

111TH CONGRESS
1ST SESSION

S. 449

To protect free speech.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 13, 2009

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

A BILL

To protect free speech.

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”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The freedom of speech and the press is en-
9 shrined in the first amendment to the Constitution
10 of the United States.

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

5 (3) The free expression and publication by jour-
6 nalists, academics, commentators, experts, and oth-
7 ers of the information they uncover and develop
8 through research and study is essential to the for-
9 mation of sound public policy and thus to the secu-
10 rity of the people of the United States.

11 (4) The first amendment jurisprudence of the
12 Supreme Court of the United States, articulated in
13 such precedents as *New York Times v. Sullivan* (376
14 U.S. 254 (1964)), and its progeny, reflects the fun-
15 damental value that the people of the United States
16 place on promoting the free exchange of ideas and
17 information, requiring in cases involving public fig-
18 ures a demonstration of actual malice, that is, that
19 allegedly defamatory, libelous, or slanderous state-
20 ments about public figures are not merely false but
21 made with knowledge of that falsity or with reckless
22 disregard of their truth or falsity.

23 (5) Some persons are obstructing the free ex-
24 pression rights of United States persons, and the
25 vital interest of the people of the United States in

1 receiving information on matters of public impor-
2 tance, by first seeking out foreign jurisdictions that
3 do not provide the full extent of free-speech protec-
4 tion that is fundamental in the United States and
5 then suing United States persons in such jurisdic-
6 tions in defamation actions based on speech uttered
7 or published in the United States, speech that is
8 fully protected under first amendment jurisprudence
9 in the United States and the laws of the several
10 States and the District of Columbia.

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

23 (7) The governments and courts of some for-
24 eign countries have failed to curtail this practice,
25 permitting lawsuits filed by persons who are often

1 not citizens of those countries, under circumstances
2 where there is often little or no basis for jurisdiction
3 over the United States persons against whom such
4 suits are brought.

5 (8) Some of the plaintiffs bringing such suits
6 are intentionally and strategically refraining from
7 filing their suits in the United States, even though
8 the speech at issue was published in the United
9 States, in order to avoid the Supreme Court's first
10 amendment jurisprudence and frustrate the protec-
11 tions it affords United States persons.

12 (9) The United States persons against whom
13 such suits are brought must consequently endure the
14 prohibitive expense, inconvenience, and anxiety at-
15 tendant to being sued in foreign courts for conduct
16 that is protected under the first amendment, or de-
17 cline to answer such suits and risk the entry of cost-
18 ly default judgments that may be executed in coun-
19 tries other than the United States where those indi-
20 viduals travel or own property.

21 (10) Journalists, academics, commentators, ex-
22 perts, and others subjected to such suits are suf-
23 fering concrete and profound financial and profes-
24 sional damage for engaging in conduct that is pro-
25 tected under the Constitution of the United States

1 and essential to informing the people of the United
2 States, their representatives, and other policy-
3 makers.

4 (11) In turn, the people of the United States
5 are suffering concrete and profound harm because
6 they, their representatives, and other government
7 policymakers rely on the free expression of informa-
8 tion, ideas, and opinions developed by responsible
9 journalists, academics, commentators, experts, and
10 others for the formulation of sound public policy, in-
11 cluding national security policy.

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

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

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

1 district court specified in subsection (f) against any person
 2 who, or entity which, brought the foreign lawsuit if—

3 (1) the writing, utterance, or other speech at
 4 issue in the foreign lawsuit does not constitute defa-
 5 mation under United States law; and

6 (2) the person or entity which brought the for-
 7 eign lawsuit serves or causes to be served any docu-
 8 ments in connection with such foreign lawsuit on a
 9 United States person.

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

19 (c) REMEDIES.—

20 (1) ORDER TO BAR ENFORCEMENT AND OTHER
 21 INJUNCTIVE RELIEF.—In a cause of action described
 22 in subsection (a), if the court determines that the
 23 applicable writing, utterance, or other speech at
 24 issue in the underlying foreign lawsuit does not con-
 25 stitute defamation under United States law, the

1 court shall order that any foreign judgment in the
2 foreign lawsuit in question may not be enforced in
3 the United States, including by any Federal, State,
4 or local court, and may order such other injunctive
5 relief that the court considers appropriate to protect
6 the right to free speech under the first amendment
7 to the Constitution of the United States.

8 (2) DAMAGES.—In addition to the remedy
9 under paragraph (1) and if the conditions for release
10 under that paragraph are satisfied, damages shall be
11 awarded to the United States person bringing the
12 action under subsection (a), based on the following:

13 (A) The amount of any foreign judgment
14 in the underlying foreign lawsuit.

15 (B) The costs, including reasonable legal
16 fees, attributable to the underlying foreign law-
17 suit that have been borne by the United States
18 person.

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

22 (d) TREBLE DAMAGES.—If, in an action brought
23 under subsection (a), the court or, if applicable, the jury
24 determines by a preponderance of the evidence that the
25 person or entity bringing the foreign lawsuit which gave

1 rise to the cause of action intentionally engaged in a
2 scheme to suppress rights under the first amendment to
3 the Constitution of the United States by discouraging pub-
4 lishers or other media from publishing, or discouraging
5 employers, contractors, donors, sponsors, or similar finan-
6 cial supporters from employing, retaining, or supporting,
7 the research, writing, or other speech of a journalist, aca-
8 demic, commentator, expert, or other individual, the court
9 may award treble damages.

10 (e) EXPEDITED DISCOVERY.—Upon the filing of an
11 action under subsection (a), the court may order expedited
12 discovery if the court determines, based on the allegations
13 in the complaint, that the speech at issue in the underlying
14 foreign lawsuit is protected under the first amendment to
15 the Constitution of the United States.

16 (f) VENUE.—An action under subsection (a) may be
17 brought by a United States person only in a United States
18 district court in which the United States person is domi-
19 ciled, does business, or owns real property that could be
20 executed against in satisfaction of a judgment in the un-
21 derlying foreign lawsuit which gave rise to the action.

22 (g) TIMING OF ACTION; STATUTE OF LIMITA-
23 TIONS.—

24 (1) TIMING.—An action under subsection (a)
25 may be commenced after the filing of the foreign

1 lawsuit in a foreign country on which the action is
2 based.

3 (2) STATUTE OF LIMITATIONS.—For purposes
4 of section 1658(a) of title 28, United States Code,
5 the cause of action under subsection (a) accrues on
6 the first date on which papers in connection with the
7 foreign lawsuit described in section (a), on which the
8 cause of action is based, are served on a United
9 States person in the United States.

10 **SEC. 4. APPLICABILITY.**

11 This Act applies with respect to any foreign lawsuit
12 that is described in section 3(a) in connection with papers
13 that were served before, on, or after the date of the enact-
14 ment of this Act.

15 **SEC. 5. DEFINITIONS.**

16 In this Act:

17 (1) DEFAMATION.—The term “defamation”
18 means any action or other proceeding for defama-
19 tion, libel, slander, or similar claim alleging that
20 forms of speech are false, have caused damage to
21 reputation or emotional distress, have presented a
22 person or persons in a negative light, or have re-
23 sulted in criticism or condemnation of a person or
24 persons.

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

4 (3) FOREIGN JUDGMENT.—The term “foreign
5 judgment” means any judgment of a foreign coun-
6 try, including the court system or an agency of a
7 foreign country, that grants or denies any form of
8 relief, including injunctive relief and monetary dam-
9 ages, in a defamation action.

10 (4) FOREIGN LAWSUIT.—The term “foreign
11 lawsuit” includes any other hearing or proceeding in
12 or before any court, grand jury, department, office,
13 agency, commission, regulatory body, legislative com-
14 mittee, or other authority of a foreign country or po-
15 litical subdivision thereof.

16 (5) UNITED STATES.—The term “United
17 States” means the several States, the District of Co-
18 lumbia, and any commonwealth, territory, or posses-
19 sion of the United States.

20 (6) UNITED STATES PERSON.—The term
21 “United States person” means—

22 (A) a United States citizen;

23 (B) an alien lawfully admitted for perma-
24 nent residence to the United States;

1 (C) an alien lawfully residing in the United
2 States at the time that the speech that is the
3 subject of the foreign defamation suit or pro-
4 ceeding was researched, prepared, or dissemi-
5 nated; or

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

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