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"Stop W.O.K.E." is Broke: Injunction Against Florida's Anti-Woke Law Aimed at Employer Training Is Upheld by Eleventh Circuit

By Dawn Siler-Nixon, Louis D. Wilson, and Emily Chase-Sosnoff

On Monday March 4, 2024, the U.S. Court of Appeals for the Eleventh Circuit upheld the August 2022 preliminary injunction issued by Judge Mark Walker of the U.S. District Court for the Northern District of Florida, ordering state officials in Florida to take no steps to enforce the Individual Freedom Act, Fla. Stat. § 768.10(8) (also known as HB7 or the "Stop W.O.K.E. Act," which stands for "Stop the Wrongs to Our Kids and Employees"), based on concerns the law is unconstitutional.

Background

In the case of *Honeyfund.Com Inc. v. Governor, State of Florida*, No. 22-13135 (Mar. 4, 2024), two private employers and a diversity, equity, and inclusion (DEI) consultant and training company argued that the Stop W.O.K.E. Act (or "the Act") is unconstitutional because it restricts free speech and is impermissibly vague. In sum, the Act seeks to prohibit Florida employers from requiring employees to attend any training or activity that "espouses, promotes, advances, inculcates, or compels" an individual to believe certain prohibited concepts relating to race, color, sex, or national origin.

The Eleventh Circuit Ruling

In a twenty-two-page opinion reviewing the district court's decision to issue the preliminary injunction, the Eleventh Circuit succinctly dissected and rejected what it described as "the latest attempt to control speech by recharacterizing it as conduct." In so doing, the court found that the Act commits "the greatest First Amendment sin" by targeting speech based on its content and penalizing certain viewpoints that the state deems offensive.

In rejecting Florida's "attempt to control speech by recharacterizing it as conduct," the court determined that the "First Amendment is not so easily neutered." The court clarified that Florida's decision to "limit[] its restrictions to a list of ideas designated as offensive," by definition, "targets speech based on its content." The Eleventh Circuit captured the essence of the First Amendment violation by noting that "[t]he only way to discern which mandatory trainings are prohibited is to find out whether the speaker disagrees with Florida. That is a classic—and disallowed—regulation of speech." This "direct penalty on certain viewpoints," regardless of Florida's desire to "protect the ears of its residents[,] 'is not enough to overcome the right to freedom of expression'" protected by the First Amendment.

While the Eleventh Circuit's decision only halts enforcement of the Act pending a final decision on the merits of the complaint, the unanimous three-judge panel made its position clear: "Whether Florida is correct that the ideas it targets are odious is irrelevant—the government cannot favor some viewpoints over others without inviting First Amendment scrutiny." The court concluded with this poignant observation: "Intellectual and cultural tumult do not last forever, and our Constitution is unique in its commitment to letting the people, rather than the government, find the right equilibrium."

Impact on Florida Employers

The court's opinion affirms the lower court's block on workplace training restrictions and on the enforcement of any alleged violation of the Stop W.O.K.E. Act. For now, Florida employers can continue DEI trainings and conversations without fear that they may be alleged to have espoused or endorsed a prohibited concept by simply discussing or covering certain topics, but employers should carefully monitor further proceedings in this case. A statement from the Florida Governor's office issued after the decision was published indicates that it disagrees with the decision and is reviewing all appeal options, which could include a request for rehearing by the full Circuit. The merits of the case are still pending before the U.S. District Court for the Northern District of Florida.

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