Woke gets judicial protection

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By Terry A. Hurlbut August 22, 2022

Last Friday (August 19), a federal judge effectively gave *woke* the special protection of the judiciary. He enjoined the workplace training part of the Stop Wrongs to Our Kids and Employees (Stop WOKE) Act. Gov. Ron DeSantis (R-Fla.) signed this into law in December of 2021. Now Judge Mark E. Walker says this law violates the First Amendment protections of those who tell employees that “normal” and “professional” are white racist words. With this ruling, Judge Walker gave another push to those seeking to build *parallel structures* in the United States today. But his judicial history suggests that one of his next rulings will be that departments of (and consultants in) human resources would be *derelict in their duties* not to tell whites that they are inherently racist.

What the Stop WOKE Act does

The Stop WOKE Act, or Individual Freedom Act, targets two bad influences:

1. Teachers, boards of education, and others who promote woke ideology in school, and
2. Departments of (and consultants in) human resources who similarly promote woke ideology at work.

The formal term for woke ideology is *critical theory*. This idea goes by other formal names, like Critical Race Theory, Intersectional Feminism, and Queer Theory. Essentially, woke ideology assigns *social credit* to members of certain identity groups. This credit has its basis in a new wrinkle on the communist theory of history. The original communist theory of history emphasized class struggle. The woke theory emphasizes a struggle among races, between genders, and between normal and alternative lifestyle choices and adaptations.

This should surprise no one: the social credit score for a white heterosexual cisgendered male is: zero.

Gov. DeSantis complained of consultants in both human resources and educational psychology doing two things. First, they convince their clients that "equity" demands placing these "zero social credit" individuals at a disadvantage, and subjecting them to continual emotional torque at work and in school. Second, they charge hefty fees for their dubious services.

The Stop WOKE Act forbids the promotion of woke ideology at work or in school. Critical Race Theory is the target getting all the attention, but not by far the only manifestation of woke. Parents can sue schools who teach woke in class. And until Friday, HR departments could not teach woke at work.

Definitions

Aside from the use of *woke* as a new adjective (or passive participle) instead of a simple past tense, *CNAV* will define a few words it used above and will use below.

Intersectional: a woke concept saying that a woman is like a hapless pedestrian in the middle of a dangerous road intersection, where bigots and bullies can hit her from all directions – for being a woman, for being non-white, *et cetera ad nauseam*.

Cis-gendered: identifying as a member of the gender of one's birth. From the Latin preposition *cis-* meaning "on the same side of a line." Opposite to **trans-gendered**, meaning *crossing* the gender line.

Human Resources (abbr. HR): that department dealing with hiring, benefit management, and so on. Employers used to call this department **Personnel**.

Social credit: a method of scoring individuals from membership in certain "victim" or "oppressor" groups. The Chinese Communist Party invented the concept.

Diversity training: specific training ostensibly in encouraging all staff to respect the feelings of other staff. If this training limited itself to discouraging the telling of off-color and similarly boorish jokes, Gov. DeSantis would not object. But modern diversity training actually says

that words like *normal* and *professional* are white racist words. It also teaches core woke tenets. “Racist” becomes identical to “white,” “sexist” to “male,” and so on.

Injunction: a court order to someone to stop doing something, or to start doing something. To **enjoin** someone means to issue an injunction against him.

Walker’s woke ruling

We turn now to the ruling in *Honeyfund.com v. DeSantis*, Case No. 4:22cv227-MW/MAF, in the United States District Court for the Northern District of Florida, Tallahassee Division, Judge Mark E. Walker presiding.

In his ruling, Judge Walker actually invokes a *television* show, *Stranger Things,* available on Netflix.

> In the popular television series *Stranger Things*, the “upside down” describes a parallel dimension containing a distorted version of our world. See *Stranger Things* (Netflix 2022). Recently, Florida has seemed like a First Amendment upside down. Normally, the First Amendment bars the state from burdening speech, while private actors may burden speech freely. But in Florida, the First Amendment apparently bars private actors from burdening speech, while the state may burden speech freely…

> Now, like the heroine in *Stranger Things*, this Court is once again asked to pull Florida back from the upside down.

The “once again” phrase refers to an earlier ruling by another judge of the same District Court. In *NetChoice LLC v. Moody*, Judge Robert Hinkle blocked a Florida anti-deplatforming law. That ruling is on appeal to the Court of Appeals for the Eleventh Judicial Circuit. But obviously that ruling destroys the common-carrier doctrine that had been a key feature of American commercial law. Anyone wanting to know the reason for platforms like Gab.com or TruthSocial.com, will find it in this ruling.

Woke concepts Judge Walker seeks to protect as free speech

The Stop WOKE Act says teaching any of the following constitutes racial, sexual, or other discrimination. Call these the Eight Precepts of Woke. They read as follows:

> 1. Members of one race, color, sex, or national origin are morally superior to members of another race, color, sex, or national origin.

> 2. An individual, by virtue of his or her race, color, sex, or national origin, is inherently racist, sexist, or oppressive, whether consciously or unconsciously.

> 3. An individual’s moral character or status as either privileged or oppressed is necessarily determined by his or her race, color, sex, or national origin.

> 4. Members of one race, color, sex, or national origin cannot and should not attempt to treat others without respect to race, color, sex, or national origin.

Guilt by association with past acts

> 5. An individual, by virtue of his or her race, color, sex, or national origin, bears responsibility for, or should be discriminated against or receive adverse treatment because of, actions committed in the past by other members of the same race, color, sex, or national origin.

> 6. An individual, by virtue of his or her race, color, sex, or national origin, should be discriminated against or receive adverse treatment to achieve diversity, equity, or inclusion.

> 7. An individual, by virtue of his or her race, color, sex, or national origin, bears personal responsibility for and must feel guilt, anguish, or other forms of psychological distress because of actions, in which the individual played no part, committed in the past by other members of the same race, color, sex, or national origin.

> 8. Such virtues as merit, excellence, hard work, fairness, neutrality, objectivity, and racial colorblindness are racist or sexist, or were created by members of a particular race, color, sex, or national origin to oppress members of another race, color, sex, or national origin.

Objection, Your Honor! No foundation!

Judge Walker specifically says that employers and consultants may indeed endorse these concept. In so doing, he insists that the Stop WOKE Act regulates speech and only incidentally regulates conduct. That, he says, violates the First Amendment.

In fact Judge Walker says flatly that America is still an inherently racist society. How else can one interpret this:

> If Florida truly believes we live in a post-racial society, then let it make its case. But it cannot win the argument by muzzling its opponents. Because, without justification, the (law) attacks ideas.

To illustrate his point further, he includes this:

> Telling your employees that concepts such as “normal” or “professional” are imbued with historically based racial biases is not — and it pains this Court to have to say this — the same as trapping Black employees in a room while a woman in a gorilla suit puts on a retaliatory, racially inflammatory performance the day before a holiday celebrating the end of slavery. Rather, it is speech protected by the First Amendment.

No Internet engine search has produced a single reference to any case of anyone putting on such a disgusting and puerile display at work, or of management tolerating it. So already this judge introduces a comparison for which he has laid no foundation. Worse than that, he ignores the effect the endorsement of the forbidden concepts would have.

Why endorsing woke speech by HR implies and threatens woke conduct

Examine this paragraph from the Honeyfund ruling:

> Defendants also place a great deal of weight on the first "concept"—that "[m]embers of one race, color, sex, or national origin are morally superior to members of another race, color, sex, or national origin." Who could object to banning that? Of course, the IFA bans much more: such as suggesting that white privilege exists (concept 3) or that people should consider another person's race or sex when interacting with them (concept 4).10 In other words, even assuming some concepts are proscribable—which they are not—the IFA still prohibits the endorsement of many widely-accepted ideas.

Again, the judge *fails* to establish any *wide acceptance* of the white privilege and other woke ideas. Nor would that be relevant. A wrong idea with wide acceptance is still wrong.

White, you're fired! Man, you're fired! Breeder, you're fired!

The judge also fails to acknowledge *who is speaking.* When the dreaded HR says to you that:

1. Non-whites are morally superior to whites,
2. "Racist" is identical to "white" (and "sexist" identical to "male," etc.),
3. Whites have privilege and non-whites suffer oppression by definition,
4. Color-blindness is repugnant in and of itself,
5. Whites must suffer to redress wrongs that whites committed in the past,
6. Whites must suffer to "even the score" with non-whites (the meaning of "equity"),
7. A white (or male or heterosexual or whatever) is personally guilty of all past sins of whites, males, etc., and
8. Merit, excellence, hard wo9rk, fairness, neutrality, objectivity and color-blindness are all white racist, male sexist, and other -ist words,

then HR has just told you to expect lower pay, deliberately demeaning assignments, and various shove-asides. *That's* conduct, Your Honor. And your failure to recognize that constitutes the worst sort of judicial error—except for *Roe v. Wade*. (And *Plessy v. Ferguson*, and *Dred Scott v. Sandford*.)

Judge Walker does say that the actual implementation of lower pay, demeaning assignments, and shove-asides would violate the Florida Civil Rights Act. But *why permit the dreaded HR to threaten such conduct if it's illegal?* Since when do threats of illegal acts constitute protected speech?

Who are Judges Mark E. Walker and Robert Hinkle?

One may best understand the ruling of Judge Walker (and the earlier ruling of Judge Hinkle) by examining their respective histories. Barack Obama appointed Judge Walker to the Court in 2012. His Wikipedia page (at least, as of this posting) lists his most notable rulings.

Without exception, these are woke rulings. In the Mark Walker world, felons (at least ex-convicts) may vote. The State must permit early voting and drop-box voting, with all the security problems they bring. Riots are First Amendment protected speech. In fact, Florida is such a horrible suppressor of votes that it must pre-clear all election laws with the federal government. (The Eleventh Circuit enjoined that one, which is still on appeal.)

Judge Hinkle is almost as bad. Bill Clinton appointed him in 1996. His Wikipedia page (as of today) lists three Big Rulings, one of which the Eleventh Circuit reversed. He is a "senior" judge now, meaning semi-retired.

Bottom line: Republicans must strive to capture a majority in the House and two-thirds of the Senate. They then can clean out the national judiciary, and remove many judges from the bench on impeachment for, and conviction of, infidelity to the Constitution. Judges Walker and Hinkle would *ipso facto* be the perfect candidates. In Judge Hinkle's case, impeachment could mean forbidding him to take *any* cases.

What next for the opponents of woke?

Thus far, those parts of the Stop WOKE Act applicable to *school lessons* and *parents' right of discovery and cause of action* remain in force. They will stay in force until some teacher sues to say she has *a right* to tell her white pupils that the school ought to make rules that they sit in the back of class and the school bus, stand last in line, eat prison food while their non-white counterparts get the good food, etc. So long as the school does not *actually make or enforce* such rules, teachers may say what they like. That hasn't happened yet, but it's now waiting to happen. No doubt Judge Walker stands ready to invalidate the first parental lawsuit against woke teaching in class. And the first pupil to act on critical theory concepts in the play-yard can rely on Judge Walker for protection.

No doubt the State of Florida will appeal the injunction. What the Eleventh Circuit will do, remains to see.

In the meantime, the Parallel Society will expand, to include employers who *reject* woke ideology. These employers will *refuse* to teach the Eight Precepts of Woke. Then some member of an aggrieved group will apply for a job with one of these employers, get the job, and then sue the employer for *not* subjecting white heterosexual cisgendered males to such mandatory training.

If Judge Walker follows his logic in *Honeyfund*, he will *find against the employer and enjoin him to institute such mandatory training.*

Do you deny it?

CNAV reminds all readers, and all with whom any reader might share the site's content, of *CNAV*'s open-comment policy. Anyone may comment, so long as one does not threaten or advocate force or violence, or use language of such caliber that Thomas Bowdler would have to strike it. (Thomas Bowdler produced editions of classical works, which he sanitized of lewd, obscene, or lascivious language. Today, "to Bowdlerize" means to censor speech or other conduct according to Thomas Bowdler's original criteria.)

Of course that creates a problem, does it not? Shall *CNAV* allow woke language but not its equally repugnant opposite? *CNAV* does not allow comments that disparage non-whites – or whites, either. Same for women v. men, or any other pairing.

But perhaps in this particular context, *CNAV* would have to make an exception, would it not? Let it suffice that *CNAV* will allow comments by:

1. Any party or friend-of-the-court briefer in *Honeyfund v. DeSantis*,
2. Any attorney representing the same,
3. Anyone representing himself as an expert on Constitutional law, or
4. Anyone else considering himself qualified to comment on the ruling or the law in question,

to support or dispute any point *CNAV* has made here. The Bowdler and anti-violence rules shall apply. But perhaps the disparagement rules would need temporary suspension, in case anyone thinks he can make a *truth claim* in favor of any of the Eight Precepts of Woke. With the clear understanding that anyone else can rebut such truth claims.