

CORY MILLS
7TH DISTRICT, FLORIDA

WASHINGTON OFFICE
1237 LONGWORTH HOB
WASHINGTON, DC 20515
(202) 225-4035

LAKE MARY DISTRICT OFFICE
1525 INTERNATIONAL PKWY
#1051
LAKE MARY, FL 32746
(407) 638-7900

PORT ORANGE DISTRICT OFFICE
1000 CITY CENTER CIRCLE
PORT ORANGE, FL 32129
(386) 238-9711



COMMITTEE ON ARMED SERVICES

COMMITTEE ON FOREIGN AFFAIRS

Congress of the United States
House of Representatives
Washington, DC 20515

March 23, 2023

The Honorable Kathleen Passidomo
President of the Senate
Florida Senate
409, The Capitol
404 South Monroe Street
Tallahassee, FL 32399

The Honorable Paul Renner
Speaker of the House
Florida House of Representatives
420, The Capitol
402 South Monroe Street
Tallahassee, FL 32399

Dear Florida Senate President Passidoma and Florida House Speaker Renner,

I write to you to express my concern of a recent bill that was introduced, in both chambers in the Florida legislature, S.B. 1220 and H.B. 991, respectively. Among other issues, these bills would (1) target speech based on its content, which is presumptively unconstitutional under existing Supreme Court precedent; (2) tilt the playing field in favor of plaintiffs in certain defamation actions by setting the burden of proof below the standard set by the Supreme Court of the United States; (3) redefine "public official" in an unconstitutional manner; (4) functionally eliminate the use of anonymous sources, even in cases involving corporate and government whistleblowers and illegal and egregious conduct by powerful individuals; and (5) create a bonanza for plaintiffs lawyers.

The Supreme Court has acknowledged "a 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."¹ The Court acknowledged this fact because our constitutional Republic requires an informed citizenry in order to function properly.

While I believe the motivations and concerns that have led to the introduction of these bills are genuine and made in good faith, I am gravely concerned that they violate the free speech rights that are enshrined in the First Amendment of the United States Constitution.

Instituting content-based restrictions: Certain aspects of the bills appear to target speech based on its content. However, the Supreme Court has made it clear that content-based restrictions on

¹ *New York Times Co. v. Sullivan*, 376 US 254 (1964).

speech (including those of the sort included in these bills) are subject to strict scrutiny and therefore presumptively unconstitutional. Strict scrutiny is the highest standard of judicial review and would require that the state of Florida prove that the law serves a compelling governmental interest and is narrowly tailored to advance that interest.² I am not convinced that Florida has a compelling government interest that would allow it to infringe on the First Amendment rights of citizens with a content-based restriction of the sort proposed in these bills.

Curtailing speech about public figures and government officials: Other aspects of these bills are similarly unconstitutional. The Supreme Court made clear in *New York Times Co. v. Sullivan*, that statements regarding public officials have a heightened constitutional protection and must be made with “actual malice—that is, with knowledge that it was false or with reckless disregard of whether it was false or not.”³ The Supreme Court has held the actual-malice standard is a fundamental protection provided by the First Amendment to all defendants who are accused of defaming public figures and government officials. However, the bills now before the Florida legislature would drastically restrict the protections provided by this standard.

Redefining “public official”: This bill also attempts to change the definition of “public official”. The current bills before both the Senate and House carves out entire groups of people from the definition of a public figure who can be the subject of that uninhibited, robust, and wide-open” debate that is the foundation of our Republic. This is unconstitutional. The Supreme Court has held that states may not define who is considered “public officials” because “the constitutional limits of free expression in the Nation [cannot] vary.”⁴

Eliminating anonymous sources: HB 991 creates a presumption that a statement by an anonymous source is false in a defamation case. While I understand the motivation to create this presumption given the myriad examples of abuse by legacy media outlets, the legitimate instances were relying on anonymous sources counsels caution. For example, journalists routinely rely on granting sources anonymity in cases involving corporate and government whistleblowers, national security and law enforcement abuses, or egregious and illegal misconduct by powerful individuals.

Creating a plaintiff lawyer bonanza: The bills would also establish unfairness in Florida’s courthouses that will lead trial lawyers to rush to our state. The bills create specific presumptions and inferences in favor of plaintiffs that will tie the hands of citizens and others who attempt to defend against spurious defamation claims. The result will be an opening of the floodgates to frivolous litigation.

In conclusion, I agree that some media companies and journalists have abused their constitutional protections or allowed their journalists to further their own personal or political agendas. However, these bills do not affect just those outlets. If passed, they will stifle all media voices – whether liberal, conservative, or neutral – that your constituents have come to trust and rely on, as well as any individual who chooses to exercise their rights to freedom of speech. I

² *Unites States v. Playboy Entm’t Grp.*, 529 U.S. 803, 813 (2000).

³ *New York Times Co. v. Sullivan*, 376 US 254 (1964).

⁴ *Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966).

support your desire to see a return to integrity and truthfulness among all journalists, but efforts to achieve that goal should not be pursued at the expense of all citizens' First Amendment rights.

One of the many reasons I am so proud to be a Floridian is that our great state has led in preserving our Constitutional rights and not allowing the federal government to overreach. However, this bill is encouraging the state to violate its citizens' fundamental rights as Americans and is not only unpatriotic, but it is not representative of the free state of Florida. While I agree in principle of the intent of this bill, I urge you to reassess the proposed language before it is further considered.

Honorably,



CC: Florida Senate Members
Florida House of Representatives