



February 20, 2024

Honorable Tommy Gregory
Chair, The Florida House of Representatives Judiciary Committee
513 The Capitol
402 South Monroe Street
Tallahassee, FL 32399-1300

Re: Written testimony against HB 757: Defamation, False Light, and Unauthorized Publication of Name or Likenesses

Dear Chair Gregory:

We write jointly as a nonpartisan coalition representing the Foundation for Individual Rights and Expression (FIRE), PEN America, the First Amendment Foundation, Common Cause Florida, and the American Civil Liberties Union of Florida to provide written testimony of our opposition to HB 757: Defamation, False Light, and Unauthorized Publication of Name or Likenesses (HB 757). We urge the House of Representatives to vote no on HB 757 due to our extreme concern that, if passed, HB 757, and its counterpart in the Senate, SB 1780 (SB 1780), will irreparably harm freedom of speech and freedom of the press in Florida.

HB 757 is so broadly worded that in addition to chilling the speech of journalists, pundits, and radio talk show hosts, it would chill the speech of any person who renders a single utterance on the internet (“*any one* exhibition of a motion picture, or any one publication, exhibition, or *utterance on the Internet.*”)(emphasis added). HB 757 directly contradicts long-standing protections of speech on issues of public concern. It will also lead to a flood of litigation, creating huge financial burdens and resulting in the chilling of free speech.

HB 757 contains incurable infringements on core First Amendment protections, such as lowering the bar for public figures and government officials to bring lawsuits in

violation of long-established Supreme Court precedent set forth in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). Specifically, the bill targets anonymous sources and creates a presumption of actual malice for any publisher when “a public figure plaintiff can establish that a published statement is false and that the publisher relied on an anonymous source for the statement.” This presumption is vague, overbroad, and patently unconstitutional. It would force journalists to either reveal their anonymous sources or face civil liability for significant money damages.

The free press enjoys constitutional protections and anonymous sources are a key element to the journalistic process. If passed, HB 757 could curtail and punish reporting that involves unnamed whistleblowers—even if their information is corroborated by named sources—for any element of the story determined to be false. This will create a chilling effect on Florida journalists to report crimes and issues of public concern, undermining the freedom of the press and harming citizens.

In this way, HB 757 runs contrary to principles upheld by the United States Supreme Court, first established in *New York Times Co. v. Sullivan*. The Court affirmed that “debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” 376 U.S. at 270. *Sullivan* established that critical content or “sharp attacks” against a government official are protected speech even if they may contain inaccuracies, so long as such false statements were not made “with knowledge that it was false or with reckless disregard of whether it was false or not.” *Id.* at 280. This basic protection enables the press to pursue and publish important stories containing unfavorable information about public officials and institutions without fear of potentially crushing civil liability if such reports turn out to contain inaccuracies.

The newly created and onerous “veracity hearing” requirements set forth in HB 757 do nothing to alleviate the constitutional infirmities of HB 757 and only create additional burdens and harms. As written, Section 770.107 would violate the Seventh Amendment by denying parties a right to a jury trial on a question of fact. Further, it requires parties to prove the truth or falsity of any challenged statements in a hearing within 60 days of a plaintiff’s request, an unrealistic time frame that benefits parties with greater resources. This section exposes mom and pop bloggers and small news outlets to a potential onslaught of legal fees for defamation accusations that do not pass constitutional muster, due to the First Amendment deficiencies inherent in HB 757. These requirements could also flood the courts with hearings to substantiate any number of new defamation lawsuits that would be encouraged under HB 757 and similarly stained with these constitutional impediments, saddling Floridians with debilitating upfront litigation costs.

The effects on freedom of speech would be devastating. Small stations and outlets may need to change their formats, and many others may need to close due to additional costs. This could deal a fatal financial blow to talk radio, sports and religious programming, artists and comedians, and independent bloggers and social media users, all of whom are especially vulnerable if they have relatively modest resources.

HB 757 allows defamation or privacy tort lawsuits to be brought in any county in the state if the statement giving rise to the lawsuit was put on the Internet. This means Floridians may be forced to defend themselves against frivolous lawsuits on the opposite end of the state. The provision also enables forum shopping, in which plaintiffs bring lawsuits in courthouses they believe will grant them favorable rulings. Coupled with the proposed veracity hearing, this will impede equal and fair access to the courts and the right to a jury trial and will chill speech as Floridians seek to avoid such litigation risks.

Current Florida law allows defamation defendants to reasonably limit their liability if they quickly take affirmative steps such as issuing a retraction. But HB 757 would require publishers to somehow remove their articles from the entire Internet in order to receive this protection. This is not only vague and unclear, but often an impossible threshold to meet.

Further, the proposed language amending Section 770.04(2) provides that any appearance of the false statement online restarts the statute of limitations unless the owner takes “reasonable steps to permanently remove the statement and any related report from the Internet.” The vagueness of “reasonable steps” and “any related report” could mean that an appearance on a third party site, a screenshot, or a quote posted by an unrelated party restarts that statute of limitations, meaning lawsuits may potentially be filed decades after an original statement or report is published. This will encourage publishers to remove or decline to publish content that may not be defamatory, in the interest of protecting themselves from potential liability in the future.

The same provision also eliminates the fair reporting privilege for the publishers who have not taken such undefined “reasonable steps,” meaning they could face liability for reporting on information received from government officials and the contents of official documents even if the publisher’s accounts of the information were fair and accurate. This will deter reporting on public officials and actions, leaving Floridians in the dark on the actions of their government.

These harms will likely increase news and data deserts, which arise in communities with limited access to comprehensive or credible information resources, impeding the democratic process and limiting access to and dissemination of public information. This bill will likely exacerbate these challenges, with news and data deserts especially prevalent in remote communities or those of limited economic means. Rather than ameliorate these challenges, the bill stands to make places with a deficit of news outlets worse, jeopardizing the availability of local reporting precisely among those in vulnerable conditions or areas without significant resources or infrastructure.

The House should be well aware of the constitutional deficiencies inherent in HB 757 due to its blatant contravention of the principles laid out in *Sullivan*. Floridians deserve better—they deserve a legislature that protects their constitutional rights and shields the state from the inevitable harm inflicted from plainly unconstitutional bills.

This nonpartisan collective agrees that the flaws in HB 757 are unconstitutional and incurable. If passed into law, this bill will stand to permanently damage the freedom of speech and freedom of the press in Florida, and will unjustly punish countless local news organizations, chilling important speech. We urge the Florida House of Representatives Judiciary Committee to reject HB 757.

Sincerely,

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Katie Blankenship
Director, PEN America Florida

Bobby Block
Executive Director, First Amendment Foundation

Amy Keith
Executive Director, Common Cause Florida

Kara Gross
Legislative Director, ACLU of Florida

Cc: Florida House of Representatives Speaker Paul Renner, members of the Florida House of Representatives, members of the House Judiciary Committee