Proposed Education Bills

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Today 📈 & 🎫

- Initial Matters
- Birds-Eye View
- What’s in the bills?
- Issues That Might Arise
- Thoughts & Questions
Initial Matters
My background

- Teach Arizona Education Law in College of Education
- Direct an undergraduate clinic in College of Law
- Former special education teacher
- Education attorney who has represented students & parents

- NOT an expert on legislative process
Information, Not Legal Advice

The purpose of this presentation is to provide general information. It does not serve as legal advice or counsel.

Information about: what’s proposed, what legal challenges might arise, and how courts might analyze them
Warning!

⚠️ This presentation has a lot of text.
⚠️ To find Arizona statutes and bills under consideration by the legislature, visit azleg.gov
Birds-Eye View
Keep in mind:

✧ We don’t know whether these bills will pass and, if so, what the final version will look like
✧ If the bills do pass and are signed into law, they will likely be challenged in court
✧ Ultimately, the court will decide questions of:
  ✧ Interpretation
  ✧ Whether any state or federal constitutional issues might invalidate the law(s)
✧ 2021’s SB 1532/ARS 15-717.02 is an example
Guidance

Can ask school counsel for advice & guidance

Understanding A.R.S. § 15-717.02 regarding “prohibited instruction” and its impact on teaching the History and Social Studies Standards

What is A.R.S § 15-717.02?

At the end of the 2021 session of the Arizona Legislature, a bill was passed (Laws 2021, Chapter 404, Section 21) that prohibits instruction on certain topics from being offered in public district or charter schools in grades PK-12. The law states that a teacher, administrator or other employee shall not use public monies for instruction that presents any form of blame or judgement on the basis of race, ethnicity or sex or allow instruction based on the following seven concepts:

1. One race, ethnic group, or sex is inherently morally or intellectually superior to another race, ethnic group, or sex.
2. An individual, by virtue of the individual’s race, ethnicity, or sex, is inherently racist, sexist, or oppressive whether consciously or unconsciously.
3. An individual should be “invidiously” discriminated against or receive adverse...
What’s in the bills?

5 Types of Bills for Discussion
+ Proposed Amendments to AZ Constitution
Bills related to:

- Prohibited Instruction
- Required Instruction
- American Flag Display & Pledge of Allegiance
- Publicly Posting Classroom Materials
- Attorney General Investigation of Schools & Universities

& Proposed Amendments to the Arizona Constitution
Prohibited Instruction
Prohibited Instruction Bills
HB 2112 and HB 2291

K-12 prohibition on instruction that “presents any form of blame or judgment on the basis of race, ethnicity, or sex”

K-12 teachers “may not allow or make part of a course any of the following concepts:

1. ONE RACE, ETHNIC GROUP OR SEX IS INHERENTLY MORALLY OR INTELLECTUALLY SUPERIOR TO ANOTHER RACE, ETHNIC GROUP OR SEX.
2. AN INDIVIDUAL, BY VIRTUE OF THE INDIVIDUAL’S RACE, ETHNICITY OR SEX, IS INHERENTLY RACIST, SEXIST OR OPPRESSIVE, WHETHER CONSCIOUSLY OR UNCONSCIOUSLY.
3. AN INDIVIDUAL SHOULD BE INVIDIAUOUSLY DISCRIMINATED AGAINST OR RECEIVE ADVERSE TREATMENT SOLELY OR PARTLY BECAUSE OF THE INDIVIDUAL’S RACE, ETHNICITY OR SEX.
4. AN INDIVIDUAL’S MORAL CHARACTER IS DETERMINED BY THE INDIVIDUAL’S RACE, ETHNICITY OR SEX.
5. AN INDIVIDUAL, BY VIRTUE OF THE INDIVIDUAL’S RACE, ETHNICITY OR SEX, BEARS RESPONSIBILITY FOR ACTIONS COMMITTED BY OTHER MEMBERS OF THE SAME RACE, ETHNIC GROUP OR SEX.
6. AN INDIVIDUAL SHOULD FEEL DISCOMFORT, GUILT, ANGUISH OR ANY OTHER FORM OF PSYCHOLOGICAL DISTRESS BECAUSE OF THE INDIVIDUAL’S RACE, ETHNICITY OR SEX.
7. ACADEMIC ACHIEVEMENT, MERITOCRACY OR TRAITS SUCH AS A HARD WORK ETHIC ARE RACIST OR SEXIST OR WERE CREATED BY MEMBERS OF A PARTICULAR RACE, ETHNIC GROUP OR SEX TO OPPRESS MEMBERS OF ANOTHER RACE, ETHNIC GROUP OR SEX.
Prohibited Concepts

1. One race, ethnic group or sex is inherently morally or intellectually superior to another race, ethnic group or sex.

2. An individual, by virtue of the individual's race, ethnicity or sex, is inherently racist, sexist or oppressive, whether consciously or unconsciously.

3. An individual should be invidiously discriminated against or receive adverse treatment solely or partly because of the individual's race, ethnicity or sex.

4. An individual's moral character is determined by the individual's race, ethnicity or sex.

5. An individual, by virtue of the individual's race, ethnicity or sex, bears responsibility for actions committed by other members of the same race, ethnic group or sex.

6. An individual should feel discomfort, guilt, anguish or any other form of psychological distress because of the individual's race, ethnicity or sex.

7. Academic achievement, meritocracy or traits such as a hard work ethic are racist or sexist or were created by members of a particular race, ethnic group or sex to oppress members of another race, ethnic group or sex.
Prohibited Instruction Bills
HB 2112 and HB 2291

Consequences to include:

- Teacher suspension or revocation of teaching certificate
- Fine
  - “not to exceed $5,000 per school” – HB 2112
  - “at least $5,000 per school” – HB 2291
Prohibited Instruction Bills

Can the legislature do this?

Can the legislature tell schools what not to teach?

Don’t students have a right to learn about these topics?
Prohibited Instruction Bills

Arce v. Douglas, 793 F.3d 968 (9th Cir. 2015)

Youth action group protest TUSD governing board meeting in 2011 in protest of state law bad on "ethnic studies" (Photo from Arizona Daily Star)
Prohibited Instruction Bills

*Arce v. Douglas*, 793 F.3d 968, 982 (9th Cir. 2015)

“a delicate balance”

A student’s First Amendment right to receive information and ideas

State’s authority in educational matters
Prohibited Instruction Bills

🔗 *Arce v. Douglas*, 793 F.3d 968, 983 (9th Cir. 2015)

“[T]he state may not remove materials otherwise available in a local classroom unless its actions are *reasonably related to legitimate pedagogical concerns*”

*especially “where the local school board has already determined that the material at issue adds value to its local school curriculum”*
Prohibited Instruction Bills

What type of instruction do these bills prohibit anyway?

What does it even mean to make a concept “part of a course”?

Are these bills too vague?
Prohibited Instruction Bills

Arce v. Douglas, 793 F.3d 988 (9th Cir. 2015)

“A statute is impermissibly vague if it:

fails to provide a reasonable opportunity to know what conduct is prohibited, or

is so indefinite as to allow arbitrary and discriminatory enforcement”
Prohibited Instruction Bills

These bills are really broad...

Animus?

Do these bills prioritize one particular viewpoint over another?
A statute can be invalid if its enactment or enforcement was motivated by a discriminatory purpose, such as racial animus.

5 Factors to Determine Racial Animus:

1. Impact bears more heavily on one race than another?
2. Historical background of law
3. Specific sequence of events that led up to law
4. Departures from normal procedures or substantive conclusions
5. Relevant legislative history
Prohibited Instruction Bills

To the extent these bills seem concerned with discrimination

→ don’t we already prohibit discrimination based on race and sex?
“Hostile Environment” already prohibited


- Requires schools to address any hostile environment in schools due to discrimination based on race, color, or national origin. See Monteiro v. Tempe Union High Sch. Dist., 158 F.3d 1022, 1025 (9th Cir. 1998).


- Requires schools to address sexual harassment and any hostile environment due to discrimination based on sex. See Davis v. Monroe County Board of Education, 526 U.S. 629, 651 (1999).
Required Instruction

2/5
Required Instruction
HB 2555 – Civics

Adds details to current law regarding required civics education K-12

15-701.01. High schools; graduation; requirements; community college or university courses; transfer from other schools; academic credit

A. The state board of education shall:

1. Prescribe a minimum course of study that incorporates the academic standards adopted by the state board for the graduation of pupils from high school.

2. Prescribe competency requirements for the graduation of pupils from high school incorporating the academic standards in at least the areas of reading, writing, mathematics, science and social studies. The academic standards prescribed by the state board in social studies shall include personal finance, and American civics education AND A COMPARATIVE DISCUSSION OF POLITICAL IDEOLOGIES, SUCH AS COMMUNISM AND TOTALITARIANISM, THAT CONFLICT WITH THE PRINCIPLES OF FREEDOM AND DEMOCRACY THAT ARE ESSENTIAL TO THE FOUNDING PRINCIPLES OF THE UNITED STATES. The state
Required Instruction
HB 2555 – Civics

15-701.04. Civics instruction; education curriculum; board approval

A. To help families, civic institutions, local communities, schools and charter schools prepare students to be civically responsible and knowledgeable adults, the state board of education shall:

1. Develop integrated civic education standards that school districts and charter schools must incorporate as part of regular school work in kindergarten programs and grades one through twelve. The civic education standards must assist students in developing all of the following:

(a) An understanding of the students’ shared rights and responsibilities as residents of this state and of the founding principles of the United States, including all of the following:

(i) The history and content of the Declaration of Independence, including national sovereignty, natural law, self-evident truth, equality of all persons, limited government, popular sovereignty and inalienable rights of life, liberty and property, and how they form the philosophical foundation of our government.
HB 2555 – Civics

- Federalist papers
- Sense of civic pride
- Understanding of civic-minded expectations
- Oral histories of diverse, civic-minded individuals

(ii) THE HISTORY, MEANING, SIGNIFICANCE AND EFFECT OF THE PROVISIONS OF THE UNITED STATES CONSTITUTION AND AMENDMENTS TO THE UNITED STATES CONSTITUTION, WITH EMPHASIS ON EACH OF THE TEN AMENDMENTS THAT MAKE UP THE BILL OF RIGHTS AND HOW THE UNITED STATES CONSTITUTION PROVIDES THE STRUCTURE OF OUR GOVERNMENT.

(iii) THE ARGUMENTS IN SUPPORT OF ADOPTING OUR NATION'S REPUBLICAN FORM OF GOVERNMENT AS EMBODIED IN THE MOST IMPORTANT OF THE FEDERALIST PAPERS.

(b) A SENSE OF CIVIC PRIDE AND A DESIRE TO PARTICIPATE REGULARLY IN GOVERNMENT AT THE LOCAL, STATE AND FEDERAL LEVELS.

(c) AN UNDERSTANDING OF THE PROCESS FOR EFFECTIVELY ADVOCATING BEFORE GOVERNMENT BODIES AND OFFICIALS.

(d) AN UNDERSTANDING OF THE CIVIC-MINDED EXPECTATIONS, DEVELOPED BY THE STATE BOARD OF EDUCATION, OF AN UPRIGHT AND DESIRABLE CITIZENRY THAT RECOGNIZES AND ACCEPTS RESPONSIBILITY FOR PRESERVING AND DEFENDING THE BLESSINGS OF LIBERTY INHERITED FROM PRIOR GENERATIONS AND SECURED BY THE UNITED STATES CONSTITUTION.

2. CURATE ORAL HISTORY RESOURCES TO BE USED ALONG WITH THE CIVIC EDUCATION STANDARDS THAT PROVIDE PORTRAITS IN PATRIOTISM BASED ON THE PERSONAL STORIES OF DIVERSE INDIVIDUALS WHO DEMONSTRATE CIVIC-MINDED QUALITIES, INCLUDING FIRST-PERSON ACCOUNTS OF VICTIMS OF OTHER NATIONS' GOVERNING PHILOSOPHIES WHO CAN COMPARE THOSE PHILOSOPHIES WITH THOSE OF THE UNITED STATES.

3. REVIEW AND EITHER APPROVE OR REJECT THE INTEGRATED CIVIC EDUCATION CURRICULUM SUBMITTED BY EACH SCHOOL DISTRICT AND CHARTER SCHOOL PURSUANT TO SUBSECTION B OF THIS SECTION TO ENSURE THAT THE CURRICULUM MEETS THE REQUIREMENTS OF THIS SECTION.

B. ON OR BEFORE A DATE PRESCRIBED BY THE STATE BOARD OF EDUCATION, EACH SCHOOL DISTRICT AND CHARTER SCHOOL SHALL ANNUALLY SUBMIT ITS INTEGRATED CIVIC EDUCATION CURRICULUM TO THE STATE BOARD OF EDUCATION FOR APPROVAL.
Is it the legislature’s job to prescribe this much detail in the curriculum?

Isn’t that up to school boards?
Article 11, section 2 of Arizona State Constitution:

2. Conduct and supervision of school system
Section 2. The general conduct and supervision of the public school system shall be vested in a state board of education, a state superintendent of public instruction, county school superintendents, and such governing boards for the state institutions as may be provided by law.
Flag and Pledge
Flag & Pledge of Allegiance
HB 2597, Amending A.R.S. 15-506 to require:

- daily pledge of allegiance to the flag (K-6)
- daily minute of quiet reflection and moral reasoning (4-12)
- Parent exemption

4. For grades seven through twelve, place a legible copy of the Constitution of the United States and the Bill of Rights adjacent to each classroom flag.

5. FOR KINDERGARTEN PROGRAMS AND GRADES ONE THROUGH SIX, set aside a specific time each day for those students who wish to recite the pledge of allegiance to the United States flag. STUDENTS SHALL RECITE THE PLEDGE OF ALLEGIANCE TO THE UNITED STATES FLAG DURING THIS TIME. AT THE REQUEST OF A PARENT, THE PARENT'S STUDENT SHALL BE EXCUSED FROM THE REQUIREMENT OF THIS PARAGRAPH.

6. FOR GRADES FOUR THROUGH TWELVE, SET ASIDE A SPECIFIC TIME EACH DAY FOR STUDENTS TO ENGAGE IN QUIET REFLECTION AND MORAL REASONING FOR AT LEAST ONE MINUTE. STUDENTS SHALL ENGAGE IN QUIET REFLECTION AND MORAL REASONING DURING THIS TIME. AT THE REQUEST OF A PARENT, THE PARENT'S STUDENT SHALL BE EXCUSED FROM THE REQUIREMENT OF THIS PARAGRAPH.

B. Private schools, parochial schools and homeschools are exempt from this section.
Flag & Pledge of Allegiance
HB 2597

龊 Implicates students’ First Amendment rights

 chees Pledge of Allegiance cannot be required
 chees Mandatory prayer in school not allowed

This bill seems to follow a case out of Florida, which held that requiring parental permission before being excused from reciting the pledge did not violate students’ First Amendment rights

Frazier ex rel. Frazier v. Winn, 535 F.3d 1279, 1282 (11th Cir. 2008)
Publicly Posting Materials
Publicly Posting Classroom Materials

HB 2315 & 2535, creating ARS 15-113.01

Current law (ARS 15-113):

A. A parent of a student in a public educational institution has the right to review learning materials and activities in advance. A parent who objects to any learning material or activity on the basis that the material or activity is harmful may request to withdraw that parent's student from the activity or from the class or program in which the material is used and request an alternative assignment.
Publicly Posting Classroom Materials

HB 2315 would require public schools to post on a website:

- Lists of required or recommended classroom reading materials (title, author, publisher, etc.)
- Lists of assigned or recommended audio, video, or audiovisual presentations (title, author, publisher, etc.)
- Regular updates

HB 2535 would also require similar websites:

- For “all of the learning materials and activities” that are used or “being considered for use”
- Available 3 or fewer clicks
- 60-day waiting period before purchasing, approving, or selecting any of the materials
Publicly Posting Classroom Materials

Can teachers and schools even do this? Too burdensome?
Publicly Posting Classroom Materials

Article 11, Section 2 of Arizona State Constitution:

2. Conduct and supervision of school system

Section 2. The general conduct and supervision of the public school system shall be vested in a state board of education, a state superintendent of public instruction, county school superintendents, and such governing boards for the state institutions as may be provided by law.
Arce v. Douglas, 793 F.3d 968 (9th Cir. 2015)

Ban on TUSD Mexican-American Studies Implicates students’ First Amendment right to receive information and ideas

Cited a 1982 Supreme Court Case holding that “a school could not remove certain materials from its library because of a disagreement with the ideas in the book or to impose upon the students a ‘political orthodoxy.’”

Investigations

Last proposed bill
Investigation of Schools & Universities

HB 2276

Current state law (ARS 41-194.01) requires the state attorney general to investigate allegations that a county, city, or town’s ordinance, regulation, order, or other official action violated state law or the AZ Constitution, upon the request of a member of the legislature request

HB 2276 would amend this state law to include investigations for regulations, orders, and other official actions taken by universities, ABOR, and public schools
Investigations of Schools

Article 11, Section 2 of Arizona State Constitution:

2. Conduct and supervision of school system

Section 2. The general conduct and supervision of the public school system shall be vested in a state board of education, a state superintendent of public instruction, county school superintendents, and such governing boards for the state institutions as may be provided by law.
ARS 15-1626(A): ABOR has “the powers necessary for the effective governance and administration of the institutions under its control”

Including the power to “establish curricula and designate courses at the several institutions that in its judgment will best serve the interests of this state”
Bills related to:

- Prohibited Instruction
- Required Instruction
- American Flag Display & Pledge of Allegiance
- Publicly Posting Classroom Materials
- Attorney General Investigation of Schools & Universities
Proposed Amendments to AZ Constitution
HCR 2001

What’s a concurrent resolution?

HCR 2001, if it passes both houses of the legislature, would propose amendments to the AZ Constitution, if approved by the voters and on proclamation of the governor.

These amendments could still face legal challenges if they conflict with the U.S. Constitution.
HCR 2001

“Stop Critical Race Theory and Racial Discrimination in Schools and Other Public Institutions Act”

1. Short title
   This act may be cited as the "Stop Critical Race Theory and Racial Discrimination in Schools and Other Public Institutions Act".

2. Purpose
   The people of this state find and declare the following:  
   1. Slavery, legal racial discrimination and racism are so inconsistent with the founding principles of the United States that Americans fought a civil war to eliminate the first, waged long-standing political campaigns to eradicate the second and have made the third unacceptable in the court of public opinion.
   2. Racially discriminatory ideologies and practices such as that known as "critical race theory" directly contradict the principles of the Fourteenth Amendment of the United States Constitution, the Civil Rights Act of 1964 and the Constitution of Arizona by inflaming divisions on the basis of race and ethnicity.
   3. By advocating for differential treatment of individuals on the basis of race and ethnicity, promoting the assumption that reverse racism is necessary or advancing the idea that an individual should be first and foremost reduced to one's demographic identity, the aforementioned ideologies and practices deny the constitutional guarantee of equal protection of the Law and the promise of the Declaration of Independence holding that all men are created equal.
   4. The ordinary meaning of terms such as "anti-racist" and "diversity, equity and inclusion" have been supplanted and distorted by proponents of an ideology that actively groups, segregates, discriminates or otherwise advocates for differential treatment among individuals based on racial and ethnic characteristics.
   5. It is unacceptable for state-run, taxpayer-supported institutions to teach or implement racially discriminatory ideologies or practices or to require students or employees to endorse racial discrimination or participate in activities promoting it.
Proposed Article II, section 36

Currently:

• “Affirmative Action Ban” (Prop 107)
• Prohibits preferential treatment or discrimination on the basis of “race, sex, color, ethnicity, or national origin” in operation of public schools, including universities

HCR 2001 would, among other things:

• Prohibit treating applicants differently on the basis of race or ethnicity when making hiring, promotion, or admissions decisions
• Prohibit disciplinary decisions that treat students differently on the basis of race or ethnicity
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<th>Proposed Article XI, section 7</th>
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<td><strong>Currently:</strong></td>
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<td>• Prohibits “religious or political test[s]” as a condition for admission to public school as a teacher or student</td>
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<td><strong>HCR 2001 would, among other things:</strong></td>
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<td>• Include <em>employees</em>, as well as teachers</td>
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<td>• Include <em>promotion</em>, as well as admission</td>
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<td>• Defines “political test” as “compelling or soliciting” a <em>statement</em> of personal belief in support of any ideology or movement that promotes differential treatment...based on race”</td>
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### Proposed Article XI, section 12

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<th>Currently:</th>
<th>HCR 2001 would, among other things:</th>
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<td>• Does not exist</td>
<td>• Prohibit schools &amp; universities from compelling any employee or student to <strong>endorse or profess, or attend trainings promoting</strong>, the concepts mentioned in HR 2112 &amp; 2291</td>
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Prohibited Concepts

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Discussion