuasive speech and writing. This experience gave me special insight into the use of language to convey a message, convince others, and communicate authority. I currently teach for an online paralegal program for a college in Arizona, where one of these bills affecting state universities is pending. Last year, I had some students who tiptoed close to the line of inappropriate speech regarding women and People of Color. One of the students asked me for legal advice on how to bring a claim of reverse racism against another professor. These students would likely support these bills. Now, I feel I am constantly on guard with the things I say or write to the class, because I fear being misinterpreted.

I am also part of the Office for Diversity, Equity, and Inclusion at my place of employment. My day-to-day work involves providing training in implicit bias, compliance with sexual misconduct policy,

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3 Such techniques include the “Rule of Three” and alliteration.
4 I declined to provide the advice.
and investigating claims of discrimination and harassment. We encourage diversity in employment and train search committees in how to seek and appreciate difference. A large portion of our work is focused on being anti-racist. In other words, I am committed to learning and teaching many of the tenets of Critical Race Theory.

Because of my legal training, I know the importance of language, syntax, and grammar in the development of law, especially in legislation. I am alert to the Canons of Statutory Construction and the importance of items such as the “plain meaning rule” and “congressional intent” (Easterbrook, 1988). My skills will allow for a more accurate understanding of the profundity of these laws. I believe these bills, if they become laws, will have a greater impact than anticipated. In my experience, people without legal training are generally not as attentive to the process of lawmaking and do not examine proposed laws in a methodical manner, but these bills are too important to ignore. Legislation that affects what can be taught to future generations, that limits training, and prescribes a set of speech rules to follow should be a loud clanging bell that alarms all involved in higher education to pay attention.

**Significance of Study**

This study is significant for several reasons. First, law impacts every aspect of our society and will continue to do so, from the establishment of the Constitution to the state rules for agencies. At its best, law provides guidance and secures the well-being of various members of society (Matsuda, 1987). At other times, it can be repressive and cause suffering, such as laws and court decisions subjugating others to inferior, less than human status (Ross, 1990b). We have all agreed, as a community of citizens, to obey the law as authoritative—but we should pause in the case of bad law. The law is not always just and it is not always moral, and in those cases it is important to figure out what the purpose is behind the law and the motivation of those who bring it. Bad law has led to judges making outrageous decisions and has forced them to follow the letter of the law in bad legislation to absurd consequences (Moore, 2007).
The laws under consideration in this study would affect one of our most fundamental rights in the United States—the right to free speech. They would also constrain and interfere with those professors who practice CRT, who want to expose their students to how race has been formed and how race itself forms our customs and culture. After all, race was created by law—the rules of the Census are created by the U. S. Congress (Ladson-Billings, 1998). Legislators determined which race was free, which race was enslaved, which were deemed masters, and which race could claim citizenship (Omi & Winant, 2015). The content of the proposed anti-CRT laws implicates how society views and responds to racial issues and racism, and we must question and critically examine what is being proposed. In 1968, Dr. King stated: “the American people are infected with racism—that is the peril” (para. 43). In other words, racism is part of our national psyche—it has been with us since our founding and is still causing pain and suffering. Even today, racial meanings act to reinforce existing structures of power in a society and maintain White supremacy (King, 2020). The concepts of race and racial inequality are woven throughout the proposed laws, and “the language of race is important because it strongly affects political and policy agendas” (Giroux, 2003, p. 195). Because these laws and bills purport to be counter to CRT, it is important to examine them to see if the concepts they state are accurately defined.

No matter the content, laws that control education will affect the future of a society. For most of the history of higher education, institutions were free from government interference in curriculum, research, and other activities (Beckam, 1978). Depending on the state, public universities, or those who are at least partially funded by the state, are usually governed by boards that have varying connections with the state government (Birnbaum, 1991). Most law affecting the functioning of the public university involve resources and funding, not the curriculum delivered in the classroom (Beckam, 1978). Unfortunately, there does not seem to be much attention paid (apart from Critical Race Theorists themselves, a few educators, and pundits) over these laws that would control what is taught in university classrooms. This may be because many of the laws will likely be held unconstitutional (Kendi,
People may be unaware of the laws, or not realize their importance (Crenshaw, 2022). However, Crenshaw (2022) warned this current spate of laws signals the decline of democracy: “[t]hat legislators can appropriate law to banish critiques of law should rattle every last one of us” (p. 1717). These laws have been proposed nationwide, and they are being proposed in greater numbers each year (Young & Tager, 2022). Crenshaw (2022) went on to state:

> It will take the support of colleagues throughout the profession to reverse the current descent into a new McCarthyism. The possibility of syllabi, research dollars, and permissible perspectives being dictated by politicians in state capitals across the country is no longer a distant possibility.
> This is not a drill. (p. 1728)

Crenshaw meant to sound the alarm over these laws—by comparing their passage to McCarthyism, Crenshaw harkened back to a time when professors were being fired over their beliefs, and fear prevented critical discussion in many classrooms (Scott & Moyers, 2019). In other words, educators would do well to pay attention to these laws, which may be the first step toward the state controlling the dissemination of information.

Orwell stated in his novel, 1984: “Those who control the present, control the past and those who control the past control the future” (Orwell, 1962). In other words, students learn what they are taught, and if educators are told to ignore or deemphasize certain topics, the knowledge will be lost, and future educators will not know what they were denied. Since these bills propose to control the flow of information within our educational system, this is an issue that will eventually affect all of society.

**Chapter Summary**

This dissertation considers bills and laws proposed at the intersection of the fields of education, law, and race. I examined current legislative trends of proposing bills that may impact instruction in higher education institutions on race, history, CRT, and other topics frequently described in the bills as “divisive concepts.” Since the number of bills being filed by state legislators affecting university
instruction has increased, there is an urgent need to critically examine the content and context of these bills. This study scrutinized the bills proposed over the past two years, along with justification statements, with a critical lens to see what Discourse models were revealed—in other words, to reveal what hegemonic concepts around difference, education, and critical education were exposed in the attempt to censor communication in higher education.
Chapter 2

The law is not always just a benign force that enforces justice and equity for all. Instead, “people in power sometimes abuse law to achieve their own ends” (Matsuda, 1987, p. 323). Laws are made and fashioned in the context of current cultural norms, and those norms can change over time (Lopez, 1997; Ross, 1990b). For example, the Supreme Court of the United States applied the law of the country in the following rulings over the course of history:

- Black enslaved people could be “bought and sold as an ordinary article of merchandise” (Dred Scott v. Sandford, 1857, p. 407).
- Whether to use children for labor is up to the states: It is “a purely local matter to which the federal authority does not extend” (Hammer v. Dagenhart, 1918, p. 276).
- Regarding forced sterilization of a person with intellectual disabilities: “It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind” (Buck v. Bell, 1927, p. 207).
- The law that allowed for concentration camps to hold Japanese citizens was more important than their freedom: “We cannot—by availing ourselves of the calm perspective of hindsight—now say that, at that time, these actions were unjustified” (Korematsu v. United States, 1944, p. 224).
- There is no “fundamental right to homosexuals to engage in acts of consensual [sex]” (Bowers v. Hardwick, 1986, p. 192).

There were all examples of Supreme Court decisions, some of which were based on congressional legislation such as the Fugitive Slave Act of 1793 (guaranteeing the right of a slaveholder to recover an escaped enslaved person), the Black Codes of the 1860s (laws to limit the rights of newly freed enslaved persons), and Public Law 503 (passed in 1942 to allow for internment camps) (Irons,
Most people today would consider these laws to be abhorrent. Suffice to say, there has been no shortage of U.S. laws that, in the rear-view mirror of time, look nothing like justice or righteousness; in fact, they reflect the bigotry, ignorance, and violence that were de jure at that point in time.

The anti-Critical Race Theory (CRT) laws currently being proposed by state legislators belong in this list as well. They will limit the speech of educators and students regarding certain concepts (Crenshaw, 2022; Hamilton, 2021). They will limit the knowledge of students and curtail the development of critical thought (Kaplan & Owings, 2021; Liou & Alvara, 2021). These anti-CRT laws may be included in this list of ignorant, egregious laws one day. This is not yet a settled matter, however.

Today, there are two sides to the debate. On the one hand, there are those who consider these law as “gag orders,” an obvious violation of their right to learn, teach, and have access to anti-oppressive knowledge (e.g., Young & Tager, 2022). On the other hand, there are those who see CRT as a dangerous idea (e.g., Rufo, 2021). In order to fully understand the anti-CRT bills and laws, it is important to review how race became intertwined with the state and its functions, and what cultural norms and values are reflected in the current racial order of our society. Therefore, in the first part of this chapter, I will give a brief overview of CRT. Then, I will review the literature on the relationship between race and the state, including how the racial order developed in the United States. I will also explain the concept of the “Racial State,” the key theory for this study (Goldberg, 2002; Omi & Winant, 2006). In the third portion, I will review three Discourse models that seem to uphold the current racial order as advanced by the Racial State. Finally, I will define and discuss the phenomenon of “Whitelash,” (Bonilla-Silva et al., 2020) including common strategies used by White people supporting the Discourse models and the validation of the current racial order.

**Critical Race Theory in a Nutshell**

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5 As a reminder: as described in Chapter 1, I will be capitalizing terms such as Whiteness, Black, and People of Color to highlight these social identities. However, I will not change the capitalization used in quotations from other sources.
Since much of the legislation either mentions or alludes to CRT, it is necessary to understand what CRT is and some of the major tenets it employs. Critical Race Theory was a reaction to Critical Legal Studies, which examined law as a mechanism that perpetuates social inequalities and systemic injustice (Delgado et al., 2017). It is not a singular course or training but a way of analyzing the role race and racism plays in the building of societal beliefs, structures, and institutions, particularly as reflected in U.S. law (Delgado et al., 2017; Watson Institute, 2022). Critical Race Theory attempts “to understand how a regime of white supremacy and its subordination of people of color have been created and maintained in America,” and looks at the inconsistencies of legal doctrine with regard to race and the policies created and maintained by systemic racism (Crenshaw et al., 1995, p. xiii). Mari Matsuda (1991) defined critical race theory as:

- the work of progressive legal scholars of color who are attempting to develop a jurisprudence that accounts for the role of racism in American law and that work toward the elimination of racism as part of a larger goal of eliminating all forms of subordination. (p. 1331)

Delgado and Stefancic (1998) wrote that many Critical Race theorists agree “racism is ordinary, not aberrational” (p. 8). This means racism is not only the actions of one individual, but racism exists in everyday occurrences (Crenshaw, 2006; Irons, 2022). Other accepted tenants include the idea that racism is permanent, woven into U.S. foundations through its laws, customs, and institutions (Goldberg, 2009) and race is a socially constructed idea (Bonilla-Silva, 2022; Ladson-Billings, 1988; Omi & Winant, 2015).

**Racism as Normal and Systemic**

The CRT tenant positioning racism as normal and systemic relies on the logic that the United States was founded on the oppression of Black people and a system of White supremacy that continues today (Bonilla-Silva, 2022; Delgado et al., 2017; Harris, 1993). The privilege afforded to White people back in the times of slavery became institutionalized and expected over generations (Crenshaw, 1988;
Harris, 1993). In other words, because White people were deemed superior, they were afforded greater opportunities and advantages to Black people, which allowed them to achieve more success at a faster rate. Their children ultimately received these benefits as well, and most inherited the wealth of their ancestors (Bonilla-Silva, 2022; Feagin & O’Brien, 2004; Leonardo, 2004). Systemic racism is the most prominent form of racism today, as it is incorporated into our societal structures, institutions, habits, and practices, occurring on a mostly subliminal level (Applebaum, 2008; Irons, 2022). Giroux (2003) explained:

> It is symptomatic of a culture of racism that has no language for, or interest in, understanding systemic racism, its history, or how it is embodied in most ruling political and economic institutions in the United States, or, for that matter why it has such a powerful grip on American culture. (p. 205)

Thus, CRT proposes that systemic racism exists in many forms and inequity may have multiple causes.

**Interest Convergence**

One way this scheme of White racial dominance is kept alive is through the application of interest convergence. In 1980, Derrick Bell examined the Supreme Court decision in *Brown v. Board of Education* from a critical race lens. He proposed the reason for the decision, which was to end segregation in public schools, was actually a product of interest convergence between the interests of Black and White persons (Bell, 1980). He considered the decision was not the sole result of a need for racial progress, but that it was coupled (converged) with a desire to improve the country’s image in the world (Bell, 1980; Delgado & Stefancic, 1998). Interest convergence thus slows racial progress, as it occurs in the rare instances when the interests of White and Black people converge according to political dictates. When interests do not converge, however, White people are less likely to take action (Bell, 1980; Crenshaw, 1988; Delgado & Stefancic, 1998; Gotanda, 2004). Critical Race Theory contemplates both when and why racial progress has been slow.
**Whiteness as Property**

Harris (1993) explained one of the reasons White people were slow to embrace racial progress was the concept of Whiteness as property. Whiteness was the criteria for owning property at the country’s founding (Harris, 1993). In addition, the Whiteness of an individual is a type of property interest in itself: it provides “the legal legitimation of expectations of power and control that enshrine the status quo” (Harris, 1993, p. 1715). Early on, this property served as a bulwark to slavery since those without Whiteness could become the property of others. Later, the Supreme Court in *Plessy v. Ferguson* (1896) made it clear “[the Black man] is not lawfully entitled to the reputation of being a white man” when riding on a segregated train (p. 163). Any disruption to the status quo may reduce this value of Whiteness (Bell, 1988). In other words, providing more equitable rights to Black people may cause White people to lose power, status, etc., not only for them but their descendants (Milner, 2008). This property interest in Whiteness, of positive expectations and rights, has not yet converged with the assumption that these expectations should also be enjoyed by People of Color (Bonilla-Silva, 2022; Cabrera, 2018). Combined with the concepts above, CRT thus recognizes how race has influenced power structures in our society.

**Counter-Storytelling**

Critical Race theorists often use storytelling, our counter-stories, to add experiential value to research and literature (Delgado et al., 2017). These “stories, or narratives, are deemed important among CRT scholars [because they] add necessary contextual contours to the seeming ‘objectivity’ of positivist perspectives” (Ladson-Billings, 1988, p.11). The purpose of storytelling is “to draw on the knowledge of people of color who are traditionally excluded as an official part of the academy” (Solórzano & Yosso, 2002, p. 37), and to give voice and context to historical oppression (Delgado, 1990; Ladson-Billings, 1988). In other words, CRT allows for voices and stories silenced due to fear, oppression, or another reason.
Race and the State

Race is a part of the governing state (Bell, 1988; Bonilla-Silva, 2022; Goldberg, 2009). Race became intertwined with the institutions and structures of the United States at its inception, when the racial categories of “Black” and “White” developed specific meanings in early U.S. America (Omi & Winant, 2015; United States Census Bureau, 1793). The idea of race has its roots in slavery and the Census with the development of color categories to identify who was marked for enslavement (Harris, 1993). There was a need to make racial categories because enslaved persons had no political rights, but White Southerners wanted them counted for purposes of representation (King, 2020). In other words, the compromise of counting enslaved people as 3/5ths of a person (as reflected in the Constitution) was a political decision that enabled the South to have more representation in the federal government (Nobles, 2000). Economic and political structures were based on this division and the laws and policies that followed justified the system of slavery (King, 2020). This racial hierarchy was necessary for the early economy of the country, as slave-labor was used not only to grow the largest money-making crops in the South, but also to build colleges, government buildings, and serve the elite across the nation (Wilder, 2013). Consequently, the culture of capitalism depended upon the establishment of these hierarchies to justify the unequal distribution of wealth and power, as “racism enshrines the inequalities that capitalism requires” (Melamed, 2015, p. 77).

The Racial State

Even today, racial meanings act to reinforce existing structures of power in a society (King, 2020; Omi & Winant, 2015). The architects of the United States created the governing structures so that White supremacy was enshrined in the country’s institutions, laws, and practices (Harris, 1993; Irons, 2022); but the state has also preserved this racial ideology (Bonilla-Silva et al., 2020). In other words, the country was founded by White men, for White men, and they established a government that keeps them in power. Their interests were advanced and promulgated through state and other institutional
practices that have been maintained since the United States was formed (Bonilla-Silva, 2022; Bonilla-Silva et al., 2020; Cabrera, 2018; Feagin & O’Brien, 2004). Omi and Winant (2006) referred to this as the Racial State, the overarching theory for this research. States are composed of institutions and actors that keep order and unity through agencies and policies (Omi & Winant, 2015). However, the state is also inextricably linked to society (Feagin & O’Brien, 2004; Omi & Winant, 2006). Race relations and meanings, as part of society, are therefore part of the order the state maintains.

Figure 1
The Racial State

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6 Some scholars have criticized Omi and Winant’s (2015) concept of the Racial State for ignoring the White actors behind the state functions, including Bracey (2015) and Feagin and Elias (2013), who stated: “A central problem with Omi and Winant’s ... explication of formation theory is that it provides only circuitous or vaguely implied analysis of whites’ dominant role in creating and perpetuating the material realities of racial oppression, inegalitarian racial hierarchies and white-framed interpretations of racial matters. No critical and explicit discussion of whites as a racial group shaping and maintaining the racial oppression and dynamics central to US society appears in their book. Almost nowhere in Racial Formation do Omi and Winant present explicit and needed descriptive terms like ‘whites’, ‘white Americans’, ‘European Americans’ and/or ‘Americans of European descent’, and most especially in regard to determinative practices shaping the structures of racism” (p. 939).
As shown above in Figure 1, when the racial order is out of balance, the state will attempt to equilibrate the components of the organizations, institutions, and actors with the societal components of social norms, ideologies, and Discourse models, as determined by those in the ruling class of the state (Omi & Winant, 2006). In Figure 1 above, the social norms side of the lever is not what the state wants—it has dipped down, meaning that what the state actors want is not what society is providing. The state must use the tools it has, such as legislation and regulation, to increase the power it has in its organizations, institutions, and actors, until this power moves the social norms and ideologies back into balance. Therefore, when the racial order is out of balance, the state uses accommodation or repression, depending on the cause of the imbalance, to achieve equilibrium (Omi & Winant, 2006, 2015).

Omi and Winant (2006) determined every action by the state influences racial relations and the state itself serves to preserve the racial order. Through laws, regulations, policies, court decisions, enforcement procedures, and other state decisions, the state helps shape how society sees race, and race determines how and when these tools are created (Bracey, 2015; Girouz, 2003; Omi & Winant, 2006, 2015).

In the pre-civil rights era, disruption of the racial order or racial status quo was what Omi and Winant (2015) called a “war of maneuver,” since Black people at that time did not have much political sway and had to fight the state from outside the system. Put differently, a war of maneuver takes place when a group is fighting a system of which they are not a part. This war of maneuver eventually evolved into a “war of position,” which is disruption from within, after civil rights were affirmed (Omi & Winant, 2015, p. 142). In other words, now that Black people were recognized as part of the system (as voters and citizens), disruptions could take place within the system, using the system’s tools at their disposal (such as voting). However, this only caused the state apparatus to move from attempts of overt racial domination to racial hegemony, by making the racial status quo, that of White supremacy, into such a
natural, commonsense notion that it is rarely questioned (Leonardo, 2004; Feagin & O’Brien, 2004; Omi & Winant, 2006). Simply put, the United States has allowed racism to survive by its maintenance of the racial status quo in White supremacy.

**Challenges to the Racial Balance**

While the state functions to keep order and balance, occasionally there are challenges to that order (Bonilla-Silva, et al., 2020). Challenges that disrupt the delicate balance of racial power, whether they come from within or outside of the state apparatus, are what Omi and Winant (2015) called “racial projects.” Racial projects can be advanced by individuals or institutions at a micro- or macro-level (Feagin & Elias, 2013; Omi & Winant, 2015). In other words, they can be individual conversations or state action, such as the proposition or enactment of a law. These projects are “attempts to reproduce, extend, subvert, or directly challenge” the racial social system (Omi & Winant, 2015, p. 125). Sometimes they aim to reframe conceptions of racial ideology in either progressive or subversive ways. If a project “creates or reproduces structures of domination based on racial signification and identities,” then the project is racist (Omi & Winant, 2015, p. 128). Bonilla-Silva’s (2022) definition about racial structures seem to align with the concept of Racial Projects: “racism is about the practices and behaviors that produce a racial structure—a network of social relations at the social, political, economic, and ideological levels that shapes the life chances of the various races” (p. 21).

When the order of the state is disrupted, the imbalance must be resolved, and the equilibrium must be re-established. When these disruptions are racially based, the resolution is also on racial terms, and the terms usually keep the racial status quo as it is, with White people remaining the dominant group (Omi & Winant, 2006). Racism, therefore, is the practice of keeping this social organization (Giroux, 2003; Leonardo, 2004; Feagin & O’Brien, 2004; Omi & Winant, 2015).

**Racial Discourse Models**
The racial order is fostered not only by the state, but by society, as both work in tandem as described by Omi and Winant (2006). One way to describe the widespread societal beliefs, values, and current power dynamics are what Gee (2005) called Discourse models. They are “‘theories’ (storylines, images, explanatory frameworks) people hold, often unconsciously, and use to make sense of the world and their experiences in it. They are always oversimplified, an attempt to capture some main elements and background subtleties, in order to allow us to act in the world without having to think overtly about everything all at once” (Gee, 2005, p. 61). Discourse models are inseparable from politics, as they emulate current power structures and the allocation of power in society (Gee, 2005, 2014). Therefore, some Discourse models support racism and the institutional racism maintained by the Racial State, while others support cultural norms such as sexism. Since the Racial State equilibrates through actions, laws, and other methods until balance is achieved (see Figure 1), these actions foster the development and refinement of Discourse models (Bacchi, 2000; Gee, 2005; Omi & Winant, 2006). Discourse models will be the filter I use to examine the meaning behind the bills and laws. Below, I outline three of the Discourse models that were likely be to be revealed and supported through this study of the bills and laws proposed for educational reform: neoliberalism, colorblindness, and meritocracy.

Neoliberalism

Neoliberalism is more than an economic theory. At its core, the neoliberal focuses on the individual and self-serving interests (Brown, 2015; Giroux, 2003; Harvey, 2007). The idea of the common good or a “collective vision of society” is contrary to neoliberalism, which is “first and foremost designed to enable individuals to plan their actions according to market logic” (Blalock, 2014, p. 83). Neoliberalism embraces the concept that competition in a free market, when left to its own devices, will give individuals greater freedom and opportunities (Esposito, 2011; Harvey, 2007). Neoliberalism encompasses competition, privatization, and free markets, and is a hegemonic Discourse model in the United States (Blalock, 2014; Brown, 2019; Giroux 2003). Neoliberalism incorporates market principles
into all facets of life: politically by deregulation and privatization, economically by placing a monetary value on all things both tangible and intangible, culturally by embracing Western values of individualism, competition, and ambition, and morally by adopting the ethos of the conservative Right as best suited to maintaining the neoliberal ideology (Brown, 2015; Kundnani, 2021).

One of the most important ways neoliberalism maintains power is through the power of government in the form of laws and regulations (Harvey, 2007). The aim of neoliberalism is not to demolish the state, but to use the power of the state to represent the interests of the dominant ruling class. This class comprises those who have already succeeded in the neoliberal game and likely want to maintain their superior stance (Goldberg, 2009; Harvey, 2007; Kundnani, 2021). A necessary component of this system is individualism. For neoliberalism to thrive, it must assume an individual’s self-reliance and encourages individuals to put their own needs and interests first (Harvey, 2007). Therefore, under neoliberalism, inequity between people is ordinary, normal, and to be expected, because some individuals have made better choices in the free market that is allegedly open to all (Brown, 2019; Esposito, 2011). Neoliberalism thus encourages competition for resources, including social and cultural capital (Kundnani, 2021). Those who benefit most from this ideology continue to promote neoliberal values, passing laws, policy, and other rules to foster continuance (Feagin & Hohle, 2017; Giroux, 2003). Therefore, neoliberal policy provides those who prosper in its system control over the system itself.

**Colorblindness**

Colorblindness is a concept “that refuses overt references to race in a specious assertion of race neutrality and neoliberal individualism” (Leonardo, 2020, p. 19). Put another way, colorblindness is a view in which race doesn’t matter—everyone is on equal footing and all races have the same opportunities. Many Critical Race scholars have stated actual, realized societal colorblindness is illusory (Bonilla-Silva, 2022; Cabrera, 2018; Delgado et al., 2017; Feagin & Hohle, 2017).
Colorblindness asserts “racial conflict and discrimination is a thing of the past and that race has no bearing on an individual’s or group’s location or standing in contemporary American society” (Giroux, 2003, p. 198). It embraces the notion that the advances made in civil rights in the past have pushed us past racism and discriminatory practices, so all have an equal chance to succeed in our society (Esposito, 2011; Hamilton, 2021). According to those who support this colorblind view, because of the “achievement” in the elimination of racism, there is no longer a need for the government to interfere with race-conscious policies designed to ameliorate the legacy of slavery and racism (Bonilla-Silva, 2022; Leonardo, 2020). This is evident in our jurisprudence that embraces neutrality as the guiding element for discrimination adjudication: in judging discrimination, there is no need to consider systemic or institutional racism as part of the equation, only whether the actions of individuals rise to the level of legal discrimination (Hiraldo, 2010; Inwood, 2015; Leong, 2013). Even the Supreme Court expresses agreement with the concept: “Our Constitution is color-blind, and neither knows nor tolerates classes among citizens” (Justice Harlan’s dissenting opinion) (Plessy v. Ferguson, 1896, p. 559). Any policy, such as affirmative action, that tries to address historical oppression based on race, is considered unfair because people are to be evaluated only on their merit (Goldberg, 2009; Inwood, 2015).

Bonilla-Silva (2022) described colorblindness in the title of their book as a form of Racism Without Racists. Racism, they argued, is no longer the overt actions of individuals characteristic of the Jim Crow period, such as regulating People of Color to the bottom of society based on supposed racially determined characteristics like lower intelligence or laziness. Racism today is the use of “subtle, covert, and seemingly nonracial” mechanisms fostering the continuance of the current racial order which advantages White people over all other races (Bonilla-Silva, 2022, p. 23). For example, people may dismiss the consequences of racism as something in the past (“We had a Black president”), make claims of race neutrality (“I don’t see color”), or cite individualist principles as a reason for equality (“Everyone has the same opportunities today”) (Bonilla-Silva, 2022; Esposito, 2011; Inwood, 2015). However, many
scholars have declared that racial colorblindness simply perpetuates racism by deflecting attention from systemic racism, the prominent form of racism today (Bonilla-Silva et al., 2020; Cabrera, 2018; Leonardo, 2020).

**Meritocracy**

Closely related to the concept of colorblindness is that of meritocracy (Bonilla-Silva, 2022; Giroux, 2003). Meritocracy is a Discourse model proposing an individual’s success is determined solely by their own actions and choices, and with enough effort and ability, anyone can achieve the success and status they desire (Harvey, 2007). Therefore, a person’s merit is positively correlated with their individual success (Girerd & Bonnot, 2020). In other words, a person who is not succeeding in the game of life is responsible for their own demise, as the “neoliberal model of choice does not recognize the material constraints that limit an individual’s choices because those constraints are seen as merely the product of her previous choices” (Blalock, 2014, p. 88). The result of this would be that any failure to succeed must be because of individual decisions, since everyone had an “equal opportunity” to showcase their merit, and not because of any race-based, systemic disadvantages (Bonilla-Silva, 2022; Giroux, 2003).

These Discourse models are not new and are topics of interest in CRT literature. However, legislators in multiple states have proposed banning the teaching of CRT and its tenets, of the discussion of certain divisive concepts, or the elimination of curriculum based on the proposals of The 1619 Project (UCLA, n.d.). If that occurs, then these issues regarding colorblindness, individualism, and meritocracy and how they intersect with race may be unresolved. The concerns over inequity and how it remains as a vestige of slavery will be ignored. In other words, “[w]here one side sees a reckoning with America’s past and present sins, another sees a misguided effort to teach children to hate America” (Meckler & Dawsey, 2021, para. 6).

**Strategies of Discourse**
As Figure 2 below illustrates, this study examines the current educational reform texts (both bills and their justification statements), how the texts support Discourse models, what strategies or tactics are used for that support and how these models and tactics in turn support the bills. Some have asserted these bills are a backlash against the recent reinvigoration (or for some, awareness) of movements against racism, such as the Black Lives Matter movement (Wallace-Wells, 2021). The strategies that are used in backlash by White people against Black racial progress has been called “Whitelash” (Bonilla-Silva, et al., 2020).

Figure 2

Overview of Concepts

Whitelash

Racial progress in the past has been followed by backlash and regression, from the institution of Jim Crow laws in the South after reconstruction to the race massacre prompted by the success of Black people in Tulsa, Oklahoma on Black Wall Street (Bérubé & Ruth, 2022). The gains Black people made in 1964 and 1965 with the civil rights acts were met with arguments that policies such as affirmative action were rewards given unjustly, without regard to merit or need (Crenshaw, 2006; Giroux, 2003). The possibility of racial progress for Black people has often been met with “Whitelash,” or a “collective and
historical process made up of actions and reactions by whites attempting to dismantle any challenge to the racial status quo or any calls made [by] oppressed groups for equal rights and treatment” (Bonilla-Silva et al., 2020, p. 18). In other words, Whitelash is backlash by White people that prevents racial progress for People of Color. Leonardo (2020) stated recent revivals of racist speech can be traced to “whitelash against eight years of Obama, twenty-five years of multiculturalism, forty years of affirmative action, and fifty years of civil rights legislation” (p. 25). Put simply, Whitelash is a tool used to maintain the racial status quo, prompted by change (or fears of change) in the racial order (Bonilla-Silva, et al., 2020).

Today, Whitelash seems to be occurring in response to a growing awareness of racial disparity and injury. For example, the Black Lives Matter movement grew from a hashtag protesting the murder of Trayvon Martin into an organization providing training and resources that have impacted many lives (Black Lives Matter, n.d.). The protests following the murder of George Floyd constituted the largest mass protest in the nation’s history and were attended by people of all ages and races (Hamilton, 2021; Watson Institute, 2022). Though CRT existed long before this growing awareness, those opposed to this culture shift used the individual and institutional tools at their disposal to counter the pro-Black message (Bonilla-Silva et al., 2020). For example, the rise in hate crime and growing numbers of White supremacy groups after the election of Barak Obama as president (Bigg, 2008) and the insurrection at the U.S. Capitol on January 6, 2021 where the confederate flag was prominently displayed (Fernando & Nasir, 2021) were both examples of Whitelash against perceived racial progress for Black people (or a perceived lessening of power for White people).

**Whitelash in Legislation.** Now, it seems the Whitelash is being used in an additional arena, the legislative process, by the introduction of anti-CRT bills. Those who support the bills recognized a re-defined CRT could be used to inspire fear, using phrases such as CRT being an “existential threat” to “core American values” (Wallace-Wells, 2021, para. 8), “purposely political” and “dispens[ing] with the
idea of rights” (Butcher and Gonzalez, 2020, p. 10), and a movement that will “advocate for ...
destruction” and “reward victimization” (Goldwater Institute, n.d., para. 10-11). This representation of
cRT is critical to the current legislative Whitelash; in fact, there is evidence legislators know exactly what
cRT is but have decided on this course of action (using it as a fear tactic, changing the definition, and
promoting misinformation) to keep things as they are—to maintain the status quo and their place in the
dominant strata of society (Wallace-Wells, 2021). A tweet by Christopher Rufo, conservative activist,
stated the following about the efforts to discredit CRT:

We will eventually turn it toxic, as we put all of the various cultural insanities under that brand
category.... We have decodified the term and will recodify it to annex the entire range of
cultural constructions that are unpopular with Americans. (Rufo, as cited in Jaleel, 2021, para. 4)

Thus, the anti-CRT activists have taken a way of looking at inequities, Critical Race Theory, and made it a
catch-all for conservative fears, reformulating CRT to use as a political weapon of Whitelash (Wallace-
Wells, 2021).

The actions of Rufo are but one mechanism of Whitelash. While there are many ways in which
to oppose an event or the progress of one group or idea, there are rhetorical and other types of
strategies that reappear over time (Bonilla-Silva, et al., 2020; Leonardo, 2020; Mintz, 2020). As early as
1824, philosophers such as Jeremy Bentham were examining “canards, fallacies, illusions, sophistries,
specious arguments, tautologies, technicalities, errors in logic, erroneous beliefs, distorted reasoning,
willful falsehoods, word magic and other tactics used by defenders of the status quo to block reform”
and “perpetuate selfish interests” (Mintz, 2020, para. 3). Below, I describe some tactics of Whitelash
that may be revealed throughout this study as part of Discourse models that support the current racial
order. As with Discourse models, many of the strategies of Whitelash complement and bleed into each
other, with some encompassing one component to activate another.

Appropriation & Rearticulation
 Appropriation & Rearticulation is the taking of a concept, ideology, or theme and reworking it “such that these elements obtain new meanings” (Omi & Winant, 2014, p. 165). In the case of racial progressive movements, it is the “ideological appropriation of elements of an opposing position” (Omi & Winant, 2014, p. 264). In other words, appropriation is the taking of something (an idea, language, interpretation, philosophy, method, etc.) from another group or person. Rearticulation is when these items are reworked or redefined so that they have a new meaning for an opponent. The actions of Rufo, in rearticulating CRT, is one example of these mechanisms, as he took the concept of CRT and reworked it for another purpose.

Many of the themes used by progressives were, and still are, rearticulated by White people. For example, the theme of Black people being the victim of discrimination has recently been appropriated and rearticulated by White people with the claim of “reverse discrimination” (Bonilla-Silva et al., 2020; Esposito, 2011; Harris, 1993; Liou & Alvara, 2021). Some White men in college explained to Cabrera (2018) the existence of affinity groups or organizations for People of Color is discrimination against them, since they are White and cannot join. This rearticulation seemed at first glance to support anti-discrimination notions, but at the same time, it criticized the efforts to allow historically marginalized groups to gather (Omi & Winant, 2015). In fact, some surveys have found the majority of White people think “reverse racism” or racism against White people is more prevalent than racism against People of Color (Bonilla-Silva, et al., 2020). In this instance, the racial problem has been flipped on its head, with “the majority of Whites insist[ing] that people of color (especially Blacks) are the ones responsible” by “playing the race card” (Bonilla-Silva, 2022, p.1).

Another example of rearticulation is shown in the hostility to affirmative action (Ross, 1990a). Affirmative action has been rearticulated as an individual entitlement, not as a group amelioration mechanism (Crenshaw, 2006; Esposito, 2011; Leonardo, 2020). Clarence Thomas (as a future Supreme Court Justice in 1991) stated the following regarding affirmative action:
America was founded on a philosophy of individual rights, not group rights. I believe in compensation for actual [victims of discrimination but] not for people whose only claim to victimization is that they are members of a historically oppressed group. (Swain, 2002, p. 164)

Affirmative action was implemented to increase minority representation in the workforce, which requires using racial and gender group statistics and preferences in hiring and admissions processes (Alexander, 1998; Matsuda, 1987). The rearticulation of this to an individual right makes it difficult to implement.

Another appropriation example was described by Leonardo (2020): White people now use their own racial identity to establish themselves as the “victim” of laws such as affirmative action that give People of Color an advantage over White people. This “appropriation of identity politics” inverts the purpose of affirmative action, with White people claiming to be a group targeted for discrimination (Leonardo, 2020, p. 25). In other words, because a Person of Color was hired in an effort to increase diversity, this must mean a White person has lost the job because of their race. Both appropriation and rearticulation are evidenced in the claim “that affirmative action is a form of legal favoritism based on race, that racism is essentially a thing of the past, and that affirmative action victimizes innocent whites” (Ross, 1990b, p. 15).

**Rhetorical Versatility**

Rhetorical Versatility is another strategy of Whitelash. Thomas Ross (1990b), a scholar of law and race, stated: “Rhetoric is a magical thing. It transforms things into their opposites. Difficult choices become obvious. Change becomes continuity. Real human suffering vanishes as we conjure up the specter of righteousness” (p.1). One strategy of Rhetorical Versatility is the use of “Textual Winks” (Morris, 2002; Ross, 1990b; Sanchez, 2018). Charles E. Morris III (2002) described textual winking in their article regarding homosexuality, in which they defined the tactic as rhetoric that “must imply two ideological positions simultaneously” (p. 230). In this, the speaker states, or fails to state, one thing but
implies by “winking” something else to an informed listener. The purpose, according to Sanchez (2018), is to hide meanings in language—while an unaware audience may assume the speaker is expressing one position, the speaker is in fact sending a message (either unrelated or counter to the spoken position) to those who can de-code the language.

Such coded language has become an effective technique in the age of Trumpism (Leonardo, 2020; Sanchez, 2018). One instance of textual winking occurred, according to Sanchez (2018), when Donald Trump described two of his allies who had recently beaten a Latino. While Trump first said the incident “would be a shame,” but then he dismissed it by claiming he hadn’t heard anything about the incident. Trump then stated the men were “passionate” and that they “love this country and they want this country to be great again” (p. 50). In that exchange, Trump occupied two different positions: he distanced himself from the incident and then shifted to praise for anyone who loved their country, a seemingly political maneuver to change the topic. However, it also gives a wink to others—these men who assaulted a foreigner were to be praised as patriots (Sanchez, 2018).

Rhetorical Versatility is ubiquitous in legal decisions (Delgado & Stefancic, 1993; Longazel, 2014; Lopez, 1997; Ross, 1990b). A competent litigator can take any issue and make a convincing argument for both sides (Ross, 1990b)—in fact, in my own law school moot court competitions, we were expected to argue for either side of a case in front of an appellate court, using the same law and case precedent as the other side. Ross (1990b) calls this “the magic of legal rhetoric,” and it has been employed on multiple occasions in cases regarding race. For example, Justice Taney, a former Supreme Court justice, explained the following when the Supreme Court was asked to decide whether Black people were citizens:

It is not the province of the court to decide upon the justice or injustice, the policy or impolicy, of these laws. The decision of that question belonged to the political or law-making power; to
those who formed the sovereignty and framed the Constitution. The duty of the court is, to interpret the instrument they have framed. (Dred Scott v. Sandford, 1856, p. 405)

In other words, because the writers of the Constitution had the power to define a person, the court had to honor their definition, no matter if it is wrong. Conversely, it would have been just as possible to use the legal rhetoric displayed in Brown v. Board of Education 347 U.S. 483 (1954): “In approaching this problem, we cannot turn the clock back to 1868 ... We must consider public education in the light of its full development and its present place in American life throughout the Nation” (p. 493). In other words, society has evolved since this law was written, so it needs to be changed. In the first decision, the Court explained away their duty to justice by invoking the concept of time (when the law in question was written) as an excuse for denying the humanity of a Black person. In the second, they used time (when the law was written) as a reason to create justice that the law had stripped away. This is the “magic” of legal rhetoric: just as in the use of textual winks, employing rhetorical versatility can make all positions sound logical, intelligent, and prudent (Ross, 1990b).

White Innocence

White Innocence is the concept that White people have no responsibility for systemic racism today (Gotanda, 2004; Jayakumar & Adamian, 2017; Ross, 1990a). One maneuver of White Innocence is the focus to re-write history (Applebaum, 2008). For example, there is an effort to recast the cause of the Civil War as an issue of “states’ rights,” instead of the preservation of slavery (Bonilla-Silva et al., 2020). This tactic fits with Bonilla-Silva’s (2022) description of “the past is the past” storyline of colorblindness that invokes White Innocence, since “believing discrimination is a thing of the past helps Whites reinforce their staunch opposition to all race-based compensatory programs” (p. 129). This claim also serves to minimize the effects of systemic racism by asserting the conviction that we as a country have moved past discriminatory practices and racism is not a problem today—therefore, policies such as affirmative action are divisive, keeping racism and discrimination alive (Bonilla-Silva, 2022; Leonardo,
Another storyline that complements White Innocence is “I didn’t own any slaves,” which encompasses the idea that “present generations are not responsible for the ills of slavery” (Bonilla-Silva, 2022, p. 129). This line represents a denial of the idea that although White people today do not enslave people, they still benefit from privileges and immunities their ancestors held (Giroux, 2003; Leonardo, 2004; Feagin & O’Brien, 2004; Omi & Winant, 2015).

Legal actors have also blended the concept of White Innocence into many decisions regarding race (Ross, 1990a, 1990b). For example, in Brown v. Board of Education (1954), Justice Warren created what Gotanda (2004) called an “Aha!” moment for the nation. In his decision, Warren emphasized whatever decisions were made in the past, the Court must focus on today. He then took a leap of logic and stated: “Whatever may have been the extent of psychological knowledge [before today], this finding [that separate but equal is not constitutional] is amply supported by modern authority” (Gotanda, 2004, p. 494). Justice Warren was effectively claiming “we could not know then what we know now” — (the “Aha!” moment). In other words, Justice Warren claimed that because larger U.S. society didn’t know any better, it was blameless for the injustice and White innocence was maintained (Gotanda, 2004).

The most modern of the strategies used in Whitelash is the promotion of the “new White nationalism” (Bonilla-Silva, et al., 2020, p. 33). The new White nationalism uses colorblind racial speech while highlighting the White race as a victim of injustice (Bonilla-Silva, et al., 2020). While introduced as a current racial ideology, the resurgence and acceptance of more overt forms of racism are tactics of White supremacy that embrace Leonardo’s (2020) “identity politics” referenced above. Leonardo stated new racial speech is:

a type of race talk that, on the surface, harkens back to Jim Crow speech but cannot be equated with it. Its overtness, both linguistic (e.g., “build the wall” and “Muslim ban”) and symbolic (e.g., white men brandishing Tiki torches), recalls Jim Crow whiteness only at the obvious level. It is
unabashed, brazen, and unapologetic. But at the semiotic level, new racial speech inaugurates whiteness in an unparalleled way precisely because it interpolates an acknowledged racial subject, an identity politics of whiteness. (p. 19)

In other words, while new White nationalists deny that the color of a person matters (so programs such as affirmative action are unnecessary), at the same time they assert discrimination because of the color of their skin. The “new whiteness wants ... symmetrical rights with blackness to assert ‘white pride,’ ‘white nationalism,’ and a ‘white homeland’” (Leonardo, 2020, p. 28).

**Chapter Summary**

This chapter first introduced Critical Race Theory, introduced the concepts of the Racial State and Discourse models, and reviewed relevant literature on Discourses related to race and the strategies of Whitelash that support those Discourse models. While there have been prior examinations of race and rhetoric, none have examined the current slate of education reform bills through the lens of the Racial State Theory. The bills should be critically examined to discover if and how they maintain the Racial State through strategies of rearticulation. While some say these bills are essentially educational gag orders that misconstrue CRT and eliminate history, others insist the concepts that are prohibited lead to more racial division in society (Meckler & Dawsey, 2021). This study examined the text of the bills and supporting statements discursively with a legal eye on context to determine if they are a type of Whitelash upholding racial Discourse models.
Chapter 3

The purpose of this study was to examine the U.S. state-level postsecondary educational reform bills, laws, and justification statements that purport to eliminate discussion surrounding Critical Race Theory (CRT) and related concepts. The law acts as a hegemonic force that “induces people to comply with a dominant set of practices and institutions” (Litowitz, 2000, p. 517). It articulates what is considered acceptable in society, as it both creates and mirrors dominant Discourses (Gee, 2005). The language of law, however, is manipulable: a competent legal writer can make a particular outcome seem natural and logical, even if the language did not seem to support that reasoning (Ross, 1990b). Therefore, examining the language of these bills matters—not only for what they seem to say on the surface, but how the choice of words, grammar, and syntax in combination with the intent and identity of the writer reflect and create meaning (Easterbrook, 1988).

I focused on the January 2021 to October 2022 period, as these bills began being proposed in 2021, with the first proposed in Mississippi on January 18, 2021 by Senator Angela Burks Hill to forbid the use of The 1619 Project in K-12 schools (Miss. S. Assemb., SB253, 2021). Since that time, 192 bills have been introduced to limit the speech of educators, 68 of which propose censoring speech at higher education institutions. Seven of these bills have become law (Young & Tager, 2022).

My analysis focused on the bills affecting higher education institutions and justification statements. For purposes of this dissertation, I defined justification statements as legislative documents, reports, and media appearances made by political supporters of the bills and laws. I used only public statements by governors, lieutenant governors, and legislators of states. In my analysis, I identified Discourse models that reflect and uphold these bills and justification statements and examined the strategies of Whitelash used by proponents of these bills.

In this chapter, I explain my underlying philosophy and why a qualitative study was appropriate for this study. First, I discuss the research design chosen for this study, along with my epistemological
approach and theoretical stance. Then, I describe the instrumentation for the research. As my study focuses entirely on documentary analysis, this section will explain the parameters of the documentation and how the data field was narrowed. In the third section, my data analysis techniques will be listed and described. Finally, I will discuss any known limitations of the study and any ethical implications.

Research Design

In this qualitative study, I used documentary analysis (Fairclough, 1995; Gee, 2005; Wodak & Meyer, 2001) to answer the following questions:

1. What is the content and scope of U.S. state-level postsecondary educational reform bills and laws that particularly target CRT and related concepts that have been proposed in the past three years?

2. What are the Discourse models (the widespread societal beliefs, values, and current power dynamics) that are communicated by these laws and bills and related justification statements of the laws as voiced by political supporters and sponsors in legislative documents, official reports, and media appearances?

3. How do these bills and laws and related justification of the laws uphold and reinforce these Discourse models?

Qualitative research examines social phenomena through the experiences, interpretations, beliefs, and actions of people. In short, “[q]ualitative inquiry ... focuses on meaning in context” (Merriam & Tisdell, 2015, p. 2). Rather than numbers, qualitative research relies on language and other forms of expression to examine how others make sense of their reality (Merriam & Tisdell, 2015). Qualitative studies are in-depth investigations that are primarily inductive, though the researcher is informed by theory (Creswell & Guterman, 2018). For example, in this study I proposed some Discourse models that would likely be revealed in the analysis, but a qualitative study allows for the discovery of more models that may be shown in the data. A qualitative design was most appropriate for this research
because I examined text to reveal what common beliefs and norms are revealed in the bills and justification statements. I was not testing a hypothesis or confirming a theory; rather, I was diving deep into the language used by the proponents to consider their choice of words.

**A Critical Approach**

My epistemological approach was a critical one, as I was interested in examining who is creating the laws, for whom, and their justification for maintaining current power structures through the consequences to higher education pedagogy. Critical research exposes the multiple realities that are positioned within social contexts (Merriam & Tisdell, 2015). A critical lens highlighted the Discourse models that adversely impact underrepresented populations. As these bills are a product of political forces, this revealed how these forces shape our knowledge through a “common sense” approach to the way our society functions in terms of race (Creswell & Plano Clark, 2017; Gee, 2005; Omi & Winant, 2015). According to Merriam and Tisdell (2015), “[c]ritical research has its roots in several traditions and currently encompasses a variety of approaches” (p. 11). However, no matter the approach, critical research is focused on power: who has and doesn’t have it, how it is reinforced, who benefits, and who suffers (Wodak & Meyer, 2001). The critical researcher also recognizes “the deepest impact of power everywhere is inequality, as power differentiates and selects, includes and excludes” (Blommaert, 2005, p. 2).

**Critical Discourse Analysis**

This study relied heavily on textual analysis, which is an effective way to reveal current societal beliefs and norms (Mearns, 2014). According to Shin and Ging (2019), texts can “reflect a certain way of viewing the world and are colored by author’s intentions” (p. 167). Analysis of texts by the powerful can disclose an overt or subtle design to influence societal norms in the direction that will most benefit those in power (Gee, 2011). Because written discourse must be created, the choices an author makes in
terms of grammar, lexicon, and style can reveal the intentions and purpose behind the document, which will in turn show the author’s goals and expectations (Shin & Ging, 2019).

My approach to this research was a discursive one and employed Critical Discourse Analysis as proposed by Gee (2005). According to Gee (2005), discourses are the use of language in context (that is, to execute an idea or identity). In contrast, Discourses, with a capital “D,” are the use of discourse and other items (such as style, attitude, clothing, interactions, etc.) to form identity and meaning (Gee, 2005). Discourses are revealed in language and social interaction, reflect ideologies, and are constantly being created and re-created (Fairclough, 1993). Therefore, language in the context of legislation has a particular importance in not only reflecting the identity of the writer, but because the analysis of legal language is often dependent on the intent of the writer (Easterbrook, 1988).

Critical Discourse Analysis was appropriate for this study because “CDA aims to investigate critically social inequality as it is expressed, signaled, constituted, legitimized and so on by language use” (Wodak & Meyer, 2001, p. 3). It aims to uncover hidden power relations within discourse and expose how the powerful may benefit from the social processes the language encourages (Wodak & Meyer, 2001). According to Fairclough (1992), “Discourse as a political practice establishes, sustains and changes power relations, and the collective entities between which power relations obtain” (p. 67). This was done in this study by using a selection of Gee’s (2014) tools of discourse analysis to uncover the Discourse models that are supported by the language in the bills and justification statements. Discourse models are “‘theories’ (storylines, images, explanatory frameworks) that people hold, often unconsciously, and use to make sense of the world and their experience in it” (Gee, 2005, p. 61). Discourse models are a bridge between our individual experiences and the societal structures and institutions that uphold and promote the “appropriate” explanatory frameworks. Therefore, Discourse models and politics are closely related, as the models reflect what is normal and acceptable in our culture (Gee, 2005).
The text in this study was political language. This type of discourse often uses words that are “neutral, reasonable, and apolitical in order to instill tacit ideological messages” (Mikelatou & Arvanitis, 2018, p. 502). One of the purposes of CDA is to uncover how discourse and power are related and to reveal ideologies or hidden political agendas: “what functions a discourse is performing [and] what relations and relations of power a particular discourse brings to light” (Rosenfeld, 2021, p. 521). It also reveals how oral and written discourse reveals relationships of power that perpetuates the dominant culture or hegemony (Mearns, 2014). Both of these purposes made this CDA technique well-suited for this study, since CDA does not subscribe to the notion of neutrality of discourse. This study unearthed how discourse is employed to maintain cultural inequities (Mearns, 2014).

Data Sources

The primary source of information for this study was textual documents, though transcripts of some statements by bill supporters were also analyzed. While some qualitative studies use documentary analysis to supplement their research, my study used documents as the primary source of data (Marshall & Rossman, 2016). According to Yin (2003):

You can make inferences from documents, but … every document was written for some specific purpose and some specific audience other than those of the … study being done. In this sense, the … investigator is a vicarious observer, and the documentary evidence reflects a communication among other parties attempting to achieve some other objectives. (p.87)

Below, I outline the procedures I took to analyze the bills affecting higher education institutions and justification statements made by lawmakers for their passage. First, I will explain how the data was collected and organized before coding began. Then, I will describe the first and second level coding I employed for the bills and describe how I used Excel and Word to synthesize the codes. I will then describe how I used Gee’s (2005, 2014) methods to complete my analysis of the bills. Finally, I will describe the coding, synthesis, and use of Gee’s methods to analyze the statements.
Collection of Documents

First, I collected bills and statements from all 50 states. While some bills have been proposed at the federal level, I chose to focus on state laws, as education content and delivery is primarily the purview of state government (Spillane, 1996). At least once per week during data collection, until October 31, 2022, I reviewed the Educational Gag Order Index (PEN America, n.d.-b), an online, shared data set owned and updated by PEN America, a non-profit organization dedicated to the continuation of free expression and academic freedom (PEN America, n.d.-a). I also cross-checked that data with the UCLA School of Law CRT Forward Tracking Project (n.d.), which also contained a listing of all proposed and enacted bills that referenced the prohibition of CRT and “which tracks, identifies, and analyzes measures aimed at restricting access to truthful information about race and systemic racism” (para. 1). I continued visiting these websites until October 31, 2022, and collected all bills that affected higher education institutions and the instruction on race, history, and CRT through gag orders or other means of speech control. I initially collected a total of 70 bills based on the categorization provided by the two organizations Pen America and the UCLA School of Law. Figure 3 shows the location of anti-CRT proposals throughout the nation since January 2021 (UCLA, n.d.):
As shown above, anti-CRT activity is taking place across the nation on the local, county, and state level. For this study, I focused only on state-level initiatives that propose to limit speech in university classrooms, though the figure above also includes local initiatives to ban CRT. Figure 4 shows the number of these state-level initiatives from January 2021 to August 2022 (Young & Tager, 2022):
Figure 4

Number of Anti-CRT Initiatives at the State Level

As Figure 4 shows, not many of the introduced bills have been made law. In addition, many of the bills are similar in content, but not all reference higher education institutions, as shown in Figure 5 below (Young & Tager, 2022):

Figure 5

Institutions Referenced in the Bills

[Graph showing the percentage of proposed educational gag orders targeting particular types of institutions, with data from PEN America Index of Educational Gag Orders, August 2022.]
As Figure 5 shows, some of the bills reference more than one type of institution. However, this study was limited to those that proposed to limit speech in colleges and university classrooms.

I also collected justification statements in support of the bills. As part of a listserv, I received daily newsletters of The Chronicle of Higher Education (https://www.chronicle.com/) and Inside Higher Ed (https://www.insidehighered.com/). At least once per week and usually each day, I reviewed these newsletters for articles that referenced these types of bills, their effects on institutions of higher education, politicians in support of the bills, etc. If an article was found, I visited the correlating website and reviewed the article to see if it contained justification statements given by lawmakers in state governments (which includes legislators, governors, and lieutenant governors) in support of these laws, or if it contained a link to such a statement. If the article referenced a document or speech when quoting a lawmaker-proponent of the bills, I attempted to locate the original document or speech for analysis. I continued collecting these justification statements by this method until October 31, 2022 and initially collected 42 statements.

After data collection was complete, I reviewed all bills and justification statements to make sure they met the criteria for this study. The bill criteria included: proposed by a state lawmaker as a state law; prohibits or requires instruction or speech regarding race, Critical Race Theory, or The 1619 Project; and affects instruction of students at institutions of higher education. The justification statements must have been made by a state lawmaker in support of a specific bill or in support of these types of bills. In total, 53 bills and 26 statements were selected for analysis.

**Organization of Documents**

The next step in analysis was to organize the large corpus of data. I organized the bills and statements in an Excel spreadsheet, as shown in Table 1 below. I included information about the bills that will not be referenced in later analysis, since I was not sure what organizational data would turn out to be relevant. For example, I included information on the identity groups that were listed in the bills.
For example, some bills stated that there should be no divisive statements made based on race or sex (Ala. HB8, 2022); some mentioned race, sex, and religion (Ky. HB487, 2022); while others listed a combination of some protected classes such as sex, race, ethnicity, religion, color, or national origin (Miss. HB1495, 2022). Figure 6 shows the major identity groups for all bills:

**Figure 6**

*Identity Groups Named in the Bills*

![Identity Groups Named in the Bills](image)

*Other included 2 bills which included Gender and Sexual Orientation, and 1 bill each containing Culture, Heritage, Marital Status, Familial Status, Disability Status, and Biological Sex.*

As shown in Figure 6, most of the named identity groups were race and sex. The third most mentioned in the bills was religion, with ethnicity, nationality, and color close behind.

The Excel spreadsheet shown in Table 1 has 11 columns and is primarily organized by state and bill. The first column contains the state where the bill was proposed, the second column contains the bill number with a hyperlink to the bill contents, the third column shows the date the bills was introduced, the fourth column gives the status of the bill (whether it remained a bill or became a law by October 31, 2022), and the fifth column lists the bills primary sponsor, who is the legislator that proposed the bill.
The sixth column contains a code explaining how I organized the bills into categories, which will be explained below. The seventh column contains a shorthand abbreviation of the named identity groups in the prohibitions, such as R standing for race, S for sex, and Eg for ethnic group. The eighth column indicates whether the bill contained a specific definition of “stereotyping,” the ninth column whether the bill contained a specific reference to CRT, and the tenth column listed the type of enforcement procedures given by the bill, such as “funding withheld” for those universities who violate the bill.

The remaining columns contained hyperlinks to justification statements associated with the bill. If the justification statement is only available through audio (such as a press conference), I transcribed the press conference using computer aided software or by hand (depending on length) for inclusion.

Table 1

Portion of Spreadsheet Organization Table

<table>
<thead>
<tr>
<th>STATE</th>
<th>BILL NUMBER</th>
<th>DATE INTRODUCED</th>
<th>STATUS</th>
<th>PRIMARY SPONSOR</th>
<th>CONTENT CATEGORY</th>
<th>NAMED IDENTITY GROUPS</th>
<th>Stereotyping</th>
<th>CRT</th>
<th>ENFORCEMENT</th>
<th>STATEMENTS</th>
</tr>
</thead>
</table>

For example, Table 1 above shows the organization of one bill from the state of Florida, numbered HB7. This bill was introduced on January 11, 2022 and is currently the law in Florida. The bill’s primary sponsor was Representative Bryan Avila, a Republican. In my organization method, I have classified this bill as belonging in the “A” category, which will be explained below. In the content of the bill, it references the following identity categories: Race, Color, National origin, and Sex. There is no specific reference to stereotyping or CRT in the bill, and there is no description of how the law will be enforced. There is a statement by a lawmaker regarding this bill, and there is a hyperlink to the statement.

Citation Information
Throughout the rest of this dissertation, I will be referring to bills with the following method for in-text citations: (Abbreviation of state/Bill number). The reason for breaking with the APA method is the large amount of state bills that are referenced.

The Publication Manual of the American Psychological Association (APA Manual) (2020) does not indicate how state bills are to be cited and refers the researcher to The bluebook: a uniform system of citation (2020). The Bluebook is the legal citation guide used by most law schools and courts. The Bluebook instructions are to include: the name of the legislative body that is proposing the bill abbreviated according to The Bluebook tables (2020), the number of the bill, the number or year of the legislative body, the number of the legislative session, and the parenthesized state abbreviation and year of enactment or publication. There are no instructions for how to cite in-text, because in legal writing, all references are footnoted with the entire citation appearing the first time it is mentioned. For later citations, any short form that points to the source can be used, including the short form “id.,” which means “the immediately preceding authority” (The Bluebook, 2020). There is no separate reference list in legal writing.

Normally, the APA method for in-text citation is the “author-date citation system,” with the letters “a,” “b,” “c,” etc. added to the date for multiple works in the same year. (APA Manual, 2020). However, this method would likely confuse the reader. Therefore, I refer to bills with the state abbreviation according to the rules of The Bluebook (2020) followed by the bill number.

For example, in this paper I refer to seven bills that the Mississippi Legislature entertained in the year 2022. Rather than cite in-text with “Miss. H. Assemb., 2022a” and “Miss H. Assemb., 2022b,” my citations are “Miss437” and “Miss149,” which contains the state abbreviation, sans punctuation, according to The Bluebook (2020) and the number of the specific bill, as shown in Table 2:
Table 2

*Citation Method Comparison*

<table>
<thead>
<tr>
<th>APA IN-TEXT CITATION METHOD</th>
<th>METHOD USED FOR THIS DISSERTATION</th>
<th>REFERENCE LIST INFORMATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Miss. H. Assemb., 2022a</td>
<td>Miss437</td>
<td><a href="http://billstatus.ls.state.ms.us/2022/pdf/history/HB/HB0437.xml">http://billstatus.ls.state.ms.us/2022/pdf/history/HB/HB0437.xml</a></td>
</tr>
<tr>
<td>Miss H. Assemb., 2022b</td>
<td>Miss1491</td>
<td><a href="http://billstatus.ls.state.ms.us/documents/2022/pdf/HB/1400-1499/HB1491IN.pdf">http://billstatus.ls.state.ms.us/documents/2022/pdf/HB/1400-1499/HB1491IN.pdf</a></td>
</tr>
</tbody>
</table>

As shown in Table 2 above, to use the APA in-text citation method would require numerous checks of the reference list to figure out which bill is being referenced. The method used here, however, eliminates that need, reduces the amount of space needed for the citations, and allows the reader to easily discern to which bill I am referring.

The justification statements are cited using the APA Method. However, it is important to note that some statements consist of language from multiple speakers. In the case of hearing excerpts, occasionally there were multiple lawmakers who spoke on the supporting the bills. These were referred to as a single “justification statement.” In addition, the statements were varied in their format: some were transcripts from hearings, some were social media posts, some were letters, etc. Therefore, there is no reference to the line, section, paragraph, or page number in the in-text quotations. These decisions will prevent the reader from confusing a justification statement with a reference and will also avoid confusion by not using a motley of citation methods.

*Additional Organization of Bills*

Because of the large amount of data, I continued to organize the bills according to type. I determined what similarities existed between and among the bills and how they differed (Saldaña, 2016). From this, I categorized the bills. Many of the bills were almost identical in content regarding
eight concepts which were described as “divisive” or “discriminatory,” allowing me to significantly reduce the data corpus. These are listed in Table 3:

Table 3

Common Divisive Concepts in Bills

<table>
<thead>
<tr>
<th>COMMON DIVISIVE CONCEPT LIST</th>
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<tbody>
<tr>
<td>“No student enrolled in or attending a public K-12 school or public institution of higher education shall face any penalty or discrimination on account of his or her refusal to support, believe, endorse, embrace, confess, act upon, or otherwise assent to divisive concepts” (Ala9).</td>
</tr>
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<tr>
<td>9</td>
</tr>
</tbody>
</table>

Some of these bills had additional concepts, which I listed separately for coding. The bills containing a list of at least four divisive concepts were placed in Category A. There were also bills containing a much shorter list of three concepts which were place in Category B. The Category B bills were almost identical. There were 30 bills categorized as A and 14 categorized as B. There were 9 bills that did not fit any of the categories and were placed in Category U.

Most of the Category A bills were extremely similar and had a list of nine concepts that were defined as divisive or discriminatory. I created a list of the differences in the wording of these concepts for coding purposes. For example, many of the Category A bills had the following as the first divisive
concept: “That one race or sex is inherently superior to another race or sex” (Ala8). Before coding, I listed the other varieties of this concept found in the bills:

- “that one race or sex is morally or intellectually superior to another race or sex” (Ariz1412)
- “that one race or sex is morally superior to another race or sex” (Fla7)
- “that one race or sex is superior or inferior to another race or sex” (Ind167, La564, Miss437, Miss1492, Miss2113, NH2, SC4605)
- “that one race or sex is inherently, morally, or intellectually superior to another race or sex” (WVa498)
- “that one race or sex is fundamentally, institutionally, or systemically superior to another race or sex” (La564, Miss437, Miss1492)
- “that one race or sex is fundamentally, systemically, or irredeemably racist, sexist, or nationalistic to another race or sex” (Utah257)

This was done for each of the divisive concepts. Then, I created a separate list of any additional concepts found in bills beyond the common nine. This list included the following:

- “[b]igotry’ means any of the following concepts: the belief that individuals do not or should not possess equal rights, regardless of their race or sex; race or sex essentialism, meaning assigning values, moral and ethical codes, privileges, status, or beliefs to an individual or group of persons based on their race or sex, including the assumption that an individual or group’s race or sex makes them fundamentally or inherently dominant, privileged, oppressed, oppressive, or victimized; the belief that meritocracy or merit-based systems, or related character traits such as a hard work ethic, self-reliance, objectivity, rational or linear thinking, planning for the future, or delayed gratification: i. Are racist, sexist, or oppressive; ii. Were created by members of a particular race or sex to protect their political, financial, or social status or to oppress members
of another race or sex; or iii. Are traits that generally differentiate Americans on the basis of race or sex” (Ky706)

- “ascribing character traits, values, moral or ethical codes, privileges, or beliefs to a race or sex, or to an individual because of the individual’s race or sex” (Tenn2313)
- “promoting division between, or resentment of, a race, sex, religion, creed, nonviolent political affiliation, social class, or class of people” (Miss437)
- “that an individual of one race or sex should be treated disrespectfully regarding that individual’s race or sex” (La564)
- “that an individual should affirm or profess the resentment of an individual based on the individual’s identity trait” (Utah257)
- “that an individual should receive favorable treatment because of the individual’s race or sex” (Idaho352)
- “that any individual should be asked to accept, acknowledge, affirm, or assent to a sense of guilt, complicity, or a need to work harder solely on the basis of his or her race or sex” (Ala292)
- “that certain character traits, values, moral or ethical codes, privileges, or beliefs are ascribed to an identity trait or to an individual because of the individual’s identity trait” (Utah257)
- “that fault, blame, or bias should be assigned to a race, sex, or religion, or to members of a race, sex, or religion, solely on the basis of their race, sex, or religion” (Ala312)
- “that promotes or advocates the violent overthrow of the United States government” (Miss437, Miss1492, Utah257)
- “that promotes or the division between, or resentment of, a race, sex, religion, creed, nonviolent political affiliation, social class or class of people” (Miss437, Miss1492, Tenn2313)
- “that the concepts of capitalism, free markets, or free industry are inherently racist” (Utah257)
• “that the concepts of capitalism, free markets, or working for a private party in exchange for wages are racist and sexist or oppress a given race or sex” (La564, Miss437, Miss1492)

• “that the concepts of racial equity and gender equity, meaning the unequal treatment of individuals because of their race, sex, or national origin, should be given preference in education and advocacy over the concepts of racial equality and gender equality, meaning the equal treatment of individuals regardless of their race, sex, or national origin” (La564, Miss437, Miss1492)

• “that with respect to American values, slavery and racism are anything other than deviations from, betrayals of, or failures to live up to the founding principles of the United States, which include liberty and equality” (Ala312, SC4799)

The second category of bills (B) included the following prohibitions:

• “that any sex, race, ethnicity, religion, color, or national origin is inherently superior or inferior to any other” (Ala11)

• “that any individual should be adversely treated on the basis of their sex, race, ethnicity, religion, color, or national origin” (Idaho377)

• “that any individual, by virtue of sex, race, ethnicity, religion, color, or national origin, is inherently responsible for any action committed in the past by any other member of the same sex, race, ethnicity, religion, color, or national origin” (Miss1496)

There was no substantial variation in these bills, though three of these bills specifically prohibited instruction of the 1619 Project.

The prohibition language of category A and B bills was also separated out for coding purposes.

There were two types of prohibitions in the bills: some bills prohibited the instruction of certain concepts outright, while some prohibited instruction indirectly. For example, some stated: “No instructor, teacher, or professor at any public school receiving any funding from the state shall teach,
advocate, or encourage the adoption of any racist or sexist concept while instructing students” (Idaho352), while others prohibited the compulsion of affirming or expressing the divisive concepts:

No public K-12 school or public institution of higher education, or employee of the school or institution, shall direct or otherwise compel any student of the school or institution to personally affirm, adopt, or adhere to any of the following tenets. (Ala11, Idaho377, Idaho488, Ill5505, Miss1491, Miss1496, Miss2171, SC4325)

Of the 53 bills, 21 contained prohibitions against teaching a student to adopt or believe the concepts, and 32 banned instruction of the divisive concepts themselves. The bills used various language in what they prohibited:

**Figure 7**

*Prohibition Language in Bills*
As shown in Figure 7, a professor could not do any of the above (teach, instruct, train, etc.) regarding divisive concepts. The restriction language was varied across the bills, and the figure above is a word cloud compilation of all the words used in the section of the bills that gave the constraint.

The remaining category U bills were coded separately, as their variations were substantial. These bills included Ariz2001, Ark1218, La1014, Miss1634, NH1255, NY8253, Okla614, Okla1641, SC534, and SC4605.

**Coding of Bills**

I entered the content of the bills into Excel for ease of coding. Before coding the data, I created a list of provisional codes, based on the initial reading of the bills, literature reviews, and my own knowledge as an attorney. These codes included items such as “individual,” “colorblind,” and “nationalism.” I also included Concept and Values Coding during the initial coding. In initial coding, I proceeded to “discover the most significant or frequent initial codes” (Lapan, et al., 2012, p. 46).

In Concept Coding, larger portions of language are examined for meanings and ideas which may not be captured through a single word. It is: “an appropriate method when the analyst wishes to transcend the local and particular of the study to more abstract or generalizable contexts” (p. 120). Since my study looked for the meanings that may not be obvious at first glance, this method was an important addition to the study as it enabled me to go beyond in vivo codes and to examine the text for propositions and impressions.

To complement the Concept Coding, I used Values Coding to focus on the beliefs, opinions, and espoused morals in the language of the bills. This coding also allowed for examination of platitudes common to the bills. Saldaña (2016) stated that Values Coding includes not only values, which is the significance the speaker places on something, but also attitudes, which include our valuation of another person or thing, and beliefs, which include a person’s “truth” about themselves, society, and their
relationships. Values Coding was necessary for my study since I was discerning the “cultural values and belief systems” that are the impetus behind the bills. (Saldaña, 2016, p. 132).

I employed constant comparison while coding the bills. As I proceeded with initial coding, using Concept and Values Coding, I constantly compared the codes with the new data, searched for codes that emerged from the discourse and grouped them into categories (Charmaz, 2006; Saldaña, 2016; Creswell & Guetterman, 2018; Hatch, 2002). This process was repeated until no new categories emerged (Marshall & Rossman, 2016). I noted where the codes were similar to previous codes and where new data prompted a revision of codes (Lapan, et. Al, 2012).

**Using Excel and Word to Organize Coded Text**

While there are programs that are specialized for quantitative data sorting, I used a method developed by Ose (2016) that uses only Word and Excel to classify and frame a large amount of data. Ose developed this method to have “a simpler way of coding qualitative data and to sort all of the text in proper chapters and subchapters rather than trying to analyze the data using complex, very powerful, and sophisticated software” (p. 148).

First, the text to be analyzed is put into an Excel workbook. After opening a spreadsheet, a notation of the speaker for the statement was entered into the first column. The textual data is entered into the second column. The amount of data in each cell of the column is determined by the researcher, and I chose to have roughly one or two sentences of the data in each cell. The process was repeated for each bill, which was entered into its own sheet in the workbook. Coding took place in Excel in the third column of each sheet and a code list was maintained in another sheet in the workbook.

After coding in Excel, the text, speaker, and line number in the sheet was combined using the function tool. Then, all the sheets of data were combined into one large sheet. This data was sorted by content, using the Filter and Sort tool to organize the columns by code and content. Then, the data was transferred back into a Word document, where:
the text is separated into chapters and sections because the actual codes are transformed into headings in the text. The structure in Word (Heading 1, Heading 2, and Heading 3) is used to structure the text into main categories, topics, and subtopics. ... With all quotes on the same topic and subtopic collected in the same place in a document, it is relatively easy to read through the text on a specific topic (p. 149)

and analyze the data.

**Second Level Coding of Bills**

After this, I reviewed the codes gleaned from the bills to determine whether any more were repetitive in nature, combining them when it seemed the meanings were clearly the same or extremely similar. In this second iteration of coding, I eliminated codes that were not relevant or unhelpful, such as provisional codes chosen beforehand that turned out to be only descriptive and not pertinent to any category.

I condensed the codes even further through Pattern Coding, using phrases or words to describe major actions, themes, or Discourse models, completing what Saldaña (2016) called “coding the codes” (p. 229), and what Lapan, et. al (2012) called focused coding, which is when “researchers explore codes and decide which best capture what they see happening in the data” (p. 49). Using these Pattern Codes, I recoded the data, making sure that all major ideas had been captured.

After confirming the relationships between the sections of data, I examined the Pattern Codes for themes revolving around the Discourse models that stood out in the data as well as Whitelash techniques that supported the Discourse models. This was mainly shown through ideas and concepts that were repeated in the bills, such as an emphasis on national pride and individualism.

Until this point, most of the analysis of the data had been done by looking at sections of the bills, which may have been a sentence or a short paragraph. Occasionally, more than one code was
assigned to the sections using this method, but after the second iteration of coding using the Pattern Codes, only a few were in more than one category.

The next portion of analysis was a deeper dive into the text. I examined each line of the bills that had been organized for coding, as described above, using Gee’s discourse analysis questions (See Appendix A), the Significance Building Tool, and Politics Building Tool (Gee, 2005, 2014). According to Gee (2005),

a discourse analysis involves asking questions about how language, at a given time and place, is used to construe the aspects of the situation network as realized at that time and place and how the aspects of the situation network simultaneously give meaning to that language. (p. 110)

In other words, I examined the language of the bills and justification statements to see how the language both used and fostered common Discourse models and what strategies of Whitelash were used in the text.

**Discourse Models.** After the second iteration of coding, I used Discourse models as a tool of inquiry. This portion of the analysis was partly deductive, as I had already considered certain Discourse models that may be relevant to the text. These Discourse models, colorblindness, neoliberalism, and meritocracy, have been referenced in literature as significant to the study of race and racism (Applebaum, 2008; Bonilla-Silva, 2022; Bonilla-Silva et al., 2020; Cabrera, 2018; Crenshaw, 2006; Delgado & Stefancic, 1993; Feagin & Hohle, 2017; Giroux, 2003; Goldberg, 2009; Hamilton, 2021; Inwood, 2015; Jayakumar & Adamian, 2017; Kundnani, 2021; Leonardo, 2020). I asked the following regarding Discourse models:

1. What Discourse models are relevant here? What must I, as an analyst, assume that people feel, value, and believe, consciously or not, in order to talk (write), act, and/or interact this way?
2. Are there differences here between the Discourse models that are affecting espoused beliefs and those that are affecting actual actions and practices? What sorts of Discourse models, if any, are being used here to make value judgments about oneself or others?

3. How consistent are the relevant Discourse models here? Are there competing or conflicting Discourse models at play? Whose interests are the Discourse models representing?

4. What other Discourse models are related to the ones most active here? Are there “master models” at work?

5. What sorts of texts, media, experiences, interactions, and/or institutions could have given rise to these Discourse models?

6. How are the relevant Discourse models here helping to reproduce, transform, or create social, cultural, institutional, and/or political relationships? What Discourses and Conversations are these Discourse models helping to reproduce, transform, or create? (Gee, 2005, p. 92–93).

This allowed me to interpret not only what was written, but what was unwritten—in other words: “to distinguish clearly between what is content description and what is being inferred from the content” (Cardno, 2018, p. 633). I examined the text for the choice of words and overall intent, as proposed by Cowan and Mcleod (2004). They proposed that discourse analysis examines how people construct discourse through choice of words, organization, and presentation to transmit unspoken messages, increase social capital and standing, or prevent or encourage acquiescence. This procedure is fitting for legal documents, such as laws, which are carefully scrutinized for language. Therefore, I examined how each word may foster a specific ideology, along with meanings or themes that might be inferred from the text. I also considered the choice of words and their context, determining whether there were any techniques of Whitelash, hidden Textual Winks, or references that required assumption.

To assist in this analysis, I also used two tools from Gee (2014) specific to language: The Significance Building Tool and the Politics Building Tool. These tools, also referenced as two of Gee’s
(2005) building tools of language in *An Introduction to Discourse Analysis: Theory and Method*, were chosen because they allow an examination of what the language is trying to accomplish.

**Significance Building Tool.** The Significance Building Tool examines how the choice of word placement and vocabulary stress some words or phrases more than other, making them more significant to the reader. Conversely, significance of others can be lessened. The words and their placement give meaning and value to certain ideas in the text (Gee, 2014). Put another way, the Significance Building Tool helps to analyze what the writer or speaker is trying to highlight as important and what other ideas are dismissed. According to Gee (2014), the researcher should ask “how words and grammatical devices are being used to build up or lessen significance (importance, relevance) for certain things” (p. 98).

**Politics Building Tool.** The Politics Building Tool views how the “words and grammatical devices are being used to build (construct, assume) what counts as a social good” and how this good is disseminated (Gee, 2014, p. 126). Politics, in this sense, does not mean partisan ideals but is the distribution of things of value in our society. This tool considers “what social goods (e.g. status, power, aspects of gender, race, and class, or more narrowly defined social networks and identities) are relevant (and irrelevant) in this situation,” how they are “made relevant (and irrelevant), and in what ways,” and how they are linked to Discourse models (Gee, 2005, p. 112). In other words, the Politics Building Tool helps determine if a social good is being gifted or denied. The researcher should ask:

- How words and grammatical devices are being used to build (construct, assume) what counts as a social good and to distribute this good to or withhold it from listeners or others. Ask, as well, how words and grammatical devices are being used to build a viewpoint on how social goods are or should be distributed in society. (Gee, 2014, p. 126)

- It was also important that I looked at these bills from a legal lens. Since these bills are legal documents, the language chosen by the bills’ authors is crucial and required a lens focused on any legal loopholes for administering the bill, any unintended effects of the bill should it become law, the
intended effects of the law, and any issues of interpretation. If a law is not written in such a way as to eliminate any ambiguities, then the administration of that law is not only confusing to follow but is at the mercy of the courts to decide what the law actually means. I also examined who the law would affect, how it would affect them, and who it would not effect. Finally, I felt it was important to examine the essential elements of any claim that would have to be proven for the law to be implemented.

Each word in a law or regulation is chosen, or should be chosen, with utmost care. Many terms are legal tools of art which are often misunderstood by laypersons. For example, the term “fraud” has a particular legal meaning in law, and a competent attorney will make sure they know the legal definition before using it in an argument (Allison, n.d.). Therefore, analyzing a legal document requires a close look at the words chosen, the sentence structure, and to anticipate any problems in the future with the application of the law.

This legal analysis, combined with the themes developed from the earlier coding, gave a rich set of triangulated data for theme construction. According to Saldaña (2016), “a theme is an extended phrase or sentence that identifies what a unit of data is about and/or what it means” (p. 199) and is appropriate for studies “exploring a participant’s psychological world of beliefs, constructs, identity development, and emotional experiences” (p. 200). The themes that emerged from the data included support for Discourse models as well as instances of Whitelash.

The steps of analysis for the bills are listed in Table 4 below:
Table 4

Steps of Analysis for Bills

<table>
<thead>
<tr>
<th>STEP</th>
<th>TYPE OF ANALYSIS</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Organization of Bills</td>
<td>Characteristics of the text included in spreadsheet, statements linked</td>
</tr>
<tr>
<td>2</td>
<td>Categorizing</td>
<td>Whether the bill references divisive concepts, CRT, or <em>The 1619 Project</em> (or a combination)</td>
</tr>
<tr>
<td>3</td>
<td>Initial Coding</td>
<td>Provisional Coding, Concept Coding, Values Coding with Constant Comparison</td>
</tr>
<tr>
<td>4</td>
<td>Second Level Coding</td>
<td>Code elimination or combination, Pattern Coding</td>
</tr>
<tr>
<td>5</td>
<td>Discourse model analysis</td>
<td>Discourse models that are supported or revealed by text</td>
</tr>
<tr>
<td>6</td>
<td>Significance Building Tool/Politics Building Tool</td>
<td>Repeating and important themes in text, placements of words and grammar for meaning, what social goods are relevant to text</td>
</tr>
<tr>
<td>7</td>
<td>Legal Analysis</td>
<td>Terms of art, effects of bill, legal loopholes</td>
</tr>
</tbody>
</table>

As Table 4 shows, there were seven steps in the analysis of the bills. This included organization and categorization, coding, using the tools from Gee (2005, 2014), and legal analysis.

**Coding of Statements**

The analysis of supportive statements was very similar to the bill analysis. However, after reading through the bills and the statements, I decided that it was best to analyze each set of data separately, because the statements were made by supporters of the bills and were not necessarily written in legal language. In addition, the statements may have been made by non-lawyers, who may be unfamiliar with the nuances of statutory construction. Finally, some of the statements were made in real time, while other statements were prepared and written.

to be made by a lawmaker who supported passage of the bill. All articles on the two websites from January 2021 to October 2022 that referenced these types of bills were pulled and read. Some of the articles contained quotes from a supporter. If the supporter was a lawmaker of a bill that met the criteria, it was selected for analysis. Some contained a link or a reference to a public speech or statement, a social media post, or a public hearing. In these cases, I attempted to obtain the entire speech, statement, or hearing. I transcribed oral statements from speeches and relevant portions of hearings. There was no distinction made between written or oral statements for coding purposes.

As with the bills, the first round of coding the statements included a list of provisional codes. As coding progressed, however, more codes were added through In Vivo, Concept, and Values coding. In vivo coding is the process of establishing codes by using words taken from the actual text (Marshall & Rossman, 2016). According to Saldaña (2016), in vivo coding can “provide imagery, symbols, and metaphors for rich category, theme, and concept development” (p. 109). The statements produced many additional codes that were not applicable to the bills, such as “fight” and “indoctrinate.” The statements also contained much more data that was appropriate for Values Coding, especially around beliefs. Beliefs are the reflections of “a system that includes our values and attitudes, plus our personal knowledge, experiences, opinions, prejudices, morals, and other interpretive perceptions of the social world” (Saldaña, 2016, p. 132).

Once the initial coding was complete, Pattern Coding revealed patterns and themes related to the research questions. Recoding the statements with these macro-codes solidified the Pattern Code choices.

**Fill-In Tool/Why This Way and Not That Way Tool.** I then reviewed each statement again, using Gee’s Discourse model questions and two of Gee’s tools of Analysis: the Fill-In Tool and the Why This Way and Not That Way Tool. The Fill-In Tool considers not only what the speaker or writer said but also the context of the speech, including what is assumed and inferred by the listener or reader. In other
words, it is important to consider what is not said in the speech (Gee, 2014). Using the Fill-in Tool, I considered what was missing from the language used, and what a reader or listener would have to “fill in” to understand the context (Gee, 2014).

According to Gee (2014), the analyst should ask:

[b]ased on what was said and the context in which it was said, what needs to be filled in here to achieve clarity? What is not being said overtly, but is still assumed to be known or inferable? What knowledge, assumptions, and inferences do listeners have to bring to bear in order for this communication to be clear and understandable and received in the way the speaker intended it to? (p. 18)

For the Why This Way and Not That Way Tool, I examined if there was additional meaning to the language based on the words and phrasing used by the speaker (Gee, 2014). The researcher should ask: why the speaker built and designed with grammar in the way in which he or she did and not in some other way. Always ask how else this could have been said and what the speaker was trying to mean and do by saying it the way in which he or she did and not in other ways. (Gee, 2014, p. 63)

This required a close reading of the texts on a line-by-line basis. Gee (2011) also stated:
critical discourse analysis argues that language-in-use is always part and parcel of, and partially constitutive of, specific social practices, and that social practices always have implications for inherently political things like status, solidarity, the distribution of social goods, and power. (p. 28)

Therefore, I also considered the following in terms of word choice and phrasing: What was emphasized in each sentence or selection? Were any power relations used or defined, such as using an active voice for the powerful and a passive voice for others? Was first person or third person language used? Do the words used have any double meanings or connotations?
After this analysis, I examined the Pattern Codes gleaned from the statements, the answers to Gee’s Discourse model and Discourse Analysis questions, and the results of the line-by-line audit of the statement data. The steps of analysis for the justification statements are summarized in Table 5:

**Table 5**

*Steps of Analysis for Justification Statements*

<table>
<thead>
<tr>
<th>STEP</th>
<th>TYPE OF ANALYSIS</th>
<th>DESCRIPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Organization of Statements</td>
<td>Linked to bills in spreadsheet, transcription of speech</td>
</tr>
<tr>
<td>2</td>
<td>Initial Coding</td>
<td>Provisional Coding, In Vivo, Concept Coding, Values Coding with Constant Comparison</td>
</tr>
<tr>
<td>3</td>
<td>Second Level Coding</td>
<td>Code elimination or combination, Pattern Coding</td>
</tr>
<tr>
<td>4</td>
<td>Discourse model analysis</td>
<td>Discourse models that are supported or revealed by text</td>
</tr>
<tr>
<td>5</td>
<td>Fill-In Tool/Why This Way and Not That Way Tool</td>
<td>What is assumed or inferred in context, why words and phrasing were chosen by the writer</td>
</tr>
</tbody>
</table>

As shown in Table 5, there were five steps in the analysis of the justification statements, including organization, coding, and using the tools from Gee (2005, 2014). Together, this data was triangulated to form key assertions of prominent Discourse models and methods of Whitelash.

**Limitations and Ethical Considerations**

All researchers come to the table with different beliefs, passions, and positions, so each part of the research process may be influenced: “[c]hoosing the topic is, in itself, having or taking a view” (Marshall & Rossman, 2016, p. 44). Discourse analysis involves a researcher choosing and interpreting texts, and bias may be inserted. However, CDA “explicitly rejects the futility of maintaining what it regards as the façade of neutrality in the observer” (Mearns, 2014, p. 220). Because CDA investigates relationships regarding power and social inequity, there is no neutral position: “[t]his political nature of CDA enables researchers to descry alternative interpretations of texts and to uncover the ideologies
naturalized within discourse” (Shin & Ging, 2019, p. 168). To make sure positions are explained thoroughly, I maintained reflexivity throughout the study, using self-reflection to serve as a checking mechanism. In addition, I read the texts and data multiple times.

Trustworthiness in qualitative research has been described as the “rigor” of the study, including the design, methods, and other aspects (Merriam & Tisdell, 2015; Creswell & Guetterman, 2018). In other words, trustworthiness refers to the caliber of the research. Both validity and reliability contribute to the quality of a study. Creswell (2014) stated “[q]ualitative validity means that the researcher checks for the accuracy of the findings by employing certain procedures, while qualitative reliability indicates that the researcher’s approach is consistent across different researchers and different projects” (p. 201). While there are differing viewpoints on the suitable ways to assess trustworthiness in qualitative research, the researcher can take steps to demonstrate the soundness of a study (Merriam & Tisdell, 2015). Assessments of validity and reliability occur throughout the research (Creswell, 2007).

The internal validity (or credibility) of a study is a measure of the accuracy of the findings (Merriam & Tisdell, 2015). Internal validity increases the robustness of the study. One of the techniques I employed to bolster internal validity is triangulation in the form of multiple sources of data. I examined multiple bills across the nation along with many justification statements. This ensured that my data and findings are saturated, and no new themes discovered with additional documentation (Merriam & Tisdell, 2015). I also looked for contradictory evidence in the data, another technique to increase validity. Acknowledging discrepant explanations allowed for a more robust process and will increase trustworthiness (Merriam & Tisdell, 2015; Rose & Johnson, 2020). Throughout the research process, I was also reflexive. Reflexivity is the process by which a researcher explains and reflects on their position regarding motivation, bias, intent, and assumptions (Marshall & Rossman, 2016). By demonstrating reflexivity, the “overall study can be strengthened with thoughtful, insightful articulation of the ways in
which researchers’ subjective positionalities influence all aspects of the research process, from subject matter to methods to analysis to representation of the findings” (Rose & Johnson, 2020, p. 442).

One benefit I have as a researcher for this study is my experience with reading legal material. As an attorney, I am deeply aware of the nuances of legal language and terms of art. This personal background and training prepared me to conduct a more thorough and accurate reading of the bills, which increased the validity of the study. Finally, peer review was also utilized for validity. I asked my research advisor and my dissertation committee to read and reflect on my methods and analysis and considered their advice and suggestions for improvement. By having peers review my process, the study benefitted from their expertise and contributed to the rigor of the research (Merriam & Tisdell, 2015).

A reliable study is one that can be replicated (Creswell & Plano Clark, 2017). Reliability (or consistency) is difficult in qualitative research since “human behavior is never static, nor is what many experience necessarily more reliable than what one person experiences” (Merriam & Tisdell, 2015, p. 250). One of the bonuses of documentary analysis, the basis for this study, is that documents are fixed and do not change. However, the triangulation, my expertise, and the peer review process assisted in increasing the reliability of my study (Merriam & Tisdell, 2015). In addition, I gave a detailed account of how the data was chosen and the methods that were used to increase reliability. Because there are no human subjects in this research, I am aware of no ethical implications for participants or vulnerable populations.

Chapter Summary

This chapter described the methodology that was used for this research involving the bills and justification statements that have been issued by state legislature across the nation with the purpose of limiting discussion on CRT in higher education institutions. Validity was ensured by considering whether the answers to questions converge and support each other and how the results of the analysis can be applied to similar data (Gee, 2005). By focusing on coding for themes, Discourse models, and tools from
Gee (2005, 2014), I discovered what societal beliefs are supported and upheld and determine what strategies of Whitelash have been used to do so.
Chapter 4

This is the first of five chapters which all present the findings of this study. I have organized the findings along two vectors of difference: (1) bills versus justification statements, and (2) Discourse models versus strategies of Whitelash. Whitelash is backlash against racial progress as demonstrated by White people (Bonilla-Silva, et al., 2020). Whitelash strategies are used to uphold Discourse models that support the racial status quo. Table 6 below provides a visual listing of these five chapters.

Table 6

<table>
<thead>
<tr>
<th>Chapter Number</th>
<th>Chapter Content (Findings Discussed)</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Bills: Discourse models</td>
</tr>
<tr>
<td>5</td>
<td>Bills: Three Strategies of Whitelash</td>
</tr>
<tr>
<td>6</td>
<td>Bills: Final Strategy of Whitelash (Legal Tactics)</td>
</tr>
<tr>
<td>7</td>
<td>Justification Statements: Discourse models</td>
</tr>
<tr>
<td>8</td>
<td>Justification Statements: Strategies of Whitelash</td>
</tr>
</tbody>
</table>

As shown in Table 6 above, the first three chapters will focus on the bills, and the last two will focus on the justification statements. Chapter 4 will discuss the findings related to the Discourse models reflected and upheld by the language of the bills. Chapter 5 will explain three strategies of Whitelash used in the bills that reinforce Discourse models supporting the current racial order. Chapter 6 will document the findings regarding the fourth strategy of Whitelash used in the bills, which are specific legal maneuvers. I pulled out this final strategy into its own chapter because these devices required more explanation regarding legal processes and language. Chapter 7 lays out the findings of Discourse model analysis regarding the justification statements. Finally, Chapter 8 will describe the strategies of Whitelash used in the justification statements.

Discourse Models in Bills

This chapter discusses the Discourse models that were revealed by the text of the bills. As discussed in Chapter 2, Discourse models are current societal beliefs, values, and power structures that
are revealed through the use of discourse, which includes language, ways of being, and interactions (Fairclough, 1993; Gee, 2005). According to Gee (2005):

> Discourse models flow from our experiences and social positions in the world. Discourse models are not just based on our experiences in the world, they “project” onto that world, from where we “stand” (where we are socially positioned), certain viewpoints about what is right and wrong, and what can or cannot be done to solve problems in the world. (p. 88)

This chapter thus answers part of the research questions: What are the Discourse models (the widespread societal beliefs, values, and current power dynamics) that are communicated by these laws and bills? How do the bills confirm and sustain current Discourse models, especially those involving race?

Across my analysis of all 57 bills, three Discourse models were reflected broadly and reinforced by the text of the bills, as seen in Figure 8:

**Figure 8**

*Discourse Models Upheld by the Bills*
As shown in Figure 8, three Discourse models were fortified by the bills: Neoliberalism, Nationalism, and Colorblindness. In this chapter, I will discuss each Discourse model and provide evidence from the text of the bills that support the identification of these Discourse models.

**Neoliberalism**

As discussed in Chapter 2, Neoliberalism is a worldview that supports embracing the rule of market values in all areas. It asserts that competition in a free, unregulated market is the best way to allow individuals to advance in society through Western values of competition and individualism (Brown, 2015; Harvey, 2007; Kundnani, 2021). The Discourse model of Neoliberalism was reflected in several ways in the bill text. The notion of the primacy of the individual, a foundational component of neoliberal beliefs and practices (Brown, 2019), was found repeated throughout each bill. Twenty-nine bills had a list of concepts, usually called “divisive” or “discriminatory” concepts, that professors were forbidden to discuss in university classrooms, or that contained information about how the professor should or should not go about teaching their students. The term “individual” was repeated throughout these concepts:

- “that an individual, by virtue of the individual’s race or ethnicity, is inherently racist or oppressive, whether consciously or unconsciously” (Ark2001)
- “that an individual’s moral character is necessarily determined by his or her race or sex” (Ala9)
- “an individual, by virtue of his or her race, color, sex, or national origin, bears personal responsibility for and must feel guilt, anguish, or other forms of psychological distress because of actions, in which the individual played no part, committed in the past by other members of the same race, color, sex, or national origin” (Fla7)

---

7 As a reminder, as discussed in Chapter 3, I will be referring to bills with the following method for in-text citations: (Abbreviation of state/Bill number). The reason for breaking with the APA method is the large amount of state bills that are referenced.
Not only were the concepts themselves focused on the individual but peppered throughout the bills were references to respecting the individual (Ark1218) and avoiding the association of individuals with any group or assignment of group characteristics (Ark2001). For example, SC4605 stated:

It is the intent of the General Assembly that educators, administrators, students, childcare providers, employers, and employees: respect the dignity of individuals. ... The General Assembly hereby affirms that under the principles enshrined in the Declaration of Independence, United States Constitution, Civil Rights Act of 1964, Constitution of South Carolina, 1895, and Human Affairs Law found in Chapter 13, Title 1, all individuals in places of learning, employment, and childcare have a right to be treated equally as individuals, without being the subjects of, or being compelled to affirm or participate in, stereotyping or scapegoating others based on personal or group characteristics or beliefs. (SC4605)

The word “individual” appeared in the bills for this study a total of 616 times. There was no language in the bills referring to shared culture, societal goods, or even to discrimination in a group context. All references to discrimination and racism were aimed at individuals by individuals.

In fact, some bills directly advocated for neoliberal values. Four bills supported the neoliberal beliefs of limited government and faith in open markets through capitalism (Harvey, 2007). For example, Utah257 forbid instruction that states “that the concepts of capitalism, free markets, or free industry are inherently racist.” One unusual bill, Louis1014, did not contain concepts that were forbidden, but instead contained concepts that universities were required to teach, such as: “The purposes of limited government, which is to protect the inalienable rights of the people and to protect the people from violence and fraud” and the “economic system of money with intrinsic value” (La1014). Other bills were even more direct in their support of neoliberalism, such as Miss437, Miss1492, and Tenn2313, which prohibited classroom discussion supporting the notion “that the concepts of capitalism, free markets, or working for a private party in exchange for wages are racist and sexist or oppress a given race or sex.”
This means it would be illegal to discuss how People of Color are often excluded from the benefits of capitalism due to systemic racism and that pay inequity still exists.

The bills also promoted the neoliberal discourse of the individual as the sole unit of responsibility for success or failure in the capitalistic free market. For example, nearly half, or twenty-six of the bills contained a prohibition against teaching that meritocracy or traits such as a hard-work ethic “are racist or sexist or were created by a particular race to oppress another race” (Ala8). Other examples include:

- “that academic achievement, meritocracy or traits such as a hard work ethic, rational thinking, objectivity or literacy are features of racism or oppression” (Ark2001)
- “that meritocracy or traits and behaviors such as a hard work ethic, punctuality, use of standard English language are racist or sexist, or were created by a particular race or group to oppress another race or group” (SC4605)
- “such virtues as merit, excellence, hard work, fairness, neutrality, objectivity, and racial colorblindness are racist or sexist, or were created by a particular race to oppress another race” (Fla7)
- “such virtues as merit, excellence, hard work, fairness, neutrality, objectivity, and racial colorblindness are racist or sexist, or were created by a particular race to oppress another race or religion” (Ind352)
- “such virtues as merit, excellence, hard work, fairness, neutrality, objectivity, and racial colorblindness are racist, sexist, or nationalistic, or were created by a particular race to oppress another race” (Utah257)
- “academic achievement, meritocracy, or traits such as a hard work ethic are racist or sexist or were created by members of a particular race, ethnic group, or biological sex to oppress members of another race, ethnic group, or biological sex” (WVa498)
• “meritocracy or traits, including a hard work ethic, are not racist but are fundamental to the right to pursue happiness and to be rewarded for industriousness” (Wyo127)

• “the belief that meritocracy or merit-based systems, or related character traits such as a hard work ethic, self-reliance, objectivity, rational or linear thinking, planning for the future, or delayed gratification are racist, sexist, or oppressive; were created by members of a particular race or sex to protect their political, financial, or social status or to oppress members of another race or sex; or are traits that generally differentiate Americans on the basis of race or sex “(Ky706)

These additions include the following traits being related to meritocracy: hard work, rational thinking, objectivity, literacy, punctuality, use of standard English, excellence, fairness, neutrality, colorblindness, self-reliance, rational or linear thinking, planning for the future, and delayed gratification. Meritocracy advances the belief that an individual is solely responsible for their own success or failure (Harvey, 2007). In other words, with enough hard work and effort, anyone can prosper regardless of their life circumstances, even if there are systemic disadvantages and discriminatory efforts to limit their success (Bonilla-Silva, 2022). Any failure to benefit from a meritocratic system is only the failure of the *individual* who lacks the hard-work ethic to succeed. Wyo127 went even farther, stating that meritocracy and hard work are necessary for success and happiness. None of the bills explained how wealth disparity or social position can influence a person’s financial success, nor do they describe other contributing factors towards prosperity besides self-reliance. La1014 summed up the devotion to neoliberal ideals of individualism and autonomy by declaring:

> Democratic societies built on the ideals of individual freedom and the self-driven pursuit of prosperity with a dedication to equal opportunity for all will thrive in perpetuity, while societies built on the false promises of equity and equal outcomes for all have consistently ended in failed states. (La1014)
Put another way, adherence to the free-market system, self-reliance, and individualism is the acceptable method for prosperity advocated by these bills. The emphasis that the bills placed on these topics, as well as the repetition of support for neoliberal concepts such as meritocracy and hard work, constitute the Discourse model of Neoliberalism.

**Nationalism**

A second Discourse model that was promoted in the text of the bills was that of Nationalism. The language of the bills revealed a promotion of national pride along with derogation of the out-group (defined by the bills as those who support the principles of CRT) (Mummendey, et al., 2001). According to the Oxford Dictionary, nationalism is “[a]dvocacy of or support for the interests of one’s own nation, esp. to the exclusion or detriment of the interests of other nations” (Oxford, 2023). Nationalism involves a strong in-group identification that is dependent on comparison with an out-group (Mummendey, et al., 2001). Nationalists may also “isolat[e] themselves from any information counter to their own image of the group, and view… threats to their policies as threats to the group” (Druckman, 1994, p. 56).

A familiar refrain in the bills was what I describe as “Protection” sentiment. That is, the bills purported to be protecting the country or its citizens from harm. First, eleven of bills contained the prohibition against teaching “that this state or the United States is fundamentally racist or sexist” (Ala8), and four forbid instruction about any coup d’état against the United States (La564, Miss1492). Okla614 established that education should not “endorse, favor or promote socialism, communism or Marxism” and must be “free from anti-American bias.” NH1255 forbade all teachers to give negative commentary of the founding of the country with references to slavery, and Ind1362 forbid discussion of any anti-U.S. American ideologies. This directive erases historical facts that are not flattering to the US and provide a fanciful image of the early United States.

Nationalists will promote a positive history of their country (Schertzer & Woods, 2022). For example, some bills do not want a strong focus on a history which makes plain the violence implicit in
U.S. slavery. These bills also focused on the institution of slavery and the need to eliminate the association of the founding of the country with that practice. Two bills called slavery a “deviation,” “betrayal,” and “failure... to live up to the founding principles of the United States,” and dictated this was the only appropriate response to discussions over the introduction of slavery and racism in the United States (Ala312, SC4799). Two other bills called slavery, legal discrimination, and racism “inconsistent with the founding principles” (La1014, Ark2001). One claimed that:

Americans fought a civil war to eliminate the first, waged long-standing political campaigns to eradicate the second, and rendered the third unacceptable in the court of public opinion, all of which dispels the idea that the United States and its institutions are systemically racist and confutes the notion that slavery, racial discrimination under the law, and racism should be at the center of public elementary, secondary, and postsecondary education institutions. (La1014)

This implies that racism does not exist in the contemporary United States and that CRT is unnecessary. These assertions serve to defend the in-group and relieve them of responsibility to end racism. Ignoring the existence of this type of racism promotes a delusional view of race relations in the US today.

The framers of the constitution, often called the “founding fathers,” were glorified in some bills along with early historical documents. For example, SC534 required instruction at least once per year in universities regarding George Washington and his “divine protection,” victories of American troops, the founders’ belief in “God-given rights,” the “ideals” of the U.S. American revolution, and Thomas Jefferson’s drafting of the Declaration of Independence (SC534). Several bills indicated reverence to the United States Constitution (La1014). In addition, some bills used the U.S. Constitution and the Civil Rights Act as authorities to further denigrate the concept of CRT. In Ark2001 and SC4605, the legislation stated that CRT was in direct opposition to these documents. Other bills cited the Constitutions of the United States and their own state as evidence that the tenets of CRT contradict the concept that all citizens have equal protection under the law (SC4799).
Finally, the language of the bills established the out-group as those in favor of CRT and cited adversarial content against the out-group. First, the bills used phrases such as “fundamentally undermine” (Ill5505), “inflaming division” (Ariz2001), and “fostering hate” (Miss1496) as descriptors of CRT. In one bill, CRT proponents were described as a unit that “actively groups, segregates, [and] discriminates” according to race. Second, the list of divisive concepts is deemed as a listing of CRT tenets (Miss1492). Most of these concepts are not found in CRT literature, such as having someone’s moral character determined by their race or sex, or that students must feel anguish because of their race or sex. It is true that some concepts touch on CRT tenets that address concepts such as systemic racism and colorblindness, but the wording of the concepts redefined CRT proponents as attackers rather than critically analyzing societal inequalities through the lens of these selfsame concepts. For example, the forbidden concept: “an individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race or sex” (Ala8) presupposes that CRT proponents encourage White men to feel bad because of their race and sex. Other examples of establishing CRT as the out-group include:

- “racially discriminatory ideologies and practices such as that known as ‘Critical Race Theory’ directly contradict the principles of the Fourteenth Amendment of the United States Constitution, the Civil Rights Act of 1964 and the Constitution of Arizona” (Ariz2001)
- “this bill would prohibit public K-12 schools and public institutions of higher education from teaching certain concepts regarding race or sex, such as Critical Race Theory” (Ala8)
- “the Idaho legislature finds that tenets outlined in subsection (3)(a) of this section, often found in ‘Critical Race Theory,’ undermine the objectives outlined in subsection (1) of this section and exacerbate and inflame divisions on the basis of sex, race, ethnicity, religion, color, national origin, or other criteria in ways contrary to the unity of the nation and the well-being of the state of Idaho and its citizens” (Idaho375, Idaho377, Idaho488)
• “the Mississippi Legislature finds that tenets outlined in subsection (3)(a) of this section, often found in ‘Critical Race Theory,’ undermined the objectives outlined in subsection (1) of this section and exacerbate and inflame divisions on the basis of sex, race, ethnicity, religion, color, national origin, or other criteria in ways contrary to the unity of the nation and the well-being of the State of Mississippi and its citizens” (Miss1495, Miss1496, Miss2171)

**Colorblindness**

The third Discourse model upheld by the text of the bills is that of Colorblindness, “a form of race subordination ... that ... denies the historical context of white domination and Black subordination” (Harris, 1993, p. 1768). Only three bills listed Colorblindness specifically:

It shall constitute discrimination ... to subject any student or employee to training or instruction that espouses, promotes, advances, inculcates, or compels such student or employee to believe ... such virtues as merit, excellence, hard work, fairness, neutrality, objectivity, and racial colorblindness are racist or sexist, or were created by members of a particular race, color, national origin, or sex to oppress members of another race, color, national origin, or sex. (Fla7)

Though it avoids the word “Colorblind,” one of the divisive concepts in many of the bills included: “That members of one race or sex cannot and should not attempt to treat others without respect to race or sex,” which actually contains the definitions of Colorblindness and sex-blindness (NH544; Oxford, n.d.).

In other words, professors would not be allowed to instruct their class on how Colorblindness functions in our society to perpetuate systemic racism (Bonilla-Silva, 2022). Essentially, the inclusion of this concept as a forbidden topic means that educators must endorse the opposite—that people *can* and *should* treat others without regard to their race. This concept is present in 28 of the bills. Examples of related prohibited concepts include:

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8 One of the definitions of the term “colorblind” in the Oxford English Dictionary is: “Taking no account of differences in race or skin colour” (Oxford, n.d.).
• “that members of one race or sex cannot and should not attempt to treat others without respect to race or sex” (Ala7, Ala8, Ala9)

• “that members of one race should attempt to treat others differently solely on the basis of race” (Ala292)

• “[b]igotry is ... [t]he belief that an individual or group should not, or cannot, attempt to treat others of a different race without respect to race” (Ky706)

• “members of one (1) race, sex, or religion cannot and should not attempt to treat others without respect to race, sex, or religion” (Ky18)

• “that members of any sex, race, ethnicity, religion, color, national origin, or political affiliation should not attempt to treat others without respect due to sex, race, ethnicity, religion, color, national origin, or political affiliation” (Ind1362)

• “members of one race, color, national origin, or sex cannot and should not attempt to treat others without respect to race, color, national origin, or sex” (Fla7)

• “that individuals or institutions of cannot and should not attempt to treat individuals without respect to race or sex” (Ind352, Pa1532)

These phrases define and bolster the concept of racial Colorblindness as a common-sense, hegemonic approach to race relations.

Another form of Colorblindness promoted by the bills is an insistence on equal treatment as individuals without consideration for historical oppression and current injustice. Four bills stated that individuals should not be given adverse or favorable treatment based on their race or sex (La564, Miss437, Miss1492, SC4605). At first glance, this concept seems to support equality. However, considered in the context of affirmative action, this concept supports the Colorblind Discourse model by eliminating preferences based on racial or gender identity.
The bills supported an additional measure of Colorblindness through an insistence on equality without regard to equity, what Bonilla-Silva (2022) called the “frame of abstract liberalism” (p. 52). Examples of this include Ky706, which stated it was “bigotry” to believe that “individuals do not ... possess equal rights,” and SC4605, which stated that all have “a right to be treated equally as individuals.” Four bills go further, explaining that the concept of equality should be given preference over equity (La564, Miss 437, Miss1492, SC4799). Specific language included:

- “that the concepts of racial equity and gender equity, meaning the unequal treatment of individuals because of their race, sex, or national origin, should be given preference in education and advocacy over the concepts of racial equality and gender equality, meaning the equal treatment of individuals regardless of their race, sex, or national origin” (La564, Miss437)
- “that equity is a concept that is superior to or supplants the concept of equality, equality before the law, and the role of equality in the United States Constitution and American jurisprudence” (SC4799)

By focusing on the idea of equality, the bills fostered the Colorblindness Discourse model which does not account for the unequal opportunities available to People of Color. In other words, students could not be taught that White people have advantages over People of Color in political, social, and educational arenas, and that these privileges are built into our systems. In addition, students could not be taught that to give a White person and a Black person an equal opportunity only magnifies the advantage of the White person.

Finally, the bills advanced the Discourse model of Colorblindness by insisting that professors display objectivity and neutrality in classroom instruction. Some bills allow instruction on the concepts, but forbid professors from enticing students to adopt them. However, they still state that any instruction must be given in “an objective manner and without endorsement” (Ala9, Ala312, Ala292, Ark627, Fla7, Ohio327, Utah257, WVa498) or to “remain impartial” (Ind1389). For example, while a
professor may discuss the topic of systemic racism but cannot take a position on its existence. Other bills go further and require professors to remain neutral in the discussion of public policy issues, even those not mentioned in the bills themselves:

- “public postsecondary education institutions should strive to maintain a neutral institutional position on any public policy issue that is not directly related to the operation of such institutions and should not directly or indirectly compel students, faculty, or other personnel to publicly express a particular position on a public policy issue” (La1014)
- “it is the duty of the state agency (as defined in IC 4-13-1.4-2), school corporation, or qualified school, or an employee of the state agency, school corporation, or qualified school to remain impartial in activities described in subsection (a)(1) and (a)(2), and to ensure that students are free to express their own beliefs and viewpoints concerning activities described in subsection (a)(1) and (a)(2) without discrimination” (Ind1389)

By upholding and sanctioning neutrality in classroom discussions, the bills foster racial colorblindness by ignoring race, what Bonilla-Silva (2022) called “minimization of racism” (p. 83).

**Chapter Summary**

In summary, the analysis of the bill text revealed three Discourse models that were supported and promoted: Neoliberalism, Nationalism, and Colorblindness. Several examples of each discourse were revealed in the language used in the bills. For Neoliberalism, this included references to individualism, capitalism, and meritocracy. The concepts of national pride, pro-USA sentiment, glorification of the founding, and in-group inclination were present in the Nationalism Discourse. Finally, the notions of equality over equity and the dismissal of race disclosed the existence of a Colorblindness Discourse.
Chapter 5

As previously mentioned, this chapter is the second out of five chapters regarding the findings of the study. This chapter will answer part of the research question: How do the bills confirm and sustain current Discourse models, especially those involving race? In this chapter, I discuss three strategies revealed through analysis of the bills that are forms of Whitelash (Bonilla-Silva et al., 2020), that is the efforts, both individually and institutionally, by the dominant strata in response to racial progress for People of Color, as shown in Figure 9:

Figure 9

*Strategies of Whitelash Upholding Discourse Models in Bills*

As shown in Figure 9, the authors of the bills used several strategies to increase acceptance of their propositions, but four main tactics emerged from the data: Legitimation, Denial, Fear, and Legal Maneuvers. Figure 9 illustrate that these strategies serve to uphold the three Discourse models discussed in Chapter 4. This chapter will discuss the first three categories of Whitelash: Legitimation,
Denial, and Fear. Legal Maneuvers will be discussed separately in Chapter 6 due to the sheer volume of data found in the content analysis.

**Whitelash through Legitimation**

This first Whitelash strategy used was Legitimation. Legitimation is the process by which an author or speaker makes their argument admissible, justified, or validated (Van Leeuwen, 2007). There are multiple ways of attaining Legitimation, including mitigating concessions and claiming consensus (Van Leeuwen, 1995). However, the methods of Legitimation used in the text of the anti-CRT bills are Authority, Appeal to Emotions, and Altruism (Reyes, 2011; Van Leeuwen, 1995, 2007).

**Authority**

The first method of Legitimation, Authority, is the process by which a speaker projects and maintains that they have the power and clout to speak reliably on the topic (Van Leeuwen, 1995). From the outset, the fact that these bills were introduced and supported by elected officials serves to legitimize their content and give them Authority. Elected lawmakers are considered by most to be professionals who are authorized to make difficult and important decisions regarding the affairs of state government (Reyes, 2011). Creating and introducing bills are part of their official duties. Therefore, the bills automatically instill a sense of Authority simply because these they were written by government officials (Martín Rojo & Van Dijk, 1997). In addition, as a formal legal document, the bills are written in a manner with which most lay people are unfamiliar. For example, the bills consist of numbered sections, some referring to other statutes or other sections of the bill. Those not accustomed to reading statutes may not understand the reason for the perplexing layout and may assume that lawmakers must possess intelligence and authority to create these complications. This necessary back and forth reading between sections also impresses upon a reader a seriousness about the document, since it relates to other laws and other sections. Also, many of the terms, such as “notwithstanding another provision of law”
(SC4799) are not those used in everyday conversation, and terms of art such as “bona fide” and “severable” (Ariz2001) give the bills a sense of importance.

Finally, the imposition of enforcement actions adds to authority as Legitimation. That is, many of the bills listed punitive results for those that violated the terms. Figure 10 shows an analysis of the punitive measures mentioned in all 53 of the bills that constitute the corpus for this study. Of the 53 bills, 36 imposed either withholding funds from the university, disciplining the faculty member, or allowing the parents or students to sue the university. I analyzed each bill by the consequences imposed if there was a violation and found that the most common punitive action was withholding funds:

**Figure 10**

*Types of Enforcement in Bills*

As Figure 10 shows, the majority of the bills (36) had undesirable consequence for failure to comply: Seven bills dictated that the professor should be disciplined, 15 stated that the state would withhold funding for universities, and 14 allowed parents or students to sue universities. The fact that non-
compliance with the bills would lead to some form of punishment lends Authority to the bills. In other words, these bills are not simply a declaration of a holiday, or a resolution to honor a citizen; they are of such significance as to merit a penalty for defiance.

**Appeal to Emotions**

Another Legitimation method is an Appeal to Emotions. According to Reyes (2011), emotions serve to inure the audience to a receptive state of mind, and “skew the audience towards accepting and supporting the proposal of the social actor, who has triggered the emotions in the first place” (p. 790). One way in which the bills Appeal to Emotions is a focus on freedoms guaranteed by the Constitution or Bills of Rights, which many U.S. Americans feel are sacrosanct (Lakoff, 2006). Some bills proclaimed that the purpose of the bill included: ensuring a “virtuous and moral people educated in the philosophy and principles of government for a free people (La1014), to “protect intellectual freedom and free expression to the fullest degree” (MO1634), and to protect “freedom of inquiry, freedom of speech, freedom from compelled speech, and freedom of association” (SC4605). In fact, 22 of the bills contained some reference to freedom or rights, including the following:

- “foster and defend intellectual honesty, freedom of inquiry and instruction, freedom of speech, freedom of association” (Ill5505)
- “foster and defend intellectual honesty, freedom of inquiry and instruction, and freedom of speech and association” (Idaho488, Idaho377, Idaho375, Miss2171, Miss1496, Miss1491)
- “requiring instruction to be consistent with specified principles of individual freedom” (Fla7)
- “foster and defend intellectual honesty, freedom of inquiry and instruction, and freedom of speech and association” (Ala11)
- “protect intellectual freedom and free expression to the fullest degree” (MO1634)
- “inhibit or violate the First Amendment rights of students or employees or undermine intellectual freedom and freedom of expression” (Miss1492)
• “inhibit or violate the First Amendment rights of students or employees or undermine intellectual freedom and freedom of expression” (Miss437)

• “the First Amendment of the United States Constitution and Article I, Section 7 of the Constitution of Louisiana protect freedom of speech” (La1014)

• “democratic societies built on the ideals of individual freedom and the self-driven pursuit of prosperity with a dedication to equal opportunity for all will thrive in perpetuity” (La1014)

• “promote and protect the intellectual freedom of students, faculty, and other personnel at public postsecondary education institutions and to promote and protect the free exchange of ideas, individual students, faculty, and other personnel of the public postsecondary education institutions” (La1014)

• “frequent and free elections in a representative government” (La1014)

• “rule of law, with frequent and free elections in a representative government which governs by majority vote within a constitutional framework” (La1014)

• “inhibit or violate the First Amendment rights of students or employees or undermine intellectual freedom and freedom of expression” (La564)

• “protects the fundamental and constitutional right of all students and faculty to freedom of expression” (Ky18)

• “interfere with the freedom of others to express views they reject so that a lively and fearless freedom of debate and deliberation is promoted and protected” (Ky18)

• “so that the free expression of students and faculty is not limited” (Ky18)

• “invite guest speakers to campus to engage in free speech regardless of the views of the guest speakers” (Ky18)

• “ensure that students are free to express their own beliefs and viewpoints concerning curricular materials and educational activities” (Ind167)
• “ensure that students are free to express their own beliefs and viewpoints concerning curricular materials and educational activities” (Ind1362)
• “protect, to the greatest degree, academic freedom, intellectual diversity, and free expression” (SD1012)
• “inhibit or violate the First Amendment rights of any student or employee” (SD1012)
• “foster and defend intellectual honesty, freedom of inquiry, and instruction” (SC4605)
• “acknowledge the right of others to express differing opinions” (SC4605)
• “a right to be presented with instruction that is intellectually honest, placed in historical context, and grounded in verifiable facts” (SC4605)
• “a right to have freedom to express differing opinions, especially on controversial topics, without penalty or marginalization” (SC4605)
• “a right to have freedom of inquiry, freedom of speech, freedom from compelled speech, and freedom of association” (SC4605)
• “violate the rights of individuals in a free and egalitarian society” (SC4605)
• “to prohibit or abridge a person’s First Amendment rights to the freedom of speech or to the teaching and free exercise of religion” (SC4605)
• “a right to be treated equally as individuals” (SC4605)
• “acknowledge the rights others have to express differing opinions and to foster and defend” (SC4605)
• “intellectual honesty, freedom of inquiry and instruction and freedom of speech and association” (Or3408)
• “the right to public and free expression of religion, speech and peaceable assembly” (Okla614)
• “the right to participate in religious student associations free from discrimination” (Okla614)
• “the right to engage in expressive activity on campus” (Okla614)
• “the right to an unbiased education that does not endorse, favor, promote, demean, show hostility toward or intentionally undermine any particular religion, nonreligious faith or religious perspective” (Okla614)
• “the right to an unbiased education that does not endorse, favor or promote socialism, communism or Marxism and that is free from anti-American bias” (Okla614)
• “the right to an unbiased learning environment that is free from the display of flags or propaganda of any organization or symbol of socialism, communism, Marxism or anti-American sentiment” (Okla614)
• “to protect to the fullest degree intellectual freedom and free expression, and the intellectual vitality of students and faculty shall not be infringed” (Okla2988)
• “to inhibit or violate the First Amendment rights of students or faculty” (Okla2988)
• “to protect the right to free speech and expression protected by the First Amendment of the United States Constitution and the West Virginia Constitution” (WVa498)

The list above was a compilation of the phrases mentioning rights and freedoms in the bills. This recollection of freedoms that citizens hold prepares the reader to view the remainder of the legal document—that is, the bill—with an eye toward keeping those freedoms intact.

Another Appeal to Emotions occurred in the use of inflammatory language throughout the bills. The words chosen in many instances would inspire a reader to caution and even anger. For example, some bills said that CRT “exacerbates” or “inflames division” in society (Miss1491, Ala11), “fosters hate and division,” teaches “students to hate or despise their nation” (Ill5505), or promotes “resentment” (Tenn2313). Other inflammatory language included terms like “anguish,” “psychological distress,” “blame,” and “emotional distress” for students if professors teach the divisive concepts (La564, Miss437, Miss1492). These word choices prime the reader into an agitated state (Van Leeuwen, 1995)
and impress upon them a sense that the bills are doing something important, especially for their children.

**Altruism**

The final Legitimation method observed in the bills was that of Altruism. In Altruism, the politicians offer the bills as a “common good that will improve the conditions,” or that will benefit a group (Reyes, 2011, p.787). Many of the altruistic motives were signaled in the preface to bills. For example, one bill stated that the purpose was to “promote and protect the intellectual freedom of students, faculty, and other personnel at public postsecondary education institutions and to promote and protect the free exchange of ideas” (La1014). Another bill stated it was the “duty of a public institution of higher education to protect intellectual freedom and free expression to the fullest degree” (Mo1634). Ind1389 signaled Altruism by stating it was a “duty of the state agency … to ensure that students are free to express their own beliefs and viewpoints.” In this case, the bills propose to benefit those who oppose CRT. They reflect the values and morals of that community, so they seem a logical response and something that was done by the lawmaker to help like-minded citizens (Van Leeuwen, 1995).

**Whitelash through Denial**

The second Whitelash strategy used by the bills was Denial of racism. Denial of racism can take two forms: First, at the individual level, or someone denying that they, as an individual, are not a racist person, or second, at the institutional level, that is when someone denies that their institution is not racist. This second form of Denial, concerning broader systemic racism, is “typical for public discourse, for instance in politics, the media, education, corporations and other organizations” (Van Dijk, 1992, p. 89). This second form of Denial is the main focus of this section.

Some of the bills denied outright the existence of racism today. This refrain of “America is not racist,” being advanced by elected officials, furthers the belief that systemic racism is not a problem in
the United States. For example, one bill stated U.S. Americans have made racism “unacceptable in the
court of public opinion” (Ariz2001) while another claimed that the United States is not systemically
racist (Louis1014). In addition, three of the bills stated:

- “a teacher or student may not be compelled by a policy of a state agency, school district, or
  school administration to affirm a belief in anything characterized as the systemic nature of
  racism, or like ideas” (SC4799)
- professors are prohibited from “teaching that the United States was founded on racism”
  (NH1255)
- professors may not claim that “groups of people, entities, or institutions in the United States
  [are] inherently, immutably, or systemically sexist, racist, anti-LGBT, bigoted, biased, privileged,
  or oppressed” (Mo1634)

A form of denial that was expected as a strategy in the bills is that of White Innocence.

According to Cabrera et al. (2016), White Innocence can take two forms. The first is evoked when a
White person claims that they have not participated in any racist activities, so they are not responsible
for any historical or current racism. The second type involves a White person who denies they have
benefitted from any privilege because of their skin color. The bills focused on the first type of White
Innocence.

Of the 53 bills analyzed, 49 stated in some form that “an individual, by virtue of his or her race
or sex” does not bear “responsibility for actions committed in the past by other members of the same
race or sex” (Ala8). Other bills added that individuals could not be held accountable or should not feel
guilt or anguish for those actions (Ark2001, Miss1492). In addition, one bill indicated that CRT advocates
have “supplanted and distorted” the concepts of “anti-racist” and “diversity, equity, and inclusion,” and
that they are the ones who are promoting discrimination (Ark2001). This, according to Van Dijk (1992), is
also a common form of Denial: reversing the charge of racism to claim White people are the ones experiencing discrimination.

Statements in the bills ignore the existence of systemic racism, which does not focus on an individual claiming responsibility for another individual acts, but a recognition of the cause and results of slavery and discrimination (Crenshaw et al., 1995). Van Dijk (1992) stated this form of Denial, when promoted by politicians, “is most influential and, therefore, also most damaging: it is the social discourse of denial that persuasively helps construct the dominant white consensus” (p. 89). Because these bills are public documents promoted by state officials, this Denial will reach a large audience.

**Whitelash through Fear**

The final strategy revealed by the text of the bills is that of Fear. Fear is an effective strategy to garner backing for an idea and motivates a wide range of human behavior (Reyes, 2011). It has been used effectively by politicians and other actors to create general panic, villainize the out-group, and persuade others to fight (Reyes, 2011).

The bills examined in this study continually referred to a Fear of brainwashing and control of young people through the vehicle of formal education. For example, language in the bills referred to students being compelled to support a position on an issue (La1014), compelled to believe in a theory (Ark2001), compelled to speak (SC4605), compelled to “adhere to particular language usage” (SC4605), or to “affirm a belief in anything characterized as the systemic nature of racism, or like ideas, or in anything characterized as the multiplicity or fluidity of gender identities” (SC4799). To be compelled is to force (Oxford, 2007), and the image of a child or young adult being forced to do something in a classroom against their will evokes alarm. The bills also reinforced a Fear of people being degraded or harmed because of their race or sex (Okla1641). Other bills promoted a Fear of CRT by claiming that it is an ideology that discriminates based on race, wants to divide students, teaches children to hate their country, and treats people differently based on race (SC4605). One bill forbids actions that “demean,
show hostility toward or intentionally undermine any particular religion, nonreligious faith or religious perspective” (Okla614), suggesting that CRT in education would threaten religious freedom. Finally, some bills intimated that CRT advocated “violent overthrow of the United States government” (Miss1492).

Fear can also be a tactic of Legitimation through the appeal to emotions, but in the case of the bills, Fear played a prominent role by suggesting a future in which CRT advocates would employ discrimination against White people, undermine religion, and take over the government. Fear is perhaps the most effective emotion to trigger a response (Reyes, 2011, p. 790). This strategy of demanding immediate action by alluding to an atrocious future is not unusual for discourse in politics (Dunmire, 2007).

Chapter Summary

In summary, the analysis of the bill text revealed three strategies of Whitelash used by the authors of the bills to promote their chosen Discourse models: Legitimation, Denial, and Fear. First, the authors used Legitimation in the form of Authority, Appeal to Emotions, and Altruism to justify their position. Second, the authors used Denial of racism to further the belief that systemic racism does not exist. Finally, Fear was used as a strategy to invoke anxiety over what may happen in the classroom, to the government, and White people in the future.
Chapter 6

The legal language used in the bills serves as a strategy for Whitelash because it requires or forbids certain behaviors by university faculty. This chapter will answer part of the research question: How do the bills confirm and sustain current Discourse models, especially those involving race? In this chapter, the third of five findings chapters, I lay out the legal devices, as techniques of Whitelash, that were used in the bills.

A close reading of the bills with a legal lens exposes many concerns with statutory construction. When judges interpret statutes and apply them to a case, they follow rules that have been developed over time in the practice of law. This is called statutory construction (Easterbrook, 1988). One of the tools of statutory construction is the application of the plain meaning rule, which states: “where the language of an enactment is clear, and construction according to its terms does not lead to absurd or impracticable consequences, the words employed are to be taken as the final expression of the meaning intended” (United States v. Missouri Pac. R. Co., 1929, p. 278). In other words, judges will look at the words and apply their plain meaning to understand how the statute will be enforced. It is important to keep this rule in mind when reading these bills, since the lawmakers’ choice of words is crucial. Therefore, I analyzed the bills by examining the legal loopholes in the bills (including elements of legal claims), the unintended and intended effects of the bills (including who the bills impact and how), any vagueness and ambiguity present in the bills, and the language choices of the lawmakers.

In this chapter, I first discuss the diction of the bills and point out how legal issues may arise due to the choice of words and phrases. Then, I explain the legal concept of vagueness and give examples from the bills that expose this concept. Next, I define the concept of ambiguity and how it relates to vagueness, showing how various text phrases display legal ambiguity. Finally, I give examples from the bills that are legally overbroad and describe how the bills may affect more than what was intended by the authors of the bills.
Diction

Many issues were noted with respect to the words used in the bills. Below, I provide three examples of how the choice of words makes the content of the bills difficult to understand and implement.

First, the wording of many bills is confusing. As stated in Chapter 3, most of the bills contain a list of “divisive concepts.” Generally, professors are either not allowed to teach the concepts or are forbidden to compel a student to believe in the concepts. This means those who support the bills are promoting the reverse of how the concepts are phrased. For example, the first divisive concept in most of the bills is: “That one race or sex is inherently superior to another race or sex.” A professor is not allowed to teach this concept. A supporter of the bill, then, would endorse the statement: “one race or sex is not superior to another race or sex,” and a professor could teach this statement. This is confusing because the reader must reverse what is stated in the divisive concepts to know what is allowed.

Another example of the perplexity is that one of the divisive concepts in most of the bills is written in the double negative: “That members of one race or sex cannot and should not attempt to treat others without respect to race or sex” (Idaho352). Therefore, it would be illegal for a professor to teach that members of one race should not attempt to treat others without respect to race. However, the reader must do mental gymnastics to figure out what a professor would be allowed to teach, since there are two negatives in the concept.9

The confusion over this way of writing the concepts is evident in Ala312. The bill listed the following as a divisive concept along with the others as described above: “that with respect to American values, slavery and racism are anything other than deviations from, betrayals of, or failures to live up to the founding principles of the United States, which include liberty and equality” (Ala312). The bill stated

9 Reversing one would be: “members of one race should attempt to treat others without respect to race.” The reversal of the second negative would read “members of one race should not attempt to treat others with respect to race.” It is unclear if one or both would be allowed under the bills.
it is forbidden to teach this concept. Therefore, a professor would not be allowed to teach the phrase above. In other words, the bill would endorse the reverse of the concept, that slavery and racism are not deviations from the founding principles. This is an endorsement of CRT tenants. Therefore, it seems as if the drafters of Ala312 were also confused by the method of writing the divisive concepts in the negative.

Another bill with language issues was Kent706. It stated: “‘Bigotry’ means any of the following concepts: ... The belief that individuals do not or should not possess equal rights, regardless of their race or sex.” Parsing this out, this means a person is a bigot if they believe that individuals should not possess equal rights. However, it also means that a person is a bigot if they believe that individuals do not possess equal rights. The bill stated a professor could not teach bigoted concepts (Kent706). In other words, it would be illegal for a professor to instruct a student to believe that people do not possess equal rights based on their race or sex. This is confusing because there is no constitutional guarantee of equal rights, only “equal protection of the laws” (U.S. Const. amend. XIV).

The bill also used the phrase:

[I]t shall be an unlawful practice for a public employer to [a]ct directly or indirectly to ... orient any individual ... to adhere to, affirm, adopt, believe, or otherwise assent to bigotry, critical social justice theory, race and sex essentialism, or a revisionist history of America’s founding.

(Kent796)

The use of the word “orient” in the bill’s directive is concerning. According to Black’s Law Dictionary, the term “orient” is not a legal term of art (Garner, 2021). Since it is not, and thus does not have a legal definition, a court interpreting this statute would likely use the plain meaning rule. The common definition of “orient” in the context above is: “to bring into a defined relationship with known facts, circumstances, etc.” (Oxford, 2006). One of the responsibilities of professors is to bring known facts to

Ironically, this explanation would likely be illegal under Kent706.
students. Therefore, even though the bill’s language does not outright ban instruction of divisive concepts (just to instruct students to believe in them), this word essentially broadens the import of what the bill requires. Those professors who “orient” students by teaching them certain facts about critical social justice theory, even if they do not instruct students to believe in it, would be in violation of the law.

**Vagueness**

The second legal issue noted in the bills was that of vagueness. The definition of “vague” is: “[i]mprecise or unclear by reason of abstractness; not sharply outlined; indistinct; uncertain” (Garner, 2019). As described above, the method of writing out the divisive concepts in the majority of the bills left the reader uncertain as to what was allowed and what was not allowed. Other specific examples include a bill from Alabama which had a divisive concept stating that: “fault, blame, or bias should be assigned to a race, sex, or religion, or to members of a race, sex, or religion, solely on the basis of their race, sex, or religion” (Ala292). This statement is vague because it is unclear as to what is forbidden. For example, would it be allowed for a professor to teach about the inquisition under this bill? Another bill with vagueness stated that everyone had “a right to be treated equally as individuals, without being the subjects of, or being compelled to affirm or participate in, stereotyping or scapegoating others based on personal or group characteristics or beliefs” (SC4605). Again, it is uncertain here what is being promoted—who must show this type of “treatment” in order to comply with the bill? Is the bill stating that if someone is stereotyped, there is a violation?

A particularly egregious and confusing example of vagueness is Ariz2001. Below, I have underlined the portions of the bill I found concerning. Section 7 stated:

-No sectarian instruction shall not be imparted in any school or state educational institution that may be established under this constitution, and *no a religious or political test or qualification shall ever not be required as a condition* of admission into, or promotion within, any public
educational institution of the state, as teacher, employee, student, or pupil; but the liberty of conscience hereby secured shall not be so construed as to justify practices or conduct inconsistent with the good order, peace, morality, or safety of the state, or with the rights of others. (sic)

The use of multiple negatives in this text makes it difficult to follow and interpret, such as “no instruction ... shall not be imparted” and “no ... test shall ever not be required.” Does this mean that instruction shall be imparted or that tests are required, or are not required? Due to this uncertainty, I have marked the underlined portions above as confusing and unclear as to what is required and what is prohibited. In other words, because of the poorly written phraseology, this portion of the bill is extremely vague.

The term “vague” has a specified meaning in the law (Cornell, n.d.). Under the vagueness doctrine, a statute is void for vagueness if judges would not be able to enforce the law fairly (Cornell, n.d.). Put another way, a statute will be stricken from the law if it is so unclear it would be impossible to implement. This is because under the Due Process Clause of the Fifth Amendment, a statute must give a person notice of what conduct would violate the statute (U.S. Const. amend. V). According to the Supreme Court,

a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law. (Papachristou v. Jacksonville, 1972, p. 162)

Statutes (or portions of statutes) which are written so that “persons of ordinary intelligence” do not know what is forbidden are then void for vagueness (F.C.C. v. Fox Television Stations, Inc., 2012, p. 253). In other words, if an everyday person could not understand what they are forbidden to do because the language in the bill is too confusing, then the bill should be void because it is too vague.
At least half of the bills had some portion that a court may consider too vague to implement. This is certainly the case with the examples above.

**Ambiguity**

Closely related to vagueness in the law is the ambiguity doctrine. Ambiguity is the legal term used when words with multiple meanings are used in a statute and not defined, giving more than one possible outcome (Cubbage, 1997). When ambiguity occurs, it is up to the court to apply rules of statutory construction to determine what the statute means (*United States v. Mills*, 2002). This is supposed to encourage drafters of bills to choose words and phrases carefully (Cubbage, 1997).

Many of the bills contained ambiguity, such as the statement: “Nothing in this act shall be construed to prohibit the discussion of divisive concepts in an objective manner and without endorsement as part of a larger course of academic instruction” (Ala9, Ala312, Ala292, FL7, La564; Ohio327; Utah257; WVa498). This means that to discuss the concepts, a professor 1) must be objective, 2) must not endorse the concept, and 3) the concept must be presented in a larger course. Questions arise immediately from this passage, such as: Does objective mean that the professor must present “both sides” of an issue? What if there are more than two “sides”? Does it mean that they must refrain from stating their own opinion on the issue? What is meant by “endorsement”? Would asking students to think about one of the concepts mean that the professor has endorsed the concept? Finally, what is a larger course of instruction? Is it a general education course? Is it a course with more than 10 students? 50 students? 100 students? These questions are ambiguous and unanswered.

Additional ambiguity resided in the prohibitions in the bills. As discussed in Chapter 3, some of the bills, while not technically barring instruction of the divisive concepts, prevented any kind of instruction for students to affirm or believe in the concepts. Figure 11 shows all the prohibitions for complete instruction of the concepts in the bills:
As shown in Figure 11, many bills do not allow professors to require a student to do any of the things listed in the second column of the Figure (that is, adopt, believe, etc.) regarding a divisive concept. While most of the verbs in the second column have a plain meaning, there is ambiguity for some terms. For example, the term “acknowledge” does not have a legal definition, so judges would defer to the plain meaning of the term when interpreting whether the bill had been violated. “Acknowledge” has nine definitions, according to the Oxford English Dictionary:

- “with complement (now usually preceded by as or to be): to recognize or confess (someone or something) to be the thing specified”
- “without complement: to accept the authority, validity, or legitimacy of; to accord due recognition to; to own the claim or title of (a person)”
- “to own as genuine, or of legal force or validity; to own, avow, or assent, in legal form, to (an act, document, signature, etc.) so as to give it validity”

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• “to accept or admit the existence or truth of (something)”
• “to recognize, admit that something is the case”
• “to utter by way of acknowledgement or admission”
• “to own or recognize with gratitude, or as an obligation (a gift, a service rendered, etc.)”
• “to attest or confirm (the receipt of something, as a letter, postal package, or the like); to provide notification that one has received (a letter, etc.)”
• “to show that one has noticed or recognized (someone), esp. by making a gesture or greeting; to notice or return (such a gesture or greeting)” (Oxford, 2006)

The bills did not specify which definition should be applied, rendering it ambiguous. Another ambiguity existed in NH1255, which had the following instruction:

No teacher shall advocate any doctrine or theory promoting a negative account or representation of the founding and history of the United States of America in New Hampshire public schools which does not include the worldwide context of now outdated and discouraged practices. Such prohibition includes but is not limited to teaching that the United States was founded on racism. (NH1255)

I have identified the underlined phrase as particularly problematic. The paragraph states that a professor can advocate a negative account of the founding of the US, as long as they include “the worldwide context of now outdated and discouraged practices.” However, there are many outdated and discouraged practices in the world—from slavery, to barbers performing surgery, to virgin sacrifice. Do all of these practices need to be included? From the context of the bill, one could assume that the drafter meant the practices of slavery. One could also assume the drafter meant the practice of racism. However, the phrase as written is ambiguous. In other words, if a professor was held in violation of the bill because they had advocated a negative account of the United States, it is not clear what they could offer as a defense as there are multiple meanings of the phrase “outdated and discouraged practices.”
**Overbroad**

The final legal concept at issue in the bills is the overbreadth doctrine. A statute is overbroad if “the particular law reaches beyond the scope of the subject matter it was originally intended to cover, causing it to cover activity that it was not intended to cover” (Cornell, n.d.). For example, the courts may look to see if a statute that curtails speech prohibits even more speech than is intended, as in a statute that prevents any speech about political candidates within 10 feet of a polling place. This statute may have been passed to prevent annoying voters. However, this statute could also prevent two people from discussing the candidates while waiting in line to vote. The statute regulated more speech than was intended, so it violates the First Amendment overbreadth doctrine (*United States v. Williams*, 2008).

Because the bills attempt to regulate the speech of professors, academic freedom and free speech must be considered when lawmakers craft proposed legislation. For example, the following phrases include terms that could prohibit more speech than is necessary. These terms have been underlined:

- “no state agency nor any public K-12 school may teach, instruct, or train any employee, contractor, staff member, teacher, student, or any other individual or group of individuals to adopt or believe a divisive concept” (Ala7, Ala8, Ala9, Ala292, Ala312, NH544)
- “direct or otherwise compel any employee, contractor, staff member, teacher, student, or any other individual or group of individuals to affirm, adopt or adhere to a divisive concept” (Miss2113, SD1012, Utah257)
- “it shall constitute discrimination on the basis of race, color, national origin, or sex under this section to subject any student or employee to training or instruction that espouses, promotes, advances, inculcates, or compels such student or employee to believe any of the following concepts” (Fla7)
• “no instructor, teacher, or professor at any public school receiving any funding from the state
shall teach, advocate, or encourage the adoption of any racist or sexist concept while instructing
students” (Idaho352)

• “no student enrolled at a public postsecondary education institution shall be subjected to any
classroom instruction or discussion, formal or informal, or printed or digital material, including
but not limited to textbooks and instructional materials, that promotes any of the following
concepts” (Ky18)

The bills stated a professor may not participate in the underlined terms, “train,” “compel,” “espouse,”
“promote,” “advance,” “encourage,” and “subject.” These may all reach beyond what the law is
intended to prohibit. For example, Fla7 forbid an instructor to “promote” divisive concepts but does not
define what this behavior looks like. Does leaving a book on a desk regarding CRT reach to the level of
“promoting”? Does talking with another professor about CRT in the cafeteria? Does participating in a
Black Lives Matter rally? These questions are unanswered. Because these terms used in the bills may
prevent more speech or behavior than is necessary for the law’s purpose, the bills are overbroad.

One of the more troubling examples, Pa1532, contained a prohibition that stated: “[n]o
communication by a Commonwealth, county or municipal agency, school district or public
postsecondary institution, or an official representative, shall adopt, express or promote any racist or
sexist concept.” The alarming portion of this statement is the use of the term “communication.” The
prohibition did not state who would need to do the communication in order for it to be deemed
“communication” by a public postsecondary institution. As written, it could apply to any employee at a
public university. In addition, communication could be almost anything: a phone call, an email, a text,
etc., and the statement did not specify that this communication had to be public or private. There is no
indication as to who the recipient must be. The prohibition could apply to a professor having a private
conversation about a divisive concept. Because it would seem to regulate speech beyond the context of the bill, a court would likely hold that this portion is overbroad. ¹¹

Chapter Summary

This chapter provided a summary of legal issues present in the bills. Diction, the choice of words and phrases, was discussed and several examples of unintended consequences were provided. In addition, some of the bill sections would likely be held void for vagueness, because a person of ordinary intelligence could not define what is prohibited. The bills also showed ambiguity because several terms and phrases had multiple meanings. Finally, portions of some bills displayed overbreadth because they forbid more speech than what was intended. Whether these choices were intentional is unknown, but because of these legal maneuvers, the behavior prohibited by the bills is unclear, which will serve to chill speech by professors. In addition, the bills may be applied to cover more speech than is necessary, depending on the interpretation of the content.

¹¹ Of course, this is assuming that the drafters of the bill did not intend this result. If the purpose of the bill was to prevent any speech regarding divisive concepts by anyone at a public university, this would require a different analysis.
Chapter 7

As outlined above, this chapter is the fourth of five chapters explaining the findings of the study. This chapter will answer part of the research questions: What are the Discourse models (the widespread societal beliefs, values, and current power dynamics) that are communicated by justification statements of the laws as voiced by political supporters and sponsors in legislative documents, official reports, and media appearances? How do these related justification statements uphold and reinforce these Discourse models?

Here, I move from examining the Discourse models upheld and reflected in the bills to those upheld and reflected in the justification statements made by proponents of the bills. The justification statements were statements made by a government official, usually a politician, that supported the passage of a particular bill or anti-CRT bills affecting universities. Often, a politician would give a speech or a news interview that referenced the bill they were supporting. Other times, hearings would be held in state committees and the politician who introduced a bill would testify, or they would enter a written statement into the record explaining their support. Overall, the statements exposed and encouraged three Discourse models, as shown in Figure 12:
As shown in Figure 12, two of the models, Neoliberalism and Nationalism, were also revealed in the content of the bills, as presented in Chapter 4. One model that only appeared in the justification statements is the concept of Law as Morality. This chapter will describe all three of these Discourse models reflected in the justification statements, give examples of evidence to support the models, and discuss the overall reinforcement they provided.

**Neoliberalism**

The first Discourse model that appears in the statements was Neoliberalism. As discussed in Chapter 2, Neoliberalism is the theory that the market should be the guiding principle of all facets of society and states should base their laws on the ethics of the market (Harvey, 2007). Individualism is needed for Neoliberalism to function: a person must put their interests before that of the common good and compete in the free market to prosper both financially and socially (Brown, 2019; Kundnani, 2021).
Many of the statements made by public officials supported the neoliberal ideology. First, some statements contained reference to the concept of the individual as the quintessential unit of importance. For example, Senator Hansen, when testifying at a hearing on Neb1107, urged his colleagues to keep the “concept of valuing individuals at the forefront” of their minds. He went on to express concern that CRT would “undermine the value of an individual,” and spoke of “celebrat[ing] the opportunities that come with individual responsibility” (Nebraska Hearing, 2022). Both Representative Lowery of Arkansas and Representative Grendell of Ohio regarded being perceived as an individual preferrable to being viewed as a member of a class or race (Lowery, 2021; Grendell, 2021).

Other statements focused on the drive for success, which is accepted by neoliberalists as a commonsense approach to conduct (Brown, 2019). In other words, it is taken for granted that individuals are motivated to attain wealth and prosperity. Representative Arthur of Ohio (2021) declared that the US was “founded on individual responsibility, individual accountability, and individual accomplishment and failure.” Other politicians spoke of how education should be focused on helping individuals reach their full potential: “Mississippi is taking another step toward ensuring our kids received the unbiased and impartial education, they need to reach their full potential as individuals, not as a liberal operatives” (Supertalk Mississippi, 2022). Senator Hansen stated in a hearing that he wanted individuals to “reach their fullest potential by determining the interpretation of objective history and learning to succeed in the present and future without feeling guilt for their race or sex” (Nebraska Hearing, 2022). Still others stated that anyone can succeed, no matter what has happened in the past (Nebraska Hearing, 2022). However, most of the statements that mentioned individuals and their efforts to flourish also included some reference to race or skin color, for example:

- “preparing individuals of all skin colors to become self-sufficient and successful” (Louisiana Hearing, 2021)
• “imply that certain races are incapable of succeeding on their own—that’s outrageous”
  (Louisiana Hearing, 2021)
• “ensure that our schools are teaching content that fosters a civil society, where everyone can
  flourish, regardless of background or skin color” (Louisiana Hearing, 2021)
• “potential allowed for and opportunity given without regard to race or sex” (Nebraska Hearing,
  2022)
• “their actions alone, regardless of the race, can create a promising reputation and future”
  (Nebraska Hearing, 2022)
• “learning to succeed in the present and future without feeling guilt for their race or sex”
  (Nebraska Hearing, 2022)
• “compelling our children to believe that they are prone to succeed based on qualities they
  cannot change, such as their skin color or ethnicity, removes all sense of individual
  responsibility” (Grendell, 2021)
• “minority students may learn to believe no matter how hard they work, they will always be held
  back or incapable of succeeding based on their identity” (Cox, 2022)

A connecting concept between race and success is White privilege. According to Applebaum (2008),
White privilege is realized when “White people benefit from the group privileges of racism that
simultaneously marginalize people of color” (p. 293). The converse is that People of Color do not have
this privilege, not that they are incapable of prosperity or success, but that they succeed despite not
having these benefits. The statements connecting the concepts of race and success implied that People
of Color were being told that they could not succeed because of their skin color. The statements also
suggested that reasons they would not be successful were a lack of responsibility or hard work.

Lastly, two statements supported the Discourse model of Neoliberalism through references to
limited government, a staple of neoliberal thought. For example, Senator Crabtree of Idaho warned that
regarding CRT, “things may be coming from the federal government” (Idaho Hearing, 2021), and Governor DeSantis of Florida stated that CRT was “state-sanctioned racism” (Bella, 2021). The reduction of government and deregulation, which affords more freedom to the individual, is sustenance for neoliberalism.

**Nationalism**

The second Discourse model revealed in the justification statements is that of Nationalism. As discussed in Chapter 4, Nationalism a sort of exaggerated devotion towards one’s country, defined by Encyclopedia Britannica (2023) as an “ideology based on the premise that the individual’s loyalty and devotion to the nation-state surpass other individual or group interests.”

In the justification statements, some revered the United States and its citizens, such as: “America is still the least racist place I’ve ever been” (Idaho Hearing, 2021), and “we fight for the American nation and we fight for the people who live in it” (Vance, 2021). Many of the statements claimed ownership of the United States or its qualities, using phrases such as “this great country,” “great students,” “patriotic education,” “our fundamental values, our greatest achievements,” “our country,” and “our nation” (Supertalk Mississippi, 2022; Noem, 2021; Bella, 2021; Arthur, 2021). Others claimed to be doing what was best for the nation, most often in statements claiming that CRT would sow division and the bills would bring U.S. Americans together, such as:

- “the purpose of this bill is to provide equal and non-discriminatory education opportunities to students, while preventing further division among Americans” (Grendell, 2021)
- “it’s going to break us apart, it’s going to put us in camps, and we need things are going to bring us together as Americans” (Ozaki, 2021)
- “and this bill is really a bill about unity that we’re all, uh, equal” (NH Hearing, 2021)
• “HB 327 encourages the objective instruction about and discussion of divisive concepts, rather than allowing taxpayer dollars to be spent on concepts that indoctrinate and divide, rather than unite, students” (Grendell, 2021)

• “I trust you will agree with me that we need to preserve honest, patriotic education throughout South Dakota—education that that cultivates in our next generation both a profound love of our country and a realistic picture of its virtues and challenges” (Noem, 2021)

Reference to the founding of the United States and the earliest colonizers was also a common refrain in the statements. At least nine of the reviewed statements had some reference to the “founders” or to “the founding” of the country. This refrain was noticed in Senator Vance’s keynote address at the National Conservatism Conference (2021), which had the following:

• “they are taught the children who go through this university system that this country built by our fathers and grandfathers is an evil and terrible place; ladies and gentlemen, we are giving our children over to our enemies and it’s time we stopped doing it”

• “and so I looked at scripture help to know some of the great holy fathers and saints of the—of the church and thought about some of the great heroes of western civilization”

• “of course, I thought about some of the great American leaders” (Vance, 2021)

Representative Lowery of Arkansas also spoke of the greatness of Jefferson, Washington, and Lincoln, calling them “men that were so reasoned and so expert in their writings and their understanding of what we needed in America” (Lowery, 2021). Other statements referenced the U.S. Constitution, the Declaration of Independence, or the Civil Rights Act of 1964 as evidence of the country’s guiding principles (Grendell, 2021; Supertalk Mississippi, 2022). For example, Representative Arthur of Ohio declared:

From the very conception of our country, the Declaration of Independence outlined the then controversial ideas of individual responsibility, individual accountability, and equality under the
law, which has since become the bedrock of our civilization. While we have certainly grown in our understanding and practical application of these principles, the truth remains that we would not be the nation we are today without the belief, affirmed in the Civil Rights Act of 1964, that: “it shall not be lawful...to discriminate against any individual...because of an individual’s race, color, religion, sex, or national origin...” (Arthur, 2021)

The paragraph above exemplified the language found throughout the statements in mentioning cherished historical documents and admiration of the country. The focus on freedoms and rights cultivated a nationalist in-group affinity.

Finally, six of the statements expressed that the bills were important for the freedoms and rights of U.S. American citizens. They expressed the need to ensure “every student’s First Amendment freedoms, the freedom of expression, the freedom of thought and the freedom to question” (Louisiana Hearing, 2021); to affirm “the contributions of ALL Americans to our great nation and the refinement of the founding concepts of freedom: equality of all, just and equal treatment under the law, and the opportunity to follow your dreams” (Arthur, 2021); that CRT advocates would deprive citizens of their “core freedom of speech..., the right to provide for your family, [and] the right to participate in the self-government of this country” (Vance, 2021); and that universities should remain “a place where freedom of thought and expression are encouraged, not stifled by political agendas” (Noem, 2021). For those who place a high value on freedoms, this listing impressed upon them that CRT was a threat, and that allowing it in classrooms would take away cherished freedoms.

Law as Morality

The final Discourse model exposed by the justification statements is what I name Law as Morality. A slightly different concept of Law as Morality was explained by Allan (2020a, 2020b), a legal philosopher at the University of Cambridge, who mainly focused on the law’s connection to morality through its interpretation by judges and other tribunals. Allan (2020b) defined the law as “the public
scheme of justice constructed and maintained by a legal and political culture that honors the moral independence and equal dignity of persons” (p. 576). In other words, laws must necessarily be for the greater good. While Allan (2020a, 2020b) mentioned what he called “wicked” laws, he seemed to place a great deal of faith in the law as an instrument of justice, created by ethical politicians and enforced by impartial tribunals. However, Greenberg (2011), lawyer and philosophy professor at U.C.L.A., explained that “[e]ither morality could track the content of the law, or the content of the law could track morality” (p. 97). Put another way, the content of a law could reflect the morays of the time, or a law could introduce an altered morality—a law could reflect morals or create them. While I believe the latter is occurring in the anti-CRT bills, what I propose is that in addition to the content of a law, the supporters of a law imbue righteousness and virtue (morality) into their justification of that law. In the case of anti-CRT bills, the patrons’ statements project almost saintly behavior on themselves as supporters and on the lawmakers who wrote the bills.

To this end, 12 of the 26 statements contained some reference to protecting citizens or students. Governor DeSantis asserted that “this important legislation gives students and employees the resources they need to fight back” (Florida Governor, 2021). In other words, it is important to wage war with those who support CRT. Other examples include:

- “this bill is the latest attempt to add a layer of control over what’s being taught to our students” (Idaho Hearing, 2021)
- “I’m trying to provide the guardrails” (Peiser, 2022)
- “Louisiana lawmakers have a duty and responsibility to protect the right of every individual to a learning environment that’s free of discrimination” (Louisiana Hearing, 2021)
- “our kids are our greatest assets in Mississippi, and we will do whatever we can to protect them” (Supertalk Mississippi, 2022)
• “but we also have to protect people and protect our kids from some very pernicious ideologies that are trying to be forced upon them all across the country” (Bella, 2021)

• “as leaders, we must recognize troubling issues and act before they become urgent problems affecting our children and grandchildren” (Noem, 2021)

The refrain of “we are trying to protect the children” is one that meshes well with the human instinct to keep children safe. First, the statements claimed that these bills will harm children, heightening anxiety, especially in mothers (Kinsley & Lambert 2006). The justification statements then offer a solution to that perceived harm.

Not only do statements purport to protect, three of the statements also have a common refrain of willingness to fight. One fostered an image of the state citizens being attacked by outsiders, stating that “Mississippi will become subjected to an onslaught of insults,” “despite the arrows that will be volleyed at us we’re not backing down we can’t back down,” and “to those looking to terrorize us do you do what you gotta do because at the end of the day, Mississippi will do what’s right” (Supertalk Mississippi, 2022). The choice of the words “onslaught,” “arrows” being “volleyed,” and “terrorize” all cultivated notions of war. Two other statements also encouraged mental images of war in stating that CRT will put people in “camps” (New Hampshire Hearing, 2021; Ozaki, 2021). However, these statements are not as heated as those by Senator Vance of Ohio and Lt. Governor Patrick of Texas:

• “we have to honestly and aggressively attack the universities in this country” (Vance, 2021)

• “ladies and gentlemen, we are giving our children over to our enemies and it’s time we stopped doing it” (Vance, 2021)

• “but if that’s your attitude, ladies and gentlemen, we’re going to continue to empower the College. The colleges and the universities that make it impossible for conservative ideas to ultimately carry the day” (Vance, 2021)
• “I hope that you remember that the reason we fight, the reason that we do what we do... It’s for the young father, whose little girl just wants to build a friendship with a person because they’re both children of God and not members of separate groups, victim and oppressor” (Vance, 2021)

• “ladies and gentlemen, we fight for the American nation and we fight for the people who live in it” (Vance, 2021)

• “the professors are the enemy” (Vance, 2021)

• “uh, they’re doing it I think for cynical reasons, but at the end of the day they’re destroying something that’s critical and important and good about this country, and we should fight back against it” (Fox News, 2021 [interview with Senator Vance])

• “they can get right in the face of the Board of Regents—the Chair, the President, Chancellor, the legislature. To tell us—to go jumping like—we’re not going to do that” (Patrick, 2022)

• “we are not going to allow a handful of professors who did not—do not represent the entire group to teach” (Patrick, 2022)

• “as a nation we’re not going to allow it to happen” (Patrick, 2022)

• “[professors have] opened the door for this issue because [they] went too far” (Patrick, 2022)

• “so, they can hide behind academic freedom all they want, but we’re not going to put up with it here and we’re going to pass this legislation” (Patrick, 2022)

The common thread in these statements is that the university and its professors are the enemy, and those listening to the statements need to fight them. However, not only are the justification statements calling for action, using words of aggression and violence, but they also indicated that the bills are justified because they will punish those who disobey by withdrawing funds. As stated above, 15 bills would withhold funding for universities in violation. The justification statements went further, using threatening or provoking language when discussing funding:
• “we won’t allow Florida tax dollars to be spent teaching kids to hate our country or to hate each other” (Florida Governor, 2021)

• “because the legislators are the banker, whether we like it or not. And we may not be the sharpest folks in town, but we got the money and so for us, we want to have a little input if we’re going to put public money into these public schools, we want to have some input into how that’s being spent” (Idaho Hearing, 2021)

• “in that light, I would ask you and your board colleagues to consider the following: Whether appropriated funds are being used in a manner that neither the legislative nor the executive branch would support” (Noem, 2021)

• “we are those who distribute taxpayer dollars. We are the ones who pay their salaries, the parents are the ones who pay tuition and of course we’re going to have a say in what the curriculum is” (Patrick, 2022)

• “we’re not going to fund them—I’m not going to pay for that nonsense” (Patrick, 2022)

• “they better watch the money we send about what they do” (Patrick, 2022)

• “they need to get out of that business; that’s not what we’re paying professors for” (Patrick, 2022)

Others justification statements referenced the rights of parents. Fourteen bills gave parents the right to bring a cause of action against professors and institutions who teach these concepts and ideas. This was emphasized in the justification statements:

• “we need more options for parents, the taxpayers who fund our public schools to provide families with curriculum options that fit their needs” (Louisiana Hearing, 2021)

• “it also would enable private citizens—like parents or concerned citizens—to initiate lawsuits against school districts that adopt racist policies, procedures, or programs. The citizen could
seek an injunction from the court and also would be eligible to be reimbursed for legal fees” (Cox, 2022)

- “giving parents a private right of action to be able to enforce the prohibition on CRT and they get to recover attorney’s fees when they prevail, which is very important” (Bella, 2021)

As Greenberg (2011) stated, “given the moral reasons for following the solution that most others follow, everyone may now have a moral obligation to adopt the specified solution. In that case, the legislature has changed the moral profile, creating a new moral obligation” (p. 57). In other words, now that the legislators have given moral reasons to ban discussion of CRT, “moral” citizens should now take up the fight.

Though the content of the bills may provide moral reasons for adoption, the supporters of these bills are also claiming the moral high ground through their statements. The threat of losing funding, combined with the refrain of “protecting” and the call to arms for war against universities, promoted the bills as the right thing to do—the moral thing to do. The justification for the bills was that the citizens needed protection, and the supporters of the bills would fight for their protection, using their powers of funding to help them. The justification statements cast the supporters as the heroes who will lead the way on the battlefield.

**Chapter Summary**

In summary, the analysis of the justification statements exposed three Discourse models: Neoliberalism, Nationalism, and Law as Morality. Neoliberalism was revealed in the statements that suggested individualism, prosperity, and limited government. The phrases in the statements regarding reverence for country, founders, and freedoms supported the second model of Nationalism. Finally, the Discourse model of Law as Morality was reflected in the statements by references to protecting the citizenry, a willingness to fight the enemy, and threatening to withhold funding.
Chapter 8

This final findings chapter will discuss the strategies present in justification statements made by proponents of the bills in order to justify their passage. The justification statements were made by public officials who supported a particular anti-CRT bill or supported these types of bills. This chapter will answer part of the research question: How do the bills confirm and sustain current Discourse models, especially those involving race? Therefore, in this Chapter I discuss the strategies of Whitelash, backlash against racial progress, that were revealed in the analysis of the justification statements, as shown in Figure 13:

Figure 13

*Strategies of Whitelash Upholding Discourse Models in Justification Statements*

Figure 13 shows the four strategies found in the justification statements as they support and uphold the Discourse models described in Chapter 7. These strategies revealed by the justification statements serve as a form of Whitelash because they are being used to chill speech that may support the tenets of CRT in response to a growing societal awareness of inequality and systemic racism.
(Leonardo, 2020). As shown in Figure 13, the strategies exposed by the analysis of the justification statements are Rhetorical Versatility, Persuasion, Prophesying, and White Innocence. Within each of these broad strategies are sub-strategies, which I refer to as “methods,” as shown in Table 7:

**Table 7**

**Methods of the Strategies of Whitelash**

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<th>Strategy of Whitelash Used in Justification Statements</th>
<th>Methods</th>
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As shown in Table 7, the Whitelash strategy of Rhetorical Versatility contained two methods, Appropriation & Rearticulation and Textual Winks. The second strategy of Persuasion contained three methods: Turning the Tables, Creation of Groups, and Diction. The third strategy, Prophesying, used three methods: Creation of Emergency, Creation of Danger, and Creation of Threat. The final strategy of White Innocence had two methods: Distancing and Denial. Each of these methods and strategies are described in further detail throughout the remainder of this chapter.

**Rhetorical Versatility**

The first Whitelash strategy reflected in the justification statements is that of Rhetorical Versatility. According to Sanchez (2018), rhetorical versatility is “a term signifying the way polysomic language can be used for different audiences” (p. 45), often using textual winks, which will be discussed below. However, being versatile in rhetoric involves more than the use of double meanings. According to Fairclough (1993) language can be used to shape “social identities, social relations and systems of
knowledge and belief” (p. 134). In other words, rhetoric is one of the ways in which reality is formed. There were two methods of Rhetorical Versatility uncovered in the justification statements:

Appropriation & Rearticulation and Textual Winks.

**Appropriation & Rearticulation**

The first method through which the statements use Rhetorical Versatility is through Appropriation & Rearticulation. As described in Chapter 2, Appropriation & Rearticulation is a process in which a concept is commandeered, then reinterpreted or perverted so that it supports the opposing side (Omi & Winant, 2014). It constitutes taking the opposition’s ideology and reworking it to have a different meaning. A rearticulated concept (or so-called “alternative truth”) repeated often enough, in different ways, by trusted individuals, will make that version more acceptable and more believable (Van Leeuwen, 1995). In other words, a person in power, claiming that something is true multiple times and in multiple ways (even though it may be false), will shape perceptions in society so that many start to believe. This was evidenced throughout all the justification statements.

For example, Governor Reeves of Mississippi made his claim very clear in his official statement regarding CRT:

I want to set the record straight about Critical Race Theory, because the radical left in the media continue to spread misinformation on this critical issue. And while they may be okay lying to you, I believe you deserve the truth. (Supertalk Mississippi, 2022)

Florida Governor DeSantis explained that not only did he speak the truth, but “we have a responsibility to stand for the truth, to stand for what’s right and we’re doing that” (Bella, 2021). This statement not only appropriates the concept CRT but calls on the audience to repeat this misrepresentation.

The versions of “facts” in the justification statements run counter to the tenets of CRT, making these an example of Appropriation & Rearticulation. For example, Governor DeSantis also claimed not
only that CRT is racist, but that it is “state-sanctioned racism” (Bella, 2021). This statement appropriates a main goal of CRT—to uncover the operations of racism—and rearticulates it as racist itself.

Other statements regarding CRT that were appropriated and rearticulated across the body of justification statements include:

- “the problem that we’re seeing is that some students are being taught that because of the color of their skin, they are inferior to students that have different skin colors” (Louisiana Hearing, 2021)
- “they are told that America is a fundamentally racist and evil country” (Vance, 2021)
- “Critical Race Theory is about labels and stereotypes, not education” (WHO 13, 2021)
- “the simple truth is that supporting Critical Race Theory is actually creating systemic racism” (Louisiana Hearing, 2021)
- “Critical Race Theory has been creeping through our schools forever and we might not even be aware of it” (Idaho Hearing, 2021)
- “Critical Race Theory really says that all of our institutions here in the United States are racist and something that really is to be attacked” (Ozaki, 2021)
- “CRT is something that was handed down by a national organization ... and they want to put it in higher education, all across the country” (Patrick, 2022)
- “the global modern-day version [of the definition of CRT] would be any of the things listed at the front of the bill, and that would be prioritizing or saying one group is inferior to the other based on sex, religious affiliation, national origin, race, ethnicity, etc. ... I think we all know what Critical Race Theory is and the definition is well defined in 4799” (South Carolina Hearing, 2022)
- “Critical Race Theory ... is an offshoot of a socialist program that everything that happens is life is based on racism; every court decision is based not on the law or the jury says, but on racism.
That everything that happens in the workplace is race—based on racism. That everything—that everything that happens is based on racism” (Patrick, 2022)

Through these phrases, CRT has been appropriated and rearticulated. It is important to remember that this strategy was not employed surreptitiously. As stated in Chapter 2, Christopher Rufo, one of the main architects of the anti-CRT bills, bragged that: “[w]e have decodified the term and will recodify it to annex the entire range of cultural constructions that are unpopular with Americans” (Jaleel, 2021, para. 4). In his statement, Rufo described the process of Appropriation & Rearticulation.

Another way the justification statements exhibited Appropriation & Rearticulation was in the content of CRT. Twelve of the statements mentioned that when history is taught, it should be done presenting objective facts, implying that CRT does not present factual history. However, history is not an objective endeavor—it is determined by the consensus of historians and is never completely without bias (Hannah-Jones, 2021; McCullagh, 2000; Trevelyan, 1947, Turberville, 1933). The statements thus take the concept of CRT and misrepresent it as a subject that cannot be historically accurate.12 In four of the statements, the supporters repeated the refrain of teaching history in an objective manner multiple times (Nebraska Hearing, 2022; Grendell, 2021; Arthur, 2021; Utah Hearing, 2022).13 For example, the following phrases appeared in the statements:

- “they can do this by walking through the objective points of history” (Nebraska Hearing, 2022)
- “history is objective and should be taught without subjective editorializing that assigns fault to a whole race or sex” (Nebraska Hearing, 2022)

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12 Other statements, however, indicated that “both sides” of historical facts should be presented to students, indicating that they realize history is not objective. For example, Crabtree stated he doesn’t see a problem with historical facts as along as the instructor is providing “balanced views” (Idaho Hearing, 2021). Indiana supporters insisted that instruction be “impartial” and “viewpoint neutral” and that “we don’t want the teaching of one perspective to the exclusion of another” (KBTV, 2021).

13 As discussed above, repeating an idea gives credence to its truthfulness.
• “they can reach their fullest potential by determining the interpretation of objective history”
  (Nebraska Hearing, 2022)
• “they can if—if—the whole idea is that we want to teach objective history and not subjective
  history” (Nebraska Hearing, 2022)
• “nothing in this chapter shall be construed to prohibit discussing, as part of a larger course of
  academic instruction, the divisive concepts but it has to be done in an objective manner and
  without endorsement” (New Hampshire Hearing, 2021)
• “House Bill 327 specifically encourages the objective instruction and impartial discussion about
  divisive concepts” (Grendell, 2021)
• “HB 327 encourages the objective instruction about and discussion of divisive concepts”
  (Grendell, 2021)
• “HB 327 protects children’s right to learn American History in an objective and historically
  accurate manner without taxpayer dollars being used to promote an ideology of racism and
  group guilt” (Arthur, 2021)
• “it strives to ensure that every Ohioan is treated equally under the law and that every individual
  enjoys the rights and privileges of a non-discriminatory, objective representation of educational
  and historical facts” (Arthur, 2021)
• “one of the items is the teaching and discussion of truthful balanced historically accurate and
  unbiased concepts” (Utah Hearing, 2022)
• “we don’t mind looking at history warts and all—those are—that—that’s really important, as
  long as they’re historical—historically accurate and unbiased concepts” (Utah Hearing, 2022)

The phrases above illustrate the Appropriation & Rearticulation of CRT from a theory that looks at
history from a different viewpoint into a subjective, inaccurate look at U.S. history. Therefore, the
statements exhibited Appropriation & Rearticulation through claiming the “truth” about CRT, warping the tenets of CRT, and misrepresenting CRT as promoting historically inaccurate information.

**Textual Winks**

A second method of Rhetorical Versatility is that of Textual Winks. Textual Winks are words or phrases used in discourse that have two meanings, one for a general audience member, and one containing a hidden meaning for an informed listener (Morris, 2002). Put another way, the speaker can send a message to audience members of the in-group in a covert manner by using words and phrases that mean one thing to the in-group but another to the out-group (Sanchez, 2018). In this section, I will first review Textual Winks that occurred in Senator Vance’s statement given to the National Conservatism Conference. Secondly, I will describe winks by Representative Cox. Thirdly, I will review Textual Winks that alluded to religion. Finally, I will examine various other Textual Winks that occurred in the justification statements.

**Senator Vance’s Textual Winks.** There were numerous winks in Senator Vance’s statement at the National Conservatism Conference in 2021. He stated:

And what does it mean for leadership to learn that the way to rectify racial injustice in this country is to put a black graduate of the Harvard Business School on the board of Morgan Stanley instead of to invest in black communities all across our country or frankly white communities all across our country. (Vance, 2021)

First, the phrase “put a black graduate ... on the board” winked at affirmative action practices. It implied that resources were being used to give a Black person a place on a board instead of applying those resources to fix more pressing problems. Second, the phrase “or frankly white communities” supported the notion of reverse racism, in this case that White communities are not getting as much in resources as Black communities.
Another part of the statement by Senator Vance which contained Textual Winks was: “the simple fact is that our universities tell the powerful what they want to hear, and they couch it in ridiculous political rhetoric, instead of dealing with a real consequence of progressive policy” (Vance, 2021). This phrase winked at the relationship between the in-group and the powerful, linking the out-group with universities and those in power. Also, a strong wink of reverse racism was present in the phrase “instead of dealing with a real consequence of progressive policy.” Progressive policy throughout this statement was used as a code word for policies of diversity, equity, and inclusion such as affirmative action. In the statement above, the speaker’s wink implied that White people not benefitting from these policies is the real consequence of these policies. This was confirmed in the later phrase “They care more about identity politics; they care more about diversity, equity, inclusion than they do their own society, than they do the people who live in it” (Vance, 2021). In other words, the leaders in the universities are putting efforts into helping People of Color to the exclusion of White people, another wink of reverse racism.

Reverse racism was also winked in additional phrases uttered by Vance, including: “it means standing for the people in this country who’ve been screwed over the last 30–40 years” and “that so long as we’re chair of trailblazing on diversity, equity, inclusion it doesn’t matter if normal people get screwed—all that matters is progressive orthodoxy, and whether our society reinforces it” (Vance, 2021). This second phrase also hinted at the phenomenon of “whiteness as normal,” through the use of the term “normal” people. Whiteness as normal is described by Leonardo (2007) as “the standard whereby other groups are judged” (p. 263). In other words, Whiteness is seen as the average, natural condition. The statement winked that it is the White people (that is, “normal” people) who are getting “screwed” by Diversity, Equity, and Inclusion efforts.

Even without mentioning the term “White,” the following sentence in Senator Vance’s statement alluded to a sense of ownership in the nation: “They are taught—the children who go
through this university system—that this country built by our fathers and grandfathers is an evil and terrible place.” This winked to another meaning for the audience: they are descendants of the founders of this country, who were White people. Governor Noem of South Dakota (2021) winked to this as well by stating: “I have become increasingly concerned about a growing movement throughout the country to reject patriotic education and downplay the positive revolution in human affairs set in motion by our Founders.” Here again, the use of “our Founders” winked to White people. However, an additional wink was present in Governor Noem’s statement in the use of the word patriotic. This term has come to have multiple meanings, due to its use as a descriptor of White supremacists by former President Trump (Sanchez, 2018). Sanchez (2018) described the word as allowing: “bigoted audiences to fill that space with their own ideology (due to the climate of white supremacy in America)” (p. 51). Sometimes called “dog whistles,” politicians will used them “to galvanize public support for racist policies” (Liou & Alvar, 2021, p. 80). In other words, the meaning of these winks are unnoticed by many in the audience, but send a clear message to others.

Finally, Senator Vance (2021) gave a very large wink to the southern states in his statement that said:

And what these people are doing by forcing us to constantly focus on the color of our skin is that they are destroying an essential part of American heritage that we can judge people based on the content of their character. (Vance, 2021)

This mention of “heritage” is a code word that evoked a nod to southern support of the confederate battle flag. One of the most common responses to removing the flag from statehouse grounds was that it was a symbol of tradition and heritage, and the frequent cry of “Heritage, not hate!” was heard in protest to the flag’s removal (Strother, et al., 2017). Therefore, the term heritage is “one with no emotional charge for many in the American public but one that resonates particularly with white supremacist groups who view their ‘white’ heritage as displaced” (Sanchez, 2018, p. 52).
Representative Cox’s Textual Winks. The justification statement of Representative Cox of Pennsylvania contained winks to reverse racism. Representative Cox stated that CRT proponents “argue America’s racist past can only be overcome by an equally—but obviously inverted—system of racism” (Cox, 2022). However, he also qualified this “inverted” racism in the following phrase: “Critical race theory attempts to ‘fight fire with fire’ by combating racism using equally or even worse racist policies” (Cox, 2022). The wink behind this claim is found in the term “worse racist policies.” In other words, if the tables were turned and racism was “inverted” (meaning White people were not the dominant race and had to endure laws and policies that allowed discrimination, violence, stereotyping, etc.), this would be worse than the racism we have today (meaning racism against People of Color). This justification statement also embraced “whiteness as normal” by declaring: “Whites are considered oppressors of a diverse group of other students” (Cox, 2022). The Textual Wink of “diverse,” meaning Black students or Students of Color, reduces them to the description of “other.”

Winks Regarding Religion. Other Textual Winks in the justification statements involved the Christian religion as a White religion. One statement contained the sentence: “I really wish that Christians could come forward with something issued from love to address issues of race” (Moseley, 2022). At first glance, this seemed like a simple call to action. However, since most U.S. Americans associate the United States with Christianity (Jacobs and Theiss-Morse, 2013), this also winked to the alleged supremacy of the Christian religion—that only Christians could be counted on to teach about issues of race from a position of love. The implication is that others, such as people who are Muslim, would be unable to do this.\(^ {14}\)

Other statements used biblical or other religious language to drive home their association with the Christian audience. For example, statements included claims that “we know the truth,” which is a

\(^ {14}\) Many Americans perceive those in the Muslim religion as mostly Black or Brown people (Shortle & Gaddie, 2015).
common refrain in Christian worship (Mashburn, 2021; Supertalk Mississippi, 2022), and other biblical references such as “there’s a season for everything” and “the sins of their father” (Vance, 2021). In that same statement, Senator Vance (2021) referred to “the great holy fathers and saints of the church” and the “great prophet and statesman Richard Milhouse Nixon” as inspiration for his speech. Another Textual Wink to the Christian Right occurred in the phrase “So we’re not talking about not teaching about race in America or slavery in America, one of the worst sins in our country, along with abortion.” (Patrick, 2022). The end of abortion rights was one of the Christian Right’s major victories in 2022, the culmination of a decades-long attempt to overturn Roe v. Wade (Kerby, 2022). This reference to abortion being one of the “worst sins” and the biblical references were Textual Winks to the Christian Right position.

Other Textual Winks. There were other uses of Textual Winks in the justification statements. For example, Lt. Governor Patrick (2022) winked at the in-group through the phrase: “one of the things that Richard Lowery talked about on Fox today…” which made it clear that he watched Fox News, creating a connection between himself and the Fox News viewers in the audience. Other statements revolved around the social dynamics of White people and People of Color. For example, one supporter stated:

The message was made clear—white people are bad; black people are innocent victims—and the students were encouraged to believe that there’s an endless era of black victimization that’s being taught down here. And maybe ask those in the criminal justice system about endless black victimization. (KBTV, 2021)

The “wink” in this statement was the reference to the criminal justice system. This phrase associated Black people with crime, one of the more common stereotypes that plays on the fear of White people (Oliver, 2003). In that same justification statement, the speaker also stated:
Historical fiction books and the books that kind of talk about the founding of this country, it’s been riddled with writings from Third World experiences. By authors that are completely unheard of—what—they are the white—they are non-white race, so any non-white author is basically being given priority over the historical readings. (KBTV, 2021)

Two different winks were present in this section. The first phrase winked that historical “fiction” is written by non-White people, as Third World countries are mainly populated by People of Color. The second phrase winked that non-White history writers are obscure, or “completely unheard of.” Taken together, these two different winks told the in-group that accurate, non-fictional history must be written by White people.

Two other statements contained Textual Winks by association with the countermovement to Black Lives Matter. One phrase indicated the desire to have more empathy and “more understanding for all students” (Idaho Hearing, 2021), while another stated the honor to be “invited to joint sponsor such timely and important legislation, which affirms the contributions of ALL Americans to our great nation” (Arthur, 2021, emphasis in original). Both of these examples evoked “All Lives Matter,” a phrase seen by the in-group as a more appropriate, colorblind statement (Atkins, 2019).

As evidenced by the examples above, there is a plethora of Textual Winks throughout the statements. Overall, these winks spoke to conservative, White, Christian, middle-class U.S. Americans.

**Persuasion**

The second overall Whitelash strategy revealed in the justification statements was Persuasion. Persuasive speech involves the use of semantic devices in order to convince another person to believe in what the speaker wants them to believe. Using these techniques, “it is not the verifiable truth of a message which is relevant and likely to impress an audience and make it act upon a certain impulse; it is the way things are said (or done)” (Sornig, 1989, p. 95). There were three methods of Persuasion used in the justification statements: Turning the Tables, Creation of Groups, and Diction. I describe each below.
**Turning the Tables**

One method of Persuasion is Turning the Tables, or twisting the argument so that the other side is on the defense. This was not found in all the statements, because it requires a back-and-forth conversation between two or more persons to see this method performed. In other words, it is not likely to be found in written statements. Therefore, I have provided only the most flagrant examples of this method below.

Turning the Tables involves a speaker either rephrasing a question or a statement by another person so that the speaker seems to have the better argument. This was used five times by Senator Baldwin (2022) in an Indiana hearing on a CRT bill:

- “yes, but I think what you’re really asking me is ...”
- “I think, where the—the—the—the issue that you’re probably really getting at is—is the constitutional right to talk about nearly anything they want to talk about...”
- “I sort of feel like I just heard you say that you wanted to bring your personal biases into the classroom”
- “then do you think that any collegiate educator in any capacity should tell a child number one through eight? Is that okay? Is that all right to tell a child that they are inherently different? Better? Superior? ... Is that okay? To tell a child? I think maybe if you think that that is okay, then you and I just philosophically disagree”
- “I feel like you’re—you’re in some way working around saying any of these are okay” (Indiana Hearing, 2020)

Senator Baldwin changed what the speaker said and rephrased either the question or the statement of another senator four times in one hearing. This put the other senator on the defense. This technique was also used in another hearing when a lawmaker stated: “And—uh—I would ask that any opponents of this bill—uh—that you would ask them which of the divisive concepts that they support. I think that
would be a key question” (Nebraska Hearing, 2022). Turning the Tables made these speakers out to have the reasonable, common-sense side of the argument and put the other side on the defensive. This method also turned the argument back to the topic the bill supporters wanted to discuss or made their position seem like the noble choice.

**Creation of Groups**

A common method of persuasion is the creation of good feelings for in-groups (“us”) and bad feelings for out-groups (“them”), what Van Leeuwen (1995) called “negative other-presentation and positive self-presentation” (p. 539). Van Leeuwen went on to state that this type of rhetoric “not only requires emphasis on the alleged negative properties of the Others, but also stresses that We are essentially good” (p. 539 [capitalization in original]). This method also bleeds into others, such as in Turning the Tables (described above) where the opposition is framed as unreasonable or unethical.

There were numerous examples of this method in the justification statements. For example, the following phrases highlight the perceived negative properties of those who are CRT proponents:

- “my children have come home in tears because of the things that they have been pushing at school” (Moseley, 2022)
- “it then goes on to castigate figures in our history like Jefferson, Washington, and even criticizes at great length Abraham Lincoln” (Lowery, 2021)
- “do you think about what MLK stood for [when] he said he didn’t want people judged on the color of their skin, but on the content of their character—you listen to some of these people nowadays, they don’t talk about that” (Bella, 2021)
- “hiding behind this academic freedom argument just doesn’t work. If you go back—back at your TV station world—well—all of our jobs, we’re all held accountable, but they are saying we don’t want to be held accountable and we will teach anything we want to, any student, anytime we want, including Critical Race Theory” (Patrick, 2022)
• “that says we’re going to judge you when you walk in the classroom about the color of your skin” (Patrick, 2022)
• “that if you’re white, you were born a racist. That that’s normal not an aberration, and you’re an oppressor. And if you are a person of color, you’re a victim—you’re a victim” (Patrick, 2022)
• “I mean how many of you how many of you in this room got hired in, and you can do anything you want for the next six years—show up for work, not show up for work, do your job, not to your job, do a bad job” (Patrick, 2022)
• “the origins of this bill came from—uh—the idea for this bill came from a professor at one of our state universities who wishes to remain anonymous due to fear of backlash” (New Hampshire Hearing, 2021)
• “the universities which by the way, are not exactly politically sympathetic with any of the people in this room” (Vance, 2021)
• “the professors are the enemy” (Vance, 2021)

The phrases above position CRT supporters as people who make children cry, denigrate the founders of the United States, judge others, avoid accountability, call people racists, refuse to work, and will threaten others. These negative characteristics make “them” a justifiable enemy.

Other parts of the justification statements focused on setting up positive self-representation of the in-group. In two hearings, senators often repeated their willingness to be friendly by stating: “I propose to be open and—and collaborative, and willing to listen and make changes to the extent that they are necessary,” “I’ll be happy to answer questions as best I can,” “Happy to have a lot of dialogue about that” (Indiana Hearing, 2020), and “I will uh—uh be happy to address any of those” (New Hampshire Hearing, 2021). These statements work to associate the senators as flexible, open-minded, and reasonable. Other justification statements declared a willingness to help the in-group, such as “We are not going to allow a handful of professors who did not—do not represent the entire group to teach
and indoctrinate students” (Patrick, 2022) and “We won’t allow Florida tax dollars to be spent teaching kids to hate our country or to hate each other” (Florida Governor, 2021). Statements such as these made the in-group appear to be vulnerable and in need of protection by the senators themselves.

Not only was the in-group given positive characteristics, but many justification statements also used the pronouns “we,” “us,” and “our,” including the audience in order to generate feelings of solidarity with the in-group. The use of these pronouns “can bring the audience together and encourage them to identify with the emotions felt by the politicians” (Thomas & Wareing, 2004). This technique was used by 23 of the 26 statements, which included the following:

- “I trust you will agree with me that we need to preserve honest, patriotic education ... education that that cultivates in our next generation both a profound love of our country and a realistic picture of its virtues and challenges” (Noem, 2021)
- “these are all things that we all agree, or should agree, that we should not be teaching our children” (Moseley, 2022)
- “we have a responsibility to stand for the truth to stand for what’s right” (Bella, 2021)
- “none of us want indoctrination of our children” (Idaho Hearing, 2021)
- “this bill is the latest attempt to add a layer of control over what’s being taught to our students” (KBTV, 2021)
- “but despite the arrows that will be volleyed at us—we’re not backing down, we can’t back down—our kids are our greatest assets in Mississippi will do whatever we can to protect them” (Supertalk Mississippi, 2022)
- “it’s going to break us apart; it’s going to put us in camps” (Ozaki, 2021)
- “I think we can all agree that these and the idea that a child should be discriminated against or receive adverse treatment because of their race or sex is wrong” (Nebraska Hearing, 2022)
• “I think if any of us want to do the things that we want to do for our country and for the people who live in it, we have to honestly and aggressively attack the universities in this country” (Vance, 2021)
• “House Bill 327 will ensure that our students are being taught to think, not what to think” (Grendell, 2021)
• “our classrooms, students and even teachers are under constant threat by Critical Race Theory advocates” (Florida Governor, 2021)
• “apparently, it does not apply to those who want to teach about our constitution and our declaration of independence or capitalism or Western culture” (Patrick, 2022)
• “we—we don’t want the teaching of one perspective to the exclusion of another, that we want teachers who are teaching us how to think not what to think on a particular issue” (Indiana Hearing, 2022)
• “to ensure that our schools are teaching content that fosters a civil society” (Louisiana Hearing, 2021)
• “Critical Race Theory can undermine our students’ sense of self-worth” (Cox, 2022)
• “attempting to indoctrinate our students with a theory or belief system that is divisive” (Representative Gleim, 2021)

Creating a sense of being a part of the in-group by using pronouns that refer to themselves and the audience is a powerful tool of persuasion (Wodak, 1989). The description of the in-group and out-group through these types of statements denoted the anti-CRT bill supporters as trustworthy and dutiful, and the out-group as amoral and corrupt.

*Diction*

Another method of Persuasion is Diction, or choice of words. This includes the use of figurative language such as metaphors and similes, euphemisms, and allusion.
**Metaphors and Similes.** Metaphors and similes are rhetorical devices in which one thing is compared to another as having similarities. They are often used to simplify difficult concepts, especially by politicians, who also use this method to further denote positive characteristics of the in-group and negative characteristics of the out-group (Hampl, 2019). The use of metaphors and similes also associates the familiar with the unfamiliar, creating a sense of belonging (David, 2014). A euphemism “consists in the substitution of a word or expression of comparatively favourable implication or less unpleasant associations, instead of the harsher or more offensive one that would more precisely designate what is intended” (Oxford, 2023). In other words, it is the use of a word in place of another to circumvent bad feelings or distaste associated with that word. Euphemisms are used by politicians to avoid words they do not want to promote, since their connotation may reflect badly on them, their audience, or the argument at hand (Thomas & Wareing, 2004).

There were instances of metaphors and similes in the justification statements. One of these stated:

But these ideas are again—you’ve probably heard the term snake-oil salesman—so there’s a new industry—uh that has popped up that is not regulated very well—and I’m not asking for it to be regulated—it’s diversity training or inclusion training. Uh and uh there’s an aspect of that industry that promotes the ideas listed in the divisive concept list. And it’s—uh I would liken it to—uh snake oil as—uh you know proposing to cure disease, but in actuality it’s really making it worse. (New Hampshire Hearing, 2021)

Four other examples included the following:

- “sometimes reminds me of the committee that was intended to make a horse and they ended up with a camel—you know, sometimes the outcome isn’t exactly what everybody agrees to but close” (Idaho Hearing, 2021)
“sometimes you know legislation is like making sausage—it’s not such a wonderful thing, but it’s the best we can do at the time” (Idaho Hearing, 2021)

“across this great country we’re seeing a full Court press by a vocal minority of well-organized and well-funded activists” (Supertalk Mississippi, 2022)

“students are being force fed an unhealthy dose of progressive fundamentalism that runs counter to the principles of America’s founding” (Supertalk Mississippi, 2022)

In the first two examples above, the speaker intended to use simile to describe how bills become law—that it is a process that calls for compromise (making a camel instead of a horse) and for getting things done, even if messy (legislation is like making sausage). The third example used a basketball term (full court press) which means “intense pressure ... applied to the opposing team over the entire length of the court” (Oxford, 2023), which invoked an image of CRT proponents being relentless in their zeal. In that same statement, Governor Reeves implied that CRT was “an unhealthy dose of progressive fundamentalism” (Supertalk Mississippi, 2022). An unhealthy dose conjured notions of medication in great quantity, something that could poison the recipient. These phrases collectively cast a negative impression of CRT proponents.

**Euphemisms.** Euphemisms were used mainly for two subjects: race and racism. In the examples below, I have italicized the euphemisms for discussion.

Justification statements contained references to a “certain segment of our legislature” that would oppose the bill (Idaho Hearing, 2021), “a lot of diverse speakers here today” (Indiana Hearing, 2022), and that “Whites are considered oppressors of a diverse group of other students” (Cox, 2022), which are all likely euphemisms for People of Color. Other statements also referred to People of Color as “others” or used terms to refer to a group:

- “and not assigning feelings of guilt on students—on students of a particular race or sex”

  (Nebraska Hearing, 2022)
“blamed for actions committed by members of *those groups* in the past” (Idaho Hearing, 2021)

“but we should not do it in a way that castigates students, that points at *certain students*” (Lowery, 2021)

“the instruction on the historical oppression of a *particular group* of people” (Utah Hearing, 2022)

“that people are born—uh—inherently oppressors and that *others* are born to be inherently oppressed” (New Hampshire Hearing, 2021)

“because she was being told by her teacher that she, because of her white skin color, was an oppressor and that many of the *other children* in her classroom were victims” (Vance, 2021)

The “particular race,” “those groups,” and “certain students” of the first three statements above are euphemisms for White people. The last three, “particular group,” “others,” and “other children,” are euphemisms for People of Color, often Black people. The use of the euphemisms enables an avoidance of having to say what these phrases actually mean. Below I have rewritten the phrases with the euphemisms removed and the race-based term written in italics:

“and not assigning feelings of guilt on students—on [*White students*]” (Nebraska Hearing, 2022)

“blamed for actions committed by [*White people*] in the past” (Idaho Hearing, 2021)

“we should not do it in a way that castigates students, that points at [*White students*]” (Lowery, 2021)

“the instruction on the historical oppression of [*Black people*]” (Utah Hearing, 2022)

“that people are born—uh—inherently oppressors and that [*People of Color*] are born to be inherently oppressed” (New Hampshire Hearing, 2021)

“because she was being told by her teacher that she, because of her white skin color, was an oppressor and that many of the [*Black children*] in her classroom were victims” (Vance, 2021)
At least six of the statements contained euphemisms for racism. Most of the bills used the term “topic” or “issue,” as shown in the following phrases:

- “we want teachers who are teaching us how to think, not what to think on a particular issue” (Indiana Hearing, 2022)
- “this is a tumultuous, difficult bill and topic” (Indiana Hearing, 2022)
- “obviously, this is a very important topic, and one that’s got a lot of attention” (Indiana Hearing, 2022)
- “but either way this bill is here to intend to meet the needs of our legislature in terms of these concerns” (Idaho Hearing, 2021)
- “trying to address these particular issues” (Idaho Hearing, 2021)
- “you know, this is a—this topic is a complex issue that we as a country have been struggling with ever since its founding” (Nebraska Hearing, 2022)
- “they’re concerned that we will not be able to teach certain aspects” (Nebraska Hearing, 2022)
- “these topics are part of our history ... The trainees and students under the teaching of these topics will benefit from knowing the successes and failures of our past and present” (Nebraska Hearing, 2022)
- “it’s tough to get out here in the cold and testify on kind of an emotional issue and a political issue as well” (Nebraska Hearing, 2022)
- “we have to talk about those issues, and we should” (Lowery, 2021)

Other phrases used various euphemisms for racism such as “history and thought concepts” (Nebraska Hearing, 2022), “those historical facts” (Indiana Hearing, 2022), “sins” (New Hampshire Hearing, 2021), or “mistakes” (Noem, 2021) to avoid a term that many White people find uncomfortable (van Dijk, 1992). For example, the following phrase sounds very different than the one from the list above: “We
want teachers who are teaching us how to think, not what to think about [racism]” (Indiana Hearing, 2022).

**Allusion.** Allusion is “an indirect or casual reference to a historical or literary figure, event, or object” (David, 2014, p. 166). The persuasive power of allusion lies in the familiarity of the reference. Just like metaphors, which promote feelings of belonging, allusion does the same since the audience likely knows the reference.

Six of the justification statements used allusion in references to Martin Luther King, Jr. This is also an example of appropriation (discussed above), using a civil rights champion’s words to promote anti-CRT concepts. The phrases included the following:

- “as the Reverend Martin Luther King Jr., a man who championed equality for all humans, stated: ‘Darkness cannot drive out darkness, hate cannot drive out hate...’” (Grendell, 2021)
- “what these people are doing by forcing us to constantly focus on the color of our skin is that they are destroying an essential part of American heritage that we can judge people based on the content of their character” (Fox News, n.d.)
- “we can do that by continuing to focus on Dr. Martin Luther King’s vision of advancing equality under the law and protecting the integrity of every human life” (Cox, 2022)
- “Dr. Martin Luther King stated, ‘I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character’” (Representative Gleim, 2021)
- “do you think about what MLK stood for – he said he didn’t want people judge on the color of their skin, but on the content of their character” (Bella, 2021)
- “it teaches kids that we should judge others based on race, gender or sexual identity, rather than the content of someone’s character” (WHO 13, 2021)
This allusion of Martin Luther King, Jr.’s words “has been wrenched out of the social and political context in which King lived and died and has been misappropriated by some proponents of colorblindness” (Turner, 1996, p. 116). In other words, portions of his legacy have been highlighted and others ignored to provide selective evidence for those opposed to CRT. Nevertheless, the use of his words as Allusion fosters a feeling of familiarity for the audience.

Other examples of allusion included references to the U.S. Constitution, the Declaration of Independence, and the Civil Rights Act. Five of the statements contained mention of those items, which included the following:

- “we need to teach courses on the values and principles of this country that we were founded upon the Constitution, the Declaration of Independence, we want to teach about those issues” (Patrick, 2022)
- “failures to live up to what is in the Constitution and our American values” (South Carolina Hearing, 2022)
- “from the very conception of our country, the Declaration of Independence outlined the then controversial ideas of individual responsibility, individual accountability, and equality under the law” (Arthur, 2021)
- “we would not be the nation we are today without the belief, affirmed in the Civil Rights Act of 1964, that: ‘it shall not be lawful...to discriminate against any individual...because of an individual’s race, color, religion, sex, or national origin...’” (Arthur, 2021)
- “prohibited divisive concepts are clearly defined within the bill ... based solely upon the external characteristics of ‘nationality, race, color, ethnicity, religion, or sex,’ similarly described in the Civil Rights Act of 1964” (Grendell, 2021)
• “is this the vision that champions of the Civil Rights Movement and all those who have worked on bridging our divides as humans through cooperation, love, and understanding would have hoped for?” (Grendell, 2021)

• “through abolition, through the freedom of the slaves, the Emancipation Proclamation, through reconstruction, through Civil Rights Act of 1964, the contributions of Martin Luther King and on and on” (Lowery, 2021)

• “so that all Americans could be—could envision what the Declaration of Independence and the Constitution held up, that all men are created equal” (Lowery, 2021)

This strategy of appealing to common laws and history is common with politicians, as it establishes their right to govern (Rojo & van Dijk, 1997). In this case of the statements, the use of allusion projected a moral right (through the use of Martin Luther King’s words) and a legal right (through the citation of laws) to justify the passage of the bills.

**Prophesying**

The third strategy of Whitelash revealed by the justification statements is what I call Prophesying. Prophesying is “the action of foretelling the future” (Oxford, 2023). In the statements, several predictions were made regarding CRT: that it was an emergency that must be dealt with immediately, that it would be extremely dangerous for students and society, and that those who support it are considered the enemy. I consider each of these predictions as separate methods below.

**An Emergency**

The first method of Prophesying was to exaggerate the “problem” of CRT and make it an emergency that must be dealt with quickly. Rojo and Dijk (1997) discussed the use of “emergency rhetoric” language invoking the seriousness of an issue, concluding that the use of such language increased the acceptance of that message. In other words, defining an issue as a crisis that must be addressed immediately also increased the persuasiveness of the rhetoric.
This exaggeration occurred in 16 of the justification statements. For example, some speakers stated that they had heard about issues with CRT from “multiple resources...throughout the state” (Nebraska Hearing, 2022) and from “a number of parents” (South Carolina Hearing, 2022). Others stated that this was a “significant statewide issue” (Grendell, 2021) and “alarmed constituents” (Nebraska Hearing, 2022) want something done immediately. Governor DeSantis referred to CRT as a “constant threat” against students (Florida Governor, 2021).

At least six of the statements referenced CRT as a growing problem (Fox News, n.d.; Grendell, 2021; Idaho Hearing, 2021; KBTV, 2021; Nebraska Hearing, 2022, Noem, 2021). In fact, Governor Noem claimed that her state of South Dakota “will soon face many of the same forces that have wrecked other states’ education systems,” (Noem, 2021) and Governor DeSantis declared he needed to protect students “from some very pernicious ideologies that are trying to be forced upon them all across the country” (Florida Governor, 2021). Governor Reeves of Mississippi stated that: “across this great country we’re seeing a full court press by vocal minority of well-organized and well-funded activists” (Supertalk Mississippi, 2022), and Lt. Governor Patrick declared CRT proponents were part of a “national organization to teach critical race theory, and they want to put it in higher education, all across the country” (Patrick, 2022). All of these statements imply that CRT in universities is a widespread emergency in the United States: The supposed threat is constant and happening all over the country, and unless quick action is taken, it will only get worse.

Dangerous Theory

The second method of Prophesying in the justification statements was to highlight the perceived dangers of CRT. Here, the statements often referred to actions against students to increase the unease that the audience may already have about CRT. For example, the following phrases emphasized the anticipated harm that CRT will allegedly cause:
• “it is very dangerous and harmful to our children who have no say regarding the color of their skin” (Gomez, 2022)

• “I urge you to listen to these tenets and think of how harmful and detrimental it is to compel our impressionable children to believe such things” (Grendell, 2021)

• “it’s ridiculous and frankly it’s destroying our society” (Fox News, n.d.)

• “I am well aware of the danger posed by this policy, which is why I am co-sponsoring legislation to combat the spread of critical race theory in Pennsylvania schools” (Cox, 2022)

• “teaching our children they are inferior or inherently bad based on immutable characteristics such as race and sex can be extremely damaging to their emotional and mental well-being” (Representative Gleim, 2021)

• “you talk about tearing away a student’s—whether they’re white or of color—their self-esteem, their dignity, their spirit” (Patrick, 2022)

• “it’s going to break us apart, it’s going to put us in camps” (Ozaki, 2021)

• “to give you just a taste of what is at stake, let me ask you this: Do you believe elementary school students should be forced to celebrate ‘black communism’ and simulate a ‘black power’ rally to free a prisoner accused of murder” (Cox, 2022)

• “if you don’t believe in it, you may not graduate; you may fail your class” (Patrick, 2022)

• “children are dragged to the front of the classroom and coerced to declare themselves as oppressors and taught that they should feel guilty” (Supertalk Mississippi, 2022)

According to these phrases, CRT is dangerous, harmful, detrimental, destructive, and damaging. Not only this, but it will also affect the mental state of students who are exposed to it, pitting student against student in different “camps.” Students will be prevented from graduating or will receive failing grades or will be “dragged to the front of the classroom” and forced to declare allegiance to CRT. In short, the phrases predict that if CRT is allowed, then students will suffer.
Threatens the In-Group

The final method of Prophesying was the representation of CRT as a threat to the in-group. According to Rojo and Dijk (1997), this is usually the final step in accounting the predicted dangers of an event: “to represent the Others in terms of a threat to the public order or to Us” (Rojo and Dijk, 1997, p. 538). One of the ways the justification statements accomplished this was through a common theme of “our” students or “our” state being threatened, as discussed in the section above on Creation of Groups. In the phrases below, however, this possessiveness was combined with references to indoctrination or requiring students to agree to the tenets of CRT. Half of the justification statements mentioned these threats, sometimes multiple times within one statement. For example, the following phrases were used by Senator Crabtree of Idaho in one hearing: “A concern that some have over indoctrination of our students,” “I believe that none of us want to send our students to school be indoctrinated,” “No one wants to have indoctrination,” “So with that I want to reiterate again that none of us want indoctrination of our children,” and “We do not want our kids as they go to school to be indoctrinated” (Idaho Hearing, 2021). Other examples included:

- “I know you will agree with me when I say that there is no room for this type of indoctrination in our state” (Supertalk Mississippi, 2022)
- “what it does prohibit is schools from indoctrinating students by claiming one race is superior to another, or that individuals should be treated differently on the basis of race” (Grendell, 2021)
- “get back to concentrating on teaching the basic educational foundations of reading, writing, math, science and social studies, rather than attempting to indoctrinate our students with a theory or belief system that is divisive and not curriculum based” (Representative Gleim, 2021)
- “it is critical that our classrooms remain a place of learning, not indoctrination” (Noem, 2021)

Justification statements also referenced students being forced, compelled, or pushed to accept CRT through language such as: “impose one’s values” (Florida Governor, 2021) and “being forced or pushed
a certain way” (Nebraska Hearing, 2022). In addition, some introduced personal stories illustrating the perceived threat of CRT. Examples included:

- “my children have come home in tears because of the things that they have been pushing at school” (Moseley, 2022)
- “she was concerned about how the teacher was using it and pushing his views” (Idaho Hearing, 2021)
- “but she was most sad because ... when they did their separation into victim and oppressors, she was in the oppressor group and her best friend was in the victim group” (Vance, 2021)

The phrases above show CRT as a threat to the in-group using possessive pronouns and perceived indoctrination. In addition, some statements included specific stories to illustrate that the dire predictions were already taking place.

Prophesying took place in the justification statements by forecasting a crisis, exaggerating and embellishing perceived dangers, and villainizing the out group. The examples above show how the justification statements used these methods to increase the fear of CRT and CRT advocates, which would increase support for the banning of CRT from universities.

**White Innocence**

The fourth and final Whitelash strategy evident in the justification statements is White Innocence (Cabrera, 2014; Longazel, 2014). White innocence minimizes and denies the experiences of People of Color by a refusal to acknowledge what Cabrera (2018) calls “White immunity,” a restructuring of the concept of “White privilege.” As discussed in Chapter 2, “[w]hite innocence is the insistence on the innocence or absence of responsibility of the contemporary white person” (Ross, 1990, p. 3). One manner in which White Innocence is used is to maintain that only a few “bad White people” participate in racist behavior, and therefore their own behavior or benefits is excused or is not racist (Rodriguez, 2008). Another means is to declare that racism is in the past and deny that White privilege or racism
exists today (Simson, 2018). White Innocence creates “plausible deniability, or the ability to practice
discrimination, while at the same time denying that any discrimination is actually taking place” (Sidanius
& Pratto, 1999, p. 43). Two methods of White Innocence were present in the justification statements:
Distancing and Denial.

**Distancing**

Some of the justification statements used rhetoric that distanced the speaker from racism. One
of the more common ways this is achieved is through the “I am not a racist” trope. This is used by
persons who do not display blatant discrimination or racism, but the trope also relies on a denial of any
systemic racism or White privilege (Bonilla-Silva et al., 2020). Two of the justification statements used
personal stories to this effect. For example, Senator Vance made it a point to call attention to the fact
that he “married a woman who’s not the same skin color” (Fox News, n.d.). In addition, Lt. Governor
Patrick also shared:

I remember as a kid—it’s a long time, it’s vague memories—but I remember colored drinking
fountains and white drinking fountains. I remember that time. I remember that when I was a kid
in high school, that I had a 13 or 14 piece Motown band. And I had four black singers, and they
would come to my house in the 60s and practice because we had the big basement. And some
neighbors said to my mother, why are you letting those black boys in your house on the street
[sic], and I remember my mother telling her: mind your own business ... I remember my father
coming home. He was a truck driver and said on the road between Baltimore and Philadelphia,
one time a black family said to him: Would you mind going into this store, or this diner, and
getting me some food for my family, because I’m not allowed in. (Patrick, 2022)

These stories made the speakers out to be one of the “good” White people. In the case of Senator
Vance, he implied he was not racist because he has a wife who is a Person of Color. Lt. Governor Patrick
expressed that he came from a family who was not racist, since he had a mother standing up for the
Black “boys,” had Black people in “his” band, and his father saved Black families from hunger. The method of Distancing in the justification statements, as shown by the examples above, consisted of using relationships with People of Color. The relationships allowed the speaker to provide proof of how non-racist they are. In other words, the speakers used their relationships with People of Color as a way to distance themselves from racism.

Denial

The second method of White Innocence in the justification statements is Denial. First, twelve justification statements contained references to what they allowed professors to teach, in effect, denying that the bills would suppress any historical instruction that would provide information on slavery or racism. This allowed the supporters of the bills to claim that there was no racist reason for their justification, giving them a claim of innocence. The statements included:

- “we must tell the good, the bad, and the ugly of history” (Moseley, 2022)
- “this banning of divisive concepts in our classroom is not about banning the teaching of black history” (Lowery, 2021)
- “we didn’t say you don’t talk about race; we didn’t say that you can’t teach about slavery, we didn’t say that you ignore our history” (Patrick, 2022)
- “this bill doesn’t say that you can’t teach critical race theory. It doesn’t say that in the bill” (Idaho Hearing, 2021)
- “I totally believe that we should teach our nation’s history good and bad” (Indiana Hearing, 2022)
- “we want to talk about past discrimination. We want to talk about how some laws that we have made in the past have been hurtful. We do not want to stop that because we need to learn from that and that’s our history” (Nebraska Hearing, 2022)
• “the proponents of Critical Race Theory will tell you, and they will argue very loudly, that any attempt to ban Critical Race Theory is an attempt to ban black history and that is absolutely not the truth” (Lowery, 2021)

• “this bill does NOT prevent schools or government entities from teaching about racism, slavery, and segregation” (Grendell, 2021)

• “no prohibition against teaching slavery; in fact, this bill states that you should teach about history, and you should say that slavery was a stain on history—that it failed to live up to the true founding of America” (South Carolina Hearing, 2022)

• “so, you know there’s—there’s really nothing in here that that limits necessarily history” (Utah Hearing, 2022)

• “Marxism, Nazism, fascism … I have no problem with the education system providing instruction on the existence of those ‘isms’” (Peiser, 2022)

• “nothing in this bill seeks to ban teaching about history or literature” (South Carolina Hearing, 2022)

• “contrary to what some critics may claim, this bill in no way, in no shape, and in no form prohibits the teaching of history” (Supertalk Mississippi, 2022)

• “any claim that this bill will somehow stop Mississippi kids from learning about American history is just flat out wrong. I’ve said it before and I’ll say it again” (Supertalk Mississippi, 2022)

• “it does not ban diversity and inclusion training. It does not limit academic discussion. And it does not limit free speech” (New Hampshire Hearing, 2021)

• “HB 327 protects children’s right to learn American History in an objective and historically accurate manner without taxpayer dollars being used to promote an ideology of racism and group guilt” (Arthur, 2021)
These justification statements announced that there is no ban against teaching anything in history, and 13 of the statements claimed there was no ban against teaching CRT. Whether or not this is true is contested by CRT proponents. However, by asserting that history is not being silenced, the statements claim innocence.

The most common form of Denial was the claim that racism was a phenomenon relegated to the past. Some statements implied that racism was only practiced today by a few, and that those instances were dealt with, such as: “And as we see them, we take care of them. Granted, not soon enough, but we are a deliberative country” (Gomez, 2022) and:

I’m saying it’s not systemic. It does exist—there are vestiges of it and our country has done a very good job rooting out those last vestiges. But do I think the structure of our country is racist by design? No. (New Hampshire Hearing, 2021)

Some of the justification statements were more subtle in their attempt to displace racism to something that was a problem in the past, but not a problem today. This is a common theme for White Innocence: the assertion that racism and discrimination ended with the passage of the Civil Rights Act. For example, one statement said that the country had gone through “changes,” such as “through abolition, through the freedom of the slaves, the emancipation proclamation, through reconstruction, through Civil Rights Act of 1964, the contributions of Martin Luther King and on and on” (Lowery, 2021). Two others referred to not treating others differently or not holding individuals responsible because of the past (Nebraska Hearing, 2022; Arthur, 2021). Other statements were less inconspicuous with their claim that racism is not a problem today, including the following:

- “but ask yourself why American children are learning about America’s racist past 100 years 80 years ago” (Vance, 2021)
• “and—uh—though the United States was not perfect in the beginning, the country has advanced to where we are able to talk about—uh—a better—uh—more unity and more equality” (New Hampshire Hearing, 2021)

• “slavery is one of the original sins of our country. But the design of the country—the design of the institutions of the country—have allowed our country to evolve and to rectify those sins of the past” (New Hampshire Hearing, 2021)

• “our children and grandchildren should understand the full picture of our nation’s history—our fundamental values, our greatest achievements, and the long struggles to overcome injustice as well” (Noem, 2021)

• “those are the things that can be taught about this terrible racism that happened in this country” (Patrick, 2022)

The phrases above indicate a belief that racist behavior is not a problem today—that while the United States used to practice racism, the country has moved on from this and through our laws have made everyone equal. In addition, the statements purport that if racist behavior is performed, it is only by a few individuals. Defining racism as an anomaly, something that is committed by individuals only, helps to perpetuate racism and allows the in-group to ignore their role in its reproduction (Van Dijk, 1992).

The examples above show that White Innocence was a common strategy used by the supporters of the bills in their justification statements. Not only did the supporters use stories to explain why they couldn’t be involved in racist activities, they also declared that they were not trying to hide history. In addition, the justification statements they issued denied the existence of systemic racism today and relegated discrimination to the past.

Chapter Summary

This chapter has described the various Whitelash strategies used in the justification statements made by supporters of the bills. The strategies included Rhetorical Versatility, which consisted of
Appropriation & Rearticulation and Textual Winks. Another strategy of Whitelash revealed by the statements included Persuasion, which included the methods of Turning the Tables, Creation of Groups, and Diction. Prophesying, the third strategy, employed Creation of Emergency, Creation of Danger, and Creation of Threat. The final strategy, White Innocence, used the methods of Distancing and Denial. All of these strategies served to uphold and reinforce the Discourse models that were promoted and upheld by the statements.
Chapter 9

In this study, I examined the content and scope of U.S. state-level postsecondary educational reform bills, laws, and justification statements that particularly target CRT and related concepts. I also discussed the Discourse models that are reflected and upheld by these bills and justification statements. Finally, I examined the strategies and tactics used by the proponents of these bills, which are forms of Whitenash, to foster passage and support the Discourse models. This chapter will discuss the results of the study, explain its importance, and discuss implications for future research. In addition, I will discuss how this study may have ramifications for current practices, including at universities and state legislative bodies.

Through CDA and by using the tools of Gee (2005, 2014), I analyzed the language, grammar, and semantics of the bills and justification statements. While the purpose of the bills expressed by some of the justification statements was to keep students safe from indoctrination and discrimination, the overall effect of the bills is the silencing of speech. Therefore, in practice, I believe the bills’ intent flies under the radar, and that the purpose is to control information in universities and in public education for the next generation of U.S. inhabitants.

Research Question 1

The first Research Question asked: What is the content and scope of U.S. state-level postsecondary educational reform bills and laws that particularly target CRT and related concepts that have been proposed in the past three years? The bill criteria included: proposed by a state lawmaker; affects classroom instruction at institutions of higher education; and prohibits or requires instruction regarding race, CRT, or The 1619 Project. A total of 53 bills were analyzed.15

15 To date, seven states have passed what have come to be known as “anti-CRT laws” than forbid university faculty from teaching certain topics. The remaining bills in this study have died or expired (Pen America, n.d.-b.).
Most of the bills contained a list of items, usually called “divisive concepts,” that were banned from discussion in university classrooms (See Table 2 in Chapter 3). Three of the bills specifically banned the instruction of *The 1619 Project*, a collection of essays and other items that examines the connections between slavery and American history (Silverstein, 2019). Some of the bills claimed that these divisive concepts were the tenets of CRT. However, this is simply not true (Delgado et al., 2017). There is no tenet of CRT that says that a person must feel guilt for their skin color (Bell, 1988; Crenshaw et al., 1995; Delgado & Stefancic, 1998). There is no tenet of CRT that says a person’s moral character is determined by his or her race or sex (Cabrera 2016; Crenshaw et al., 1995, Kendi, 2021). Many of the concepts named in these bills touch on broad topics also addressed by CRT such as “race” and “racism,” but the bills simplify these concepts to the point that they do not capture the full explanation. For example, the divisive concept in many of the bills, that a student should feel discomfort or guilt because of their race or sex, is an misinterpretation of the CRT tenet that systemic racism is the result of years of oppression and discrimination against Black people through our laws and institutions, most of which were created by White men (Bell, 1988; Bonilla-Silva, 2022; Crenshaw et al., 1995; Delgado et al., 2017; Harris, 1993). Without more of an explanation, the framing that CRT teaches students to feel guilty for their race or sex was disingenuous.

Of the bills, 21 had prohibitions against instructing a student to adopt or believe the concepts, and 32 banned instruction of the concepts outright. Of great concern is that it was unclear what actions would lead to a finding that someone had instructed a student to adopt or believe the concepts. For example, does the professor need to say the words “I want you to believe that an individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously?” What about a professor stating: “It is common knowledge that men are inherently sexist?” Would this be allowed? If a professor gives instruction on how systemic racism operates today, are they teaching a
student to believe it? Without the answers to these questions, faculty do not know what they can and what they cannot say in class.

This type of prohibition serves to chill the speech in university classrooms. Professors who are unsure of what they can teach are more likely to avoid the topic altogether, which is a great disservice to students. Also of concern is that prohibition of certain topics from the classroom violates academic freedom. These prohibitions would apply to all professors, including those who teach CRT and theories of social justice. A robust, academically-free university system is “necessary for an informed public, a public that can understand and evaluate issues of common concern and form judgements on the basis of a knowledgeable understanding of the world” (Butler, 2017). This can only occur if faculty “may be uninhibited in criticizing and advocating controversial changes in accepted theories, widely held beliefs, existing institutions, as well as the policies, programs, and leadership of their own institution” (Reichman, 2021, p. 119). To tell professors what they can and cannot teach in matters related to their expertise is a flagrant violation of academic freedom.

Research Question 2

The second research question was: What are the Discourse models (the widespread societal beliefs, values, and current power dynamics) that are communicated by these laws and bills and related justification statements of the laws as voiced by political supporters and sponsors in legislative documents, official reports, and media appearances? For this question, both the bills and the justification statements were analyzed. The justification statements must have been made by a state lawmaker in support of a specific bill or in support of these types of bills. Twenty-six statements were selected for analysis.

As described earlier, Discourse models “present specific versions of reality, formulate characteristics of social actors and groups and thus sustain and reinforce ideologies and social values” (Rojo & Dijk, 1997, p. 561). The Discourse models revealed by the bills and statements were
Neoliberalism, Nationalism, Colorblindness, and Law as Morality. Two of these Discourse models were expected: Neoliberalism and Colorblindness.

**Discourse Model of Neoliberalism**

While I expected the model of Neoliberalism, I was surprised at the extent to which the bills supported this discourse. I initially expected that meritocracy would be one of the models supported by bill language. While meritocracy is referenced in the bills, it is associated with the concepts of individualism and hard work, both of which are components of a neoliberal system of beliefs (Giroux, 2014). Therefore, rather than a stand-alone Discourse model, meritocracy has been folded into the Discourse model of Neoliberalism.

First, there was quite a focus on individualism. The term “individual” was used 616 times across the bills chosen for this study. There was no concern with the common good, no concern with society, and no concern for equity. Almost all of the “divisive concepts” were written in terms of the individual, and other bills wrote of the right to be treated as “individuals” (SC4605).

The individual is also responsible for their success or failure through the system of meritocracy. The problem with the concept of meritocracy is that it concludes: “those who are at the top are there because of merit [and] those who are under-represented lack merit in some way ... Meritocracy refuses any acknowledgement of the role racism plays in everyday structures of society” (Davison & Shire, 2015, p. 85). It was interesting to note what traits some of the bills associated with meritocracy: hard work, rational thinking, objectivity, literacy, punctuality, use of standard English, excellence, fairness, neutrality, colorblindness, self-reliance, rational or linear thinking, planning for the future, and delayed gratification. To me, this listing of additional related traits accomplishes two things: First, it re-defines merit to suit those in power. In other words, use of colorblindness has nothing to do with possessing admirable qualities, nor does delayed gratification. Second, many of the additional traits are code words associated with Black people. For example, I believe “punctuality” is based on stereotypes that Black
people are often late. I believe “use of standard English” is denying the legitimate use of African-American Vernacular English and also serves to associate Black Americans with a lack of intelligence.

Surprisingly, some bills extolled the virtues of neoliberalism by forbidding instructors to associate “capitalism, free markets, or free industry” with racism or sexism (Utah257). One bill even commanded university faculty to teach that the government should be limited to protect capitalism (La1014). To my mind, these last two examples go above and beyond upholding and supporting the Discourse model of neoliberalism—they are ensuring its survival for generations.

The statements also stressed the important of the individual, but commonly connected this notion with the neoliberal value of prosperity. Interestingly, most of the statements regarding this also referenced skin color, as in “where everyone can flourish, regardless of background or skin color” (Louisiana Hearing, 2021). These types of statements, therefore, were also a nod to the Discourse model of Colorblindness. Taken together, the bills and the statements supported the ideas that the individual is valued over society, the individual is the sole unit responsible for success or failure, that capitalism is the best financial model, and that individuals should want to participate in the free market system (Harvey, 2007). In addition, bills and statements supported the notion that racism can only be practiced by individuals, and that individuals should be relieved from any responsibility of racism (Bonilla-Silva, 2022). Systemic racism, if discussed at all, was either flatly denied or suggested to be something in the past.

**Discourse Model of Nationalism**

The bills and justification statements also upheld and reinforced the Discourse model of Nationalism. Contemporary nationalism in the United States combines a “potent mix of religious fundamentalism, racist supremacism, muscular Americanism and a fetish for the ‘gun’” (Cox, 2018, p. 287). To support their causes and beliefs, White nationalists do not shy away from violence, as seen on January 6, 2021 at the U.S. Capital (Schertzer & Woods, 2022).
It was apparent in the language of most of the bills that the legislators allowed absolutely no negative depiction of the United States or of its founding. In addition, some of the bills made the early Americans seem almost god-like—especially those that laid out the instruction that must be given regarding the history of the United States, as in SC534 which required faculty to teach about George Washington and his “divine protection,” the founders belief in “God-given rights,” and Thomas Jefferson’s drafting of the Declaration of Independence (SC534, La1014). The overwhelming idolatry of the United States and its founders in the statements was incredible: from the country being the “least racist place” to its “great heroes” to its great achievements, the image of the country was one of patriotic pride, devotion to its founders, and love of western culture (Idaho Hearing, 2021; Vance, 2021). Most of the nationalist rhetoric in the bills and statements fit perfectly into Schertzer & Woods (2022) observations of how nationalists see their country, including: “The most important event in the nation’s history was the time of its ‘glorious past,’ when the nation was at its very best;” and “The nation’s creed—its unique way of life and values—reflects the attributes of its dominant ethnic group” (p. 41).

The use of the founders, “i.e., White male elites, many of whom were slave owners ... suggests a certain nostalgia for what they consider the ‘real’ America ... where personal liberty and economic freedom were reserved for Whites” (Esposito, 2011, p. 8). Trump picked up this baton during his 2016 presidential campaign by using the dog whistle “Make America Great Again,” which encouraged this nationalistic rhetoric (Omi & Winant, 2014). As stated by Leonardo (2007): “a white nation is imagined every time a white subject argues for a return to the great past of American heritage or when the nativist response to immigration threatens to close the US border with Mexico” (p. 262). Language that named freedoms and rights was also prevalent in the bills and statements, though some statements usually referenced items such as “freedom of thought” and “freedom to question,” which are not freedoms guaranteed by the US Constitution (Louisiana Hearing, 2021; Noem 2021).
In addition, using the Constitution as a reference that “equality” was the guiding principle of the day contradicts the fact that enslaving people was also sanctioned by the Constitution (U. S. Const. art. IX, § 9). In order to believe in the narrative that the US was founded on equal rights for all, one would also need to believe that the founders were good men who did not own and manage their own forced labor camps. This cognitive dissonance requires a solution, and banning discussion on these topics is one way to resolve the contradiction.

The romanticizing of the country’s founding and its early documents presents only one view of history and does not take into account the views of Indigenous persons and enslaved people at that time. According to Turberville (1933), an early historian, “[w]hen national history is exploited or perverted for the deliberate purpose of fostering national or racial pride, nothing could be more mischievous from the point of view of either academic or public welfare” (p. 291). In other words, filtering history to create a utopian past does a disservice to us all.

**Discourse Model of Colorblindness**

One Discourse model upheld by the bills, but not as much by the statements, was that of colorblindness. Colorblindness was reinforced by language in the “divisive concepts,” such as: “members of one race or sex cannot and should not attempt to treat others without respect to race or sex” (NH544). In other words, the anti-CRT bills support treating each other without regard for race or sex. Everyone, regardless of their race or sex, is to be treated the same.16 The implication here was that affirmative action programs would violate this concept. As discussed above, anti-affirmative action relies on the concept of racial colorblindness to support its position—the idea that a Black person is getting a job due to affirmative action must mean that they took the job away from a White person (Crenshaw, 2006). If everyone is treated regardless of race, then affirmative action disappears.

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16 The irony here is that this means the anti-CRT bill supporters should support all gender-inclusive restrooms.
The bills also supported colorblindness by focusing on equality and neutrality, which: “denies the historical context of white domination and Black subordination” (Harris, 1993, p. 1768). Four bills stated outright that equality was better than equity, and forbid instructors to say otherwise (Miss 437, Miss1492, La564, SC4799). In other words, all persons should receive equal treatment, not equitable treatment. There is to be no discussion of how advantages for White people are often based on generations of privilege. Some bills also demanded that any discussion of divisive concepts (if allowed by the bill) be “objective” and “without endorsement” (Ala8, Utah257). In other words, professors are to remain race-neutral, what legal scholar Williams (1991) called “racism in drag” (p. 116).

These examples reflect the “myth” of Colorblindness. As Strauss (1986) stated: “we do not have a choice between colorblindness and race-consciousness; we only have a choice between different forms of race-consciousness” (p. 114). It seems that the bills have chosen race-consciousness that denies the inequity in society.

**Discourse Model of Law as Morality**

Law as Morality was a Discourse model promoted primarily in the justification statements. Some of the supporters, through their statements, were very emphatic in their message of protection of citizens, alluding to the need to protect students from the environment created by CRT. The language used varied in how it was their “duty” to protect, but the justification statements were consistent in that the speakers felt some moral obligation to do what they were doing. They often used words that provoked images of war, such as “fight” and “terrorize” (Florida Governor, 2021; Supertalk Mississippi, 2022).

Two of the statements were particularly virulent in the message of needing to fight against the universities and professors who support CRT, with one of them ending in the proclamation of “[t]he professors are the enemy” (Patrick, 2022; Vance, 2021). This can also be related to the method of Persuasiveness called Creating Groups, discussed in Chapter 8. In other words, the language used often
creates an enemy. In addition, the statements were commonly written or spoken as pro-conservative dogma, declaring the left and the academic elite as the enemy (KBTV, 2021; Supertalk Mississippi, 2022). Overall, the effect of most of the statements was that fighting against CRT was the “right” or “moral” thing to do.

Research Question 3

The third research question was: How do these bills and laws and related justification of the laws uphold and reinforce these Discourse models? The bills and statements all served to limit discussion of CRT and espoused ideas that limit racial progress. In doing so, they acted as mechanisms of Whitelash, which is the “individual, institutional, and structural countermeasures against the dismantling of white supremacy or actions, real or imagined, that seek to remedy existing racial inequities” (Embrick et al., 2020, p. 206). Below I first summarize the strategies used in the bills, and next I summarize strategies used in the justification statements.

Strategies in Bills

There were four main strategies used by bills to uphold and reinforce the Discourse models. These strategies were Legitimation, Denial, Fear, and Legal Maneuvers.

The bills attempted Legitimation of the Discourse models through the use of authority, emotions, and altruism. First, since the bills were written by those who we have elected to rule state governments, they automatically have an air of authority (Martín Rojo & Van Dijk, 1997). After all, these are the people whom we have elected to keep us safe and protect our interests as citizens. We have given them this authority. In addition, because this is a legal document, many people are often impressed by the “legalese” used in the bills, thinking that the persons who wrote them must be intelligent. The bills used references to freedoms and rights as an underlying reason for their purpose, which appealed to the emotions of readers and implied altruistic motives (Ill5505). There were numerous references to freedoms and rights in the bills. It seemed to be very important to the authors
of the bills to outline that freedoms and rights would be taken away if CRT was allowed. Most often, this freedom was student expression. In other words, the bills assumed that CRT instructors would not allow a different opinion in the classroom and would stifle the speech of those who objected to the tenets of CRT. This was never actually described in the bills, but there was a common refrain of the need to allow differing viewpoints and beliefs. In addition, the bills used provoking language to evoke fear that allowing CRT would cause discord and discrimination against White people, such as “inflame division” (Miss1491).

Denial was also a tool of Whitelash used by the bills. The main focus was the denial of systemic racism, not individual acts of racism, as evidenced through the “divisive concept” that the United States was “founded on racism” (NH1255). In addition, most of the bills with the common list of “divisive concepts” contained a prohibition against an individual being held “responsible for actions committed in the past by other members of the same race or sex” (Ala9). First, this assumes that a CRT instructor would teach this. Second, this seems to be a prohibition not against instruction, but a directive to students that they are not to feel bad if they discover that White people owned slaves, and that they are still benefitting from that today. In other words, just stating that systemic racism and White privilege exists and explaining the concept does not require an emotional response.

The most distressing mechanism used, in my opinion, was the use of Legal Maneuvers. The choice of words, or diction, was either an example of extremely poor drafting or a masterful attempt to obfuscate from the true purpose of the bills. By presenting “divisive concepts” in negative statements or in unclear terms, the bills were extremely confusing to understand. The use of double negatives in some statements also made the prohibitions vague and nebulous (Ariz2001). In addition, some words were highly ambiguous, or their meaning was undefined. Any first-year law student knows the importance of the choice of words in legal drafting: Terms that are not clear are defined, and there should be no question as to the meaning that should be conveyed. However, these bills contain numerous
peculiarities that are difficult to decipher, which would make trying to follow them (if they became law) almost impossible.

**Strategies in Justification Statements**

There were numerous examples of Whitelash in the justification statements. The four broad categories included Rhetorical Versatility, Persuasion, Prophesying, and White Innocence. However, within those categories were multiple subcategories.

**Rhetorical Versatility.** Rhetorical Versatility involves the crafting of language to affect your audience—basically, to lead them in the direction you want them to go. I found that Appropriation & Rearticulation and Textual Winks were used as methods of Rhetorical Versatility in the justification statements. By appropriating and rearticulating the concepts of CRT, the justification statements twisted the meaning of some tenets or singled out portions of tenets to give them a new meaning. For example, the Governor of Mississippi was emphatic that “the radical left” was lying about CRT, and he was going to “set the record straight” (Supertalk Mississippi, 2022). Some misrepresentations included that CRT creates systemic racism, that CRT is a national movement trying to entrench itself in schools, and that CRT teaches students that the United States is evil. In addition, there was also the requirement to teach an “objective” view of history. History is not a collection of impartial facts—it is a compilation of what has occurred as determined by point of view, which is always biased (Blake, 1955; Crenshaw, 2021). Since most of the history of the US has been written by White men, this is the viewpoint that has prevailed, which is not objective.

There were extensive Textual Winks in the statements, including references to Fox News, All Lives Matter, the religious right, and reverse racism (Cox, 2022; Arthur, 2021; Patrick, 2022; Vance, 2021). The use of coded language is one exemplified by former President Trump, who used Textual

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17 A quick search of Governor Reeves’ website shows he has a bachelor’s degree in economics. There is no mention of expertise in CRT (Office of Governor Tate Reeves, n.d.).
Winks to call on the “silent majority” (meaning White people) to “take back control” of the country. According to Schertzer & Woods (2022), this allowed him to speak clearly to the White nationalists in the audience, “while remaining ambiguous enough to speak to more moderate members of the ethnic group” (p. 101). Other winks in the statements included references to “progressive policy” and “identity politics,” both of which are code for policies of Diversity, Equity, and Inclusion. One blatant Textual Wink was done by Senator Vance (2021) who talked about how CRT proponents are “destroying an essential part of American heritage,” which was a clear reference to Southern White Supremacy groups who call the confederate battle flag a symbol of “heritage, not hate” (Strother, et al., 2017).

**Persuasion.** The statements also used persuasive techniques, the most prominent being the Creation of Groups—the in-group and the out-group—by making CRT advocates out to be anti-American villains who are out to indoctrinate children, force students to hate the US, and make White people feel guilty (Vance, 2021). The in-group, on the other hand, was portrayed as righteous, patriotic, god-fearing citizens. The statements consistently used the pronouns “we,” “us,” and “our” to create comradery between the speaker and the audience (Bella, 2021; Grendell, 2021). Occasionally, metaphors and similes such as legislation is like making “sausage” and CRT advocates are like “snake-oil salesmen” were used to increase this feeling of being in-the-know (Idaho Hearing, 2021; New Hampshire Hearing, 2021).

The statements often used euphemisms to communicate with the audience. While some statements did use the terms “Black people,” “White people,” “race,” and “racism,” many of them used terms like “a particular race” or “other race” to distinguish between White people and People of Color. Racism was referred to as an “issue” (Indiana Hearing, 2022). The statements also hid what the bills were really about, saying that they were addressing a “topic” or a “concern” (Nebraska Hearing, 2022). When laid bare, the topic was the fear that White people have against racial progress. The hidden concern was that students would be learning that the founders of the US, who were White men, had enslaved people for a labor force to build the country, and that the impact of this is still affecting Black
people today. The latent interest was that White students would realize that they had social and economic privileges, and that systemic racism is integrated into our society.

**Prophesying.** When engaging in Prophesying, the statements magnified the seriousness of the “issue” and declared an emergency response. This is a common tactic in political speech, as it necessitates quick and decisive action, which the speaker claims to provide (Rojo & Dijk, 1997). The statements also exaggerated the “problem” of CRT. One statement announced that CRT had “wrecked” other states’ education systems (Noem, 2021), though no proof of this was offered. Other statements referenced how the speakers were being bombarded with emails and messages from their constituents, who were “alarmed” and wanted something done (Nebraska Hearing, 2022). The statements highlighted the perceived dangers and harms of CRT, reporting that the problem was growing and would soon take over the schools. They warned that students will be failing classes if they don’t support CRT, dragged to the front of classrooms to pledge allegiance to CRT, and forced to hate their country (Patrick, 2022; Supertalk Mississippi, 2022). In sum, students are threatened to the point of crying and suffering through indoctrination by national activists who have come to brainwash them (Moseley, 2022; Noem, 2021). One of the most repeated warnings was that students were being “indoctrinated.” This appeared in over half of the justification statements.

**White Innocence.** Finally, the justification statements exposed the strategy of White Innocence through Distancing and Denial. Distancing was accomplished through anecdotes that showed the speaker of the statement as a “good White person.” One speaker of a statement pronounced that he was the husband of a Person of Color (Fox News, n.d.). The unspoken part of this declaration was “so of course, I can’t be a racist.” Bonilla-Silva (2022) stated: “Color-blind racism is the dominant racial discourse in the nation exemplified by what comes after a White person says, ‘I am not a racist, but...’ or ‘Some of my best friends are Black’” (p. xvii). By distancing themselves from racism, these speakers of the statements were only showing their true colorblindness.
Lastly, the justification statements revealed that Denial was commonly used as a method of White Innocence. The first form was in denying that history would be suppressed as a result of the bills. The speakers could then claim there was no racism behind the bills or their justification. In addition, by denying that Black history will be erased, the speakers of these statements are insinuating that they are innocent of racism. However, CRT proponents disagree (Kendi, 2021). The teaching that is referenced in these statements does not match what the bills purport to allow (Lowery, 2021). In addition, Crenshaw (2021b) stated that even though it may be technically true that some bills do not prevent instruction of history or CRT, “the laws’ language — often eerily identical — is even more insidious: It explicitly sets out to sanction certain feelings as part of a disingenuous crackdown on racial division” (para. 7).

Crenshaw declared that any student or parent can claim that their feelings were affected, so the laws serve to stifle any instruction that may lead to critical consideration of present-day racism (Crenshaw, 2021b). The bills clearly put limits on the teaching of slavery, racism, and the Black experience in this country. Some proponents basically stated: “we didn’t say you can’t teach black history, just that you can’t make a student believe or adopt these divisive concepts.” However, the line between “teaching” and making someone “believe” in what you are teaching is very fine—so fine, in fact, that I would say invisible. Therefore, this profession of innocence by denial is deceitful.

Another form of Denial was the claim that racism was relegated to the past, minimizing the experiences of Black people and the effects of discrimination today (Bonilla-Silva, 2022). The common theme was that racism already been dealt with by the country (Gomez, 2022; New Hampshire Hearing, 2021). There were references to the Civil Rights Act, the Civil War, and the “sins of the past” (New Hampshire Hearing, 2021). Leonardo (2007) referenced this type of denial when speaking about modern racism: “after some 40-odd years of Civil Rights legislation, [deniers] have all but erased 250 years’ effect of slavery, 100 years’ damage of Jim Crow, not to mention a ‘little matter of genocide’ for Native Americans” (p. 266). The statements also pushed the notion that racism is only perpetrated by
individuals and systemic racism does not exist (van Dijk, 1992). None of the justification statements mentioned systemic racism except to deny its existence. The Denial served two functions: first, it allowed the person making the statement to claim that they are innocent of racism because they, as an individual, do not hurl slurs or consciously discriminate against People of Color. Second, it allowed the person to ignore any privilege they had inherited from being a White person, since our country has already fixed the problem of racism.

**Additional Considerations**

The Discourse models and the strategies of Whitelash revealed through the bills and justification statements are alarming. However, there were three justification statements that had portions I feel deserve additional attention. These statements seem to “say the quiet part out loud,” or disclose something they did not intend. The first said:

> So I think, when we start to tell children that those historical facts should affect their feelings, or that those historical facts should—should guide their framework for their own ideologies, or that they should feel inferior superior, is, when we rise to the level of dividing children. (Ind. Hearing, 2022)

Of course, CRT does not endeavor to tell students their how they should feel or divide them. However, it is the middle portion of this excerpt that caught my attention: “that those historical facts should guide their framework for their own ideologies.” This, in a nutshell, is critical thinking. It is the hallmark of higher education—helping students to develop their own framework for their own ideologies. As discussed in Chapter 1, one of the most important goals of university instruction is the development of critical thinking skills so that students have the tools to build and repair our democracy (Brown, 2015; Butler, 2017; Giroux, 2014; Reichman, 2021; Zook, 1947). Perhaps the most damaging result of these bills is the minimization of critical thinking as a cornerstone of higher education. Giroux (2014) refers to this as: “a battle over the very capacity of young people and others to imagine a different and more
critical mode of subjectivity” (p. 45). If we eliminate critical thinking, we lose an important ingredient of our democracy: without critically educated citizens, there will be no one to hold those in power accountable. (Brown, 2015). The phrase above essentially states that the speaker does not want students to be influenced by history as told from a CRT perspective—to not think critically about racism, because they might start to form their own opinions about their world. Therefore, it is better to keep that perspective out of schools altogether.

This leads to the next excerpt that gave me pause. Here, Senate Vance was speaking to the National Conservativism conference when he said: “Why, ladies and gentlemen, are schoolchildren learning from schoolteachers that America is a fundamentally racist and evil country? Because those same schoolteachers learned it from some progressive professor at a university 10 or 15 years ago” (Vance, 2021). While I do not believe that schoolteachers are teaching students that the US is evil, the second portion contains a nugget of truth. Our education system is not only for dumping knowledge into students’ heads, but it also teaches students social relations—their “place” in society. It “tailors the self-concepts, aspirations, and social class identifications of individuals to the requirements of the social division of labor” (Bowles & Gintis, 1976, p. 129). In other words, what we learn, who we learn from, and how we learn helps to perpetuate the societal order. If we have been educated in that system, we will teach that system because it is what we know. Therefore, it is likely that some teachers today did learn about systemic racism and inequality in their university education, realized its importance, and are attempting to pass on that knowledge. This education will cease if these bills are passed—not only for K-12 school children, but for university students as well. As I discussed in Chapter 1, “[w]hoever controls the education of our children controls our future” (Hill, 1999). Three of the bills in this study specifically targeted future teachers: they forbid the instruction of divisive concepts in university teacher preparation programs (Ariz1412, Ind1362, Ind167). Essentially, they are attempting to forbid future teachers from learning about the tenets of CRT or even broader concepts such as the vestiges of slavery
and racial inequality and discrimination. These teachers, once out in the school system, won’t know about CRT and thus won’t be able to pass on the knowledge. This is another example (like the overturning of Roe v. Wade) of the conversative movements’ ability to plan for and reach a long-term goal (Kerby, 2022). Focusing on universities, and particularly teacher education programs, will have generational effects.

The final passage I want to highlight is: “I think the idea is to make sure it’s not being forced or pushed a certain way, or they might have a disagreement, or they might have a—they might agree with the concept of where they’re getting pushed” (Nebraska Hearing, 2022). The speaker here is talking about students, and that the idea is to make sure that CRT is not being forced or pushed a certain way. However, the speaker then makes a startling admission: “or...they might agree with the concept of where they’re getting pushed.” I do not think that any professional educator would “push” any concept on a student. However, this phrase articulates exactly what the anti-CRT conservatives are worried about—that students might agree with the concept. Therefore, if they can keep the concept from ever getting to the student in the first place, the student will remain in ignorance that there is another way of viewing the world. In fact, the entire push behind this anti-CRT movement seems to belie a belief that students who learn and critically examine the racial systems and material effects in the United States will work to effect change, and this is a future that this legislation seems to foresee and work against.

**Connection to Framework**

According to Omi and Winant (2006), the state preserves the racial order by keeping both state actions and societal demands balanced. This theory collides with two other CRT concepts: interest convergence and Whiteness as property. As discussed in Chapter 2, interest convergence results in slow racial progress (Crenshaw, 1988). Interest convergence is the idea that it is only when the interests of White people and People of Color are the same, or converge, that White people are more likely to support those interests (Bell, 1980; Crenshaw, 1988; Delgado & Stefancic, 1998; Gotanda, 2004).
Therefore, it is during times of imbalance that change occurs, either in support of or against the current racial order. When there are imbalances, which are challenges to the balance of racial power (what Omi and Winant (2015) call “racial projects”), the racial state acts to maintain balance. (See Figure 14).

**Figure 14 Maintaining Racial Balance**

As shown in Figure 14, state actors, by proposing bills to limit discussion of CRT, are tilting the scales of the racial order back into a sense of so-called balance. The proposal of these bills by state actors are either a reaction to racial progress (and thus, they are designed to maintain the previous social order of White supremacy), or the proposal is an offensive move designed to create imbalance that necessitates a reaction from society. In other words, the state actors are attempting to maintain order that has been affected by societal pressure or are trying to create an imbalance so that society will react. I believe the bills are both a reaction to racial progress and a desire to preserve the value of Whiteness as property (Harris, 1993). Whiteness as property is a concept recognizing that Whiteness is a valuable possession, a property interest that descends from the founding of the country and continues today, as it is: “based in substantial part on the perception that black gains threaten the main component of status for many whites: the sense that as whites, they are entitled to priority and preference over blacks” (Bell, 1988, p.776). Whiteness comes with power, control, and recognition as the dominant strata in current society
This preservation of property value (through the introduction of these bills) is a racial project that uses “appeal[s] to ‘traditional values,’ ‘individual responsibility,’ and the use of coding to hide negative references to people of color” to maintain White supremacy (Calmore, 1997, p. 53). In addition, the murder of George Floyd in 2020 caused many White people to look at the injustices that so many Black people face: there was a widespread, renewed interest among White U.S. inhabitants to learn about racial disparities and to speak out against racism (Hamilton, 2021; Watson Institute, 2022). Therefore, it is likely that the growing awareness of injustices for People of Color, and the threat of Whiteness being devalued, were the impetus for these bills. These bills were Whitelash to that societal shift.

There can be no question that the bills were created for a nefarious purpose: Christopher Rufo, the architect behind many of the bills, expressed that “conservatives engaged in the culture war had been fighting against the same progressive racial ideology since late in the Obama years, without ever being able to describe it effectively … ‘Critical race theory’ is the perfect villain” (Wallace-Wells, 2021, para. 6). Rufo called the phrase a “political weapon” which “connotes hostile, academic, divisive, race-obsessed, poisonous, elitist, anti-American” sentiment (Wallace-Wells, 2021, para. 7). In other words, the conservative movement is using CRT as a catch-all for the “progressive racial ideologies” that they oppose. They claim they are attempting to ban discussion of CRT as a dangerous theory, but according to Rufo, CRT actually means ideas of racial progress and equity. Rufo spelled out, in no uncertain terms, the purpose in hijacking CRT: The conservative movement is fighting racial progress, and they are using institutional and state tools to do so (Bonilla-Silva et al., 2020; Omi & Winant, 2015).

During my analysis of the bills and justification statements, several Discourse models and strategies of Whitelash were revealed in the documentary text. This has been summarized in Figure 15:
As shown in Figure 15, a total of four Discourse models were supported by the documents: Nationalism, Colorblindness, Neoliberalism, and Law as Morality. These Discourse models were supported through eight strategies of Whitelash: including Denial, Persuasion, Prophesying, Legal Maneuvers, White Innocence, Legitimation, Fear, and Rhetorical Versatility. Overall, it is apparent that many of the Discourse models overlap, with hazy boundaries and some being more pertinent to either the bills or the justification statements. Likewise, the strategies are not limited in their support. The strategy of Legitimation, for example, may have been discussed regarding the bills, but those who made the justification statements also employed this strategy when using their authority (as a congressman, Governor, etc.) and appealing to the emotions of their audience. This complex system cannot be reduced to simple lines of reasoning, but what can be gleaned from this information is that the Discourse models of Nationalism, Colorblindness, Neoliberalism, and Law as Morality are upheld by
some U.S. lawmakers, and a variety of strategies are used to keep the Discourse models alive and part of our institutions and systems within society.

**Implications of Study**

While there are many implications from this study, there are three implications for scholarship and three implications for practice that I believe are particularly important. These implications are discussed below.

**Implications for Scholarship**

There are three implications for scholarship arising from this study: the education of teacher candidates in universities, the academic freedom of faculty, and the study of the new anti-DEI bills that are currently being proposed across the nation. Below, I describe why these are important implications, briefly discuss existing scholarship, and propose new studies that could be conducted.

**Teacher Candidate Education.** The first area of scholarship arising from this study is the training of future teachers. This study revealed there is a perception that teachers are making students feel bad about their race or sex, dividing student according to race, and teaching them to hate their country. As discussed above, three of the proposed bills specifically target teacher-preparation programs in universities. This begs the question: how are future K-12 teachers trained about race?

Talking about race has positive effects, such as increasing respect, reducing prejudice, and elevating compassion (Sue et al., 2009). However, many professors are hesitant to discuss racial issues, and under some of these bills, will be barred from doing so. Discussions about race are difficult, even for seasoned professors, who are not aware of their own biases or who are fearful of saying the “wrong” thing (Sue & Constantine, 2007). Matias (2014, 2016) has done significant work around this issue, especially in the “white imagination.” Matias (2014) explained: “The white imagination is one where white individuals can be cognizant that they are white, but believe such a racial marker does not have any influence on a racialized society, like education” (p. 297). It seems that training in CRT would
encourage future educators to recognize this in themselves, but studies have shown that even with courses in CRT, White teacher candidates find talking about race and racism to be extremely difficult as well (Ladson-Billings, 2009). Matias (2014, 2016) has studied this phenomenon with her own students but a wider scale of study may be beneficial.

Based on my study, there is fomenting fear that future teachers are learning how to “indoctrinate” students and to make them feel bad about their race. A study that examines how future teachers are currently learning about race and CRT would provide information that could be compared to the assertions made throughout the bills and justification statements in this study. For example, a quantitative study of teacher education programs could examine if and when discussions of race are occurring, and the emotions associated with those discussions. These findings could be compared with the anti-CRT bills or political climate of the area.

**Academic Freedom of Faculty.** A second area of scholarship would be the academic freedom of faculty. This study revealed that the impact on speech in the classroom may be broader than what is realized. For example, the notion of neutrality, as revealed in the Discourse model of Colorblindness, permeated the language that is allowed (or not allowed) under the bills. A professor may have concerns about offering “both sides” of an issue and decide not to give instruction on a controversial topic. This study also described the prohibition language of the bills and how they may chill speech beyond what is proscribed. Therefore, a study on how academic freedom is being impacted by these bills would be welcomed.

In 1915, the American Association of University Professors (AAUP) released a Declaration of Principles on Academic Freedom and Academic Tenure. It stated that professors should have the academic freedom of inquiry and research, classroom teaching, and out-of-classroom speech. The declaration also indicated that higher education was a public good with “responsibility of the university as a whole ... to the community at large, and any restrictions upon the freedom of the instructor” would
be dangerous to the community (AAUP, 1915). A robust, academically-free university system is
“necessary for an informed public, a public that can understand and evaluate issues of common concern
and form judgments on the basis of a knowledgeable understanding of the world” (Butler, 2017). This
can only occur if faculty “may be uninhibited in criticizing and advocating controversial changes in
accepted theories, widely held beliefs, existing institutions, as well as the policies, programs, and
leadership of their own institution” (Reichman, 2021, p. 119).

These bills inhibit faculty speech, so it is important to understand how professors have been (or
may be) touched by them. For example, I believe it would be meaningful to investigate how faculty in
states with legislative gag orders in place have changed their teaching practices, if at all. In addition,
even in states where the bills have not passed, it would be relevant to examine if faculty know about
these bills and if they are concerned about their passage. I believe a mixed methods study of this area
would be beneficial. A case study “investigates a contemporary phenomenon within its real-life context”
(Yin, 2003, p. 13). Both qualitative and quantitative data could be gathered to provide a complete
picture of how faculty are responding to these bills, since the issues involved are complex and would
benefit from multiple sources of data (Creswell & Plano Clark, 2018).

**New Anti-DEI Bills.** The final area of scholarship would be investigating the new slate of bills
that are currently being proposed in various states to end Diversity, Equity, and Inclusion (DEI) efforts at
public universities. It seems that these new bills, perhaps in combination with the Florida bill discussed
in this study, have already served to chill speech in higher education: For example, Moody (2023), a
reporter for *Inside Higher Ed*, asked 40 Florida university presidents to comment on legislation to limit
DEI efforts. Even when guaranteed anonymity, none responded. Therefore, the effects of these new bills
are already being felt by universities, even though they have only recently started to make their way
through state legislation (Charles, 2023). Therefore, a study on these new anti-DEI bills would add to the
knowledge uncovered by this study in exposing any additional Discourse models and strategies used by politicians.

The authors of model legislation for the recent attack on DEI offices allege: “that [DEI] offices are the nerve center of woke ideology on university campuses” (Kelderman, 2023, para. 7). There are, as of March 23, 2023, 25 bills that have been proposed in state legislatures to ban diversity statements, abolish DEI offices, end required diversity training, or stamp out affirmative action (Lu, et al., 2023). Of these bills, at least four have borrowed a page from the playbook of the anti-CRT bills in this study: they allow “people to sue schools that they think deploy a variety of efforts to tamp down on perceived racism, sexism, homophobia, and transphobia on campus” (Charles, 2023, para. 2).

The methodology of this study could be applied to these new bills affecting DEI to see what models are supported by these new laws and if the same strategies of Whitelash are employed. In addition, the study could be supplemented by interviews with the lawmakers who have introduced these new bills. This would be an opportunity to ask questions regarding the lawmaker’s purpose for the bills. No matter the method, the new bills deserve additional research because the assault on universities has not abated.

Implications for Practice

There are many implications for practice arising from this study. I highlight three below: defense of faculty who are accused of violating these types of laws, the practice of policy creation in DEI and CRT, and the practice of DEI work. Below, I describe why these are important implications and explain how the information gleaned from this study could be used.

Defense of Faculty. The defense of faculty relies on an understanding of the law. Law is much more than legislators passing bills and judges deciding cases. The law also acts “as a system of structuring society” (Hamilton, 2021, p. 84; Matsuda, 1987). It determines what is considered morally right and defines punishment for the wicked. It is both shaping and is shaped by society (Greenberg,
This is accomplished not only by judges and legislators – it is also accomplished by attorneys through the arguments they make in support of their clients. When I was in private practice, I was at first surprised when a judge would use the information from legal memorandums and briefs that I had written and submitted to them. Later in my career, I became accustomed to a judge using my language (sometimes verbatim) in their decision. Because of my research and writing, I influenced judges on the meaning of law. Therefore, I saw firsthand that attorneys can have an effect on statutory construction, and this study can be used in that practice.

The findings of this study can be used in arguments that assist in the defense of a client who has been accused of violating one of these laws. Many of the legal issues exposed through this study’s analysis will be useful in a legal brief, especially the concepts of vagueness and overbreadth. The findings in this study can become part of a court document explaining how the law can chill more speech than is intended, or how the law is so poorly written that a person could not comprehend what was being regulated (Cornell, n.d.). Both of these arguments would make at least portions of the law unconstitutional. However, faculty need to be aware of the laws and how they impede classroom instruction. To assist faculty in navigating these issues, the information from this study can be used in the creation of a workshop by a university’s legal department and DEI offices. This workshop would review the information from this study, discussing the Discourse models and strategies of Whitelash, along with the legal issues discovered in the analysis of the bills. The goal of the workshop would be to prepare faculty and faculty union representatives with proactive information so that they can mount a more successful defense if they are accused.

**Practice of Policy Creation.** Secondly, findings from my study could be used in the creation and review of policies for universities. Policies regarding DEI in universities often take the form of institutional mission or values statements, with little effort beyond these documents (Elwick, 2020). Universities can go farther in helping to achieve social objectives by creating policies focused on equity
issues and CRT. Ahmed (2007) stated that the policy document itself can be a measure toward raising awareness, but universities should be careful to not make the document the “end point” (p. 593). The policy should not make broad statements about valuing diversity but should provide concrete steps to fulfill that commitment.

The information from this study can assist university policymakers in two ways to fulfill this goal: First, this study showed how language in a bill revealed Discourse models that do not support racial progress. Those who create a policy regarding CRT can use the findings to craft a policy that does not employ these models. One example is the Discourse model of Colorblindness, which perpetuates institutional and systemic racism. The term “colorblindness” appeared rarely in the bills studied (Fla7), but the model was supported in other ways through language choices. Therefore, the wording of policies created could be checked against the findings of this study. Second, the information from this study would assist universities in developing a policy regarding the instruction of CRT. For universities that believe CRT is a valuable addition to curriculum, it would behoove them to create a policy regarding its inclusion. I believe that the information contained here could educate administrators about CRT, the Discourse models, and strategies. In addition, the Discourse models could be a starting point for areas of the policy to address, while the Whitelash strategies could inform the writers of specificities to include in their policy.

**Practice of DEI work.** Finally, findings from my study could be used in the practice of DEI work. DEI offices, in partnership with administration, should make concerted efforts to recognize the strategies of Whitelash exposed by this study in their own university practices and make efforts to eliminate them. DEI offices can use the Discourse models revealed in this study as a springboard for training, education, and discussion with administration to explore Whitelash strategies in current policies and practices.
Recognizing and eliminating Whitelash strategies would take effort and work from the entire university community. Initiatives regarding DEI tend to be hierarchical processes, coming from the top in the form of a diversity statement (Embrick et al., 2018). This is not necessarily bad, but it can turn into ambivalence if the necessary attention and resources are not deployed concurrently (Omi & Winant, 2015). Top-down initiatives tend to take on institutionalized viewpoints that can often be contradictory, such as support for both affirmative action and racial colorblindness (Embrick et al., 2018). In addition, many see statements of DEI commitment from a university as insincere; therefore, administrators must take an active role in DEI: “Administrators cannot diminish their role as institutional authorities by claiming that diversity and equity are everyone’s business” (Barnett, 2020, p. 29). Administrators should empower campus DEI offices and faculty to educate the campus on the Discourse models revealed through this study and how they affect students. Working together, these branches of the university could bring about positive change through the efforts to eliminate barriers to racial progress (Patton et al., 2007). It is necessary for these offices “to be open to moving beyond the status quo and recognizing the entrenchment of race in educational settings, including programs and services offered through student affairs divisions” (Patton et al., 2007, p. 49).

Chapter Summary

The bills under consideration in this study would constrain and interfere with those professors who want to expose their students to how race forms our customs and culture, and it is important that they be dissected and examined. This chapter presented a summary of the study connecting it to the theoretical framework of the racial state. In addition, implications for scholarship and practice were discussed.

Laws that control education will affect the future of a society. The bills and justification statements in this study asserted that certain topics should not be discussed because they will harm the United States. However, I believe that:
the history upon which a sane and healthy patriotism can be founded must be veracious history, and this will be a record of a country’s failures, blunders, disasters, and humiliations, as well as of its glories and achievements; it will contain warning as well as inspiration. In other words, it must be written by those who are honestly anxious to tell the truth, the whole truth, and nothing but the truth. (Turberville, 1933, p. 291)

Taken together, the bills and justification statements, through tactics of Whitelash, upheld and promoted Discourse models to push back racial progress. Using CRT as a scapegoat, these bills go much further than just the banning of “divisive concepts.” These bills ban exposure to history through the eyes of People of Color. These bills ban discussion of equity. Most terrifyingly, these bills control the flow of information.
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Appendix A

Discourse Model Analysis

1. What Discourse models are relevant here? What must I, as an analyst, assume that people feel, value, and believe, consciously or not, in order to talk (write), act, and/or interact this way?

2. Are there differences here between the Discourse models that are affecting espoused beliefs and those that are affecting actual actions and practices? What sorts of Discourse models, if any, are being used here to make value judgments about oneself or others?

3. How consistent are the relevant Discourse models here? Are there competing or conflicting Discourse models at play? Whose interests are the Discourse models representing?

4. What other Discourse models are related to the ones most active here? Are there “master models” at work?

5. What sorts of texts, media, experiences, interactions, and/or institutions could have given rise to these Discourse models?

6. How are the relevant Discourse models here helping to reproduce, transform, or create social, cultural, institutional, and/or political relationships? What Discourses and Conversations are these Discourse models helping to reproduce, transform, or create?

(Gee, 2005, p. 92–93)

Additional Questions to Consider During Coding

<table>
<thead>
<tr>
<th>Significance Building</th>
<th>How words and grammatical devices are being used to build up or lessen significance (importance, relevance) for certain things.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Politics Building</td>
<td>How words and grammatical devices are being used to build (construct, assume) what counts as a social good and to distribute this good to or withhold it from listeners or others. Ask, as well, how words and grammatical devices are being used to build a viewpoint on how social goods are or should be distributed in society.</td>
</tr>
<tr>
<td>Fill-in Tool</td>
<td>Based on what was said and the context in which it was said, what needs to be filled in here to achieve clarity? What is not being said overtly, but is still assumed to be known or inferable? What knowledge, assumptions, and inferences do listeners have to bring to bear in order for this communication to be clear and understandable and received in the way the speaker intended it to?</td>
</tr>
<tr>
<td>Why This Way/Not That Way Tool</td>
<td>Why the speaker built and designed with grammar in the way in which he or she did and not in some other way. Always ask how else this could have been said and what the speaker was trying to mean and do by saying it the way in which he or she did and not in other ways.</td>
</tr>
</tbody>
</table>

(Gee, 2014, pp. 18, 63, 98, 126)