
SYMPOSIA

BUILDING SHIELDS: ACCREDITATION, INSURANCE, AND PUBLIC-PRIVATE PARTNERSHIPS AS TOOLS TO SAFEGUARD CRITICAL RACE THEORY AND DEMOCRACY IN HIGHER EDUCATION

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INTRODUCTION

Following the racial justice uprisings of 2020, universities have become increasingly vulnerable to coordinated political campaigns aimed at dismantling antiracist teaching, training, and research.¹ These attacks, ranging from legislative bans on Critical Race Theory (“CRT”)² to executive efforts to dismantle the U.S. Department of Education,³ expose the fragility of higher education’s role as a guardian of democratic pluralism. This Essay demonstrates that universities cannot rely solely on moral suasion or First Amendment litigation to resist these escalating, structural assaults. Instead, colleges and universities must build a multilayered legal strategy that renders the teaching of CRT and the pursuit of racial equity both legally difficult to target and financially costly to pursue. By outlining three mutually reinforcing, interlocking mechanisms—accreditation standards, mission-aligned insurance pools, and public-private partnerships—this Essay builds an institutionally controlled shield for academic freedom and inclusive pedagogy, including CRT instruction.

Part I focuses on the compliance mechanism inherent in the accreditation process. Accrediting agencies, acting within their discretion to set evaluative standards, can require governance arrangements that protect academic freedom and curricular integrity, and link antidiscrimination and equity principles to educational quality to safeguard CRT instruction. The accreditation mechanism embeds procedural obligations that render attacks on CRT and efforts to restrict institutional missions procedurally noncompliant. Part II outlines the financing mechanism of mission-aligned insurance pools. Modeled on nonprofit healthcare captives and organized by higher-education associations, these pools stabilize costs, fund a duty to defend, and coordinate multi-institutional strategies when parallel lawsuits target member colleges and universities, or their programs, faculty, or courses. As a result, episodic exposure is transformed into funded, coordinated defense, making political attacks on colleges and universities financially burdensome for even the most well-funded anti-CRT campaigns. Part III provides a rapid-response litigation and support mechanism through public-private partnerships. Public-private partnerships with philanthropic foundations and civil rights nonprofits provide colleges and

¹ See *About*, CRT FORWARD, <https://crtforward.law.ucla.edu/about> [https://perma.cc/7747-ET9N] (last visited May 4, 2026) (tracking political actions targeting critical race theory instruction).

² For purposes of this Essay, the definition of CRT is adopted from the UCLA School of Law’s CRT Forward *FAQ* page. *FAQ*, CRT FORWARD, <https://crtforward.law.ucla.edu/faq> [https://perma.cc/VU46-CBNF] (last visited May 4, 2026) (“CRT seeks to understand why inequality persists in a society that has explicitly condemned racism and has repeatedly adopted laws and policies intended to eliminate it.”).

³ Laura Meckler & Danielle Douglas-Gabriel, *Trump Moves Closer to Eliminating Education Department Amid Shutdown*, WASH. POST (Oct. 18, 2025), <https://www.washingtonpost.com/education/2025/10/18/trump-education-department-cuts>.

universities with flexibility by delivering rapid-response funding, representation, and nonpartisan public education consistent with federal law.

In addition to these shields, a narrow federal mechanism remains prospective yet is beyond the scope of this Essay. In a federal policymaking environment affirmatively oriented toward protecting race-conscious instruction, Congress and the U.S. Department of Education could exercise Spending Clause authority to attach noncoercive, process-based conditions to discretionary education funds, in alignment with Title VI's antidiscrimination mandate, reinforcing the compliance, financing, and rapid-response mechanisms discussed throughout this Essay.

These strategies transform racial justice commitments from aspirations to operative institutional designs. By integrating these shields, colleges and universities can resist censorship, preserve academic freedom, and meet their civic responsibility to prepare students for full participation in a multiracial democracy.

I. ACCREDITATION AS A PROCEDURAL SHIELD

Accrediting agencies occupy a distinct authority in the institutional landscape of higher education. As private, federally recognized entities, accrediting agencies possess broad discretion to define evaluative standards that shape the internal governance and pedagogical structures of colleges and universities.⁴ That authority offers a critical opportunity in the current moment: to embed protections for academic freedom and racial equity into accreditation criteria and, in doing so, to shield the teaching of CRT and antiracist pedagogy from coordinated political attack.

The introduction of at least fifty-eight anti-CRT measures by Florida government actors across local and state government entities since 2021 demonstrates the need to utilize accreditation standards to shield against attacks on CRT and related concepts.⁵ In 2022, Florida state senators enacted Senate Bill 7044, which mandated accreditor rotation and empowered state boards to identify preferred accreditors to convert the accreditation process into a tool for state ideological manipulation of institutional governance, academic freedom,

⁴ See 20 U.S.C. § 1099b(a) (setting federal recognition criteria for accrediting agencies); 34 C.F.R. pt. 602 (2025) (regulating recognition of accrediting agencies); *see also, e.g.*, *Marjorie Webster Junior Coll., Inc. v. Middle States Ass'n of Colls. & Secondary Schs.*, 432 F.2d 650, 654-56 (D.C. Cir. 1970) (describing accreditation as professional, private function and cautioning against judicial second-guessing of standard-setting and academic judgments); *McKeesport Hosp. v. Accreditation Council for Graduate Med. Educ.*, 24 F.3d 519, 524-27 (3d Cir. 1994) (holding accrediting agency's action not state action because agency's decisions were "judgments made by private parties according to . . . standards that are not established by the State" (alteration in original) (quoting *Blum v. Yaretsky*, 457 U.S. 991, 1008 (1982))).

⁵ See *CRT Forward Tracking Project*, CRT FORWARD, <https://crtforward.law.ucla.edu/map/?state=FL> [<https://perma.cc/5RQR-64P3>] (last visited May 4, 2026) (documenting thirty-six state-level and twenty-two local-level measures introduced).

and policing of CRT instruction.⁶ In 2023, Florida government officials sought to invalidate the federal accreditation process.⁷ The unsuccessful legal challenge against the U.S. Department of Education targeted the requirement that federal student aid eligibility depends on accreditation by a recognized agency.⁸ Prior to this challenge, federal courts had enjoined Florida's "Stop W.O.K.E" classroom restrictions in higher education as unconstitutional viewpoint discrimination.⁹ Florida government actors' strategy of proliferating anti-CRT measures while manipulating the accreditation process to advance a politicized, inaccurate description of CRT reflects an effort to control forty public colleges and universities across the state.¹⁰

Applied across all accrediting agencies, a uniform compliance framework would address both the nationwide spread of anti-CRT measures and the proposed accreditation scheme by making CRT bans incompatible with accreditation and eliminating evasion through accreditor shopping to preserve race-conscious instruction consistent with institutional missions. Accrediting agencies have operated with significant autonomy and have evolved into complex quality assurance organizations that evaluate institutions based on the college or university's mission, governance systems, academic standards, and

⁶ See S.B. 7044, ch. 2022-70, § 4, 2022 Fla. Laws 486, 492-93 (codified as amended at FLA. STAT. § 1008.47(2)(a)-(b) (2025)) (prohibiting consecutive-cycle accreditation and directing each public institution "[i]n the year following reaffirmation or fifth-year review . . . [to] seek and obtain accreditation from an accrediting agency or association identified by the Board of Governors or State Board of Education"); see also Divya Kumar, *Florida Legislature Passes Bill Allowing More Scrutiny of Tenured Faculty*, TAMPA BAY TIMES (Mar. 10, 2022), <https://www.tampabay.com/news/education/2022/03/10/florida-legislature-passes-bill-allowing-more-scrutiny-of-tenured-faculty> (reporting effect of Senate Bill 7044 in reducing influence of accrediting agencies and warning about measure's political consequences); Eric Kelderman, *Will the Commission for Public Higher Education Be a 'Serious' Accreditor?*, CHRON. HIGHER EDUC. (Oct. 14, 2025), <https://www.chronicle.com/article/will-the-commission-for-public-higher-education-be-a-serious-accreditor> (linking Florida's accreditation push to combating "woke accreditation cartels").

⁷ Katherine Knott, *DeSantis Challenges Constitutionality of Accreditation*, INSIDE HIGHER ED (June 27, 2023), <https://www.insidehighered.com/news/government/student-aid-policy/2023/06/27/florida-lawsuit-challenges-constitutionality> [<https://perma.cc/W4FH-YK4W>].

⁸ *Florida v. Cardona*, 752 F. Supp. 3d 1320, 1325, 1346 (S.D. Fla. 2024) ("The state challenges the constitutionality of the federal government's use of private accreditation agencies as part of its process to approve postsecondary institutions as eligible institutions within the meaning of the Higher Education Act . . .").

⁹ *Pernell v. Fla. Bd. of Governors of the State Univ. Sys.*, 641 F. Supp. 3d 1218, 1288 (N.D. Fla. 2022).

¹⁰ *Explore Educational Institutions: Choosing the College, University, or Career Center That's Right for You Will Help You Shine*, FLA. SHINES, <https://www.floridashines.org/go-to-college-explore-colleges-universities> [<https://perma.cc/SC8X-CLX9>] (last visited May 4, 2026) ("Florida has 40 public colleges and universities that offer a range of programs and experiences.").

fiscal health.¹¹ While accreditation evaluations have often prioritized student outcomes and institutional effectiveness, there remains a substantial opportunity to more explicitly connect accreditation metrics to core principles of antidiscrimination and equity.

By requiring institutions to maintain governance structures that safeguard inclusive teaching, accrediting agencies can operationalize antidiscrimination and equity principles, such as the obligation to ensure anti-discriminatory learning environments, protect against racial harassment, and promote equitable access to academic resources. Examples of governance structures capable of withstanding external interference could include: (1) documented faculty control over curriculum development; (2) formal procedures for resisting state-level censorship mandates; (3) transparent processes for investigating alleged violations of academic freedom; and (4) institutional review boards empowered to assess whether course offerings reflect commitments to both examining how racial power has accumulated over time to create the falsehood of a racial hierarchy and providing students with the tools necessary to address the most pressing racial issues of our time. These procedural requirements would safeguard teaching CRT and related frameworks that address systemic inequality by embedding institutional requirements into the decision-making processes that are reviewed and renewed through each accreditation cycle.

Crucially, such compliance obligations need not impose or endorse any substantive ideological viewpoint. Instead, the proposed obligations would affirm institutions' authority—and duty—to prepare students for participation in a multiracial democracy and global society, which inherently requires exposure to complex historical, structural, and racial realities.¹² In doing so, accreditation standards would not only signal the legitimacy of teaching CRT, but also entrench a procedural difficulty and legal risk for institutions to eliminate such teaching without undermining their accreditation status.

This model reframes accreditation from a technical compliance system into a site of resistance. Accreditation becomes a regulatory mechanism that affirms the centrality of racial equity, CRT, and inclusive pedagogy to institutional legitimacy. Under this model, politically motivated attacks against CRT or any other related theory or concept are not only suspect but procedurally inconsistent with the governance structures universities must maintain to remain in good standing with their respective accrediting agencies.

¹¹ See *supra* note 4 and accompanying text (outlining federal accreditation framework).

¹² See, e.g., Derek W. Black, *The Fundamental Right to Education*, 94 NOTRE DAME L. REV. 1059, 1084 (2019) (arguing public education is foundational to democratic participation); John A. Powell, *Post-Racialism or Targeted Universalism?*, 86 DENV. U. L. REV. 785, 786-88 (2009) (arguing dominant understandings of racism make structural racial inequality harder to perceive); Kimberlé Williams Crenshaw, *Twenty Years of Critical Race Theory: Looking Back to Move Forward*, 43 CONN. L. REV. 1253, 1261-64 (2011) (describing CRT as attentive to institutional, structural, and ideological reproduction of racial hierarchy).

Legal precedent supports this approach. Federal courts recognize accreditors as experts whose determinations are reviewed deferentially for procedural regularity and evidentiary support.¹³ The standard applied for evaluating accreditation decisions is substantial evidence, as well as arbitrary-and-unreasonable review.¹⁴ Courts recognize accreditors as private actors, channeling disputes into record-based fairness review rather than constitutionalizing policy disagreements between institutions and the accreditor.¹⁵ This deferential posture affirms accreditors' authority to articulate and apply standards concerning institutional mission, governance, educational quality, and compliance processes, and supports incorporating protections into accreditation criteria as procedural compliance obligations.

Despite contemporary political challenges, the legal and structural advantages of using accreditation as a protective mechanism remain compelling. First, accrediting agencies retain broad discretion in setting their standards and have historically exercised that discretion in the face of political pressure.¹⁶ Second, the process of gaining and maintaining accreditation often involves peer review, institutional self-study, and multi-year site visits.¹⁷ These procedural safeguards provide insulation against arbitrary political interference.

Accreditation serves as both shield and scaffold: a shield against political encroachment on CRT instruction, and a scaffold for institutionalizing the procedural norms that sustain academic freedom and inclusive governance. By embracing this role, accrediting agencies can help transform the defense of CRT from a reactive legal strategy into a proactive infrastructure for democratic pluralism.

¹³ See, e.g., *Pro. Massage Training Ctr., Inc. v. Accreditation All. of Career Schs. & Colls.*, 781 F.3d 161, 171-73 (4th Cir. 2015) (emphasizing deference to accreditor expertise and process-based review); *Wilfred Acad. of Hair & Beauty Culture v. S. Ass'n of Colls. & Schs.*, 957 F.2d 210, 214-15 (5th Cir. 1992) (recognizing limited, deferential review of accrediting decisions).

¹⁴ *Wilfred Acad.*, 957 F.2d at 214.

¹⁵ See, e.g., *Lincoln Mem'l Univ. Duncan Sch. of L. v. A.B.A.*, No. 3:11-CV-608, 2012 WL 137851, at *20 (E.D. Tenn. Jan. 18, 2012) (denying preliminary injunction and refusing to reconsider American Bar Association ("ABA") judgment); *Thomas M. Cooley L. Sch. v. A.B.A.*, 459 F.3d 705, 712, 715 (6th Cir. 2006) (upholding ABA's actions and reviewing for substantial evidence or arbitrariness).

¹⁶ See, e.g., Jamie Stengle & Michael Felberbaum, *University of Virginia Warned After Failed Ouster*, YAHOO! NEWS (Dec. 12, 2012, at 09:29 ET), <https://www.yahoo.com/news/university-virginia-warned-failed-ouster-142907230.html> (reporting Southern Association of Colleges and Schools' Commission on Colleges warned university about governance violations following politically contentious removal of president).

¹⁷ See 34 C.F.R. §§ 602.16-.19 (2025) (requiring recognized accrediting agencies to maintain standards and monitor continued compliance).

II. INSURANCE INNOVATION AND RISK POOLING AS A FINANCIAL SHIELD

While accreditation provides the procedural shield, mission-aligned insurance provides a potential financial fortification against attacks on higher education. Institutions face parallel costs in the form of compliance inquiries, legislative audits, and regulatory sanctions, with attendant reputational harm. In this politically volatile climate, insurance can serve as a structural tool for safeguarding academic freedom and institutional autonomy. However, standard commercial policies, which are the instruments universities most commonly rely on to manage the costs of legal exposure, sometimes fail to provide adequate protection from the cluster of litigation and enforcement actions aimed at censoring race-conscious teaching, including CRT.¹⁸ Exclusions for intentional or ideologically framed conduct, volatility in limits and pricing, and carrier reluctance to underwrite manufactured controversies implicating race make budgeting unpredictable and defense coverage contingent.¹⁹ As a result, the commercial insurance market for colleges and universities treats the core risk to race-conscious instruction as uninsurable. If the university classroom is to be governed by diversity of thought and academic freedom rather than political coercion, a different insurance architecture is required.

A more effective model for higher education institutions under attack lies in the creation of captive or mission-aligned insurance pools developed in the healthcare sector.²⁰ Captive insurance, formed and controlled by their member institutions, allows universities to pool risk, stabilize premiums, and customize

¹⁸ See *President & Fellows of Harvard Coll. v. Zurich Am. Ins.*, 77 F.4th 33, 36-39 (1st Cir. 2023) (illustrating high salience of landmark civil rights or CRT-adjacent litigation does not excuse noncompliance with notice requirements in standard insurance policies).

¹⁹ See STACIE KROLL, PAUL POUSSON & JOHN ERGASTOLO, GALLAGHER, HIGHER EDUCATION FACES A PERFECT STORM 2, 6 (2024), <https://www.ajg.com/-/media/files/gallagher/us/news-and-insights/2024/ggb-higher-education-faces-a-perfect-storm.pdf> (noting rising higher-education liability exposures and regulatory pressures have led carriers to tighten underwriting, increase exclusions, and restrict coverage); see also Kenneth S. Abraham, *Liability Insurance and Accident Prevention: The Evolution of an Idea*, 64 MD. L. REV. 573, 581-83 (2005) (describing historical use of premium differentiation and safety inspections by liability insurers to influence insured behavior and manage accident risk).

²⁰ Nonprofit organizations and professional groups routinely form member-controlled captive insurance pools known as risk retention groups (“RRGs”) to insure education or practice-aligned risks. See *Risk Retention Groups*, NAIC (Oct. 13, 2025), <https://content.naic.org/insurance-topics/risk-retention-groups> [<https://perma.cc/XX8T-UJB7>] (describing RRGs as member-owned liability insurers that may be formed under a state’s captive or traditional insurance laws); see also *Preferred Physicians Mut. Risk Retention Grp. v. Pataki*, 85 F.3d 913, 914 (2d Cir. 1996) (upholding federal law “prohibit[ing] states from excluding RRGs chartered under the laws of another state”); *Ophthalmic Mut. Ins. v. Musser*, 143 F.3d 1062, 1065 (7th Cir. 1998) (recognizing healthcare specialty RRG structure while upholding Wisconsin’s separate patient-compensation-fund requirements); *Wadsworth v. Allied Pros. Ins.*, 748 F.3d 100, 101 (2d Cir. 2014) (reaffirming federal Liability Risk Retention Act allows member-owned professional-liability pools to operate across state lines).

coverage to meet emerging threats.²¹ In this model, institutions would collectively finance and govern an insurer organized to cover the litigation and related risks of race-conscious teaching, curriculum, and research, including CRT. Since the pool is formed and controlled by its member institutions, premiums are stabilized across cycles, underwriting is tailored to higher education's actual exposure, and coverage terms are committed to levels that are unavailable under traditional commercial carriers' policies. Properly capitalized and reinsured, the pool can defend institutions against attack from political actors by: (1) retaining experienced panel counsel with subject-matter expertise, (2) coordinating multi-institution strategies when lawsuits are filed in parallel, and (3) funding expert testimony, discovery management, and appellate work as part of ordinary claims handling rather than as ad hoc crisis spending. Universities may participate through nonprofit corporations that function as self-insured pools, captive insurers, or risk retention groups under applicable state insurance statutes and federal law, with governance vested in a board of institutional representatives owing fiduciary duties to the pool's shared mission values.²² Within this framework, the pool adopts underwriting aligned with each college or university's mission commitments.

Coverage offered by such a pool could include defense costs for lawsuits alleging violations of enacted CRT bans, indemnification for faculty named in an individual capacity for teaching CRT, and support for institutional responses to administrative investigations or subpoenas premised on efforts to suppress CRT and related initiatives. Notably, the pool could also encompass public relations and reputational management services necessary to counter disinformation campaigns, which would ensure that courtroom strategy is not undermined by the proliferation of false information designed to mislead the public and chill speech.

Beyond financial protection, the existence of mission-aligned insurance acts as a deterrent. When state actors or ideological plaintiffs recognize that targeted institutions possess a robust defense infrastructure with adequate resources, counsel, and continuity, meritless or symbolic suits may become less attractive. The pool can formalize this deterrent effect by setting expectations for coordinated responses, maintaining precedent and briefing banks, and supporting test-case litigation when statutory or regulatory schemes are

²¹ The Liability Risk Retention Act authorizes member-owned risk-retention groups to pool liability risk across affiliated policyholders. 15 U.S.C. §§ 3901-06. As one example of state-level policy, the Vermont captive insurance statute authorizes captive insurers formed by parent or affiliated organizations to insure their risks and tailor coverage. VT. STAT. ANN. tit. 8 § 6002(a) (2026).

²² United Educators, which insures over 1,600 institutions, provides one model for how higher education institutions can cooperatively manage complex litigation exposure. See Emily Spennato, *1,600 Colleges and Universities Joined Together to Manage Risk. They Built Their Company in Vermont*, RISK & INS., Apr. 2020, at A4, A5 (describing United Educators as providing education-specific liability products, risk-management services, and comparatively stable pricing across market cycles).

deployed to ban CRT. In this sense, the pool functions as both insurance and an institution-building mechanism to finance defense, while cultivating shared expertise that lowers marginal costs over time.²³

Further, the establishment of such pools enhances inter-institutional solidarity. By joining, institutions align their financial risk with their public mission, signaling that the defense of academic freedom, specifically the freedom to teach about race and racism, will not depend on a single university's budget cycle or endowment fund. Smaller and more resource-constrained colleges can gain access to defense capacity that would otherwise be unreachable, while larger institutions benefit from predictable costs and sector-wide coordination. The collective structure can ensure that the burdens of defending CRT are distributed and that the benefits of successful defenses—such as favorable rulings, refined arguments, and institutional expertise—are shared among the members. As a shield within a multi-layered defense, mission-aligned insurance pools would fortify institutions against targeted campaigns to suppress CRT, making such campaigns harder to sustain and more costly to pursue, while keeping pedagogy within the rightful domain of faculty and institutional governance.

III. PUBLIC-PRIVATE PARTNERSHIPS AS A RAPID RESPONSE SHIELD

Building on the financial shield of mission-aligned insurance pools, public-private partnerships with philanthropic foundations and civil rights nonprofit organizations supply the rapid-response legal support and funding that universities need to defend the teaching of CRT, while remaining compliant with federal restrictions on political activity.²⁴ With a history of defending civil liberties and supporting democratic institutions, philanthropic and civil rights nonprofit organizations are natural and powerful allies in this effort because they maintain litigation infrastructure independent of state and federal agencies to

²³ As one example, United Educators supplements liability coverage with risk-management programming designed to build shared institutional capacity through training, advisory support, and education-specific resource collections. *See Risk Management*, UNITED EDUCATORS, <https://www.ue.org/risk-management> [<https://perma.cc/SV39-GADN>] (last visited May 4, 2026) (describing resource collections, online training, consultant advice, risk assessments, and other support services for educational institutions).

²⁴ *See, e.g.*, I.R.C. § 501(c)(3) (exempting nonpartisan public service organizations from corporate taxation); I.R.C. §§ 501(h), 4911 (limiting tax exemptions for organizations influencing legislation); Treas. Reg. § 1.501(c)(3)-1(c)(3)(iii) (2025) (prohibiting tax-exempt organizations from intervening in political campaigns); *see also* *Regan v. Tax'n with Representation of Wash.*, 461 U.S. 540, 544-51 (1982) (upholding § 501(c)(3) lobbying limits while noting charities may litigate and engage in nonpartisan advocacy); *In re Primus*, 436 U.S. 412, 426-32 (1978) (affirming nonprofit civil-liberties litigation as permissible); *NAACP v. Button*, 371 U.S. 415, 428-29 (1963) (recognizing civil-rights litigation as protected expressive association); *Branch Ministries v. Rossotti*, 211 F.3d 137, 142-44 (D.C. Cir. 2000) (affirming revocation of church's tax-exempt status for partisan campaign intervention).

mobilize counsel, expert capacity, and communications support.²⁵ Leveraging these relationships will allow universities to withstand adverse executive action and state-level censorship mandates without pre-emptively complying with viewpoint control.

These partnerships may take many forms. Universities may collaborate with civil rights organizations to provide legal support for faculty targeted by state CRT bans, form research consortia with philanthropic funders to develop best practices for inclusive governance, or co-sponsor public education campaigns to counteract disinformation about CRT. The flexibility of these arrangements allows institutions to tailor the partnership to local threats while drawing on national or even international networks of expertise and support.

The operative legality of the public-private partnership shield is straightforward. Civil rights and philanthropic organizations are not legally prohibited from partnering with universities to defend democracy, academic freedom, and CRT. Section 501(c)(3) of the Internal Revenue Code permits tax-exempt organizations, like colleges and universities, to engage in litigation, issue advocacy, and educational programming, which are all modalities required to contest classroom censorship and defend faculty targeted for teaching about race and racism.²⁶ In fact, many nonprofits have historically operated in this space. Organizations such as the ACLU and the NAACP Legal Defense Fund have provided direct representation, filed amicus briefs, and organized public advocacy campaigns to protect academic freedom in higher education.²⁷ Within that settled space, universities can align with mission-consistent partners to secure immediate representation for threatened courses, file declaratory and injunctive actions against unlawful curricular restraints, and coordinate amicus participation when statewide policies seek to suppress CRT. Universities can formalize these relationships through memoranda of understanding or joint-defense agreements that outline roles, responsibilities, confidentiality, and information-sharing protocols. These agreements would help ensure that rapid-response counsel is available when censorship efforts escalate and that

²⁵ See Scott L. Cummings, *The Internationalization of Public Interest Law*, 57 DUKE L.J. 891, 900-03 (2008) (highlighting role of defense funds in shaping civil litigation strategies); Deborah L. Rhode, *Public Interest Law: The Movement at Midlife*, 60 STAN. L. REV. 2027, 2064-67 (2008) (describing how these organizations bring “additional resources, perspectives, and legitimacy”); Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443, 447-49 (2001) (outlining practice of “law and organizing” where legal strategies are “directed by community-based organizations”).

²⁶ See *supra* note 24 and accompanying text.

²⁷ See Rhode, *supra* note 25, at 2032 n.9, 2064 (highlighting ACLU and NAACP Legal Defense Fund as early exemplars of public interest law which expanded activities beyond courtroom litigation, creating durable institutional infrastructures); *ACLU History*, ACLU, <https://www.aclu.org/about/aclu-history> [<https://perma.cc/8PV9-M3C2>] (last visited May 4, 2026) (“The ACLU, having joined the NAACP in the legal battle for equal education, celebrated a major victory when the Supreme Court declared that racially segregated schools were in violation of the 14th Amendment.”).

institutional records, expert testimony, and communications are coordinated rather than improvised.

Philanthropic foundations also play a crucial role in the public-private partnership shield. Philanthropic foundations can underwrite the multi-layered defense infrastructure by funding CRT centers, legal clinics focused on educational equity, and standing rapid-response teams capable of moving from demand letters to litigation on compressed timelines. In the aggregate, such arrangements prevent politically motivated investigations, subpoena campaigns, and board-level directives from isolating individual faculty, programs, or initiatives. Philanthropic efforts have historically been critical in landmark civil rights litigation,²⁸ and the same model can be deployed to protect higher education in the present moment.

Beyond immediate defense, public-private partnerships would expand institutional capacity. Universities would gain access to specialized expertise in constitutional and civil rights litigation, appellate strategy, legislative advocacy, evidence development tailored to disputes over CRT, as well as media-literacy and public-education support to counter disinformation about race and racism. Additionally, the public-private partnerships would support proactive educational efforts. Universities and their nonprofit partners can organize conferences, publish white papers, and conduct faculty workshops on topics related to CRT. These initiatives not only build internal resilience but also educate the public, legislators, and media about the importance of protecting CRT in a multiracial democracy. Rather than politicize pedagogy, this design preserves academic freedom as the controlling locus of classroom governance to insulate instruction from viewpoint-based political interference. In doing so, the public-private partnerships complement other shields in the multi-layered defense of higher education by providing the litigation and financial mechanisms that render accreditation-based compliance obligations and mission-aligned insurance pools credible in practice.

Public-private partnerships are a core component of a multi-layered defense strategy to fund and staff rapid-response legal action, operate outside the reach of hostile executive priorities, and sustain the teaching and study of CRT against coordinated attack. By cultivating these relationships, universities can develop a national network of institutions and organizations dedicated to protecting CRT and defending its institutional democratic values.

CONCLUSION

The campaign to suppress CRT and related race-conscious teaching, research, and training has exposed the limits of moral suasion and episodic litigation in defending higher education. Durable protections for race-conscious education, specifically the teaching of CRT and related frameworks, require a multilayered, institutionally controlled defense that converts political pressure from anti-CRT

²⁸ See Cummings, *supra* note 25, at 900-05 (detailing funders' role in sustaining nonprofit litigation capacity and expert networks).

campaigns into financially burdensome and time-intensive undertakings. The shields detailed in this Essay provide an initial architecture for that defense.

Accreditation supplies structural defense. Accrediting agencies, within their discretion to define evaluative standards, can require governance arrangements that protect curricular integrity and connect antidiscrimination and equity principles to educational quality. Situated in a review posture that emphasizes procedural regularity and support in the accreditation record, these standards make viewpoint-driven efforts to exclude CRT inconsistent with obligations necessary to gain or maintain accreditation.

Mission-aligned insurance pooling provides the financing that commercial markets withhold. By stabilizing costs, committing to a duty to defend, and coordinating multi-institution strategies when parallel lawsuits arise, a pooled insurer shifts episodic exposure into predictable, shared defense capacity. This shield raises the price of censorship and deters meritless litigation aimed at suppressing race-conscious education.

Public-private partnerships reinforce the agility to respond when executive priorities are hostile. Consistent with Internal Revenue Code § 501(c)(3), civil rights and philanthropic organizations can provide rapid-response funding, representation, and nonpartisan public education to support faculty, courses, and programs targeted for teaching about race and racism. Memoranda of understanding and joint-defense agreements ensure that counsel, records, expertise, and communications are coordinated rather than improvised, and that universities resist state-level censorship mandates without pre-compliance.

The shields discussed in the Essay are not the only shields available. In a different political moment, Congress and the U.S. Department of Education could deploy the Spending Clause to attach non-coercive, process-based conditions to discretionary higher education funds, connected to Title VI's antidiscrimination mandate, requiring institutions to maintain academic freedom to teach CRT and procedures for resisting political interference. Such conditions would leave pedagogical content to universities while making these processes a term of federal support, supporting resistance to conflicting state mandates. If a state prohibits instruction on systemic racism, institutions could invoke federal compliance obligations as the basis for non-acquiescence. This potential federal intervention would operate as an additional shield that reinforces, rather than displaces, the institution-controlled strategy developed throughout this Essay.

These shields are tools of institutional design, instruments through which institutions can enact their highest ideals. In the struggle to defend multiracial democracy, universities must lead not just in theory but in structure. The time to build is now.