



**Statement by Chris Erchull,
Staff Attorney, GLBTQ Legal Advocates & Defenders (GLAD),
before the Senate Judiciary Committee,
in Support of Senate Bill 304,
An Act Relative to Discrimination in Public Workplaces and Education**

Honorable Chairperson Carson and Members of the Committee:

Thank you for taking the time to consider my statement in support of Senate Bill 304, An Act Relative to Discrimination in Public Workplaces and Education. This bill will reverse the harm caused by the recently-enacted so-called “Divisive Concepts” legislation, which has impeded educational opportunities for New Hampshire public school students. SB 304 will also ensure that teachers and public employers have the freedom to teach vital concepts necessary for participation in a just, equitable, and more unified world.

As an attorney with GLBTQ Legal Advocates & Defenders (GLAD), New England’s leading legal rights organization dedicated to ensuring equality for LGBTQ people and people living with HIV, I fully support legislation that promotes the free exchange of ideas in classrooms and public workplaces. GLAD submits this written testimony to highlight three important points to underscore our support.

1. The so-called “Divisive Concepts” legislation denies critical learning opportunities to New Hampshire students and public employees.

The “Divisive Concepts” law that went into effect in 2021 has demonstrably stifled the discussion of important ideas from classrooms and workplaces, disadvantaging our students and public employees. New Hampshire’s public school teachers, in particular, have no way of knowing what topics are forbidden under the law, yet they are under a constant threat of disciplinary action. The result is a climate of fear that effectively silences teachers and students when it comes to discussions about past and present discrimination and civil rights.

Past efforts to banish important ideas and concepts from classroom discussion have demonstrated the harm caused by legislation of this nature. For example, the Arkansas state legislature enacted a law in 1928 to prevent teaching evolution in the classroom. At the time, the idea of evolution was unfamiliar to many people and, for some, contradicted their sincerely held religious beliefs. The effect of the law was to prevent students from learning important ideas about modern science, which put Arkansas youth at a disadvantage compared to other students across the country. Eventually in 1968, after forty years, the Supreme Court of the United States held that the statute was unconstitutional because the law relied only on the religious beliefs of some of the citizens of Arkansas.¹

¹ *Epperson v. Arkansas*, 393 U.S. 97 (1968).

In another example, in 1976, a school board in Long Island, New York banned a list of nine books, some of which were revered literary classics by authors like Kurt Vonnegut and Langston Hughes, from a school library because parents had complained that they viewed the books as “anti-American, anti-Christian, anti-Semitic and just plain filthy.” There is no doubt that the parents who complained were looking out for the well-being of the children in the school district, but banning the books deprived students of the right to a full opportunity to learn and engage critically with the ideas presented in the banned books. As a result, the students were at a disadvantage because they lacked learning opportunities available to students in other school districts. The Supreme Court ruled that the school board had violated the First Amendment rights of the students who desired access to the books as part of a robust education to prepare them to engage with the world as full citizens.²

These lessons from the past help illustrate the importance of encouraging students to engage with difficult and even controversial ideas and concepts in the classroom, rather than closing them off from the world around them. Full engagement is crucial to a complete education. Laws that exclude concepts from schools typically have the effect of depriving students of opportunities to learn, even if the intent is to insulate and protect them from new ideas that some members of the community might see as controversial, frightening, or even harmful. It is more harmful to students to enter the world unprepared.

2. The so-called “Divisive Concepts” legislation has already caused more division in New Hampshire.

While the proponents of the “Divisive Concepts” law suggested that it would reduce division and promote unity, the reality is that the law has become the source of division in New Hampshire schools. Teachers, administrators, parents, and students across the state have voiced their fierce opposition to the legislation, putting them at odds with the law’s proponents and at odds with the people tasked with enforcing it.

Education Commissioner Frank Edelblut decried the message of a popular and timely book by Ibram X. Kendi, *How to Be an Antiracist*, claiming that it contradicts the message of Dr. Martin Luther King, Jr., that it distorts our nation’s history, and that it is inconsistent with our Constitution.³ Instead of inviting students to engage in a discussion about Kendi’s ideas, however, Commissioner Edelblut has taken the position that students should not know these ideas exist.

Going even further, Commissioner Edelblut has caused teachers to fear losing their licenses if they so much as mention Kendi in the classroom. The Department of Education published a website last November inviting parents to lodge complaints against New Hampshire’s public school teachers, urging surveillance of teachers who dare to introduce

² *Island Trees Union Free School District No. 26 v. Pico*, 457 U.S. 853 (1982).

³ Frank Edelblut, *Teach children about racism, not to be racists*, Union Leader Op-Eds (June 13, 2021), https://www.unionleader.com/opinion/op-eds/frank-edelblut-teach-children-about-racism-not-to-be-racists/article_36088256-e64a-509d-8552-33d442fcc90f.html.

topical discussions about racism and other forms of discrimination in schools.⁴ These steps have the effect of pitting parents, who are genuinely concerned about the well-being of their children, against dedicated teachers, who work tirelessly to provide meaningful education to our young people. By inspiring division in this manner, the legislation and the efforts to enforce it erode trust in the relationship between parents and teachers. Students benefit when teachers and parents work together, united in the goal of preparing young people to participate in a diverse and ever-changing world. The “Divisive Concepts” law does nothing to further that goal.

And the division is not limited to the dynamics within the classroom. Moms for Liberty has offered a cash payout to anyone who successfully goes after a teacher under the “Divisive Concepts” law.⁵ Furthermore, two lawsuits have been filed against the State of New Hampshire on behalf of the two major teachers’ unions, along with parents, teachers, and administrators, challenging the constitutionality of the “Divisive Concepts” law.⁶ Far from promoting unity, this law has been extremely divisive in the short time that it has been law in New Hampshire.

3. Students and public employees must be equipped to participate in the world by learning the complicated and nuanced truth about our history.

Granite Staters understand that New Hampshire is an exceptional state in an exceptional nation. We should all be proud of the achievements in building democracy and advancing civil rights owed to the founders and many bold leaders throughout our collective history. But we also understand that our history is clouded by unpleasant elements, including the state’s role in the trans-Atlantic slave trade. For example, it does not benefit us to ignore the abhorrent truth that the New Hampshire colony did not impose tariffs on the importation of captive Africans, which led to the smuggling of enslaved people from Portsmouth to other colonies.⁷ By learning about New Hampshire’s participation in past atrocities, students learn to be accountable for ensuring that history does not repeat itself, and students are empowered to repair the ongoing harm that persists because of our historical errors, some of which have not been fully redressed.

The text that is proposed in SB 304 to replace the “Divisive Concepts” law will ensure that teachers will not lose their jobs or otherwise face penalties solely for teaching harsh truths about our history to our youth. Such assurances are necessary in a time of nationwide political division. We must ensure our teachers are able to prepare students to engage and to introduce students to unpleasant facets of the past, without fearing arbitrary punishment for doing so. The political divide was exacerbated by the enactment of the

⁴ New Hampshire Department of Education, *Right to Freedom from Discrimination in Public Workplaces and Education* (last visited Jan. 10, 2022), <https://www.education.nh.gov/who-we-are/deputy-commissioner/office-of-governance/right-to-freedom-from-discrimination>.

⁵ “We’ve got \$500 for the person that first successfully catches a public school teacher breaking this law.” @Moms4LibertyNH, Twitter.com (Nov. 12, 2021), <https://twitter.com/moms4libertynh/status/1459166253084467205>.

⁶ See *Mejia, et al. v. Frank Edelblut, et al.*, 1:21-cv-01077 (D.N.H. Dec. 20, 2021); *Local 8027, AFT-New Hampshire, et al. v. Frank Edelblut, et al.*, 1:21-cv-01063 (D.N.H. Dec. 13, 2021).

⁷ Middle Passage Ceremonies and Port Markers Project, *African Presence in New Hampshire* (last visited Jan. 10, 2022), <https://www.middlepassageproject.org/2020/06/24/african-presence-in-new-hampshire/>.

“Divisive Concepts” law in New Hampshire last year, but SB 304 is the opportunity to bring us together.

In 1954, the Supreme Court of the United States unanimously delivered a crystal clear message that our public schools must not be permitted to perpetuate the historical inequality that has plagued our nation from before its founding.⁸ The promise of *Brown v. Board of Ed.*, that “separate but equal” is inherently unequal, went beyond ensuring that students of different races be allowed to learn together—the decision taught us that our Constitution promises public school students a truly integrated education. An education that fully acknowledges the victories and failures of the past, while celebrating our differences and promoting unity, will vindicate the cherished aspiration of our Declaration of Independence, the firm belief that all men are created equal. SB 304 brings us a step closer to that promise, ensuring that New Hampshire students will be stewards of a future free from inequality based on race, religion, gender, sexual orientation, or any other core aspect of identity.

We respectfully urge the Committee to vote Ought to Pass on SB 304.

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⁸ *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).