



STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Dear Mr. Schulman:

Thank you for your letter of October 2, 2024, and the additional information that you provided on October 8th. We have carefully reviewed your inquiry and request.

We understand your client is concerned about how the State of Alabama may interpret and enforce House Bill 172, now Act 2024-349, against an individual creating comedic content. This Office reads Act 2024-349 as an extremely narrow prohibition against deceptive political content. Recognizing the breadth of the First Amendment, particularly as to political speech, the Alabama Legislature carved out a limited category of media to regulate.

Act 2024-349 does not apply unless “a reasonable viewer or listener would incorrectly believe that the depicted individual engaged in the speech or conduct depicted.” Moreover, in order for the State to bring a successful prosecution under Act 2024-349, *all* of the following factors must be proven: 1) knowledge by the person that the media falsely represents an individual; 2) distribution of the media within 90 days before an election; 3) intent by the distributing person to harm the reputation or electoral prospects of a candidate in the coming election, *and* knowledge that the distribution is reasonably likely to cause that result; 4) intent by the distributing person to change the voting patterns of electors in the coming election *by deceiving* electors into believing that the depicted individual in fact engaged in the speech or conduct depicted, *and* knowledge that the distribution is

reasonably likely to cause that result. The law further provides an exception to the prohibition, noting that a disclaimer will protect the distributing individual from criminal liability. Based on the material we have reviewed, your client's media would fall well outside of the prohibitions in Act 2024-349.

Keep in mind too, that both U.S. Supreme Court precedent and Alabama Supreme Court precedent recognize the rule of lenity, which requires "any ambiguity in a criminal statute to be construed in favor of the accused." *See Staples v. U.S.*, 511 U.S. 600, 619 (1994); *see also Ex Parte Bertram*, 884 So. 2d 889, 892 (Ala. 2003).

In closing, the Alabama Legislature carefully drafted Act 2024-349 for use against bad actors intending to interfere in Alabama's elections. The State of Alabama is committed to free expression. This Office will not permit any prosecution under this Act to proceed against an individual simply exercising his or her First Amendment rights.

Respectfully,



Steve Marshall  
Attorney General

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