STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 935

By: Jett

AS INTRODUCED

An Act relating to schools; providing certain legislative recognition; amending 70 O.S. 2021, Section 24-157, which relates to a prohibition on the instruction of certain concepts; creating the Stop the Wrongs to Our Kids and Employees (Stop W.O.K.E.) Act; providing short title; defining terms; expanding concepts which are prohibited from being part of a course; prohibiting in public schools the use of certain supplemental instructional materials; providing for enforcement; allowing certain civil action and establishing awards; allowing the dismissal of school officials, officers, and employees who knowingly commit certain violation and directing that they be declared in violation of certain oath; prohibiting certain defense; providing certain construction; prohibiting certain discrimination; allowing certain civil action and establishing awards; providing for affirmative defense; providing for certain construction of act; providing for noncodification; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The Legislature hereby recognizes the following findings:
1. The United States Constitution is not silent as to how
government actors in this state shall respond and react to critical
race theory for the matter arises under the Establishment Clause and
the Free Exercise Clause of the First Amendment to the United States
Constitution;

2. The Establishment Clause of the First Amendment to the
United States Constitution states that the government “shall make no
law respecting an establishment of religion,” and Article II,
Section 5 of the Oklahoma Constitution states, “Public money or
property - Use for sectarian purposes. No public money or property
shall ever be appropriated, applied, donated, or used, directly or
indirectly, for the use, benefit, or support of any sect, church,
denomination, or system of religion, or for the use, benefit, or
support of any priest, preacher, minister, or other religious
teacher or dignitary, or sectarian institution as such”;

3. The Free Exercise Clause of the First Amendment to the
United States Constitution states that the government “shall make no
law...prohibiting the free exercise [of religion]”;

4. The Establishment Clause of the First Amendment applies to
this state through the Fourteenth Amendment, and the United States
Supreme Court held in Hein v. Freedom From Religion Foundation Inc.,
551 U.S. 587 (2007) that the Establishment Clause applies to the
executive branch, which includes Oklahoma public schools;
5. All that religion amounts to is a set of unproven answers to the greater questions like “why are we here”, what gives us identity, what should we be doing as humans, and what happens after death;

6. The Establishment Clause of the United States Constitution was never solely designed to prohibit the government from respecting and recognizing the doctrines of institutionalized religions but of non-institutionalized religions, such as secular humanism;

7. The United States Supreme Court found that secular humanism is a religion for the purposes of the First Amendment in cases such as:
   c. United States v. Seeger, 380 US 163 (1965), and
   d. Welsh v. United States, 398 U.S. 333 (1970);

8. Most of the United States courts of appeals have found that secular humanism is a religion for purposes of the First Amendment in cases such as:
   a. Malnak v. Yogi, 592 F.2d 197 (3d Cir.1979),
   b. Theriault v. Silber, 547 F.2d 1279 (5th Cir.1977),
   d. Lindell v. McCallum, 352 F.3d 1107 (7th Cir.2003),
e. Real Alternatives, Inc. v. Sec’y Dep’t of Health & Human Servs., 150 F. Supp. 3d 419, 2017 WL3324690 (3d Cir. Aug. 4, 2017), and
f. Wells v. City and County of Denver, 257 F.3d 1132 (10th Cir. 2001);

9. Religious experts have testified under oath that critical race theory is a doctrine, orthodoxy, ideology, and dogma that is part of a worldview consisting of a series of unproven faith-based assumptions and naked assertions that is implicitly religious and inseparably linked to the religion of secular humanism;

10. Regardless of political affiliation, all members of the Legislature and all executive and judicial officers are bound by oath to put their own political and religious beliefs aside and to comply with their duty to honor their oath of office pursuant to Article VI, Clause 3 of the United States Constitution to uphold the United States Constitution and to, therefore, immediately stop creating, respecting, and enforcing policies that promote the plausibility of critical race theory because all of those policies fail all three prongs of the lemon test established by the United States Supreme Court in Lemon v. Kurtzman, 403 U.S. 602 (1971) for:
   a. constituting non-secular shams that lack a primary secular purpose,
   b. cultivating indefensible legal weapons against non-observers of the religion of secular humanism, and
c. serving to excessively entangle the government with the religion of secular humanism;

11. The United States Supreme Court in Edwards v. Aguillard, 482 U.S. 578 (1987) and Agostini v. Felton, 521 U.S. 203 (1997) found that if government action fails one prong of the lemon test, it is unconstitutional, and the evidence shows that the enforcement and creation of policies in public schools that respect critical race theory fail all three prongs of the lemon test;

12. The United States Supreme Court in Lee v. Weisman, 505 U.S. 577 (1992) found that there are “heightened concerns with protecting freedom of conscience from subtle coercive pressure in the elementary and secondary public schools,” while also holding in Edwards v. Aguillard, 482 U.S. 578 (1987) that the government “should be particularly vigilant in monitoring compliance with the Establishment Clause in the public-school context,” when minors are subjected to religious indoctrination with the perception of the government’s stamp of approval;

13. According to the United States Supreme Court in cases like Flast v. Cohen, 392 U.S. 83 (1968), a taxpayer with a logical nexus to a controversy involving a government actor’s violation of the Establishment Clause has standing to sue to enforce compliance;

14. The federal courts have held in cases like Holloman v. Harland, 370 F.3 1252 (11th Cir. 2004), that neither emotional appeals nor sincerity of belief can be used to usurp the
Establishment Clause of the First Amendment, and the evidence shows that all policies that respect, favor, endorse, or promote critical race theory in public schools are based on a series of emotional appeals;

15. There has not been the promised equality and unity cultivated by teaching critical race theory in public schools, but instead, there has been division and an increase in racial tension in an emotionally exploitative and intellectually dishonest manner demonstrating that such policies are a sham that lack a primary secular purpose;

16. Critical race theory is a non-secular divisive doctrine that amounts to an attempt to justify practices that are inconsistent with the peace and safety of this state by:

   a. cultivating moral superiority complexes in observers of critical race theory with the government’s endorsement at the taxpayer’s expense,

   b. leading to the social marginalization and even violent oppression of non-observers of critical race theory, and

   c. conflicting with the neutral, non-controversial, natural, secular, and self-evident truth that “all men are created equal...endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness”; and
17. Pursuant to the police powers afforded to this state under the Tenth Amendment to the United States Constitution, the Legislature has a compelling reason to prevent the teaching of divisive and controversial religious doctrines in public schools that are calculated to emotionally exploit race and cultivate racial tensions in the advancement of a narrow and exclusive religious worldview that isquestionably moral and perspectively implausible.

SECTION 2. AMENDATORY 70 O.S. 2021, Section 24-157, is amended to read as follows:

Section 24-157. A. This act shall be known and may be cited as the “Stop the Wrongs to Our Kids and Employees (Stop W.O.K.E.) Act.

B. As used in this act:

1. “Critical race theory” means a set of assertions and unproven faith-based assumptions that form a doctrine, ideology, dogma, and orthodoxy that is inseparably linked to the religion of secular humanism. The term involves non-secular divisive doctrine that includes, but is not limited to, the concepts described in paragraph 1 of subsection D of this section;

2. “Emotional appeal” means a method of persuasion through sentiment, not logic, designed to create an emotional response to achieve certain ends;

3. “Lemon test” means a three-prong test originally created by the United States Supreme Court and adopted by this state which is used to determine whether government action is unconstitutional
under the Establishment Clause of the First Amendment to the United States Constitution. Government action violates the Establishment Clause and Article II, Section 5 of the Oklahoma Constitution if the action fails to satisfy any of the prongs. The test requires that state action or government policy:

a. have a valid secular purpose,

b. not have the effect of advancing, endorsing, or inhibiting religion, and

c. not foster excessive entanglement with a particular religion;

4. “Logical nexus” means at least some minimal, relevant, legitimate, important, or rational connection and connotes a low-threshold standard;

5. “Non-secular” means faith-based, not proven, predicated on naked assertions, or emotional feelings, not self-evident objective fact;

6. “Promote” means to advocate for, assist with, favor, respect, endorse, encourage, or popularize through advertising or publicity;

7. “Public School” means a public educational institution that is maintained at public expense for the education of the children of a community or district and that constitutes a part of a system of free public education including primary and secondary schools from grades prekindergarten through twelve. The term shall include
accredited nonpublic educational institutions including primary and secondary schools from grades prekindergarten through twelve;

8. “Religion” means a set of unproven answers to the greater questions like “why are we here,” “what should we be doing as humans,” “how do we get our identity,” and “what happens after death”. The term means a closed system and group or community that is organized, full, and provides a comprehensive code by which individuals may guide their daily activities. Religion involves an ultimate concern or sincere belief and can be non-theistic or theistic;

9. “Secular humanism” means a faith-based worldview that is also referred to as postmodern-western-individualistic moral relativism, expressive individualism, or antitheism and is often the mirror opposite of theism. The term refers to a religion that worships man as the source of all knowledge and truth. The term includes a belief system that is centered on the unproven assumptions that there are no moral absolutes and no one moral doctrine should be used as the superior basis for law and policy, except for the religious doctrines of secular humanism. The term includes a series of unproven faith-based assumptions and naked assertions that suggest that morality and truth are man-made conventions and that at the heart of liberty is man’s ability to define his own meaning of the universe. The term refers to a religion that tends to promote licentiousness and to justify
practices that are inconsistent with the peace and safety of the state. The term refers to the belief that man is merely a bundle of chemicals, animated pieces of meat, or accidental particles, that nature is all there is, and that there is nothing after death. Critical race theory is a doctrine, ideology, orthodoxy, and dogma that is inseparably linked to this religion. The term refers to a religion that has many different denominational sects and is expressed in widely varying ways;

10. “Taxpayer standing” means the standing of a taxpayer to file a lawsuit against a government actor that is directly or symbolically engaging in practices that violate the Establishment Clause of the First Amendment to the United States Constitution or Article II, Section 5 of the Oklahoma Constitution after the government actor actually or prospectively engaged in action that potentially failed at least one prong of the lemon test. A taxpayer shall have a logical nexus to a government actor’s violation to assert taxpayer standing. A person who pays sales tax in this state can successfully assert this form of standing before the courts of competent jurisdiction.

C. 1. No enrolled student of an institution of higher education within The Oklahoma State System of Higher Education shall be required to engage in any form of mandatory gender or sexual diversity training or counseling; provided, voluntary counseling shall not be prohibited. Any orientation or requirement that
presents any form of race or sex stereotyping or a bias on the basis of race or sex shall be prohibited.

2. Pursuant to the provisions of the Administrative Procedures Act, the Oklahoma State Regents for Higher Education shall promulgate rules, subject to approval by the Legislature, to implement the provisions of this subsection.

B. The provisions of this subsection shall not prohibit the teaching of concepts that align to the Oklahoma Academic Standards.

1. No teacher, administrator or other employee of a school district, charter school or virtual charter school shall require or make part of a course the following concepts:

   a. one race or sex is inherently superior to another race or sex,

   b. an individual, by virtue of his or her race or sex, is inherently racist, sexist or oppressive, whether consciously or unconsciously,

   c. an individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex,

   d. members of one race or sex cannot and should not attempt to treat others without respect to race or sex,

   e. an individual’s moral character is necessarily determined by his or her race or sex,
f. an individual, by virtue of his or her race or sex, bears responsibility for actions committed in the past by other members of the same race or sex,
g. any individual should feel discomfort, guilt, anguish or any other form of psychological distress on account of his or her race or sex.
h. meritocracy or traits such as a hard work ethic are racist or sexist or were created by members of a particular race to oppress members of another race,
i. the violent overthrow of the United States government should be promoted,
j. this state or the United States is fundamentally or irredeemably racist or sexist,
k. division between or resentment of a race, sex, religion, creed, nonviolent political affiliation, social class, or class of people should be promoted,
l. character traits, values, morals, or ethical codes can be ascribed to a race or sex or to an individual because of the individual’s race or sex,
m. the rule of law does not exist but instead is a series of power relationships and struggles among racial or other groups,
n. all Americans are not created equal and are not endowed by their creator with certain unalienable
rights including life, liberty, and the pursuit of
happiness, or

governments should deny to any person within the
government’s jurisdiction the equal protection of the
law.

2. The State Board of Education shall promulgate rules, subject
to approval by the Legislature, to implement the provisions of this
subsection.

SECTION 3. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 24-157.1 of Title 70, unless
there is created a duplication in numbering, reads as follows:

A. Pursuant to the Establishment Clause of the First Amendment
to the United States Constitution and Article II, Section 5 of the
Oklahoma Constitution, a public school shall not include, as part of
a course of instruction or in a curriculum or instructional program,
or allow or force teachers or other employees of the public school
to use supplemental instructional materials that endorse, favor,
respect, or promote critical race theory because the policies fail
the Lemon test for:

1. Constituting non-secular shams that lack a primary secular
purpose;

2. Cultivating indefensible legal weapons against non-observers
of the religion of secular humanism; and
3. Having the effect of excessively entangling the government with the religion of secular humanism.

B. The following persons may enforce the provisions of subsection A of this section in a civil court of competent jurisdiction:

1. A taxpayer of this state or a political subdivision of this state who has taxpayer standing;

2. A parent or legal guardian who pays taxes in this state and who has a student in a public school that has violated the provisions of subsection A of this section has taxpayer standing; and

3. A public school employee who is punished by a public school for refusing to teach critical race theory to students.

C. A plaintiff who brings a civil action against a public school for violating the provisions of subsection A of this section may seek and be awarded the following by a court of competent jurisdiction:

1. Attorney fees and costs;

2. Actual damages;

3. Injunctive relief; and

4. Other forms of equitable relief deemed appropriate.

D. A school official, officer, or employee of the state who knowingly violates the provisions of subsection A of this section
may be dismissed from the person’s office or position, and the
person’s employment may be terminated immediately.

E. Any public school official who violates the provisions of
subsection A of this section may be declared to be in violation of
their oath of office established under Article VI, Clause 3 of the
United States Constitution and subjected to declaratory relief for a
violation in a court of competent jurisdiction.

F. Sincerity of belief or emotional appeals shall not
constitute a valid defense for a violation of the provisions of
subsection A of this section.

G. Notwithstanding the provisions of subsection A of this
section to the contrary, the provisions of this section do not
prohibit a public school from including, as part of a course of
instruction or in a curriculum or instructional program, or from
allowing teachers in a public school to use supplemental
instructional materials that include:

1. The history of an ethnic group, as described in textbooks
and instructional materials adopted in accordance with approved
curriculum;

2. The impartial and neutral discussion of controversial
aspects of history;

3. The impartial and neutral instruction on the historical
oppression of a particular group of people based on race, ethnicity,
class, nationality, religion, or geographic region; or

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4. Historical documents.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-157.2 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. Pursuant to the Free Exercise Clause of the First Amendment to the United States Constitution and Article II, Section 5 of the Oklahoma Constitution, a public school shall not discriminate against any person for believing in or for failing to believe in the plausibility of critical race theory.

B. A student or teacher who experiences discrimination by a public school as described in subsection A of this section shall have standing to file suit in a court of competent jurisdiction where they can seek:

1. Injunctive relief;
2. Attorney fees and costs;
3. Actual damages; and
4. Other forms of relief deemed appropriate.

C. It shall be an absolute and affirmative defense in a civil action brought pursuant to subsection A of this section that the public school was acting in compliance with the Establishment Clause of the First Amendment to the United States Constitution or Article II, Section 5 of the Oklahoma Constitution or other existing state and federal laws.
SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 24-157.3 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. The Stop the Wrongs to Our Kids and Employees (Stop W.O.K.E.) Act is constructed on the premise that:

1. The United States is a constitutional republic of which this state is a part;
2. The United States Constitution is the supreme sovereign law of this country that preempts all state and federal law;
3. The First Amendment to the United States Constitution applies to the states through the Fourteenth Amendment to the United States Constitution;
4. The Establishment Clause of the First Amendment to the United States Constitution and Article II, Section 5 of the Oklahoma Constitution were not merely designed to prevent the state from respecting and promoting the doctrines of institutionalized religions but those of non-institutionalized religions;
5. All members of the Legislature and all executive and judicial officers are bound by oath or affirmation pursuant to Article VI, Clause 3 of the United States Constitution to not create or enforce policies that violate the Establishment Clause or the Free Exercise Clause of the First Amendment to the United States Constitution regardless of the member’s or officer’s party affiliation or personal religious beliefs;
6. The Establishment Clause balanced with the Free Exercise Clause of the First Amendment to the United States Constitution is the controlling constitutional authority in informing this state on how to respond and react to critical race theory;

7. Emotional appeals shall not be used to usurp the Establishment Clause of the First Amendment to the United States Constitution or Article II, Section 5 of the Oklahoma Constitution in an effort to justify the government’s creation or enforcement of policies that respect, endorse, favor, or promote critical race theory;

8. All policies put forth by public schools that respect, favor, endorse, or promote critical race theory fail the lemon test first established by the United States Supreme Court and are thereby preempted by the Establishment Clause of the First Amendment to the United States Constitution and Article II, Section 5 of the Oklahoma Constitution in their making and enforcement and shall be enjoined from enforcement because the policies:

   a. constitute non-secular shams that lack a primary secular purpose,

   b. cultivate indefensible legal weapons against non-observers of the religion of secular humanism, and

   c. have the effect of excessively entangling the government with the religion of secular humanism;
9. In the wake of policies in public schools that respect, favor, endorse, or promote critical race theory, there has not been the promised equality, unity, and tolerance but instead, there has been:

   a. the cultivation of moral superiority complexes in observers of critical race theory, and
   b. the social marginalization and oppression of the non-observers of critical race theory; and

10. This state shall be particularly vigilant in monitoring compliance with the Establishment Clause in the public school context to protect minors from religious indoctrination with the government’s stamp of approval, especially when that religious ideology promotes licentiousness or attempts to justify practices that are inconsistent with the peace and safety of the state.

   B. The Stop W.O.K.E. Act shall not be constructed as prohibiting students or teachers from believing in or from refusing to believe in the plausibility of critical race theory or practices because such beliefs and practices are protected under the Free Exercise Clause of the First Amendment to the United States Constitution and under Article II, Section 5 of the Oklahoma Constitution. The Stop W.O.K.E. Act shall be constructed on the premise that protections of religious practices under the Free Exercise Clause of the First Amendment to the United States Constitution and Article II, Section 5 of the Oklahoma Constitution...
are not absolute, and this state is authorized to regulate or prohibit certain religious practices pursuant to its inherent police powers afforded under the Tenth Amendment to the United States Constitution if those practices promote licentiousness or are inconsistent with the peace and safety of the state. Critical race theory attempts to justify practices that are inconsistent with the peace and safety of this state.

SECTION 6. This act shall become effective July 1, 2023.

SECTION 7. It being immediately necessary for the preservation of the public peace, health, or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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