

Memorandum

From: Andrea Young, Executive Director; Chris Bruce, Policy & Advocacy Director; Vasu Abhiraman, Senior Policy Counsel; Anisha Ariff, Fellow

To: Georgia State Senate Caucus

Date: February 28, 2022

Re: Comparing SB 377's definition of "divisive concepts" with Trump's Executive Order

Summary

The definitions of divisive concepts, race stereotyping, and race scapegoating in SB 377 mirror language found in Trump's Executive Order on Combating Race and Sex Stereotyping ([EO 13950](#)), whose goal was to censor certain "divisive concepts" in trainings conducted by government contractors.

A federal court already ruled that the "divisive concepts" language in President Trump's Executive Order was unconstitutionally vague ([Santa Cruz Lesbian and Gay Comm. Ctr. v. Trump, 508 F. Supp. 3d 521 \(N.D. Cal. 2020\)](#)).

SB 377 makes only two substantive changes to Trump's Executive Order:

1. SB 377 removes all references to sex that are present in the EO.
2. SB 377 amends the phrase "race" to include "race, skin color, or ethnicity."

SB 377 lifts nearly all its "divisive concepts" language from Trump's EO with minimal substantive additions but omits references to sex-based discrimination.

Annotated version of SB 377: *Underlined phrases are the only additions to Trump's EO*

- (1) 'Divisive concepts' means any of the following concepts, including views espousing such concepts:
 - (A) One race or ethnicity is inherently superior to another race or ethnicity;
 - (B) The United States of America and the State of Georgia are fundamentally or systemically racist;
 - (C) An individual, solely because of his or her race, skin color, or ethnicity, is inherently racist or oppressive, whether consciously or subconsciously;
 - (D) An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race, skin color, or ethnicity;

- (E) An individual's moral character is inherently determined by his or her race, skin color, or ethnicity;
- (F) An individual, because of his or her race, skin color, or ethnicity, bears responsibility for actions committed by other individuals of the same race, skin color, or ethnicity, whether past or present;
- (G) An individual should feel discomfort, guilt, anguish, or any other form of psychological distress because of his or her race, skin color, or ethnicity;
- (H) Meritocracy or traits such as a hard work ethic are racist or were created by individuals of a particular race to oppress individuals of another race; or
- (I) Any form of race or ethnic scapegoating or race or ethnic stereotyping.

(2) 'Race or ethnic scapegoating' means assigning fault, blame, or bias to a race or ethnicity or to an individual of a particular race or ethnicity because of his or her race or ethnicity. Such term includes, but is not limited to, any claim that an individual of a particular race or ethnicity, consciously or subconsciously, and by virtue of his or her race or ethnicity, is inherently racist or is inherently inclined to oppress others.

(3) 'Race or ethnic stereotyping' means ascribing character traits, values, moral and ethical codes, privileges, status, or beliefs to a race or ethnicity, or to an individual because of his or her race or ethnicity.

Annotated version of Trump's EO: *Phrased omitted from SB 377 are struck through*

- (a) "Divisive concepts" means the concepts that
 - (1) one race ~~or sex~~ is inherently superior to another race ~~or sex~~;
 - (2) the United States is fundamentally racist ~~or sexist~~;
 - (3) an individual, by virtue of his or her race ~~or sex~~, is inherently racist, sexist, or oppressive, whether consciously or unconsciously;
 - (4) an individual should be discriminated against or receive adverse treatment solely or partly because of his or her race ~~or sex~~;
 - ~~(5) members of one race or sex cannot and should not attempt to treat others without respect to race or sex;~~
 - (6) an individual's moral character is necessarily determined by his or her race ~~or sex~~;
 - (7) an individual, by virtue of his or her race ~~or sex~~, bears responsibility for actions committed in the past by other members of the same race ~~or sex~~;
 - (8) any individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race ~~or sex~~; or



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(9) meritocracy or traits such as a hard work ethic are racist ~~or sexist~~, or were created by a particular race to oppress another race. The term “divisive concepts” also includes any other form of race ~~or sex~~ stereotyping or any other form of race ~~or sex~~ scapegoating.

(b) “Race ~~or sex~~ stereotyping” means ascribing character traits, values, moral and ethical codes, privileges, status, or beliefs to a race ~~or sex~~, or to an individual because of his or her race or sex.

(c) “Race or sex scapegoating” means assigning fault, blame, or bias to a race ~~or sex~~, or to members of a race ~~or sex~~ because of their race ~~or sex~~. It similarly encompasses any claim that, consciously or unconsciously, and by virtue of his or her race ~~or sex~~, members of any race are inherently racist or are inherently inclined to oppress others, ~~or that members of a sex are inherently sexist or inclined to oppress others.~~