111TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 111–154

RECOGNITION OF FOREIGN DEFAMATION JUDGMENTS

JUNE 15, 2009.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CONYERS, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 2765]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2765) to amend title 28, United States Code, to prohibit recognition and enforcement of foreign defamation judgments and certain foreign judgments against the providers of interactive computer services, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

CONTENTS

	Page
Purpose and Summary	1
Background and Need for the Legislation	2
Hearings	7
Committee Consideration	7
Committee Votes	7
Committee Oversight Findings	8
New Budget Authority and Tax Expenditures	8
Congressional Budget Office Cost Estimate	8
Performance Goals and Objectives	9
Constitutional Authority Statement	9
Advisory on Earmarks	9
Section-by-Section Analysis	9
Changes in Existing Law Made by the Bill, as Reported	10

PURPOSE AND SUMMARY

H.R. 2765 is intended to dissuade potential defamation plaintiffs from circumventing First Amendment protections by filing suit in foreign jurisdictions that lack similar protections. Specifically, the

bill amends title 28 of the United States Code to add provisions to prevent U.S. courts from recognizing or enforcing a foreign defamation judgment when (1) such judgment is inconsistent with the First Amendment; (2) enforcement would be inconsistent with Section 230 of the Communications Act of 1934, providing immunity for interactive computer services from suits based on content hosted by such services; or (3) the foreign court's assertion of personal jurisdiction over the defamation defendant is inconsistent with the due process standards of the United States Constitution. H.R. 2765 also contains a fee-shifting provision that allows a court to award a reasonable attorney's fee to a party that successfully resists recognition or enforcement of a foreign defamation judgment based on one of the grounds enumerated in the bill.

BACKGROUND AND NEED FOR THE LEGISLATION

DIFFERENCES IN U.S. AND BRITISH LAW GIVING RISE TO "LIBEL TOURISM"

The First Amendment to the Constitution limits the liability of authors and publishers under state defamation law by prohibiting injunctions against defamatory statements in nearly all instances,[1] and by restricting the circumstances under which a plaintiff may recover damages for defamation. The First Amendment limits liability in three key respects. First, it renders non-actionable a defamatory statement of opinion that "does not contain a provably false factual connotation."[2] Second, it requires the plaintiff to prove the falsity of a defamatory statement.[3] Third, it requires the plaintiff to prove fault, with clear and convincing evidence, by showing actual malice or negligence, depending on the subject matter of the statement and whether the defendant is a public figure.[4]

These and related First Amendment doctrines reflect "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open."[5] With increasing frequency, however, the subjects of publications disseminated primarily in the United States have sought to circumvent First Amendment protections by bringing, or threatening to bring, defamation suits against American authors and publishers in Britain. This type of forum shopping has come to be known as "libel tourism."[6]

---

[1] See New York Times Co. v. U.S., 403 U.S. 713 (1971). See also Ollman v. Evans, 750 F.2d 970, 995 (1984) (Bork, J., concurring).

[2] Milkovich v. Lorain Journal Co., 497 U.S. 1, 19–20 (1990).

[3] Philadelphia Newspapers, Inc. v. Hepps, 475 U.S. 767 (1986). One qualification is necessary: The Supreme Court has reserved decision on whether the plaintiff must prove falsity if the he or she is a private (rather than a public) figure and the statement concerns a private matter. See id. at 775. That narrow category of cases is not likely to be implicated by H.R. 2765; but if it ever were to be, the courts would be able to address the question.

[4] If the statement concerns a public official or public figure, the plaintiff must prove that the defendant made it with "actual malice"—that is, "with knowledge that it was false or with reckless disregard of whether it was false or not," New York Times Co. v. Sullivan, 376 U.S. 254, 279–80 (1964), and must do so with "clear and convincing proof." Gertz v. Robert Welch, Inc., 418 U.S. 323, 342 (1974). If the statement concerns a private figure, the plaintiff must prove at least negligence. Id. at 347; see also Hepps, 475 U.S. at 768. Even then, though, proof of actual malice is required to recover punitive damages or presumed compensatory damages if the statement concerns a public matter. Gertz, 418 U.S. at 348–350; see also Hepps, 475 U.S. at 774.

[5] New York Times Co., 376 U.S. at 270.

[6] See, e.g., Libel Tourism: Hearing Before the Subcomm. on Commercial and Administrative Law of the H. Comm. on the Judiciary, 111th Cong. (2009) [hereinafter "Libel Tourism Hearing"] (statements and testimony of Bruce D. Brown and Laura R. Handman); Anna C. Henning

Britain's appeal to libel tourists stems from its plaintiff-friendly defamation law. In contrast to American law, British law imposes on the defendant the burden of proving the truth of a defamatory statement; renders opinions actionable unless the defendant can successfully invoke the "fair comment exception" for opinions drawn from facts and made without "actual malice." In addition, as far as the record before the Committee suggests, British law permits at least some injunctions against speech that would be condemned as an unconstitutional prior restraint if issued in the United States.[7] These and other features of British defamation law have drawn criticism from the United Nations Human Rights Committee,[8] and even from some members of the British Parliament.[9]

British procedural law also facilitates libel tourism, especially in its approach to the exercise of personal jurisdiction over defendants. Whereas the due process clauses of the Constitution allow a court in the United States to exercise personal jurisdiction over a defamation defendant only if his statement was "expressly aimed at" the jurisdiction in which the court sits,[10] British law allows a court to exercise personal jurisdiction over a libel defendant if his statement, wherever it was aimed, caused "real or substantial" harm or injury to reputation in Britain.[11] The "real and substantial" requirement has done seemingly little to mitigate British courts' liberal approach to personal jurisdiction. British courts have been quick to exercise jurisdiction over American defendants whose book, magazine, or newspaper, though principally or even exclusively distributed in the United States, reaches even a few readers in Britain.

Similarly, British courts have liberally exercised jurisdiction over American defendants whose Internet site, though established in the United States, is visited by a person in Britain. Consequently, concerns have been raised that the Internet has rendered American authors and publishers especially vulnerable to libel suits in Britain.[12] As one commentator has described the situation, "in the Internet age the British libel laws can bite you, no matter where you live."[13]

A well known example of a libel suit brought in British court against an American author or publisher is the suit brought by Saudi billionaire Khalid Bin Mahfouz against Dr. Rachel Ehrenfeld, a citizen of the United States. In her 2003 book *Funding Evil: How Terrorism is Financed and How to Stop It,* Dr. Ehrenfeld accused Bin Mahfouz of financing international terrorism. The book was published and circulated almost exclusively in the United

---

and Vivian S. Chu, "Libel Tourism": Background and Legal Issues, CRS Rpt. for Congress, R40497 (2009); Sarah Staveley-O'Carroll, N.Y. U. J. Law & Liberty (forthcoming 2009).

[7] Libel Tourism Hearing (statement of Laura R. Handman).

[8] U.N. Human Rights Comm., Int'l Covenant on Civil and Political Rights, Consideration of Reports by States Parties Under Article 40 of the Covenant, Concluding Observations of the Comm., United Kingdom of Great Britain and Northern Ireland, ¶25, U.N. Doc. CCPR/C/GBR/CO/6 (July 30, 2008).

[9] See Writ Large: Are British courts stifling free speech around the world?, Economist, Jan. 8, 2009.

[10] Calder v. Jones, 465 U.S. 783 (1984); see also Libel Tourism Hearing (responses to questions for record of Bruce D. Brown, Partner, Baker & Hostetler LLP, and Laura R. Handman, Partner, Davis Wright Tremaine LLP).

[11] Libel Tourism Hearing (responses to questions for record of Bruce D. Brown) (quoting Berezovsky v. Michaels, [2000] 2 All ER 98, [2000] WLR 1004, [2000] All ER (D) 643 (House of Lords, May 11, 2000)).

[12] Id. (testimony and statements of Bruce D. Brown and Laura R. Handman).

[13] Alan Rusbridger, A Chill on "The Guardian," N.Y. Rev. Books, Jan. 15, 2009.

States. A mere 23 copies reached Britain as a result of Internet sales, and only the first chapter was accessible online.

The British court, however, found this sufficient contact to support personal jurisdiction over Dr. Ehrenfeld. Dr. Ehrenfeld refused to defend against the suit, and the court entered a default judgment against her. The court awarded Bin Mahfouz substantial damages, and enjoined publication of the allegedly libelous statements in Britain.[14] There appears to be no question that the suit could not have been maintained in the United States consistent with the First Amendment.

Of more concern, perhaps, than the admittedly small number of libel-tourist suits like Bin Mahfouz's is the frequency with which British lawyers have threatened American authors and publishers with pre-publication libel suits in Britain involving forthcoming publications in the United States. Two prominent media lawyers who appeared before the Subcommittee on Commercial and Administrative Law testified that such threats have become increasingly commonplace. One of the lawyers testified that "[v]irtually every demand letter we receive these days from a U.S. lawyer is accompanied by one from a British solicitor." [15]

The author or publisher who receives such a threat faces a dilemma. He or she can either (1) publish the material, and risk an expensive libel suit and a large libel judgment that could not be entered in the United States because it is inconsistent with the First Amendment or (2) relinquish his or her First Amendment rights. All too often, authors and publishers choose the latter option. This self-censorship not only threatens First Amendment rights; it also deprives Americans of important information and insights on matters of national concern.[16]

NEED FOR A UNIFORM STANDARD CONCERNING ENFORCEMENT OF FOREIGN DEFAMATION JUDGMENTS

While some disagreement has arisen as to the appropriate response to libel tourism, nearly all serious defenders of the First Amendment agree on one essential point; American authors and publishers should be able to write and publish for an American audience on matters of public concern secure in the knowledge that no foreign defamation judgment inconsistent with the First Amendment can be enforceable against them or their assets in a court of the United States.[17]

The enforcement of foreign judgments for defamation in the United States, like the enforcement of any foreign judgment, is currently governed by State law.[18] Every State's law governing the enforcement of foreign judgments denies recognition or enforcement of foreign judgments that contravene the State's public policy under what is often called the "public policy exception." Courts have interpreted a few States' public policy exception to bar the en-

---

[14] Libel Tourism Hearing (statement and testimony of Rachel Ehrenfeld, Director, American Center for Democracy).

[15] Id. (testimony of Laura R. Handman).

[16] See, e.g., id. (statements of Bruce D. Brown and Laura R. Handman).

[17] Europeans do not enjoy this security. British libel judgments "are now easily enforceable against assets throughout European Union (except for Denmark)." Id. (responses to questions for record of Bruce D. Brown).

[18] That was not always so; the enforcement of foreign judgments was, until the early twentieth century, governed by Federal law. See, e.g., American Law Institute, Recognition and Enforcement of Foreign Judgments: Analysis and Proposed Federal Statute 1–3 (2006).

forcement of foreign judgments inconsistent with the First Amendment,[19] and two States have recently enacted statutes that codify that interpretation.[20] However, the absence, in most States, of case law or statutes to that effect leaves open the disturbing possibility that a foreign judgment inconsistent with the First Amendment could be enforced.[21] A Federal rule that protects the First Amendment rights of American authors and publishers—without regard to the particular State in which they happen to be located—is therefore needed.[22]

In the 110th Congress, the House of Representatives addressed this need by passing, under suspension of the rules, H.R. 6146, sponsored by Representative Steve Cohen of Tennessee. The bill would have amended title 28 of the United States Code to prohibit a court within the United States "from recognizing or enforcing a foreign judgment for defamation that is based upon a publication concerning a public figure or a matter of public concern, unless the domestic court determines that the judgment is consistent with the First Amendment to the Constitution."[23] First Amendment advocates applauded the House passage of H.R. 6146.[24]

H.R. 2765 builds on H.R. 6146. Like its predecessor, H.R. 2765 would prohibit a Federal or State court within the United States from enforcing a foreign defamation judgment inconsistent with the First Amendment.[25] In addition, H.R. 2765 deters libel tourism in three new respects.

First, H.R.2765 would prohibit a court within the United States from enforcing a defamation judgment if the foreign court's exercise of jurisdiction over the defendant failed to comport with the fundamental due process requirements imposed on courts within the United States under the Fifth and Fourteenth Amendments.[26]

Second, the bill would prohibit a court within the United States from enforcing a foreign judgment for defamation inconsistent with section 230 of the Communications Decency Act.[27] This provision shields the providers of an "interactive computer service," such as

---

[19] See, e.g., Telnikoff v. Matusevich, 347 Md. 561, 702 A.2d 230 (1997). See also, e.g., Yahoo!, Inc. v. La Ligue Contre le Racisme et L'Anti-semitisme, 433 F.3d 1199 (9th Cir.), cert. denied, 126 S. Ct. 2332 (2006). For other examples, see, Sarah Staveley-O'Carroll, Libel Tourism Laws: Spoiling the Holiday and Saving the First Amendment?, N.Y.U. J. Law & Liberty (forthcoming 2009).

[20] The two States are Illinois and New York. See 735 ILCS 5/12–621(b)(7) (Illinois) (providing that an Illinois court "need not [recognize]" a foreign judgment for defamation unless the court "first determines that the defamation law applied in the foreign jurisdiction provides at least as much protection for freedom of speech and freedom of the press as provided by both the United States and Illinois Constitutions"); McKinney's N.Y. CPLR § 5304(b)(8) (New York) (prohibiting a court from enforcing a foreign defamation judgment unless the foreign forum provides "at least as much protection for freedom of speech and press" as does the First Amendment).

[21] See, e.g., Libel Tourism Hearing (responses to questions for the record of Linda Silberman); see also American Law Institute, supra note 18, at 80.

[22] See, e.g., Editorial, Libel Tourism, N.Y. Times, May 25, 2009 ("Congress needs to pass a law that makes clear that no American court will enforce libel judgments from countries that provide less protection for the written word."). See also, e.g., Michael J. Broyde and Deborah E. Lipstadt, Editorial, Home Court Advantage, N.Y. Times, Oct. 11, 2007.

[23] H.R. 6146, 110th Cong. § 2.

[24] See, e.g., Libel Tourism Hearing (statement of the American Civil Liberties Union); Editorial, Bringing an End to "Libel Tourism," N.Y. Times, Sept. 29, 2008.

[25] H.R. 2765, 111th Cong. § 1(a).

[26] Id.

[27] 47 U.S.C. § 230 (2007).

blogs, from liability under defamation laws for the content of postings on their sites.[28]

Third, the bill would allow a court within the United States to award attorneys' fees to a defendant who successfully resists the enforcement of a foreign judgment under one of the above-specified grounds set forth in the bill.[29] This provision, modeled on the fee-shifting provision governing civil rights actions,[30] is intended to dissuade libel tourists from subjecting American authors and publishers to the burden and expense of having to defend against non-meritorious enforcement actions—and to require that when they do subject the authors and publishers to that undue burden and expense, they compensate them for at least the resulting attorney's fees.

Some lawmakers and commentators, while supportive of H.R. 2765, have urged Congress to take a more aggressive approach to the problem of libel tourism. The starting point for such proposals is New York's recently enacted Libel Terrorism Prevention Act, which expands the "long-arm" jurisdictional provision in New York's code of civil procedure to facilitate the maintenance of a counter-suit—for declaratory relief in particular[31]—by the defendant against the plaintiff in the foreign libel action.[32] The New York law provides, in particular, that New York courts "shall have personal jurisdiction over any person who obtains a judgment in a defamation proceeding outside the United States against any person who is a resident of New York . . . who has assets in New York or may have to take actions in New York to comply with the judgment. . . ."[33]

The Committee has two concerns with this model of counter-suits against libel tourists. The first is that many such suits would require a court within the United States to exercise personal jurisdiction over a foreign libel-tourism plaintiff who lacks sufficient contacts with the United States to permit the exercise of personal jurisdiction consistent with due process.[34] The second is that such counter-suits, depending on the nature of the relief sought, may represent too great an intrusion into the legal systems of other countries. Some countries might even respond in kind by authorizing suits to interfere with counter-suits in defamation cases or, more broadly, by authorizing suits to counter other types of suits in the United States to which they object.[35] Principles of international comity counsel moderation.[36]

In reaching this conclusion, the Committee is mindful that British libel law has recently become more protective of free speech. Last year, the House of Lords issued a decision that put British

---

[28] H.R. 2765, 111th Cong. § 1(a). This provision was included in response to a submission from Public Citizen which cited instances in which the providers of interactive computer services have been threatened with libel tourism suits. Libel Tourism Hearing (statement of Public Citizen).

[29] See H.R. 2765, 111th Cong. § 1(a).

[30] 42 U.S.C. § 1988(b) (2007).

[31] See McKinney's CPLR § 302(d).

[32] The statute was passed in response to a decision of New York's highest court holding that New York could not exercise personal jurisdiction over Bin Mahfouz in a counter-suit brought against him by Rachel Ehrenfeld arising from the British libel judgment he obtained against her. Ehrenfeld v. Bin Mahfouz, 881 N.E.2d 830 (N.Y. 2007).

[33] Id.

[34] See, e.g., Libel Tourism Hearing (written statement of Linda Silberman; response to questions for record of Linda Silberman); David B. Rivkin Jr. & Bruce D. Brown, "Libel Tourism" Threatens Free Speech, Wall St. J., Jan. 10, 2009.

[35] See id. (testimony and statement and testimony of Linda Silberman).

[36] See id. (testimony of Linda Silberman).

law closer to the First Amendment by expanding the scope of Britain's "responsible journalism" (or Reynolds) privilege. The Reynolds privilege allows a journalist to defeat a libel action by establishing that his or her inaccurate statements about a subject were the product of "responsible journalism" if, among other things, they concern matters of public interest and the journalist acted "fairly and reasonably" in obtaining the material on which the statements were based.[37] While the Lords' decision is not as speech-protective as *New York Times v. Sullivan*,[38] it may signal a trend toward greater protection for the free-speech values embodied in the First Amendment.[39]

Finally, the Committee notes that it was recently briefed by a delegation from the Culture, Media and Sport Committee of the House of Commons. As confirmed in a follow-up letter, that committee of the House of Commons informed this Committee that it is currently undertaking an inquiry into the problem of libel tourism. A report of the inquiry is expected later this year.[40] The Committee is especially reluctant to recommend that the House authorize more aggressive measures to address libel tourism until it reviews the report's findings and recommendations.

HEARINGS

No legislative hearing was held on H.R. 2765. On February 12, 2009, the Committee's Subcommittee on Commercial and Administrative Law held an oversight hearing on the problem of libel tourism and possible legislative alternatives for addressing it. Testimony was received from Bruce D. Brown, a partner at the law firm of Baker & Hostetler LLP; Rachel Ehrenfeld, Director of the American Center for Democracy; Laura R. Handman, a partner at the law firm of Davis Wright & Tremaine; and Linda J. Silberman, the Martin Lipton Professor of Law at New York University School of Law.

COMMITTEE CONSIDERATION

On June 10, 2009, the Committee met in open session and ordered the bill H.R. 2765 favorably reported without amendment, by a voice vote, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 2765.

---

[37] Jameel v. Wall St. J. Europe S.P.R.L. [2006] UKHL 44, [2007] 1 A.C. 359 (appeal taken from Britain) (H.L.).

[38] See, e.g., Libel Tourism Hearing (statement of Bruce D. Brown).

[39] See, e.g., Libel Tourism Hearing (responses to questions for record of Bruce D. Brown and Laura R. Handman). See also Kyu Ho Youm, Liberalizing British Defamation Law: A Case of Importing the First Amendment?, 13 Comm. L. & Pol'y, 415, 417 (2008).

[40] See Libel Tourism Hearing (letter from Hon. John Whittingdale, Chairman, Culture, Media and Sport Comm., House of Commons, to Hon. Steve Cohen, Chairman, and Trent Franks, Ranking Member, Subcomm. on Commercial and Administrative Law, dated April 20, 2009).

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2765, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 12, 2009.

Hon. JOHN CONYERS, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2765, a bill to amend title 28, United States Code, to prohibit recognition and enforcement of foreign defamation judgments and certain foreign judgments against the providers of interactive computer services.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Leigh Angres, who can be reached at 226-2860.

Sincerely,

DOUGLAS W. ELMENDORF,
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.
Ranking Member

H.R. 2765—A bill to amend title 28, United States Code, to prohibit recognition and enforcement of foreign defamation judgments and certain foreign judgments against the providers of interactive computer services.

H.R. 2765 would prohibit U.S. district and State courts from enforcing foreign defamation judgments that are inconsistent with Constitutional protections and certain telecommunications laws. In general, foreign courts do not have jurisdiction over the United States, and U.S. courts would not recognize a foreign judgment against the United States. (Under the Federal Tort Claims Act, the Federal Government waived its sovereign immunity and consented to being sued in Federal courts only in particular cases.) Therefore,

CBO estimates that H.R. 2765 would have no significant effect on the Federal budget.

H.R. 2765 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would preempt State laws related to foreign judgments. CBO estimates that State courts would incur no significant costs to comply with the preemption; therefore the costs of the mandate would not exceed the annual threshold established in UMRA for intergovernmental mandates ($69 million in 2009, adjusted for inflation).

The bill also would impose private-sector mandates as defined in UMRA on individuals seeking to have certain foreign defamation judgments enforced in the United States. New requirements on those individuals would limit an existing right to recover damages. The direct cost of the mandate would be the net value of forgone awards and settlements in such claims. Based on information about foreign defamation cases, CBO expects that the cost of the mandate would fall below the annual threshold established in UMRA for private-sector mandates ($139 million in 2009, adjusted annually for inflation).

The CBO staff contact for this estimate is Leigh Angres. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 2765 is designed to preclude the recognition or enforcement (in Federal or State court) of a foreign defamation judgment that is inconsistent with either the First Amendment or Section 230 of the Communications Act of 1934, as amended, 47 U.S.C. § 230, or that was entered by a foreign court whose exercise of personal jurisdiction over the defendant failed to comport with the requirements's set forth in the due process clauses of the Fifth and Fourteenth Amendments.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, Section 8, of the Constitution.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 2765 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

SECTION-BY-SECTION ANALYSIS

The following discussion describes the bill as reported by the Committee.

Sec. 1. Section 1(a) of the bill amends part VI of title 28, United States Code by adding new Sections 4101, 4102, and 4103 as follows:

New section 4101 contains definitions for "domestic court," "foreign court," "foreign judgment," and "State." "Domestic court"

means a Federal or State court. "Foreign court" means a court or other tribunal of a foreign country. "Foreign judgment" means "a final judgment rendered by a foreign court." "State" means "the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States."

New section 4102(a) prohibits a domestic court from recognizing or enforcing a foreign defamation judgment if the party resisting recognition or enforcement of the foreign judgment claims that the foreign judgment is inconsistent with the First Amendment, unless the domestic court finds that the foreign judgment is consistent with the First Amendment. The party seeking enforcement bears the burden of proving that the foreign judgment is consistent with the First Amendment.

New section 4102(b) prohibits a domestic court from recognizing or enforcing a foreign defamation judgment if the party resisting recognition or enforcement establishes that the foreign court's exercise of personal jurisdiction over such party does not comport with the U.S. Constitution's due process requirements.

New section 4102(c) prohibits a domestic court from recognizing or enforcing a foreign defamation judgment against the provider of an interactive computer service, as defined in section 230 of the Communications Act of 1934, if the party resisting recognition or enforcement of the foreign judgment claims that the foreign judgment is inconsistent with section 230. The party seeking enforcement bears the burden of proving that the foreign judgment is consistent with section 230.

New section 4102(d) clarifies that an appearance by a party in a foreign court to defend against a foreign defamation suit on whatever grounds does not deprive that party of the right to oppose recognition or enforcement of a foreign defamation judgment in the U.S. on the grounds outlined in new sections 4102(a)-(c).

New section 4103 is a fee-shifting provision that allows a court to award the party resisting recognition or enforcement of a foreign defamation judgment a reasonable attorney's fee if that party prevails on a ground specified in new Sections 4102(a)-(c).

Section 1(b) of the bill makes a conforming clerical amendment to part VI of title 28.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

TITLE 28, UNITED STATES CODE

* * * * * * *

PART VI—PARTICULAR PROCEEDINGS

CHAP. Sec.
151. Declaratory Judgments **2201**
* * * * * * *
181. Foreign judgments ***4101.***
* * * * * * *

CHAPTER 181—FOREIGN JUDGMENTS

Sec.
4101. Definitions.
4102. Recognition of foreign defamation judgments.
4103. Attorneys' fees.

§ 4101. Definitions

In this chapter:

(1) DOMESTIC COURT.—The term "domestic court" means a Federal court or a court of any State.

(2) FOREIGN COURT.—The term "foreign court" means a court, administrative body, or other tribunal of a foreign country.

(3) FOREIGN JUDGMENT.—The term "foreign judgment" means a final judgment rendered by a foreign court.

(4) STATE.—The term "State" means each of the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

§ 4102. Recognition of foreign defamation judgments

(a) FIRST AMENDMENT CONSIDERATIONS.—Notwithstanding any other provision of Federal or State law, a domestic court shall not recognize or enforce a foreign judgment for defamation whenever the party opposing recognition or enforcement of the judgment claims that the judgment is inconsistent with the first amendment to the Constitution of the United States, unless the domestic court determines that the judgment is consistent with the first amendment. The burden of establishing that the foreign judgment is consistent with the first amendment shall lie with the party seeking recognition or enforcement of the judgment.

(b) JURISDICTIONAL CONSIDERATIONS.—Notwithstanding any other provision of Federal or State law, a domestic court shall not recognize or enforce a foreign judgment for defamation if the party opposing recognition or enforcement establishes that the exercise of personal jurisdiction over such party by the foreign court that rendered the judgment failed to comport with the due process requirements imposed on domestic courts by the Constitution of the United States.

(c) JUDGMENT AGAINST PROVIDER OF INTERACTIVE COMPUTER SERVICE.—Notwithstanding any other provision of Federal or State law, a domestic court shall not recognize or enforce a foreign judgment for defamation against the provider of an interactive computer service, as defined in section 230 of the Communications Act of 1934 (47 U.S.C. 230), whenever the party opposing recognition or enforcement of the judgment claims that the judgment is inconsistent with such section 230, unless the domestic court determines that the judgment is consistent with such section 230. The burden of establishing that the foreign judgment is consistent with such section 230

shall lie with the party seeking recognition or enforcement of the judgment.

(d) APPEARANCES NOT A BAR.—An appearance by a party in a foreign court rendering a foreign judgment to which this section applies for the purpose of contesting the foreign court's exercise of jurisdiction in the case, moving the foreign court to abstain from exercising jurisdiction in the case, defending on the merits any claims brought before the foreign court, or for any other purpose, shall not deprive such party of the right to oppose the recognition or enforcement of the judgment under this section.

§ 4103. Attorneys' fees

In any action brought in a domestic court to enforce a foreign judgment for defamation, the court may allow the party opposing recognition or enforcement of the judgment a reasonable attorney's fee if such party prevails in the action on a ground specified in subsection (a), (b), or (c).

○