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State Board of Education
25 South Front Street
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Dear State Board of Education:

Enclosed you will find our legal review of your “Resolution to Condemn Racism and to Advance Equity and Opportunity for Black Students, Indigenous Students and Students of Color.” I join you in publicly condemning racism and promoting equality and opportunity.

Our aim has been to provide you with as much clarity and precision as possible under state and federal law, given the vagueness and lack of specific detail about what actual actions are contemplated to execute the general direction of the resolution. As the legal opinion points out, a generally permissible goal—an accurate teaching of history—may be accomplished by impermissible means (race-conscious treatment of individual students based solely on the color of their skin.) As someone once observed, the devil is in the details.

But the law itself is a reflection of society, and is the slow product of the debates we have about our culture and our values and the nature of justice. My attached legal opinion regards the law as it is; I use this moment and a separate letter to address whether society ought to change the values that undergird the law as it is.

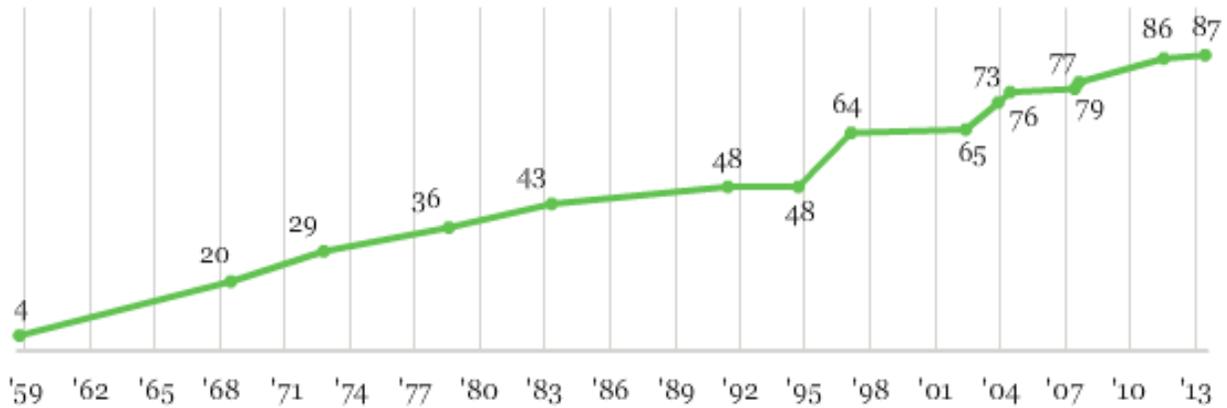
The hard-won American consensus underlying civil rights is equality. For example, the marriage of people of different races was once against the law in some states – it even had its own name, miscegenation. These laws were struck down as unconstitutional by a unanimous United States Supreme Court in *Loving v. Virginia* – incredibly, in 1967, within living memory.

I say "hard-won consensus" because a Supreme Court decision never creates consensus. Rather, the consensus was won through the long fight to dismantle Jim Crow, from marches to civil disobedience to advocacy that ultimately moved public opinion over many years.

Gallup measured public sentiment about miscegenation over the years. In 1958, *only 4%* of Americans approved marriage between blacks and whites. By 2013, *87% of Americans did*.

Do you approve or disapprove of marriage between blacks and whites?

■ % Approve



1958 wording: "... marriages between white and colored people"

1968-1978 wording: "... marriages between whites and nonwhites"

GALLUP®

This is only one law, and one example of the phenomenal distance America has traveled toward the ideals of its founding – all humans' birthright of equality and rights that cannot be taken, sold or mortgaged.

This hard-won consensus was summed up by the Rev. Martin Luther King Jr.: "...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."

King was not describing a colorblind society, but a virtuous society – and for imperfect human beings, it will always remain to some degree aspirational. Call it the King consensus.

But there is now a move afoot to derail that hard-won consensus to seek a virtuous society. It sees our country's aspirational and founding documents – the Declaration of Independence and the Constitution – as instruments designed to establish and maintain white supremacy and racial oppression forever.

Rather than each person being judged by the content of their character, this contra-King movement wants to teach our children that their character is determined by the color of their skin. When many of our constituents express anger about Critical Race Theory, they mean this radical upending of American values.

I won't use that term because of the disagreement about what it is. There is an entire academic literature, and a literature critiquing it. My purpose is to contrast the King consensus with this contra-King movement.

"Implicit bias training" – reportedly the subject of some debate among members of this board, and promoted by the contra-King movement – often imputes collective guilt, moral deficiency or racial bias to entire swaths of people based solely on the immutable characteristic of skin color.

In place of King's vision, which seeks to make race irrelevant, this contra-King movement makes race central to all interactions, social, legal and political.

Instead of viewing a person's skin color as the least important defining characteristic, it seeks to make skin color the dominant defining characteristic.

King's vision is one of hope, inspiration, and demonstrable success. Those who would upend his content-of-character consensus offer a vision that is forever bleak, deterministic and promises nothing but endless racial confrontation.

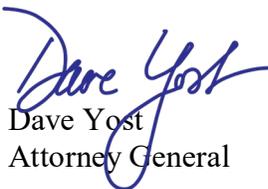
Honest history must be taught in our schools. The Tulsa Massacre, Jim Crow, the lynchings of more than 3,000 Black Americans – these ugly chapters must be plainly taught, for the same reason that the Holocaust must be plainly taught.

But so, too, should our history include the story of how the American people and our legal institutions put an end to these injustices and continue the work to guarantee equal treatment for all.

We can teach children that they live in a society where their prospects are unlimited, or we can teach them that that their lives will be unfairly blighted – or unfairly blessed – by the color of their skin.

I think most parents would prefer the former.

Yours,


Dave Yost
Attorney General