Case Nos. 24-6139, 24-6140, 24-6141

In the

United States Court of Appeals

for the

Tenth Circuit

BLACK EMERGENCY RESPONSE TEAM, et al.,
Plaintiffs,

OKLAHOMA STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, et al.,
Plaintiffs, Appellants and Cross-Appellees,

v.

GENTNER DRUMMOND, in his official capacity as Oklahoma Attorney General, et al.,
Defendants, Appellees and Cross-Appellants,

UNIVERSITY OF OKLAHOMA BOARD OF REGENTS, et al.,
Defendants.

Appeal from a Decision of the United States District Court for the Western District of Oklahoma - Oklahoma City
Case No. 5:21-cv-01022-G · Honorable Charles B. Goodwin, U.S. District Judge

BRIEF OF THE AMERICAN FEDERATION OF TEACHERS AND AFT-OKLAHOMA AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLANTS

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DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1(a), 29(a)(4)(A), and 29(b)(4), *amici curiae* the American Federation of Teachers and AFT-Oklahoma are labor unions. They are not stock corporations, have no parent corporations, and have no shareholders.

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INTEREST OF AMICI CURIAE

Amici American Federation of Teachers ("AFT") and AFT-Oklahoma ("AFT-OK") submit this brief on behalf of their members, most of whom are K-12 educators in Oklahoma and throughout the United States.[1] The AFT was founded in 1916 and today represents 1.8 million members in more than 3,000 local affiliates nationwide. AFT members include educators and educational assistants, higher education faculty and administrative staff, nurses and health care workers, and public employees. AFT's K-12 members are committed to providing their students the highest quality public education consistent with the standards set by the local, state, and federal government. AFT-OK has 3,000 members statewide, with its largest local chapter in Oklahoma City (Local 2309), which has 1,400 members.

In this brief, the AFT and AFT-OK explain why this Court should reverse in part the decision of the district court to uphold several portions

[1] Pursuant to Federal Rule of Appellate Procedure 29(a)(2), all parties have consented to the filing of this brief. Also, pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), no party's counsel authored this brief in whole or in part, and no party's counsel or other person (other than the *amici*) contributed money intended to fund preparing or submitting the brief.

of Oklahoma House Bill 1775 ("HB 1775") because of the serious impact that leaving the statute in place will have on educators in Oklahoma and on the quality of classroom instruction that AFT-OK members can provide to Oklahoma students. K-12 teachers are uniquely positioned to explain to this Court the harm caused by divisive concepts laws like HB 1775 because they are the frontline practitioners who must interpret and apply these statutes daily in their classrooms.

Teachers face the concrete reality of deciding moment-by-moment—when leading classroom discussions, answering student questions, or selecting reading materials—whether their actions might violate the vaguely worded prohibitions in HB 1775. Teachers also possess intimate knowledge of how classroom discussions naturally evolve and how students respond to educational content, giving them specialized insight into the practical impossibility of navigating laws that fail to provide clear guidance about what crosses the line from permissible education into prohibited "divisive concepts." Finally, teachers can explain what will be lost to students—the richness of discussion and intellectual engagement that students require—if HB 1775 remains in place.

PRELIMINARY STATEMENT

In lawsuits brought by the AFT and other educators, courts across the country have repeatedly rejected laws like HB 1775, with successful constitutional challenges in New Hampshire, Florida, and California all finding that divisive concepts statutes fail to provide fair notice to educators and invite arbitrary enforcement. For the same reasons that these other laws have been struck down and enjoined, HB 1775's "divisive concepts" ban should be enjoined.

Like its counterparts in other states, HB 1775 is so poorly drafted—several phrases are indecipherable—that teachers and administrators cannot know what concepts and ideas are prohibited. This leaves AFT and AFT-OK members in doubt as they make impossible decisions every day about what reading material to assign and how to conduct classroom instruction, fearing that a misstep will violate the law and jeopardize their careers and livelihood. As the Supreme Court recognized in *Keyishian v. Board of Regents*, 385 U.S. 589 (1967), such indeterminate language means "no teacher can know just where the line is drawn," *id.* at 599, creating the very uncertainty that offends due process.

HB 1775's enforcement regime compounds these constitutional defects by vesting virtually complete discretion in enforcement agencies with the power to impose severe penalties—including the loss of teaching credentials and school district accreditation—based on a regulator's subjective interpretations of these vague prohibitions. We have already seen arbitrary enforcement of HB 1775, such as the revocation of the license of an individual teacher for the simple act of encouraging library access. Given the statute's susceptibility to discriminatory application and its chilling effect on AFT-OK members and other educators, this Court should reverse the district court's decision to the extent that it upheld portions of the statute relating to "divisive concepts."

ARGUMENT

I. In Response to Challenges from Educators, Courts Have Rejected Other "Divisive Concepts" Laws

What most concerns teachers about HB 1775 and similar laws is that these "divisive concepts" statutes create an atmosphere of fear, and a threat of discipline based on ideological concerns that have no relevance to the reality of classroom instruction that AFT-OK members live each day. HB 1775 was passed in response to an asserted concern about critical race theory ("CRT") in Oklahoma classrooms. App. Vol. I at 109–

111. Yet Oklahoma's State Board of Education has admitted there were no documented cases of CRT being taught in any K-12 classroom in Oklahoma prior to the enactment of HB 1775. App. Vol. I at 118. Despite this, AFT-OK members and other educators are now forced to try to discern the meaning of the several "divisive concepts" or else face discipline.

In response to statutes like HB 1775, AFT members and other public-school teachers have challenged such laws in court as unconstitutionally vague so that classroom instruction may proceed without fear of punishment. Many courts have agreed with educators that these "divisive concepts" statutes were vague and granted declaratory and injunctive relief blocking their enforcement.

For example, in New Hampshire, a federal judge declared that state's divisive concepts law unconstitutionally vague in response to challenges from the AFT and other educator plaintiffs, in part because the court could not determine what the law's banned concepts actually prohibited. *See Loc. 8027 v. Edelblut*, No. 21-CV-1077-PB, 2024 WL 2722254 (D.N.H. May 28, 2024). In particular, the court faulted the law because it "fail[ed] to address [its] intended target," CRT, "directly" and

instead used "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." *Id.* at *9.

University educators challenged Florida's version of HB 1775 and the courts likewise halted that law's enforcement. *Pernell v. Fla. Bd. of Governors*, 641 F. Supp. 3d 1218, 1287 (N.D. Fla. 2022) (preliminarily enjoining Florida's HB 7's prohibition on college instruction in part because it was "impermissibly vague"); *see also Honeyfund.com, Inc. v. Desantis*, 622 F. Supp. 3d 1159, 1184 (N.D. Fla. 2022) (same for Florida HB 7's restrictions in the workplace), *aff'd on other grounds*, 94 F.4th 1272 (11th Cir. 2024) (enjoining the law on First Amendment grounds).

Earlier this year, California's Court of Appeal became the latest court to heed the warnings of educators when it struck down a similar "divisive concepts" statute, this one passed at the local level. The court held that it created interpretive chaos, leaving teachers "confused by the . . . prohibited concepts, unsure of the listed concepts' meanings or application to their curriculum, and unsure how to comply with the [law] and their state-mandated instruction." *Mae M. v. Komrosky*, 111 Cal.

App. 5th 198, 217 (2025). The prohibited concepts in that case are identical to the ones prohibited by HB 1775. *See id.*

In this case, the district court partially enjoined HB 1775 on vagueness grounds, holding that two of the eight prohibited concepts are so vague that it is impossible for teachers to know what they can and cannot teach in the classroom. As discussed below, the district court did not carry this insight further, leaving in place the other six concepts, which are just as vague as those concepts the court struck down.

The successful constitutional challenges brought by the AFT and other educators in New Hampshire, Florida, and California demonstrate that divisive concepts laws, regardless of their particular state origins, share fundamental constitutional defects that render them impermissibly vague under the Fourteenth Amendment. Oklahoma's HB 1775, following the same constitutionally defective template as these struck-down laws, suffers from identical infirmities that compel the same constitutional conclusion.

II. The Statute's Reference to "Make Part of a Course" Is Vague

Before laying out its eight prohibited concepts, HB 1775 contains a vague introductory clause, stating that "[n]o [school personnel] shall

require or make part of a course the following concepts." Okla. Stat. tit. 70, § 24-157(B)(1) (emphasis added). This introductory clause fails to provide AFT-OK members and other Oklahoma educators with adequate notice of when the appearance of a prohibited concept in a classroom violates the law, and thus renders the entire statute void for vagueness.

As an initial matter, the district court correctly determined that a person of ordinary intelligence would have no way of knowing when introducing students to an idea would amount to impermissibly "requiring" that "concept." App. Vol. III at 134–135. At the same time, however, the district court held that the phrase "making part of a course" was not vague, holding that it referred to when a teacher is "directly endorsing, promoting, or inculcating any concept as a normative value." App. Vol. III at 134.

Apart from the legal defects with this second ruling that are discussed in the Plaintiffs-Appellants' brief, Opening Br. at 25–29, the district court's interpretation cannot be reconciled with teaching practices used every day by AFT-OK members. Teachers often integrate concepts into their courses without endorsing, promoting, or inculcating them as normative values. Presenting students with contrary viewpoints

is essential "to encourage the development of critical thinking skills," *Loc. 8027*, 2024 WL 2722254, at *12, and widely considered a best practice, *see, e.g.*, Patricia Garcia et al., *The Pedagogical Promise of Primary Sources: Research Trends, Persistent Gaps, and New Directions*, 45 J. Acad. Librarianship 94, 94 (2019) ("[E]ducators are employing engaged learning theories that promote the development of critical reasoning skills, such as identifying evidence and biases within documents.").

For example, a history teacher might assign students a pair of primary sources to read—one from an abolitionist and another from a proponent of slavery—to understand the ideological divisions that led to the Civil War.[2] The teacher might also reference those sources in response to a student's in-class question about the arguments advanced in favor of those causes. In either case, the teacher has "made" both perspectives "part of a course" without ever advocating for them or

[2] *E.g.*, Bill Rts. Inst., *Slavery and the Struggle for Abolition from the Colonial Period to the Civil War* (2025), https://billofrightsinstitute.org/lessons/slavery-and-the-struggle-for-abolition-from-the-colonial-period-to-the-civil-war (lesson plan with speeches from William Lloyd Garrison against slavery and John C. Calhoun in defense of it).

promoting them as normatively correct, but rather to teach how certain views led to dehumanization and violent conflict and to illustrate how those views shaped the national discourse. Yet educating students by illustration—whether as part of a planned lesson or spontaneous response—could cost a teacher their career.

Similarly, under HB 1775, it could violate the law for a teacher to assign students to write an independent research paper on a historical figure like Thomas Jefferson, given that a student may then discuss in class Jefferson's views about Native Americans or enslaved people. Some of Jefferson's views were based on the banned concept that some races were more intelligent than others.[3] *Amici* fear that for simply allowing students to research our country's third president, a teacher could lose their license to teach in Oklahoma, forcing them to either leave the state and uproot their family or find a new career.

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[3] *See* Thomas Jefferson, *Notes on the State of Virginia* 150 (1782), https://tile.loc.gov/storage-services/service/gdc/lhbcb/04902/04902.pdf ("[T]he blacks, whether originally a distinct race, or made distinct by time and circumstances, are inferior to the whites in the endowments both of body and mind."); Thomas Jefferson, *Letter to John Adams* (June 11, 1812), https://www.loc.gov/exhibits/jefferson/178.html ("[Native Americans] will relapse into barbarism & misery, lose numbers by war & want, and we shall be obliged to drive them, with the beasts of the forest into the Stony mountains.").

A teacher could also have their license revoked for not correcting a student who mentioned or cited sources concerning a prohibited concept during a classroom discussion, contrary to the Supreme Court's holding in *Keyishian*, 385 U.S. at 599–600 (rejecting as impermissibly vague a statute that forbade the employment of an instructor who "advocates, advises or teaches the [prohibited] doctrine" where the law might apply to a teacher who simply "informs his class" that historical figures subscribed to a particular doctrine).

Of course, reasonable minds will differ on whether the teacher has "made" a prohibited concept "part of a course" in these situations—and this is just what makes the statute vague. For example, the Edmond Public Schools' guidance in this case suggests that students can *read* about prohibited concepts, as long as they do not *discuss* those concepts in class.[4] Officials interpreting a similar law in New Hampshire reasoned that students could *mention* prohibited concepts in class, but only if teachers "offer[ed] 'disclaimers' in response to student statements to

[4] App. Vol I at 138 ("Just because a book depicts a character or historical figure who is experiencing or practicing racism, this does not mean you are promoting or transferring that same concept to your students. Classroom discussion centered around such readings should not include any of the 8 prohibitions from HB 1775.").

avoid running afoul of the [law]." *Loc. 8027*, 2024 WL 2722254, at *13. Yet even under the latter view, teachers can only guess how to phrase those mandatory disclaimers. All of this demonstrates that the phrase is too vague for AFT-OK members and other teachers to interpret and follow.

In the experience of AFT members, when educators are uncertain about how they can (or cannot) incorporate prohibited concepts into their classes, students suffer. Teachers will shy away from introducing their students to any challenging perspective. "It would be a bold teacher who would not stay as far as possible from utterances or acts which might jeopardize his living." *Keyishian,* 385 U.S. at 601. Activities like "open class discussion" and "essay and open-ended short answer questions" become rare, while techniques like "the Socratic method [and] playing devil's advocate" may disappear entirely. *Loc. 8027*, 2024 WL 2722254, at *16 (explaining how social studies and English teachers responded to New Hampshire's similar statute); *see also Mae M.*, 111 Cal App. 5th at 218 ("This is the exact situation the void-for-vagueness doctrine seeks to ameliorate. Teachers are left to self-censor and potentially overcorrect,

depriving the students of a fully informed education and further exacerbating the teachers' discomfort in the classroom.").

Like the other statutes that have been struck down, HB 1775 deprives students of opportunities to engage critically with new ideas, stifles their capacity for independent thought, and prevents teachers from conveying important information about our society.

III. All of the Prohibited Concepts Are Vague

The eight enumerated "divisive concepts" themselves leave AFT-OK members and other educators confused, and are too vague and indefinite to pass muster under the Due Process Clause.

While the District Court correctly recognized that two of the concepts (those in Sections 24-157(B)(1)(c) and (d)) were void for vagueness, it erred when it concluded—with little explanation—that the remaining concepts were "sufficiently clear." App. Vol. III at 135. This leaves AFT-OK members, who must make practical, often instantaneous, decisions in their classrooms every day without the benefit of legal advice, in a state of paralyzing uncertainty as to whether a wide array of lessons and course materials are now illegal. A teacher cannot equivocate or ask inquiring young minds to wait while the teacher looks

up legally sanctioned answers or consults with legal counsel without losing credibility or worse. Due process demands more.

A. Sections 24-157(B)(1)(a) and (b) Are Hopelessly Unclear

The first two forbidden concepts in HB 1775 leave teachers in a state of uncertainty about what is and is not permitted in classroom instruction. Those concepts are: (a) "one race or sex is inherently superior to another race or sex," and (b) "an individual, by virtue of his or her race or sex, is inherently racist, sexist or oppressive, whether consciously or unconsciously." Okla. Stat. tit. 70, § 24-157(B)(1)(a)–(b).

As educators know, the notion that one race or sex is superior to another has played a central role in both United States and global history. Yet the statute directs educators to teach social studies and literature classes without mentioning that concept, even when historical events were caused by supremacist ideology, or seminal literary works reflect these views. The results are unthinkable: teachers must instruct students on Nazi Germany without discussing racism, and the Salem witch trials without mentioning sexism.

These concerns are not hypothetical for educators. Officials applying similar bans in Virginia and Florida warned that slavery itself

could be a forbidden subject.[5] One Florida official opined that even alluding to "the existence of racism" in society would be unlawful.[6] Fearing retaliation, one seventh-grade civics teacher in Florida never told her students "that Black people did not have the legal right to vote until 1870, almost 100 years after the founding of the United States."[7] An English teacher in New Hampshire likewise feared teaching Joseph Conrad's *Heart of Darkness*, due to its negative treatment of European imperialism.[8]

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[5] Am. Oversight, *The Far-Right Attack on Public Education: How Curriculum and Classroom Censorship Stifles Educators, Harms Students, and Threatens Our Democracy* 10 (2025), https://americanoversight.org/wp-content/uploads/The-Far-Right-Attack-on-Public-Education.pdf (reporting a Virginia official concluded teachers could not instruct students that "slavery put one group of people over another as historical fact"); *id.* at 14 ("A discussion of how Europeans benefited from the slave trade prompted a [Florida official] to warn that the topic 'may lead to a viewpoint of a "oppressor vs. oppressed" based solely on race or ethnicity.'").

[6] *Id.* at 13.

[7] Human Rts. Watch, *"Why Do They Hate Us So Much?": Discriminatory Censorship Laws Harm Education in Florida* 27 (2024), https://www.hrw.org/sites/default/files/media_2024/06/us_florida0624%20web.pdf.

[8] *Nat'l Educ. Ass'n v. U.S. Dep't of Educ.*, 779 F. Supp. 3d 149, 194 (D.N.H. 2025) (describing educators' responses to guidance forbidding "indoctrinat[ing] students with the false premise that the United States is built upon systemic and structural racism" (internal quotation marks omitted)).

Further confusing AFT-OK members is the idea that teachers may not discuss the "inherent" superiority of one group over another. The term "inherent" refers to qualities either "belonging by nature or settled habit."[9] AFT-OK members are left to differentiate between those attributes arising by nature or from settled habits and those that are merely extrinsic or accidental, all in a fast-paced classroom environment. Those decisions can all be second-guessed by parents and administrators, and even a single error can cost a teacher their career.

Guidance from regulators in Oklahoma and elsewhere provides AFT-OK members with no certainty. For example, it is unclear whether a teacher may discuss the concept of implicit bias. Unsurprisingly, even government attorneys do not agree on that point. According to the General Counsel of the Oklahoma State Department of Education, it is illegal to suggest that "deeply rooted stereotypes, built over time and by history and culture, . . . can turn into implicit bias and can eventually lead to discrimination if unchecked."[10] App. Vol. II at 170. Yet officials

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[9] *Inherent*, Merriam-Webster (last visited Sept. 2, 2025), https://www.merriam-webster.com/dictionary/inherent.

[10] *But see* Okla. State Dep't of Educ., *Oklahoma Academic Standards: Social Studies* 114 (2025), https://oklahoma.gov/content/dam/ok/en/osde/documents/services/standa

interpreting the same language in a New Hampshire statute concluded that it "does not prohibit teaching about implicit bias because it is not an inherent form of bias." *Loc. 8027*, 2024 WL 2722254, at *10.

Punishing educators for crossing such unintelligible lines is unfair and contrary to due process. *See id.* (concluding New Hampshire's ban on teaching analogous concepts was void for vagueness). But the brunt of teachers' confusion will fall on Oklahoma's students, who cannot receive instruction on the facts that have shaped both their history and present.

B. Section 24-157(B)(1)(e) Is Too Indefinite

Section 24-157(B)(1)(e)'s ban on the concept that "an individual's moral character is necessarily determined by his or her race or sex" is equally vague. Okla. Stat. tit. 70, § 24-157(B)(1)(e). In three sentences of analysis upholding that provision, the district court did not clarify or provide concrete definitions for the terms "moral character" and "necessarily determined" and instead just quoted the text as if its

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rds-learning/social-studies/SS%20OAS%20July%202025.pdf (mandating instruction on "how segregation took multiple forms by comparing de jure segregation (e.g., miscegenation laws, public transportation) and de facto segregation (e.g., redlining, loan practices) which maintained the policies of 'separate but equal'").

meaning were self-evident. *See* App. Vol. III at 140 ("The text prohibits teaching that a person is of a certain moral character due to the person's race or sex.").

This leaves AFT-OK members in the impossible position of interpreting these two unclear phrases without any useful guidance from the State or the district court. First, the notion of "moral character" is "mired in obscurity." *Honeyfund.com*, 622 F. Supp. 3d at 1181. Although the district court cited a dictionary definition of "character" as the totality of qualities that "distinguish" a person and constitute his or her "individuality," App. Vol. III at 140 n.14 (quoting *Character*, Oxford English Dictionary (2024)), that does not dispel confusion as to which particular attributes are part of someone's character—let alone someone's *moral* character.

Complicating matters further, the statute bans teaching the concept that a person's moral character is "necessarily determined" by race or sex. Guidance from the Edmond Public Schools directs teachers not to teach that "someone's character is *predetermined* by their race or sex." App. Vol. I at 137 (emphasis added). But that interpretation founders on the district court's acknowledgement that traits "deriving

from environment, culture, [and] experience" also contribute to a person's character. App. Vol. III at 140 n.14 (citation omitted). Traits developed through experience cannot be so easily separated from a person's race or sex, which often lead individuals to have particular types of experiences, both positive and negative. Whether external factors standing alone have played a "necessary" role in "determin[ing]" a person's moral character is a question fit for deep philosophical and theological speculation; it is not a sufficiently clear concept to strip educators of their livelihoods.

C. The Impossibility of Teaching Without Violating Sections 24-157(B)(1)(f), (g) and (h)

AFT-OK members are also concerned about how they can comply with Subsections (f), (g) and (h), which in different ways require educators to avoid certain concepts that necessarily arise in teaching social studies.

Subsection (f) prohibits a teacher from discussing the concept that "an individual, by virtue of his or her race or sex, bears responsibility for actions committed in the past by other members of the same race or sex." Okla. Stat. tit. 70, § 24-157(B)(1)(f). This creates an interpretive

minefield that renders basic and mandatory historical instruction legally perilous.

For example, Oklahoma state standards require teachers to instruct students about Oklahoma's own complicated racial history. *See Oklahoma Academic Standards: Social Studies*, *supra* note 10, at 87 ("Examine the evolution of race relations in Oklahoma. . . . Describe the continued growth of African American communities, including the emergence of 'Black Wall Street' in Tulsa's Greenwood District. . . . Analyze the causes of the Tulsa Race Massacre, including its continued social and economic impact."). It is impossible for a teacher discussing the 1921 Tulsa Race Massacre to explain the historical fact that White Tulsans who inherited property in the rebuilt Greenwood district benefitted from the destruction of Black Wall Street without implicitly suggesting that the ancestors in those families "bear responsibility" for the Massacre. Yet there is no other way for teachers to "[a]nalyze" the "continued social and economic impact" of the Tulsa Race Massacre as the Standards require. *Id.* But if teachers cannot educate students on Oklahoma's challenging racial history, students will be left unable to meet the demands of our diverse and evolving society.

The ambiguity becomes even more pronounced when teaching about the experience of Native Americans in the Trail of Tears. If a teacher explains that White settlers who acquired Cherokee lands through forced removal thereby established family wealth that persists today, it is possible that an administrator will conclude that the teacher has impermissibly suggested that contemporary White Americans "bear responsibility" for Indian removal. The statute's failure to distinguish between explaining causal relationships and assigning moral culpability leaves educators to guess whether historical analysis of how land acquisition shaped modern America crosses into prohibited territory.

Similarly, subsection (g)'s prohibition on causing students to "feel discomfort, guilt, anguish or any other form of psychological distress on account of his or her race or sex" likewise places teachers in a double-bind. Okla. Stat. tit. 70, § 24-157(B)(1)(g). If the teacher engages in accurate education about Oklahoma history, it is possible that students of all races may feel distress about the way in which Native Americans and Black people were treated in Oklahoma in the past. The law's focus on student emotional responses rather than instructional content creates impossible pedagogical standards, as teachers cannot control how

students react to historical information. To leave uncomfortable historical facts unsaid deprives students of the ability to recognize harmful ideas and discern their ruinous results. For, to quote Santayana, "[t]hose who cannot remember the past are condemned to repeat it."[11]

Consider a teacher presenting eyewitness accounts from Tulsa Race Massacre survivors describing the destruction of Black Wall Street. Regulators may punish those teachers if some students feel guilt hearing about this history of racial violence, or if Black students experience anguish learning about the systematic destruction of their community's wealth. The law provides no mechanism for distinguishing between appropriate emotional responses to Oklahoma's difficult history (a history that in different circumstances obtained elsewhere in this nation) and prohibited psychological distress "on account of" one's race. Despite state standards mandating that students be able to "[a]nalyze the causes of the Tulsa Race Massacre, including its continued social and economic impact," *Oklahoma Academic Standards: Social Studies*, *supra* note 10,

[11] George Santayana, *The Life of Reason; or the Phases of Human Progress* 284 (2d ed. 1905).

at 87, the law offers no guidance for educators trying to teach honestly about how violence and racial segregation shaped modern Oklahoma without violating the psychological distress prohibition.

Likewise, Native American students might feel "distress" upon learning about the forced assimilation policies at the Carlisle Indian School that affected Oklahoma tribes. Yet that information is critical to teaching students about the nation's historical treatment of Native Americans, even if it causes psychological distress.

Finally, AFT-OK members are also forced to engage in guesswork when construing subsection (h)'s prohibition on teaching that "meritocracy or traits such as a hard work ethic are racist or sexist or were created by members of a particular race to oppress members of another race." Okla. Stat. tit. 70, § 24-157(B)(1)(h). The provision's vague language fails to distinguish between different types of analysis about Oklahoma's historical exclusions, some of which were falsely framed as "merit-based," such as literacy tests designed to disenfranchise Black and Native voters. *See Oklahoma Academic Standards: Social Studies*, *supra* note 10, at 107 ("Describe continued attempts to disenfranchise African Americans through the use of poll taxes and

literacy tests by some state governments."). If a teacher explains that these allegedly "merit-based" voting requirements were deliberately crafted to exclude non-white citizens from the franchise, a regulator might well conclude that the teacher violated the law by instructing that these literacy standards were "created to oppress members of another race."

Moreover, if a teacher discusses how sharecropping systems in Oklahoma were structured to keep Black farmers in perpetual debt despite their hard work, it is possible that the teacher might be subject to discipline for suggesting that "work ethic" standards were applied in discriminatory ways. Educators are left to guess whether presenting documented historical fact violates the statute's broad prohibitions. Subsections (f), (g) and (h) all force teachers to choose between providing honest education about Oklahoma's development and avoiding legal jeopardy.

IV. The Academic Standards Clause Inflicts Further Harms on Teachers

In addition to complying with HB 1775, AFT-OK members must comply with the Oklahoma Academic Standards. HB 1775 contains a "safe-harbor" that allows educators to teach "concepts that align to the

Oklahoma Academic Standards." Okla. Stat. tit. 70, § 24-157(B). The district court viewed this as a saving grace, believing that it allowed teachers to teach to these standards, regardless of the "divisive concepts" set forth in HB 1775. App. Vol. III at 143–144.

Nothing could be further from the truth. The Academic Standards put AFT-OK members and educators in a double bind by compelling teachers to discuss perilous topics, but without specifying *how* to cover them in class in manner that does not break the law. For example, the Academic Standards "[d]o not dictate how teachers should teach" and "[d]o not mandate a specific curriculum."[12] Instead, they establish "expectations for what students should know and be able to do by the end of the school year."[13] Teachers therefore must instruct students on the subjects listed in the Academic Standards. But the Academic Standards offer no guidance—and, consequently, no protection—with respect to the *way* teachers present those topics.

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[12] Okla. State Dep't of Educ., *Oklahoma Academic Standards*, (last visited Aug. 15, 2025), https://oklahoma.gov/education/services/standards-learning/oklahoma-academic-standards.html.

[13] *Id.*

As a result, AFT-OK members must develop lessons that satisfy both the Academic Standards and the statute, knowing that a misstep could end their career. For example, the Social Studies Academic Standards compel instruction on: "the *Dredd Scott v. Sanford* decision," "the political and social goals of the Ku Klux Klan," "the Tulsa Race Massacre," "justifications supporting imperialist ideology and colonialism," and "the Nazi ideology of the 'Master Race.'"[14] Teachers have the impossible task of selecting readings, discussion questions, activities, and assessments that educate students on these subjects, without incorporating banned concepts such as racial superiority (for example, by discussing the nature, purpose, and impact of the Nuremberg Decrees or the Japanese mass internments) or the creation of emotional distress in students.

By imposing "an affirmative duty to teach topics that potentially implicate several of the banned concepts," the Academic Standards put educators in a "position where they must instruct students on [those topics] but face the threat of job loss if their instruction . . . crosses the

[14] *Oklahoma Academic Standards: Social Studies*, *supra* note 10, at 77, 78, 87, 98, 159.

line." *Loc. 8027 v. Edelblut*, 651 F. Supp. 3d 444, 462 (D.N.H. 2023). Worse, with social media and like forces exerting undue influence, the zealotry of our times inflames the prospect of unwarranted complaints and unanticipated consequences that need no additional encouragement. Far from protecting educators, the Academic Standards render them more vulnerable to the statute's vague prohibitions.

The text of the Academic Standards exclusion also deprives teachers of fair notice of what conduct is protected and proscribed. While the district court assumed the protection would apply to the teaching of "historical events" in the Academic Standards, App. Vol. III at 143, the statute protects only the teaching of "*concepts*," Okla. Stat. tit. 70, § 24-157(B) (emphasis added). It is unclear whether teaching about historical facts—like the Tulsa Race Massacre—rather than more abstract "concepts" would fall within the Academic Standards exclusion.

The minefield of problems facing AFT-OK members is not hard to see. A teacher might discuss a banned concept that does not specifically appear in the Academic Standards while teaching during a lesson on a topic the Standards mandate. For example, a teacher might assign a

primary source opposing women's suffrage[15] to help explain "how the promise of political equality impacted the views of women" during the Founding.[16] Or teachers could discuss banned concepts to pursue the broader goals of the Academic Standards, by enabling students to "evaluate the validity of a speaker's argument," "identify bias," and "identify logical fallacies."[17] Whether these lesson plans violate the law is unknown and unknowable. The Academic Standards exclusion neither alleviates nor cures the statute's fatal defects.

V. HB 1775 Is Susceptible to Arbitrary and Discriminatory Enforcement

Finally, AFT and AFT-OK members are concerned that HB 1775 allows for "arbitrary and discriminatory enforcement." *Grayned v. City*

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[15] *See, e.g.*, Museum Am. Revolution, *How Did Women Lose the Vote?: The Backlash* (last visited Aug. 16, 2025), https://www.amrevmuseum.org/virtualexhibits/when-women-lost-the-vote-a-revolutionary-story/pages/how-did-women-lose-the-vote-the-backlash (using primary sources to examine why New Jersey disenfranchised women in 1807).

[16] *Oklahoma Academic Standards: Social Studies*, *supra* note 10, at 69.

[17] Okla. State Dep't of Educ., *Oklahoma Academic Standards: English Language Arts* 99 (2021), https://oklahoma.gov/content/dam/ok/en/osde/documents/services/literacy-policy-and-programs/oklahoma-academic-standards/2021-OAS-English-Language-Arts-Standards.pdf.

of Rockford, 408 U.S. 104, 108 (1972). Without "minimal guidelines," *see Kolender v. Lawson*, 461 U.S. 352, 358 (1983) (citation and internal quotation marks omitted), or established "standards," *see City of Chicago v. Morales*, 527 U.S. 41, 52 (1999), to guide enforcement authorities, AFT-OK members will be at the mercy of those charged with enforcing HB 1775.

In the absence of standards, teachers will be subject to varying and inconsistent oversight from parents, administrators, and courts. Parents enjoy an unfettered "right to inspect curricul[a], all instructional materials . . . , classroom assignments, and lesson plans" to investigate an educator's compliance with the statute—regardless of whether their child attends the teacher's class, school, or district. Okla. Admin. Code § 210:10-1-23(e). Not only that, but the regulations also permit anyone to lodge a complaint accusing a teacher of violating the statute. *Id.* § 210:10-1-23(g)(1) (permitting "students, parents, teachers, school staff, and members of the public to file a complaint"). If either a school district or the State Department of Education receives such a complaint, they must investigate the accused teacher. *Id.* § 210:10-1-23(g). And

regardless of the eventual outcome, in the eyes of superiors, a measure of concern remains.

This means that teachers will be subject to oversight not only by other professional educators in their school district or the State, but by individual parents. Their views about what violates the vague prohibitions in HB 1775 will vary, causing disparate outcomes that offend due process. *See Carolina Youth Action Project v. Wilson*, 60 F.4th 770, 784 (4th Cir. 2023) (striking down a school disorderly conduct law that allowed enforcement by schools and/or by the police, leading to "starkly disparate outcomes" that "turn[ed] on the whims of a school resource officer" who had "unbridled discretion" to refer the case).

Oklahoma's system also includes mandatory investigations that vest immense discretion in state officials and carry severe consequences for teachers. This means that almost *any* violation of the statute suffices to suspend a school employee, no matter how innocent the employee's error or negligible the impact on students. Okla. Admin. Code § 210:10-1-23(j)(2) (providing that if the State Board of Education concludes a school employee engaged in a "willful violation" of the statute, then the Board "shall initiate proceedings to revoke the [employee's] license or

certificate," thereby stripping the employee of their ability to teach at Oklahoma's public schools). These severe penalties strike "fear" in educators that classroom "discussions could lead to a complaint against [them]." *Loc. 8027*, 2024 WL 2722254, at *16. Indeed, an experienced teacher in New Hampshire was "so troubled" by the constant threat of enforcement under a similar law that "she decided to leave teaching altogether," rather than face unwarranted harassment and reputational damage. *Id.*

Systems like this one—that "vest virtually complete discretion in the hands of the [enforcement agencies] to determine whether" an educator has violated the Law—must offend due process. *See Kolender*, 461 U.S. at 358 (observing that the "important aspect of vagueness doctrine" is "the requirement that a legislature establish minimal guidelines to govern law enforcement") (citation and internal quotation marks omitted). Indeed, AFT-OK has already seen this type of arbitrary enforcement in Oklahoma. The State Board of Education revoked the teaching certificate of Summer Boismier, an English teacher at Norman Public Schools, for decorating her classroom with posters that encouraged students to obtain public library cards. Order to Revoke

Teaching Certification 3–4, *Black Emergency Response Team v. Drummond,* No. 5:21-cv-01022 (W.D. Okla. Sept. 12, 2024), Dkt. No. 213-1. Because the Board found that Boismier intended "to entice her students" to access books that contained banned concepts, the Board concluded that she had willfully "circumvent[ed]" the statute. *Id.* at 4, 6.

For each teacher punished for violating the statute, many more suffer a distinct harm: the silence that falls over classrooms when educators are afraid to teach students the truth. *See Arnett v. Kennedy*, 416 U.S. 134, 231 (1974) (Marshall, J., dissenting) ("For every employee who risks his job by testing the limits of the statute, many more will choose the cautious path and not speak at all."). The resulting loss to students—of the opportunity to learn their own history as Oklahomans and Americans, and become fully informed members of our democratic society—diminishes us all.

CONCLUSION

The Court should reverse in part the district court's decision to deny injunctive relief.

Respectfully submitted,

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I hereby certify that:

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(4)(g) because it contains 6,090 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

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Dated: September 3, 2025 */s/ Harry Sandick*

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I hereby certify that on September 3, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by using the CM/ECF system. I certify that participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

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