LEGISLATURE OF THE STATE OF IDAHO

Sixty-seventh Legislature Second Regular Session - 2024

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 538

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO CIVIL RIGHTS; PROVIDING LEGISLATIVE INTENT AND LEGISLATIVE FINDINGS; AMENDING CHAPTER 59, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5909B, IDAHO CODE, TO PROHIBIT COMPULSORY GENDER LANGUAGE, TO PROVIDE A CIVIL CAUSE OF ACTION FOR VIOLATIONS, AND TO AUTHORIZE RULEMAKING AUTHORITY; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. LEGISLATIVE INTENT AND LEGISLATIVE FINDINGS. (1) It is the intent of the Legislature to preserve the constitutional right to free speech of all people in the State of Idaho, especially as this right intersects with the operations of governmental entities of the state of Idaho.

(2) It is further the intent of the Legislature to ensure that no person in the State of Idaho is compelled by any governmental entity in the State of Idaho to communicate statements that such citizen believes to be false. The United States Supreme Court has long held that no government actor may seek "to compel a person to speak its message when he would prefer to remain silent or to force an individual to include other ideas with his own speech that he would prefer not to include." 303 Creative LLC v. Elenis, 600 U.S. 570, 586 (2023). No person should be subjected to any coercion by any governmental entity in the State of Idaho to communicate in any way statements that such person prefers not to communicate. To permit a governmental entity of the State of Idaho to compel speech in such a way would deprive persons within this state of their fundamental right to be free from coerced speech.

(3) The Legislature finds that despite the United States Supreme Court's clear holding that compelled speech offends the constitution, government actors across the State of Idaho and the United States as a whole are not vigilantly protecting the people against such compelled speech. There are increasing pressures by state government actors to compel public employees, as well as students in public schools, to communicate certain preferred personal titles and pronouns that many such employees and students do not prefer to communicate. Specifically, to compel the use of preferred personal titles and pronouns that do not correspond with the biological sex of the individual seeking to be referred to by such preferred personal titles or pronouns.

(4) To protect the people of Idaho against unlawful compelled speech, the Legislature finds it expedient to codify into Idaho law a prohibition on any governmental entity in the State of Idaho from compelling any public employee or public school student to communicate preferred personal titles and pronouns that do not correspond with the biological sex of the individual seeking to be referred to by such titles or pronouns. Such prohibition is essential to ensure that the constitutional right to free speech of every person in the State of Idaho is respected.
SECTION 2. That Chapter 59, Title 67, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 67-5909B, Idaho Code, and to read as follows:

67-5909B. COMPULSORY GENDER LANGUAGE PROHIBITED -- PRIVATE CAUSE OF ACTION -- RULEMAKING. (1) As used in this section:

(a) "Government employee" means a person employed by the state of Idaho, or by any county, municipality, public university or community college, school district, special district, or any other political subdivision or governmental instrumentality of or within the state.

(b) "Public school" means any publicly funded school teaching kindergarten through grade 12 students that is operated and controlled by any public school district organized under the laws of this state, including specially chartered school districts.

(c) "Sex" means the classification of a person as either female or male based on the organization of the body of such person for a specific reproductive role, as indicated by the person's sex chromosomes, naturally occurring sex hormones, and internal and external genitalia present at birth.

(d) "Student" means an individual who is enrolled on a full-time or part-time basis at a public school or public institution of higher education.

(2) A government employee, regardless of the scope of such employee's official duties, shall not be subject to adverse employment action for declining to:

(a) Identify such employee's pronouns while acting within the scope of employment; or

(b) Address a person using a name other than the person's legal name or a derivative thereof, or by a preferred personal title or pronoun that is inconsistent with the person's sex.

(3) An employee of a public school or public institution of higher education, regardless of the scope of such employee's official duties, shall not:

(a) Knowingly and intentionally address an unemancipated minor student by a name other than the student's legal name or a derivative thereof, or by a preferred personal title or pronoun that is inconsistent with the student's sex, without the written permission of the student's parent or guardian; and

(b) Be subject to adverse employment action for declining to address a student using a name other than the student's legal name, or a derivative thereof, or by a preferred personal title or pronoun that is inconsistent with a student's sex.

(4) A student of a public school or public institution of higher education shall not be subject to adverse disciplinary action by the school or institution for declining to:

(a) Identify such student's pronouns; or

(b) Address a person using a name other than the person's legal name, or a derivative thereof, or by a preferred personal title or pronoun that is inconsistent with the person's sex.
(5) Any person who is harmed by a government employer, public school, or public institution for higher education for violating the provisions of this section shall have a private cause of action for injunctive relief, monetary damages, reasonable attorney's fees and costs, and any other appropriate relief. All civil actions brought pursuant to this section must be initiated within two (2) years from the date that the violation occurs.

(6) The Idaho commission on human rights may adopt rules to administer the provisions of this section.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after July 1, 2024.