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Statement from Kimberlé Crenshaw, Co-Founder and Executive Director of the African American Policy Forum on New Hampshire Federal Court Blocking Educational Censorship Law

National — On Tuesday, May 28th, a U.S. federal district court struck down New Hampshire's educational censorship law (HB-2) in a victory for educational equity in classrooms across the state. Promoted as an initiative to ban critical race theory from public school classrooms, HB-2 amended New Hampshire's education and anti-discrimination laws to censor certain ideas about racism, sexism and other forms of oppression both in teachers' classrooms, and in their extracurricular activities. The court recognized that the HB-2 restriction on teaching "divisive concepts" by imposing severe consequences for vaguely defined offenses obscured the real aim of the law: to make racism and sexism illegible to future generations. By striking HB-2 down, the court freed teachers to pursue their teaching mission without the threat of potential loss of employment, and students have the freedom to learn.

Kimberlé Crenshaw, Co-Founder and Executive Director of the African American Policy Forum:
"This landmark decision underscores the need to repudiate the anti-critical race theory and educational censorship laws in place in 22 other states. The court accurately defined critical race theory as a movement to analyze the role of race and racism in law and society, not as "anti-American propaganda," as HB-2 maliciously claimed. This ruling underscores how necessary it is for judges, elected officials and others who have decision-making power within our justice system to understand critical race theory and consequently, to recognize the true intention of legislation that violates the 14th amendment.

"At the African American Policy Forum, we have been tracking and combating educational censorship laws since Trump's original education gag order No. 13950. We sounded the alarm as these laws accelerated book banning, censored teaching the truth about our history and about our democracy, and cost some educators their livelihoods. These anti-truth laws sow distrust in public education as a key pillar of our democracy. They represent the chilling domino effect of an increase in legislation that intends to intimidate educators into self-censoring truthful discussions about systemic racism, and to restrict children's learning. All courts should hold legislators accountable for this egregious attempt to undo racial progress through misleading, unconstitutional, and deliberately vague efforts to limit the freedom to speak, to teach and to learn. We call on courts in other states to strike down similar laws and protect the freedom to learn."

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African American Policy Forum:
The African American Policy Forum (AAPF) is a social justice think tank that utilizes new ideas and innovative perspectives to transform public discourse and policy on race and social justice

concerns. We bring together academics, policymakers, artists, politicians, activists, and stakeholders to promote frameworks and strategies that address a vision of racial justice that embraces the intersections of race, gender, class, and the array of barriers that serve to disempower those who are marginalized in society. We are dedicated to advancing and expanding racial justice, gender equality, and the indivisibility of all human rights.

NOTES

good description of what the laws that are being struck were,

KRISTIN NOTES HERE:

New Hampshire's HB-2 amended New Hampshire's education and antidiscrimination laws to restrict how teachers could speak about racism, sexism and other forms of oppression in their classrooms and extracurricular roles. It identified vague concepts that students could not be taught and established new provisions for enforcement that included the potential loss of employment and certification for teachers and the threat of civil liability.

the rationale that affirms freedom and racial justice,

KRISTIN NOTES:

Given the severe chilling effect on teachers of this law and the others like it in 22 states in our country, the decision today from United States District Judge Paul J. Barbadoro to grant summary judgment in Local 8027, AFT-N.H., AFL-CIO, et al. v. Frank Edelblut, Commissioner, N.H. Department of Education, et al. is most welcome.

Vagueness was intentional/at the heart of the legislation:

"Supporters of the Amendments have made no secret of the fact that their aim is to restrict what teachers can say about what plaintiffs call DEI initiatives but supporters of the Amendments call CRT.[6] But rather than take on issues like structural racism, implicit bias, and affirmative action directly, the Amendments employ general terms such as teaching that one race is superior to another, that individuals are inherently racist, and that individuals should not be subject to adverse treatment because of their race. While these banned concepts may appear straightforward at first glance, their ambiguity comes to light when put into practice.[7]"

Judge Barbadoro found the **impact of this law was far reaching**, in part because of its vagueness: "uncertainty surrounding what the Amendments do and do not prohibit has caused teachers to err on the broad side of caution by self-censoring their lesson plans and, in some circumstances, leaving the profession altogether." He noted one teacher was left "unsure how to engage in "any contemporary investigation of race" without violating the Amendments and feels compelled to avoid the topic altogether, despite the "valuable analytical training" that the exercise provides to students."

Judge Barbadoro found: "The Amendments are viewpoint-based restrictions on speech that do not provide either fair warning to educators of what they prohibit or sufficient standards for law enforcement to prevent arbitrary and discriminatory enforcement. Thus, the Amendments violate the Fourteenth Amendment to the U.S. Constitution."

Used great examples about **how impossible it would be for teachers to teach about the recent affirmative action decision** without running afoul of the law.

and why everyone should care.

KRISTIN:
This ruling highlights the importance of our courts in holding legislators accountable in this egregious attempt to undue racial progress through misleading and deliberately vague legislation that sought to chill the freedom to speak, to teach and to learn.

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FROM THE NH NEA RELEASE

"Today's court victory means that educators across New Hampshire can nurture an equitable and inclusive school environment where all students are seen and heard," **said Christina Kim Philibotte and Andres Mejia, two New Hampshire school administrators who are plaintiffs in the case**. "It is critically important that students see themselves in the books they read and in the classroom discussions they have to ensure that they feel cared for and valued. We understand that the legislature is still pushing dangerous bills that tell students of color, students from the LGBTQ+ community, and students with

historically marginalized identities that they do not belong in our schools and history. This decision pushes back on these legislative efforts by providing relief for teachers who can now confidently do their jobs and teach in ways that validate their students' lived experiences. We are grateful to the Court for striking down this unconstitutional classroom censorship law in a decision that has moved the pendulum towards justice for children across the state."

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NOTES FROM EMILY:

- The opinion uses a near-perfect definition of CRT as we'd like the courts / legislators to understand it, right? If there's a way to weave that in without adding too much to the statement that might be helpful.

SOMETHING LIKE: The court's decision rightly defines CRT as a movement to analyze the role of race and racism in law and society, not as "anti-American propaganda," as HB-2 maliciously claimed.

- Need to stress not just that these laws exist in 22 other states, but that this decision provides a model with which we can come after the laws in those 22 other states.

SOMETHING LIKE: Today's landmark decision provides a legal model for repealing the anti-CRT and educational censorship laws in place in 22 other states and sends a strong message: the anti-racist majority is coming for these discriminatory legislative efforts, and we will succeed in defending educational freedom.

- Need to stress Kim's / AAPF's thought leader status / work on this, maybe by tying it back to Trump's original executive order, which is named in this opinion as the origin of the NH law.

SOMETHING LIKE: At the African American Policy Forum, we have been tracking and combatting educational censorship laws since Trump's original education gag order No. TKTK.

MY 2 CENTS (TIM)

I think the things to stress are:

1. That the court has struck a blow for free speech by invalidating legislation intended to chill discussion of race and racism in America under the guise of banning the teaching of “divisive concepts.”
2. That the court recognized the true intention of the legislation, which was to intimidate educators and get them to self-censor truthful discussions of racism in history and today, by subjecting them to deliberately vague and threatening regulations
3. That the court acknowledged the law was already having that chilling effect: a concern raised in other states grappling with similar legislation, and which other courts should consider in striking down similar laws elsewhere