

In the Senate of the United States,

July 19, 2010.

Resolved, That the bill from the House of Representatives (H.R. 2765) entitled “An Act 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.”, do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE.***

2 *This Act may be cited as the “Securing the Protection*
3 *of our Enduring and Established Constitutional Heritage*
4 *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 nec-*

1 *essary to shape public policy in a representative de-*
2 *mocracy.*

3 *(2) Some persons are obstructing the free expres-*
4 *sion rights of United States authors and publishers,*
5 *and in turn chilling the first amendment to the Con-*
6 *stitution of the United States interest of the citizenry*
7 *in receiving information on matters of importance, by*
8 *seeking out foreign jurisdictions that do not provide*
9 *the full extent of free-speech protections to authors*
10 *and publishers that are available in the United*
11 *States, and suing a United States author or publisher*
12 *in that foreign jurisdiction.*

13 *(3) These foreign defamation lawsuits not only*
14 *suppress the free speech rights of the defendants to the*
15 *suit, but inhibit other written speech that might oth-*
16 *erwise have been written or published but for the fear*
17 *of a foreign lawsuit.*

18 *(4) The threat of the libel laws of some foreign*
19 *countries is so dramatic that the United Nations*
20 *Human Rights Committee examined the issue and in-*
21 *dicated that in some instances the law of libel has*
22 *served to discourage critical media reporting on mat-*
23 *ters of serious public interest, adversely affecting the*
24 *ability of scholars and journalists to publish their*
25 *work. The advent of the internet and the inter-*

1 *false light, or have resulted in criticism, dishonor, or*
2 *condemnation of any person.*

3 “(2) *DOMESTIC COURT.*—*The term ‘domestic*
4 *court’ means a Federal court or a court of any State.*

5 “(3) *FOREIGN COURT.*—*The term ‘foreign court’*
6 *means a court, administrative body, or other tribunal*
7 *of a foreign country.*

8 “(4) *FOREIGN JUDGMENT.*—*The term ‘foreign*
9 *judgment’ means a final judgment rendered by a for-*
10 *ign court.*

11 “(5) *STATE.*—*The term ‘State’ means each of the*
12 *several States, the District of Columbia, and any*
13 *commonwealth, territory, or possession of the United*
14 *States.*

15 “(6) *UNITED STATES PERSON.*—*The term*
16 *‘United States person’ means—*

17 “(A) *a United States citizen;*

18 “(B) *an alien lawfully admitted for perma-*
19 *nent residence to the United States;*

20 “(C) *an alien lawfully residing in the*
21 *United States at the time that the speech that is*
22 *the subject of the foreign defamation action was*
23 *researched, prepared, or disseminated; or*

1 “(D) a business entity incorporated in, or
2 with its primary location or place of operation
3 in, the United States.

4 **“§ 4102. Recognition of foreign defamation judgments**

5 “(a) *FIRST AMENDMENT CONSIDERATIONS.*—

6 “(1) *IN GENERAL.*—Notwithstanding any other
7 provision of Federal or State law, a domestic court
8 shall not recognize or enforce a foreign judgment for
9 defamation unless the domestic court determines
10 that—

11 “(A) the defamation law applied in the for-
12 eign court’s adjudication provided at least as
13 much protection for freedom of speech and press
14 in that case as would be provided by the first
15 amendment to the Constitution of the United
16 States and by the constitution and law of the
17 State in which the domestic court is located; or

18 “(B) even if the defamation law applied in
19 the foreign court’s adjudication did not provide
20 as much protection for freedom of speech and
21 press as the first amendment to the Constitution
22 of the United States and the constitution and
23 law of the State, the party opposing recognition
24 or enforcement of that foreign judgment would
25 have been found liable for defamation by a do-

1 *mestic court applying the first amendment to the*
2 *Constitution of the United States and the con-*
3 *stitution and law of the State in which the do-*
4 *mestic court is located.*

5 “(2) *BURDEN OF ESTABLISHING APPLICATION OF*
6 *DEFAMATION LAWS.—The party seeking recognition or*
7 *enforcement of the foreign judgment shall bear the*
8 *burden of making the showings required under sub-*
9 *paragraph (A) or (B).*

10 “(b) *JURISDICTIONAL CONSIDERATIONS.—*

11 “(1) *IN GENERAL.—Notwithstanding any other*
12 *provision of Federal or State law, a domestic court*
13 *shall not recognize or enforce a foreign judgment for*
14 *defamation unless the domestic court determines that*
15 *the exercise of personal jurisdiction by the foreign*
16 *court comported with the due process requirements*
17 *that are imposed on domestic courts by the Constitu-*
18 *tion of the United States.*

19 “(2) *BURDEN OF ESTABLISHING EXERCISE OF*
20 *JURISDICTION.—The party seeking recognition or en-*
21 *forcement of the foreign judgment shall bear the bur-*
22 *den of making the showing that the foreign court’s ex-*
23 *ercise of personal jurisdiction comported with the due*
24 *process requirements that are imposed on domestic*
25 *courts by the Constitution of the United States.*

1 “(c) *JUDGMENT AGAINST PROVIDER OF INTERACTIVE*
2 *COMPUTER SERVICE.*—

3 “(1) *IN GENERAL.*—*Notwithstanding any other*
4 *provision of Federal or State law, a domestic court*
5 *shall not recognize or enforce a foreign judgment for*
6 *defamation against the provider of an interactive*
7 *computer service, as defined in section 230 of the*
8 *Communications Act of 1934 (47 U.S.C. 230) unless*
9 *the domestic court determines that the judgment*
10 *would be consistent with section 230 if the informa-*
11 *tion that is the subject of such judgment had been pro-*
12 *vided in the United States.*

13 “(2) *BURDEN OF ESTABLISHING CONSISTENCY*
14 *OF JUDGMENT.*—*The party seeking recognition or en-*
15 *forcement of the foreign judgment shall bear the bur-*
16 *den of establishing that the judgment is consistent*
17 *with section 230.*

18 “(d) *APPEARANCES NOT A BAR.*—*An appearance by*
19 *a party in a foreign court rendering a foreign judgment*
20 *to which this section applies shall not deprive such party*
21 *of the right to oppose the recognition or enforcement of the*
22 *judgment under this section, or represent a waiver of any*
23 *jurisdictional claims.*

24 “(e) *RULE OF CONSTRUCTION.*—*Nothing in this sec-*
25 *tion shall be construed to—*

1 “(1) affect the enforceability of any foreign judg-
2 ment other than a foreign judgment for defamation;
3 or

4 “(2) limit the applicability of section 230 of the
5 Communications Act of 1934 (47 U.S.C. 230) to
6 causes of action for defamation.

7 **“§4103. Removal**

8 *“In addition to removal allowed under section 1441,*
9 *any action brought in a State domestic court to enforce a*
10 *foreign judgment for defamation in which—*

11 “(1) any plaintiff is a citizen of a State different
12 from any defendant;

13 “(2) any plaintiff is a foreign state or a citizen
14 or subject of a foreign state and any defendant is a
15 citizen of a State; or

16 “(3) any plaintiff is a citizen of a State and any
17 defendant is a foreign state or citizen or subject of a
18 foreign state,

19 *may be removed by any defendant to the district court of*
20 *the United States for the district and division embracing*
21 *the place where such action is pending without regard to*
22 *the amount in controversy between the parties.*

23 **“§4104. Declaratory judgments**

24 “(a) CAUSE OF ACTION.—

1 “(1) *IN GENERAL.*—Any United States person
2 *against whom a foreign judgment is entered on the*
3 *basis of the content of any writing, utterance, or other*
4 *speech by that person that has been published, may*
5 *bring an action in district court, under section*
6 *2201(a), for a declaration that the foreign judgment*
7 *is repugnant to the Constitution or laws of the United*
8 *States. For the purposes of this paragraph, a judg-*
9 *ment is repugnant to the Constitution or laws of the*
10 *United States if it would not be enforceable under sec-*
11 *tion 4102 (a), (b), or (c).*

12 “(2) *BURDEN OF ESTABLISHING UNENFORCE-*
13 *ABILITY OF JUDGMENT.*—The party bringing an ac-
14 *tion under paragraph (1) shall bear the burden of es-*
15 *tablishing that the foreign judgment would not be en-*
16 *forceable under section 4102 (a), (b), or (c).*

17 “(b) *NATIONWIDE SERVICE OF PROCESS.*—Where an
18 *action under this section is brought in a district court of*
19 *the United States, process may be served in the judicial dis-*
20 *trict where the case is brought or any other judicial district*
21 *of the United States where the defendant may be found, re-*
22 *sides, has an agent, or transacts business.*

23 “**§ 4105. Attorneys’ fees**

24 “*In any action brought in a domestic court to enforce*
25 *a foreign judgment for defamation, including any such ac-*

1 *tion removed from State court to Federal court, the domestic*
2 *court shall, absent exceptional circumstances, allow the*
3 *party opposing recognition or enforcement of the judgment*
4 *a reasonable attorney’s fee if such party prevails in the ac-*
5 *tion on a ground specified in section 4102 (a), (b), or (c).”.*

6 **(b) SENSE OF CONGRESS.**—*It is the Sense of the Con-*
7 *gress that for the purpose of pleading a cause of action for*
8 *a declaratory judgment, a foreign judgment for defamation*
9 *or any similar offense as described under chapter 181 of*
10 *title 28, United States Code, (as added by this Act) shall*
11 *constitute a case of actual controversy under section*
12 *2201(a) of title 28, United States Code.*

13 **(c) TECHNICAL AND CONFORMING AMENDMENT.**—*The*
14 *table of chapters for part VI of title 28, United States Code,*
15 *is amended by adding at the end the following:*

“181. Foreign judgments 4101.”.

Attest:

Secretary.

11TH CONGRESS
2^D SESSION

H.R. 2765

AMENDMENT