No. 122,472

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

BLACK EMERGENCY RESPONSE TEAM, *et al.*,

Plaintiffs,

v.

GENTNER DRUMMOND, in his official capacity as Oklahoma Attorney General, *et al.*,

Defendants.

STATE DEFENDANTS' ANSWER BRIEF

Submitted by:

Garry M. Gaskins, II, OBA No. 20212
Solicitor General
OKLAHOMA OFFICE OF THE ATTORNEY GENERAL
313 N.E. 21st Street
Oklahoma City, OK 73105
Phone: (405) 521-3921
Garry.Gaskins@oag.ok.gov

Zach West, OBA No. 30768
Director of Special Litigation
Will Flanagan, OBA No. 35110
Assistant Solicitor General
OKLAHOMA OFFICE OF THE ATTORNEY GENERAL
313 N.E. 21st Street
Oklahoma City, OK 73105
Phone: (405) 521-3921
Zach.West@oag.ok.gov
William.Flanagan@oag.ok.gov

COUNSEL FOR STATE DEFENDANTS

March 3, 2025

No. 122,472

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

BLACK EMERGENCY RESPONSE TEAM, *et al.*,

Plaintiffs,

v.

GENTNER DRUMMOND, in his official capacity as Oklahoma Attorney General, *et al.*,

Defendants.

STATE DEFENDANTS' ANSWER BRIEF

Submitted by:

Garry M. Gaskins, II, OBA No. 20212
Solicitor General
OKLAHOMA OFFICE OF THE ATTORNEY GENERAL
313 N.E. 21st Street
Oklahoma City, OK 73105
Phone: (405) 521-3921
Garry.Gaskins@oag.ok.gov

Zach West, OBA No. 30768
Director of Special Litigation
Will Flanagan, OBA No. 35110
Assistant Solicitor General
OKLAHOMA OFFICE OF THE ATTORNEY GENERAL
313 N.E. 21st Street
Oklahoma City, OK 73105
Phone: (405) 521-3921
Zach.West@oag.ok.gov
William.Flanagan@oag.ok.gov

COUNSEL FOR STATE DEFENDANTS

March 3, 2025

INDEX

Cases

Statutes

Other Authorities

Cases

INTRODUCTION

This Court has long emphasized that a "party seeking a statute's invalidation as unconstitutional has the burden to show the statute is clearly, palpably, and plainly inconsistent with the Constitution." *Lafalier v. Lead-Impacted Communities Relocation Assistance Tr.*, 2010 OK 48, ¶ 15, 237 P.3d 181, 188. Both here and before the federal district court, the Plaintiffs have not come close to demonstrating that any aspect of H.B. 1775 is particularly difficult to understand, much less clearly, palpably, and plainly contrary to either the state or federal constitutions. In purporting to analyze the plain meaning of key words and provisions in H.B. 1775, Plaintiffs fail basic reading comprehension, contradict the statute's text and context, and put forth several absurdities in the process. Perhaps most incredibly, Plaintiffs simultaneously argue *in the same sentence*: (1) that the word "require" is too vague to be understood or interpreted by this Court; and (2) the word "requirement" has a firm and fast meaning that can be readily discerned. *See* Plaintiffs' Brief at 9. This arbitrary approach is difficult to take seriously.

As State Defendants explained in their opening brief, and as they have maintained for nearly four years now, H.B. 1775's various provisions have a straightforward and appropriately limited meaning and scope that is not difficult to understand, much less so vague as to be unconstitutional. The law is an obvious attempt to combat the promulgation of racist and sexist concepts in Oklahoma education, a topic that should not be controversial in a country where racism and sexism are prohibited in countless legal ways. Thus, this Court should accept the plain meanings offered by State Defendants and reject the absurd interpretations implausibly fronted by Plaintiffs, interpretations that fly directly in the face of common sense and basic understanding. Finally, this Court should also decline to endorse the University of Oklahoma's previously unbriefed argument that H.B. 1775's narrow requirement that certain non-classroom training and orientations be voluntary violates the Oklahoma Constitution.

BACKGROUND

State Defendants offer the following responses to Plaintiffs' "Summary of the Record."

1. For starters, in a brief where they accuse the Legislature of ambiguity and vagueness, Plaintiffs speak in highly ambiguous terms about what they are promoting. For example, they claim merely to be supporters of "racial justice," "culturally responsive curricula and programming," a "safer campus for minority students," "address[ing] the problems of racism and bigotry," and a "nationwide conversation about race." Pls.' Br. at 2, ¶¶ 1–2. But if that is so, then what could possibly be wrong with H.B. 1775? H.B. 1775, after all, merely prohibits teaching K-12 children things like "one race or sex is inherently superior to another race or sex." *Id.* at 3, ¶ 4 (quoting 70 O.S. § 24-157(B)(1)(a)). What do Plaintiffs want to teach that contradicts this?

Plaintiffs let the mask slip a bit when they decry an inability under H.B. 1775 to indoctrinate schoolkids about their "white privilege." *Id.* at 4, ¶ 5. What Plaintiffs apparently deem appropriate "culturally responsive curricula" that would "address the problems of racism and bigotry" look remarkably like, well, racism and bigotry. *See, e.g.*, State Defendants' Brief at 1–2 (discussing New York public school teaching that "all white people" perpetuate systemic racism). Plaintiffs seemingly wish to fight fire with fire, combatting racism and sexism with materials and concepts that are openly racist and sexist. *Contra Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 748 (2007) ("The way to stop discrimination on the basis of race is to stop discriminating on the basis of race."). And a basic anti-racism law like H.B. 1775 now stands firmly in their way.

2. Plaintiffs deem it meaningful that the concepts H.B. 1775 prohibits in K-12 education appeared in an executive order from the first Trump Administration. Pls.' Br. at 3, ¶ 2. This is true. On September 22, 2020, the prior Trump Administration issued an "Executive Order on Combating Race and Sex Stereotyping." Exec. Order, No. 13950, 85 Fed. Reg. 60683 (Sept. 28,

2020).[1] That EO declared it "the policy of the United States not to promote race or sex stereotyping or scapegoating in the Federal workforce or in the Uniformed Services, and not to allow grant funds to be used for these purposes." *Id.* at 60685. The EO identified nine "divisive concepts" to avoid, such as the belief that "one race or sex is inherently superior to another race or sex," or that "an individual, by virtue of his race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously." *Id.*

It is also true that this EO was enjoined in the final weeks of the first Trump Administration. *See Santa Cruz Lesbian & Gay Cmty. Ctr. v. Trump*, 508 F. Supp. 3d 521 (N.D. Cal. 2020). What Plaintiffs omit, however, is that the injunction was only *partial*; the district court preliminarily enjoined Sections 4 and 5 of the EO, which imposed restrictions on independent federal contractors and federal grantees. *Id.* at 550. The district court expressly *declined* to enjoin Sections 3 (the military) and 6 (government agencies), which covered the government's "own workforce." *Id.* at 546. Similarly, HB 1775 is simply clarifying the content of Oklahoma's own curriculum, which affects only the state's "own workforce." In any event, the *Santa Cruz* decision evaded appellate review because the EO was withdrawn by the Biden Administration within weeks of the district court's decision. Thus, even its partial injunction for independent contractors and federal grantees was never tested on appeal.

Moreover, just recently, the new Trump Administration issued an executive order entitled "Ending Radical Indoctrination in K-12 Schooling." Exec. Order No. 14,190, 90 Fed. Reg. 8853.[2] That EO criticizes attempts to compel schoolchildren "to adopt identities as either victims or oppressors solely based on their skin color and other immutable characteristics." *Id.* at 8853. These

---

[1] *Available at* https://www.federalregister.gov/documents/2020/09/28/2020-21534/combating-race-and-sex-stereotyping.

[2] *Available at* https://www.federalregister.gov/documents/2025/02/03/2025-02232/ending-radical-indoctrination-in-k-12-schooling.

practices "not only erode critical thinking but also sow division, confusion, and distrust." *Id.* In addition, they "violate[] longstanding anti-discrimination civil rights laws in many cases." *Id.* For example, "demanding acquiescence to 'White Privilege' or 'unconscious bias,' actually promotes racial discrimination." *Id.* The Executive Order then defines "[d]iscriminatory equity ideology" as including various "immoral generalizations" that are nearly identical to the various concepts forbidden by H.B. 1775. *Id.* at 8853–54. Provisions like those found in H.B. 1775, that is, are supported by the United States.

3. Plaintiffs also ignore that the concepts they wish to teach—like "white privilege"—risk violating civil rights laws. In *Diemert v. City of Seattle*, 689 F. Supp. 3d 956 (W.D. Wash. 2023), for example, a federal court held that an employee "stated a plausible claim for a hostile-work environment based on race" when, among other things, he was repeatedly told "he had white privilege and racist motives." *Id.* at 961, 963. Citing that case and others, the Tenth Circuit "endorse[d]" the "settled and sound principle" that while "merely discussing 'the influence of racism on our society does not necessarily violate federal law,'" when "'employers talk about race—any race—with a constant drumbeat of essentialist, deterministic, and negative language, they risk liability under federal law.'" *Young v. Colo. Dep't of Corr.*, 94 F.4th 1242, 1253 n.4 (10th Cir. 2024) (quoting *De Piero v. Pa. State Univ.*, 711 F.Supp. 3d 410, 424 (E.D. Pa. 2024)).

And in the educational context, of course, the U.S. Supreme Court recently held that the admissions processes used by Harvard and North Carolina violated the Equal Protection Clause because, among other things, they "unavoidably employ race in a negative manner" and "involve racial stereotyping." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 230 (2023). In so holding, the Court criticized "[m]any universities" who "for too long" have "done just the opposite" of treating students equally. *Id.* at 231. "[I]n doing so, they have concluded, wrongly, that the touchstone of an individual's identity is not challenges bested, skills built, or

lessons learned but the color of their skin." *Id.* Going forward, the Supreme Court held in no uncertain terms that "the student must be treated based on his or her experiences as an individual—not on the basis of race." *Id.* at 231. This language dovetails precisely with H.B. 1775's provisions. It is also holdings like this that render toothless Plaintiffs' complaint that the "Oklahoma Legislature passed the Act into law with the express intent to ban certain ideas and practices." Pls.' Br. at 8; *see also id.* at 11. Certain invidious ideas and practices *must* be prohibited, especially if they conflict with the Constitution's promises of equality.

4. Nevertheless, teachers, schools, and school districts across the country have embraced the type of racially charged curricula that Plaintiffs apparently prefer. *See, e.g.*, Jon Brown, *Superintendent Says Detroit Schools 'Deeply Using Critical Race Theory,'* FOX NEWS (Nov. 30, 2021);[3] Christopher Rufo, *Embracing Critical Theory, Teacher's Union Says They—Not The Parents—Control What Kids Learn*, NEW YORK POST (July 5, 2021).[4] Still other students and parents have become increasingly alarmed at racially charged teachings. The Attorneys General of Montana and Arkansas, in official opinions, have documented many examples of such teachings. *See* Doc. 61-1, Ark. Atty. Gen. Op. No. 2021-042 (Aug. 16, 2021); Doc. 61-2, Mon. Atty Gen. Vol. No. 58 Op. No. 1 (May 27, 2021). These include:

- One critical race theory textbook rejects the ideal of a "colorblind" society, as "[o]nly aggressive, color-conscious efforts" can address racism in America. Doc. 61-1 at 2.
- Utilizing "antiracist" curriculum, an Illinois school district segregated administrators and students in training programs, school "affinity groups," disciplinary policies, and a "Colorism Privilege Walk." Doc. 61-2 at 12–13.
- School districts and universities have proposed racially segregated housing, advisors, grading policies, and professional development and training. Doc. 61-2 at 13.

---

[3] *Available at* https://www.foxnews.com/us/superintendent-says-detroit-schools-deeply-using-critical-race-theory.

[4] *Available at* https://nypost.com/2021/07/05/embracing-critical-theory-teachers-union-says-they-control-what-kids-learn/.

- A North Carolina school district launched a campaign against "whiteness in educational spaces." Doc. 61-2 at 14.

- A public school in San Diego accused white teachers of being "colonizers" on stolen land, told them they are racists upholding racist ideas, structures, and policies, and recommended that they undergo "antiracist therapy." Doc. 61-2 at 15.

- A student in a Nevada charter school sued after he was allegedly given a failing grade because he refused to confess his privilege. Doc. 61-2 at 16. That course also "allegedly obligated students to label white, male, Christian, and heterosexual identities as inherently oppressive and privileged." *Id.*

After a review, the Montana Attorney General held that "[i]n many instances, the use of 'Critical Race Theory' and 'antiracism' programming discriminates on the basis of race, color, or national origin in violation of the Equal Protection Clause ..., Title VI of the Civil Rights Act of 1964," and various Montana laws. Doc. 61-2 at 1. Arkansas's Attorney General similarly held that "instituting practices based on critical race theory, professed 'antiracism,' or associated ideas can violate Title VI, the Equal Protection Clause, and ... the Arkansas Constitution." Doc. 61-1 at 1.

Oklahoma has not been immune from this trend. Plaintiffs' own witness in the district court admitted that OU students have complained when teachers deployed racialized concepts such as "white privilege." Doc. 27-4 at ¶ 15. Similarly, a long-time Oklahoma City schoolteacher and minister testified that he and his colleagues were told in a mandatory training that they must publicly confess their white privilege and racism. Doc. 61-3, Affidavit of James Taylor, ¶ 7. And a former Superintendent of Education testified that parents across the State are concerned about the increasing amount of racialized and sexualized teaching, and that they are scared to speak up for fear of retaliation. Doc. 61-4, Affidavit of Janet Barresi, ¶¶ 4–7. When Plaintiffs claim that "educators across the state have raised" concerns about H.B. 1775, they are not speaking for those teachers who believe it is "well written and straightforward." Doc. 61-6, Affidavit of Calvin Jones, ¶ 5; *see also id.*, ¶ 6 ("If you can't teach a history class without labeling kids in the narrow ways that

are barred by HB 1775, you're probably in the wrong profession.").[5] This testimony supporting H.B. 1775 is a part of the record.

HIGHER EDUCATION QUESTIONS AND RESPONSES

I. Does 70 O.S. § 24-157(A)(1) of the Oklahoma Statutes violate article XIII, section 8 of the Oklahoma Constitution? In other words, does the Oklahoma Legislature have the power to regulate the affairs of the University of Oklahoma, or other universities or colleges impacted by the Act, to the extent done in section 24-157(A)(1)?

A. This question asks for an advisory opinion.

State Defendants reiterate that this Court should decline to answer the initial question about the respective authority of the Legislature versus the University of Oklahoma as it relates to H.B. 1775. *See* State Defs.' Br. at 6–12. In sum, neither Plaintiffs nor OU Defendants have alleged or counter-claimed that the Act violates the State Constitution, and the issue was not briefed before the district court. OU Defendants admit as much. *See* OU Br. at 4 (stating that OU only argued before the district court that the "legislature is without authority to dictate curriculum to the University"). At most, the OU Defendants may have raised this issue in an oral argument two years after they filed their motion to dismiss. *See* Pls.' Br. at 13. Thus, in effect, the question asks for an advisory opinion on a thorny and important question regarding the legal power and control, or lack thereof, that the Legislature has over the State's flagship university. Such questions should not be answered unless squarely presented to the district court. This is especially so given that the question also asks about the Legislature's authority to regulate other universities or colleges

---

[5] Plaintiffs claim the Lieutenant Governor "has stated publicly that the Act lacks clarity." Pls.' Br. at 9. They do not quote him, however, presumably because his comments were more nuanced than what Plaintiffs convey. *See, e.g.*, Allison Herrera, *Oklahoma Lt. Gov. Matt Pinnell: HB 1775 Needs to be 'Clarified' as Spotlight Shines on State's History*, KOSU (June 20, 2023) https://www.kosu.org/race-culture/2023-06-20/oklahoma-lt-gov-matt-pinnell-hb-1775-needs-to-be-clarified-as-spotlight-shines-on-states-history ("That's why I say *if* we need to clarify that in the language, then it needs to be clarified so that teachers know what can be taught and not taught." (emphasis added)).

impacted by the Act. That aspect of the question is even more improper for certification, given the absence of various other universities, colleges, or boards, as parties.

Finally, again, although they differ on the merits of this question, State Defendants and OU Defendants agree that H.B. 1775 does *not* extend to classrooms. That is to say, the State's Attorney General, Governor, and Regents for Higher Education all agree with the Board of Regents of the University of Oklahoma that H.B. 1775, textually and contextually, only affects non-classroom training and orientations, and nothing more. *See infra* pp. 15–17. And if this Court agrees with *that* interpretation, then there is no reason to answer this first question given that the certifying court already found that Plaintiffs "lacked standing to challenge the first sentence of section 24-157(A)(1)" because Plaintiffs have no legally protected interest in whether university training is mandatory or voluntary. State Defs.' Br. at 12 (citations omitted).

B. Section 24-157(A)(1) is constitutional.

As State Defendants explained in their Brief in Chief, if this Court chooses to answer this question, it should hold that section 24-157(A)(1) does not contravene the Oklahoma Constitution by regulating mere training and orientations. Again, this Court has long emphasized that a "party seeking a statute's invalidation as unconstitutional has the burden to show the statute is clearly, palpably, and plainly inconsistent with the Constitution." *Lafalier*, 2010 OK 48, ¶ 15. Neither Plaintiffs nor OU Defendants have met that heavy burden here. Plaintiffs barely even try. They devote two meager paragraphs to the argument that making student orientations voluntary rather than mandatory violates the Oklahoma Constitution. *See* Pls.' Br. at 12–13. Moreover, in the paragraph where Plaintiffs argue that the University's exclusive authority extends to student orientations and training, *id.* at 13, Plaintiffs cite nothing other than the University counsel's comments at oral argument. This falls woefully short of the comprehensive case that is necessary.

Earlier, Plaintiffs reference a 2020 decision from the Court of Civil Appeals. *Id.* (citing

Franco v. State, 2020 OK CIV APP 64, 482 P.3d 1). But the *Franco* decision is not binding on this Court, it does not mention this Court's critical decision in *Baker*, and its fact pattern does not resemble the present case. *See Franco*, 2020 OK CIV APP 64, ¶ 2 ("This case concerns a purported contract between Dr. Franco and the University of Oklahoma's College of Medicine."). So, it is of little use here. To be sure, *Franco* relies on a 75-year-old case from the Western District of Oklahoma for the proposition that OU's Board of Regents is authorized to "pass all rules and regulations" that it "considers to be for the benefit of the health, welfare, morals and education of the students." *Id.*, ¶ 28 (quoting *Pyeatte v. Bd. of Regents of Univ. of Okla.*, 102 F. Supp. 407, 413 (W.D. Okla. 1951)). But the *Pyeatte* case was distinct from the present case, as well—something that *Baker* expressly observed. *See Bd. of Regents of Univ. of Okla. v. Baker*, 1981 OK 160, ¶ 6 n.2, 638 P.2d 464, 466. There, the plaintiff did "not challenge the authority of the University of Oklahoma to issue rules to govern admission to the University," but rather contended that "her liberty of contract" was violated by rules relating to dormitories. *Pyeatte*, 102 F. Supp. at 414. This is a starkly different scenario than H.B. 1775's focus on mandatory student orientations. And, as this Court held 30 years later in *Baker*, the University's "independence cannot be equated with complete immunity for legislative regulation." 1981 OK 160, ¶ 19. Indeed, *countless* state and federal laws relating to health, welfare, morals, and yes, even education, undeniably apply to students at OU. *See, e.g.*, Non-Discrimination, *Policies and Procedures,* OU INSTITUTIONAL EQUITY OFF. ("University policy prohibits retaliation against a person for filing a complaint of discrimination or harassment under this policy or other applicable federal, state, or local laws.").[6]

For their part, the University of Oklahoma Defendants now contend that H.B. 1775, if applied to OU, would intrude upon their exclusive authority to govern the University even if it

---

[6] *Available at* https://www.ou.edu/eoo/policies-and-procedures.

only covers orientations and training (and not classrooms). That said, their brief toggles inconsistently between arguing that H.B. 1775 even narrowly construed "appears to intrude upon the Regents' authority to govern the University," OU Br. at 1, and admitting that "[t]o stay *consistent with* the Constitution, the statute should be construed to mean nothing more than a college or university may not 'require' or make mandatory any orientations that advance a racial bias." *Id.* at 17 (emphasis added). It is a bit challenging to square these positions, much as it is difficult to square OU's position now with its position before the district court.

In any event, the University's primary argument for impropriety of legislation reaching orientations and training is that "the Board of Regents **IS** the **GOVERNMENT** of the University of Oklahoma," and that "[t]his necessarily includes the authority to determine what orientations" [and] training" can occur. OU Br. at 17 (emphases in original). This of course traces to the Constitution's statement that "[t]he government of the University of Oklahoma shall be vested in a Board of Regents." OKLA. CONST. art. XIII, § 8. But OU's argument still relies mostly on *Baker*, and *Baker* made clear that "government" in this context does not mean that OU's "independence" can "be equated with complete immunity for legislative regulation." *Baker*, 1981 OK 160, ¶ 19. To the extent that OU "governs," that is, it is still subservient to many local, state, and federal laws. In this context, that is, the OU "government" is not the "sovereign power in a country or state," but rather just the "structure of principles and rules determining how" the OU "organization is regulated." OU Br. at 10 (quoting BLACK'S LAW DICTIONARY (12th ed. 2024)). And denoting the non-sovereign Regents as the "Government of the University" does not automatically exclude actual *sovereign* governments from utilizing police powers in ways affecting OU.

Nothing in the OU Defendants' generic historical account, OU Br. at 5–7, dictates otherwise. No one denies that the OU Board of Regents was placed in the Constitution in 1944 as the "government of the University of Oklahoma." *Id.* at 6. Nor is there any apparent reason to

deny that in the years prior to 1944 "[p]olitics played a major role in the University's operations." *Id.* at 5. That said, the insinuation that constitutionalizing the Board of Regents "separat[ed]" OU from political influence, *id.*, is questionable. Regardless, OU makes no accusation that H.B. 1775 is political, as opposed to a genuine effort to protect students.

OU Defendants skip straight from 1944 to *Baker* in 1981, where this Court emphasized that it had "no doubt that in elevating the status of the Board from a statutory to a constitutional entity the people intended to limit legislative control over University affairs." *Id.* at 6 (quoting *Baker*, 1981 OK 160, ¶ 8). But this Court said *limit*, not eliminate. Thus, even under *Baker*, neither the Legislature nor the People are entirely powerless when it comes to regulating universities. *See, e.g.*, Ruth Ann Dreyer, *Okla. State Regents for Higher Education*, ENCYCLOPEDIA OF OKLA. HISTORY AND CULTURE ("[A]s a result of their constitutional status, the state regents and the state system enjoy *some* insulation from fierce Oklahoma politics." (emphasis added)).

Rather than carve out a massive zone of exclusivity for OU, this Court expressly deemed *Baker* to be a "narrow" decision. *Baker*, 1981 OK 160, ¶ 5. *Baker* dealt solely with whether OU's Regents had the "exclusive authority … to determine faculty salary increases," *id.*, and this Court found it "unnecessary … to fully examine here the nature and extent of legislative regulation applicable to the Board," *id.* ¶ 19. Unsurprisingly, then, the cases from Montana, Nebraska, and California that *Baker* relied on all dealt with the salaries and wages of university employees, *id.* ¶¶ 9–18, and thus they have the same limited applicability as *Baker* here.

Put differently, a ruling for OU Defendants on this point would be a significant *extension* of *Baker* to a different context and fact pattern. OU claims "[t]his matter could not be clearer," OU Br. at 12, but they do not cite to any authority directly on point—whereas in *Baker* this Court could deem the salary matter "clear[]," 1981 OK 160, ¶ 19, thanks largely to the existence of wage and salary case law from other states. Again, laws must be clearly, palpably, and plainly inconsistent

with the Oklahoma Constitution for them to be deemed invalid, and the grounding for the clarity found in *Baker* simply does not exist for a law (H.B. 1775) that merely says that student orientations on subjects fraught with moral and legal risk must be done voluntarily.

The additional authorities OU Defendants cite (such as *Franco* and *Pyeatte*, discussed above) are not on point. OU Defendants cite this Court's order in *State v. Oklahoma Merit Protection Commission*, 2001 OK 17, 19 P.3d 865, but that order concerned a university's relationship with an employee, and it did not reference *Baker*. OU Defendants also cite an Attorney General Opinion from 1996, but they admit that opinion discussed only whether a legislative "hiring freeze" could be applied to a constitutionally created board—a topic very similar to *Baker*. OU Br. at 9 (citing 1995 OK AG 12). Leaving the State, OU Defendants cite two cases from Michigan that are over 100 years old, but only for generic authority propositions that, as *Baker* later explained, must be limited. *See id.* at 10. Similarly, they cite a nearly 100-year-old case from Minnesota, but the Minnesota court's extremely broad holding cannot possibly apply here considering *Baker*. *See State v. Chase*, 220 N.W. 951, 957 (Minn. 1928) ("The whole power to govern the University, we repeat, was put in the regents by the people. So no part of it can be put elsewhere ...."). In passing, OU Defendants point to a more recent decision from the Montana Supreme Court holding that its legislature could not regulate guns on campus. OU Br. at 7–8 n.5 (citing *Bd. of Regents of Higher Educ. v. State*, 512 P.3d 748 (Mont. 2022)). But guns are a different topic than mere student training and orientation. Moreover, that decision is *highly* questionable; logically applied, it would seemingly mean a university could allow, say, machineguns on campus, even if they violated state law.

OU Defendants also cite a 1909 decision from this Court. OU Br. at 8 (citing *Trapp v. Cook Constr. Co.*, 1909 OK 259, 105 P.667). But *Trapp*, by OU Defendants' own admission, involved the "oversight and construction of [campus] facilities," *id.*, a topic much more akin to salaries than student orientations and training. Regardless, *Trapp* predates *Baker* by 70 years. And a prior

Attorney General—in an A.G. Opinion cited by OU Defendants, OU Br. at 11–12—observed that the "*Trapp* rationale" was "greatly limited in scope" by this Court in *Baker*. 1987 OK AG 7, ¶ 9. Thus, OU Defendants' own citations reveal that the longstanding opinion of the Attorney General's Office is that *Baker* "greatly *limited*" independent university authority. That same A.G. Opinion also observed that, per *Trapp*, the exclusive powers of a state office (like the Regents) created without specificity as to the content of those powers "are those [powers and authority] which are attached to the office at the time of the adoption of the constitutional provision." *Id.* at ¶ 7. But no specific historical evidence has been put forth here.

To their credit, OU Defendants acknowledge that this prior A.G. Opinion attempted "to outline the legislative acts which may be permissible." OU Br. at 11. But they do not negate the conclusion that the Legislature's effort here falls on the side of permissibility. H.B. 1775 is a "general police power regulation[] governing private persons"—students—in Oklahoma universities (not just OU). *Id.* And restrictions on the mandatory promulgation of racism and sexism protect the public health and welfare. *Id.* n.6. Similarly, racism and sexism in higher education are "matters of statewide concern," such that regulating them in the context of protecting students does not intrude into purely "internal university affairs" like salaries. *Id.* at 12. Respectfully, OU Defendants' insistence that the "matter could not be clearer" in their favor is mistaken, and they provide little to support their position. *Id.* Indeed, it is telling that OU Defendants are forced to claim "classroom requirements, curricula, [and] research" are threatened, *id.*, even though they elsewhere correctly assert that H.B. 1775 does not reach classrooms or curriculum, *id.* at 15. Moreover, their assertion that the "Regents have sole discretion to determine what may or may not be taught, researched, or *spoken about* on campus" is ominously broad, *id.* at 12 (emphasis added), and itself clearly in conflict with state and federal free speech law.

Finally, this Court should also be wary of extending *Baker* because, as narrow as it was,

Baker rested on shaky constitutional footing. There, no express constitutional language stripped the Legislature of the power to legislate university salaries. Nevertheless, this Court held that "[l]imitations on legislative authority may be implied," as "[e]very positive delegation of power by the Constitution to one officer or department of government implies a negation of its exercise by any other officer or department." 1981 OK 160, ¶ 7. But this reasoning runs headlong into Article V, section 36 of our Constitution, which provides that "[t]he authority of the Legislature shall extend to all rightful subjects of legislation, and any specific grant of authority in this Constitution, *upon any subject whatsoever*, shall *not* work a restriction, limitation, or exclusion of such authority upon the same or any other subject or subjects whatsoever." (emphases added). This is in direct tension with the idea that the Legislature is de-powered by implication; indeed, *Baker* even acknowledged that "[t]his section was incorporated in the constitution *to preclude the idea of the exclusion of power by implication.*" 1981 OK 160, ¶ 7 n.3 (emphasis added).

But *Baker* buried this important constitutional provision in a footnote, dismissing it solely by claiming—without a single citation—that "[t]he implied limitations with which Article V, [§] 36, is concerned are those which might otherwise arise from grants of power to the Legislature, not those arising from grants of power to other constitutional entities." *Id.* This invented limitation makes little sense, nor can it be found in the actual text of Article V, section 36. Nor has that sentence ever again been cited by this Court, after *Baker*, as far as State Defendants can tell. And any notion that the University is completely independent even in its "integral" and "internal university affairs," 1981 OK 160, ¶¶ 17, 19, is obviously wrong. Surely *Baker* does not exempt OU, for example, from important state anti-discrimination laws, such that the University could fire or hire professors based on race or sex. *See, e.g.*, 25 O.S. § 1101(A) ("This act provides for exclusive remedies within the state of the policies for individuals alleging discrimination in employment on the basis of race, color, national origin, sex, religion, creed, age, disability or genetic information.").

But why, then, would the Legislature be prevented from protecting students from racism and sexism, as well?

To be clear, State Defendants are not asking for *Baker* to be overruled. Rather, they are simply observing that a decision that, without citation or textual support, significantly narrowed an important constitutional provision protecting legislative power should not be *extended* to new territory without compelling reasons. And those reasons are not present here. Moreover, it cannot be forgotten that it is more than the Legislature that is at issue. In Oklahoma, after all, "[t]he first power reserved by the people is the initiative, and eight per centum of the legal voters shall have the right to propose any legislative measure." OKLA. CONST. art. V, § 2. "The right of the initiative is precious, and it is one which this Court is zealous to preserve to the fullest measure of the spirit and the letter of the law." *In re Initiative Petition No. 382 State Question No. 729*, 2006 OK 45, ¶ 3, 142 P.3d 400, 403. Any ruling that the Legislature cannot act also means the People cannot legislate.

II. As it relates to section 24-157(A)(1)'s prohibition of "[a]ny orientation or requirement that presents any form of race or sex stereotyping or a bias on the basis of race or sex," what is the meaning of the term "requirement?"

For numerous reasons, the inclusion of the word "requirement" does not transform this provision targeting mandatory *orientation* activities into a sweeping regulation of curriculum and classwork. *See* State Defs.' Br. at 15–20. Again, OU Defendants agree with State Defendants on this point. *See* OU Br. at 15 ("[A] fair reading of the particular terms of the statute demonstrate that those terms do not apply to any university or college curriculum, research, or academic freedoms ...."). Despite agreement from the Attorney General, Governor, OU Regents, and State Regents on this point, and a nearly four-year period in which university classrooms were not regulated under H.B. 1775, the district court strangely concluded that "requirement" nevertheless "applies to and restricts curricular speech." Doc. 172 at 14. This interpretation is wrong.

Plaintiffs offer, roughly speaking, three points of support for the district court's wayward

view. *First*, they claim that the State's uniform interpretation "defies the context of the text itself." Pls.' Br. at 14. But tellingly, Plaintiffs do not focus on the context *of the text*. Instead, they cherry-pick the broadest dictionary definitions they can find, generically refer to the "context of higher education," and move on. *Id.* State Defendants, on the other hand, painstakingly walked through the actual *textual* context. State Defs.' Br. at 15–20. We explained how the second sentence with "requirement" must be read in conjunction with the more limited first sentence in that subsection. *See id.* ("These two sentences work together to accomplish the same objective ...."). We contrasted this subsection with the K-12 subsection, which expressly deploys classroom words like "teacher" and "course," to show that the Legislature knows how to regulate a classroom and chose not to. *Id.* And we pointed out that the same dichotomy between K-12 (classroom language) and higher education (no classroom language) can be found in the H.B. 1775 title, which is a recognized source of interpretative context. *Id.* We then pointed out that, contextually, when the Legislature wanted to regulate classrooms, it did so specifically, with express concepts. Given the absence of specificity in the "requirement" subsection, it stands to reason something different is going on. Finally, we pointed out that the *ejusdem generis* canon of construction applies here and uses the textual context to limit the meaning of "requirement" to the more limited words around it. *Id.*

Plaintiffs do not acknowledge this overwhelming textual context, much less interact with it. Instead, again, they rely on the "context of higher education" where there are, loosely speaking, "requirements" both in and outside of classrooms. Pls.' Br. at 14. But State Defendants showed how even that context favors the State, as well, in that the Legislature should not be presumed to have stepped into a place where free speech protections are undeniably much stronger.

Second, Plaintiffs argue that State Defendants' position renders the word "requirement" mere "surplusage." Pls. Br. at 15. This is not true. As State Defendants already explained, this sentence uses both "orientation" *and* "requirement" as a manner of making sure that there are not

any loopholes left behind with the first sentence's use of the words "training" or "counseling." In short, H.B. 1775 ensures that a university could not merely rename a mandatory orientation activity as a first-year requirement or something similar and try to escape H.B. 1775's limitation by linguistic shenanigans. Plaintiffs have never confronted this argument.

Third, Plaintiffs assert that the "presence of the disjunctive between the words ('orientation *or* requirement') makes justifying the same meaning even harder." Pls Br. at 15. But this is just a variation of their previous (and mistaken) argument claiming that the State's reading treats the two words as "synonymous." *Id.* H.B. 1775 does no such thing. And even if it did, even Plaintiffs admit that there are exceptions to this canon when "the context dictates otherwise." *Id.* (quoting *Toch v. City of Tulsa*, 2020 OK 81, ¶ 25, 474 P.3d 859). Here, the context militates against Plaintiffs.

III. As it relates to section 24-157(A)(1)'s prohibition of "[a]ny orientation or requirement that presents any form of race or sex stereotyping or a bias on the basis of race or sex," what does it mean to "present[]" race or sex stereotyping or a bias on the basis of race or sex?

As established above, section 24-157(A) applies exclusively to prohibiting certain forms of training and orientation sessions focused on gender or sexual diversity training or racial bias. Because this provision only applies to mandatory orientation-like requirements, it does not affect classroom instruction. Thus, Plaintiffs' concern about whether professors can lawfully "describe discriminatory beliefs" is obviously misplaced. Pls.' Br. at 16. They can.

Regardless, Plaintiffs' interpretation of "presents" as forbidding even the *description* of discriminatory beliefs stretches too far. *First*, the only evidence Plaintiffs provide for this claim is the statement that "present" can be defined as bringing something "into the presence of" someone else. *Id.* But that is not the only way to interpret "present." State Defendants have provided numerous instances when "presents" was used in the context of arguing *in favor of* a position. State Defs.' Br. at 21–22. This comports with the dictionary definition "to lay (something, such as a

charge) before a court as an object of inquiry." *Present*, Merriam-Webster.[7] *Second*, the entire Act prohibits the teaching of racist and sexist concepts, as well as mandatory orientations. *See In re Estate of Little Bear*, 1995 OK 134, ¶ 22, 909 P.2d 42, 50 ("Words used in a part of the statute must be interpreted in light of their context and understood in a sense that harmonizes with all other parts of the statute."). Under Plaintiffs' theory, the Legislature chose to ban the *refutation* of racist stereotypes in an Act designed to prohibit racist teaching. That makes no sense, and Plaintiffs have provided no reason for why the Legislature would ban—with punishment—the refutation of concepts it desires to prohibit. Accordingly, "present" in this Act means to promote or argue in favor of race or sex stereotyping or a bias on the basis of race or sex.

K-12 QUESTIONS AND RESPONSES

The purpose of statutory interpretation "is to ascertain and give effect to legislative intent." *Humphries v. Lewis*, 2003 OK 12, ¶ 7, 67 P.3d 333, 335. When the statutory text is plain, interpretation is straightforward. The court will apply the "meaning expressed by the language used." *Brown v. Claims Mgmt. Res. Inc.*, 2017 OK 13, ¶ 20, 391 P.3d 111, 118 (citation omitted). Ambiguous language, however, is more of a challenge. When faced with ambiguity, this Court will use the "well-known canons for statutory construction." *Stricken v. Multiple Injury Tr. Fund*, 2024 OK 1, ¶ 15, 542 P.3d 858, 866. This includes considering the disputed language within the context of the Act as a whole, the ordinary rules of grammar, the context surrounding enactment, and the Act's overall purpose. *Id.* The common thread underlying these disparate canons is the principle that they are to be used "to give effect to the intent of the legislature." *Id.* To give effect to the intent of the Legislature, this Court has emphasized that it must give statutory language "a reasonable and sensible construction, one that will avoid absurd consequences, if this can be done

[7] *Available at* https://www.merriam-webster.com/dictionary/present.

without violating legislative intent." *State ex rel. Dep't of Pub. Safety*, 1995 OK 75, ¶ 7, 898 P.2d 1280, 1282. Indeed, this Court has held that "[i]t is the duty of the court to so construe a statute as to give it a sensible effect." *Dowell v. Bd. of Educ. of Okla. City*, 1939 OK 268, ¶ 10, 91 P.2d 771, 774.

This Court has been asked to interpret provisions of H.B. 1775 pertaining to K-12 schools. State Defendants have offered an interpretation of these provisions that comports with the plain text, the Act as a whole, and the legislative intent. Plaintiffs, however, are not arguing that these provisions mean one thing and not another. Instead, they argue that these provisions have no meaning. Pls.' Br. at 28. They posit that the Legislature enacted a law on an important topic with no discernible meaning whatsoever. Not only is this position wrong based on the plain text of the Act, but it also contradicts this Court's precedent governing interpretation. *See Okla. Pub. Emps. Ass'n v. State ex rel. Off. of Pers. Mgmt.*, 2011 OK 68, ¶ 11, 267 P.3d 838, 844 ("The Court presumes that the Legislature . . . does not perform vain and useless acts in carrying out its legislative drafting responsibilities."). As this Court has held, statutes should be given meaning "if any reasonable and practical construction can be given to its language." *Dowell*, 1939 OK 268, ¶ 10.[8] Here, the Act can be and should be interpreted in a way that gives effect to the Legislature's intent.

IV. As it relates to title 70, section 24-157(B)(1) of the Oklahoma Statutes' directive that "[n]o teacher, administrator or other employee of a school district, charter school or virtual charter school shall require or make part of a course the following concepts: ... ," what does it mean to "require" an identified "concept[]?"

Read in the context of the rest of the statute, "require" means to teach the prohibited concepts as true. Thus, the Act prohibits school personnel from teaching the concepts as true or

---

[8] *See also, e.g., Blyth & Co. v. City of Portland*, 282 P.2d 363, 366 (Ore. 1955) ("[C]ourts do not cast aside language of a law as meaningless if it is reasonably possible to give it effect. It must be presumed that the legislative body had a purpose in mind in all the language it used, and it is the duty of courts to endeavor to ascertain that purpose."); *State Bd. of Tech. Registration v. McDaniel*, 326 P.2d 348, 354 (Ariz. 1958) ([A] statute is not invalid merely because it is difficult to interpret."); *State v. Alangcas*, 345 P.3d 181, 191 (Haw. 2015), *as corrected* (Feb. 20, 2015) (similar); *State v. Doe*, 92 P.3d 521, 523 (Idaho 2004) (similar); *Howarth v. Gilman*, 73 A.2d 655, 657 (Pa. 1950) (similar).

endorsing them. It does not prohibit schools from merely mentioning or refuting those concepts. This interpretation is consistent with the definition of "require," the Act's text as a whole, the intent of the Act, and common sense. Plaintiffs' arguments to the contrary are unavailing.

Previously, Plaintiffs argued that "[t]he plain letter of the law prohibits any mention of the banned concepts, not merely the affirmative promotion of racist ideas." Doc. 27 at 18. Now, Plaintiffs concede that this interpretation is nonsensical. *See* Pls.' Br. at 19 (an interpretation of "require" that prohibited discussing racism and sexism "would be an absurd overreach, and neither Plaintiffs nor any Defendants argue that such a broad interpretation was the legislature's intent"). Thus, Plaintiffs have repudiated the interpretation that "require" means that teachers are prohibited from merely mentioning the prohibited concepts or teaching that people in history believed them. Because Plaintiffs have not advocated for this broad interpretation, this Court has been presented with two options: (1) that "require" in this provision means "to call for as suitable or appropriate"[9]—*i.e.*, to teach as true or good, or (2) that "require" in this provision has no discernible meaning. Obviously, the Legislature did not intend to enact a law without meaning. Only the first option is consistent with the text of the statute, the goals of the statute, and this Court's duty "to ascertain and give effect to legislative intent." *Humphries*, 2003 OK 12, ¶ 7.

In their effort to deny the Act meaning, Plaintiffs ignore the provision addressing the Oklahoma Academic Standards. Pls.' Br. at 17–27. But the Legislature thought that provision was important enough to place at the beginning of the subsection addressing K-12 education. The Legislature explained that "[t]he provisions of this subsection shall not prohibit the teaching of concepts that align to the Oklahoma Academic Standards." 70 O.S. § 24-157(B). Before even mentioning the eight concepts, the Legislature made unambiguously clear that what followed

---

[9] *Require*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/require.

would not prohibit teaching concepts and subjects that are part of or aligned with the Oklahoma Academic Standards. These standards outline *in copious detail* the topics and themes that each K-12 student should know and understand at the end of each grade level.

Most relevant here, these standards touch on many topics dealing with race or other fraught social topics. For instance, the eighth-grade standards dictate that "[s]tudents will analyze, interpret, and evaluate increasingly complex literary and informational texts that include a wide range of historical, cultural, ethnic, and global perspectives from a variety of genres." Okla. Admin. Code 210:15-3-28(k)(1). This standard—and others like it—call for Oklahoma students to read voices from a diverse array of perspectives and backgrounds. The standards for social studies, similarly, call for an unflinching examination of United States history. In fifth grade, students are required to learn about "the forced migration of Africans through the Transatlantic slave trade" and the experience of enslaved Africans. *Id.* 210:15-3-105.5(b)(3), (8). In junior high, the standards require students to learn about the rise of the Ku Klux Klan and its appalling acts of intimidation and violence. *Id.* 210:15-3-105.8(l)(3)(B). High school students are taught—among other things—the internment of Americans of Japanese descent, the Holocaust, and Jim Crow laws. *Id.* 210:15-3-110. Students also learn about the Civil Rights Movement, women's suffrage, and D-Day. *Id.*

The Oklahoma History course follows the same pattern. Students are taught about oil booms, the development of Black Wall Street, and the successful integration of the public education system, but they are also required to learn about the Tulsa Race Massacre and the forced removal of the American Indian nations. *Id.* 210:15-3-107. The course, however, is not restricted to the past. Students are expected to "[e]xamine ongoing issues including immigration, criminal justice reform, employment, environmental issues, race relations, civic engagement, and education." *Id.* 210:15-3-107(f)(9). In sum, the Oklahoma Academic Standards not only permit teachers to teach about racism and expose students to diverse perspectives, they *require* teachers to do so.

Before listing the prohibited concepts, the Legislature unequivocally expressed its intent that prohibiting the eight specified concepts does not affect the teaching of the Academic Standards. The standards—and the concepts embodied within—provide the lens for interpreting the Act. By disregarding the Academic Standards, Plaintiffs have ignored the express intent of the Legislature and violated this Court's dictate that the words of a statute must be interpreted with "due regard" for the statute as a whole. *State v. Robertson*, 2006 OK 99, ¶ 7, 152 P.3d 875, 878.

With the Oklahoma Academic Standards in mind, State Defendants' interpretation is undeniably correct. The contested provision reads that "[n]o teacher, administrator or other employee of a school district, charter school or virtual charter school shall require or make part of a course the following concepts[.]" 70 O.S. § 24-157(B)(1). This question centers on what it means to "require" a prohibited concept. As an example, consider the first prohibited concept: what does it mean for a teacher to "require" the concept that "one race or sex is inherently superior to another race or sex." *Id.* § 24-157(B)(1)(a). While they concede that the following interpretation is not the Legislature's intent, Plaintiffs suggest that this prohibition "could be read" as prohibiting "any history textbook that explained the history of racism and sexism." Pls.' Br. at 19. But such an interpretation is squarely foreclosed both by common sense and by the Legislature's admonishment that the Act should not be read as forbidding the Oklahoma Academic Standards—which include numerous topics explicitly addressing racism and sexism. The only plausible way to read this prohibition consistent with legislative intent, then, is to interpret "require" to mean teaching *as true* or *endorsing*. After all, the Academic Standards call for teaching about Jim Crow, slavery, and the Ku Klux Klan. Those lessons will all necessarily discuss racism and past views that one race was superior to others. Therefore, we know that the Legislature did not intend this particular provision to prohibit all mentions of racism. If teachers are allowed to discuss racism, and teach about historic racist views, to "require" this racist concept must simply mean to teach

the concept as true. Of course, consistent with this interpretation, nothing in the Academic Standards calls for school personnel to teach that one race is superior to another race.

Instead of considering the Legislature's caution that the Act must be interpreted consistently with the Oklahoma Academic Standards, Plaintiffs have selected choice broad dictionary definitions of "require," the word "or," and the district court's definition of "make part of a course," and cobbled those definitions together to argue that there is no understandable meaning. Pls.' Br. at 18–20. This is not how texts are interpreted. Words and phrases in a statute must be interpreted in the context of the entire Act. *Robertson*, 2006 OK 99, ¶ 7. A faithful reader does not interpret a word or phrase by pulling the broadest of several definitions and importing that definition into a statute regardless of the context. Courts, that is, "should avoid slicing a single word from a sentence, mounting it on a definitional slide, and putting it under a microscope in an attempt to discern the meaning of an entire statutory provision." *Wachovia Bank, N.A. v. United States*, 455 F.3d 1261, 1267 (11th Cir. 2006). "[T]he cardinal rule [is] that a statute is to be read as a whole . . . since the meaning of statutory language, plain or not, depends on context." *King v. St. Vincent's Hospital*, 502 U.S. 215, 221 (1991) (citations omitted). Put differently, "the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes." *Helvering v. Gregory*, 69 F.2d 809, 810–811 (2nd Cir. 1934) (Learned Hand, J.).

In any event, dictionary definitions support State Defendants' interpretation of "require." As mentioned in State Defendants' opening brief, "require" is defined as "to call for as suitable or appropriate" or alternatively "to demand as necessary or essential: have a compelling need for." *Require*, Merriam-Webster.[10] Other definitions include "to impose need or occasion for; make necessary or indispensable." *Require*, Dictionary.com.[11] These definitions are consistent with an

---

[10] *Available at* https://www.merriam-webster.com/dictionary/require.
[11] *Available at* https://www.dictionary.com/browse/require.

interpretation that "require" means to teach as true. Even the dictionaries cited by Plaintiffs contain definitions that are consistent with this interpretation such as "to order someone to do something" or "to make it officially necessary for someone to do something." *Require*, Cambridge Dictionary.[12] Plaintiffs argue that these definitions are confusing because "K-12 education is compulsory in Oklahoma." Pls.' Br. at 18. K-12 education might be compulsory, but not all concepts are "call[ed] for as suitable or appropriate" in Oklahoma schools. *Require*, Merriam-Webster.[13] The Act merely forbids teaching that the eight specified concepts are appropriate or true. And, again, any alleged confusion over which definitions are applicable to "require" in this provision are negated by the emphasis that the Act does not affect the Academic Standards.

Plaintiffs next argue that "require" has no discernible meaning because it is connected to "make part of a course" by the conjunction "or." Pls.' Br. at 19–20. Plaintiffs allege that if to "make part of a course" means "directly endorsing, promoting, or inculcating any concept as a normative value," then "require" cannot have a discernible meaning separate from "make part of a course." *Id.* at 20–21. Not so. State Defendants agree with the district court that "make part of a course" read in conjunction with the eight concepts forbids school personnel from directly endorsing, promoting, or inculcating any concept as a normative value. Indeed, that is the entire point of the statute. As State Defendants see it, "require" and "make part of a course" are similar and often overlapping terms, but they are not necessarily identical. Both terms are designed to prohibit school personnel from endorsing the concepts, to be sure. That said, while many violations of the Act could fall under both "requir[ing]" a prohibited concept and "mak[ing] part of a course" a prohibited concept, some violations would fall under one and not the other.

Consider this hypothetical: A teacher finishes a lesson, turns to her class, and says "none

---

[12] *Available at* https://dictionary.cambridge.org/us/dictionary/english/require.
[13] *Available at* https://www.merriam-webster.com/dictionary/require.

of what I am about to say will be on the test. There is no need to take any notes. This is my personal opinion only." The teacher then spends five minutes arguing that the Ku Klux Klan was right that the white race is superior to all others and indicates that she wants her students to feel the same way. In this example, the teacher undoubtedly is "calling for as appropriate" or "requiring" the forbidden concept that "one race or sex is inherently superior to another race or sex." 70 O.S. § 24-157(B)(1)(a). However, through the attempted disclaimer, the teacher has consciously not made the concept part of the course in an official sense. Students will not be tested on it and have no need to learn it, apparently. Thus, the teacher would have (to any sane and infuriated parent) "required" the concept without making it part of the course.

Now, consider a hypothetical where a teacher allows students to choose among several topics to write a short research paper. Within each topic, the teacher has curated a list of reading materials that will consist of the research for the paper. One topic covers meritocracy. If a student chooses to write a paper on this topic, the teacher has provided a list of readings that only argue that the concepts of meritocracy and hard work are racist creations of white culture invented to oppress minorities. This scenario implicates the prohibited concept 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." 70 O.S. § 24-157(B)(1)(h). However, the teacher would not have truly required the concept. After all, the student is free to select a different topic, and the teacher has not directly taught the prohibited concept as true. But this topic with its curated list of readings would still violate the statute because the teacher has made it part of the course.[14]

Plaintiffs pit "require" and "make part of a course" against each other, assuming that

---

[14] To be clear, the violation in this example stems from the teacher ensuring that the student would only receive the viewpoint against meritocracy. If a teacher were to assign students to write a paper on contemporary societal issues, and a student chose to write a paper arguing in favor of the KKK or ISIS, that may be troubling, but the teacher would not have violated the Act.

"require" must be either broader or narrower than "make part of a course." Pls.' Br. at 20–21. As can be seen through the above examples, however, the terms can mean slightly different things. Neither term is surplusage. Instead, they work together to prohibit teachers from endorsing the prohibited concepts. By including both terms, the Legislature has closed potential loopholes.

Accordingly, the structure of the Act, dictionary definitions, and common sense dictate that "require" in this Act means to teach as true or otherwise call for as appropriate and good.

V. As it relates to section 24-157(B)(1)(c), what does it mean to "make part of a course the ... concept[]: ... an individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex?"

Plaintiffs devote little space in support of their position that prohibiting teachers from endorsing the concept that "an individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex" has no discernible meaning. *See* Pls.' Br. at 22. On this provision, Plaintiffs' entire argument appears to rest on the statement that the word "treat" is impossibly ambiguous. *Id.* One problem with this argument is that the word "treat" does not appear in this provision. *See* 70 O.S. § 24-157(B)(1)(c). Instead, the provision refers to "adverse treatment." *Id.* While the word "treatment" is not defined in the Act, it is not a particularly confusing word. As laid out in State Defendants' opening brief, this provision simply prohibits teaching that there are individuals that should have their interests harmed or be treated worse than others because of their race or sex. State Defs.' Br. at 25–26.

Per Plaintiffs, though, "treat" or "treatment" is troublesome because it could prohibit subjects that are currently being debated at a societal level such as whether it is permissible to discriminate against certain races in college admissions. Pls.' Br. at 22. This is not an argument about vagueness or meaning. It is an argument that the statute prohibits things Plaintiffs prefer or support, such as affirmative action. While it is true that people have argued that Asian applicants should be discriminated against because of their race in college admissions to benefit other

minorities,[15] that fact does not make a statutory prohibition on teachers endorsing that racially fraught idea vague or unclear. This is especially so after *Students for Fair Admissions*. *See* 600 U.S. at 231 ("the student must be treated based on his or her experiences as an individual—not on the basis of race"). Accordingly, this provision has a clear and discernable meaning.

VI. As it relates to section 24-157(B)(1)(d), what does it mean to "make part of a course the ... concept[]: ... members of one race or sex cannot and should not attempt to treat others without respect to race or sex?"

Plaintiffs' primary argument against this provision's lucidity stems from the so-called "triple negative." Pls.' Br. at 22–23. A double negative is confusing, according to Plaintiffs, which means a triple negative must be even more confusing. But the concept itself does not really contain three negatives. Rather, the concept is that "members of one race or sex cannot and should not attempt to treat others without respect to race or sex." 70 O.S. § 24-157(B)(1)(d). Plaintiffs have reached three negatives by including the prohibition on teaching the concept as a listed negative. Pls' Br. at 22–23. Such semantic games do not make the provision unconstitutionally vague.

Breaking the concept into two parts helps demonstrate its clarity. Start with "members of one race or sex cannot and should not." 70 O.S. § 24-157(B)(1)(d). This is easy. It clearly means that individual members of one race or sex are not able to (cannot) and possess an obligation to not (should not) do whatever follows the phrase. And what follows is the phrase "to treat others without respect to race or sex." The word "treat" is defined as "to regard and deal with in a specified manner" or "to bear oneself toward." *Treat*, Merriam-Webster.[16] Thus, this phrase means to regard or act towards someone in a manner that does not take race or sex into account. Putting these halves together, a teacher may not convey to a student: (1) that they should believe that

---

[15] *See, e.g.*, Jonathan Chait, *I Support Affirmative Action, but Stop Denying it Discriminates Against Asians*, N.Y. MAG. (Feb. 8, 2022), https://nymag.com/intelligencer/2022/02/the-left-is-gaslighting-asian-americans-on-school-admissions.html.

[16] *Available at* https://www.merriam-webster.com/dictionary/treat.

individuals are unable to treat other persons without regard for race or sex, or (2) that individuals *should* treat others based on race or sex. This is a bit more complex than the other concepts, to be sure, but it not particularly challenging to understand that the Legislature is prohibiting teachers from indoctrinating their students against the ideal of colorblindness.

Plaintiffs' assertion that this interpretation requires rewriting the provision, Pls.' Br. at 23, is unavailing. Using other words to explain what the concept means is not rewriting the phrase. It is just how explaining works. (In ordinary conversation, if someone asked a friend what a phrase meant, that person would expect the friend to use different words in doing so.) Plaintiffs' complaint that the Legislature might have been able to use clearer language to describe the concept is meritless. Even if the Legislature could have been clearer, that does not mean that the provision lacks meaning. Courts have consistently held that "a statute is not ambiguous simply because it is inartfully drafted." *In re Rogers*, 513 F.3d 212, 226 (5th Cir. 2008); *see also State v. Williams*, 728 N.E.2d 342, 361 (Ohio 2000) (similar). A statute might be "awkward, and even ungrammatical; but that does not make it ambiguous …." *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004).

The two federal district court cases interpreting similar provisions do not aid Plaintiffs. *See Honeyfund.com, Inc. v. DeSantis*, 622 F. Supp. 3d 1159 (N.D. Fla. 2022); *Local 8027 v. Edelblut*, No. 21-cv-1077-PB, 2024 WL 2722254 (D.N.H. May 28, 2024). To begin, neither courts' findings on vagueness have been fully examined on appeal. *Honeyfund* was affirmed, but on distinct grounds. The appellate court ruled it unconstitutional viewpoint discrimination to prohibit private sector employers from holding mandatory meetings for employees that endorse the prohibited concepts. *Honeyfund.com, Inc. v. Governor*, 94 F.4th 1272, 1275 (11th Cir. 2024). To the contrary, the provision here applies to public K-12 instruction—where states lawfully choose curriculum and viewpoint. For its part, *Edelblut* is currently on appeal. *Local 8027 v. Edelblut*, No. 24-1690 (1st Cir.).

In any event, those opinions are unconvincing. *Edelblut* involved a similar New Hampshire

law that said students may not be "taught, instructed, inculcated or compelled to express belief in, or support for" four specific concepts. N.H. REV. STAT. ANN. § 193:40. Those concepts largely mirror subsections (a), (b), (c), and (d) of H.B. 1775. The New Hampshire analogue to the provision under the microscope here prohibited teaching "[t]hat people of one age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin cannot and should not attempt to treat others without regard to" those same characteristics. *Id.* The district court held that it was "unable to discern" what the legislature "intended to ban" with this provision "that is not already banned by the first three concepts." *Edelblut*, 2024 WL 2722254 at *11. This is absurd. Again, subsection (d) is addressing teaching kids that individuals either are unable to or should not even try to treat people in a colorblind (or sex-blind) manner. This is plainly distinct from saying one race is "inherently superior" to others or that "an individual should be discriminated against" because of their race. N.H. REV. STAT. ANN. § 193:40(a), (c). The court's question of "[h]ow, if at all, is teaching that individuals should be discriminated against on the basis of race different than teaching that individuals should not be treated without regard for race?," *Edelbut*, 2024 WL 2722254, at *11, has a straightforward answer. The first provision in that question prohibits teaching that individuals should be treated worse because of race. The second provision prohibits teaching that an individual should not try to treat others without considering race. It is not that complicated.

Honeyfund fares no better. The Florida law in that case prohibited employers from endorsing the position that "[m]embers of one race, color, sex, or national origin cannot and should not attempt to treat others without respect to race, color, sex, or national origin." FLA. STAT. § 760.10(8)(a)(4). In finding this provision vague, the court practically *admitted* it understood the thrust of the provision. *See Honeyfund*, 622 F. Supp. 3d at 1182 ("Does this prohibit anything other than colorblindness?"). And the hypotheticals the court cited are easy to answer. "Does it

ban topics such as affirmative action and diversity?" *Id.* No, the provision does not ban discussions of diversity. And by focusing on *individuals'* treatment of people of other races, this particular provision does not touch on affirmative action programs. The court's concern that the law may prohibit sexual harassment training, *id.*, is similarly strained. The provision is not vague.

In sum, a teacher may not force students to believe that individuals are unable to treat others without considering race or sex or that individuals should treat others based on race or sex.

VII. Although not needed, the extrinsic evidence supports State Defendants.

The text of the statute, alone, supports State Defendants' interpretation. Regardless, extrinsic evidence is supportive, as well. Plaintiffs argue that comments from legislators are irrelevant, but comments made by the U.S. President are relevant. Pls.' Br. at 25–27. This is incoherent. It is also contrary to the position Plaintiffs took previously, where they have relied on comments from legislators to infer intent. *See, e.g.*, Doc. 27 at 9; Doc. 66 at 5. To the extent this Court considers any legislative history here, it cuts in favor of State Defendants.

In the House of Representatives, for example, bill sponsor Kevin West repeated numerous times that the bill allows teaching about past atrocities and racism. "This will not negate what the history is. Our past will still be taught, as well as our present." Statement of Rep. Kevin West, House First Regular Session, Day 50, Apr. 29, 2021, 10:08:50–10:09:15 AM.[17] When asked if the law would allow for hard conversations about race or the Tulsa Race Massacre, he responded: "this bill does not prohibit those kind of conversations." *Id.* at 10:28:50–10:28:54 AM. To the extent this Court deems it relevant, the legislative record confirms what the text of the statute says.

CONCLUSION

This Court should adopt State Defendants' reasonable interpretations of H.B. 1775.

---

[17] *Available at* https://former.okhouse.gov/video/Default.aspx.

Respectfully Submitted,

GARRY M. GASKINS, II, OBA NO. 20212
Solicitor General
ZACH WEST, OBA NO. 30768
Director of Special Litigation
WILL FLANAGAN, OBA NO. 35110
Assistant Solicitor General

OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA
313 N.E. 21st Street
Oklahoma City, OK 73105
Phone: (405) 521-3921
Garry.Gaskins@oag.ok.gov
Zach.West@oag.ok.gov
William.Flanagan@oag.ok.gov

Counsel for the State Defendants

CERTIFICATE OF SERVICE

This is to certify that on this 3rd day of March 2025, a true and correct copy of the foregoing STATE DEFENDANTS' ANSWER BRIEF was mailed, postage prepaid to the following:

Adam H. Hines
Oklahoma Bar Number: 35640
Megan Lambert
Oklahoma Bar Number: 33216
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF OKLAHOMA
P.O. Box 13327
Oklahoma City, OK 73113

Emerson Sykes
Leah Watson
Sarah Hinger
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004

Maya Brodziak
Zakiya Lewis
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
1500 K Street NW, Suite 900
Washington, DC 20005

Douglas Koff
Julia Beskin
Sara Solfanelli
Kevin Scot Johns
SCHULTE ROTH & ZABEL LLP
919 Third Avenue
New York, NY 10022

M. Daniel Weitman
Tina S. Ikpa
University of Oklahoma Office of Legal Counsel
660 Parrington Oval, Suite 213
Norman, OK 73109

GARRY M. GASKINS, II, OBA NO. 20212