

WILL: Tells Biden education department critical race theory is wrong for public schools

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The News: The Wisconsin Institute for Law & Liberty (WILL) submitted [public comment](#) to the United States Department of Education against the adoption of a proposed [grant program to prioritize](#) Critical Race Theory in federally funded American History and Civics Education. WILL's public comment emphasizes our concern that the Biden Administration is attempting to push Critical Race Theory – including the New York Times' "[1619 Project](#)" and the "[anti-racism](#)" ideology of Dr. Ibram X. Kendi – into public school curriculum.

The Quotes: WILL President and General Counsel, Rick Esenberg, said, "The federal Department of Education's stated priority to emphasize 'equity' and 'anti-racism' represents a troubling divergence from American values and principles. Advancing and promoting Critical Race Theory in public schools is not only morally wrong but may leave public schools vulnerable to liability and litigation."

What is Critical Race Theory? Critical Race Theory is an academic discipline, based in Marxism, that teaches racism pervades every corner of American society, and therefore, that American institutions must be torn down and remade so that all of society's benefits can be equitably redistributed.

Background: In April 2021, the U.S. Department of Education issued a [call for public comment](#) on "proposed priorities" for competitive grants in American History and Civics Education. Specifically, the Department wants to prioritize grant proposals that "support the development of culturally responsive teaching and learning and the promotion of information literacy skills in grants under these programs."

Supporting background information for the grant priority state:

American History and Civics Education programs can play an important role in this critical effort by supporting teaching and learning that reflects the breadth and depth of our Nation's diverse history and the vital role of diversity in our Nation's

democracy. For example, there is growing acknowledgement of the importance of including, in the teaching and learning of our country's history, both the consequences of slavery, and the significant contributions of Black Americans to our society. This acknowledgement is reflected, for example, in the New York Times' landmark "1619 Project" and in the resources of the Smithsonian's National Museum of African American History.

Accordingly, schools across the country are working to incorporate anti-racist practices into teaching and learning. As the scholar Ibram X. Kendi has expressed, "[a]n antiracist idea is any idea that suggests the racial groups are equals in all their apparent differences—that there is nothing right or wrong with any racial group. Antiracist ideas argue that racist policies are the cause of racial inequities." It is critical that the teaching of American history and civics creates learning experiences that validate and reflect the diversity, identities, histories, contributions, and experiences of all students.

The details of this priority reveal the Biden Administration's troubling decision to prioritize Critical Race Theory in America's schools. By endorsing the New York Times' "1619 Project" and the "anti-racism" of Ibram X. Kendi, "equity" has replaced equality in the federal government's priorities.

WILL's Public Comment: WILL [warned](#) the Department of Education that the adoption of these ideas are in tension with the U.S. Constitution and the rights of equal protection.

Not only is government-sponsored CRT poisonous, pernicious, and demeaning to all Americans, it is also illegal in many ways. The United States Constitution guarantees the equal protection of the laws. This foundational principle protects all individuals against discrimination or harassment based on race by the government. And so, it is no surprise that a theory that rejects "colorblindness" and "neutral principles of constitutional law" would also run afoul of the foundational principle of equality under the law. Public school teachers who treat students differently because of their race undoubtedly violate the guarantee of equal protection. Moreover, the Constitution protects a "freedom of conscience," meaning that government schools cannot force students to adopt a certain point of view, such as those core propositions of CRT about white supremacy, white privilege, or systemic racism. Relatedly, the Constitution prohibits "compelled speech," meaning that teachers cannot force a student to speak a certain message, such as a confession that "I am a racist."

More broadly, federal and state laws protect students from racial discrimination. This means that students cannot be treated differently because of their race. For example, if a student is made to feel "white guilt" in public school, then that child

has probably been the victim of race discrimination as defined by Title VI of the Civil Rights Act of 1964 and numerous state laws.

Public schools who violate these basic guarantees open themselves up to lawsuits, discovery, and potential liability. The U.S. Department of Education is therefore doing them no favor by sending them into classrooms with this discriminatory curriculum, which will almost certainly face strict constitutional scrutiny in a court of law.

The US Department of Education will review the comments submitted and decide whether to create this grant program. WILL was one of thousands of groups and individuals advocating for the removal of Critical Race Theory from this grant program.