



The Freedom to Write

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February 4, 2024

Honorable Kathleen Passidomo  
President, Florida Senate  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

**Re: PEN America’s opposition to SB 1780: Defamation, False Light, and Unauthorized Publication of Name or Likenesses**

Dear President Passadimo:

As Director of the PEN America Florida office, I write to express PEN America’s concern and opposition to SB 1780: Defamation, False Light, and Unauthorized Publication of Name or Likenesses (SB1780). 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.

SB1780 is a blatant attempt to undermine protections for journalists and intimidate anonymous sources. In a healthy democracy, such protections are necessary for a free press to function: including protections from civil liability for the exercise of constitutionally protected speech. These protections have long been enshrined in law. *See New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). In *Sullivan*, 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.

SB1780 attempts to gut those protections and chill the work of journalists in numerous ways.

**First**, it would decimate the journalist’s privilege -- enshrined in Florida statute 90.5015 -- which allows journalists to protect the anonymity of sources. As drafted, SB1780 holds that this privilege does not apply to a “professional journalist or media entity.” The bill only gets worse from there, amending Section 77.012 to specify that a “statement by an anonymous source is presumptively false for purposes of a defamation

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action.” Enshrining such a presumption threatens the protections historically afforded journalists to report freely on vital public policy issues, weakening laws that shield journalists from lawsuits. Worse still, the bill also creates a dangerous presumption of “actual malice” in cases where a news publication was based on an anonymous source, presenting a stark danger to Florida’s journalists and their sources.

**Second**, SB1780 classifies any allegation that a public figure or government official has “discriminated against another person or group because of their race, sex, sexual orientation, or gender identity” as defamation per se, and that a plaintiff accused of such discrimination may be “entitled to statutory damages of at least \$35,000.” Targeting specific content of public speech, SB1780 thus risks chilling constitutionally protected speech that is critical of the government or other public figures for potentially discriminatory actions. This is contrary to principles long upheld by the United States Supreme Court. *See W. Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (“If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein”).

**Third**, SB1780 aims to further chill reporting by eliminating a prevailing defendant’s ability to recover attorneys’ fees and costs in a defamation case while ensuring that a prevailing plaintiff remains entitled to monetary recovery. Exposing journalists to the specter of crushing civil penalties while providing them with no means to recover their own costs threatens to effectively silence reporting on matters of vital public concern.

Based on these deficiencies, and the vagueness and overbreadth of the bill, SB1780 will undermine core First Amendment protections and upend long standing protections for press freedom in the United States -- a hallmark of our democracy. Indeed, American 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).

The flaws in SB1780 are incurable. The bill opens avenues of tort liability strictly prohibited by the United States Supreme Court. Even if SB1780 did not run afoul of *Sullivan*, the harm it would cause to journalists and the free

press would be a devastating blow to the values and protections of the First Amendment.

We urge the Florida Senate to reject SB1780.

Sincerely,

A handwritten signature in black ink, appearing to read "Katie Blankenship". The signature is fluid and cursive, with a large loop at the end of the last name.

Katie Blankenship  
Director, PEN America Florida

Cc: Members of the Florida Senate