

Nos. 22-13992 & 22-13994

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**In the United States Court of Appeals  
for the Eleventh Circuit**

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LEROY PERNELL, ET AL.,  
*Plaintiffs-Appellees,*

v.

BRIAN LAMB, ET AL.,  
*Defendants-Appellants.*

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ADRIANA NOVOA, ET AL.,  
*Plaintiffs-Appellees,*

v.

MANNY DIAZ, JR., ET AL.,  
*Defendants-Appellants.*

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**CERTIFICATE OF INTERESTED PERSONS**  
**AND CORPORATE DISCLOSURE STATEMENT**

The undersigned counsel of record certifies that the following listed persons and entities as described in 11th Cir. R. 26.1-2(a) have an interest in the outcome of this case, and were omitted from the Certificates of Interested Persons in briefs that were previously filed per 11th Cir. R. 26.1-2(b):

- The New Press.

The New Press is a not-for-profit corporation exempt from income tax under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3). It does not have a parent corporation, and no publicly held company has a 10 percent or greater ownership interest in the company.

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*Reno v. Am. Civil Liberties Union*,  
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*Speech First, Inc. v. Cartwright*,  
32 F.4th 1110 (11th Cir. 2022) .....*passim*

*Tinker v. Des Moines Indep. Cmty. Sch. Dist.*,  
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**Statutes and Rules**

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CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE  
 MOVEMENT (Kimberlé Crenshaw et. al. eds., 1st ed. 1996).....*passim*

*Critical Race Theory: The Key Writings That Formed the Movement*,  
 THE NEW PRESS, <https://thenewpress.com/books/critical-race-theory> .....20 n.19, n.20

*CRT Forward: Tracking the Attack on Critical Race Theory*,  
 U.C.L.A. SCH. OF L. CRITICAL RACE STUDIES PROGRAM  
 (Apr. 2023), [https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law-CRT-Report\\_Final.pdf](https://crtforward.law.ucla.edu/wp-content/uploads/2023/04/UCLA-Law-CRT-Report_Final.pdf).....25 n.33

*CRT Forward*, U.C.L.A. SCH. OF L. CRITICAL RACE STUDIES  
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Dana Goldstein, *Florida Rejects Math Textbooks, Citing ‘Prohibited Topics’*, N.Y. TIMES (Apr. 18, 2022),  
<https://www.nytimes.com/2022/04/18/us/florida-math-textbooks-critical-race-theory.html> .....26 n.35

Dana Goldstein, Stephanie Saul, and Anemona Hartocollis, *Florida Officials Had Repeated Contact With College Board Over African American Studies*, N.Y. TIMES (Feb. 9, 2023),  
<https://www.nytimes.com/2023/02/09/us/florida-college-board-african-american-studies.html>.....27 n.37

*Foreword by Cornel West*, THE NEW JIM CROW: MASS  
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<https://newjimcrow.com/about/foreword-by-cornel-west> .....19 n.16

Jacey Fortin, *Critical Race Theory: A Brief History*, N.Y. TIMES  
 (Nov. 8, 2021), <https://www.nytimes.com/article/what-is-critical-race-theory.html> .....20 n.19

Jane Coaston, *The Intersectionality Wars*, VOX (May 28, 2019),  
<https://www.vox.com/the-highlight/2019/5/20/18542843/intersectionality-conservatism-law-race-gender-discrimination> .....21 n.22

Jeffrey S. Solochek, *Florida Asks College Board to Modify AP Psych Curriculum. The Answer: Absolutely Not*, MIAMI HERALD  
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Jeremy C. Young et al., *America’s Censored Classrooms*, PEN AM.  
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 WEEKLY (Dec. 17, 2021), <https://shorturl.at/isAD8> .....3 n.1

Jonathan Friedman & Nadine Farid Johnson, *Banned in the USA: Rising School Book Bans Threaten Free Expression and Students’ First Amendment Rights*, PEN AM. (April 2022),  
<https://pen.org/banned-in-the-usa/> .....24 n.27

Kasey Meehan et al., *Banned in the USA: State Laws Supercharge Book Suppression in Schools*, PEN AM. (Apr. 20, 2023),  
<https://pen.org/report/banned-in-the-usa-state-laws-supercharge-book-suppression-in-schools/> .....23 n.26

Michelle Alexander, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (10th Anniversary ed. 2020) .....*passim*

*The New Canon: What’s the Most Influential Book of the Past 20 Years?*, CHRON. OF HIGHER EDUC. (Oct. 30, 2018),  
<https://www.chronicle.com/article/whats-the-most-influential-book-of-the-past-20-years/>.....18 n.12

*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> .....28 n.41

Patricia Mazzei et al., *Florida at Center of Debate as School Book Bans Surge Nationally*, N.Y. TIMES (Apr. 22, 2023),  
<https://www.nytimes.com/2023/04/22/books/book-ban-florida.html> .....24 n.28

Press Release, *Florida Rejects Publishers’ Attempts to Indoctrinate Students*, FLA. DEPT. OF EDUC. (Apr. 15, 2022),  
<https://www.fldoe.org/newsroom/latest-news/florida-rejects-publishers-attempts-to-indoctrinate-students.stml>.....26 n.36





## **INTEREST OF AMICUS CURIAE**

The New Press is a not-for-profit publishing house, established in 1990 as an alternative to large, commercial publishers. As a mission-driven publisher advancing social change in the public interest, The New Press seeks to amplify voices advocating for a more inclusive, just, and equitable world and seeks to publish books to facilitate social change, enrich public discourse, and defend democratic values. To that end, The Press is committed to publishing works of educational, cultural, and community value that, despite their intellectual merits, may be deemed insufficiently profitable by commercial publishers and underrepresented in the mass media. It survives financially as a not-for-profit by a combination of donor support and proceeds from books that generate sales.

The New Press's editorial decisions are informed by three related aims: (1) to add traditionally underrepresented voices to the national conversation; (2) to broaden the audience for serious intellectual work; and (3) to address the problems of a society in transition, highlighting attempts at reform and innovation in a wide range of fields.

Guided by these principles, The New Press has brought to the fore paradigm-shifting voices across the progressive spectrum in a number of key areas including: race relations, education reform, criminal justice, immigration, labor and economic justice, gender studies, cultural criticism, legal studies, and international literature. Across these disciplines, The Press has also taken a

leading role in publishing a wide range of new work in African-American, Asian-American, Latino, LGBT, and Native-American studies. The cultural and political salience of The New Press's publications have made them widely used in high school, college and graduate level courses throughout the country.

The Press's publications in these areas range from such (unexpected) national bestsellers as Michelle Alexander's *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (some 1.8 million copies sold); *Critical Race Theory: The Key Writings That Formed the Movement*, a groundbreaking book collecting essays by the Critical Race Theory movement's key founders and theoreticians, led by Kimberlé Crenshaw; Steve Phillips's *Brown Is the New White: How the Demographic Revolution Has Created A New American Majority*; and Elie Mystal's 2022 *New York Times* bestseller, *Allow Me To Retort: A Black Guy's Guide to the Constitution*; to lesser known but equally important books including Peter Edelman's

Prize for Literature. In 2021, The New Press’s publisher was named the publishing industry’s “Person of the Year” by *Publishers Weekly*.<sup>1</sup>

Florida’s “Individual Freedom Act,” known alternatively as the Stop Wrongs to Our Kids and Employees (“W.O.K.E.”) Act

The New Press thus has a significant interest in the outcome of this case, which will determine whether enforcement of the Act should be preliminarily enjoined on Florida public college campuses.<sup>2</sup>

### **STATEMENT OF THE ISSUE**

Whether the Stop W.O.K.E. Act is unconstitutional in that it proscribes disfavored viewpoints in violation of the First Amendment and in so doing stifles academic freedom in Florida public education and chills the distribution of books expressing progressive opinions.

### **SUMMARY OF ARGUMENT**

The current Florida administration, unhappy with the expression of progressive opinions on Florida campuses, has turned to a familiar old approach: censorship of the public debate. The State has found such opinions on issues such as race and gender inconvenient. And rather than combat those opinions through reasoned argument from countervailing points of view, the State has instead attempted to silence one side of the debate by passing the Stop W.O.K.E. Act.

The Act prohibits educators in Florida colleges and schools from expressing eight enumerated viewpoints. While it describes these disfavored viewpoints vaguely and in such a way as to make their prohibition seem unimpeachable, by

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<sup>2</sup> The parties have consented to the filing of this brief. Neither the parties nor their counsel have authored this brief in whole or in part, and neither they nor any other person or entity other than The New Press or its counsel contributed money that was intended to fund preparing or submitting this brief.

the State’s own admissions, the statute is intended to stifle the expression of widely held progressive opinions, such as those endorsing affirmative action to combat racial inequities. Far from a valid regulation of school curriculum, Florida has made no secret of the Act’s true discriminatory purpose—to banish “woke” (*i.e.*, progressive) viewpoints from Florida schools in an effort to tilt the academic debate in favor of the State’s preferred opinions. Such an Act is unconstitutional. *See* Point I, *infra*.

In addition to infringing the First Amendment rights of Florida professors and students, the Act chills the distribution of books expressing disfavored viewpoints on Florida college campuses. Florida professors will avoid the appearance of endorsing the Act’s proscribed viewpoints by assigning or recommending progressive books. In so doing, the Act effectively bans these important works from Florida campuses, including many of The New Press’s most celebrated publications, such as Michelle Alexander’s *The New Jim Crow* and the seminal essay collection, *Critical Race Theory*, edited by Kimberlé Crenshaw *et al.* The Act therefore stifles intellectual inquiry and academic freedom on Florida campuses, casting a “pall of orthodoxy” over Florida public education, *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 603 (1967), and unconstitutionally impeding the distribution of progressive books, including those of The New Press. *See* Points II and III, *infra*.

Finally, the Act is part of a nationwide “burn the books” campaign spearheaded by Florida, rendering it essential that this Court lead the way in establishing that such legislation is unconstitutional. *See* Point IV, *infra*.

Since its founding, The New Press has sought to publish works that promote a more inclusive, just, and equitable world and advance many of the precise viewpoints that the State would prefer to banish from the public discourse. These works contribute to the country’s “intellectual bottom line,” and our democracy suffers when they are silenced on the ground that they express opinions that chafe against the State’s viewpoint. This

**ARGUMENT**

*White people don't feel good about Uncle Tom's Cabin. Burn it.  
Someone's written a book on tobacco and cancer of the lungs?  
The cigarette people are weeping? Burn the book.*

— Ray Bradbury, FAHRENHEIT 451, 59  
(Ballantine Books 7th ed. 1972)

**POINT I**

**THE STOP W.O.K.E. ACT AMOUNTS TO AN UNCONSTITUTIONAL,  
VIEWPOINT-BASED RESTRICTION ON SPEECH UNDER THE FIRST AMENDMENT.**





ethnic, racial, or sexual minorities.”<sup>7</sup> Per such definition, The New Press’s books are decidedly “woke” and are directly in the gunsights of Florida’s concededly “anti-woke” statute. New Press books advocate for a more inclusive and equitable world

its face, the Act bars professors from endorsing eight viewpoints in their instruction of students, censoring a wide variety of valid and commonly-held progressive opinions. *Cartwright*, 32 F.4th at 1125-26 (explaining that “[v]iewpoint discrimination is even more anathematic to the First Amendment” than content-

While the Act does not assert plainly that it targets only progressive viewpoints, a state may not mask viewpoint discrimination under the guise of neutrality. *See Cartwright*, 32 F.4th at 1126-28 (enjoining the University of Central Florida’s “discriminatory-harassment” policy because it effectively targeted “particular views taken by students,” and thus impermissibly chose “winners and losers in the marketplace of ideas” (citation omitted)).

### **B. The Act’s Unconstitutionality under the First Amendment**

Professors on Florida public campuses justifiably fear the consequences of appearing to endorse any of these proscribed viewpoints in their course instruction. Such consequences include causing their college or university to become ineligible for performance funding, risking disciplinary measures, and facing termination for failure or refusal to comply with the statute’s provisions.<sup>9</sup> The Act, in essence, subjects professors to the Hobson’s choice of either risking these consequences or self-censoring—thereby preventing them from freely teaching subjects such as structural racism, policing and criminal justice, critical race theory, and implicit bias.

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<sup>9</sup> The Florida Board of Governors issued implementing regulation 10.005 on August 26, 2022 as the enforcement mechanism for Section 1000.05(4)(a). *See 10.005 Prohibition of Discrimination in University Training or Instruction*, Bd. of Governors, State Univ. Sys. of Fla. (Aug. 26, 2022).

This Court only last year reiterated that these forms of injuries must be redressed through court intervention “because of the fear that free speech will be chilled even before the law, regulation, or policy is enforced.” *Cartwright*, 32 F.4th at 1120 (citation omitted). As this Court emphasized, “[w]here the alleged danger of legislation is one of self-censorship, harm can be realized even without an actual prosecution.” *Id.* (citation omitted).

And the record here plainly establishes that the Act indeed stifles scholarship, instruction and public discourse on Florida campuses in support of race or gender consciousness.<sup>10</sup> For example, the Act would preclude Professor Plaintiff LeRoy Pernell from teaching the foundational premise of his criminal procedure course (1 pr)3.7 (e)3.(/521.3 (pus0.004 Tw c.70)TjEMCn)8.3 43.5 ( d)12.50.05 ( d)12.

these Professor Plaintiffs-Appellees' free speech also curtails students' rights to receive information and ideas that would, absent the Act, feature in class instruction.

The State contends that the Act only regulates in-classroom instruction, which, according to the State, "is indisputably government speech [and] is wholly unprotected by the First Amendment." Brief of Defendants-Appellants at 24. Put another way, the State asserts "that the First Amendment does not grant individual professors the constitutional right to determine the public-university curriculum," *id.* at 17, given "the State's unquestioned authority to control the subjects taught in 'the established curriculum,'" *id.* at 32.

But the State has it wrong: the Act is not saved simply because it purports to regulate curriculum. Although this is an area in which state governments are generally afforded considerable discretion, *see Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988), that discretion, even as to curriculum, does not give Florida a free hand to discriminate on the basis of viewpoint. For, as this Court has explicitly held, *Hazelwood* does *not* alter the test for reasonableness and non-discrimination in a school. *See Searcey v. Harris*, 888 F.2d 1314, 1318-19, 1319 n. 7 (11th Cir. 1989) (explaining that "there is no indication that the Court [in *Hazelwood*] intended to drastically rewrite First Amendment law to allow a school official to discriminate based on a speaker's view" in regulating curricular activity; even in the curriculum context, regulations of speech must be "reasonable in light

of the purposes served” and “viewpoint neutral” (citations omitted)). Thus, the requirement of the constitutional test that such restrictions must not only be “reasonable,” but “viewpoint neutral” as well, remains in full force as to school curriculum. And such requirements apply, *a fortiori*, here in a case with curriculum at the college level. *See Cartwright*, 32 F. 4th at 1128 (“Nowhere is free speech more important than in our leading institutions of higher learning.”). Having no answer to this Court’s seminal decisions in *Searcey* and *Cartwright*, you will not find them cited in the State’s brief.

The Act’s regulation of Florida public curriculum could not be further from “viewpoint neutral”—it is expressly intended to silence progressive viewpoints as part of a crusade against “wokeness.” This viewpoint-based restriction in the academic environment is contrary to the axiom that the “government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.” *Rosenberger v. Rectors and Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995); *see also Iancu v. Brunetti*, 139 S. Ct. 2294, 2302 (2019) (Alito, J., concurring) (“Viewpoint discrimination is poison to a free society.”).

As is clear, the Act is a textbook case of viewpoint discrimination. It eliminates a spectrum of protected expression that “espouses” “concepts” disfavored by the state (disparagingly characterized by Florida as “woke indoctrination”), thereby “regulat[ing] [] speech based on the specific motivating

ideology or the opinion or perspective of the speaker,” rather than combatting “woke” ideas with countervailing views. *See*



white privilege and denouncing the concept of colorblindness, *see* Dorsey Decl. ¶ 43; and

- Plaintiff Professor Sharon Austin’s articles endorsing critical race theory and affirmative action, *see* Austin Decl. ¶¶ 40-43.<sup>11</sup>

And like these course materials identified by the Plaintiff-Appellees, many of The New Press’s publications fit squarely within the category of books proscribed, and whose distribution has consequently been impeded, by the Act.

This interference with The New Press’s distribution of its books is constitutionally impermissible. One does not have to burn books physically to run afoul of the Constitution. Rather, the Supreme Court has long made clear that unjustifiable impediments to publishers’ *distribution* of books cannot survive scrutiny under the First Amendment. *See generally Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 64 n.6 (1963) (“The constitutional guarantee of freedom of the press embraces the circulation of books as well as their publication[.]”); *see also LaCroix v. Town of Fort Myers Beach*, 38 F.4th 941, 949-50 (11th Cir. 2022) (collecting cases); *Lovell v. City of Griffin*, 303 U.S. 444, 451-52 (1938) (invalidating an ordinance that banned the distribution of literature within the municipality); *Jamison v. Texas*, 318 U.S. 413, 416 (1943) (invalidating an

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<sup>11</sup> *See* Ex. 1 (Pernell Decl.), Ex. 2 (Dorsey Decl.), and Ex. 3 (Austin Decl.) to Plaintiffs’ Mot.

ordinance prohibiting

interfere with the exercise of First Amendment rights can undoubtedly offend the Constitution, as “informal sanctions,” such as “coercion, persuasion, and intimidation . .

These viewpoints, ~~which~~ articulate *The New Jim Crow*— a book that has been called the “secular bible of a new social movement”<sup>16</sup> and “[t]he most influential criminal justice book of this decade”<sup>17</sup> and that has been cited as the impetus for the founding of key criminal justice reform organizations, including the Art for Justice Fund<sup>18</sup>—are precisely the sorts of opinions that Florida has attempted to silence on public college campuses. Any professor who assigns *New Jim Crow* and thus in so doing appears to endorse its viewpoints, leaves himself or herself a target of State action. See Fla. Stat. Ann. §§ 1000.05(4)(a)(3), (4), (6). As in *Cartwright*, it is “clear that the average [professor] would be intimidated . . . by the” Act from assigning this reading. *Cartwright*, 32 F.4th at 1124.

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<sup>14</sup> THE NEW JIM CROW, at 7.

<sup>15</sup> THE NEW JIM CROW, at x.

<sup>16</sup> Foreword by Cornelius et al., 2019, at 2. *Tw. J. Fla. J.M.*

The New Press also publishes the seminal collection of essays, *Critical Race Theory*,<sup>19</sup> edited by Kimberlé Crenshaw (now Distinguished Professor of Law at the University of California, Los Angeles; Isidor and Seville Sulzbacher Professor of Law at Columbia Law School; winner of the Outstanding Scholar Award from the Fellows of the American Bar Foundation; and member of the American Academy of Arts and Sciences), along with Neil T. Gotanda,



### **POINT III**

#### **THE ACT STIFLES ACADEMIC FREEDOM IN HIGHER EDUCATION.**

Academic freedom is a constitutionally recognized interest under the First Amendment, as has been repeatedly acknowledged







2021.<sup>30</sup> To date, although Florida “has the most sweeping set of restrictions,” the State’s work has inspired dozens of other programs.<sup>31</sup>

On a national level, state legislative efforts have explicitly targeted critical race theory, a term first coined by a group of scholars led by Derrick Bell and New Press author Kimberlé Crenshaw. As noted above, pp. 7-8, 20 *supra*, Governor DeSantis—among other pejoratives—deems the theory “nonsense.” And the U.C.L.A. School of Law Critical Race Studies Program has documented, since September 2020, a total of 214 local, state, and federal government entities across the United States have introduced 699 anti-critical race theory bills, resolutions, executive orders, opinion letters, statements, and other measures, as of the filing of this brief.<sup>32</sup> A report published by the U.C.L.A. School of Law’s CRS Program in April 2023 found that, as of December 2022, government actors in 49 states had put forth attempts to ban critical race theory, with lawmakers in 28 states adopting at least one anti-“CRT” measure.<sup>33</sup>

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<sup>30</sup> Jeremy C. Young et al., *America’s Censored Classrooms*, PEN AM. (Aug. 17, 2022), <https://pen.org/report/Americas-censored-classrooms/>.

<sup>31</sup> See Bianca Quilantan, *Ron DeSantis’ Ban of School Diversity Programs is Coming to These States Next*, POLITICO (May 17, 2023), <https://www.politico.com/news/2023/05/17/diversity-initiatives-states-are-next-00097268>.

<sup>32</sup> *CRT Forward*, U.C.L.A. SCH. OF L. CRITICAL RACE STUDIES PROGRAM (last accessed June 20, 2023), <https://crtforward.law.ucla.edu/>.

<sup>33</sup> *CRT Forward: Tracking the Attack on Critical Race Theory*, U.C.L.A. SCH. OF L. CRITICAL RACE STUDIES PROGRAM, 5, 16 (Apr. 2023),

Furthermore, the Act is just one front in the State’s broadside assault on progressive viewpoints and ideals. Just last month, the State announced the rejection of dozens of social studies textbooks with content on topics, such as the Black Lives Matter movement and protestations of police brutality and racism.<sup>34</sup> The year prior, the State rejected nearly a third of all proposed math textbooks that referenced critical race theory or “social and emotional learning”<sup>35</sup> and touted its rejection of “publishers’ attempts to indoctrinate students.”<sup>36</sup>

In another example, during the College Board’s development of its first Advanced Placement course in African American studies for national acceptance, the Florida Department of Education, by its own admission, repeatedly contacted the College Board in 2022 and early 2023, to urge the Board to remove certain subject matter modules—which included works by New Press authors—from the

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[https://crtforward.law.ucla.edu/wp-content/uploads/202aplLAp-w8 Tm\[\(e\)3.5 iionrdpdoe-wncs](https://crtforward.law.ucla.edu/wp-content/uploads/202aplLAp-w8 Tm[(e)3.5 iionrdpdoe-wncs)

course's scope.<sup>37</sup> Ultimately, Florida's education department sent a January 12, 2023, letter informing the College Board that the course even as then revised—plainly as a consequence of Florida's importuning—would not be approved in Florida schools in part by reason of references to critical race theory and other progressive ideas.<sup>38</sup> The College Board's proposed final version, released in February 2023, then eliminated all references to New Press books from the study program with national effect.<sup>39</sup> The College Board has since announced that it

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<sup>37</sup> *See, e.g.,* @SenMannyDiazJr, TWITTER (Jan 20, 2023, 5:35 PM), ...

would again revise the course curriculum,

relations and other important issues in our nation at the time when open debate of these issues is critical.

### SUMMARY

Since its founding, The New Press has committed to publishing books that contribute to the country’s intellectual bottom line, including those advancing viewpoints that chafe against the prevailing orthodoxy of the times. Promoting these viewpoints enriches the national conversation and is critical to the health of our democracy. Through the Stop W.O.K.E. Act, Florida has attempted to silence precisely such viewpoints. Though the Florida Governor’s website states that “[t]here is no place for indoctrination or discrimination in Florida,”<sup>43</sup> the Stop W.O.K.E. Act most decidedly discriminates against viewpoints not embraced by the state and imposes the state’s own viewpoints in a form of indoctrination forbidden by our Constitution. This Court should intervene to clearly establish the legislation’s flagrant unconstitutionality.

### CONCLUSION

For the reasons set forth above, The New Press respectfully submits that the District Court’s order directing a preliminary injunction be affirmed.

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<sup>43</sup> Press Release, *Governor Ron DeSantis Signs Legislation to Protect Floridians*

Respectfully submitted,

/s/ Herbert M. Wachtell

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**CERTIFICATE OF COMPLIANCE**

1. This brief complies with Federal Rules of Appellate Procedure 29(a)(5), 32(a)(7)(B)(i), and 11 Cir. R. 32-4 because it contains 6,365 words, excluding the parts of the brief exempted by Rule 32(f).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5)(A) and the type style requirements of Federal Rules of Appellate Procedure 32(a)(6) and 11 Cir. R. 32-3 because it has been prepared in a proportionally spaced typeface using Microsoft Word (14-point Times New Roman) and is double-spaced.

/s/ Herbert M. Wachtell  
Herbert M. Wachtell