

Federal Court Blocks Florida's Individual Freedom Act as Unconstitutional

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Invoking the “upside down world” depicted in Netflix drama, *Stranger Things*, the federal District Court for the Northern District of Florida blocked Florida’s Individual Freedom Act (IFA) on constitutional grounds. [*Honeyfund.com Inc. v. Ron DeSantis et al.*](#), No. 4:22-cv-00227 (N.D. Fla. Aug. 18, 2022).

Signed in April 2022, the IFA went into effect on July 1, 2022. It prohibited, among other things, employers from requiring training, or any other mandatory activity, endorsing certain sex- and race-related concepts.

Background

Florida Governor Ron DeSantis nicknamed the IFA the “Stop W.O.K.E. Act,” which stands for “Stop the Wrongs to Our Kids and Employees.” The law’s stated purpose was to protect individual freedoms and prevent discrimination in the workplace and in public schools.

[The law expanded Florida Statutes Section 760.10 of the Florida Civil Rights Act](#) to provide that it is discrimination to subject a person, as a condition of employment, to training that endorses various race- and sex-based concepts, but by its terms permitted employers to subject employees to “objective” discussion about them.

The Decision

The federal district court took issue with the IFA on constitutional grounds and enjoined its enforcement.

The plaintiffs, including employer Honeyfund.com and certain providers of employer training, on June 30, 2022, moved to preliminarily enjoin the defendants from enforcing the law and the state defendants separately moved to dismiss.

The plaintiffs described the IFA as an unbridled attempt “to stifle speech with which those in power disagree.” They argued that the IFA unconstitutionally prohibits employers from conducting race- and gender-related training that they wish to conduct.

The court pointed out that the fact that the law, by its own terms, expressly permits training on such race- and gender-related concepts if it is done in an “objective” manner underscores that the law’s purpose is to muzzle certain viewpoints, *i.e.*, those that are not “objective” and “endorse.” The court continued, “Florida’s legislators may well find plaintiffs’ speech ‘repugnant.’ But under our constitutional scheme, the ‘remedy’ for repugnant speech ‘is more speech, not enforced silence.’”

The court stated, “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

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borrow a phrase from defense counsel, self-evident. The IFA is not narrowly tailored. And so, the IFA violates the First Amendment.”

It went on to rule that the IFA violated the First Amendment as a “naked viewpoint-based regulation on speech,” did not pass strict scrutiny, and was vague. The court concluded that the plaintiffs were likely to succeed in their challenge to the constitutionality of the IFA and that the plaintiffs would suffer irreparable harm if the law remained in place.

The court granted the motion for preliminary injunction and noted that the state defendants “must take no steps to enforce” the statute until otherwise ordered. The court also declined to stay the injunction pending any appeal by the state defendants. In a separate ruling, the court also refused to dismiss DeSantis from the case at this juncture.

Next

The decision is expected to be appealed to the U.S. Court of Appeals for the Eleventh Circuit, where six out of the 20 judges were appointed since 2017.

For the moment, the preliminary injunction halted any enforcement of the IFA against Florida employers. Nevertheless, employers should continue to review employee training and other diversity measures, as they remain in the crosshairs, as the subject of controversial public discourse and even lawsuits, with plaintiffs using the fact of such measures as purported evidence of discrimination on the basis of race and gender.

Jackson Lewis attorneys will follow developments on the Florida law (and be on the watch for similar legislation around the country) and are available for questions.