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Mia Guy

Kelsey Moore

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Chilling Speech in the Name of 'Woke': A Critique of the Stop W.O.K.E. Act

I. Introduction

African American history is American history. Nevertheless, our nation has spent decades trying to whitewash and sanitize the truth about African American history in our public-school systems. And the sad truth is that our children and adolescents are not getting the education they deserve when it comes to slavery and African American history in general. Recent studies have shown just how dire the situation is. Take, for example, the Southern Poverty Law Center's 2018 report, which found that a mere eight percent of high school students could even identify the central cause of the Civil War.¹ And if that was not bad enough, a staggering sixty-eight percent of these students had no idea that slavery was only abolished through a constitutional amendment.² But perhaps the most telling statistic of all is that forty percent of teachers did not feel like they had the necessary support from their state to teach about slavery in the first place.³

Our education system has woefully failed to provide adequate education on African American history, and lawmakers are only making things worse by proposing laws that prohibit teaching about it. In 2021, a shocking 47 bills were introduced in 23 different state legislatures that aimed to restrict the teaching of topics related to race and slavery.⁴ The most recent addition to this list of offensive laws is the Stop the Wrongs to Our Kids and Employees (Stop W.O.K.E) Act, signed into law by Florida Governor Ron DeSantis

¹ Kate Shuster, *Teaching Hard History*, The Southern Poverty Law Center (Jan. 31, 2018), <https://www.splcenter.org/20180131/teaching-hard-history#summary>.

² *Id.*

³ *Id.*

⁴ Quorum, *Spreadsheets*, <https://www.quorum.us/spreadsheet/external/KBYQbCxNgAheAgQCtQZC/> (last visited Apr. 24, 2023).

on April 22, 2022.⁵ This so-called Individual Freedom Act (IFA) is unconstitutional and fundamentally flawed in its misguided attempt to address the perceived threat of "woke" ideology.

Unsurprisingly, a law like the Stop W.O.K.E Act was proposed. As Robin DiAngelo pointed out in her book, *White Fragility: Why It's So Hard for White People to Talk About Racism*, it is a massive uphill battle to get White people to admit that their race gives them advantages. "For those of us who work to raise the racial consciousness of whites, simply getting whites to acknowledge that our race gives us advantages is a major effort. The defensiveness, denial, and resistance are deep."⁶ Evidently, there are those in power who want to silence and suppress any conversation or education around social justice and diversity. It is a transparent attempt to protect White fragility and maintain the status quo of systemic oppression.

II. History of African American Studies in the Education System

The first compilation of Black life, history, and culture was created by the Association for the Study of African American Life and History (ASALH) in 1915.⁷ Carter G. Woodson, and his colleagues created the ASALH as the foundation for Black history

⁵ Staff of Ron DeSantis, *Governor DeSantis Announces Legislative Proposal to Stop W.O.K.E. Activism and Critical Race Theory in Schools and Corporations*, <https://www.flgov.com/2021/12/15/governor-desantis-announces-legislative-proposal-to-stop-w-o-k-e-activism-and-critical-race-theory-in-schools-and-corporations/> (last visited Apr. 24, 2023). See also Janai Nelson, *Ron DeSantis Wants to Erase Black History. Why?*, N.Y. Times (Jan. 31, 2023), <https://www.nytimes.com/2023/01/31/opinion/ron-desantis-black-history.html>.

⁶ Robin DiAngelo, *White Fragility: Why It's So Hard for White People to Talk About Racism* 58 (Beacon Press 2018)

⁷ LaGarrett J. King, *Teaching and Learning African American History The Status of Black History in U.S. Schools and Society*, National Council for the Social Studies, <https://ed.buffalo.edu/content/dam/ed/black-history-ed/docs/publications/Status-of-Black-History.pdf> (last visited Apr. 24, 2023).

education in the k-12 curriculum.⁸ The organization offered Black history textbooks, a Black history teacher journal, and Black history courses to incorporate into the U.S. education system. Despite their efforts, many of the widely read textbooks in the U.S. public school system describe enslaved Africans as immigrants.⁹ While also re-positioning White people as victims and prominent Black political figures as colorblind.¹⁰ The companies who author these major textbooks often limit or completely ignore the harsh realities of American history, a history built on the backs of the enslaved.¹¹

Although a 1969 survey conducted by Education USA shows that seven states “passed laws requiring or recommending that the contributions and achievements of minority groups be included in school curricula”¹² after 1961, yet there is still no national requirement or standard for teaching African American history.¹³ Yet, some states like Illinois have made strides in creating a standard by incorporating a Black History Curriculum Task Force to evaluate and expand the teaching of Black history.¹⁴ Even more so, the state of Illinois expanded its state law requirement to include “the history of Black

⁸ *Id.*

⁹ *Id.*

¹⁰ Jerricka Duncan, Shannon Luibrand, et. al., *Map in widely used U.S. history textbook refers to enslaved Africans as “immigrants,” CBS News analysis finds*, CBS News (Feb. 19, 2020), <https://www.cbsnews.com/news/the-american-pageant-map-in-widely-used-us-history-textbook-refers-to-enslaved-africans-as-immigrants-cbs-news/>.

¹¹ Publishing companies like Cengage completely removing the N-word from their textbook or mention the harm it has caused and continues to cause Black Americans. While other publishers such as McGraw-Hill highlight Thomas Jefferson but fail to mention he owned slaves. *Id.*

¹² LaGarrett J. King, *Teaching and Learning African American History The Status of Black History in U.S. Schools and Society*, National Council for the Social Studies, <https://ed.buffalo.edu/content/dam/ed/black-history-ed/docs/publications/Status-of-Black-History.pdf> (last visited Apr. 24, 2023).

¹³ Ken Miller and Michael Melia, *How black history is taught in schools faces new scrutiny*, AP News (Jun. 18, 2020), <https://apnews.com/article/ap-top-news-oklahoma-racial-injustice-tulsa-us-news-f71e9e3da209d2ff09bbaad5b574b2d3>.

¹⁴ Samantha Smylie, *Illinois teachers create Black history courses to fill in gaps in U.S. history for students*, KQED, <https://www.kqed.org/mindshift/61220/illinois-teachers-create-black-history-courses-to-fill-in-gaps-in-u-s-history-for-students> (last visited Apr. 24, 2023).

people before enslavement, the reasons why Black people were enslaved, and the American civil rights movement.”¹⁵ Despite some U.S. states' deliberate effort to lie about Black history in the broader American history education, cities, such as Philadelphia, have mandated that African American history be required for students to graduate high school.¹⁶

III. Legislative Changes in the South to Erase Black History

A. Texas House Bill 3979

Despite the outcries of residents and educators of Texas, Texas House Bill 3979 became effective on September 1, 2021. The purpose of the law is to “adopt essential knowledge and skills that develop each student’s civic knowledge, including the understanding of” (1) founding documents of the U.S., (2) structure and function of government institutions, and (3) American experience in self-government.¹⁷ The bill further restricts teachers from being required to discuss current events or widely debated topics, reward, require, or include activism or persuade a legislative branch to take a specific action, or require educators to engage in training on the basis of race or sex. Finally, the bill dismisses any ideas of critical race theory by stating that no educator shall require or make part of the course an understanding of race relations defining one race as inherently superior or oppressed or that an individual, by virtue of race or sex, bears

¹⁵ Samantha Smylie, *Illinois teachers create Black history courses to fill in gaps in U.S. history for students*, KQED, <https://www.kqed.org/mindshift/61220/illinois-teachers-create-black-history-courses-to-fill-in-gaps-in-u-s-history-for-students> (last visited Apr. 24, 2023).

¹⁶ Cathy Rainone, *The Humanity of Blackness’ Missing From History Classes: How to Transform Black History Education in Schools*, NBC Philadelphia (Jun. 29, 2020), <https://www.nbcphiladelphia.com/news/national-international/how-to-transform-black-history-education-in-schools/2450465/>.

¹⁷ H.B. 3979, 87th Leg., (Tex. 2021).

responsibility for an action committed in the past by other members of the same sex or race.

The purpose of the law is to eliminate any notion of race relations from the classroom. Many Texas educators have voiced their struggle to teach history in the classroom because of the identity that they hold and their aim as an educator to “disrupt the grand narrative.”¹⁸ Other educators expressed that the bill allows other educators to continue to ignore race.¹⁹ Since its enactment, there has been little instruction given to teachers on how to incorporate race in the classroom without violating the law.²⁰ This lack of instruction is purposeful to ensure educators have no direct way of incorporating race within the classroom outside of the required textbooks. The Texas House Bill 3979 is an earlier proponent of this policy and continues to set the stage for other states who desire to exclude race from the classroom.

B. The Stop W.O.K.E Act

The Stop W.O.K.E Act adopted by DeSantis is unconstitutional, discriminatory, and ineffective. It violates the First and Fourteenth Amendments and fails to address the complex social and cultural factors contributing to the emergence and spread of woke ideology. As a country, we must uphold the principles of free speech, equal protection, and constructive dialogue, and we must reject any laws that undermine these fundamental values.

¹⁸ Aina Marzia, *Teachers and Students Respond to Black History Bans*, Yes Magazine (Feb. 15, 2023), <https://www.yesmagazine.org/social-justice/2023/02/15/black-history-bans-students-teachers>.

¹⁹ *Id.*

²⁰ *Id.*

First and foremost, the Act violates the First Amendment's guarantee of free speech. The Act prohibits indoctrinating or attempting to indoctrinate students in public institutions with the idea that one race or sex is inherently superior to another race or sex.²¹ This prohibition is far too broad and vague, opening the door to government censorship of legitimate academic and intellectual discussions. Additionally, the Act imposes severe penalties on individuals and institutions found to violate its provisions, including termination of employment, loss of performance funding, and potentially even private action.²² These penalties effectively chill speech and discourage the free exchange of ideas, an essential aspect of academic and intellectual inquiry. Furthermore, the Act violates the Fourteenth Amendment's Equal Protection Clause by singling out certain viewpoints for censorship and punishing those who hold them. The Act specifically targets ideas associated with woke ideology, a loosely defined and highly contested concept. By prohibiting the discussion of certain ideas, the Act discriminates against individuals and institutions that hold those views, undermining the principle of equal protection under the law.

The Act also fails to address the root causes of woke ideology, which is complex and multifaceted. Woke ideology is not a monolithic or homogeneous phenomenon and cannot be addressed through a one-size-fits-all legislative solution. The Act assumes that woke ideology is a problem that can be solved by censorship and punishment. However, this approach ignores the deeper social and cultural factors that contribute to the emergence and spread of this ideology. To truly address the perceived issue of woke

²¹ John R. Vile, *Stop W.O.K.E. Act (Florida) (2022)*, The First Amendment Encyclopedia (Nov. 22, 2022), <https://www.mtsu.edu/first-amendment/article/2167/stop-w-o-k-e-act>.

²² *Id.*

ideology, we need to engage in meaningful and constructive dialogue, listen to diverse perspectives, and work together to create a more inclusive and just society.

IV. Meaning of Woke

“Florida is where woke goes to die!”²³ says DeSantis in his Inaugural Address. The term "woke" has become a buzzword in recent years, particularly in the context of social and political movements related to race, gender, and other forms of identity. As Merriam-Webster defines it, woke is being “aware of and actively attentive to important societal facts and issues (especially issues of racial and social justice).”²⁴ To be woke is generally understood to mean being aware of and actively engaging in social justice, inequality, and oppression issues. The concept of being woke has its roots in African American Vernacular English (AAVE), where it has been used for decades to describe someone who is alert to and informed about the realities of racism and discrimination. However, the term has been appropriated and expanded in recent years to encompass a broader range of social justice issues and identity-based struggles. Being woke typically involves a recognition of the ways in which systems of power and privilege operate to marginalize and oppress certain groups and a commitment to challenging and dismantling those systems. This can involve everything from educating oneself about the history and current realities of oppression to actively advocating for social justice causes to engaging in direct action and protest.

²³ Staff of Ron DeSantis, *Governor DeSantis Delivers Inaugural Address, Sets Priorities for Second Term*, <https://flgov.com/2023/01/03/governor-desantis-delivers-inaugural-address-sets-priorities-for-second-term/> (last visited Apr. 24, 2023).

²⁴ Merriam Webster, *Woke*, <https://www.merriam-webster.com/dictionary/woke> (last visited Apr. 24, 2023).

It is worth noting that the concept of being woke is not without its limitations and criticisms. Some use woke in superficial or performative ways without a real commitment to social justice causes or activism. This is exactly what DeSantis has done by giving the Stop W.O.K.E. Act its name. Additionally, the focus on individual awareness and action can obscure the larger structural and systemic issues that perpetuate inequality and oppression. Ultimately, the concept of being woke is a complex and contested one, with different meanings and interpretations depending on one's perspective and context. While it can be a powerful tool for promoting social justice and challenging oppression, it is crucial to approach it critically and thoughtfully and to be open to diverse perspectives and critiques.

V. Effects of these Acts and Proposed Solution

By attempting to ban programs that promote the discussion of African American history, oppression, racism, and the like, the Stop W.O.K.E Act is effectively trying to kill wokeness, or the idea of being aware of and engaged in issues related to social justice and equality. This is deeply concerning, as it represents an attempt to silence and marginalize voices speaking out against oppression and advocating for a more just and equitable society. Ultimately, The Stop W.O.K.E Act is not only misguided but also represents a dangerous threat to academic freedom, free speech, and the ability of individuals and communities to engage in meaningful dialogue and debate about critical social issues. Rather than attempting to silence and censor voices challenging systemic oppression and promoting social justice, we should encourage open and honest conversations about these issues and work towards a safer society for all.

To stop this proposed act and similar acts in other states, citizens should lobby against the act and seek action under the first amendment. In *Novoa v. Diaz*, a college professor sought an injunction against the Stop W.O.K.E. Act for violating the first amendment.²⁵ Professor Novoa found it challenging to comply with the Act because of the restrictions on speech, which limited course readings and lecture topics.²⁶ The court held the Act violated the First Amendment rights of students and faculty of public universities stating the “*positively dystopian*” act “*officially bans professors from expressing disfavored viewpoints in university classrooms while permitting unfettered expression of the opposite viewpoints.*”²⁷ If public school teachers would bring a similar suit, this could place the Act on hold indefinitely and become an essential case for overturning similar legislation.

We all should be worried about the implications and effects this will have on our students as future voters and leaders. Removing race from the classroom leads to uninformed voters and a skewed understanding of current legislation around race relations. A study conducted in 2008 and 2020 found that 28% of voters in 2008 believe Blacks experience discrimination compared to 59% of voters in 2020.²⁸ These statistics can dramatically decline if students aren’t allowed to explore their curiosity not only about themselves but the truth of America’s past and present. Furthermore, non-white students

²⁵ Order Granting for Preliminary Injunction, *Noava v. Diaz*, No. 4:22-cv-00324-MW-MAF (N.D. Fla. Nov. 17, 2022).

²⁶ FIRE, *Novoa v. Diaz: Florida Board of Governors: Florida Law Restricting How College Professors, Students Can Discuss Race and Sex*, <https://www.thefire.org/research-learn/novoa-v-diaz-order-granting-motion-preliminary-injunction> (last visited Apr. 24, 2023).

²⁷ Order Granting for Preliminary Injunction, *Noava v. Diaz*, No. 4:22-cv-00324-MW-MAF (N.D. Fla. Nov. 17, 2022).

²⁸ Carrie Dan, *Poll: More voters acknowledge symptoms of racism but disagree about its cause*, NBC News (Jul. 21, 2020), <https://www.nbcnews.com/politics/meet-the-press/poll-more-voters-acknowledge-symptoms-racism-disagree-about-its-causes-n1234363>.

will be further marginalized and considered inferior to Whiteness. If we allow the complete erasure of racial history and culture in the education system, we are in danger of repeating past mistakes and ensuing a new Jim Crow era.