



# EQUALITY UNDER *the* LAW PROJECT



We are *fighting* back!



## ***What is Critical Race Theory?***

You have probably heard about something called “Critical Race Theory.” It is an academic theory that makes certain claims about race in America and advocates for certain policies. But CRT—or similar theories and ideologies—have also evolved into everyday advocacy and practices in our workplaces, governments and schools. The three main components of this worldview are as follows:

1. **Racial “Identity” or “Essentialism.”** CRT and related ideologies teach that black people, on the one hand, and white people, on the other, exhibit certain characteristics and believe certain things. Most minorities are victims of oppression, and white people (either knowingly or not) are the oppressors. In this view, the most important thing about a person is his or her race.
2. **“America Is a Racist Country.”** CRT and related ideologies teach that America is a thoroughly racist country with a racist history. This racism has infected systems, structures, laws and all interactions in America. Almost all white people enjoy “white privilege” and exhibit (at least) “implicit bias.” Non-whites—almost all of them—are oppressed by (at least) “systemic racism.” In this view, oppression is the most important thing to know about America.

3. **“Equity.”** CRT teaches the solution to this problem is not “equality,” but something called “equity.” While these words sound similar, they are very different. “Equality” traditionally requires equal treatment and opportunity. “Equity” generally calls for equal results among all racial groups. It rejects non-discrimination for an Orwellian concept called “anti-racism” which, in fact, calls for discrimination and tearing down of American systems and laws that create disparate outcomes, removing benefits from certain racial groups, and granting benefits to other racial groups. While some trace the concept of “equity” to Marxist roots, the important thing to note here is that it calls for an end to race neutrality or “colorblindness.”

## ***Be on the Look Out***

In our country, we are all free to express our views and others are free to dispute them. CRT or related ideologies cannot and should not be banned or suppressed. But we can decide what our public K-12 schools teach. While children must learn the good and bad of American history (including slavery, Jim Crow and the civil rights movement), we are not required to stand by while these public schools engage in political indoctrination. In addition, the law has long recognized that schools, governments and workplaces should not engage in racial discrimination. Not all manifestations of CRT or related ideologies are unlawful. Many are just wrong. Others are things that we ought to discuss and debate. But some of what this new view calls for can create legal problems. Below is a list of the most common examples of things that schools and institutions employ (often informed by CRT or similar concepts) that may violate the law.

- **Segregation** – any separating of races. Race-based “Affinity Groups” are commonplace in schools and likely unconstitutional.
- **Benefits or awards** – to anyone based on race. For example, some schools grant awards or special benefits solely to African Americans, Latinos or other minorities.

- **Elimination of opportunities** – when race is a factor. Some schools are eliminating AP classes, gifted and talented, finals and other requirements in the name of “equity.”
- **Quotas** – or “proportionality.” Be on the lookout for any policies or rules that require a certain number of racial representations.
- **Compelled Speech** – requiring students or government employees to say, “I am a racist” or write something down they don’t agree with. Privilege walks may be a form of compelled speech.
- **Any discrimination** at all based on race.



## Spotting CRT

Proponents of this new ideology often mask their efforts within a fog of vague and seemingly innocuous words. The point is not that these buzz words should never be used or that they always mask ill-advised or unlawful actions. They don’t. But concepts like “privilege,” “fragility,” “intersectionality” or as we have seen, “equity” and “anti-racism” do not define themselves and ought to prompt questions. Training tools and events like “privilege walks,” “affinity groups,” “identity exercises” and “safe spaces” may require an explanation. Activism for “social justice,” “culturally relevant instruction” and “social-emotional learning” sound good but can mean many things.



## What are my rights?

### Freedom from Discrimination

- Discrimination means the intentional act of differing treatment based on race. This can also include harassment, which means widespread and persistent differing treatment based on race.

### Freedom of Speech

- In a public setting, such as a public school, university, or employer, you have the right to speak up and express your opinions. You cannot be forced to adopt or adhere to a certain ideological point of view that you find unacceptable.

### Freedom of Religion

- In schools and in the workplace, students and employees must be granted reasonable religious accommodations, such as the opportunity to abstain when a curriculum or event substantially interferes with your religious beliefs.







***How WILL is Fighting Back***

# DefendEquality.org

FOR YOUR KIDS, THE NEIGHBORS' KIDS AND ALL FUTURE GENERATIONS





## ***Faust, et al. v. Vilsack***

### **WILL SUES BIDEN ADMINISTRATION FOR RACE DISCRIMINATION IN FARMER LOAN FORGIVENESS PROGRAM**

The American Rescue Plan Act of 2021 (ARPA), President Joe Biden's signature COVID-19 relief legislation signed in March, provides billions of dollars of debt relief to "socially disadvantaged" farmers and ranchers. But the law's definition of "socially disadvantaged" includes explicit racial classifications: farmers and ranchers must be Black or African American, American Indian or Alaskan native, Hispanic or Latino, or Asian American or Pacific Islander. Other farmers—white farmers, for example—are ineligible.

WILL filed a lawsuit in federal court challenging the unconstitutional race discrimination in the American Rescue Plan's provision to offer loan forgiveness based on racial categories. The lawsuit was filed in the Eastern District of Wisconsin on behalf of twelve farmers and ranchers from Wisconsin, Minnesota, South Dakota, Ohio, Missouri, Iowa, Arkansas, Oregon and Kentucky. Each plaintiff would be eligible for the federal loan forgiveness program, but for their race.



Adam Faust, a WILL client from Calumet County, Wisconsin, said, “There should absolutely be no federal dollars going anywhere just based on race. The economic impact from COVID-19 didn’t hurt any race more than another as far as agriculture goes.”

“There is a case for loan forgiveness for individuals,” said Christopher Baird, a WILL client from Crawford County, Wisconsin. “But we shouldn’t be looking at the color of someone’s skin and saying this person needs more help or less help based on the color of their skin. That’s just wrong.”

U.S. District Judge William Griesbach issued a temporary restraining order halting payments in the loan forgiveness program that allocates benefits on the basis of racial categories. **This was the first order placing this unconstitutional program on hold.**

The Court recognized that the federal government’s plan to condition and allocate benefits on the basis of race raises grave constitutional concerns and threatens our clients with irreparable harm. The Biden administration is radically undermining bedrock principles of equality under the law. We look forward to continuing this litigation but urge the administration to change course now.





## **Vitolo v. Guzman**

**WILL REPRESENTS TENNESSEE RESTAURANT OWNER WHO WOULD BE ELIGIBLE FOR FUNDS, BUT FOR HIS RACE AND SEX**

The Restaurant Revitalization Fund is another ARPA relief program that explicitly uses race and sex discrimination to award federal funds. The \$28.6 billion fund, administered by the Small Business Administration, included a race-based preference giving special treatment for women and minorities for the first 21 days. In practice, SBA took all applications but then kept shifting white male restaurant owners to the back of the line. This is illegal and unconstitutional.

WILL filed a federal lawsuit in the Eastern District of Tennessee on behalf of Antonio Vitolo, owner of Jake's Bar and Grill in Harriman, Tennessee. WILL asked for a temporary restraining order and injunction to halt the discrimination in the program.

Mr. Vitolo, explained that "I do not want special treatment. I just want to be treated equally under the law. I am opposed to race and sex discrimination, and I would hope my government lived up to the same principle."



Although the district court refused to put the program on hold, WILL took the fight to the U.S. Court of Appeals on an emergency basis. A majority of the three-judge panel of the Sixth Circuit Court of Appeals granted a motion for injunction pending appeal. Judge Amul Thapar was joined by Judge Alan Norris in a decision that said, in part, “Since the government failed to justify its discriminatory policy, the plaintiffs will win on the merits of their constitutional claim.”

The decision emphasized, “As today’s case shows once again, the way to stop discrimination on the basis of race is to stop discriminating on the basis of race.” **This decision effectively halted the allocation of billions of dollars based on race and sex.**



***Rabiebna, et al. v.  
Higher Educational Aids Board***

HIGHER EDUCATIONAL AIDS BOARD  
OFFERS SCHOLARSHIPS WITH NARROW  
RACIAL CATEGORIES

The Wisconsin Higher Educational Aids Board administers the Minority Undergraduate Retention Program, a taxpayer-funded scholarship available to certain minority undergraduates enrolled in private, nonprofit higher educational institutions or in technical colleges in Wisconsin.

The minority undergraduates eligible for the taxpayer-funded program, according to state law, are: Black American, American Indian, Hispanic, and those specifically from Laos, Vietnam and Cambodia who immigrated after 1975. These narrow racial and national origin criteria mean other students—Thai, Chinese, Japanese, Indian, North African, Native Hawaiian, Pacific Islander, resident aliens from Africa, or White, for example—are ineligible to receive a scholarship.

WILL filed suit against the Wisconsin Higher Educational Aids Board, a state agency responsible for administering the Minority Undergraduate Retention Program, for violating the Constitution by discriminating based on race and national origin. WILL represents five Wisconsin

taxpayers who object to the state of Wisconsin administering this race-based scholarship program.

"America is a land of opportunity," said Kiki Rabiebnna, a WILL client. "Government programs must be available to everybody, not just certain racial groups."

"When government discriminates by race, it pits different groups against each other," said Rick Freihoefer, another WILL client. "That isn't progress. That just fans the flames of our divisions."

The eligibility categories in the Minority Undergraduate Retention Program amount to discrimination based on race, national origin and alienage, a practice clearly forbidden by the Constitution. The state of Wisconsin can offer aid based on need, income-level, family background, or even location—but not race. WILL's clients are seeking a declaration from the court that this program is unconstitutional and asking for an injunction preventing its race-based qualifications.





## ***Blaska v. City of Madison***

### **WILL SUES CITY OF MADISON FOR UNCONSTITUTIONAL RACE DISCRIMINATION**

In September 2020, the City of Madison enacted an ordinance, Madison General Ordinance § 5.20, that requires four members of the Police Civilian Oversight Board to belong to the following specific racial groups: “African American,” “Asian,” “Latinx” and “Native American.” The Madison Common Council then added another racial quota requiring “at least 50% Black members.”

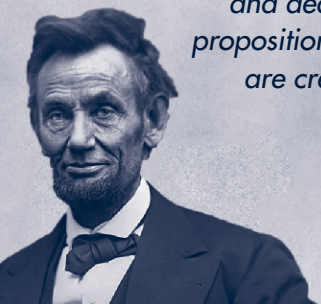
WILL filed a federal lawsuit against the City of Madison after it established these unconstitutional racial quotas. WILL represents David Blaska, a Madison resident who applied for the Board, but who is ineligible for nine of the eleven seats because he is white. Madison’s system of racial quotas is a clear violation of the Constitution’s ban on racial discrimination. WILL is seeking an injunction requiring the City to reconstitute the board, as well as punitive damages.

Racial quotas and classifications—enshrined in this City law and the official policy of the City—are unconstitutional, offensive and repugnant to basic American values. The Constitution’s guarantee of

equal protection requires governments—at all levels—to treat citizens as individuals, not members of a group or racial class. The City of Madison was warned that imposing racial quotas is unconstitutional. The return of race classifications and quotas is a troubling and dangerous step backwards.

*"Four score and seven years ago our fathers brought forth on this continent, a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal."*

**ABRAHAM  
LINCOLN**



*"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."*

**MARTIN LUTHER  
KING, JR.**





## ***The Equality Under the Law Team***

While everyone at WILL plays a part in our Equality Under the Law efforts, the team below drives this initiative and is getting real results.

WILL researches, litigates, advises and educates.



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