



February 11, 2025

Chairman Beard and members of the Senate Education Committee. I am Michael Geiermann, and I serve as General Counsel for North Dakota United. I stand here today in opposition to SB 2392. This bill is exceptionally broad as it appears to place limitations on free speech on three separate and distinct entities: Higher Education, K-12 public schools, and a “Government employer” including political subdivisions of the State and various departments, agencies boards and other institutions of the State. The Bill in most instances does not clearly define its intended purpose. Most, if not all, of the terms in the sections entitled “Prohibited Discriminatory Practice” (Page 8, Lines 1-31, Page 9. Lines 1-13) are not defined. Laws passed by the legislature must meet two requirements (1) the law must create minimum guidelines for the reasonable police officer, judge, or jury charged with enforcement of the statute; and (2) the law must provide a reasonable person with adequate and fair warning of the proscribed conduct. Unfortunately, this bill does not and appears to inhibit Free Speech.

This Bill appears to be modeled to a certain extent after the Individual Freedom Act in Florida. This Florida Act has been in litigation since its inception. In Honeyfund.com Inc v. Governor, 94 F.4th 1272, (11th Cir. 2024) the 11th Circuit Court of Appeals affirmed a district court decision granting a preliminary injunction because certain portions of the law were unconstitutionally vague and an unlawful content and view-point based speech restriction. In upholding the preliminary injunction, the Court of Appeals stated:

“The ideas targeted in Florida's Individual Freedom Act are embraced in some communities, and despised in others. But no matter what these ideas are really worth, they define the contours of the Act. By limiting its restrictions to a list of ideas designated as offensive, the Act targets speech based on its content. And by barring only speech that endorses any of those ideas, it penalizes certain viewpoints—the greatest First Amendment sin.”

I would urge a do not pass recommendation on SB 2392.