



The Freedom to Write

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January 22, 2024

Honorable Paul Renner
Speaker, The Florida House of Representatives
420 Capitol
Tallahassee, Florida 32399

Re: PEN America’s opposition to HB 757: Defamation, False Light, and Unauthorized Publication of Name or Likenesses

Dear Speaker Renner:

As Director of the PEN America Florida office, I write to express PEN America’s concern and opposition to HB 757: Defamation, False Light, and Unauthorized Publication of Name or Likenesses (HB757). PEN America is a nonpartisan, nonprofit organization which stands at the intersection of literature and human rights to support free expression in the United States and worldwide. As currently proposed, HB757 will undermine core First Amendment protections and endanger the free press.

A healthy democracy is upheld by the pillars of free speech and freedom of the press. HB757 undermines these core liberties by significantly lowering the bar for public officials to bring lawsuits against their critics. Most troubling, HB757 holds that “if a public figure plaintiff can establish that a published statement is false and that the publisher relied on an anonymous source for the statement, there is a rebuttable presumption that the publisher acted with actual malice in publishing the statement.” Enshrining such a presumption threatens the protections historically afforded journalists to report freely on vital public policy issues; it will weaken the laws that shield journalists from lawsuits that protect free speech and expression.

HB757 risks chilling constitutionally-protected speech that is critical of the government or other public figures, contrary to principles long upheld by the United States Supreme Court. Our democracy relies on our “profound national commitment to the principle 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.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

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The implications of HB757 also run afoul of established federal law protecting fundamental First Amendment rights. *Sullivan* has been the established law protecting the free press from potentially crushing civil liability for the exercise of constitutionally protected speech since 1964. The Court made no bones about the limits of libel actions by government or public officials, rejecting outright that either injury to reputation or factual error were grounds to allow intrusion on the First Amendment — “If neither factual error nor defamatory content suffices to remove the constitutional shield from criticism of official conduct, the combination of the two elements is no less inadequate.” *Sullivan*, 376 U.S. at 273.

The flaws in HB757 are incurable. The bill opens avenues of tort liability strictly prohibited by the Supreme Court. Even if HB757 did not run afoul of *Sullivan*, the harm it would cause to the free press would be a devastating blow to the values of the First Amendment. We urge the Florida legislature to reject HB757.

Sincerely,

A handwritten signature in black ink that reads "Katie Blankenship". The signature is written in a cursive style with a large, looping flourish at the end.

Katie Blankenship
Director, PEN America Florida

Cc: Members of the Florida House of Representatives