

THE RIGHT TO A NUISANCE-FREE PUBLIC EDUCATION

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*As with other landmark cases, the Supreme Court's 1954 decision in *Brown v. Board of Education* has taken on a life of its own, with meaning and significance beyond its facts and perhaps greater than its rationale.*

—Derrick Bell¹

A school is a vehicle for propaganda if it represents itself as providing all the relevant information for being an informed citizen, yet regularly withholds information for being an informed citizen.

—Jason Stanley²

INTRODUCTION

Since 1954, legal conservatives and reactionary Republicans in the United States have engaged in a complex propaganda campaign to redefine *Brown v. Board of Education*'s original purpose of guaranteeing legal equal protection for Black children in public education.³ To soften *Brown*'s societal impact by limiting its educational policy scope, legal conservatives have worked in tandem with Republican politicians and libertarian thinkers and organizations such as the Heritage Foundation (that is, racial conservatives).⁴

1. DERRICK BELL, RACE, RACISM AND AMERICAN LAW § 7.3, at 544 (3d ed. 1992) (footnote omitted).

2. JASON STANLEY, HOW PROPAGANDA WORKS 55 (2015).

3. See John Fritze, *Civil Rights Groups Accuse Conservatives of Recasting Landmark *Brown v. Board* Ruling on 70th Anniversary*, CNN (May 17, 2024, 5:00 AM), <https://www.cnn.com/2024/05/17/politics/brown-v-board-of-education-anniversary-supreme-court/index.html> [<https://perma.cc/8Q4N-FTZ7>]; Risa L. Goluboff, *The Battle over *Brown*: How Conservatives Appropriated *Brown v. Board of Education**, SLATE (July 2, 2007, 3:33 PM), <https://slate.com/news-and-politics/2007/07/how-conservatives-appropriated-brown-v-board-of-education.html> [<https://perma.cc/RTF2-SAA7>].

4. See Fritze, *supra* note 3; *Rejecting Racism in Postsecondary Institutions and Postsecondary Accreditation*, HERITAGE FOUND. (Jan. 22, 2024), <https://www.heritage.org/model-legislation/rejecting-racism-higher-education> [<https://perma.cc/YLJ5-SYMG>] (providing a model bill to “Reject[] Racism in Postsecondary Education”); *Heritage Experts: Discrimination in College Admissions Is Finally Over*, HERITAGE FOUND. (June 29, 2023), <https://www.heritage.org/press/heritage-experts-discrimination-college-admissions-finally-over> [<https://perma.cc/6N8Q-MZEN>] (praising the Supreme Court for “revers[ing] decades of repugnant discriminatory conduct exercised by administrators who punished or rewarded students based not on their credentials, qualifications, and hard work, but on the color of their skin”).

Together, they have embarked on a dialectical and legislative counteroffensive strategy that steadily chipped away at *Brown's* rationale and dicta, as well as the subsequent academic offerings informed by *Brown*. Indeed, since *Brown*, any meaningful policy or academic effort to improve Black students' educational experiences has been framed as intentionally racist toward white people. Consider, for example, *The 1619 Project* by Pulitzer Prize winner Nikole Hannah-Jones,⁵ which triggered an existential reaction among America's mostly white conservative-Republican body politic.⁶ From President Trump's Executive Order No. 13,950;⁷ to the haphazardly assembled 1776 Advisory Commission⁸ and its shoddy *1776 Report*;⁹ to more calculated policy responses by Republican-led state legislatures, such as Georgia House Bill 1084,¹⁰ Tennessee House Bill 2670,¹¹ and Florida House Bill 7;¹² to the conservative think tank Manhattan Institute's *Woke Schooling: A Toolkit for*

5. NIKOLE HANNAH-JONES, N.Y. TIMES MAG., *THE 1619 PROJECT: A NEW ORIGIN STORY* (Nikole Hannah-Jones, Caitlin Roper, Ilena Silverman & Jake Silverstein eds., 2021).

6. See Sarah Schwartz, *Lawmakers Push to Ban '1619 Project' from Schools*, EDUCATIONWEEK (Feb. 3, 2021), <https://www.edweek.org/teaching-learning/lawmakers-push-to-ban-1619-project-from-schools/2021/02> [<https://perma.cc/9JAH-234D>]; J. Brian Charles, *The New York Times 1619 Project Is Reshaping the Conversation on Slavery. Conservatives Hate It.*, VOX (Aug. 20, 2019, 5:46 PM), <https://www.vox.com/identities/2019/8/19/20812238/1619-project-slavery-conservatives> [<https://perma.cc/L2US-T86S>].

7. Exec. Order No. 13,950, 3 C.F.R. § 433 (2021) (purporting to combat the "false belief that America is an irredeemably racist and sexist country" by preventing federal contractors from providing employee training on "divisive concepts" such as "race or sex stereotyping").

8. Exec. Order No. 13,958, 3 C.F.R. § 471 (2021) (establishing an advisory commission to "better enable a rising generation to understand the history and principles of the founding of the United States in 1776" to undo an ostensibly "radicalized view" of America as a racist and sexist country).

9. THE PRESIDENT'S ADVISORY 1776 COMM'N, *THE 1776 REPORT* (2021), <https://trumpwhitehouse.archives.gov/wp-content/uploads/2021/01/The-Presidents-Advisory-1776-Commission-Final-Report.pdf> [<https://perma.cc/6PBS-EQF8>] (attacking the concept of "identity politics" for "teach[ing] that America itself is to blame for oppression").

10. H.B. 1084, 156th Gen. Assemb., 2d Reg. Sess., 2022 Ga. Laws 136 (prohibiting the teaching of "divisive concepts," including "any ... form of race scapegoating" and the concept that "[t]he United States of America is fundamentally racist").

11. H.B. 2670, 112th Gen. Assemb., 2d Reg. Sess., 2021 Tenn. Pub. Acts ch. 818 (prohibiting public schools from teaching "divisive concepts," such as those that "[p]romote division between ... a race, sex, religion, creed, ... or class of people").

12. H.B. 7, 27th Leg., Reg. Sess., 2022 Fla. Laws 534 (attacking the concept that a person's "status as either privileged or oppressed is necessarily determined by his or her race" as "discrimination on the basis of race").

Concerned Parents,¹³ along with its primer, *How to Regulate Critical Race Theory in Schools*,¹⁴ all of the aforementioned reactionary responses frame curricular and academic initiatives to support the intellectual development of Black students as threatening or discriminatory toward white people, while circuitously reinforcing the notion that addressing racial inequities constitutes an attack on white identity or “a challenge to the absoluteness of whites’ dominance.”¹⁵

At the crux of white Republican animus and adversarial reaction toward *The 1619 Project*, Critical Race Theory (CRT),¹⁶ and critical classroom teacher pedagogies—most notably culturally relevant pedagogy¹⁷—are two mutually constitutive *and* reinforcing forces: time and power.¹⁸ Time and power involve the documentation, depiction, and articulation of not only history but also the future.¹⁹ Time, according to Professors Dan Edelstein, Stefanos Geroulanos, and Natasha Wheatley, is not simply a “series of points” but a political and cognitive instrument shaped by a group’s reliance on “different formulations: on historicities, celebrations, narratives of past and future, accelerations and delays, durations and pulses, gaps, maps, economies and crises, tempos, resolutions, [and]

13. MANHATTAN INST., *WOKE SCHOOLING: A TOOLKIT FOR CONCERNED PARENTS* 21 (2021), <https://media4.manhattan-institute.org/sites/default/files/woke-schooling-toolkit-for-concerned-parents.pdf> [<https://perma.cc/KC8F-3332>] (portending to guide parents on how to “fight back”).

14. See JAMES COPLAND, MANHATTAN INST., *HOW TO REGULATE CRITICAL RACE THEORY IN SCHOOLS: A PRIMER AND MODEL LEGISLATION* 3 (2021), <https://media4.manhattan-institute.org/sites/default/files/copland-crt-legislation.pdf> [<https://perma.cc/7UGR-Q6PX>] (purporting to provide elected officials and state agencies with a template on how to craft anti-Critical Race Theory legislation).

15. See ASHLEY JARDINA, *WHITE IDENTITY POLITICS* 3 (2019). See generally *id.*, for a thorough explanation of how whites identify with one another as a racial group.

16. See generally *Introduction to CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* xiii, xiii-xxxii (Kimberlé Crenshaw, Neil Gotanda, Gary Peller & Kendall Thomas eds., 1995), for a discussion of the history and purposes of CRT.

17. See generally GLORIA LADSON-BILLINGS, *THE DREAMKEEPERS: SUCCESSFUL TEACHERS OF AFRICAN AMERICAN CHILDREN* (1994) (exploring the concept of culturally relevant teaching and its implications for Black student education).

18. See Dan Edelstein, Stefanos Geroulanos & Natasha Wheatley, *Chronocenosic: An Introduction to Power and Time*, in *POWER AND TIME: TEMPORALITIES IN CONFLICT AND THE MAKING OF HISTORY* 1, 6-9 (Dan Edelstein, Stefanos Geroulanos & Natasha Wheatley eds., 2020) (discussing the complex interaction between power and time in the context of history and politics).

19. See *id.* at 20-21.

prefigurations.”²⁰ Relatedly, power is contested and unstable because it “always calls into being its own temporal explanations and calculations, its own fictions, prophesies, and preferred histories, relying on particular ways of dredging the past.”²¹ Moreover, time and power are “entwined with structures, networks, and hierarchies” that are responsible for “situat[ing] political authority, institutional force, [and] legal order.”²² In sum, the Republican-led attacks against *The 1619 Project*, CRT, and culturally relevant pedagogy are part of the Party’s broader ideo-political strategy to ensure the United States remains a white *Herrenvolk*²³ republic in perpetuity,²⁴ whereby whiteness and white racial identity remain at the center of the “location of power, privilege, and prestige”²⁵ in the United States of America. For the purposes of this Article, white *Herrenvolk* consists of a bricolage of “racial politics and culture in the United States ... [that] shape the status of white[]” people.²⁶ According to sociologist Howard Winant,

from the late 1960s onwards, white identity has been reinterpreted in a dualistic fashion: both egalitarian and privileged, individualistic and “normalized,” “colour-blind” and besieged. Nowhere is this new framework of the white “politics of difference” more clearly on display than in the reaction to affirmative action policies of all sorts These attacks are clearly designed to produce ideological shifts, rather than to shift resources in any meaningful way. They represent whiteness as *disadvantage*, something which has few precedents in US racial history. This imaginary white disadvantage—for which there is almost no evidence at the empirical level—has achieved widespread

20. *Id.* at 2, 27.

21. *Id.* at 3.

22. *Id.* at 6.

23. See GEORGE M. FREDRICKSON, *WHITE SUPREMACY: A COMPARATIVE STUDY IN AMERICAN AND SOUTH AFRICAN HISTORY* xi-xii (1981) (describing *Herrenvolk* as a “principle of differentiation by race ... in which people of color, however numerous or acculturated they may be, are treated as permanent aliens or outsiders”).

24. Compare this assertion with MATTHEW CONTINETTI, *THE RIGHT: THE HUNDRED YEAR WAR FOR AMERICAN CONSERVATISM* (2022), which describes the evolution of the conservative movement from the Progressive Era through the present.

25. Barbara J. Flagg, *Foreword: Whiteness as Metaprivilege*, 18 WASH. U. J.L. & POL’Y 1, 1 (2005).

26. See Howard Winant, *Behind Blue Eyes: Whiteness and Contemporary US Racial Politics*, *NEW LEFT REV.*, Sept.-Oct. 1997, at 73, 74.

popular credence, and provides the cultural and political “glue” that holds together a wide variety of reactionary racial politics.²⁷

To accomplish the aforementioned racial project,²⁸ a majority of white conservative-Republicans frequently target the country’s public education system because they understand “that the schools of today generate the society of tomorrow.”²⁹ Because “schools matter,” many white conservative-Republicans assiduously guard America’s public school curricula offerings against ideas that challenge societal norms, traditions, myths, and conventions.³⁰ More specifically, the political right’s legislative assault against CRT in public education is, at its essence, a two-pronged effort to continue (1) promulgating white supremacist ideology and white *Herrenvolk* dominance in America,³¹ and (2) intellectually and culturally subordinating current and future Black students into educative servitude.³² The racialization and weaponization of public education

27. *See id.* at 75 (footnote omitted).

28. Sociologists Michael Omi and Howard Winant define a racial project as an effort[] to shape the ways in which human identities and social structures are racially signified, and the reciprocal ways that racial meaning becomes embedded in social structures.... [Racial] projects are taking place all the time, whenever race is being invoked or signified, wherever social structures are being organized along racial lines.

MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES* 13 (3d ed. 2015).

29. *See* ADAM LAATS, *THE OTHER SCHOOL REFORMERS: CONSERVATIVE ACTIVISM IN AMERICAN EDUCATION* 3 (2015).

30. *See id.*

31. According to Historian George M. Fredrickson, white supremacy refers to the attitudes, ideologies, and policies associated with the rise of blatant forms of white or European dominance over “nonwhite” populations.... [I]t involves making invidious distinctions of a socially crucial kind that are based primarily, if not exclusively, on physical characteristics and ancestry.... It suggests systematic and self-conscious efforts to make race or color a qualification for membership in the civil community.... [And it] push[es] the principle of differentiation by race to its logical outcome—a kind of *Herrenvolk* society in which people of color, however numerous or acculturated they may be, are treated as permanent aliens or outsiders.

See FREDRICKSON, *supra* note 23.

32. *See generally* CHRISTOPHER M. SPAN, *FROM COTTON FIELD TO SCHOOLHOUSE: AFRICAN AMERICAN EDUCATION IN MISSISSIPPI, 1862-1875* (2009) (discussing the development of schooling for Black students in Mississippi, the varied reactions of white people to the establishment of schools for Black students, and how the new schooling system systematically limited the educational opportunities of Black students). Span describes an education for servitude as one that does not empower or promote self-sufficiency, political empowerment,

policy by Republican-led legislatures infringes upon Black people's constitutional "right to know"³³ and freedom of thought³⁴ in two ways. The first method of infringement occurs through a panoply of deceptive rhetorical tactics, such as obfuscation, denial, disinformation, deliberate and unintentional information suppression, neglect, and the distortion of historical facts.³⁵ The second method is outright obstruction. More systematic and enduring than the first method of infringement, obstruction can entail misinformation,³⁶ censorship (for example, book banning),³⁷ and procedural delay.³⁸ In toto, both methods of constitutional infringement constitute a racial (and statutory) nuisance³⁹ for Black students, because the factuality,

or independent thinking. *See id.* at 9. In discussing the postbellum history of Black education in Mississippi, Span writes that whites, particularly the planter class, were preoccupied with maintaining the former's second-class status by having unconditional control over the type of information they consumed and learned. *See id.* at 8-10.

33. *See* David Mitchell Ivester, Note, *The Constitutional Right to Know*, 4 HASTINGS CONST. L.Q. 109, 109-10 (1977) (proposing a constitutional "right to know," which includes the right to receive and gather information from willing sources and the right to acquire information from an unwilling governmental source, and should only be limited by compelling state interests).

34. *See* Bd. of Educ., *Island Trees Union Free Sch. Dist. No. 26 v. Pico*, 457 U.S. 853, 868, 871 (1982) ("[S]tudents must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding....' Our Constitution does not permit the official suppression of *ideas*." (quoting *Keyishian v. Bd. of Regents*, 385 U.S. 589, 603 (1967))).

35. *See* Editorial, *Far-Right GOP Is Spreading Its Shocking Anti-Education Agenda*, LAS VEGAS SUN (Aug. 27, 2023, 2:00 AM), <https://lasvegassun.com/news/2023/aug/27/far-right-gop-is-spreading-its-shocking-anti-educa/> [<https://perma.cc/YN7X-N7KU>].

36. *See* Kiara Alfonseca, *Critical Race Theory Thrust into Spotlight by Misinformation*, ABC NEWS (Feb. 6, 2022, 10:02 AM), <https://abcnews.go.com/US/critical-race-theory-thrust-spotlight-misinformation/story?id=82443791> [<https://perma.cc/ZQ6F-LZAD>]. *See generally* CAILIN O'CONNOR & JAMES OWEN WEATHERALL, *THE MISINFORMATION AGE: HOW FALSE BELIEFS SPREAD* (2019) (evaluating the formation, widespread acceptance, and persistence of misinformation and arguing that social factors, rather than individual psychology, are essential to understanding the spread of false beliefs).

37. *See* Alexandra E. Petri, *Book Bans Are on the Rise in U.S. Schools, Fueled by New Laws in Republican-Led States*, L.A. TIMES (Apr. 22, 2023, 5:00 AM), <https://www.latimes.com/world-nation/story/2023-04-22/book-bans-soaring-schools-new-laws-republican-states> [<https://perma.cc/6K4D-YZNP>].

38. *See* KEITH M. FINLEY, *DELAYING THE DREAM: SOUTHERN SENATORS AND THE FIGHT AGAINST CIVIL RIGHTS, 1938-1965*, at 7, 10, 13 (2008) (discussing the historical use of strategic delay and litigation to stall civil rights advances).

39. *See generally* Rachel D. Godsil, *Race Nuisance: The Politics of Law in the Jim Crow Era*, 105 MICH. L. REV. 505 (2006) (exploring a line of Jim Crow era "race-nuisance" cases in which white plaintiffs brought common law nuisance suits in attempts to achieve residential segregation). While I am borrowing the term "race nuisance" from Godsil, I do not support her definition or conceptualization of the term.

diversity, and complexity of the Black experience in the United States is intentionally suppressed in the service of advancing white supremacist logic and propagating anti-Black reasoning.

The aim of this Article is to discuss how Florida's Individual Freedom Act infringes upon Black students' constitutional right to learn⁴⁰ about non-white supremacist ideas, their freedom to think, and a public school's ability to offer Black-centered curricula content. In addition to serving as a legislative model for other Republican-led state governing bodies, such as Texas,⁴¹ Florida's Individual Freedom Act also adversely determines the academic offerings of private education-adjacent entities. For example, the College Board altered its Advanced Placement African American Studies course in response to the Florida Department of Education's assertion that it "lacks educational value."⁴²

This Article explains that the Individual Freedom Act's racially encoded wording establishes an academic environment for a racial nuisance to exist because its criteria authorize public education officials to label curricula content under the auspices of indoctrination, divisiveness, or educational value. While the term "nuisance" is typically reserved for determining reasonableness of an "interference with a right common to the general public,"⁴³ racial nuisance for the purposes of this Article refers to claims, conduct, and policies that originate under the political auspices of reactionary grievance, resentment, or special injury claims (such as "made to feel guilty" claims), which are then subsequently leveraged by white conservative politicians and their political appointees to target and censor ideas that (1) contest American exceptionalism, (2) challenge

40. *Presidents Council, Dist. 25 v. Cmty. Sch. Bd. No. 25*, 409 U.S. 998, 999 (1972) (Douglas, J., dissenting in denial of certiorari) ("The First Amendment involves not only the right to speak and publish, but also the right to hear, to learn, to know.").

41. See Kate McGee, *Texas Lawmakers Find Consensus on Bill Banning Diversity, Equity and Inclusion Offices in Public Universities*, TEX. TRIB. (June 20, 2023), <https://www.texas-tribune.org/2023/05/27/texas-university-diversity-equity-inclusion-dei-bill-conference/> [https://perma.cc/9AR6-ACJ3].

42. Anemona Hartocollis & Eliza Fawcett, *The College Board Strips Down Its A.P. Curriculum for African American Studies*, N.Y. TIMES (Feb. 9, 2023), <https://www.nytimes.com/2023/02/01/us/college-board-advanced-placement-african-american-studies.html> [https://perma.cc/ME25-49P2]; *Our Commitment to AP African American Studies, the Scholars, and the Field*, COLL. BD. (Feb. 11, 2023), <https://newsroom.collegeboard.org/our-commitment-ap-african-american-studies-scholars-and-field> [https://perma.cc/7GL7-W47R].

43. RESTATEMENT (SECOND) OF TORTS § 821B (AM. L. INST. 1979).

sanitized depictions of Black life, (3) challenge the current state of Black subjugation,⁴⁴ and (4) are inspirational and aspirational. Part I of this Article provides an overview of the Individual Freedom Act’s required instruction provision. Part II defines the concept of a racial nuisance within the context of education. The Article concludes with a brief discussion on why Governor Ron DeSantis and the Individual Freedom Act are a racial nuisance.

I. FLORIDA’S INDIVIDUAL FREEDOM ACT

Signed into law by current Florida Governor Ron DeSantis on April 22, 2022, the Individual Freedom Act, also known as the Stop the Wrongs to Our Kids and Employees (Stop W.O.K.E.) Act, was a key initiative of the DeSantis administration.⁴⁵ Introduced as an “act relating to individual freedom,” the Act deems it unlawful to “[s]ubject[] any individual, as a condition of employment, membership, certification, licensing, credentialing, or passing an examination, to training, instruction, or any other required activity that espouses, promotes, advances, inculcates, or compels such individual to believe [that specified] concepts constitute[] discrimination based on race, color, sex, or national origin.”⁴⁶ Along with “requiring [classroom] instruction to be consistent with specified principles of individual freedom,” the Act requires “instructional staff of [Florida’s] public schools, subject to the rules of the State Board of Education and the district school board, [to] teach efficiently and faithfully, using the books and materials required that meet the highest standards for professionalism and historical accuracy ... and

44. See generally JARVIS R. GIVENS, *FUGITIVE PEDAGOGY: CARTER G. WOODSON AND THE ART OF BLACK TEACHING* (2021) (documenting how Black education has always been a subversive act that requires a fugitive relationship with the American school system).

45. See News Release, Staff of Governor Ron DeSantis, Governor Ron DeSantis Signs Legislation to Protect Floridians from Discrimination and Woke Indoctrination (Apr. 22, 2022) [hereinafter News Release, Stop W.O.K.E. Act Signed by DeSantis], <https://www.flgov.com/eog/news/press/2022/governor-ron-desantis-signs-legislation-protect-floridians-discrimination-and-woke> [https://perma.cc/3B7G-HWSV]; News Release, Staff of Governor Ron DeSantis, Governor DeSantis Announces Legislative Proposal to Stop W.O.K.E. Activism and Critical Race Theory in Schools and Corporations (Dec. 15, 2021) [hereinafter News Release, Stop W.O.K.E. Act Proposal], <https://www.flgov.com/eog/news/press/2021/governor-desantis-announces-legislative-proposal-stop-woke-activism-and-critical> [https://perma.cc/AE5S-KAXE].

46. Individual Freedom Act, ch. 2022-72, § 1, 2022 Fla. Laws 534, 534-35.

employing approved methods of instruction.”⁴⁷ Under the Act, state-approved history content must include “[t]he 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.”⁴⁸ In addition, the Act mandates public schools teach American history in a manner that covers “the period of discovery, early colonies, the War for Independence, the Civil War, the expansion of the United States to its present boundaries, the world wars, and the civil rights movement to the present” and ensures that American history will “be viewed as factual, not as constructed ... and ... defined as the creation of a new nation based largely on the universal principles stated in the Declaration of Independence.”⁴⁹

With regard to teaching African American history in Florida’s public schools, which includes the “history of African peoples before the political conflicts that led to the development of slavery, the passage to America, the enslavement experience, abolition, and the history and contributions of Americans of the African diaspora to society,”⁵⁰ the Act stipulates that “[s]tudents shall develop an understanding of the ramifications of prejudice, racism, and stereotyping on individual freedoms, and examine what it means to be a responsible and respectful person, for the purpose of encouraging tolerance of diversity in a pluralistic society and for nurturing and protecting democratic values and institutions.”⁵¹ Moreover, the Act mandates that African American history classroom

[i]nstruction shall include the roles and contributions of individuals from all walks of life and their endeavors to learn and thrive throughout history as artists, scientists, educators, businesspeople, influential thinkers, members of the faith community, and political and governmental leaders and the courageous steps they took to fulfill the promise of democracy and unite the

47. *Id.* § 3, 2022 Fla. Laws 534, 540.

48. *Id.*

49. *Id.*

50. *Id.* § 3, 2022 Fla. Laws 534, 541.

51. *Id.*

nation, [and use instructional materials that] include the vital contributions of African Americans to build and strengthen American society and celebrate the inspirational stories of African Americans who prospered, even in the most difficult circumstances.⁵²

Finally, according to the Act, public school teachers can

facilitate discussions and use curricula to address, in an age-appropriate manner, how the individual freedoms of persons have been infringed by slavery, racial oppression, racial segregation, and racial discrimination, as well as topics relating to the enactment and enforcement of laws resulting in racial oppression, racial segregation, and racial discrimination and how recognition of these freedoms has overturned these unjust laws. However, classroom instruction and curriculum may not be used to indoctrinate or persuade students to a particular point of view inconsistent with the principles enumerated in subsection (3) or the state academic standards.⁵³

Subsection (3) includes the principle that “[n]o person is inherently racist, sexist, or oppressive, whether consciously or unconsciously, solely by virtue of his or her race or sex.”⁵⁴

II. TOWARD A RACIAL NUISANCE IN THE EDUCATION OF BLACK STUDENTS IN FLORIDA

The violent assault on black life begins in the classroom for all students.

—Jarvis R. Givens⁵⁵

The Individual Freedom Act’s sanctioning of the teaching of African American history in Florida public schools is a sociolegal milestone given the state’s legacy of chattel slavery and Jim Crow, which includes the Rosewood Massacre of 1923 where white rioters from neighboring areas destroyed the all-African American town of

52. *Id.*

53. *Id.* § 3, 2022 Fla. Laws 534, 541-42.

54. *Id.* § 3, 2022 Fla. Laws 534, 544.

55. GIVENS, *supra* note 44, at 241.

Rosewood.⁵⁶ That said, given Governor DeSantis's pledge to make "[t]he Stop W.O.K.E. Act ... the strongest legislation of its kind in the nation,"⁵⁷ it is paramount to understand how the Act confers onto state agencies unfettered discretionary power to exclude information, ideas, and classroom practices that (1) promote Black cultural awareness; (2) highlight Black ingenuity and political activism; and (3) challenge colorblind ideology, Western civilization orthodoxy, and patriarchy as normative or natural.

Indeed, developed expressly to "ban Critical Race Theory and the New York Times 1619 project in Florida's schools,"⁵⁸ Florida's Individual Freedom Act is the latest instantiation of many conservative reactionary politicians⁵⁹ creating laws and policies that simultaneously allow for the development of bureaucratic procedures as well as the conferral of unchecked administrative authority and discretionary power onto state agencies—and their employees—to thwart Black pupil advancement in public education. For example, the 1956 Declaration of Constitutional Principles (that is, the Southern Manifesto) was more than a caucus of ninety-nine southern members of the Eighty-Fourth United States Congress "proff[er]ing their] ... opposition to both federally mandated public school desegregation as declared in the U.S. Supreme Court decision *Brown v. Board of Education* ... and the emerging Civil Rights Movement that ultimately destroyed the southern caste system known as Jim Crow."⁶⁰ Rather, the Southern Manifesto was the legislative template and procedural blueprint for how white people in both major political parties—Republican and Democrat—curtailed Black educational advancement nationwide throughout the mid-twentieth century. According to historian John Kyle Day, the Southern Manifesto

56. See *Rosewood Massacre*, HIST. (Jan. 10, 2023), <https://www.history.com/topics/early-20th-century-us/rosewood-massacre> [<https://perma.cc/S9DM-LUEJ>] (detailing the racially motivated destruction of the predominantly Black town of Rosewood, Florida, by white aggressors).

57. News Release, Stop W.O.K.E. Act Proposal, *supra* note 45.

58. *Id.*

59. See COREY ROBIN, *THE REACTIONARY MIND: CONSERVATISM FROM EDMUND BURKE TO SARAH PALIN* 24 (2011).

60. JOHN KYLE DAY, *THE SOUTHERN MANIFESTO: MASSIVE RESISTANCE AND THE FIGHT TO PRESERVE SEGREGATION* 3 (2014) (emphasis omitted).

allowed the white South to dictate the interpretation of *Brown II*, setting the slothfully circumspect timetable for the implementation of public school desegregation with the consent of both national political parties. It provided the Southern Congressional Delegation with the means to effectively delay federal civil rights legislation for years to come.... The death of Jim Crow largely came on white southern terms.⁶¹

In essence, Florida's Individual Freedom Act, like the Southern Manifesto, is not merely an instance of political grandstanding by Florida Governor Ron DeSantis. Rather, the Individual Freedom Act, like the Southern Manifesto before it, illustrates how a majority of white conservative-Republicans, such as Governor DeSantis, are able to leverage the state's bureaucratic authority to wage their two-pronged ideological war to epistemically lock in white supremacist thinking and *Herrenvolk* logic into the American public school system at the expense of Black students' intellectual and cultural development—thereby creating a system of educational servitude.⁶²

For instance, the Individual Freedom Act prohibits teaching public school students that “racial colorblindness” is racist.⁶³ Innocuous at first glance, the Act's provision mandating that public schools teach all students that racial colorblindness is *not* racist is spurious, as it is intended to cognitively and temporally prime *all* public school students to believe that systemic racism and structural inequality are natural phenomena.⁶⁴ Colorblindness⁶⁵—a doctrine

61. *Id.* at 5.

62. See DONALD YACOVONE, *TEACHING WHITE SUPREMACY: AMERICA'S DEMOCRATIC ORDEAL AND THE FORGING OF OUR NATIONAL IDENTITY* 326-27 (2022) (explaining that history shapes our identities and aspirations, and sharing Black students' views that the American education system conditioned them to believe “Blackness was inferior” and fostered self-hatred because they had been “baptized in the narrative that everything white was right, good, noble, and beautiful, and everything Black' was not”).

63. Individual Freedom Act, ch. 2022-72, § 2, 2022 Fla. Laws 534, 538-39.

64. See JOE R. FEAGIN, *THE WHITE RACIAL FRAME: CENTURIES OF RACIAL FRAMING AND COUNTER-FRAMING* 95 (2d ed. 2013) (“In many ways colorblind rhetoric, although often apparently sincere, has just papered over what are still blatantly racist views of Americans of color that have continued in most whites' racial framing.”); *id.* at 146 (“The white racial frame ... attempts to conceal much of the injustice of the systemically racist reality from those who adopt elements of the white framing. This shrouding involves hiding or sanitizing racist realities and entices those operating out of that frame to generally view societal inequalities as normal.”). For a detailed exploration of how the interplay of intent doctrine and colorblindness has affected equal protection jurisprudence and eroded the Fourteenth

adopted by southern segregationists, the Republican Party, and the conservative legal movement since *Brown I*—is (according to the Act) a “virtue[.]” that is neither racist nor “created by members of a particular race, color, national origin, or sex to oppress members of another race, color, national origin, or sex.”⁶⁶ By nominally framing the contemporary causes for racial inequality as amorphous and fluctuating nonracial dynamics, such as individual preferences (that is, choice), the free market, or “imputed cultural limitations,” racial colorblindness (as defined by the Act) perpetuates the white conservative reactionary ethos of “racism without racists”⁶⁷ by papering over America’s legacy of “[s]ettler colonialism[,] ... expropriation of [Indigenous] land[,] and the exploitation of humans.”⁶⁸ Indeed, since the post-civil rights movement era of the mid-twentieth century and during the early twenty-first century, racism, according to the colorblind thesis, was *only* perpetrated by the most extreme subsection of white Americans, such as the Ku Klux Klan and neo-Nazis.⁶⁹ As such, under the auspices of colorblindness, the remaining white populace in America—irrespective of political affiliation—were psychologically freed to “judge[] [people not] by the color of their skin but by content of their character.”⁷⁰

At its essence, Florida’s Individual Freedom Act propels conservative ideology and white supremacy logic into the foreseeable future

Amendment’s protections, see generally Ian Haney-López, *Intentional Blindness*, 87 N.Y.U. L. REV. 1779, 1781 (2012).

65. See Christopher W. Schmidt, *Brown and the Colorblind Constitution*, 94 CORNELL L. REV. 203, 234-37 (2008) (describing conservatives as the “victors” in the conflict over the meaning of *Brown*, given the Court’s embrace of an “anticlassification” reading of *Brown* in line with “colorblind constitutionalism”); STEVEN M. TELES, *THE RISE OF THE CONSERVATIVE LEGAL MOVEMENT: THE BATTLE FOR CONTROL OF THE LAW* 84, 246 (2008).

66. Individual Freedom Act, ch. 2022-72, § 2, 2022 Fla. Laws 534, 539.

67. See EDUARDO BONILLA-SILVA, *RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN THE UNITED STATES* 1-4 (2003) (explaining how the concept of racial colorblindness enabled white people to create an institutionalized system of “racism without racists” where they are free to “express resentment toward minorities; criticize their morality, values, and work ethic; and even claim to be the victims of ‘reverse racism’”).

68. IAN HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* 143 (2006).

69. See Alan David Freeman, *Legitimizing Racial Discrimination Through Antidiscrimination Law: A Critical Review of Supreme Court Doctrine*, 62 MINN. L. REV. 1049, 1054-55, 1067 (1978).

70. MARTIN LUTHER KING, JR., *I Have a Dream*, in *A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS OF MARTIN LUTHER KING, JR.* 217, 219 (James Melvin Washington ed., 1986).

by ideationally priming (in other words, indoctrinating) current and future public school student populations for “virtuous ignorance,”⁷¹ whereby historical knowledge of atrocities performed by the hands of white people can be strategically and conveniently excluded to conceal the legacy of structural racism.⁷² In contrast to the Southern Manifesto, which doctrinally accorded onto elected government officials a presumptive bureaucratic authority to deliberately circumvent school desegregation, the Individual Freedom Act confers onto government agencies, such as the Florida Department of Education, discretionary administrative authority to proactively and reactively define which academics have educative value, while concurrently suppressing ideas that challenge white supremacist thinking and the “paternalistic imposition of approved viewpoints.”⁷³

In the case of Black students in Florida, the Individual Freedom Act statutorily lays the groundwork for a racial nuisance⁷⁴ because it grants state education officials the unchecked authority to target courses and suppress curricula content on the Black experience that are: (1) critical of American exceptionalism; (2) interdisciplinary in [their] understanding of the law and the American judicial system; (3) unapologetically intellectual, inspirational, and creative; and (4) suspicious of classical liberalism.⁷⁵ To put it more pointedly, because the impetus for the Individual Freedom Act’s development and passage was the deliberate banning of CRT and the *New York Times’s 1619 Project*—two intellectual enterprises that are not simply rooted in the lived experiences of Black Americans but also

71. See Robert N. Proctor, *Agnotology: A Missing Term to Describe the Cultural Production of Ignorance (and Its Study)*, in *AGNOTOLOGY: THE MAKING AND UNMAKING OF IGNORANCE* 1, 2, 20-23 (Robert N. Proctor & Londa Schiebinger eds., 2008) (describing “virtuous ignorance” as a “form of resistance to (or limits placed on) dangerous knowledge” and providing further discussion of the concept).

72. See Shannon Sullivan & Nancy Tuana, *Introduction to RACE AND EPISTEMOLOGIES OF IGNORANCE* 1, 1-8 (Shannon Sullivan & Nancy Tuana eds., 2007) (examining deliberate ignorance as a “tool of oppression wielded by the powerful” to support white privilege and domination).

73. See Susan Nevelow Mart, *The Right to Receive Information*, 95 *LAW LIBR. J.* 175, 179 (2003).

74. Florida law defines a punishable nuisance as an activity that “tend[s] to annoy the community, injure the health of the citizens in general, or corrupt the public morals.” *FLA. STAT. § 823.01* (2024).

75. Derrick A. Bell, David C. Baum Memorial Lecture, *Who’s Afraid of Critical Race Theory?*, 1995 *U. ILL. L. REV.* 893, 899-901.

dedicated to providing an uncensored version of the aforementioned—the Individual Freedom Act infringes upon Black public school students’ constitutional right to access information⁷⁶ and their freedom of thought.⁷⁷ In short, in the State of Florida, curricula content on the Black experience in the United States nominally labeled as indoctrinating, conceptually divisive, or educationally unvaluable creates a learning environment for Black students that is metaphysically noxious and materially toxic—a racial nuisance.

CONCLUSION

According to Governor Ron DeSantis, the Individual Freedom Act was enacted by the Florida Legislature to require that instruction “does not indoctrinate or persuade students to a certain point of view that is inconsistent with the principles of individual freedom.”⁷⁸ A reading of the Act in the context of reactionary politics, however, reveals a more sinister plan by Governor DeSantis and the Republican-led Florida Legislature. More specifically, the Act is a power play for the American psyche—both its past and future (that is, time). For instance, by prohibiting classroom materials and discussions on the contributory role of race in past actions, the DeSantis administration and the Florida Legislature are, among other things, preemptively quelling future reparations claims by Black residents “who [are] descendant[s] of an enslaved individual who lived in the United States before December 6, 1865.”⁷⁹ As calls of reparations for Black enslavement have gained mainstream momentum throughout the United States,⁸⁰ reactionary

76. Mart, *supra* note 73, at 180-81 (describing the Supreme Court’s opinion in *Board of Education v. Pico*, where it recognized that the First Amendment protects students’ right to receive and access information).

77. See *Loewen v. Turnipseed*, 488 F. Supp. 1138, 1153-54 (N.D. Miss. 1980) (recognizing the important link between academic freedom and First Amendment guarantees, and concluding that a state textbook purchasing board’s refusal to recommend a textbook on the grounds that it was too concerned with racial matters violated plaintiffs’ First Amendment rights because the refusal “impinge[d] upon ... a student’s right to obtain an education,” with no method to check “uninhibited governmental control”).

78. News Release, Stop W.O.K.E. Act Signed by DeSantis, *supra* note 45.

79. See S.J. Res. 582, 29th Leg., Reg. Sess. (Fla. 2024). December 6, 1865, is significant as it was the date the Thirteenth Amendment was ratified.

80. Curtis Bunn, *Reparations Gained Historic Momentum in 2023 Because of California’s Efforts*, NBC NEWS (Dec. 26, 2023, 7:00 AM), <https://www.nbcnews.com/news/nbcblk/>

opponents are not simply seeking dismissal of irrelevant dates and facts but are anesthetizing the country's collective memory at the expense of Black people writ large.

Tantamount to encouraging intellectual subordination, the Individual Freedom Act constitutes a substantial and unreasonable interference with a Black student's right to enjoy a public education free of white-grievance-informed policies. The diminution in value of the Black experience, as guided by the Act, portends to propagate within public education, where the omission of honest, fact-based history is not simply morally reprehensible but also deprives Black students of Black intellectual capital and simultaneously inflates the value of whiteness.⁸¹ In short, Ron DeSantis and the Individual Freedom Act are a racial nuisance.

reparations-momentum-2023-california-rcna127949 [https://perma.cc/K9GE-H8FU].

81. See Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1757-77 (1993) (exploring the concept of "whiteness as property," which sustains power and control by framing the status quo as neutral while obscuring white privilege and domination, through an analysis of how subordination is reinforced by contemporary legal conceptions of race and identity, and identifying the property interest in whiteness as central to the issue of affirmative action); *id.* at 1725 ("Property is thus said to be a right, not a thing, characterized as metaphysical, not physical. The theoretical bases and conceptual descriptions of property rights are varied, ranging from first possessor rules, to creation of value, to Lockean labor theory, to personality theory, to utilitarian theory.... Thus, the fact that whiteness is not a 'physical' entity does not remove it from the realm of property." (footnotes omitted)).