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TO: House State & Local Government Committee
FROM: Gary Daniels, Chief Lobbyist, ACLU of Ohio
DATE: September 22, 2021
RE: Sub. House Bill 327 – Opponent Testimony

To Chairman Wiggam, Vice Chair John, Ranking Member Kelly, and members of the House State & Local Government Committee, thank you for this opportunity to provide opponent testimony on Substitute House Bill 327.

The ACLU of Ohio believes there are numerous reasons to oppose HB 327. But, much of this bill boils down to what and how do we teach Ohio students about race and racism.

HB 327 is centered around eleven “divisive concepts.” These concepts are defined in the bill. Some are non-controversial. Of course our students should never be taught one skin color, religion, sex, ethnicity, or nationality is inherently superior to another. Or that people should be discriminated against because of these differences.

But HB 327 goes much further. Banned would be any school instruction suggesting, discussing, or maintaining people can and do act in ways, whether consciously or unconsciously, that are racist, sexist, or oppressive. (Lines #38-41).

Also gone would be any hint white Americans individually or systemically benefit, in any situation or instance whatsoever, over people of color simply because they are white. (Lines #61-64).

HB 327 also mandates that any/all instruction on “controversial aspects of history” and the “historical oppression” of groups of people be done in an entirely impartial manner (Lines #177-181). (I note HB 327 provides no definition of or guidance regarding what is a “controversial aspect of history.”)

In other words, HB 327 makes illegal the State Board of Education, school districts, schools, staff, and teachers instructing students that such things as slavery in the United States, or the Jewish Holocaust, or centuries of federal, state, and local laws denying all Americans equal rights are wrong, inexcusable, or indefensible. These are but a few notable examples of the language concerns within HB 327.

Educators are rightly concerned about these provisions and others like them. Penalties for violating HB 327 include the ability to sue schools, including individual teachers, for money damages, teachers can lose their teaching licenses, and schools can lose up to 100% of their state funding. (Lines #107-136). Because they teach slavery is bad.

The end result is instructors will simply stop teaching anything on these subjects at all. Who among them will risk lawsuits, bankruptcy, license revocation, and their schools literally being shut down because they frame centuries of laws and policies that kept black people and women from voting as evidence of systemic racism and sexism?

Of course, HB 327 is not limited to just Ohio's public K-12 schools. It also includes Ohio's state colleges and universities. By design, college and university instructors enjoy wide latitude in what they teach, how they teach, and how they conduct their classrooms. This is their First Amendment right to academic freedom, broadly upheld numerous times over numerous decades by courts across the country.

HB 327 ignores, or perhaps seeks to blow up, this system, tradition, and the free speech rights of college and university staff by placing the same restrictions regarding "divisive concepts" on them as it does K-12 public schools. By doing so, it treats the 6-year-old in first grade the same as the 40-year-old PhD student at Ohio State.

HB 327 does not stop with schools, colleges, and universities. Like its application to those entities, this legislation requires state agencies and departments and local governments to ensure the "divisive concepts" are not being used in staff trainings, any instruction, programming, funding received, or funding awarded to others.

Among the numerous other problems this will create, I offer the following example: A police department accused of, or with a documented pattern of ongoing racial bias, wishes to examine its training, policies, and actions in order to improve itself. Under HB 327, it is illegal for them to offer anti-bias training suggesting or demonstrating the negative actions of a white officer towards a black citizen can be or was the result of inherent, unintentional bias on an individual or at a systemic level.

Ohioans should not be denied the truth about our state and nation's history. We should not be hesitant or afraid to discuss difficult issues, including in our schools. Instead of expanding and creating bureaucracy at numerous levels to grow government and subvert local control, we should be encouraging and facilitating open discussion and learning.

Ignorance of our flawed history has led us to keep repeating it in the present and going forward. Substitute House Bill 327 asks us to put our collective heads in the sand, to ignore reality, to whitewash our uncomfortable past. The ACLU of Ohio urges defeat of this legislation.