

IN THE COURT OF APPEALS OF VIRGINIA

Record No. 0951-22-2
Circuit Court Case No. CL21001737-00

CARLOS and TATIANA IBAÑEZ; R.I. and V.I., minors, by and through their parents, Carlos and Tatiana Ibañez, as the minors' next friends; MATTHEW and MARIE MIERZEJEWSKI; P.M., a minor, by and through the minor's parents, Matthew and Marie Mierzejewski, as the minor's next friends; KEMAL and MARGARET GOKTURK; T.G. and N.G., minors, by and through their parents, Kemal and Margaret Gokturk, as the minors' next friends; ERIN and TRENT D. TALIAFERRO; D.T. and H.T., minors, by and through their parents, Erin and Daniel Taliaferro, as the minors' next friends; MELISSA RILEY; and L.R., a minor, by and through the minor's parent, Melissa Riley, as the minor's next friend,

Plaintiffs-Appellants

v.

ALBEMARLE COUNTY SCHOOL BOARD; MATTHEW S. HAAS, Superintendent, in his official capacity; and BERNARD HAIRSTON, Assistant Superintendent for School Community Empowerment, in his official capacity,

Defendants-Appellees.

BRIEF OF *AMICUS CURIAE* IAN ROWE. IN SUPPORT OF APPELLANT

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STATEMENT OF AMICUS CURIAE

Ian V. Rowe is a senior fellow at the American Enterprise Institute, where he focuses on education and upward mobility, family formation, and adoption. Mr. Rowe is also the cofounder of Vertex Partnership Academies, a new network of character-based International Baccalaureate high schools opening in the Bronx in 2022. For more than a decade, Mr. Rowe has run schools committed to the ideals of equality of opportunity, individual dignity, and our common humanity that have educated thousands of students who are predominantly black and Hispanic, and from low-income families. He is the chairman of the board of Spence-Chapin, a nonprofit adoption services organization, and the cofounder of the National Summer School Initiative. He concurrently serves as a senior visiting fellow at the Woodson Center and a writer for the 1776 Unites Campaign. He is the author of “Agency: The four point plan (F.R.E.E.) for all children to overcome the victimhood narrative and discover their pathway to power.”

STATEMENT OF THE CASE AND MATERIAL PROCEEDINGS IN THE TRIAL COURT

Pursuant to Rules of the Court of Appeals of Virginia the *amica* provides the following brief statement of the facts and material proceedings in the trial court (Rule 5A:23(b)), but defers to the Parties on more specific matters of the facts and the procedural history.

This case arises out of policies and curricula adopted by the Albemarle County Public Schools (“School District”). Of concern to the Plaintiffs and to *amica* as an educator is that the “anti-racist” policies adopted by the School District and identified in the Complaint, Motion for Preliminary Injunction, and other Documents in the record does far more harm than good to even the very students it was alleged to protect.

The Plaintiffs filed suit on December 22, 2021. On June 1, 2022, the Albemarle County Circuit Court dismissed the action on the Defendant’s demurrer and plea in bar filed by the Defendants. R.1373. Plaintiffs filed their appeal on June 27, 2022.

ASSIGNMENTS OF ERROR

Amica adopts the assignments of error of the Appellant.

STANDARD OF REVIEW

Amica adopts the Standard of Review articulated by the Appellant.

ARGUMENT

Introduction

The Amica offers the following argument based on his experiences in education both from a high-level academia perspective and ground level perspective as a leader in local school districts, and familiar with the challenges minority students face:

I have seen the harm inflicted on children and adults of all races when well-intended, but nevertheless misguided, efforts to implement so-called “anti-racist” policies are adopted in K-12 schools. What is theorized as anti-racist in the objective, is often executed as racist in practice.

The School District’s Policy and Practices and Critical Race Theory

Based on the documents in the record, the implementation of the Albemarle School District’s “Anti-Racism” policy in several instances indoctrinates students into believing certain racial group stereotypes, in effect perpetuating racism versus seeking to eliminate it.

The key to social advancement relies much more on pro-human strategies that emphasize the uniqueness of each individual, and help kids develop agency and the tools of self-determination. This is in deep contrast to so called “anti-racist” policies such as the one implemented by the Albemarle School District that adopt a race essentialist approach that flattens people into stereotypes.

The last thing we want schools to teach or encourage our children to believe is that there is any inherent positive or negative characteristic solely based on the color of one’s skin. This is the kind of racial reductionism which is core to the tenets of Critical Race Theory.

While never explicitly mentioned, the intellectual foundation of Albemarle School District's racist "Anti-Racism Policy" is Critical Race Theory, which propagates three central beliefs:

1. Racism is entrenched in every institution and aspect of life in America, including K-12 schools. As the New York Times 1619 Project describes it, "anti-black racism runs in the very DNA of the country."

2. With that foundational belief, the Albemarle School District's racist "Anti-Racism Policy" divides human beings into two category groups: inherently privileged versus inherently non-privileged, or inherently oppressed or inherently an oppressor, based on skin color.

3. With the world divided into two groups: (1) whites; and (2) everybody else (i.e. people of color), any disparity in group outcomes is attributed to group discrimination.

Illustrative of point one, the Albemarle policy asserts systemwide racism. "Personal and institutional racism have historically existed and continues to exist in the Division." App. 1

Illustrative of point two, the Albemarle policy divides the Division into racial groups:

"In this Division, there are significant disparities between racial groups in student academic performance, achievement, and participation in academic

programs. These include disparities in graduation rates, gifted identification, course participation, special education identification, standardized test scores, and suspension rates.” App. 1

Illustrative of point three, the Albemarle policy asserts that the group disparities are “proof” of the system wide racism driving differences in group outcomes:

According to this policy, the very existence of group disparities must be due to group discrimination: “Disparities also exist between the racial demographics of the students in the Division and the staff the Division hires.” In other words, since the racial makeup of white teachers doesn’t match that of the students, then the group outcomes must be due to the skin color of the teachers. This kind of “mono-causality” leads to beliefs that we must rid teachers of their racism by reducing all faculty and students into racial caricatures. App. 1

Case in point is a slide presented in an Albemarle teacher training that contrasted communication tendencies of white people to everyone else (People of Color). “Communication is a Racialized Tool.” Paragraph 15, Ex. 7 at 7. Complaint p. 23, Appendix p. 169.

White Talk	(People of) Color Commentary
<ul style="list-style-type: none"> ● Verbal: Focused on talking and offering racial meaning through word choice, voice tone, and intonation 	<ul style="list-style-type: none"> ● Nonverbal: Focused on offering racial meaning through facial

	expressions, body movements, and physical gestures
<ul style="list-style-type: none"> ● Impersonal: Focused on the sharing of racial perspectives or experiences of someone not immediately present or involved in the conversation. 	<ul style="list-style-type: none"> ● Personal: Focused on sharing one’s own personal racial narrative, perspectives, or experiences.
<ul style="list-style-type: none"> ● Intellectual: Focused on what one thinks (or has read) with respect to race. 	<ul style="list-style-type: none"> ● Emotional: Focused on what one feels (or has experienced) with respect to race.
<ul style="list-style-type: none"> ● Task oriented: Focused on engaging in dialogue for the purposes of getting something accomplished. 	<ul style="list-style-type: none"> ● Process oriented: Focused on engaging in dialogue for the purposes of feeling present, connected, or heard.

Imagine the harmful effect on a black ten year-old child who hears that it is white people who are 'intellectual,' while black people (and all people of color) are “emotional.”

How Critical Race Theory Undermines Individual Agency

Critical Race Theory (“CRT”) advocates in education reform consistently mistake correlation (poor outcomes by a majority of black students) for causation (the poor outcomes must be due to anti-black racism), completely ignoring other demographic or public policy factors—such as the decades-long explosion in non-marital birth rates or trapping students in dysfunctional school systems—that are taboo to discuss. The fundamental approach by critical race theorists is to reject a multicausal analysis and to insist that black children be viewed solely through the

prism of race and to accept that they have no agency to overcome the insurmountable racial discrimination they may face.

Stunningly, the American Bar Association (ABA) has jumped on the bandwagon of this perverse ideology, publishing “A Lesson on Critical Race Theory,” apparently without any sense of irony, in its magazine called Human Rights. The author argues that CRT:

critiques how the social construction of race and institutionalized racism perpetuate a racial caste system that relegates people of color to the bottom tiers.... It acknowledges that the legacy of slavery, segregation, and the imposition of second-class citizenship on Black Americans and other people of color continue to permeate the social fabric of this nation.

Janel George, A Lesson on Critical Race Theory, Human Rights Magazine, Vol. 46, No. 2, Jan. 11, 2021.

Any non-white person, then, is trapped in a “racial caste system.” One can imagine a ten-year-old black boy (or his teacher) hearing that kind of rhetoric repeatedly and reasonably believing that the country is rigged against him and that he has no chance to succeed in life.

This ideology hurts not only black students. Presumably, the ABA’s corollary is that all white people suffer no such racial constraints and are endowed with limitless powers regardless of their individual circumstances. This is the prototypical “oppressor” versus “oppressed” race-reductionist ideology that CRT perpetuates, robbing both black and white people of the agency to determine their own destiny.

As Brown University Professor Glenn Loury often asserts, this insistence on viewing the world solely through a racial lens “is a bluff and a bludgeon.” Shouting “systemic racism becomes a kind of rhetorical weapon to try to get the moral high ground in a debate about racial disparity.” It also provides a safe catchphrase for people to signal the moral virtue of their own innocence and their saintly ability to implicate the “oppressor” (anyone white) and absolve the oppressed (anyone non-white). As Loury writes,

I’ve spent a lot of time pushing back against the idea that something called “systemic racism” is the primary cause of racial disparities in the US. Not only is this idea overly simplistic and ahistorical, it’s often invoked by so-called antiracist activists in order to cow their opponents into silence. If you question the idea that systemic racism is responsible for black academic underperformance, black poverty, or black crime, you’re denying the existence of the problem, and so you’re part of the problem, and so you’re likely a racist yourself. Or so the argument goes.

To understand why this race-only analysis is so harmful to all children, one may consider this analysis from a different vantage point. In “White Kids Can’t Read, Either,” I highlighted West Virginia’s 2013 poor eighth grade reading achievement using NAEP data, where only 18.7 percent of black boys were reading at proficiency. On its own, the so-called antiracist contingent would quickly point to “structural racism” as the culprit, and shouts to “close the racial achievement gap” would soon follow.

But an inconvenient fact challenges a diagnosis of “structural racism.” It turns out that, also in 2013, according to NAEP data, white eighth-grade boys in West

Virginia were reading at proficiency at a just slightly less horrific rate of 19.7 percent. Systemic racism is unlikely to be the force driving such terrible outcomes for white eighth-grade boys. Furthermore, seeking equal racial outcomes would be the height of cynicism if that whopping one-percentage-point achievement gap were closed, and the tragedy still remained that fewer than one in five black and white eighth-grade boys in West Virginia were reading at NAEP proficiency rates.

Similarly, in 2021, I testified before the Joint Committee on Education of the Kentucky State Legislature with remarks titled “Preparing Students of All Races to Achieve Greatness.” I also testified before the Rhode Island State Legislature in remarks titled “We Have Fought Racial Segregation Before, We Can Fight Racial Segregation Again.”

For both states, I relied on the raw numbers of eighth graders who were not reading at NAEP proficiency levels in 2019. Chart 1 shows that far more white eighth graders in Kentucky are not reading at proficient rates than black eighth-graders. In Rhode Island, the numbers tell a similar story.

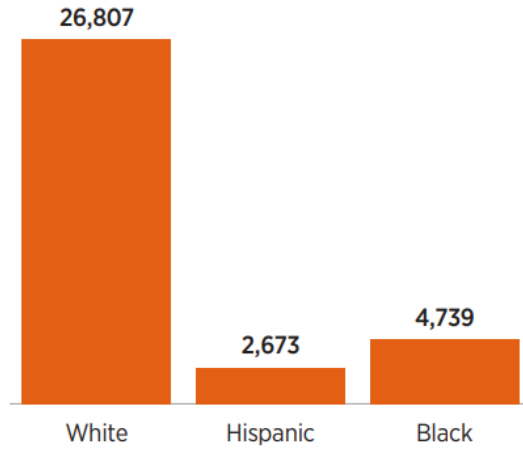
While preparing for the Rhode Island testimony, I also examined eighth-grade NAEP reading proficiency scores since 1998. As is the case in most other states, in each year since the nation’s report card was first administered in Rhode Island in 1998, fewer than half of Rhode Island’s white students in the eighth grade achieved NAEP proficiency in reading. Given the higher number of white students overall, it

makes sense that there are more white students who are not reading at NAEP proficiency levels.

CHART 1

Number of Kentucky 8th Graders Reading Below Proficiency in 2019, by Race

SOURCES: National Assessment of Educational Progress Data Explorer, and the Kentucky Department of Education.

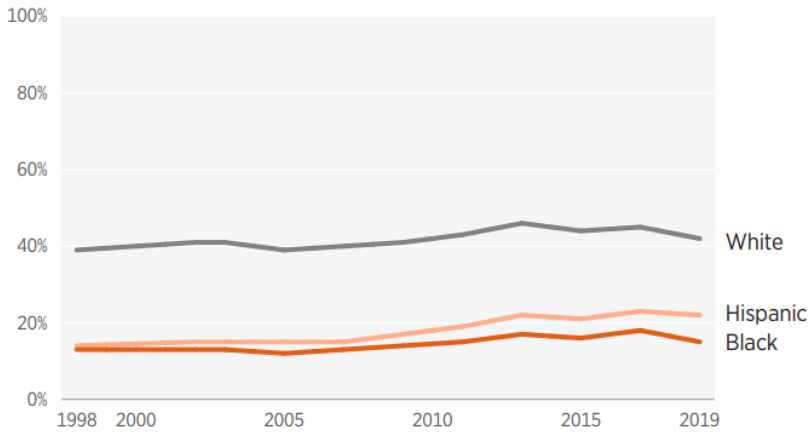


heritage.org

CHART 2

Reading Proficiency Among Eighth-Grade Rhode Island Students

PERCENTAGE SCORING "PROFICIENT" OR HIGHER ON NAEP ASSESSMENT



SOURCE: National Assessment of Educational Progress Data Explorer.

heritage.org

The sad irony remains that closing the black-to-white, or the Hispanic-to-white, achievement gap, without improving outcomes for all students, would mean that black and Hispanic student outcomes would only grow from sub-mediocrity to full mediocrity in terms of reading due to misguided attempts at achieving racial “equity.”

All this is to say that while racism could play a role in explaining why individual black children are not succeeding, the low proficiency rates across the board for black, white, and Hispanic children shows that it is clearly far less of a factor in causing failure rates. To unshackle themselves from a race-only analysis, Americans should hone in on factors like unstable family structures, lack of curricula that help young people to build personal agency, and lack of parental choice in education. Moreover, believers in CRT and “systemic racism” rarely take responsibility for how their rhetoric depresses human motivation and leads to unacceptable academic outcomes.

Eric Kaufmann, professor of politics at the University of London and an adjunct fellow of the Manhattan Institute, conducted a study to explore the “possibly detrimental effect of CRT narratives on the black people whom it is ostensibly designed to help.” In “The Social Construction of Racism in the United States,” Kaufmann explains his thesis that “the work of critical race theory authors such as Ibram X. Kendi, Ta-Nehisi Coates, and Robin DiAngelo tend to endow whites with

the power to change themselves while portraying blacks as passive subjects whose fate is dependent on the goodwill of white people.” In order to assess this possible adverse impact on black empowerment, Kaufmann asked one group of black people to read a passage from Coates’s “Letter to My Son,” which includes:

- *Here is what I would like for you to know: In America, it is traditional to destroy the black body—it is heritage*
- *Turn into a dark stairwell and your body can be destroyed. The destroyers will rarely be held accountable. Mostly they will receive pensions*
- *And now, in your time, the law has become an excuse for stopping and frisking you, which is to say, for furthering the assault on your body.*

Another group of black participants read nothing before responding to Kaufmann’s inquiries, while a third group of black participants read a text that Kaufman composed, which focused on African Americans as the descendants of conquerors with a proud heritage.

Kaufmann notes that only 68 percent of blacks who read the Coates passage agreed or strongly agreed with the following statement: “When I make plans, I am almost certain that I can make them work.” By contrast, 83 percent of those who did not read Coates but read Kaufmann’s passage said that they could do so. According to Kaufmann, “The impact of even one short passage of CRT was enough to reduce black respondents’ sense of control over their lives.”

While reading CRT messages (such as those in the Albemarle policy) can be directly harmful to black confidence and self-reliance, referring to performance

disparities as “racial achievement gaps” can undermine academic performance in minority students due to increased psychological threats, such as white students questioning the intelligence of their minority peers.

Geoffrey Cohen, a professor at the Graduate School of Education at Stanford University, tested whether a social-psychological intervention—designed to improve minority student performance and increase the understanding of the impact of psychological threats on performance—would lessen these threats. The intervention asked students to reaffirm their sense of “self-integrity” through an in-class writing assignment, and two randomized experiments showed that the intervention reduced the racial achievement gap by 40 percent. Instilling self-worth in students and treating them as individuals was far more effective than framing educational disparities primarily through a racialized lens.

Another study conducted by David Quinn, assistant professor of education at the Rossier School of Education at the University of Southern California, assessed the impact of framing opportunity from an “achievement gap” perspective. Through his investigation of three randomized experiments, he shows that a TV news story about racial achievement gaps led viewers to express biased and exaggerated stereotypes of black Americans in regard to their level of education and intellectual capability. In other words, talking about “achievement gaps” caused people to

believe in myths, such as an inequality of skills based on race, gender, or other immutable characteristics.

The Albemarle Anti-Racism Policy includes an exercise for students called “Break the Box” Appendix, pp. 399-404, 716-724. It made the statement that the “dominant culture” is "white, middle class, Christian, and cisgender" while “subordinate culture” is “black, brown, indigenous people of color of the global majority, queer, transgendered, non-binary folx, cisgender women, youth, Muslim, Jewish, Buddhist, atheist, non-Christian folx, neurodiverse, folx with disabilities, [and] folx living in poverty.”

Imagine how all young minority students in Albemarle would thrive and how their sense of agency would be cultivated if they were exposed to a more empowering curriculum. For example, “Reconstruction,” a new online tutoring program that also offers individual courses founded by Kaya Henderson, former chancellor of District of Columbia Public Schools, was “created to show our kids that they are descendants of powerful, creative, and resilient ancestors whose contributions permeate every aspect of life across the globe; and that they too are called to contribute to this rich legacy.”

There is also the freely available curriculum from [1776 Unites](#), an initiative founded by the legendary Bob Woodson that maintains a special focus on voices in the black community who celebrate black excellence, reject victimhood culture, and

showcase the millions of black Americans who have prospered by embracing the founding ideals of America. The [curriculum](#), which features lessons on The Rosenwald Schools and other lesser known stories of black resiliency in the face of adversity, has been downloaded more than 50,000 times by teachers in all fifty states, and is now being taught in public, private, and parochial schools, afterschool, prison ministries, home school and anywhere where character formation is happening with children.

One may further imagine an America where parents of all races can choose good schools and that they believe these schools will help their children to become all that they can be.

Maybe then all Americans can live in a country built not on white guilt and black dependence but on equality and individual agency, where students of all races can determine their own destiny.

Respectfully Submitted,
IAN ROWE

By Counsel

/s/ William R. Thetford
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CERTIFICATE OF WORD COUNT COMPLIANCE

The foregoing brief complies with the type-volume limitation set forth in Rule 5A:19 of the Rules of the Court of Appeals of Virginia, exclusive of the exempted portion this brief contains 3044 words.

/s/ William R. Thetford Jr.
Counsel for Amica Ian Rowe

CERTIFICATE OF SERVICE

On this 27 day of October 2022, the foregoing AMICUS CURIAE BRIEF IN SUPPORT OF APPELLANT was filed electronically with the Clerk via the Virginia Appellate Courts Electronic System (VACES) and, pursuant to Rule 5A:1(c)(4) of the Rules of the Court of Appeals of Virginia, was served via electronic mail on the following counsel for the Parties:

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/s/ William R. Thetford Jr.
Counsel for Amica Ian Rowe

Written Consent of Counsel

Pursuant to Rule 5A:23, this brief is submitted with and accompanied by the written consent of all counsel in this matter. Written consent is provided below.

From: [Jeremy Capps](#)
To: [William R. Thetford](#); [David Corrigan](#); [Missy York](#); [Blaire O'Brien](#)
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Subject: RE: Amicus in C.I. v. Albemarle County School Board
Date: Thursday, October 27, 2022 2:36:35 PM
Attachments: [image002.png](#)

We consent to the amicus filing.

Thank you.

Jeremy



JEREMY D. CAPPS

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Celebrating 30 years

From: William R. Thetford [<mailto:wrthetford@simmsshowerslaw.com>]
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Cc: Vwagner@adflegal.org; Kanderson@adflegal.org; CSchandeval@adflegal.org
Subject: Amicus in C.I. v. Albemarle County School Board

Mr. Capps, Mr. Corrigan, Ms. York, and Ms. O'Brien,

I represent Ian Rowe, a potential amicus filer in the matter of C.I. v. Albemarle County School Board. He would be filing in support of appellants from the perspective of an educator. Mr. Rowe's credentials can be located here with some highlights pasted below. <https://www.aei.org/profile/ian-rowe/>

Would you consent to my filing of the amicus brief in this matter. Please let me know at your soonest convenience. Counsel for appellant has already given us their consent.

Feel free to give me a call if you have any questions.

Ian Rowe is a senior fellow at the American Enterprise Institute, where he focuses on education and upward mobility, family formation, and adoption. Mr. Rowe is also the cofounder of Vertex Partnership Academies, a new network of character-based International Baccalaureate high schools opening in the Bronx in 2022; the chairman of the board of Spence-Chapin, a nonprofit

adoption services organization; and the cofounder of the National Summer School Initiative.

Until July 1, 2020, Mr. Rowe was CEO of Public Prep, a nonprofit network of public charter schools based in the South Bronx and Lower East Side of Manhattan. Before joining Public Prep, he was deputy director of postsecondary success at the Bill & Melinda Gates Foundation, senior vice president of strategic partnerships and public affairs at MTV, director of strategy and performance measurement at the USA Freedom Corps office in the White House, and cofounder and president of Third Millennium Media. Mr. Rowe also joined Teach for America in its early days.

Mr. Rowe has been widely published in the popular press, including in the New York Post, The Wall Street Journal, and the Washington Examiner. With his forthcoming book "Agency" (Templeton Press, May 2022), Ian Rowe seeks to inspire young people of all races to build strong families and become masters of their own destiny.

Sincerely,

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William R. Thetford

From: Chris Schandevel <CSchandevel@adflegal.org>
Sent: Thursday, October 27, 2022 3:31 PM
To: William R. Thetford
Subject: RE: Brief of Amicus Curiae

Hi Will,

On behalf of all Appellants in this case, we consent to your filing an *amicus* brief on behalf of Mr. Rowe.

Thanks!

- Chris



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From: William R. Thetford <wrthetford@simsshowerlaw.com>
Sent: Thursday, October 27, 2022 2:58 PM
To: Chris Schandevel <CSchandevel@adflegal.org>
Subject: Brief of Amicus Curiae

EXTERNAL

Chris,

Would you please confirm your consent, on behalf of all appellant counsel, for me to file an amicus brief on behalf of Ian Rowe, in the matter of C.I. v. Albemarle County School Board. He would be filing in support of appellants from the perspective of an educator. Mr. Rowe's credentials can be located here with some highlights pasted below. <https://www.aei.org/profile/ian-rowe/>

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Sincerely,

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