

Testimony on Ohio H.B. No. 322

By

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Chairman Wiggam, Vice Chairwoman John, Ranking Member Kelly, and members of the State and Local Government Committee, I am honored to provide testimony on H.B. No. 322. I am a senior fellow at the Ethics and Public Policy Center in Washington, DC. I have a doctorate in Social Anthropology from Harvard University and have taught at Harvard University and the University of Chicago. For the past twenty years, I have written about education policy at National Review Online, where I am a regular contributor, and at many other journals of policy and opinion. I coauthored the model campus free speech legislation published by Arizona's Goldwater Institute, a model that has inspired law and policy in numerous states. I am also the author of the model Partisanship Out of Civics Act, published and endorsed by the National Association of Scholars. This model legislation helped inspire H.B. 322.

Mr. Chairman, the model Partisanship Out of Civics Act is not the only precedent or inspiration for H.B. 322. A bill containing the key provisions of H.B. 322 was signed into law by Governor Abbott of Texas earlier this month. Several weeks ago, the Georgia State Board of Education issued a resolution containing the key provisions of H.B. 322. A bill quite similar to H.B. 322 has also been introduced in South Carolina and will likely be taken up at the head of the 2022 legislative session. Several other states are contemplating the introduction of bills similar to H.B. 322 next year.

Mr. Chairman, H.B. 322 is the most effective and desirable way to guard against the wave of politicization that currently threatens K-12. The bill bars curricula that "inculcate" certain concepts incompatible with the principles of individual liberty and equal rights, principles foundational to our constitutional republic. Under our system of government, citizens in the public sphere are judged as individuals. Their merit, their conduct, their moral standing and worth, their achievements, their moral and legal responsibility, the contents of their character, and their guilt for any wrongs they may have committed, are all to be assessed and assigned according to their actions as individuals, not by their race, ethnicity, religion or any other form of collective identity.

In recent times, a set of concepts that contradict the central place of individual responsibility in American law and society have entered our culture at large, and our schools in particular. These concepts derive from an academic movement popularized by legal scholars, and adopted and adapted by theorists of education. That movement is called Critical Race Theory. Critical Race Theory openly challenges and rejects the classical liberalism that undergirds our constitutional republic. Critical Race Theory and its derivatives may be fashionable in many circles right now, but this perspective is incompatible with the education of American citizens.

We do not want our children taught that that they bear the guilt of oppression simply because of their race or sex. We do not want them taught that they bear the onus of hatred, whether they are conscious of it or not. Nor do we want them taught that citizens should receive special status or entitlement simply by virtue of identity-group membership. We want our children taught by both precept and example that in the public sphere we are individuals first and foremost.

Mr. Chairman, it is important to emphasize that H.B. 322 **does not prohibit discussion** of the various concepts itemized in the bill. Indeed, H.B. 322 does not prohibit discussion of Critical Race Theory, however defined. The only things prohibited by H.B. 322 are attempts to **“inculcate”** the particular illiberal concepts listed in the bill. Anything may be discussed. What is prohibited is the attempt to teach the specific concepts listed as truths worthy of assent and belief.

This is well within the rights of a state or school district. K-12 teachers in the process of imparting lessons do not have academic freedom in the sense that university professors do. There is every good reason for this difference. Public school students are a captive audience. And crucially, K-12 students are not adults. Adults have reached a level of maturity where they are able to be exposed to a wide variety of perspectives and left to themselves to judge which to accept. Children are not so mature, nor so fully formed, and are therefore more vulnerable to shaping by their schools and teachers. Parents should not have to tolerate schools that saddle their children with guilt or remorse for their skin color. No child should be subjected to such teachings. That is not freedom. On the contrary, it is pernicious indoctrination, and any school system is well within its rights to prevent it.

Note also that H.B. 322 does not adopt the vague and subjective standard of forbidding teaching that causes “discomfort, guilt, anguish, or distress.” On the contrary, H.B. 322 prohibits attempts to teach children **that they ought to feel** discomfort or distress because of their skin color. That is a very different and far more ascertainable standard.

Note also that the two provisions of H.B. 322 that pertain to the core ideas of the 1619 Project **do not prohibit discussion of the history of slavery and racism or its wrongs**. On the contrary, they invite discussion of slavery and racism as betrayals of our great founding principles of liberty and equality. H.B. 322 simply says that, when these critically important failings are discussed, they should be presented not as the essence of our great American experiment in liberty, but as profound challenges to the success of that experiment.

Let me now address the sections of H.B. 322 that pertain to the practice of “action civics,” also known as “protest civics,” “project-based civics,” and “civic engagement.” The practice of action civics inappropriately politicizes K-12 education by requiring that students participate in ideologically partisan protests and lobbying campaigns outside of school. These protests overwhelmingly cluster on one side of the political spectrum. As after-school activities, moreover, they are not properly part of the curriculum at all. They are extra-curricular in nature, and it is deeply inappropriate for public schools to require students to participate in extra-curricular political activity.

Even if the after-school political protests and internships with political advocacy organizations that characterize action civics were evenly balanced by ideology, they would nonetheless be inappropriate for public schooling. As institutions, public schools rightly seek a posture of neutrality with regard to politics. With students as a captive audience, and with public schools

serving families situated at every point on the political spectrum, forcing children into collective political activity is wrong. It is inevitable that between teacher bias, peer pressure, and the biases of the non-profits that sponsor action civics programs, many students will be pressured into political actions that they do not truly support or understand. For this reason, H.B. 322 prevents schools from compelling students to engage in extra-curricular political activity as part of their required coursework.

Programs of action civics generally require teachers to discuss current political and social controversies in class, as preparation for organizing students to undertake extra-curricular political activity. This requirement inappropriately invites and even pressures teachers to inject their political biases into the classroom. It is important to note, however, that H.B. 322 **does not prevent teachers from discussing current events**. On the contrary, it simply prevents teachers from being mandated to do so. Some teachers will teach civics successfully by sticking to historical examples. Others will prefer to invoke current events. This choice should be left up to the teacher.

If teachers do choose to discuss current political or social controversies, H.B. 322 holds that they should strive to do so from “diverse and contending perspectives.” This provision helps to guard against indoctrination by any one political viewpoint. Notice that this particular provision is largely aspirational. It says that teachers should “strive” to explore contending perspectives. The meaning of “strive” is to “try.” This provision thus leaves teachers with considerable flexibility.

H.B. 322 also prohibits the use of private funding for courses in history, civics, social studies or similar subjects. This provision tracks the experience of states—particularly Illinois—where private foundations with strong political leanings have taken effective control of schooling through legal provisions that invite the private funding of public-school civics classes. Public schools serve families situated at every point on the political spectrum. Our public schools are governed by the people, by way of their elected representatives. Private funding of civic education allows entities with a particular political agenda to bypass democratic and representative control of public education. That anti-democratic practice should be barred.

Let me finally address the issue of the threat to Ohio posed by both action civics and Critical Race Theory. It has been argued that H.B. 322 is unnecessary because these concepts and practices have not yet come to Ohio in force. That view is short-sighted. First, as someone who has closely followed the wave of speaker shout-downs and other forms of suppression that have moved across America’s college campuses in recent years, I note that what started on the coasts swiftly traveled to the heart of the country.

Second, and most importantly, Congress is now considering several bills pertaining to civic education that could easily press both action civics and Critical Race Theory on the states, in the same way that federal Race to the Top grants under the Obama administration effectively pressed Common Core on the states. This is evident from the priority grant criteria written into the federal bills, and from priority grant criteria in history and civics recently issued by the Biden administration’s Department of Education. The Biden administration has explicitly held up the 1619 Project and a leading Critical Race Theorist as models for the sort of history and civics education it seeks to promote in the states. The very strong prospect of imminent federal intervention in history and civics education means that H.B. 322 is the best, and perhaps the only remaining chance for Ohio to protect itself from these pernicious pedagogies.