

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.

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## 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

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## 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.”.**

