

# FORT MYERS FLORIDA WEEKLY®

IN THE KNOW. IN THE NOW.

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INSIDE



## LEGISLATIVE MUZZLE

*House bill would have a chilling effect on free speech, constitutional experts warn.*

BY ROGER WILLIAMS  
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**F**LORIDA REPUBLICAN LEGISLATORS NOW less than three weeks into the rulemaking eight-week 2023 legislative session in Tallahassee are preparing to break faith with almost 60 years of American jurisprudence established by the Supreme Court in 1964 to protect free speech.

Following a public discussion criticizing media and a call to legislators to rein in its excesses by

SEE SPEECH, A14 ►

“There will be no protection for people like that, no protection for anybody who wants to get involved in their community or voice their opinion.”

— Barbara Petersen, First Amendment lawyer

INSIDE | Florida Legislative Delegations A14 ►

### A&E

New York Times bestselling author BA Shapiro on “Metropolis.” B1 ►

### Networking

Sam Galloway Jr. & Friends Soup Kitchen Benefit. A30 ►

### Around Town

Bobby Nichols - Fiddlesticks Charity Foundation raises \$1 million. A24 ►

## Southwest Florida Model UN offers real opportunities

BY LAURA TICHY  
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The 30th annual Southwest Florida Model United Nations Conference (SWFLMUN) that took place on March 6 and 7 included an unusual group of guest speakers: Ukrainian youth talking about their lives to local high school students via Zoom. Bonita Springs resident Kathleen Hessert hosted the session for youths enrolled in the KidsKonnnectUkraine virtual pen pal program she

founded. (Florida Weekly is identifying the Ukrainian children by first name only for security reasons.) The conference took place at Florida Gulf Coast University and was sponsored by the Naples Council on World Affairs.

SEE MODEL UN, A12 ►

LAURA TICHY / FLORIDA WEEKLY  
At the Southwest Florida Model UN Conference, a student delegate presents a position to his committee.



### Real Estate

Downtown Fort Myers boutique condo project underway. A31 ►

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LAURA TICHY / FLORIDA WEEKLY

Nathan Rubin of Gulf Coast High School in Naples received feedback from model UN judge Pat Jackson as other student delegates confer with other judges and moderators.

## MODEL UN

From page 1

During the session, youth from both countries learned they were more alike than not, with Ukrainian kids saying that they enjoyed playing video games, cooking snacks and playing with their pets. They said they were doing their best to continue their schooling and to stay connected with friends and families despite the hardships they faced.

Savanna Varon, from Baron Collier High School in Naples, asked the Ukrainians, "How has the war affected your mental health, and is there anything that other countries could do to help?"

Ms. Hessert added that U.S. experts express concern about social media negatively impacting youth mental health.

"I personally think that social media is good for peoples that can't go anywhere," Ctac replied. "Especially when it is war, and all your friends is moved to another country, you can at least speak and play video games with them. My best friend moved to USA, and it really helps me because I don't know what would I do without it."

"In times like this, social media is a must-have for all kinds of people because, in different situations, you need to use it," Arten added. "One day alarm sirens starts, and you can ask friends if they are OK, or connect with friends that are not in this country, so I think this is must-have for all people in Ukraine. It helps mental health. I don't think it applies on children's mental health."

The opportunity to speak with the Ukrainians was only one educational opportunity the conference provided. Like typical model UNs, the 200 students from 15 regional high schools

were issued countries to represent, which they researched -- with the help of their schools' coaches -- as they prepared to serve as delegates. The research is critical because the students must speak realistically from the viewpoint of their assigned countries, not from their personal beliefs and values. However, this model UN differs from others in significant ways.

"A number of things make our competition unique, but one is that these are not make-believe, hypothetical or artificial subjects," said Alan Van Egmond, the Naples Council on World Affairs board member who chairs the SWFLMUN as one of the council's core activities. "These are real-world topics that are actively being debated in various UN forums as we speak."

Another unique aspect of SWFLMUN is that adult judges observe the proceedings and provide the students with feedback at the end, rather than the event being judged by peers. Because of Southwest Florida's appeal to retirees, these judges have professional experience from careers in law, diplomacy and international organizations such as the World Bank or non-governmental nonprofits.

"The coaches tell us that makes a difference, and the kids step up their game, knowing that the judges are experienced, worldly people with significant backgrounds," said Mo Winograd, vice-chair of SWFLMUN. "The kids know there are heavy hitters around, but they don't know until they're introduced at the end who they actually got."

The adult judges are critical because of another unusual aspect of the SWFLMUN competition: The council awards over \$40,000 in scholarships and financial awards to the winning delegates and teams.

"Instead of just thinking about sports, this is something kids can do in school

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that can be quite impactful in their later life,” Ms. Winograd said. “And it’s nice for a kid to be able to say to mom and dad, ‘Look what I just brought home for college.’”

Noah Thorne, from Gulf Coast High School in Naples, drew the task of representing the Russian Federation in a committee focused upon addressing ongoing global food insecurity while considering how the crisis is exacerbated both by the war in Ukraine and climate change. Students from other schools represented other countries, to include a student who represented Ukraine’s viewpoint. The students had to diplomatically voice disagreements while still working together towards the committee’s assigned goal to draft a solution to the problem.

“When my school got the countries of Russia, Panama and Kuwait, we decided we’d give our most experienced delegates Russia to give the challenge to the ones who could handle it,” Mr. Thorne said. “At first, we weren’t happy about it, and we’re all going, ‘Why do we have to deal with Russia?’ But as we researched, we became more confident with it.”

He said his school’s model UN team had represented Russia at other conferences, so they had background experience. To prepare, they researched Russian policies and law. They also used the United Nations library to look up past resolutions Russia had sponsored.

“At model UNs, everyone thinks they’re going to solve all the world’s issues, but it’s less about solving the prob-

lems and more about staying true to policy,” Mr. Thorne said. “One of the biggest things we thought about was to focus on things that Russia has actually done, and we modeled our resolutions based on Russia’s. Solve world hunger with centralized funding? That’s nothing Russia would say. Undo trade barriers that are affecting Russia right now? I’m surprised (delegates on the committee) let me pass that one, personally. It was a very Russian thing, but no one questioned it. I think model UN is



LAURA TICHY / FLORIDA WEEKLY

**Model UN judges Pat Jackson, Elaine Crosson and Mary Udell introduce themselves and take questions at the end of the two-day conference.**

unique in terms of getting into the head-space of a country that is not yours and doesn’t align with your personal beliefs.” ■

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## SPEECH

From page 1

Gov. Ron DeSantis last month, the legislators took steps to do that, introducing a bill that would allow politicians and other government officials or public figures to sue any critics they claim defamed them — without having to prove actual malice if the critics point to behaviors or events arguably unrelated to the job: extra-marital affairs, for example, or possible business deals.

In another striking break with precedence, the bill says anybody who accuses an official of discrimination “against another person or group because of their race, sex, sexual orientation, or gender identity” has automatically defamed them, whether or not the allegation is true.

Not only that, but the bill would allow elected leaders and officials to claim “religious expression or belief,” or “scientific beliefs” — the phrase itself may be an oxymoron — and thus sue anyone who challenges publically their comments or actions aimed at lesbians, gays, bisexuals, transgender or queer people, or religious groups such as Jews or Muslims, for example. Such actions described as part of a leader’s religious expression or belief, or scientific belief, “cannot be considered evidence of discrimination” in the proposed bill.

In addition, anonymous sources including background sources speaking off the record for news reports — of the kind that exposed the Nixon Watergate scandal in 1973 or first exposed former President Clinton’s affair with a White House intern in 1998 or played a role in reporting former President Trump’s extra-marital liaisons in more recent years, for example — would be presumed false in any lawsuit.

The losing side, defendants who criticized officials and got the thumbs down from the courts, would have to pay attorney fees and costs. That’s an English court-system tradition, not an American tradition. Here, each side pays its own

costs, a condition much less likely to inhibit those without deep pockets from speaking their minds in public.

Florida would be the first state in the nation to take such an action if legislators pass House Bill 991.

Sponsored by Rep. Alex Andrade, R-2, and co-sponsored by Rep. Mike Beltran, R-70, the bill advanced through a civil justice subcommittee into the justice committee of the House last week. That’s part of the process that brings a bill forward to a vote, if committee members approve, in the full House of 120 legislators before the session wraps up on May 5. Bills passed in a full vote by the Legislature must then either be signed into law or vetoed by the governor. The new law would take effect July 1.

A similar bill, SB 1220, had not been

heard as of last week by any committee in the 40-member Senate.

Neither Representatives Andrade, a graduate of the University of Florida School of Law, or Beltran, a Harvard Law School graduate like the governor, returned Florida Weekly requests for comment by press time.

Gov. DeSantis, speaking last month, called for legislators to “protect” citizens from so-called false narratives created by media outlets.

“When the media attacks me, I have a platform to fight back,” he said. “When they attack everyday citizens, these individuals don’t have the adequate recourses to fight back. It would contribute to an increase in ethics in the media and everything if they knew that if you smeared somebody — (if) it’s false and you didn’t

do your homework — then you have to be held accountable for that.”

Federal law, based on the 1964 case *Sullivan vs. The New York Times*, already provides recourse for public figures defamed by media who can demonstrate the presence of malice — an intentional lie. But it protects mistakes by media, made without malice. That’s what happened in the famous Supreme Court case, based not on a news story but an advertisement.

A group of civil rights leaders criticizing the treatment of protestors by police in Montgomery, Alabama in 1960 took out a full-page advertisement in *The New York Times*. The ad appeared in print with some minor errors. The Public Safety Commissioner in Montgomery, L.B. Sullivan, felt he’d been defamed and sued

### In the **KNOW**

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the paper, even though he wasn't named in the ad. The case went to the Supreme Court, which decided by a vote of 9 to 0 that such errors, absent of malice, were protected speech.

In other words, Americans criticizing public figures or agencies have a right to be wrong if their mistakes are not malicious, a view that free-speech apologists and critics of HB991 say protects Americans from all walks of life and political viewpoints — not just professional journalists on the left or right. It encourages citizens to speak freely and to express opinions in good faith, whether or not unpopular, without fear of reprisals that could break them personally or financially.

**Current situation**

Currently, for example, Fox News is relying on Sullivan vs. The New York Times to defend itself in a \$1.6 billion defamation lawsuit filed by Dominion Voting Systems, Inc. Fox continued to broadcast claims the 2020 presidential election was stolen after broadcasters and managers knew those claims to be false, Dominion alleges, pointing to emails or texts from host Tucker Carlson and other Fox employees.

Knowingly and therefore maliciously, Fox broadcast false claims that the company's voting machines contributed to Trump's 2020 loss, according to Dominion.

Whether that is the case remains to be decided. But under traditional American law, if the Fox broadcasts were not malicious, even if they were wrong, the company cannot be punished for defamation.

The executive vice president for corporate communications for Fox News, Irena Briganti, did not return a Florida Weekly request for a comment on HB991, which is now a national news story.

A multitude of observers, meanwhile, have expressed both incredulity and alarm at HB991.

"Anybody who comes within arm's length of this bill can recognize that it's an assault on democracy and free speech," said Linda Penniman, a former Naples city councilwoman and now president of the board of trustees at the Florida Center for Government Accountability.

"Because Florida has such a broad open records law this is particularly villainous for Floridians — to have our freedoms infringed upon this way. Of all the states, the Sunshine State should not be infringing on free speech," she added.

"The sponsors of this bill (Andrade and Beltron) must have missed the lecture in their law schools on constitutional law and the First Amendment," said Peter Bergerson, a professor of public affairs at Florida Gulf Coast University. Early in his teaching career, Professor Bergerson had the late radio talk-show host Rush Limbaugh, then a young college student, in a government class he taught. Mr. Limbaugh made a highly successful career as a rightist political pundit, Professor Bergerson suggested, in part because of protections afforded to Americans by Sullivan vs. The New York Times.

"I'm not an attorney, but I subscribe to opinions widely held by constitutional scholars and lawyers that this bill would violate the U.S. Constitution," he added. One of those, Carol Locicero, a principal of the Tampa-based First Amendment law firm Thomas & Locicero, traveled to Tallahassee to attend the meeting of the subcommittee on civil justice in the capitol last week, and offer some guidance.

"What I said at the hearing was this:



BERGERSON

Most of 991 is unconstitutional. It violates our Florida Constitution as well. There are many aspects of this bill that are plain rotten public policy.

"No state legislature can enact laws that violate the First Amendment. Here, we're not just speculating about issues under the Bill of Rights. Here we have multiple bodies of case law well-tested out over decades, and this violates a lot of those cases."

Additionally, she pointed out, malice is not the only constitutional problem with the bill.

"There's a presumption in the bill that says, if you used an anonymous source that's presumptively false.

"Frist of all, anonymous sources often provide incredible critical information that prompts societal change, and gets at abuses of power — in all kinds of things. To say that's presumptively false is just not good for society."

And not just in politics, she insisted.

"There are all levels of anonymous sourcing, such as people who are regular sources who give reporters information on background, information that's important just to understanding how agencies work.

"And think of all the 'Me Too' cases and people who kept their mouths shut publicly because they were afraid of powerful men like Harvey Weinstein and Matt Lauer and Charlie Rose. Anonymous sourcing is important."

**First Amendment implications**

Barbara Petersen, a longtime First Amendment lawyer in Florida and now executive director of The Florida Center for Government Accountability, warned that "this bill will have a huge impact on everyday people who are just posting to their Facebook page or Twitter feed. It will have a huge impact on organizations and FOX news kind of people who make assertions and add opinions to their reporting quite regularly. It will get everybody. It's not about big media."

One of the most troubling aspects of HB991 in her mind is the prescription to force a defendant who gets sued by a public figure under a new law, and loses, to pay potentially huge and prohibitive attorney fees and court costs.

"They're flipping things, it's like who pays in a SLAPP lawsuit," she said. SLAPP is an acronym for strategic lawsuit against public participation, an effort to intimidate or silence critics who can't shoulder the costs of their own legal defense and have to drop their criticisms or censor themselves into silence.

"One of the first articles we ever published was about a woman in the Florida Panhandle being sued for defamation by a developer because of a Facebook post," Ms. Petersen said.

"Rather than becoming a rarity, that will become common with this law. The developer had been known for building in flood zones, and somebody posted they'd bought a house from this developer. The woman's Facebook reply was as innocuous as, 'Oh, hope you have good flood insurance.'

"There will be no protection for people like that, no protection for anybody who wants to get involved in their community or voice their opinion."

Passage of the proposed HB991, she predicted, would result in Florida becoming a destination state not just for the tourists but for the litigious.

At the Florida First Amendment Foundation, executive director Bobby Block, himself a Republican, he noted, worried that some people likely to be lit up by the high beams of this legislation haven't gotten the message.

"Conservatives in the media sector are very worried by this bill — they see it as a blunt instrument that will impact

them as much as anybody else, or more," he said.

"But, they're between a rock and hard place.

On the one hand, they're afraid of this bill if it becomes law. But on the other hand, don't want to get crosswise with Gov. DeSantis. So they're gently trying to send signals that they're concerned, but trying to do it in a soft way."

That gives rise to his biggest concern.

"Most worrying to me: All the news coverage isn't really reaching conservative audiences. And so, in many ways, if this does force changes in programming and other things by media outlets, there will be a lot of very upset voters amongst the base in Florida because of how this could impact their viewing and listening habits."

On his report card, therefore, the bill fails.

"The full bill is horrendous, a blunt instrument, largely unconstitutional. It would have a terrible impact on every media sector: traditional media, liberal media, mainstream and conservative media and social media.

"Anybody who picks up a pen or a microphone or sits at a keyboard, would have to be extraordinarily careful with what they write, print or post."

Dick Batchelor, a former state legislator and now president of Dick Batchelor Management Group Inc. based in Orlando, consultants in business development, government affairs and public policy, also is a Marine Corps veteran of Vietnam and the bloody Tet offensive of 1968. He traveled to Tallahassee to deliver his opinion about the bill to legislators, in part because he takes it personally, he said.



BATCHELOR

"Gov. DeSantis likes the quote: 'Freedoms are worth fighting for.' Well, that's right, they are. And this bill takes away freedoms I fought for — and a lot of other people around Florida did, too.

"To me 991 has more than a chilling effect on people's right to say things — to be quoted or to blog or whatever.

"One thing I learned in the Legislature: The Legislature does not have the power to pass legislation in direct conflict with federal law, I don't care what it says. That's No. 1. No. 2, the bill stymies the public's right to speak out against officials."

HB991, together with what Mr. Batchelor and others call "the blogger bill" — that's SB 1316 sponsored by Sen. Jason Brodeur, R-10, requiring bloggers who write about the governor, lieutenant governor, attorney general and some other officials to register with the state — would create a tyranny he calls Orwellian, a reference to George Orwell's iconic look at tyranny in the novel, "1984."

"It's Orwellian to have a package of legislation that in total basically disarms the public of their constitutional rights of free speech," he said.

"They already passed this in 2014 — Putin passed it, in Russia. Anybody blogging about Putin or the government has to register." Gov. DeSantis has said he doesn't support SB 1316.

But in America, and in the Sunshine State, Mr. Batchelor asks, "Why not give as much respect and deference to the

First Amendment as you do to the Second Amendment?"

That's not happening, though. Instead of insisting the government get its hands off American rights as it is doing in newly proposed legislation now before the legislature to take away the current requirement for gun permits, and to reduce the minimum age of gun purchases from 21 to 18, the government is putting its hands all over the First Amendment, seeking to control not guns but speech, he suggested.

As Mr. Block at the Florida First Amendment Foundation concludes, "This is not a Democratic issue, a conservative issue, a liberal issue or a Republican issue. It's a First Amendment American issue touching everybody.

"Supporters of the Second Amendment are always careful to precisely parse the words in the Second Amendment. Let's do that with the First Amendment."

One more thing, he noted:

"The Founding Fathers did not write, 'we want an accurate press, a trustworthy and hardworking press, a kind and compassionate press.' Instead, they talked about a FREE press. The right to be sometimes idiotic, but free. An open marketplace of ideas that everyone could be part of. A mix of the sublime and the ridiculous.

"We've been doing this for almost 250 years." ■

**In the KNOW**

**HB 991: Defamation, False Light, and Unauthorized Publication of Name or Likenesses**

» GENERAL BILL by (Alex) Andrade ; (CO-INTRODUCERS) (Mike) Beltran

» Defamation, False Light, and Unauthorized Publication of Name or Likenesses; Provides that journalist's privilege does not apply to defamation claims when defendant is professional journalist or media entity; revises provisions concerning venue for certain actions; provides for attorney fees & costs to prevailing plaintiffs in certain actions; specifies certain persons may not be considered public figures; provides certain allegations are defamatory per se; provides statutory damages to prevailing plaintiffs who are subject of such allegations; creates presumption that statement by anonymous source is presumptively false; provides public figure does not need to show actual malice to prevail in defamation action.

» Effective Date: 7/1/2023

**"Gov. DeSantis likes the quote: 'Freedoms are worth fighting for.' Well, that's right, they are. And this bill takes away freedoms I fought for — and a lot of other people around Florida did, too. To me 991 has more than a chilling effect on people's right to say things — to be quoted or to blog or whatever."**

— **Dick Batchelor**, former state legislator and now president of Dick Batchelor Management Group Inc.