

CONSERVATIVE NEWS MEDIA AND HB991:
A real and present danger of increased risks and costs

The proposed defamation bills making their way through the Florida legislature would – should they become law – radically transform the media landscape in the Sunshine State, devastating all sectors of the industry, including print and broadcast, as well as traditional and new media.

But no segment is more vulnerable to the depredations of these bills, especially HB991, than the conservative media. Without doubt, conservative news outlets are likely to see greater legal and insurance costs and a higher preponderance of punitive lawsuits than liberal or mainstream outlets.

The reason for this increased risk is that much of conservative programming centers on commentary and opinion. While this kind of broadcasting is essential to the health of American public debate, talk radio commentary is often the most contentious of all news programs, as the personalities at the center of these shows take on local, regional and national issues in purposefully provocative and colorful ways.

While commentary is usually (but not always) free of the anonymous sourcing that risks landing mainstream and liberal media reports in the cross hairs of a new wave of libel lawsuits, false factual assertions in conservative commentary are not protected speech. Conservative media would be especially susceptible to defamation cases relying on false light tort provisions, which are among the most difficult to defend against. Under this provision of HB991, even if conservative commentary or reports were true, conservative coverage is vulnerable to allegations of being intentionally designed to be negative and hurtful.

By and large, the subjects of conservative media wrath tend to be well financed and highly protective of their reputations, including pharmaceutical company executives, tech billionaires and Hollywood celebrities. These individuals have both the means and the motivation to sue conservative media but until now have been constrained by the actual malice and protected speech standards that the Florida legislation would end. Once that happens, it is no longer safe to assume that these figures would sit back and let attacks by conservative commentators to go unanswered.

Another reality is that the impacts of this proposed legislation would be felt across the industry even before the first lawsuits are filed. Already, at least one major insurance company offering libel insurance, also known as publisher's insurance, has pulled out of the state, and several others are said to be preparing to follow suit. This has resulted in two news outlets whose policies recently lapsed having to pay premiums that were as much as three times more expensive than last year. And this is even before the bills have passed. Conservative media will not be immune to the sting of higher premiums.

In addition to escalating insurance costs, extra legal expenses to vet programming and reports are going to be another source of downward pressure on revenues. While this will impact all media, it could have a greater impact on conservative outlets because of the nature of the programming. Changing programming in response to the new law would also dramatically impact a conservative news outlet's bottom line and could risk audience depletion with devastating effect.

It is also important to note that syndicated programs produced out of state but played locally, would also be subject to lawsuits in Florida and would drag the local outlets that carried them into court as well.

In short, while no media sector is immune to reach of this proposed blunt force legislation, conservative media will almost certainly find itself under fire from this law more than others.

For those who doubt this, please consider how often conservatives and conservative media has used the actual malice standard to defend against lawsuits in recent years. Here are but a few examples:

- *U.S. Dominion, Inc. v. Fox News Network*, Delaware Superior Court (pending): Fox is [relying](#) on a defense that Dominion Voting has not shown "actual malice" -- the key test established by *Sullivan* -- in Fox's false reporting that Dominion Voting had rigged machines in the 2020 election.
- *Schatz v. Republican State Leadership Committee*, U.S. Court of Appeals for the First Circuit (2012): State Republican Party in Maine, relying on actual malice defense, [defeated](#) a defamation lawsuit by a failed Democrat Senate candidate.
- *Blankenship v. Fox News Network*, U.S. District Court for the Southern District of West Virginia (2022): Fox News [defeated](#) a defamation lawsuit where it reported that the coal executive plaintiff was a felon, when in fact he was convicted only of a misdemeanor. The court found the plaintiff failed to demonstrate evidence of "actual malice."
- *McDougal v. Fox News Network*, U.S. District Court for the Southern District of New York (2020): Fox News [defeated](#) a defamation lawsuit brought by a woman who allegedly had an affair with Donald Trump after Tucker Carlson said she had "extorted" money from Trump. The court found she had not established a plausible claim for actual malice.
- *Cabello-Rondon v. Wall Street Journal*, U.S. District Court for the Southern District of New York (2017): *Wall Street Journal* [defeated](#) a Venezuelan official's defamation lawsuit over reporting – which was based on

anonymous U.S. government sources -- on cocaine trafficking. The court found no evidence of actual malice.

- *Suson v. NYP Holdings*, Civil Court of the City of New York (2008): *New York Post* [defeated](#) a defamation claim brought by a photographer who had opened a 9/11 Ground Zero Museum against an article – which was based in part on anonymous NYC Fire Department officials – questioning whether the plaintiff had legitimately obtained artifacts for the museum. Again, the court found no actual malice.

- *Kipper v. NY Post*, New York Court of Appeals (2009): Relying on actual malice, the *New York Post* [won](#) a defamation suit arising from an article that inaccurately reported that the plaintiff's medical license had been revoked.

- *Vindman v. Trump*, U.S. District Court for the District of Columbia (2022): Donald Trump, Jr., Rudy Giuliani, and Dan Scavino [defeated](#) a defamation claim brought by Trump impeachment whistleblower Lt. Col. Alexander Vindman over defendants' tweets. The court ruled that “[a]s a limited-purpose public figure . . . , Vindman was a man in the arena. Defendants may have played ugly, but Vindman does not plead facts suggesting that they acted with actual malice.”

In conclusion, conservative media must be allowed to report and freely express their views – and freely criticize public officials and figures – without fear of reprisals. HB991 if passed into law would dramatically erode that freedom, incentivize lawsuits and cause costs to skyrocket, undermining revenues and predictability for conservative news outlets. The end result would be a chilling effect on the expression of conservative views and the participation of conservatives in the marketplace of ideas.