

May 19, 2021

Ms. Mia Howerton
U.S. Department of Education
400 Maryland Avenue, SW
Room 3C152
Washington, DC 20202

**RE: Public Comments on Docket ID ED-2021-OESE-0033:
*Proposed Priorities: American History and Civics Education***

Ms. Howerton:

On April 19, 2021, the U.S. Department of Education (Department) proposed two priorities for the American History and Civics Education programs to “support the development of culturally responsive teaching and learning and the promotion of information literacy skills.”¹ The Department’s Proposed Priority 1 seeks to fund “Projects That Incorporate Racially, Ethnically, Culturally, and Linguistically Diverse Perspectives into Teaching and Learning” to “create[] learning experiences that validate and reflect the diversity, identities, histories, contributions, and experiences of all students.”²

Proposed Priority 2 seeks to “Promot[e] Information Literacy Skills” by encouraging active citizenship and using civics education programs as “an opportunity to help students develop the skills necessary to meaningfully participate in our democracy and distinguish fact from misinformation.”³ The Department will prioritize grant applications that are designed to support students in “[u]nderstanding their own biases when reviewing information, as well as uncovering and recognizing bias in primary and secondary sources,” and “[u]nderstanding how inaccurate information may be used to manipulate individuals.”⁴

These proposed funding priorities will encourage America’s schools to inculcate their students with partisan and ideological anti-American propaganda. The Department’s proposed priorities promote indoctrinating America’s school children with radically divisive, extremist, and inherently flawed theories. The adoption of the Proposed Priority 1 would perpetuate the use of substandard civics education programs in public schools, further augmenting disengagement and misinformation among our citizenry. To see this, consider the following example provided in a recent report on Critical Race Theory (CRT) by the Chinese American Citizens Alliance of Greater New York (CACAGNY): “In June 2020, the City of Seattle ran an *anti-racism* training session for the City’s White staff. The session began with instruction that all White people have a *natural sense* of racial superiority. The session then required participants to confess their *complicity* in a *system of White supremacy, undo their Whiteness, be less White, and become accountable to Blacks in their every thought*”⁵ (emphasis in original quote).

Also concerning is the fact that Priority 1 incentivizes and establishes government-sanctioned and publicly funded discrimination in states and schools across the nation, in violation of Title VI of the Civil Rights Act of 1964. Proposed Priority 2 infuses progressive activism into civics education programs by incentivizing the use of media literacy programs that revere the mainstream media and rely on biased and politically motivated “fact-checkers” to discredit and shut down conservative viewpoints.

These funding priorities, if adopted and taught in public schools, will lead to civil rights violations and the spread of racism, partisan rhetoric, and progressive advocacy in our schools. **The Texas Public Policy Foundation (TPPF) and the America First Policy Institute (AFPI) vigorously oppose the Department’s proposed priorities for the reasons that follow.**

1 86 FR 20348 (April 19, 2021), <https://www.federalregister.gov/documents/2021/04/19/2021-08068/proposed-priorities-american-history-and-civics-education>.

2 Ibid., 20349.

3 Ibid., 20350.

4 Ibid.

5 “CACAGNY Denounces Critical Race Theory as Hateful Fraud,” Chinese American Citizens Alliance of Greater New York, February 23, 2021, <https://nebula.wsimg.com/9499c73d959b9f49be9689476a990776?AccessKeyId=45A6F09DA41DB93D9538&disposition=0&alloworigin=1>.

I. The Department’s Proposed Priorities Encourage the Adoption of Civics Education Programs That Ignore America’s Unique History and Identity.

The American Republic was forged on the belief that all human beings “are endowed by their Creator with certain unalienable rights.”⁶ This Nation was founded on the principles of “Life, Liberty, and the Pursuit of Happiness,” which are inherently embedded in our laws, traditions, and beliefs.⁷ As the famed orator, writer, statesman, and former slave Frederick Douglass put it, “interpreted as it ought to be interpreted, the Constitution is a GLORIOUS LIBERTY DOCUMENT.”⁸ In fact, this concept of self-governance was a unique political experiment. At the time of the American Revolution, no other nation was a democratic republic; America was established as “the people’s government, made for the people, made by the people, and answerable to the people.”⁹ America’s core Founding principles of human equality and individual liberty have served as our moral compass as we have struggled through difficult and trying times—a revolution, a civil war, two world wars—and countless other conflicts. What principles other than equality and liberty could have served the noble purpose of emancipating the slaves, the adoption of the 13th and 14th amendments, women’s suffrage, the passage of federal civil rights laws, and the establishment of protections for individuals with disabilities? In fact, it is these core values—our commitment to individual freedom, God-given liberty, self-determination, and independence—that have caused our evolution and continually inspire us as a nation to address our imperfections.

Despite this remarkable history, the Department has chosen to encourage the espousal of civics education programs that ignore and minimize America’s inimitable and distinctive role in the establishment of a free world. The Department references, as philosophies that may be included in successful applications, are the *New York Times*’ “1619 Project,” Ibram X. Kendi’s book *How to Be an Antiracist* and Dorothy Steele and Becki Cohn-Vargas’ *Identity Safe Classrooms*. Ironically, the adoption of these priorities will have the *exact* opposite effect of what the Department intends; inclusive environments will become divisive, supportive environments will promote racism, and the Department will encourage grantees and recipients to adopt civics education programs that define students by the color of their skin.

As a result, students will be taught to ignore the virtue and achievements of this country; they will be taught that America’s heroes are villains and that the founding of this Nation is suspect.¹⁰

“This radicalized view of American history lacks perspective, obscures virtues, twists motives, ignores or distorts facts, and magnifies flaws, resulting in the truth being concealed and history disfigured.”¹¹ Instead of studying the text of the Declaration of Independence and exploring the concept of “unalienable Rights,” the Department insists on incentivizing schools to adopt curriculum whose stated goal is to “reframe American history” by falsely teaching students that our nation’s core tenet is racism—and that racism alone has framed every aspect of American culture.¹² To the contrary, slavery and racism are deviations from, betrayals of, and failures to live up to, the authentic founding principles of the United States, which include liberty and human equality. This is why the Reverend Martin Luther King, Jr. called out his country to live up to its Founding principles. He noted that the Declaration’s doctrine of equality constitutes a “promissory note” to future generations, one that this country had failed to honor. And he announced his devotion to the Declaration’s principle of color-blind equality. “I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.”¹³ Like Frederick Douglass, the Reverend King knew that America’s Founding principles were equality and individual liberty. And like Douglass, he asked only that the nation live up fully to these noble aspirations.

Rather than teaching American history through a review of the transcripts of the first Lincoln-Douglas debate or studying the text of Abraham Lincoln’s Gettysburg Address and contemplating the exceptionalism of a nation “conceived in liberty, and dedicated to the proposition that all men are created equal,”¹⁴ the Department encourages teaching young children that

6 Thomas Jefferson, *Declaration of Independence*, 1776.

7 Ibid.

8 Frederick Douglass, “What to the Slave is the Fourth of July?” July 5, 1852, <https://teachingamericanhistory.org/library/document/what-to-the-slave-is-the-fourth-of-july/>.

9 Daniel Webster, “Liberty and Union, Now and Forever, One and Inseparable,” January 26, 1830, <https://www.usapatriotism.org/speeches/dwebster1.htm>.

10 85 FR 70952 (November 5, 2020), now rescinded, <https://www.govinfo.gov/content/pkg/FR-2020-11-05/pdf/2020-24793.pdf>.

11 Ibid.

12 Mary Elliot and Jazmine Hughes, “The 1619 Project,” *New York Times*, 2019, https://pulitzercenter.org/sites/default/files/18maglabs_1619_issue_shipped_0.pdf; https://pulitzercenter.org/sites/default/files/full_issue_of_the_1619_project.pdf.

13 “The I Have A Dream Speech,” USConstitution.net, August 28, 1963, <https://www.usconstitution.net/dream.html>.

14 Abraham Lincoln, Gettysburg Address, November 19, 1863, <https://www.nps.gov/liho/learn/historyculture/gettysburgaddress.htm>.

“[o]ut of slavery . . . grew nearly everything that has truly made America exceptional.”¹⁵ The priorities encourage the adoption of misleading, racially biased materials and advocacy-based curricula—without any attention or focus on providing instruction based on historical documents or the resources that would themselves provide a counter narrative.

America’s students must know its history; they must understand the fundamental principles that make this country great. It is an injustice to incentivize the adoption of civics programs that are widely viewed as ideological, politically driven, and aimed at diminishing and degrading the history of the United States. Encouraging the adoption of materials and philosophies that rewrite history and ignore the fundamental principles that created one of the most free, multi-racial societies in the world, is a travesty.

II. The Department’s Proposed Priorities Encourage the Adoption of Civics Education Programs That Falsify American History

The Department’s proposed rule would promote civics education programs that falsify American history and mislead students about America’s past. The Department holds out the 1619 Project—whose editor and coauthor, Nikole Hannah-Jones, confessed, “I’ve always said that the *1619 Project* is not a history. It is a work of journalism. . . .”¹⁶—as “supporting teaching and learning that reflects the breadth and depth of our Nation’s diverse history.”¹⁷ The 1619 Project has been widely condemned as deceptive and factually inaccurate by historians of all political philosophies.

A group of five historians led by Brown University Professor Gordon S. Wood—a preeminent historian of the American Revolution, Pulitzer prize winner, and recipient of the National Humanities Medal—wrote that the 1619 Project’s errors “suggest a displacement of historical understanding by ideology.”¹⁸ A group of 21 historians, scholars, and political scientists led by Peter Wood, the president of the National Academy of Scholars, described the 1619 project’s central claim as one “for which there is simply no evidence.”¹⁹ A separate group of 12 Civil War historians and political scientists asked the *New York Times* to cease distributing the 1619 Project until its many errors could be corrected.²⁰

The 1619 Project makes many false historical claims, the most prominent of which is that “one of the primary reasons some of the colonists decided to declare their independence from Britain was because they wanted to protect the institution of slavery.”²¹ Professor Wood and his fellow historians explain that “[t]his is not true . . . every statement offered by the project to validate it is false.”²² For example, the 1619 Project claims that slavery was becoming controversial in Great Britain at the time of the Revolution, creating fears in America that Parliament might outlaw it. In fact, the anti-slavery movement in London did not start until 1787—over a decade after the Declaration of Independence. Moreover, the British anti-slavery movement was inspired by American anti-slavery opinion that arose in the 1760s and 1770s.²³ Thomas Mackaman, professor of history at King’s College, explains that by “raising universal human equality as a fundamental principle” the American Revolution “brought slavery in for questioning in a way that had never been done before.”²⁴ The historian the *New York Times* asked to verify this claim told the paper it had no factual basis. The *New York Times* published it anyway.²⁵

The 1619 Project also claims that while President Lincoln “opposed slavery as a cruel system at odds with American ideals, . . . he also opposed black equality.”²⁶ This is also false. Lincoln opposed slavery because he believed that the Declaration of

15 Elliott, https://pulitzercenter.org/sites/default/files/full_issue_of_the_1619_project.pdf.

16 Becket Adams, “1619 Project Founder Claims Her Project Is Simply an ‘Origin Story,’ Not History,” *Washington Examiner*, July 28, 2020, <https://www.washingtonexaminer.com/opinion/1619-project-founder-claims-her-project-is-simply-an-origin-story-not-history>

17 86 FR 20349 (April 19, 2021), <https://www.federalregister.gov/documents/2021/04/19/2021-08068/proposed-priorities-american-history-and-civics-education>.

18 Victoria Bynum, James McPherson, James Oakes, Sean Wilentz, and Gordon S. Wood, “RE: The 1619 Project,” Letter to the Editor, *New York Times*, December 19, 2019, <https://www.nytimes.com/2019/12/20/magazine/we-respond-to-the-historians-who-critiqued-the-1619-project.html>.

19 Peter Wood, “Pulitzer Board Must Revoke Nikole Hannah-Jones’ Prize,” National Association of Scholars, October 6, 2020, <https://www.nas.org/blogs/article/pulitzer-board-must-revoke-nikole-hannah-jones-prize>.

20 “Twelve Scholars Critique the 1619 Project and the *New York Times Magazine* Editor Responds,” History News Network, January 26, 2020, <https://historynewsnetwork.org/article/174140>.

21 Nikole Hannah-Jones, “America Wasn’t a Democracy, Until Black Americans Made it One,” *New York Times*, August 14, 2019, <https://www.nytimes.com/interactive/2019/08/14/magazine/black-history-american-democracy.html>.

22 Bynum.

23 Sean Wilentz, “A Matter of Facts,” *The Atlantic*, January 22, 2020, <https://www.theatlantic.com/ideas/archive/2020/01/1619-project-new-york-times-wilentz/605152/>.

24 “Tom Mackaman Interviewed on 1619 Project by History Podcast,” World Socialist Web Site, February 18, 2020, <https://www.wsws.org/en/articles/2020/02/18/mack-f18.html>.

25 Leslie M. Harris, “I Helped Fact-Check the 1619 Project. The Times Ignored Me,” *Politico*, March 6, 2020, <https://www.politico.com/news/magazine/2020/03/06/1619-project-new-york-times-mistake-122248>.

26 Hannah-Jones.

Independence's proclamation of equal rights applied to all, irrespective of race. Lincoln publicly defended this conviction at length in the Lincoln-Douglas debates, and advanced this belief as president.²⁷ The 1619 Project's claim ignores the very reason Lincoln opposed slavery.

The 1619 Project further states that African Americans primarily fought alone for civil rights, with minimal assistance from non-black Americans. This too is false. Civil War historian James McPherson, a former Princeton University professor and past president of the American Historical Association, explains that "from the Quakers in the 18th century, on through the abolitionists in the antebellum, to the radical Republicans in the Civil War and Reconstruction, to the NAACP which was an interracial organization founded in 1909, down through the Civil Rights movement in the 1950s and 1960s, there have been a lot of whites who have fought against slavery and racial discrimination, and against racism."²⁸

These are only a few examples of false or highly misleading claims the 1619 Project makes. Professor Wood describes the 1619 Project as "wrong in so many ways."²⁹ Professor McPherson considers it an "unbalanced, one-sided account" that "left most of the history out."³⁰ Any curriculum that emulates the 1619 Project will be emulating, in professor Mackaman's characterization, "a politically motivated falsification of history."³¹ It would misinform American students and undermine the teaching of American history.

III. The Department's Proposed Priority 1 Requires the Adoption of Civics Education Programs That Violate Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964 (Title VI) states:

*No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.*³²

Title VI ensures that **all** students, regardless of race, have an opportunity to learn in an environment free of discrimination. The Department's Title VI regulations establish more specific requirements to ensure the vigorous enforcement of the law's anti-discrimination provisions; Title VI prohibits treating an individual differently on the basis of race, or providing services differently on the basis of race.³³ In addition to Title VI's clear anti-discrimination mandate, the Equal Protection Clause of the 14th Amendment protects "any person" from denials of "the equal protection of the laws."³⁴ In short, any government-imposed racial classification must satisfy the strict scrutiny standard.³⁵ This includes racial classifications and race-conscious policies imposed by schools.³⁶ Under the strict scrutiny standard, racial classifications are "constitutional only if they are narrowly tailored to further compelling governmental interests."³⁷

27 Wilentz.

28 Tom Mackaman, "An Interview With Historian James McPherson on the *New York Times*' 1619 Project," World Socialist Web Site, November 14, 2019, <https://www.wsws.org/en/articles/2019/11/14/mcph-n14.html>.

29 Tom Mackaman, "An Interview With Historian Gordon Wood on the *New York Times*' 1619 Project," World Socialist Web Site, November 28, 2019, <https://www.wsws.org/en/articles/2019/11/28/wood-n28.html>.

30 Tom Mackaman, "An Interview With Historian James McPherson on the *New York Times*' 1619 Project," World Socialist Web Site, November 14, 2019, <https://www.wsws.org/en/articles/2019/11/14/mcph-n14.html>.

31 Niles Niemuth, Tom Mackaman, and David North, "The *New York Times*'s 1619 Project: A Racist Falsification of American and World History," World Socialist Web Site, September 6, 2019, <https://www.wsws.org/en/articles/2019/09/06/1619-s06.html>.

32 42 U.S.C. 2000d.

33 See also 34 C.F.R. § 100.3(b)(1), which provides that a schools receiving federal financial assistance "may not, directly or through contractual or other arrangement, on ground of race, color, or national origin: (i) Deny an individual any service, financial aid, or other benefit provided under the program; (ii) Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program; (iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program; (iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program; (v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program; or (vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program."

34 U.S. Const. amend. XIV, § 2.

35 *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 212-231, 235-239 (1995); *Wygant v. Jackson Bd. of Ed.*, 476 U.S. 267, 285 (1986).

36 *Gratz v. Bollinger*, 539 U.S. 244, 275 (2003).

37 *Grutter v. Bollinger*, 539 U.S. 390 (2003).

The strict scrutiny standard requires a school to clearly demonstrate that its “purpose or interest is both constitutionally permissible and substantial, and that its use of classification is necessary . . . to the accomplishment of its purpose.”³⁸ Schools bear the “ultimate burden of demonstrating, before turning to racial classifications, that available, workable race-neutral alternatives do not suffice.”³⁹

The Supreme Court has recognized only two interests as “compelling” in the school environment: 1) Remedying the effects of past intentional discrimination—as opposed to societal discrimination; and 2) Interest in “diversity” in the higher education context.⁴⁰ Even in the school context, the Court has emphasized that equal protection requires the government to “treat citizens as individuals, not as simply components of racial, religious, sexual or national class.”⁴¹ Whether racial classifications are used to include or exclude is irrelevant; strict scrutiny is not applied *only* to policies that disadvantage minorities.⁴² The law presumes that racial classifications “exacerbate rather than reduce racial prejudice.”⁴³ This is certainly true in a classroom setting. Furthermore, the “use of race as a proxy” for experiences or viewpoint is forbidden.⁴⁴ “[E]very time the government places citizens on racial registers and makes race relevant to the provision of burdens or benefits, it demeans us all.”⁴⁵ To this end, historically, the government must not be allowed to “allocate benefits and burdens among individuals based on the assumption that race or ethnicity determines how they act or think.”⁴⁶

Contrary to these goals, the Department’ proposed priorities require recipients and grantees to view race exclusively in terms of White or Black; white or non-white.⁴⁷ Proposed Priority 1 encourages the adoption of race-conscious—and race-exclusionary—programs and activities in schools. The civics education programs the Department intends to prioritize rely on race-based stereotypes and classifications—and will not validate diversity, student identity, or recognize the contributions and experiences of students. Recent examples of critical race theory’s inclusion in the classroom show this to be true:

- CACAGNY reports that, “[i]n August 2017, a 12th grader at a public charter school in Nevada, William Clark, took a civics class that was required for graduation. In this class, students were told to declare their race, gender, etc. The class was then bombarded with material singling out Whites as racists who enjoy the privileges of an oppressive structure. Because he was identified as White, William was subsequently harassed by classmates, teachers and administrators. Escalating abuses followed, including bad grades from the class. William and his mother have since taken the case to Court.”⁴⁸
- CACAGNY also reports on an event that took place in January 2021, where “third-graders in a Cupertino, California elementary school math class were told that they lived in a dominant culture of White, cisgender, educated Christians, and this culture was created to hoard power. The kids were then told to check themselves off on a list of victimization categories—race, gender, religion, family structure—to find out which categories made them oppressors, and which made them oppressed. A Chinese parent found out about this and organized parents to stop it. It reminded them of Mao’s bloody Cultural Revolution. The school later decided that the material was not grade-appropriate, but will still use it for older classes.” The report goes on to note that, “[w]hen the Berkeley, California School District used similar CRT material on older grades, they had to suspend it because anti-White bullying got out of control.”⁴⁹

38 *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 305 (1978); *Fisher v Univ. of Tex. at Austin (Fischer 1)*, 570 U.S. 297, at ___ (slip op., at 7) (2013).

39 *Fisher v Univ. of Tex. at Austin (Fischer 1)*, 570 U.S. 297, at ___ (slip op., at 7).

40 *Freeman v. Pitts*, 503 U.S. 467, 494 (1992); *Grutter*, U.S. 539 at 328.

41 *Miller v. Johnson*, 515 U.S. 900, 911 (1995); *Metro Broadcasting*, 497 U.S. at 602 (O’Connor J., dissenting).

42 *Parents Involved v. Seattle*, 551 U.S. 701 (2007), citing *Gratz*, 539 U.S., at 282 (Breyer, J., concurring in judgment).

43 *Adarand Constructors, Inc v. Pena*, 515 U.S. 200, 229 (1995).

44 *Miller v. Johnson*, 515 U.S. 900, 914 (1995).

45 *Grutter*, *supra*, at 353 (Thomas, J., concurring in part and dissenting in part).

46 *Metro Broad., Inc. v. FCC*, 497 U.S. 547, 602 (1990) (O’Connor, J., dissenting).

47 *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547, 610 (1990).

48 “CACAGNY Denounces Critical Race Theory as Hateful Fraud,” Chinese American Citizens Alliance of Greater New York, February 23, 2021, 2, <https://nebula.wsimg.com/9499c73d959b9f49be9689476a990776?AccessKeyId=45A6F09DA41DB93D9538&disposition=0&alloworigin=1>.

49 *Ibid.*, 2, note 7.

Instead of taking appropriate steps to implement Title VI in a manner that protects *all* students from discrimination—or effectively enforcing Title VI⁵⁰—the Department is opting to incentivize the adoption of civics education programs that include racially biased content, promote racial classifications and stereotypes, and will result in treating students differently on the basis of race—or even the creation of a hostile environment for students or staff. This assessment is not speculation; it is happening right now. To see this, consider the following incidents compiled in a recent report:⁵¹

- Seattle Public Schools tells teachers that the education system is guilty of “spirit murder” against black children and that white teachers must “bankrupt [their] privilege in acknowledgement of [their] thieved inheritance.”⁵²
- San Diego Public Schools accuses white teachers “of being colonizers on stolen Native American land and tells [them] ‘you are racist’ and ‘you are upholding racist ideas, structures, and policies.’” They recommend that the teachers undergo “antiracist therapy.”⁵³
- A middle school in Springfield, Missouri, forces teachers “to locate themselves on an ‘oppression matrix,’” claiming that white heterosexual males are inherently oppressors and must atone for their “covert white supremacy.”⁵⁴
- A Philadelphia elementary school forces fifth-graders “to celebrate ‘black communism’ and simulate a Black Power rally” to “free Angela Davis” from prison. At this school, 87 percent of students will fail to achieve basic literacy by graduation.⁵⁵
- The principal of the East Side Community School in New York sent an email to white parents telling them that they should “subvert white authority,” become “white traitors,” and then advocate for full “white abolition.”⁵⁶

Proposed Priority 1 Requires the Adoption of Racially Biased Materials That Encourage Discrimination and Perpetuate Racial Conflict

The Department’s proposed Priority makes civics education divisive by requiring schools to adopt civics education programs that propagate racial division. Grantees ascribing to the principles articulated by the Department will guarantee that racial differences and racial division become the hallmark of civics education programs. Ibram X. Kendi, whom the DOE’s proposed rule cites as a recommend resource, espouses beliefs that are racially biased, discriminatory, and would conflict with efforts to create inclusive educational learning environments. Kendi argues that *any* act, policy, or system is inherently discriminatory if it yields inequitable results—regardless of intent or purpose. Furthermore, anyone who disagrees with this position is a racist. In fact, Kendi argues that beyond understanding and confronting racism, individuals must be “ready to fight racism’s intersections with other bigotries.”⁵⁷ Kendi is clear that “[t]he only remedy to past discrimination is present discrimination” and “[t]he only remedy to present discrimination is future discrimination.”⁵⁸ Kendi’s book advocates racial discrimination that is prohibited by federal law. This concept “violates the Constitution, which regards discrimination and other racial classifications” as a “last resort,” not as the “only remedy” for racist discrimination.⁵⁹ Furthermore, Becki Cohn-Vargas and Dorothy Steele teach that having colorblind classrooms inadvertently harm students by creating unsafe environments.⁶⁰ This concept violates the most basic tenet of federal civil rights law. It requires teachers to consider race, assume that a student will possess a characteristic because of their race, and respond differently to students or treat them differently *based on race*.

50 U.S. Department of Education, Office for Civil Rights, “Racially Exclusive Practices and Title VI,” January 19, 2021, <https://www.youtube.com/watch?v=oXMD43fD1ug>; <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-tvi-webinar-reptvi.pdf>. “Any classification based on race is presumptively invalid unless the classification satisfies a ‘strict scrutiny’ analysis. That standard permits racial classifications under the U.S. Constitution only if they are narrowly tailored and constitute the least restrictive means to further a compelling governmental interest. As part of this requirement, schools bear the ‘ultimate burden of demonstrating, before turning to racial classifications, that available, workable race-neutral alternatives do not suffice.’” (*Rescinded by the Biden Administration*.) See also U.S. Dep’t of Educ., Office for Civil Rights, “Oak Park Letter,” at 4, September 29, 2015, <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/05151180-a.pdf>. (OCR held that the district violated Title VI when it held a segregated Black Lives Matter assembly because it failed “to assess fully whether there were workable race-neutral alternatives” or to “conduct a flexible and individualized review of potential participants.”)

51 Christopher F. Rufo, “Critical Race Theory in Education,” April 27, 2021, <https://christopherrufo.com/critical-race-theory-in-education>.

52 Christopher F. Rufo, “Teaching Hate,” *City Journal*, December 18, 2020, <https://www.city-journal.org/racial-equity-programs-seattle-schools>.

53 Christopher F. Rufo, “Radicals in the Classroom,” *City Journal*, January 5, 2021, <https://www.city-journal.org/radicalism-in-san-diego-schools>.

54 Christopher F. Rufo, “‘Antiracism’ Comes to the Heartland,” *City Journal*, January 19, 2021, <https://www.city-journal.org/antiracism-comes-to-the-heartland>.

55 Christopher F. Rufo, “Bad Education,” *City Journal*, February 11, 2021, <https://www.city-journal.org/philadelphia-fifth-graders-forced-to-celebrate-black-communism>.

56 Christopher F. Rufo, “Gone Crazy,” *City Journal*, February 18, 2021, <https://www.city-journal.org/east-side-community-school-tells-parents-to-become-white-traitors>.

57 Ibram X. Kendi, *How to Be an Antiracist*, (New York: One World, 2019), 10.

58 Kendi, *Antiracist*, 19.

59 Hans Bader, “Will Virginia Teach Critical Race Theory to Kindergartners?” *Liberty Unyielding*, September 13, 2020, <https://libertyunyielding.com/2020/09/13/will-virginia-teach-critical-race-theory-to-kindergartners/>.

60 “What Is Identity Safety?” *IdentitySafeClassrooms.org*, <http://identitysafeclassrooms.org/>; Becki Cohn-Vargas and Dorothy M. Steele, “Creating an Identity-Safe Classroom,” *Edutopia*, October 21, 2015, <https://www.edutopia.org/blog/creating-an-identity-safe-classroom-becki-cohn-vargas-dorothy-steele>.

Proposed Priority 1 Requires the Adoption of Materials That Include and Promote Racial Stereotypes and Classifications

The government-sponsored adoption of racial stereotypes and racial classification that are based on the belief that *all members* of a certain race inherently possess a specific trait or characteristic (because of the color of their skin) is highly suspect. In fact, “any official action that treats a person differently on account of his race or ethnic origin is inherently suspect” because such classifications promote “notions of racial inferiority and lead to politics of racial hostility.”⁶¹ These effects have been made manifest in the following cases:⁶²

- Buffalo Public Schools teaches students that “all white people” perpetuate systemic racism and forces kindergarteners to watch a video of dead black children warning them about “racist police and state-sanctioned violence” which might kill them at any time.⁶³
- “The Arizona Department of Education has created an ‘equity’ toolkit claiming that babies show the first signs of racism at three months old” and that white children become full racists— “strongly biased in favor of whiteness’ by age five.”⁶⁴
- The California Department of Education passed an “ethnic studies curriculum” that calls for the “decolonization’ of American society” and has students chant to the Aztec god of human sacrifice. The solution, according to one author, is “counter-genocide.”⁶⁵
- North Carolina’s largest school district launches a campaign against “whiteness in educational spaces”—and encourages teachers to subvert families and push the ideology of “antiracism” directly onto students without parental consent.⁶⁶
- Santa Clara County Office of Education denounces the United States as a “parasitic system” based on the invasion of “white male settlers” and encourages teachers to cash “in on kids’ inherent empathy” in order to recruit them into political activism.⁶⁷

The Department’s proposed priorities would institutionalize divisive teachings in the classroom; instruction based on critical race theory, Black Lives Matter curriculum, or Robin DiAngelo’s *White Fragility: Why It’s So Hard for White People to Talk About Racism* would be permissible under the Department’s proposed priorities but violate federal civil rights law. These resources are not evidence-based materials on which educational programs should be based; rather, these belief systems promote racial classifications based on racial stereotypes *and* require schools to categorically assign traits, characteristics, and qualities to students (and staff) based on race, and race alone.

These philosophies advance the belief that “societal structures” trump human agency. That is to say, CRT seeks simultaneously to blame not individuals but the “system” for racism. This denial of individual responsibility in the face of an apparently omnipotent “system” undermines the basis for individual liberty, which carries with it the view that individuals—not races, not classes, and not the “system” are the driving force of human history. This denial of human agency in the face of “historical forces” is morally indistinguishable from Karl Marx’s first sentence of *The Communist Manifesto*, which proclaims that “The history of all hitherto existing society is the history of class struggles.” CRT qualification notwithstanding, it goes on to insist that *all* Whites are privileged—while *all* Blacks are fundamentally and inherently disadvantaged, most often because of White oppression and racism. This view becomes clear when we reflect on this statement by one of the leaders in CRT, Robin DiAngelo (author of *White Fragility*) expressly teaches that “[r]acism comes out of our pores as white people. It’s the way that we are.”⁶⁸ Whether the culprit is Whites or the economic system, these fundamentally racist

61 *Fullilove v. Klutznick*, 448 U. S. 448, at 523 (Stewart, J., dissenting), See also *Fisher I*; *McLaughlin v. Florida*, 379 U. S. 184, 192 (1964); *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954); *City of Richmond v. J.A. Co.*, 488 U.S. 469, 493 (1989).

62 Rufo, “Critical Race Theory in Education.”

63 Christopher F. Rufo, “Failure Factory,” *City Journal*, February 23, 2021, <https://www.city-journal.org/buffalo-public-schools-critical-race-theory-curriculum>.

64 Christopher F. Rufo, “Racism in the Cradle,” March 2, 2021, <https://christopherrufo.com/racism-in-the-cradle>.

65 Christopher F. Rufo, “Revenge of the Gods,” *City Journal*, March 10, 2021, <https://www.city-journal.org/calif-ethnic-studies-curriculum-accuses-christianity-of-theocide>.

66 Christopher F. Rufo, “Subversive Education,” *City Journal*, March 17, 2021, <https://www.city-journal.org/critical-race-theory-in-wake-county-nc-schools>.

67 Christopher F. Rufo, “Merchants of Revolution,” *City Journal*, April 13, 2021, <https://www.city-journal.org/california-ethnic-studies-programs-merchants-of-revolution>.

68 Dustin Dwyer, “Why All White People Are Racist, But Can’t Handle Being Called Racist: the Theory of White Fragility,” Michigan Radio, State of Opportunity, March 25, 2015, <https://stateofopportunity.michiganradio.org/post/why-all-white-people-are-racist-cant-handle-being-called-racist-theory-white-fragility>.

concepts violate federal law (Civil Rights Act of 1964) and harm students.⁶⁹ Only discriminatory systems act on such racist assumptions—and federal law prohibits these assumptions.

“Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.”⁷⁰ Such classifications are forbidden because it is “demeaning” to judge a person “by ancestry instead of by his or her own merit and essential qualities.”⁷¹

Yet, the Department is proposing to fund grantees that develop programs that violate these principles; proposing to fund programs that teach children that they are, *based on race alone*, either advantaged or disadvantaged, oppressor or oppressed. The evidence of the detrimental effect and discriminatory impact these practices have on students and staff is mounting. Indeed, there are numerous confirmed incidents of the harmful impact of these practices on students and school staff.⁷²

IV. The Department’s Proposed Priority 2 Will Promote Progressive Indoctrination and Viewpoint-Based Discrimination Without Requiring the Appropriate Content Necessary to Ensure the Development of Unbiased Media Literacy Skills

Proposed Priority 2 is a veiled attempt to insert ideology and propaganda into our Nation’s schools. Both TPPF and AFPI agree that civics education programs should be strengthened and bolstered. The need for immediate action to improve civics education programs is clear—at a time when only 19% of native-born Americans under the age of 45 can pass the U.S. Citizenship and Immigration Services’ citizenship test, which requires only six correct answers out of ten questions.⁷³ We disagree, however, with the manner in which the Department is attempting to do so.

The Department’s proposal seeks to prioritize grant applications that support students in “learn[ing] how to gather . . . and then use evidence from that information to develop and support their ideas and advocacy positions.”⁷⁴ The most effective method by which to achieve this goal—and truly increase students’ critical thinking skills—is to require instruction in the informal fallacies in language.

Providing instruction in logical fallacies teaches students to understand relevance and effect. For example, a common logical fallacy is *Argumentum ad hominem* (abusive). Expressed in terms of the priorities the Department is proposing, an *argumentum ad hominem* would be arguing, “Of course you believe in this policy, because you’re Black/or White/or Hispanic.” Students learning logical reasoning would know that the argument is fallacious because it does not address the argument but, instead, attacks the speaker himself or herself.

This is not the purpose of civics education. Instead, the purpose of genuine civics education is to both provide our students with both content knowledge and to increase their capacity to evaluate all information they receive, from whatever source. The Department cites a teachers’ union, the American Federation of Teachers, which noted that students must know how to “evaluate sources of information, and then use evidence from that information to develop and support their ideas *and advocacy positions* [emphasis added].”⁷⁵ Frankly, focusing on enabling student advocacy puts the cart before the horse. We know from an abundance of sources that young—and not so young—Americans are functionally civically illiterate. The implementation of genuine civics education programs must be the first priority. In other words, participatory civics is “secondary to, and derives its value only from, a Founding-documents-based approach to civic education.”⁷⁶ That must be the focus. Pointing young people toward “advocacy” as the purpose of civics education runs the risk—and not simply a hypothetical risk—of, to use the words of Robert Pondiscio, using “kids as political props.”⁷⁷ We do our students and our country no favor when we insist that these young, still civically illiterate students nonetheless embark on political campaigning.

69 Conor Friedersdorf, “The Narrative Is, ‘You Can’t Get Ahead,’” *The Atlantic*, April 3, 2021, <https://theatlantic.com/ideas/archive/2021/04/black-lives-matter-curriculum-has-unintended-lesson/618501/>.

70 *Hirabayashi v. United States*, 320 U.S. 81, 100 (1943); *Rice v. Cayetano*, 528 U.S. 495, 517 (2000).

71 *Rice v. Cayetano*, 528 U.S. 495, 517 (2000).

72 “Christopher Rufo on Woke Education,” *City Journal*, <https://www.city-journal.org/christopher-rufo-on-woke-education>.

73 “National Survey Finds Just 1 in 3 Americans Would Pass Citizenship Test,” Woodrow Wilson National Fellowship Foundation, October 3, 2018, <https://woodrow.org/news/national-survey-finds-just-1-in-3-americans-would-pass-citizenship-test/>.

74 *Ibid.* 86 FR 20349.

75 *Ibid.*, 20349.

76 Thomas K. Lindsay and Lucy Meckler, “Action Civics,” “New Civics,” “Civic Engagement,” and “Project-Based Civics”: *Advances in Civic Education?* Texas Public Policy Foundation, 2020, <https://www.texaspolicy.com/action-civicsnew-civics-civic-engagement-and-project-based-civics-advances-in-civic-education/>.

77 Robert Pondiscio, “Kids as Political Props,” *Education Next*, March 7, 2019, <https://www.educationnext.org/kids-political-props/>.

There will be time for that when they grow up. Our schools are meant to teach the meaning of the Constitution and our history. They are not meant to be ideological training camps for political activists.

The civics education our children need is neither a thoughtless celebration—nor a thoughtless condemnation—of the American way of life. It is instead a *cerebration*—a “thinking through” approach that does justice both to our students and to the experiment in self-government

V. Conclusion

The Department’s proposal will result in the creation and adoption of civics education programs that promote ideology rather than history. Programs funded under this proposal falsify and ignore American history. Furthermore, the Department’s proposed priority will overturn the most fundamental notions of federal anti-discrimination law—colorblind systems turned race-exclusionary, and individuality replaced with race-based categorizations. The dark history of slavery does not define this country. And students should not be taught that it or their race defines them. There are legally permissible and educationally appropriate methods to effectively confront and demolish racism; this proposal is not one. Civics education programs that encourage race-based discrimination or that teach children that privilege—or disadvantage—is the determinative trait that will define their life is racist and only deepen the racial divide. The Department’s efforts to label these principles as “anti-racist” amount to blatant racism. Finally, the Department should prioritize programs that develop analytical skills and enable students to perform an independent evaluation of facts and information instead of establishing programs that will be used to indoctrinate students.

AFPI and TPPF urge the Department to reject this proposal and adopt priorities that will result in the adoption of quality civics education programs and abandon efforts to promote programs that equate to social justice style radicalism in the classroom.



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