

111TH CONGRESS
1ST SESSION

H. R. 1304

To create a Federal cause of action to determine whether defamation exists under United States law in cases in which defamation actions have been brought in foreign courts against United States persons on the basis of publications or speech in the United States.

IN THE HOUSE OF REPRESENTATIVES

MARCH 4, 2009

Mr. KING of New York (for himself, Ms. BERKLEY, Mr. FRANKS of Arizona, Mr. ISRAEL, Mr. COBLE, Mr. POE of Texas, Mr. WOLF, Mr. SHADEGG, Mr. WESTMORELAND, Mrs. MYRICK, and Mr. BROUN of Georgia) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To create a Federal cause of action to determine whether defamation exists under United States law in cases in which defamation actions have been brought in foreign courts against United States persons on the basis of publications or speech in the United States.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Free Speech Protection
5 Act of 2009”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) The freedom of speech and the press is en-
4 shrined in the First Amendment to the United
5 States Constitution.

6 (2) Free speech, the free exchange of informa-
7 tion, and the free expression of ideas and opinions
8 are essential to the functioning of representative de-
9 mocracy in the United States.

10 (3) The free expression and publication by jour-
11 nalists, academics, commentators, experts, and oth-
12 ers of the information they uncover and develop
13 through research and study is essential to the for-
14 mation of sound public policy and thus to the secu-
15 rity of Americans.

16 (4) The First Amendment jurisprudence of the
17 Supreme Court, articulated in such precedents as
18 *New York Times v. Sullivan*, 376 U.S. 254 (1964),
19 and its progeny, reflects the fundamental value that
20 Americans place on promoting the free exchange of
21 ideas and information, requiring in cases involving
22 public figures a demonstration of actual malice—
23 that is, that allegedly defamatory, libelous, or slan-
24 derous statements about public figures are not mere-
25 ly false but made with knowledge of that falsity or
26 with reckless disregard of their truth or falsity.

1 (5) Some persons are obstructing the free ex-
2 pression rights of Americans, and the vital interest
3 of the American people in receiving information on
4 matters of public importance, by first seeking out
5 foreign jurisdictions that do not provide the full ex-
6 tent of free-speech protection that is fundamental in
7 the United States and then suing Americans in such
8 jurisdictions in defamation actions based on speech
9 uttered or published in the United States—speech
10 that is fully protected under First Amendment juris-
11 prudence in the United States and the laws of the
12 several States and the District of Columbia.

13 (6) Some of these actions are intended not only
14 to suppress the free speech rights of journalists, aca-
15 demics, commentators, experts, and other individuals
16 but to intimidate publishers and other organizations
17 that might otherwise disseminate or support the
18 work of those individuals with the threat of prohibi-
19 tive foreign lawsuits, litigation expenses, and judg-
20 ments that provide for money damages and other
21 speech-suppressing relief. Such actions are inten-
22 tional tortious acts aimed at United States persons,
23 even though the harmful conduct may have occurred
24 extraterritorially.

1 (7) The governments and courts of some for-
2 eign countries have failed to curtail this practice,
3 permitting lawsuits filed by persons who are often
4 not citizens of those countries, under circumstances
5 where there is often little or no basis for jurisdiction
6 over the Americans against whom such suits are
7 brought.

8 (8) Some of the plaintiffs bringing such suits
9 are intentionally and strategically refraining from
10 filing their suits in the United States, even though
11 the speech at issue was published in the United
12 States, in order to avoid the Supreme Court's First
13 Amendment jurisprudence and frustrate the protec-
14 tions it affords Americans.

15 (9) The Americans against whom such suits are
16 brought must consequently endure the prohibitive
17 expense, inconvenience, and anxiety attendant to
18 being sued in foreign courts for conduct that is pro-
19 tected by the First Amendment, or decline to answer
20 such suits and risk the entry of costly default judg-
21 ments that may be executed in countries other than
22 the United States where those individuals travel or
23 own property.

24 (10) Journalists, academics, commentators, ex-
25 perts, and others subjected to such suits are suf-

1 fering concrete and profound financial and profes-
2 sional damage for engaging in conduct that is pro-
3 tected under the United States Constitution and es-
4 sential to informing the American people, their rep-
5 resentatives, and other policymakers.

6 (11) In turn, the American people are suffering
7 concrete and profound harm because they, their rep-
8 resentatives, and other government policymakers rely
9 on the free expression of information, ideas, and
10 opinions developed by responsible journalists, aca-
11 demics, commentators, experts, and others for the
12 formulation of sound public policy, including na-
13 tional security policy.

14 (12) The United States respects the sovereign
15 right of other countries to enact their own laws re-
16 garding speech, and seeks only to protect the First
17 Amendment rights of Americans in connection with
18 speech that occurs, in whole or in part, in the
19 United States.

20 **SEC. 3. FEDERAL CAUSE OF ACTION.**

21 (a) CAUSE OF ACTION.—Any United States person
22 against whom a lawsuit is brought in a foreign country
23 for defamation on the basis of the content of any writing,
24 utterance, or other speech by that person that has been
25 published, uttered, or otherwise disseminated primarily in

1 the United States may bring an action in a United States
2 district court specified in subsection (f) against any person
3 who, or entity which, brought the foreign suit if the writ-
4 ing, utterance, or other speech at issue in the foreign law-
5 suit does not constitute defamation under United States
6 law.

7 (b) JURISDICTION.—The district court shall have
8 personal jurisdiction under this section if, in light of the
9 facts alleged in the complaint, the person or entity bring-
10 ing the foreign suit described in subsection (a) served or
11 caused to be served any documents in connection with
12 such foreign lawsuit on a United States person with assets
13 in the United States against which the claimant in the
14 foreign lawsuit could execute if a judgment in the foreign
15 lawsuit were awarded.

16 (c) REMEDIES.—

17 (1) ORDER TO BAR ENFORCEMENT AND OTHER
18 INJUNCTIVE RELIEF.—If the cause of action set
19 forth in subsection (a) is established, the district
20 court shall order that any foreign judgment in the
21 foreign lawsuit in question may not be enforced in
22 the United States, including by any Federal, State,
23 or local court, and may order such other injunctive
24 relief that the court considers appropriate to protect

1 the right to free speech under the First Amendment
2 to the United States Constitution.

3 (2) DAMAGES.—In addition to the remedy
4 under paragraph (1), damages may be awarded to
5 the United States person bringing the action under
6 subsection (a), based on the following:

7 (A) The amount of the foreign judgment.

8 (B) The costs, including all legal fees, at-
9 tributable to the foreign lawsuit that have been
10 borne by the United States person.

11 (C) The harm caused to the United States
12 person due to decreased opportunities to pub-
13 lish, conduct research, or generate funding.

14 (d) TREBLE DAMAGES.—If, in an action brought
15 under subsection (a), the fact finder determines by a pre-
16 ponderance of the evidence that the person or entity bring-
17 ing the foreign lawsuit at issue intentionally engaged in
18 a scheme to suppress First Amendment rights by discour-
19 aging publishers or other media not to publish, or discour-
20 aging employers, contractors, donors, sponsors, or similar
21 financial supporters not to employ, retain, or support, the
22 research, writing, or other speech of a journalist, aca-
23 demic, commentator, expert, or other individual, the fact
24 finder may award treble damages.

1 (e) EXPEDITED DISCOVERY.—Upon the filing of an
2 action under subsection (a), the court may order expedited
3 discovery if the court determines, based on the allegations
4 in the complaint, that the speech at issue in the foreign
5 defamation action is protected by the First Amendment
6 to the United States Constitution.

7 (f) VENUE.—An action under subsection (a) may be
8 brought by a United States person only in a United States
9 district court in which the United States person is domi-
10 ciled, does business, or owns real property that could be
11 executed against in satisfaction of a judgment in the for-
12 eign defamation lawsuit giving rise to the action.

13 (g) TIMING OF ACTION; STATUTE OF LIMITA-
14 TIONS.—

15 (1) TIMING.—An action under subsection (a)
16 may be commenced after the filing of the defamation
17 lawsuit in a foreign country on which the action is
18 based.

19 (2) STATUTE OF LIMITATIONS.—For purposes
20 of section 1658(a) of title 28, United States Code,
21 the cause of action under subsection (a) accrues on
22 the date on which the defamation lawsuit in a for-
23 eign country on which the cause of action is based
24 is filed.

1 **SEC. 4. APPLICABILITY.**

2 This Act applies with respect to any foreign lawsuit
3 that is described in section 3(a) and is brought in the for-
4 eign country concerned before, on, or after the date of the
5 enactment of this Act.

6 **SEC. 5. CONSTRUCTION.**

7 Nothing in this Act limits the right of foreign liti-
8 gants who bring good faith defamation actions to prevail
9 against journalists, academics, commentators, and others
10 who have failed to adhere to standards of professionalism
11 by publishing false information maliciously or recklessly.

12 **SEC. 6. DEFINITIONS.**

13 In this Act:

14 (1) DEFAMATION.—The term “defamation”
15 means any action for defamation, libel, slander, or
16 similar claim alleging that forms of speech are false
17 or have caused damage to reputation.

18 (2) FOREIGN COUNTRY.—The term “foreign
19 country” means any country other than the United
20 States.

21 (3) FOREIGN JUDGMENT.—The term “foreign
22 judgment” means any judgment of a foreign coun-
23 try, including the court system of a foreign country,
24 that grants or denies any form of relief, including
25 injunctive relief and monetary damages, in a defa-
26 mation action.

1 (4) UNITED STATES.—The term “United
2 States” means the several States, the District of Co-
3 lumbia, and any commonwealth, territory, or posses-
4 sion of the United States.

5 (5) UNITED STATES PERSON.—The term
6 “United States person” includes a United States cit-
7 izen, an alien lawfully admitted for permanent resi-
8 dence to the United States, and a business entity
9 lawfully doing business in the United States.

○