

111TH CONGRESS
2D SESSION

S. 3518

To amend title 28, United States Code, to prohibit recognition and enforcement of foreign defamation judgments in United States Courts where those judgments undermine the first amendment to the Constitution of the United States, and to provide a cause of action for declaratory judgment relief against a party who has brought a successful foreign defamation action whose judgment undermines the first amendment.

IN THE SENATE OF THE UNITED STATES

JUNE 22, 2010

Mr. LEAHY (for himself, Mr. SESSIONS, Mr. SPECTER, Mr. SCHUMER, and Mr. LIEBERMAN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 28, United States Code, to prohibit recognition and enforcement of foreign defamation judgments in United States Courts where those judgments undermine the first amendment to the Constitution of the United States, and to provide a cause of action for declaratory judgment relief against a party who has brought a successful foreign defamation action whose judgment undermines the first amendment.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Securing the Protec-
3 tion of our Enduring and Established Constitutional Her-
4 itage Act” or the “SPEECH Act”.

5 **SEC. 2. FINDINGS.**

6 Congress finds the following:

7 (1) The freedom of speech and the press is en-
8 shrined in the first amendment to the Constitution,
9 and is necessary to promote the vigorous dialogue
10 necessary to shape public policy in a representative
11 democracy.

12 (2) Some persons are obstructing the free ex-
13 pression rights of United States authors and pub-
14 lishers, and in turn chilling the first amendment to
15 the Constitution of the United States interest of the
16 citizenry in receiving information on matters of im-
17 portance, by seeking out foreign jurisdictions that do
18 not provide the full extent of free-speech protections
19 to authors and publishers that are available in the
20 United States, and suing a United States author or
21 publisher in that foreign jurisdiction.

22 (3) These foreign defamation lawsuits not only
23 suppress the free speech rights of the defendants to
24 the suit, but inhibit other written speech that might
25 otherwise have been written or published but for the
26 fear of a foreign lawsuit.

1 (4) The threat of the libel laws of some foreign
 2 countries are so dramatic that the United Nations
 3 Human Rights Committee examined the issue and
 4 indicated that in some instances the law of libel has
 5 served to discourage critical media reporting on mat-
 6 ters of serious public interest, adversely affecting the
 7 ability of scholars and journalists to publish their
 8 work. The advent of the internet and the inter-
 9 national distribution of foreign media also create the
 10 danger that one country’s unduly restrictive libel law
 11 will affect freedom of expression worldwide on mat-
 12 ters of valid public interest.

13 (5) Governments and courts of foreign coun-
 14 tries scattered around the world have failed to cur-
 15 tail this practice of permitting libel lawsuits against
 16 United States persons within their courts, and for-
 17 eign libel judgments inconsistent with United States
 18 first amendment protections are increasingly com-
 19 mon.

20 **SEC. 3. RECOGNITION OF FOREIGN DEFAMATION JUDG-**
 21 **MENTS.**

22 (a) IN GENERAL.—Part VI of title 28, United States
 23 Code, is amended by adding at the end the following:

24 **“CHAPTER 181—FOREIGN JUDGMENTS**

“Sec.

“4101. Definitions.

“4102. Recognition of foreign defamation judgments.

“4103. Removal.

“4104. Declaratory judgments.

“4105. Attorney’s fees.

1 **“§ 4101. Definitions**

2 “In this chapter:

3 “(1) DEFAMATION.—The term ‘defamation’
4 means any action or other proceeding for defama-
5 tion, libel, slander, or similar claim alleging that
6 forms of speech are false, have caused damage to
7 reputation or emotional distress, have presented any
8 person in a false light, or have resulted in criticism,
9 dishonor, or condemnation of any person.

10 “(2) DOMESTIC COURT.—The term ‘domestic
11 court’ means a Federal court or a court of any
12 State.

13 “(3) FOREIGN COURT.—The term ‘foreign
14 court’ means a court, administrative body, or other
15 tribunal of a foreign country.

16 “(4) FOREIGN JUDGMENT.—The term ‘foreign
17 judgment’ means a final judgment rendered by a
18 foreign court.

19 “(5) STATE.—The term ‘State’ means each of
20 the several States, the District of Columbia, and any
21 commonwealth, territory, or possession of the United
22 States.

23 “(6) UNITED STATES PERSON.—The term
24 ‘United States person’ means—

1 “(A) a United States citizen;

2 “(B) an alien lawfully admitted for perma-
3 nent residence to the United States;

4 “(C) an alien lawfully residing in the
5 United States at the time that the speech that
6 is the subject of the foreign defamation action
7 was researched, prepared, or disseminated; or

8 “(D) a business entity incorporated in, or
9 with its primary location or place of operation
10 in, the United States.

11 **“§ 4102. Recognition of foreign defamation judgments**

12 “(a) FIRST AMENDMENT CONSIDERATIONS.—

13 “(1) IN GENERAL.—Notwithstanding any other
14 provision of Federal or State law, a domestic court
15 shall not recognize or enforce a foreign judgment for
16 defamation unless the domestic court determines
17 that—

18 “(A) the defamation law applied in the for-
19 eign court’s adjudication provided at least as
20 much protection for freedom of speech and
21 press in that case as would be provided by the
22 first amendment to the Constitution of the
23 United States and by the constitution and law
24 of the State in which the domestic court is lo-
25 cated; or

1 “(B) even if the defamation law applied in
2 the foreign court’s adjudication did not provide
3 as much protection for freedom of speech and
4 press as the first amendment to the Constitu-
5 tion of the United States and the constitution
6 and law of the State, the party opposing rec-
7 ognition or enforcement of that foreign judg-
8 ment would have been found liable for defama-
9 tion by a domestic court applying the first
10 amendment to the Constitution of the United
11 States and the constitution and law of the State
12 in which the domestic court is located.

13 “(2) BURDEN OF ESTABLISHING APPLICATION
14 OF DEFAMATION LAWS.—The party seeking recogni-
15 tion or enforcement of the foreign judgment shall
16 bear the burden of making the showings required
17 under subparagraph (A) or (B).

18 “(b) JURISDICTIONAL CONSIDERATIONS.—

19 “(1) IN GENERAL.—Notwithstanding any other
20 provision of Federal or State law, a domestic court
21 shall not recognize or enforce a foreign judgment for
22 defamation unless the domestic court determines
23 that the exercise of personal jurisdiction by the for-
24 eign court comported with the due process require-

1 ments that are imposed on domestic courts by the
2 Constitution of the United States.

3 “(2) BURDEN OF ESTABLISHING EXERCISE OF
4 JURISDICTION.—The party seeking recognition or
5 enforcement of the foreign judgment shall bear the
6 burden of making the showing that the foreign
7 court’s exercise of personal jurisdiction comported
8 with the due process requirements that are imposed
9 on domestic courts by the Constitution of the United
10 States.

11 “(c) JUDGMENT AGAINST PROVIDER OF INTER-
12 ACTIVE COMPUTER SERVICE.—

13 “(1) IN GENERAL.—Notwithstanding any other
14 provision of Federal or State law, a domestic court
15 shall not recognize or enforce a foreign judgment for
16 defamation against the provider of an interactive
17 computer service, as defined in section 230 of the
18 Communications Act of 1934 (47 U.S.C. 230) unless
19 the domestic court determines that the judgment
20 would be consistent with section 230 if the informa-
21 tion that is the subject of such judgment had been
22 provided in the United States.

23 “(2) BURDEN OF ESTABLISHING CONSISTENCY
24 OF JUDGMENT.—The party seeking recognition or
25 enforcement of the foreign judgment shall bear the

1 burden of establishing that the judgment is con-
2 sistent with section 230.

3 “(d) APPEARANCES NOT A BAR.—An appearance by
4 a party in a foreign court rendering a foreign judgment
5 to which this section applies shall not deprive such party
6 of the right to oppose the recognition or enforcement of
7 the judgment under this section, or represent a waiver of
8 any jurisdictional claims.

9 “(e) RULE OF CONSTRUCTION.—Nothing in this sec-
10 tion shall be construed to—

11 “(1) effect the enforceability of any foreign
12 judgment other than a foreign judgment for defama-
13 tion; or

14 “(2) limit the applicability of section 230 of the
15 Communications Act of 1934 (47 U.S.C. 230) to
16 causes of action for defamation.

17 **“§ 4103. Removal**

18 “In addition to removal allowed under section 1441,
19 any action brought in a State domestic court to enforce
20 a foreign judgment for defamation in which—

21 “(1) any plaintiff is a citizen of a State dif-
22 ferent from any defendant;

23 “(2) any plaintiff is a foreign state or a citizen
24 or subject of a foreign state and any defendant is a
25 citizen of a State; or

1 “(3) any plaintiff is a citizen of a State and any
2 defendant is a foreign state or citizen or subject of
3 a foreign state,
4 may be removed by any defendant to the district court
5 of the United States for the district and division embrac-
6 ing the place where such action is pending without regard
7 to the amount in controversy between the parties.

8 **“§ 4104. Declaratory judgments**

9 “(a) CAUSE OF ACTION.—

10 “(1) IN GENERAL.—Any United States person
11 against whom a foreign judgment is entered on the
12 basis of the content of any writing, utterance, or
13 other speech by that person that has been published,
14 may bring an action in district court, under section
15 2201(a), for a declaration that the foreign judgment
16 is repugnant to the Constitution or laws of the
17 United States. For the purposes of this paragraph,
18 a judgment is repugnant to the Constitution or laws
19 of the United States if it would not be enforceable
20 under section 4102(a), (b), or (c).

21 “(2) BURDEN OF ESTABLISHING UNENFORCE-
22 ABILITY OF JUDGMENT.—The party bringing an ac-
23 tion under paragraph (1) shall bear the burden of
24 establishing that the foreign judgment would not be
25 enforceable under section 4102(a), (b), or (c).

1 “(b) NATIONWIDE SERVICE OF PROCESS.—Where an
2 action under this section is brought in a district court of
3 the United States, process may be served in the judicial
4 district where the case is brought or any other judicial
5 district of the United States where the defendant may be
6 found, resides, has an agent, or transacts business.

7 “§ 4105. Attorneys’ fees

8 “‘In any action brought in a domestic court to enforce
9 a foreign judgment for defamation, including any such ac-
10 tion removed from State court to Federal court, the do-
11 mestic court shall, absent exceptional circumstances, allow
12 the party opposing recognition or enforcement of the judg-
13 ment a reasonable attorney’s fee if such party prevails in
14 the action on a ground specified in section 4102(a), (b),
15 or (c).’”.

16 (b) SENSE OF CONGRESS.—It is the Sense of the
17 Congress that for the purpose of pleading a cause of action
18 for a declaratory judgment, a foreign judgment for defa-
19 mation or any similar offense as described under chapter
20 181 of title 28, United States Code, (as added by this Act)
21 shall constitute a case of actual controversy under section
22 2201(a) of title 28, United States Code.

1 (c) TECHNICAL AND CONFORMING AMENDMENT.—

2 The table of chapters for part VI of title 28, United States

3 Code, is amended by adding at the end the following:

“181. Foreign judgments 4101.”.

