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Well, That Escalated Quickly: Judge Rules Florida's "Stop WOKE" Act Unconstitutional

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Is the Stop WOKE Act dead in Florida? Not yet but in Honeyfund.com, Inc., et al v. Desantis, et al , one federal district court has certainly put the brakes on it. On March 29, 2022, we informed everyone about Florida HB 7, also known as Florida's "Stop WOKE" bill, and how it would soon head to Florida Gov. Ron Desantis's desk for signing. Shortly afterwards, on April 22, 2022, Gov. DeSantis signed Florida HB 7 into law. According to the Governor's Office, the bill was created "to give businesses, employees, children and families tools to stand up against discrimination and woke indoctrination." Specifically, the bill would prevent anyone from "feel[ing] as if they are not equal or shamed because of their race." The Individual Freedom Act, dubbed the "Stop WOKE" Act, went into effect on July 1, 2022.

Plaintiffs, including employers Honeyfund.com and Primo, moved for a preliminary injunction to enjoin defendants, Gov. DeSantis, Attorney General Ashley Moody, and the Commissioner of the Florida Commission on Human Relations (FCHR), from enforcing the law. On August 18, 2022, Chief United States District Judge Mark E. Walker of the Northern District of Florida deemed the Act unconstitutional.

Comparing the challenged provisions of the Individual Freedom Act to the storyline of popular television series *Stranger Things*, Judge Walker described the Act as a distorted version of the First Amendment, turning it "upside down." Judge Walker ruled that because the challenged provisions of the Act are a naked viewpoint-based regulation on speech that does not pass strict scrutiny, the plaintiffs' motion for a preliminary injunction was granted in part.

Judge Walker explained why the provisions of the Act target speech and, subsequently, violate the First Amendment. Precisely, Judge Walker determined that the law not only targets speech, but it singles out speech that advocates viewpoints on disputed issues, while giving more favorable treatment to speech that supports the opposite positions:

To start — though trainings are admittedly at the center of this case — the IFA does far more than ban mandatory trainings. It bars "*any*. . . required activity" at which the eight forbidden "concepts" are discussed and endorsed. . .

Because the IFA covers any required activity, an employer could require every employee to read *Woke, Inc., Inside Corporate America's Social Justice Scam* but could not require employees to read *The Color of Law*. Worse still, a nonprofit corporation devoted to promoting the idea that white privilege exists could not hold a required meeting at which it endorses the concept of white privilege. But a nonprofit holding the opposite view could freely hold meetings criticizing the concept of white privilege.

The bottom line is that the *only* way to determine whether the IFA bars a mandatory activity is to look to the viewpoint expressed at that activity — to look at speech. Plainly, the IFA regulates speech…

In sum, the IFA sweeps up an enormous amount of protected speech to ban a sliver of offensive conduct that exists somewhere between the trainings Plaintiffs wish to hold and what the [Florida Civil Rights Act] already bars. It is, to borrow a phrase from defense counsel, self-evident. The IFA is not narrowly tailored. And so, the IFA violates the First Amendment.

The decision is expected to be appealed to the U.S. Court of Appeals for the Eleventh Circuit. Unless and until the Eleventh Circuit rules, pursuant to the preliminary injunction order, Florida employers subject to the provisions of the IFA can continue their diversity, equity and inclusion efforts without fear of suffering repercussions. In the words of Childish Gambino, "Stay woke."

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