

Alabama Center for Law and Liberty Endorses Eagle Forum of Alabama and Alabama Policy Institute’s Resolution on Critical Race Theory

The Alabama Center for Law and Liberty is pleased to endorse the joint resolution of Eagle Forum of Alabama and the Alabama Policy Institute concerning Critical Race Theory in Alabama’s public schools.

Although Critical Race Theory has existed since 1989,¹ it came into American public life prominently after the tragic killing of George Floyd. Drawing on its Marxist roots,² CRT teaches that “the law and legal institutions are inherently racist and that race itself, instead of being biologically grounded and natural, is a socially constructed concept that is used by white people to further their economic and political interests at the expense of people of colour.”³ These principles inevitably lead to “racial segregation, race stereotyping, and race scapegoating.”⁴

Federal law prohibits government entities, including public schools, from engaging in such conduct. The Fourteenth Amendment’s Equal Protection Clause and Title VI of the Civil Rights Act of 1964 forbid public schools from racial discrimination or creating a hostile environment based on race, which is exactly what CRT does.⁵ The Free Speech Clause of the United States Constitution also protects the rights of students to oppose CRT and to refuse to profess an ideology with which they disagree.⁶ Proponents of CRT may argue that the same Clause protects the rights of teachers and school administrators to teach these views in schools. However, the Supreme Court and the Eleventh Circuit have held that public employees must be speaking on matters of public concern *in their capacities as private citizens* in order to enjoy the First Amendment’s protections.⁷ This is not the case when public employees teach these matters in their official capacities as educators in primary and secondary public schools.

The joint resolution between Eagle Forum of Alabama and the Alabama Policy Institute proposes the solution that the Constitution requires under these circumstances. The resolution bans the most problematic parts of CRT that would necessarily violate federal law if propagated in public schools. Among other things, the resolution bans teaching that one race is inherently superior to another, that a

¹ Dr. Voddie T. Baucham Jr., *Fault Lines: The Social Justice Movement and Evangelicalism’s Looming Catastrophe* xi (2021).

² *Id.* at xii-xviii.

³ *Id.* at 70 (quoting Tommy Curry, *Critical Race Theory*, Encyclopedia Britannica, May 28, 2020).

⁴ Legality of Critical Race Theory, 58 Op. Mont. Att’y Gen. 1, 19 (2021).

⁵ *Id.* at 2-6, 18-22.

⁶ *Id.* at 23.

⁷ *Garcetti v. Ceballos*, 547 U.S. 410, 417 (2006); *D’Angelo v. Sch. Bd.*, 497 F.3d 1203, 1209-10 (11th Cir. 2007).

person by virtue of his race is inherently racist whether he realizes it or not, that a person bears responsibility for past injustices simply because of his race, and that a person should be discriminated against because of his race. Likewise, it also prohibits schools from teaching that slavery was the true foundation of the United States instead of an aberration of America's true founding principles. To the extent that schools may still discuss matters of whether racial injustice exists in the United States, the resolution requires them to present a diversity of viewpoints, to discuss the manner in a respectful way, to respect the dignity of each student, and to refrain from discrimination.

By establishing these parameters for Alabama's public schools, the resolution not only protects the dignity of every student, but it also avoids the inevitable lawsuits that would follow from the violations of the Equal Protection Clause, Title VI, and relevant state law. Since the resolution is legally sound and promotes a policy that is in the best interests of this State and its students, the Alabama Center for Law and Liberty **endorses** this resolution.

Done this 15th day of June, 2021,

A handwritten signature in black ink that reads "Matthew J. Clark". The signature is written in a cursive, flowing style.

Matthew J. Clark
Executive Director
Alabama Center for Law and Liberty