



May 7, 2021

Hon. Miguel Cardona
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Via Electronic Submission: www.regulations.gov

RE: America First Legal Foundation Comments on the Office of Elementary and Secondary Education, Department of Education, Proposed Rulemaking, “Proposed Priorities: American History and Civics Education,” 86 FR 20348, Docket ID ED-2021-OESE-0033 (April 19, 2021)

Dear Secretary Cardona:

[America First Legal Foundation](#) (“AFL”) is a national, nonprofit organization. AFL works to promote the rule of law in the United States, prevent executive overreach, ensure due process and equal protection for all Americans, and encourage the diffusion of knowledge and understanding of the law and individual rights guaranteed under the Constitution and laws of the United States.

We submit these comments regarding Proposed Priority 1, “Projects That Incorporate Racially, Ethnically, Culturally, and Linguistically Diverse Perspectives into Teaching and Learning”. The proposed priority for history education is inconsistent and irreconcilable with who we are as Americans, is irredeemably flawed, and should not serve as the basis for any programs that your Department administers. The damage this priority would inflict on our nation, and our youngest citizens, would be irreparable and unforgivable. It encourages history education that violates our founding principles and the sacred promise of full equality under law. And it would teach a new generation of Americans to think in a way that is contrary to both federal civil rights law and the United States Constitution.

Here are the four most egregious defects.

First, the proposed priority puts the government behind a profoundly controversial and widely discredited set of academic theories. The priority crudely promotes a divisive history interpreted almost exclusively in terms of systemic racism, bias, and discrimination. This prism is not only historically wrong, but its insistence on

forcing every historical and contemporary event into a rigid race-based analytical prism makes it an ideological orthodoxy, not an academic inquiry. As a model, it cites a journalist-led endeavor, the “1619 Project,” which claimed, among other things, that protecting slavery was a “primary reason[]” for the American Revolution and that the Constitution was designed to perpetuate white supremacy.¹ This endeavor has attracted overwhelming criticism from leading figures throughout the history profession and was found to have committed numerous and grave academic errors. Putting the federal government squarely behind this warped, demagogic approach is not the way to further the search for truth in the study of history—it is the way to destroy it.

Second, the proposed priority encourages a drastically one-sided, uneven, unbalanced, and politically motivated approach to teaching the facts of history. It promotes an extreme, left-wing revisionist viewpoint without any care or concern for how it fits into an overall, well-rounded education that promotes a healthy civic culture, thriving society, and unified nation. This approach will inevitably—if not purposefully—exacerbate the already abysmal condition of American history education.

Third, the proposed priority promises history education that is simply wrong and misleading as a factual and historical matter. It turns the story of America’s unique historical role in advancing freedom into a false narrative about a structurally oppressive society that then serves to advance present-day political objectives. These lies will poison a generation of young minds.

Fourth and relatedly, this incorrect reading of American history promises destructive results for American civic culture. Without a proper sense of the complexities of the past, students are less able to process the complexities of the present. This narrow, demagogic approach to history—in which the past is entirely bad, and all progress comes from its destruction—is a formula for heightening partisan polarization in the present. Pushed to its logical conclusion, it will lead to the sacrifice of our nation’s priceless shared inheritance.

Because the proposal is insidiously harmful for students who are learning history, deeply damaging to civic culture, corrosive of national unity, profoundly detrimental to the growth of knowledge and the open pursuit of academic inquiry, violative of our foundational principles, factually unsalvageable as matter of historical truth, and destructive to national unity, AFL urges the Department of Education to reject this priority as written. We strongly encourage the Department to instead adopt policies and priorities that encourage the teaching of the full picture of American history—one that will enrich and inspire young minds, not poison them. The

¹ Nikole Hannah-Jones, *Our Democracy’s Founding Ideals Were False When They Were Written*, N.Y. TIMES MAGAZINE (Aug. 14, 2019), <https://www.nytimes.com/interactive/2019/08/14/magazine/black-history-american-democracy.html>.

American story, told truthfully and accurately, is a cause for celebration, not recrimination.

AFL will carefully monitor the Department’s handling of this situation and will take all appropriate action if the Department adopts Proposed Priority 1.

I. The Priority Inappropriately Makes Contested, Ideologically-Charged Critical Theory into Government-Endorsed Orthodoxy

Perhaps nothing in the proposed rule is more alarming than its reliance on the odious and thoroughly discredited critical race theory, which is less an academic theory than it is a divisive, race-based ideology.

The basic point of critical race theory is that existing societal structures are complicit in propping up systems of racial oppression. As applied to American history, this usually means that anything and everything associated with power must be bad—from the Constitutional system itself to the Revolutionary War to the figures commonly thought of as the great men and women of American history.² While various iterations of critical race theory have become trendy in academia, many critics have come forward. Critical race theory’s obsession with systemic discrimination is not a devotion to factual accuracy; it is an ideological commitment. And it is an ideological commitment that leading figures in the fields of history and political science have criticized sharply.

To recognize that point, one only need look at the scholarly controversy surrounding the 1619 Project, which is (inexplicably) favorably cited in the background to the proposed priority. “[I]t is so wrong in so many ways,” said Gordon S. Wood, an eminent American historian and professor at Brown University.³ A dozen prominent scholars of history and political science complained, “The remedy for past historical oversights is not their replacement by modern oversights,” and avowed that the 1619 Project had failed to provide proper context for its claims.⁴ And this barely scratches the surface of the controversy.⁵ As a journalist perceptively wrote

² See *id.*

³ Tom Mackaman, *An Interview with Historian Gordon Wood on the New York Times’ 1619 Project*, WORD SOCIALIST WEB SITE (Nov. 28, 2019), <https://www.wsws.org/en/articles/2019/11/28/wood-n28.html>.

⁴ *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>.

⁵ See also, e.g., *We Respond to the Historians Who Critiqued The 1619 Project*, N.Y. TIMES (Dec. 20, 2019), <https://www.nytimes.com/2019/12/20/magazine/we-respond-to-the-historians-who-critiqued-the-1619-project.html>; Brian Stelter & Oliver Darcy, *1619 Project faces renewed criticism — this time from within The New York Times*, CNN (October 12, 2020), <https://www.cnn.com/2020/10/12/media/new-york-times-1619-project-criticism/index.html>; Elliot Kaufman, *The “1619 Project” Gets Schooled*, WALL STREET J. (Dec. 16, 2019) <https://www.wsj.com/articles/the-1619-project-gets-schooled-11576540494>; Phillip W. Magness, *The*

about the controversy, the clash goes beyond facts to crucial issues of interpretation: “The clash between the [1619 Project] authors and their historian critics represents a fundamental disagreement over the trajectory of American society.”⁶

It is not in factual dispute that there are serious critiques of the systemic-racism analysis in the 1619 Project. (And the 1619 Project is just the highest-profile attempt to interpret American history through the lens of systemic bias and discrimination. The controversies do not end there.) One can care deeply about analyzing the negative histories of racism and discrimination without falsely asserting that they are *systemic* characteristics of American law, politics, or society. The allegation of “systemic racism” has become a political buzz phrase designed to justify all manner of left-wing social and political projects, and it is divorced from sound historical analysis.

This is what makes the proposed priority so offensive to accurate history education. It takes a thoroughly discredited ideology from a profit-motivated newspaper and then declares that the federal Department of Education will prioritize projects that affirm one side of the debate. This is not the way to promote better historical understanding among American students.

II. As Written, the Proposed Priority Lacks Balance and Will Not Provide Students Adequate Historical Context

The priority promises a sclerotic focus on an extreme, negative interpretation of U.S. history to fit an expressly political narrative. But historical fact does not surrender to political expedience. This approach will deprive American students of the basics of American history and civics.

There is endless discussion among professional educators about how to balance attention to the broad sweep of content with the skills of studying and analyzing particular problems. At a high level of generality, most agree that students need to learn broad historical content as well as have opportunities to dig deeply into some issues. A student who learns only a timeline of events will not be equipped to analyze historical issues and evidence. At the same time, a student who learned, for example, the Civil War era in deep detail though without a sense of its position in the broader sweep of American history could hardly be called “well-educated.”

The new priorities are problematic not only because they are based on false assumptions, but also because they focus exclusively on a narrow subset of issues in American history. They promise a thoroughly distorted education.

1619 Project Debate: A Bibliography, AM. INST. ECON. RESEARCH (Jan. 3, 2020), <https://www.aier.org/article/the-1619-project-debate-a-bibliography/>.

⁶ Adam Serwer, *The Fight Over the 1619 Project Is Not About the Facts*, THE ATLANTIC (Dec. 23, 2019), <https://www.theatlantic.com/ideas/archive/2019/12/historians-clash-1619-project/604093/>

Even if we assumed that the issues mentioned in the priorities—issues of bias and discrimination—were presented accurately, which they are most certainly are not, the focus on these issues without broader context is misleading in and of itself. AFL urges the Department to consider how teachers contextualize individual points of focus within a broader presentation of American history that rightly portrays the triumphs and achievements of our national story.

III. The Proposed Priority Suggests a Dishonestly Negative History Designed to Smear America as a Sinful Nation

The proposed priority would foreground “systemic marginalization, biases, inequities, and discriminatory policy and practice in American history.” Under these priorities, educators will be encouraged to indoctrinate American students into a false view of history. This false view rejects the sweep of progress that marks American history from the Declaration to Lincoln to Martin Luther King, Jr. to present day. It insists that we are *not* a nation founded upon freedom that struggled and sacrificed mightily to achieve and then to extend it to all of our citizens. It insists that we are instead a nation founded on systemic bias and that we have never escaped this imagined foundational flaw.

To be clear, AFL *supports* accurately educating American students about the terrible evils of slavery, Jim Crow, and racism. We *do not*, however, support rewriting history to falsely claim that the foundation of American is oppression.

We must educate students about how American freedom, American culture, and American heroes did more to elevate the human condition than any other society in all of human history—we unleashed medical marvels, engineered miracles of science, crushed tyranny and fascism, abolished slavery, enshrined civil rights, raised up the great middle class, and served as an example to all the world.

This country, its heroes, and Western civilization, should be a source of shared pride and shared ownership for all of our people. No matter where you come from, as an American citizen, this is our shared history and our shared inheritance—it belongs to us all. It is the birthright endowed to us all. It is generational theft to deny this history, this honor, this inheritance, to any young American and any future American. It is not just wrong to do so, it is immoral.

The Declaration of Independence proclaimed that “all men are created equal,” that the Creator endowed human beings with “unalienable rights,” and that governments function rightly when they promote these rights. The Constitution structures American government to check and balance power, to lead ambition to counteract ambition. These documents are the touchstones for much of what is best in American history. Abraham Lincoln, Frederick Douglass, Elizabeth Cady

Stanton, Martin Luther King Jr., and many others referred back to the Declaration of Independence as they advanced its principles.

Truthful history should give students a nuanced understanding of the past, a full and complex picture of both successes and shortcomings. And it should leave room for pride and appreciation for a genuinely great country. No nation has been a stronger force for justice, dignity, equality, and peace.

IV. The Melancholy Vision of the American Past is Bad Policy for Civics Education

The relentlessly grim vision of the past suggested by the proposed priority would have dire consequences. If the past is full of evil, it should be discarded and replaced. This view of history would require us to consign to the rubbish heap all the wisdom, progress, and achievements of yesterday, and to enact a radical and extreme vision for tomorrow. This false and simplistically negative approach to American history and civics is a good formula for fostering dissatisfaction, despair, and destruction. No country can long thrive or endure which devotes its resources to teaching its youngest citizens to hate it.

An honest approach to American history, one in which students learn about both triumph and failure, is more accurate, more sophisticated, and infinitely more valuable. Students deserve an approach to history rightly grounded in the majesty of our nation, the full story of striving and sacrificing and fighting for greatness. In a reasonable education of American history, students learn about virtue, morality, courage, and heroism—not just hate and sin. They learn about distinguishing between good and bad, wisdom and foolishness. This in turn has obvious value for contemporary civic education and civic discourse, helping students learn to navigate interactions with people of diverse viewpoints and differing backgrounds.

This is not a subject of minor disagreement. The priority in this proposed rule would be an unmitigated disaster—an ideological, anti-factual, ahistorical assault on our founding principles, civic values, and patriotic spirit. It would be an assault on reason, on truth, and on the minds of our most priceless and precious resource: young Americans. This priority, in its current form, cannot and must not proceed. The damage it would inflict would be incalculable and irreversible.

Conclusion

Thank you for the opportunity to comment on the Department's proposal. AFL shares a deep concern for historical and civic education. We believe that Proposed Priority 1 not only fails to advance historical or civic education, but also recklessly undermines them both. AFL urges the Department of Education to fundamentally rethink its approach to history education.

Rather than seek to turn history education into an ideologically charged attack on American institutions, students should learn the full, uplifting, and inspiring epic of American progress and achievement. The Department of Education should encourage a well-rounded approach to American history that recognizes the transcendent values of America's legal and political traditions. *That* would be a worthwhile goal that would serve American students. AFL will watch carefully, vigilantly, and guardedly for how the Department handles this vitally important policy issue.

This matter goes to the very heart of what it means to be a country. There is simply nothing more important than protecting our nation's youth. We must defend their right to live in a country that promotes truth, virtue, and patriotism.