CRITICAL RACE THEORY: ACADEMIC CONCEPT OR POLITICAL PAWN

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INTRODUCTION

Critical race theory ("CRT") is a body of scholarship that seeks to analyze systemic racism present in many legal and societal systems today. The body of scholarship has been studied for decades, but in recent years it has garnered a bit of extra attention. Human brains are designed to prefer shortcuts and individuals naturally like grouping similar things together and separating out what does not belong. This human behavior has recently led to CRT becoming a catchall term for opposition to diversity or anti-bias training. Those weaponizing critical race theory found that social media provided an excellent tool to spread these ideas.

This Note seeks to analyze the politicization of CRT and why those ideas found such fertile soil on social media. A discussion follows of whether using CRT as a catchall term constitutes misinformation or propaganda, with this determination slightly differing depending on whether someone is considered an influential figure or an ordinary user online. Ordinary users' use of CRT's catchall version may constitute misinformation, but influential figures likely hold a bit more responsibility for creating misinformation around CRT. Additionally, some design elements of social media, like algorithmic promotion, play a large role in the promotion of anti-CRT rhetoric. This Note is an examination of digital platforms' responsibility and whether social platforms are ultimately in control of ensuring that a misrepresentation of CRT does not garner unwarranted attention. Solutions for digital platforms in their moderation of anti-CRT rhetoric are presented and include redirecting a viewing user to a reliable source with information about what CRT is—like tags on COVID-19 content redirecting users to the CDC—and requiring users to complete activities that teach users how to spot misinformation before they even encounter it—also known as "prebunking" activities that expose individuals to the impacts of "emotional language, fake experts, and conspiracy theories" in a simulation manner[1]—before creating an account with the platform.

I. WHAT IS CRITICAL RACE THEORY?

CRT is an academic concept that "account[s] for the role of racism in American law" and utilizes that acknowledgement to eliminate racism on a

[1] *See e.g.,* Zara Abrams, *Misinformation: Controlling the Spread*, 52 MONITOR PSYCH 44, 50 (March 2021).

larger scale.[2] Original critical race theorists emphasize that approaching the world in a color blind manner ignores racial difference and continues to reinforce a status quo of whiteness.[3] Color blindness is the idea that "the best way to end discrimination is by treating individuals as equally as possible, without regard to race, culture, or ethnicity."[4] CRT originated as a criticism against the scholarly body of work known as critical legal studies (CLS) because of CLS's failure "to acknowledge how race is a central component to the very systems of law being challenged."[5] CLS emerged in the 1970s, with the stance that implicit bias played a role in many of the "power relationships and court decisions" in the United States.[6] CRT gained traction in the late 1980s when members of the CLS community believed that CLS failed to acknowledge the role that race played in these implicit biases, leading members of the CLS community to create an offshoot body of work that is now known as critical race theory.[7]

CRT sought to make race a part of the conversation when discussing the "power imbalance" that existed in many legal structures, and encompassed ideas from feminist and civil rights law as well.[8] Derrick Bell is often credited as the father of CRT, but other influential writers in the field include Kimberlé Crenshaw, Mari Matsuda, and Angela Harris.[9] CRT is characterized by multiple tenants that vary depending on the legal scholar doing the analysis, but consistently stand for the fact that race and racism are a "fundamental" part of America that cannot simply be solved through the enactment of laws.[10] Critical race theorists explain that race is a critical part of discussions about societal structure because failing to discuss it allows a status quo that has routinely favored white Americans to thrive.[11] To analyze institutionalized racism, it is necessary to evaluate the racial bias that played a role in the creation of the systems in place today, as well as the bias that remains in these same systems.[12]

Despite decades of research and analysis, CRT has become a political dog whistle to represent stances against diversity and anti-bias training rather than any of the core tenants of the academic concept.[13] Social media has proven to be an excellent tool in amplifying this dog whistle. Posts by both

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[2] Aja Y. Martinez, *Critical Race Theory: Its Origins, History, and Importance to the Discourses and Rhetorics of Race*, 27 FRAME J. LITERARY STUD. 9, 17 (2014).

[3] George Lipsitz, *The Sounds of Silence: How Race Neutrality Preserves White Supremacy*, *in* SEEING RACE AGAIN 23, 29 (Kimberlé Williams Crenshaw et al. eds., 2019).

[4] Monnica T. Williams, *Colorblind Ideology Is a Form of Racism*, PSYCH. TODAY: CULTURALLY SPEAKING (Dec. 27, 2011), https://www.psychologytoday.com/us/blog/culturally-speaking/201112/colorblind-ideology-is-form-racism [https://perma.cc/LR7Z-85QB?type=standard].

[5] Martinez, *supra* note 2, at 17; *see also* Kimberlé Williams Crenshaw, *Unmasking Colorblindness in the Law: Lessons From the Formation of Critical Race Theory*, *in* SEEING RACE AGAIN 52, 58 (Kimberlé Williams Crenshaw et al. eds., 2019).

[6] Martinez, *supra* note 2, at 17.

[7] *Id.*

[8] *Id.*; *see also* Crenshaw, *supra* note 5, at 72–73.

[9] Chris Demaske, *Critical Race Theory*, FIRST AMENDMENT ENCYCLOPEDIA (2009), https://www.mtsu.edu/first-amendment/article/1254/critical-race-theory [https://perma.cc/GND2-B25W].

[10] *Id.*; *see* Martinez, *supra* note 2, at 26.

[11] *See* Demaske, *supra* note 9 ("[T]he current system [is] built by and for white elites").

[12] Gabriella Borter, *Explainer: What 'Critical Race Theory' Means and Why It's Igniting Debate*, REUTERS (Sept. 22, 2021, 11:45 AM), https://www.reuters.com/legal/government/what-critical-race-theory-means-why-its-igniting-debate-2021-09-21/ [https://perma.cc/K6C2-SDVU].

[13] Bridgette Baldwin, *Dog Whistle Politics and the Myth of Critical Race Theory in the Schools*, AF-AM POINT OF VIEW (Jan. 4, 2022), https://afampointofview.com/dog-whistle-politics-and-the-myth-of-critical-race-theory-in-the-schools/ [https://perma.cc/U2EY-AAU4].

influential and ordinary users allow the narrative surrounding CRT to spread around the internet, and users' psychological behavior leads us to often believe a salacious title before reading more about the concept. Additionally, designs on digital platforms have a large impact on how this narrative can continue to be spread without being checked.

II. THE POLITICIZATION OF CRITICAL RACE THEORY

CRT became a salient issue in September 2020, after President Trump issued an Executive Order that attempted to suppress any CRT teachings because of its racist implications.[14] Many authors today credit Christopher Rufo as the impetus for the increase in public interest, and the subsequent politicization, of CRT from 2020 to present day. Rufo is a conservative journalist in Seattle who reported mainly on poverty in his early career, during which he became convinced that poverty was not an issue to be solved by legislation but rather was the result of "social, familial, even psychological" factors.[15]

In the wake of George Floyd's murder in 2020, individuals and companies began to understand the systemic racism that plagued American society. Companies began conducting anti-racism and implicit bias training with the hopes of helping to solve or trying to lessen the impacts that systemic racism had on marginalized groups of people. During this time, an employee for the City of Seattle sent Rufo documents from the anti-bias training that they were undergoing, which Rufo saw as a "political opportunity."[16] Rufo read the anti-bias training documents and saw the chance to attack left-leaning politics and politicians, or at least an idea they almost universally supported, under the salacious headline of racism. The documents contained information about how companies were intending to teach white individuals about any implicit bias they may have or teach them about actions in companies that may seem harmless but could be forms of institutionalized racism.[17] Rufo interpreted these ideas to be segregationist towards white individuals and that these teachings would create and even greater divide between people on the basis of race.[18] Through Freedom of Information Act (FOIA) requests, Rufo gained access to more information about the City of Seattle's anti-bias training, including the fact that people were divided into groups based on their race for implicit bias training in their offices, ways to identify "internalized white supremacy," and teaching white individuals about internalized racial superiority.[19]

In his role as a journalist, Rufo compiled his evidence to post on the website *City Journal*, a magazine of the center-right Manhattan Institute, and titled the compilation "City of Seattle Holds Racially Segregated Civil Rights Training—In The Name of Social Justice."[20] The article was a

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[14] Aja Y. Martinez, *Why Critical Race Theory Matters*, 45 ETHNIC STUD. REV. 23, 23 (2022).

[15] Benjamin Wallace-Wells, *How a Conservative Activist Invented the Conflict over Critical Race Theory*, NEW YORKER (June 18, 2021), https://www.newyorker.com/news/annals-of-inquiry/how-a-conservative-activist-invented-the-conflict-over-critical-race-theory [https://perma.cc/YV6A-GJMC].

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*; Christopher F. Rufo, *Separate But Equal*, CHRISTOPHER F. RUFO (July 29, 2020), https://christopherrufo.com/separate-but-equal/ [https://perma.cc/5926-6FZT].

compilation of the City of Seattle's anti-bias training that Rufo had collected, along with a couple of paragraphs that explained what was in the documents. Rufo dubbed the anti-bias training documents as the City of Seattle's "segregated 'whites-only' trainings, which induct white employees into the cult of critical race theory,"[21] analogizing the "whites-only" language to the racism of the Jim Crow era in which certain places and things were whites- or blacks-only. The language in this piece, coupled with the audience it reached by publication in a center-right magazine, created a perfect storm for this piece to gain traction and cause outrage.

The article led to more people sending their own company's anti-bias trainings to Rufo, which led Rufo to evaluate the books that many of these trainings were citing.[22] After reading the footnotes in these books, he discovered a common thread in the authors pointing to "a group of legal scholars who referred to their work as critical race theory," which specifically included Kimberlé Crenshaw and Derrick Bell.[23] The works that organizations were using to inform their teachings, and the works in which Rufo evaluated the footnotes, emphasized the original CRT scholars' ideas "that white supremacy of the past lived on in the laws and societal rules of the present."[24] Rufo synonymized the common citation in anti-bias training to original CRT thinkers in their entirety.[25] Rufo outright explained that CRT gave conservatives the language to fight against the progressiveness that they had opposed since 2012; since "political correctness," "cancel culture," and "woke" did not correctly encompass what conservatives didn't like— " 'critical race theory' [was] the perfect villain."[26]

After writing more pieces for *City Journal*, Rufo appeared on *Tucker Carlson Tonight*, a TV show on Fox News known for its right-leaning host and discussion.[27] Rufo's monologue on the show gave him the chance to present what he believed to be the threat of CRT permeating the federal government.[28] Rufo concluded his segment with a quote that launched him into infamy.

> Conservatives need to wake up. This is an existential threat to the United States. And the bureaucracy, even under Trump, is being weaponized against core American values. And I'd like to make it explicit: The President and the White House—it's within their authority to immediately issue an executive order to abolish critical-race-theory training from the federal government. And I call on this President to immediately issue this executive order—to stamp out this destructive, divisive, pseudoscientific ideology.[29]

This closing statement created an "us versus them" mentality surrounding CRT, and it served as Rufo's call to action to conservatives to fight against CRT to protect American values. Moreover, it directly referred to CRT as a weapon that sought to divide America. The language Rufo used

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[21] *Id.*
[22] Wallace-Wells, *supra* note 15.
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.* (emphasis added).

was powerful in pushing his message somewhat indirectly, and in a similar vein, the words "critical," "race," and "theory" had their own subconscious impact on the public.[30] The word "critical" is often used to describe something that is high stakes or potentially harmful; "race" is a term that the public has been "societally conditioned to approach with apprehension or fear";[31] and "theory" alludes to an academic concept that is too difficult for any lay person to understand.[32] While Rufo stoked the fire with his choice of words, the name of the academic concept alone likely had a subconscious effect on the general public.

The morning after Rufo's appearance on *Tucker Carlson Tonight*, Trump's Chief of Staff, Mark Meadows, called Rufo to explain that Trump had seen Rufo's segment on Fox and was requesting Rufo's help in drafting an executive order that "limited how contractors providing federal diversity seminars could talk about race."[33] Rufo went from collecting information about one anti-bias training in Seattle to assisting the President of the United States in writing an executive order that attempted to ban a certain kind of thinking. However, it didn't stop there. After Rufo assisted Trump, he continued to write for the Manhattan Institute, with his articles garnering "more than two hundred and fifty million impressions online," assisted state legislatures in drafting bills that also banned or restricted CRT instruction or seminars, and often served as a quoted commentator for Republicans when they speak out about their disdain for CRT.[34]

CRT is an academic concept at its core. Rufo was influential in its politicization with the general public because of his likening of CRT to progressive, Democratic policy choices or anti-racism efforts. CRT became a buzzword that represented ideas which people chose to oppose, despite it being a concept that has decades of research and writing supporting the theory. Politicians and individuals were using CRT as a piece in a political chess game when it was far more complex than that. Rufo boiled down an entire academic concept into a "perfect villain" for conservatives.[35]

A. How Conservatives Have Used the Newfound Weapon of CRT

The *Executive Order on Combating Race and Sex Stereotyping*—the order that Rufo infamously helped draft—was issued on September 22, 2020 by President Trump[36] and later rescinded by the *Executive Order Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, issued by President Biden.[37] In his Executive Order, Trump sought to ban "divisive concepts" from being promoted in the federal workforce and stated that the government would not grant funds to be used for anything that was deemed a "divisive concept."[38] The term "divisive concept" was defined by Trump to include anything that promoted the idea

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[30] Martinez, *supra* note 14, at 25.
[31] *Id.*
[32] *Id.* at 25–26.
[33] Wallace-Wells, *supra* note 15.
[34] *Id.*
[35] *Id.*
[36] *See* Martinez, *supra* note 14, at 23; Exec. Order No. 13950, 85 Fed. Reg. 60683 (Sept. 28, 2020) [hereinafter Trump's Executive Order].
[37] Exec. Order No. 13985, 86 Fed. Reg. 7009 (Jan. 20, 2021).
[38] Trump's Executive Order, *supra* note 36, at 60685.

that one "race or sex is inherently superior" to another, that the United States is "fundamentally racist," or that any individual, "by virtue of his or her race" is inherently racist.[39] On its face, this Executive Order seems to promote equality, but by banning teachings concerning white privilege or the systemic oppression of marginalized communities in the United States, this Executive Order instead promoted a form of revisionist history.

While the Executive Order did not explicitly mention CRT, it challenged the concept of implicit bias as something that the country settled "on the blood-stained battlefields of the Civil War," and emphasized that racism is not an issue in the United States anymore because "all individuals are created equal."[40] While this is the hope of most Americans, this Executive Order seeks to pretend that racism was long eradicated after the Civil War and that now the target of racism is white individuals in the United States.[41] By not directly mentioning CRT, there is plausible deniability because Trump could say CRT is not what he was referencing by issuing the Executive Order. However, an Executive Order claiming that anti-bias training being conducted is racist towards white people mimics language that is often associated with the anti-CRT movement and deepens the false belief that CRT is a theory that seeks to villainize white people. Due to Rufo's direct involvement in helping draft the Executive Order, the language is nearly identical to his monologue on *Tucker Carlson Tonight*—using the words "divisive," "threatening," and "destructive" to describe anti-racist teachings[42]—supporting an inference that without using the term CRT, Trump was referring to banning CRT teachings.

CRT's moment as a political prop has failed to explain why teaching white privilege or systemic racism in America is important. W.E.B. Du Bois said that we "discuss American slavery so impartially that in the end nobody seems to have done wrong and everybody was right."[43] While slavery is not the only example of racism in America, if people fail to have discussions about what Trump labeled "divisive concepts," we no longer see the actual harm caused. Moreover, we put ourselves in the position of possibly making the same mistakes again. Trump's Executive Order only commented on banning the teaching of these divisive concepts in federal employment settings, but many states took this and began attempting to pass legislation that banned these same divisive concepts in classrooms—again using CRT as a stand-in for a discussion about race.[44] It could be argued that the Executive Order was relatively limited in scope, but the ripples across the country became increasingly clear.

Because CRT is a scholarly concept with a long history, people tend to believe what they read as opposed to doing research about the theory itself. The brief snippets on social media or TV are easier to consume than the long academic pieces of writing that detail the ins and outs of CRT. The

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[39] *Id.*

[40] *Id.* at 60683–84.

[41] *See id.* at 60684.

[42] *Id.* at 60683, 60685; Wallace-Wells, *supra* note 15.

[43] Clint Smith, *Telling the Truth About Slavery Is Not 'Indoctrination'*, ATLANTIC (Sept. 24, 2020), https://www.theatlantic.com/ideas/archive/2020/09/real-stakes-fight-over-history/616455/ [https://perma.cc/KJK3-CCUU].

[44] Rashawn Ray & Alexandra Gibbons, *Why Are States Banning Critical Race Theory?*, BROOKINGS INST. (Nov. 21, 2021), https://www.brookings.edu/blog/fixgov/2021/07/02/why-are-states-banning-critical-race-theory/ [https://perma.cc/5GHQ-DDSH].

politicization of the theory "has almost nothing at all to do with CRT"[45] and as such, many people rally against CRT rather than the specific policy objectives they oppose, like anti-bias training or diversity efforts.[46] Many people believe that CRT teaches white people that they are racist and promotes polarization among people. The Heritage Foundation, a think tank that is known to take a conservative angle,[47] has blamed CRT as the driving force behind LGBTQ+ clubs in schools, despite CRT pillars never explicitly discussing the discrimination against the LGBTQ+ community.[48] Conservatives are using CRT as a stand-in for their anti-social justice views,[49] and the left has similarly used the CRT umbrella to capture being "woke" and culturally aware—social media has provided fertile soil for these groups and their misuse of CRT.

III. THE ROLE OF SOCIAL MEDIA IN SPREADING THE POLITICIZATION OF CRITICAL RACE THEORY

Utilizing social media platforms for political discourse is not a new concept. Even more so, the last few years have shown social media's influential role in the spread of misinformation, and social media platforms' attempts to control it. The use of CRT as a political weapon has some overlap with misinformation, but an analysis of weaponized CRT under a misinformation umbrella does not tell the whole story. Using the academic concept as a proxy for anti-social justice stances creates a blend of propaganda and misinformation for which social media provided fertile soil. Designs of social media platforms coupled with natural human behavior have allowed for anti-CRT rhetoric to spread and remain unchecked.

From 2020 to 2021, the media reported on CRT as the political chip it was turned into and, as a result, "CRT's guiding assumptions were rarely mentioned" in most published articles.[50] The American Enterprise Institute analyzed many of these publications, and of ninety-one articles published in this time frame, only two mentioned core tenants of CRT.[51] While this work analyzed mainstream media reporting as opposed to social media, it demonstrated the lack of informed writing, outside of academia, explaining what CRT is. This mainstream media portrayal of CRT was quickly adopted by social media.[52]

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[45] Martinez, *supra* note 14, at 29.

[46] Char Adams, *How Trump Ignited the Fight Over Critical Race Theory in Schools*, NBC NEWS (May 10, 2021, 3:05 AM), https://www.nbcnews.com/news/nbcblk/how-trump-ignited-fight-over-critical-race-theory-schools-n1266701 [https://perma.cc/WWL2-3WYA].

[47]*See, e.g., The Heritage Foundation*, ALLSIDES, https://www.allsides.com/news-source/heritage-foundation [https://perma.cc/M3MW-6LMG] (last updated Sept. 2023).

[48] Stephen Sawchuk, *What is Critical Race Theory, and Why Is it Under Attack?*, EDUCATION WEEK (May 18, 2021), https://www.edweek.org/leadership/what-is-critical-race-theory-and-why-is-it-under-attack/2021/05 [https://perma.cc/GS3S-24SA].

[49] *See* Adams, *supra* note 46 ("Conservative leaders have been accused of using [CRT]—initially intended to recognize the systemic racism inherent in American life—as a catchall for anti-racism and diversity efforts.").

[50] Frederick M. Hess, *Media's Misleading Portrayal of the Fight over Critical Race Theory*, AM. ENTER. INST. 2 (Nov. 2021), https://www.aei.org/research-products/report/medias-misleading-portrayal-of-the-fight-over-critical-race-theory/ [https://perma.cc/NSZ3-HXYE].

[51] *Id.*

[52] *See, e.g.*, Julia Carrie Wong, *From Viral Videos to Fox News: How Rightwing Media Fueled the Critical Race Theory Panic*, GUARDIAN (June 30, 2021, 6:00 PM), https://www.theguardian.com

The dissemination of information on social media is done at speeds that we have never experienced, with evidence that "social media has outpaced traditional news outlets with 68% of US adults using social media as their primary sources of news."[53] In addition to increased use of social media as a news source, the ease with which people can share posts online has provided an effective method of content dissemination. The ability of anyone with a smartphone to share a news article on social media has allowed information to reach far more people than it likely would have in a society with mainly print media. Social media sites allow for the swift movement of a thumb to disseminate information, whereas print media required more effort on behalf of the consumer. Marketing professionals have used this system, often referred to as viral science, to spread their brand name and build a customer base.[54] Viral science has also been used to evaluate the dissemination of news articles, with articles that are prone to spreading online having similar traits of being surprising, interesting, and intense.[55] Viral science has helped marketing experts capture new customer bases and is now being used to analyze how news agencies are writing and disseminating articles. With the increase in the number of people who use social media as their main source of news,[56] one could argue that the population is as informed as it has ever been, with ease of access to news articles and increased ability to share that information. However, this spread of information online also applies to news that may not be entirely accurate.

A study done at MIT discovered that "false news spreads more rapidly on . . . [X] than real news does."[57] The rapid spread of this sort of content online could be the result of multiple factors, including individuals "clicking retweet without checking" what the information they are retweeting says, "journalists who are now under more pressure than ever to try and . . . report information emerging on the social web in real time," and sometimes is even directly disseminated by people "deliberately attempting to influence public opinion."[58] Dissemination is furthered by the fact that our brains are already "reliant on heuristics . . . due to the overwhelming amount of information" we come into contact with every day, making individual people the prime targets for retweetable salacious headlines and the lack of desire or energy to read further into the topic.[59]

While humans may be part of the problem, platform design—specifically, algorithms that can suggest posts to people based on the high level of engagement on the post[60]—also plays a crucial role in the ability of

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/education/2021/jun/30/critical-race-theory-rightwing-social-media-viral-video [https://perma.cc/PF5H-D4BV].

[53] Xiangyu Wang, Min Zhang, Weiguo Fan & Kang Zhao, *Understanding the Spread of COVID-19 Misinformation on Social Media: The Effects of Topics and a Political Leader's Nudge,* 73 J. Ass'n Info. Sci. & Tech. 726, 726 (2022).

[54] Carter Bowles, *How to Go Viral & The Science of Virality – Marketing Lessons from Internet Cats & Memes*, NP Digital, https://neilpatel.com/blog/science-of-virality/ [https://perma.cc/BZS6-75RG] (last visited Dec. 9, 2022).

[55] *Id.*

[56] Wang et al., *supra* note 53.

[57] Peter Dizikes, *Study: On Twitter, False News Travels Faster Than True Stories*, MIT News (Mar. 8, 2018), https://news.mit.edu/2018/study-twitter-false-news-travels-faster-true-stories-0308 [https://perma.cc/P5GY-XCT2].

[58] Claire Wardle, *Fake News. It's Complicated.*, First Draft (Feb. 16, 2017), https://firstdraftnews.org/articles/fake-news-complicated/ [https://perma.cc/5AZJ-P2CB].

[59] *Id.*

[60] Noah Giansiracusa, How Algorithms Create and Prevent Fake News 177 (2021).

misidentified information to spread. Platforms are designed to maximize engagement, so if a specific post garners a lot of attention and engagement, algorithms will "pick up on this and display the [post] more prominently and broadcast it to a wider audience."[61] Because CRT became such a salient matter in the past few years, CRT posts were garnering that high level of engagement and thus being shared and spread all over different platforms. This begs the question of why CRT articles garnered the attention they did. Bad news gets the public's attention,[62] and the high level of engagement by users may be linked to the outrage people feel when they read information about CRT, whether that is anger because people are misidentifying CRT or because people are angry *at* CRT. It is also important to note that language matters.

Words often used in connection with CRT include "indoctrination," "state sanctioned racism," and "child abuse."[63] The negative connotations would catch any reasonable person's attention, which leads to more interaction with a post, and creates content that the algorithm promotes. Moreover, the negative and often conservative coverage of CRT far outpaced the liberal coverage of it, with seven stories of conservative coverage about CRT for every one story from a liberal media source in early 2021.[64] The intentional manipulation of CRT was coupled with buzzwords that led to many of these negative news stories spreading like wildfire with help from the algorithm. Often, viral CRT social media posts were picked up by news outlets that reported on the potentially misleading content and its online virality. This coverage furthered social media activity, creating a feedback loop between news coverage and social media content and likely increasing engagement online.[65] Recently conducted studies show the ability of false or misleading stories on social media going so viral that they are noticed by Fox News and then broadcast by anchors on the network.[66] While these specific studies were not done with anti-CRT content, the same concept is applicable to the anti-CRT movement.[67]

In addition to algorithmic promotion, there are other design aspects of social media platforms that allow for the spread of propaganda or misinformation. For example, some design aspects of platforms influence whether a user will challenge misinformation at all.[68] Features like the ability to "hide" a post or "unfollow"/"unfriend" someone on social media are "strategies to avoid expressing opinions" and are often used instead of

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[61] *Id.*
[62] Roy Greenslade, *The Good News About Bad News-It Sells*, GUARDIAN (Sept. 4, 2007, 5:30 AM), https://www.theguardian.com/media/greenslade/2007/sep/04/thegoodnewsaboutbadnewsi [https://perma.cc/EW3C-8U4B].
[63] Kiara Alfonseca, *Critical Race Theory Thrust into Spotlight by Misinformation*, ABC NEWS (Feb. 6, 2022, 7:02 AM), https://abcnews.go.com/US/critical-race-theory-thrust-spotlight-misinformation /story?id=82443791 [https://perma.cc/XW96-B9ZU].
[64] *Id.*
[65] Wong, *supra* note 52.
[66] AFTER TRUTH: DISINFORMATION & THE COST OF FAKE NEWS (HBO Documentary Films, Mar. 19, 2020) (discussing the murder of Seth Rich in 2016 and its baseless connection to the WikiLeaks scandal).
[67] Wong, *supra* note 52.
[68] Selin Gurgun, A Research Proposal for Combatting Misinformation Through Social Media Design (Conference Paper, 8th Int'l Conf. on Behav. & Soc. Computing 2021) (available at https://ieeexplore.ieee.org/stamp/stamp.jsp?tp=&arnumber=9635365 [https://perma.cc/PYR3-ARSP]).

commenting on an incorrect post.[69] These tactics, referred to as selective avoidance, are utilized by individuals because "political disagreement often becomes emotionally charged" and avoiding disagreement by unfollowing, blocking, or hiding content is easier than fighting online.[70] This is partially attributable to individual character—some people naturally shy away from conflict. However, social media platforms providing a system that allows people to remove content they dislike or disagree with allows that information to spread like wildfire in other areas, remaining unchecked by individuals who have hidden the post.

This gives rise to the question of whether CRT and the rhetoric surrounding it in the last few years constitutes propaganda, misinformation, or a blend of the two. Propaganda is defined as "ideas, facts, or allegations spread deliberately to further one's cause or to damage an opposing cause."[71] Anti-CRT rhetoric may be a form of harassment towards proponents of CRT, which could increase the likelihood of this content constituting propaganda because the harassment is done to damage any supporters of CRT. Misinformation, meanwhile, is a result of "unintentional human or mechanical errors passed on by unsuspecting individuals," though social media platforms vary in their personal definitions of misinformation.[72] How misinformation is defined by a social media platform may determine whether anti-CRT rhetoric would be subject to the disciplinary actions a platform takes and causes another point of confusion in attempting to manage anti-CRT rhetoric. The core difference between propaganda and misinformation is the motivation to intentionally deceive others, with misinformation typically lacking ill intent, and propaganda typically having a goal of "deliberately influenc[ing] others."[73] However, most platforms equate the two in their moderation of content.

It appears that someone like Christopher Rufo knew the truth about CRT, but they chose to manipulate the concept and turn it into something that it was not, with the intent of creating the perfect villain. This would lead us to believe that the messaging surrounding CRT falls into the propaganda category. However, the same blame may not be attributable to individuals who continue to spread Rufo's message. If people using social media saw discourse surrounding CRT and read only what Rufo or other conservative actors were writing, those individuals may have truly believed that CRT was a villain to be feared. Then, by retweeting or posting articles, they contributed to the misinformation campaign that followed Rufo's propaganda. CRT is seemingly a form of misinformation that was born out of propaganda, since most ordinary users sharing the incorrect information were not doing so to deliberately deceive people but were sharing it because they thought that others should have the information that they did.

Rufo likely knew that framing CRT in the way he did would tap into the racial anxieties and prejudices of the public. Not only is race something that

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[69] *Id.*

[70] Qinfeng Zhu, Marko Skoric & Fei Shen, *I Shield Myself From Thee: Selective Avoidance on Social Media During Political Protests*, 34 POL. COMMC'N 112, 113 (2017).

[71] *Propaganda*, MERRIAM-WEBSTER DICTIONARY (11th ed. 2022).

[72] Christopher L. Cummings & Wei Yi Kong, *Breaking Down "Fake News": Differences Between Misinformation, Disinformation, Rumors, and Propaganda*, *in* RESILIENCE AND HYBRID THREATS: SECURITY AND INTEGRITY FOR THE DIGITAL WORLD 188, 189 (NATO Sci. for Peace & Sec. Ser. No. 55, 2019).

[73] *Id.* at 188.

people prefer to avoid talking about,[74] but CRT specifically seeks to analyze the flaws with the American system, which is something that Rufo and his supporters dislike: people believe that CRT being taught in classrooms was a direct attack on patriotism.[75] Rufo didn't like that CRT called white people racist just for being white—which is how he understood workplace trainings teaching individuals about their implicit biases.[76] Moreover, Rufo benefitted from the status quo that historically benefits white individuals—a status quo CRT sought to criticize. Rufo's fear of CRT, and the fear he instilled in the public, was likely born out of "the fear of losing power and influence and privilege."[77]

Misinformation may be the proper category to define what ordinary individuals did with CRT rhetoric, but it is difficult to say the same for influential figures. Rufo aside, should government officials be responsible for knowing what CRT is as opposed to what the politicized version of it represents before making a statement on the matter? If so, then it is possible we could attribute influential figures' usage of CRT as propaganda because they failed to inform themselves of the information they were posting about online and were instead just fearmongering.

The intentional and unintentional spreading of misleading information, coupled with user ability to hide posts, unfollow, or block people that they disagree with, has allowed politicized CRT rhetoric to spread on social media, specifically within circles that will not challenge the idea. While there are aspects of human nature that play a role in this, social media design has increasingly allowed misleading information to go unchecked by other users and find support in people who are already primed to the anti-CRT rhetoric.

A. Political Use by Influential Figures

It is hard to imagine a world in which politicians and individuals running for office do not have social media accounts. Throughout most of American history, communication with political actors was controlled by news media sources.[78] Social media platforms have provided political actors the ability to bypass the traditional forms of media—"the normal gatekeepers."[79] This means social media is "provid[ing] open communication . . . but [is] escaping the media's filtering . . . ."[80] It could be argued that this is a good thing, and news directly from a political actor means there is no middleman to potentially alter the Information. However, there are plenty of concerns. Political actors can produce information "without having to meet journalistic standards of accuracy or even relevance."[81] The double-edged sword of political actors' direct access to constituents has provided a helpful

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[74] *See* Martinez, *supra* note 14, at 25.

[75] Kelly Field, *Can Critical Race Theory and Patriotism Coexist in Classrooms?*, NBC NEWS (May 28, 2021, 3:00 AM), https://www.nbcnews.com/news/us-news/can-critical-race-theory-patriotism-coexist-classrooms-n1268824 [https://perma.cc/C6WV-N9YQ] ("To conservatives, the framework [of social studies course topics] is a 'Trojan horse' for a 'woke' federal curriculum . . . .").

[76] Wallace-Wells, *supra* note 15 ("[T]he phrase 'critical race theory' connotes hostile, academic, divisive, race-obsessed, poisonous, elitist, anti-American.").

[77] Adams, *supra* note 46.

[78] JASON GAINOUS & KEVIN M. WAGNER, TWEETING TO POWER: THE SOCIAL MEDIA REVOLUTION IN AMERICAN POLITICS 107 (2013).

[79] *Id.* at 108.

[80] *Id.*

[81] *Id.*

framework for influential figures seeking to promote a negative narrative surrounding CRT.

On March 15, 2021, Christopher Rufo tweeted that his goal was to "have the public read something crazy in the newspaper and immediately think 'critical race theory.'"[82] It was clear that Rufo was "publicly construct[ing] CRT as something to be feared."[83] Moreover, he used X (formerly Twitter) to disseminate his goal, which likely caused other people to utilize CRT in the same way. Looking at Rufo's tweet in a vacuum, it probably seems benign, with only seventy retweets and 528 favorites—low numbers for someone with 418,700 followers.[84] However, as someone who helped President Trump draft the Executive Order, Rufo's name was well known in conservative circles, with people like Ron DeSantis, the Republican Governor of Florida, and Tom Cotton, the junior Republican Senator from Arkansas, tweeting about CRT using Rufo's language.[85]

It is easy to see these tweets as people simply expressing their opinions or supporting Rufo because of their shared ideology. However, posts from influential figures have real-life impacts, ranging from mobilizing the public to believe CRT is dangerous to creating legislation to support the ideas that they tweet about. For example, on May 13, 2021, Tom Cotton introduced a bill to Congress titled the "Stop CRT Act" that sought to prohibit federal funds from going to "any entity" that teaches or advances the idea that "[a]ny race is inherently superior or inferior to any other race," that "[t]he United States is a fundamentally racist country," or that "[a]n individual's moral worth is determined by his or her race."[86] Cotton then took to X to post that the Senate had approved his bill, with all but one Democrat voting against it, again creating an "us versus them" mindset that has been overtly present in many CRT discussions.[87]

Ted Cruz, the junior Senator from Texas, is another political figure known for his attacks of CRT online. In a tweet from June 18, 2021, Cruz attached a video to a tweet that read, "Critical Race Theory is bigoted. It is a lie. And it is every bit as racist as Klansmen in white sheets."[88] Cruz attached a video to the tweet from his speech at the Faith & Freedom Coalition, describing his interaction with a reporter asking him what CRT is, and in his description of CRT, he says that "critical race theory says that every white person is a racist"[89]—an idea that is not part of CRT's basic tenants. To say that any academic concept is equivalent to KKK members is outlandish, but it served Cruz's purpose of further instilling fear in those who oppose CRT. Additionally, this sort of sentiment seeks to equate the violence committed against Black Americans in the Jim Crow era to White people having to learn about potential implicit biases they might hold, or how the history of racism

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[82]   Christopher F. Rufo (@realchrisrufo), X, (Mar. 15, 2021, 12:17 PM), https://twitter.com/realchrisrufo/status/1371541044592996352?lang=en   [https://perma.cc/SE8N-RMQ5].

[83]   Martinez, *supra* note 14, at 25.

[84]   *Id.*; Christopher F. Rufo (@realchrisrufo), X, https://twitter.com/realchrisrufo [https://perma.cc/P8RX-ZNNB] (representing his following numbers as of Oct. 23, 2022); Rufo, *supra* note 82.

[85]   *See* Wallace-Wells, *supra* note 15.

[86]   Stop CRT Act, H.R. 3179, 117th Cong. § 3 (as introduced by House, May 13, 2021).

[87]   Tom Cotton (@SenTomCotton), X (Aug. 11, 2021, 9:16 AM), https://twitter.com/SenTomCotton/status/1425491208621658117 [https://perma.cc/VB2V-GU3U].

[88]   Ted Cruz (@tedcruz), X (June 18, 2021, 1:51 PM), https://twitter.com/tedcruz/status/1405991457610215424 [https://perma.cc/8LWE-8UYP].

[89]   *Id.*

in America may still have lingering effects. Cruz, however, knows that the KKK and the harm they inflicted is easily recognizable, and by associating that with CRT, he can further outrage his supporters.

The social media war on CRT has had real life implications through presented bills in Congress, which continue to legitimize people's fear of CRT. When an ordinary social media user sees someone like Tom Cotton tweet about a piece of legislation he is attempting to pass that would ban federal funding for CRT teachings, they are more likely to believe that CRT is a dangerous concept that requires legislation; why else would an elected official take the time to propose a bill to Congress attempting to prohibit federal funding? This legitimization by a seemingly credible political actor provides users with the ammunition they need to prove their point online, likely arguing that if CRT was not a dangerous concept, then Congress would not be taking action to prevent it from being taught. This creates a dangerous feedback loop: people do not like CRT, influential and political figures post about the harm it causes and act on it in D.C.; people become more scared and outraged; and people continue to spread information about why CRT is harmful, citing to politicians as their source of information.

In addition to legislation, other real-life implications of the social media war on CRT include violent protests at school board meetings. Since George Floyd's murder in 2020, many schools across the United States have sought to teach children about systemic racism, and many school districts are requiring anti-bias training for their educators.[90] Because CRT has been used as an umbrella term to capture all discussions regarding race, parents have synonymized the increase in systemic racism trainings with schools implementing CRT curriculum. In fact, most teachers do not even use the term critical race theory, and do not ask their students to read work by the legal scholars who helped shape CRT.[91] Some parents believe their children should not be taught about CRT in schools, citing that CRT teaches their children that they are racist and encourages division.[92] Some parents liken CRT to "teaching our children to go out and murder police officers."[93] The increase in these protests have risen in correlation with "media coverage and debates over CRT-related legislation."[94] These protests have even resulted in death threats against school board members and educators, both over social media and on school grounds.[95]

The videos of these school board meeting protests have shown to be "a highly effective rightwing propaganda machine to propel critical race theory from academic obscurity to center stage in the US political debate."[96] More

[90] Marisa Iati, *What is Critical Race Theory, and Why Do Republicans Want to Ban it in Schools?*, WASH. POST (May 29, 2021, 8:00 AM), https://www.washingtonpost.com/education/2021/05/29/critical-race-theory-bans-schools/ [https://perma.cc/5RAJ-9KQW].

[91] *Id.*

[92] *See* Adam Harris, *The GOP's 'Critical Race Theory' Obsession*, ATLANTIC (May 7, 2021), https://www.theatlantic.com/politics/archive/2021/05/gops-critical-race-theory-fixation-explained/618828/ [https://perma.cc/2KH9-XLFE].

[93] Wong, *supra* note 52.

[94] Aaron Wolfson, *Fact Sheet: Demonstrations Over Critical Race Theory in the United States*, ACLED (July 14, 2021), https://acleddata.com/2021/07/14/fact-sheet-demonstrations-over-critical-race-theory-in-the-united-states/ [https://perma.cc/5VG9-EHVL].

[95] Edward Graham, *Who is Behind the Attacks on Educators and Public Schools?*, NAT'L EDUC. ASS'N (Dec. 14, 2021), https://www.nea.org/advocating-for-change/new-from-nea/who-behind-attacks-educators-and-public-schools [https://perma.cc/RWR5-TBQA].

[96] Wong, *supra* note 52.

than twenty percent of posts on Facebook between January 1, 2021 and June 21, 2021 that mentioned CRT were articles about or videos of school board protests.[97] While the posts use language to their advantage by making salacious titles, the videos and articles have been amplified after they are reposted by prominent right-wing figures.[98] Influential figures continuing to spread the rhetoric of CRT as something to be feared allows for millions more impressions than when an ordinary user posts about it. For example, Ben Shapiro, a conservative political commentator, posted about CRT 167 times between January 1, 2021 and June 30, 2021, garnering over 6.5 million interactions online.[99] If an individual without a large platform posted 167 times about CRT, it is unlikely that it would amass this much influence; but a recognizable figure like Ben Shapiro can create a media storm over basically anything he wants. Without social media, it is unclear if Shapiro would have ever garnered this amount of influence on a topic he discussed, but the ability of social media to disseminate information so rapidly and widely allowed for the weaponization of CRT to continue and thrive.

Influential figures, like elected officials, know that anti-CRT rhetoric keeps their supporters outraged, and by continuing to post about it, these influential platform users are increasing support of anti-CRT rhetoric in the real world. By keeping their followers angry about CRT, politicians can draft laws like Senator Cotton's "Stop CRT Act," knowing that it is supported by their constituency. Additionally, by taking steps on the Hill to fight CRT, many followers of these influential figures take their anger against CRT to their school boards or protests, which are often posted about online and contribute to the feedback loop between social media, news media, and eventually, real-life violence and outrage.[100]

Some influential people on social media platforms, however, are not legislators or political affiliates, but rather people or groups who have amassed a large following and attempt to spread news in a way that classic journalism does not. For these groups of influencers who attempt to *combat* the war on CRT, the algorithmic promotion of popular content is beneficial. People can use the same salient CRT language that garnered so much attention in the first place but connect it to content that informs the public about the core tenants of CRT and how the theory was being villainized. For example, an account known as "The Good Liars" is active on multiple different platforms. Their brand revolves around a satirical pair of comedians who go to many conservative rallies and try and blend in with the other attendees while interviewing individuals and asking them questions that show how little the participants know about the issue which they are being interviewed about.

In a tweet from November 21, 2021, one of the members of The Good Liars, Jason Selvig, interviews a man who says that "Critical Race Theory is the most important issue in the Virginia election."[101] In this interview, Selvig asks the man what the most important issue in the governor's race in Virginia is, to which the man responds, "Getting back to the basics of teaching

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[97] *Id.*

[98] *Id.*

[99] *Id.* (citing CrowdTangle data).

[100] Wong, *supra* note 52.

[101] The Good Liars (@TheGoodLiars), X (Nov. 1, 2021), https://twitter.com/thegoodliars /status/1455243036795998212 [https://perma.cc/A3X6-LDUT].

children, not teaching them critical race theory."[102] Selvig then asks the man to define CRT. The man seemingly deflects the question, saying he is "not going to get into the specifics because he doesn't understand it that much," but still follows this up by saying "what little bit I know, I don't care for."[103] Selvig pushes further and asks what little bit the man has heard that he dislikes. While this person almost readily admits that he has no idea what CRT is, the Good Liars have shown a unique and relatively beneficial approach to combatting the negative rhetoric surrounding CRT.

The Good Liars are aware that they are unlikely to change the minds of people who are so far entrenched in these negative viewpoints, but asking questions that get to the root of someone's misunderstanding is something that can cause individuals to second-guess their assumptions. Moreover, by posting this interview, The Good Liars are not necessarily spreading the tenants of CRT but showing that CRT has become a stand-in for something that individuals just do not like. With shows like *Last Week Tonight with John Oliver* and *SNL*'s *Weekend Update* segment, satire and comedy have become helpful ways to transmit news. The Good Liars have similarly used the comedic approach on the smaller scale of social media and been able to demonstrate the lack of understanding associated with CRT. The Good Liars do not possess the power that other public figures do in influencing legislation. However, in the same way that politicians post about CRT to keep their supporters angry, groups like The Good Liars create content to show that CRT is not a villain and that many people do not know what it is at all.

Influential people posting about the harm CRT causes misleading information to spread and reinforces the belief that CRT is harmful. Coupled with the fact that algorithmic designs promote posts that have high levels of engagement, a cycle begins that is hard to escape. On the other hand, these algorithmic designs may create a window of opportunity for individuals who seek to inform social media users about what CRT is instead of how it has been promoted. The blind approach through which some platforms promote content might allow users like The Good Liars to end up in the content feed of someone who regularly followed Ted Cruz, which may cause that person to question and attempt to inform themselves about what the core tenants of CRT are before choosing to oppose it so staunchly.

B. POLITICAL USE BY ORDINARY SOCIAL MEDIA USERS

Ordinary users of social media platforms have tried to use their voice, amplified by the speed at which information moves on social media, to combat the harmful rhetoric surrounding CRT. However, in the same vein, there were the ordinary users who used their accounts to parrot the same harmful information that was being spewed to them by influential individuals. The power of content spreading on social media gives ordinary people the ability to spread their opinions to groups of people they would in no other way be in contact with. This can be both beneficial and harmful, but allowing ordinary users to have a potentially influential impact on the discussion of CRT provides another layer of analysis for the concept of anti-CRT rhetoric.

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[102] *Id.*
[103] *Id.*

TikTok, a social media site that garnered most of its popularity during the lockdown period of COVID-19, does not require a large following for a user's voice to be noticed. The default page on the app is called the "For You Page," and could be compared to the "Trending" pages on X and Instagram. One does not need to follow anyone on TikTok to have endless content on the For You Page to scroll through. Their algorithmic design takes the videos a user seems to like or spends the full time watching and gives the user more similar content.[104] This allows individuals with no following at all to reach more people than they would otherwise.

A cursory search of CRT on TikTok brings up the hashtag CRT ("#CRT"), which has amassed 866.8 million total views, at the time of publication.[105] It should be noted that CRT can stand for multiple things on TikTok, including some computer and photography terms; some people use the hashtag simply because they know that CRT videos are popular and it will get more views on their video, even if it is unrelated. The 866.8 million views may not be an entirely accurate representation of the true user interaction with CRT, but it does reflect how popular the hashtag is and how easy it is to end up watching videos discussing the body of scholarship. A quick scroll through the videos does not show news articles or statistics about legislation. Rather, videos tagged with #CRT show individuals sitting in their homes defining CRT, showing clips from politicians talking about CRT, and sharing their personal experiences with the body of scholarship.

Many videos discussing CRT include individuals commenting on politicians using CRT but not knowing what the term refers to. For example, in the Florida gubernatorial debate on October 25, the topic of CRT was raised. Florida Governor Ron DeSantis made very public stances against CRT being taught in schools, while his opponent, Charlie Crist, believed that CRT focuses on the history of America and that schools must teach the full extent of our history, otherwise, we are doomed to repeat it.[106] A small portion of the debate was picked up by some TikTok users, and many creators posted the clip with sentiments like "Ron DeSantis was making an ass out of himself"[107] and that Crist's response to DeSantis's incorrect use of CRT was "eloquent."[108] The former video received over 120,000 views, and the latter received over 32,000 views.[109]

The clips were certainly picked to favor the opinion that both creators sought to push, but the ability of these posts to garner the attention they did was largely benefitted by TikTok's algorithm as well as the platforms bite-size video model, with no video being longer than three minutes in total. Social media platforms' algorithms and bite-size presentation of information allows for misinformation to spread, but individual users have used these

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[104] Vann Vicente, *Why is TikTok so Popular? Why the Social Network is Unique*, HOW TO GEEK (Feb. 17, 2021, 8:00 AM), https://www.howtogeek.com/711824/why-is-tiktok-so-popular-why-the-social-network-is-unique/ [https://perma.cc/26LK-P3RJ].

[105] TIKTOK, https://www.tiktok.com/tag/crt?is_from_webapp=1&sender_device=pc [https://perma.cc/7URQ-6EDJ] (as of Nov. 12, 2023).

[106] Grant Fineout, *DeSantis, in Testy Debate with Dem Rival, Sidesteps 2024 Question*, POLITICO (Oct. 24, 2022, 10:01 AM), https://www.politico.com/news/2022/10/24/desantis-crist-debate-2024-00063262 [https://perma.cc/N8V2-QVQT].

[107] @mr.jonnysterns, TIKTOK (Oct. 26, 2022), on file with author.

[108] @theimmortaljonnysterns, TIKTOK (Oct. 25, 2022), https://www.tiktok.com/@theimmortaljonnysterns/video/7158476821984611630?_t=8WutBiS7LIs&_r=1 [https://perma.cc/U6P3-BYW6].

[109] *Id.*

design features to their advantage by posting clips that inform the public and call out influential figures on their misuse of CRT. At the same time, these same methods are still utilized by people who intend to spread the negative connotations of CRT at the individual level.

With TikTok's algorithm promoting the videos with which a user engages, it is unlikely that any user is seeing both sides of the CRT debate. This could lead to entrenched opinions by both sides. However, the idea that users no longer need a large following to promote content should be seen as a net positive. Platforms have become a true town square in individuals being able to express themselves without needing followers, a fancy camera or editing studio, or a certain level of education. Digital platforms have allowed individuals to use their voice more than they have in previous history, and politicians and educators are no longer running the show.

TikTok's bite size video model has proven to be a great way of engaging audiences. The opposite might be true for a platform like YouTube. YouTube, with their slogan "Broadcast Yourself," emphasizes the ability for anyone to become a user and creator on the site to promote a website by ordinary users and for ordinary users. However, influential figures and organizations—like major news networks—have found that YouTube is a beneficial way to disseminate information. A quick search of "Critical Race Theory" on YouTube provides videos made by *PBS NewsHouse*, *The Washington Post*, and *John Oliver's Last Week Tonight*.[110] This over saturation of influential figures on a platform originally geared towards ordinary users has caused the ordinary users to get buried in the heaps of professionally produced videos.

In addition to the increase of influential figures seemingly drowning out ordinary users' voices, videos on YouTube have an average length over ten minutes.[111] This likely gives content creators very little time to grab the viewer's attention and thus, decreases overall viewing on the platform. Moreover, the length of YouTube's videos provides content creators plenty of opportunities to advertise, further decreasing the viewer's engagement in the overall video itself.[112] TikTok, on the other hand, disguises their ads as ordinary users on the platform promoting products in "sponsored" videos. If a viewer recognizes it as an advertisement and wants to skip it, then can simply scroll past it without having to wait for the option to skip the advertisement, like YouTube requires.[113] Despite YouTube's design being less viewer friendly, its long-form model provides more space for users to explain concepts in-depth, like CRT, and its roots in ordinary user creation helps non-influential figures find a voice online. The ability of anyone to upload to YouTube creates a space for individuals to attempt to inform the public about the core tenants of CRT. By having ten- to fifteen-minute videos, people can create factual and informative content without needing the full setup of a news studio. YouTube gives ordinary people access to

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[110]   YouTube, https://www.youtube.com/results?search_query=critical+race+theory [https://perma.cc/2JHU-Q29L] (reflecting results as of Nov. 12, 2023).

[111]   Dexxter Clark, *How Long Should a YouTube Video Be in 2023*, Social Video Plaza, https://www.socialvideoplaza.com/en/articles/ideal-length-for-youtube-video [https://perma.cc/9N6T-CVY9] (last visited Oct. 16, 2023).

[112]   Raul Mercado, *YouTube vs. TikTok: Which is Better for Viewers?*, Make Use Of (Nov. 10, 2021), https://www.makeuseof.com/youtube-vs-tiktok-better-for-viewers/ [https://perma.cc/V373-FSST].

[113]   *Id.*

longer form video creation, without requiring that users be news organizations or any sort of influential person.

Ordinary users and influential figures alike are responsible for the content they create and choose to publish; however, they are not alone. Without the digital platform themselves, people would struggle to find a way to spread their opinions at the rate at which they have on social media. Individuals and the content they create are what make social media platforms what they are today. However, the platforms themselves have created the space for these individuals to make their voices heard and thus, it is important to evaluate the digital platforms' responsibility.

C. Call to Action by Digital Platforms

A common thread among those who produce or disseminate anti-CRT content is that they do not believe that schools should be teaching students that certain systems in America are inherently racist because doing so is divisive. However, this is seemingly a dog whistle to the fact that people are comfortable with the way things are currently, creating a form of CRT that is now a stand-in for wanting to maintain a status quo that benefits white people and let systems remain in place that have historic roots in racism.

Social media companies have long been critiqued for the content they allow on their platform, leading to longwinded and detailed community guidelines by nearly every platform to try and define what is and is not allowed by users. Some have argued that misleading CRT content could be removed under a platform's hate speech rule because anti-CRT content has been correlated with the defense of racist systems. Since, anti-CRT content has been used as a stand-in for "anti-racism and diversity efforts," an individual's stark opposition to it is the equivalent of opposing equal protection.[114] Some authors have addressed the legal regulation of racist speech offline if a "definition of actionable racist speech [is] narrow in order to respect first amendment values."[115] This legal regulation would not necessarily apply to digital platforms because digital platforms are not government actors and not subject to First Amendment protections or regulations, but it may provide a framework that digital platforms could use to help structure their rules.[116]

Mari Matsuda, a professor associated with CRT and its formation, has provided elements of a narrow definition of racist speech that could be used to combat racist speech offline via the First Amendment.[117] Matsuda's narrow definition may give digital platforms an example of how they could begin to moderate racist speech in the online world. The three elements in Matsuda's definition require the message (1) to be of racial inferiority, (2) be directed against a historically oppressed group, (3) and be persecutory, hateful, and degrading.[118] Matsuda explains that the first element of racial inferiority is met when "[r]acist speech proclaims racial inferiority and denies the personhood of target-group members."[119]

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[114] Adams, *supra* note 46.
[115] Mari Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 Mich. L. Rev. (Aug. 1989), *reprinted in* Words that Wound 17, 35 (1993).
[116] *See* 47 U.S.C. § 230(c)(2)(A).
[117] Matsuda, *supra* note 115, at 35.
[118] *Id.* at 36.
[119] *Id.*

The first part of this definition—"proclaims racial inferiority"[120]—may be a bit more difficult to show because CRT is used to represent multiple ideas. However, there may be a thin line to connect anti-CRT rhetoric to the promotion of maintaining the status quo of the country, which has long caused groups to be racially inferior to others. This may be a hard argument to make because it requires assumptions about what the individual user may believe CRT represents. If platforms found this part of the definition too hard to implement consistently, the second half of this requirement may be easier for platforms to adopt. Because many anti-CRT individuals want to teach a revisionist history of America, this would support an argument that the war on CRT content denies the personhood of target-group actors. The weakness here is that anti-CRT content rarely promotes the teaching of revisionist history on its face, making the problem even more difficult for digital platforms. For example, if someone tweets, "CRT is a divisive, racist way of thinking and should not be taught to our children," a platform could easily say that "divisive" is merely an opinion, and the use of the word "racist" is in reference to racism against white people, which is not a historically oppressed group, and the fact that it should not be taught to children is an opinion. This would all mean that the content could remain online, despite its continuing to spread a narrative about CRT that is not in line with the theory's tenants.

The second element of Matsuda's definition requires the message to be directed at a historically oppressed group.[121] If digital platforms chose to adopt this part of the racist speech definition, even though many experts could be brought in to help define what constitutes a historically oppressed group, anti-CRT rhetoric may not meet this standard and may be subject to removal or other consequences by a platform. Because anti-CRT rhetoric on its face is often directed at the *theory* as opposed to *people*, there is no historically oppressed group to target. Additionally, even if users attack supporters of CRT, that is not attacking a historically oppressed group. Even though it seems like anti-CRT rhetoric has connections to wanting to erase Black history and maintain a status quo favorable to white individuals, these connections are not outright targeting and thus, would be difficult for the platform to fight.

Matsuda explains her final element of racist speech—persecutory, hateful, and degrading—as equivalent to the First Amendment's limits on fighting words.[122] This would likely be the easiest part of this definition for digital platforms to adopt, as there is already a substantial framework and precedent for how fighting words have been handled offline. Platforms might be wary of adopting a policy that so closely aligns with First Amendment regulation, however, because it would push platforms closer to being subject to the First Amendment overall, which Section 230 of the Communications Decency Act already seeks to avoid.[123] Matsuda provides a narrow definition of racist speech that could be used to regulate such actions offline and may double as a helpful starting point for digital platforms that seek to regulate

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[120] *Id.*
[121] *Id.*
[122] *Id.*
[123] 47 U.S.C. § 230(c)(2)(A).

racist speech online or alter their current hate speech policies to more directly target racist speech.

In 2023, X's hate speech policy prohibited content that "promote[s] hostility and malice against others based on their race, religion, disability, sexual orientation, gender identity or ethnicity/national origin."[124] The policies then listed the certain instances in which this rule applied, which included content that contains violent threats and incitement against protected categories.[125] Similar to Matsuda's second element of racist speech requiring a targeting of a historically oppressed group, these rules were unlikely to capture anti-CRT rhetoric because of the lack of *direct* targeting of a group by a user. Anti-CRT rhetoric is used as a stand-in for policy desires that have racist roots—like wanting to teach revisionist history—but posting about disliking CRT is unlikely to meet X's standard for hate speech. X's current hate speech policy prohibits content that "targets individuals or groups with abuse based on their perceived membership in a protected category," which is even less likely to capture anti-CRT rhetoric.[126]

YouTube's policies around hate speech are similar, again protecting against the targeting of the same protected categories and any encouragement of violence "against individuals or groups based on" these protected categories.[127] While some anti-CRT rhetoric could reasonably be connected to the encouragement of violence against school boards,[128] school boards are not a protected group in the platforms' policies and thus, would unlikely be subject to regulation by YouTube.

In addition to possibly regulating anti-CRT rhetoric under a hate speech rule, some have suggested that misinformation regulation would be a better approach. Congress is aware of the harm that misinformation causes and that social media platforms may be responsible for ensuring that misinformation does not spread on their sites. However, Congress also acknowledges the difficult balance that platforms must strike between moderating content on their sites while ensuring it does not suppress speech.[129] Despite the acknowledgement that platforms have some responsibility in combatting misinformation on their sites, it is unclear if anti-CRT rhetoric constitutes misinformation or merely uninformed opinions.

Platforms have community guidelines in place to combat the spread of false or misleading information. While this is helpful in content moderation, it becomes more difficult when each platform differs in its definition of misinformation. X defines misinformation as "claims that have been confirmed to be false by external, subject-matter experts or include information that is shared in a deceptive or confusing manner,"[130] whereas YouTube says that misinformation includes "[c]ertain types of misleading or

[124] *Hateful Conduct*, X, (Apr. 2023), https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy [https://perma.cc/64W8-P26R].

[125] *Id.*

[126] *Id.*

[127] *Hate Speech Policy*, YOUTUBE, (June 5, 2019), https://support.google.com/youtube/answer/2801939?ref_topic=9282436 [https://perma.cc/49EQ-CJY3].

[128] Graham, *supra* note 95.

[129] JASON A. GALLO, CONG. RSCH. SERV., R46662, SOCIAL MEDIA: MISINFORMATION AND CONTENT MODERATION ISSUES FOR CONGRESS 1 (2021).

[130] *How We Address Misinformation on X*, X, https://help.twitter.com/en/resources/addressing-misleading-info [https://perma.cc/G6LJ-AQE4].

deceptive content . . . that can cause real-world harm" along with specific categories of misinformation—suppression of census participation, manipulated content, misattributed content, promoting dangerous remedies, cures or substances, and contradicting expert consensus on certain safe medical practices.[131] These differing definitions can cause some content not allowed on X to be allowed on YouTube, or vice versa.

   If someone posts on X that they believe CRT should not be taught in schools, that may not meet the standard for misinformation set by the platform outright, but one could argue that using the villainized version of CRT could be "information that is shared in a deceptive or confusing manner"[132] and may come close to satisfying X's misinformation requirement, making such content subject to removal or other consequences. The issue of determining exactly what "version" of CRT the user is referring to may persist, which is where human content moderation as opposed to artificial intelligence (AI) content moderation would be more beneficial. Meanwhile, a user who creates a video on YouTube detailing why they believe CRT should be banned from being taught in public schools may meet YouTube's standards for misinformation and thus, be subject to regulation because it could be considered deceptive or able to cause real world harm if there is a connection between the content and the threats of violence experienced by school boards.

   Despite hate speech and misinformation policies in place already, platforms have yet to find a solution to moderating the anti-CRT rhetoric online. An extreme solution would be for digital platforms ban to discussion of CRT all together. With the support of Section 230 of the Communications Decency Act—which protects digital platforms from liability for removing another user's content—it is likely that they could legally achieve this.[133] Also, this solution does not address the issue because it also stops users like The Good Liars or ordinary TikTok users from posting content that seeks to inform others on the core tenants of CRT; these users would still be mentioning CRT, making them subject to this umbrella ban, while trying to promote accurate information.

   Another possible solution is not a complete ban of content, but rather a blanket rule applying to posts based on keyword recognition. During the COVID-19 pandemic, misinformation surrounding the coronavirus and vaccine spread throughout social media. Because it was happening at rates at which digital platforms could not keep up even if they tried, they began using an automated system that would flag any content mentioning COVID with a warning to look to official guidelines for all information surrounding masks or vaccines. Posts that spread false information and posts that were accurate in their information were both flagged with a link at the bottom redirecting any user seeing the content to the Centers for Disease Control (CDC) website. This was a middle-ground solution for digital platforms as they were able to flag all posts mentioning COVID quickly and easily but did not take the step of removal, leaving it up to the user seeing the content if they were going to seek out more information. Despite the popular belief

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[131] *Misinformation Policies,* YouTube, https://support.google.com/youtube/answer/10834785#zippy=%2Cmisattributed-content [https://perma.cc/W3JP-4XT2].
[132] X, *supra* note 130.
[133] 47 U.S.C. § 230(c)(2)(A).

that individuals are stuck in their own echo-chamber, new research has found that these warnings referring to the CDC for accurate information were effective in reducing misconceptions.[134]

Something similar might be possible for CRT. Most of the COVID flags were effective because they pointed to a government source, which is likely more trustworthy than an independent source.[135] While there is no central government source that publishes information regarding the body of scholarship that is CRT, platforms could consider linking to something that is still well respected and still independent, like Encyclopedia Britannica. Platforms could also potentially survey its users to determine what independent organizations they find most trustworthy and utilize those organizations and their content on CRT. This is seemingly a quick and effective solution for digital platforms. It would not require the removal of content without further review, but still reaches a large amount of content and could be done by AI moderation.

In addition to enforcement, there is a question of whether platforms should be held responsible for allowing the negative and largely false narrative surrounding CRT to spread in the fashion that it did. The ability of these messages to gain traction was the result of how social media is structured, along with the increased use by the public of social media for news. While these factors are seemingly out of the platform's control, a platform's algorithmic promotion of content is not. One may argue that digital platforms were negligent in allowing misleading information to spread because of their algorithmic promotion, which looks only to interactions with content and not to the information contained within the content that garners such high interaction levels.

Digital platforms do not need to tear down and rebuild the algorithmic system as they know it; however, there are some small changes that could be instituted to prevent similar problems in the future. For example, after posts get a certain number of interactions, it may be in a platform's best interest to have a content moderator review the information to ensure that it is accurate or at least not harmfully misleading. Monitoring posts that are beginning to go viral does not mean that removal is the automatic solution, but it requires more thoughtful review by the platform. Because not every post on a platform goes viral, these posts are easier to spot and keep track of than the millions of pieces of user generated content that are created every minute on a platform. After content meets a threshold of interactions that the platform deems as the early stages of virality, human content moderators could review it and flag it for misinformation, reduce its appearance on people's media feeds, or, if necessary, remove it. This would at least slow the process of algorithmic promotion of incorrect information.

Possibly the most promising solution is known as prebunking—that is, teaching users how to spot misinformation before they even encounter it.[136] Prebunking involves exposing individuals to the impacts of "emotional language, fake experts, and conspiracy theories" in a simulation manner with

[134] *See* Candice Lanius, Ryan Weber & William I. MacKenzie Jr., *Use of Bot and Content Flags to Limit the Spread of Misinformation Among Social Networks*, 11 Soc. Network Analysis & Mining 32 (2021).
[135] *See id.*
[136] *See, e.g.*, Zara Abrams, *Misinformation: Controlling the Spread*, 52 Monitor Psych 44, 50 (March 2021).

the hopes that the individual will be better at spotting examples of this in the real world.[137] There has even been a video game titled "Bad News" that "simulates a social media feed to teach participants how to distinguish between real and fake news headlines."[138] It is possible that platforms could adopt a similar concept—if not a video game, maybe a quiz—that is a part of their terms and conditions to create an account on their website. Before users can actively contribute content to the service, they must understand what misleading information looks like. This would help get ahead of the problem rather than coming up with reactive solutions on the backend. Early research by the American Psychology Association has shown that if individuals are shown a piece of misleading information and are then told how they may be misled by the information, "[when] they encounter that misinformation later, it no longer sticks."[139]

Digital platforms are not innocent bystanders in promotion of anti-CRT rhetoric. They created the environment where misleading content can thrive and have chosen not to act for fear of seeming political. While the solution may not be readily present, platforms hold responsibility for this result.

CONCLUSION

Critical race theory has a long history in American scholarship, with valuable lessons to teach. Villainizing CRT creates division and erases the beneficial lessons that CRT has to offer. Social media is the forum through which nearly all misleading information of CRT has been shared and created. The speed at which information travels on social media, coupled with the use by influential figures on the topic have created a wildfire that may be hard to put out. However, the aspects of social media that have caused the war on CRT to get out of hand are the same ones that allowed for individuals to attempt to combat the negative rhetoric surrounding the concept. While individuals have been generating the content about CRT, platforms hold some of the responsibility in letting it spread in the way it has—meaning they also have the power to try and implement solutions in content moderation to help curb the rapid spread of misleading information.

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[137] *Id.* at 50.
[138] *Id.* at 51.
[139] *Id.* at 50.