

remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

Mr. COHEN. I yield myself as much time as I may consume.

Mr. Speaker, H.R. 2765 prohibits U.S. courts from recognizing or enforcing foreign defamation judgments that are inconsistent with our First Amendment or fundamental due process. This legislation addresses what has come to be referred to as libel tourism, doing an end run around the First Amendment by suing American authors and publishers for defamation in the courts of foreign countries with more plaintiff-friendly defamation laws, particularly Britain. Britain has become a favorite destination for libel tourists for a number of reasons. First, British law lacks our constitutional free speech protections and instead, specifically disfavors speech critical of public officials and public figures.

Second, British libel law places the burden of proving the truth of the allegedly defamatory statement on the defendant. This distinction has drawn criticism not only from American defenders of free speech but also from some Members of the British Parliament.

And third, Britain takes a very expansive view of personal jurisdiction. A British court can exercise personal jurisdiction over a libel defendant if his or her statement, wherever it was made or aimed, can be said to cause "real or substantial" harm or injury to reputation in Britain.

Combined with the Internet, this expansive view has rendered American authors and publishers especially vulnerable to libel suits in Britain. As one commentator has said, "In the Internet age, the British libel laws can bite you no matter where you live."

H.R. 2765 will deter libel tourists from taking advantage of these differences in the laws of Britain and other foreign jurisdictions and our precious First Amendment by imposing important limitations on the enforcement of foreign defamation judgments in our courts. Under the bill, a U.S. court cannot enforce a foreign defamation judgment inconsistent with the First Amendment to our Constitution or when the foreign court's exercise of personal jurisdiction over the defendant does not comport with our due process requirements. And a U.S. court cannot enforce a foreign defamation judgment against an interactive computer service if doing so is inconsistent with section 230 of the Communications Act of 1934. This will ensure that libel tourists cannot chill speech by suing a third-party interactive computer service rather than the actual author of the statement.

Finally, the bill allows a court to award attorney's fees to the party resisting enforcement of the foreign judgment if that party prevails. This

puts some added teeth in the bill. That was a recommendation at our hearing on the bill. This will not only compensate the American author or publishers for the expense of defending a nonmeritorious enforcement action but will help dissuade the would-be libel tourist from putting them to that expense in the first place.

I am joined in introducing this legislation by my colleague DARRELL ISSA of California. Last year our bill passed the House overwhelmingly, and I ask my colleagues to support it again this year. I would like to thank Judiciary Committee Chairman JOHN CONYERS and Ranking Member LAMAR SMITH and all the cosponsors of this bill for their help and support in bringing it to this point.

I reserve the balance of my time.

Mr. GOHMERT. Mr. Speaker, I recognize myself for such time as I may consume.

Thomas Jefferson observed that "the only security of all is in a free press. The agitation it produces must be submitted to. It is necessary to keep the waters pure." Were he alive today, Jefferson would not take too kindly to libel tourists, the subject of H.R. 2765. Oh, it seems true that some U.S. media more recently have become fan clubs rather than objective pursuers of truth, but there are still some very dedicated journalists in the United States who should be free from harassment from inappropriate libel suits in overseas courts.

In the wake of 9/11, the American media have become increasingly alarmed over a phenomenon called libel tourism. The term refers to the subject of a critical news story suing an American author or reporter of an article, story or book for defamation in a plaintiff-friendly overseas or foreign forum. These suits are filed mostly in Great Britain, as its libel and slander laws provide writers and journalists with less protection than those under the U.S. system that honors a First Amendment and a free press. Persons identified in news stories as terrorists or terrorist sympathizers have brought some of the higher-profile suits.

So how would American courts treat foreign judgments that clash with American legal values under this bill? A foreign judgment will not be enforced in the U.S. court when the foreign judgment is offensive to State public policy or the Constitution. And that's what this bill does.

Last September, as my friend from Tennessee indicated, the House passed a libel tourism bill that codified existing U.S. treatment of the subject. The other body did not act on the measure. So we revisit the issue today, better informed, thanks to a subcommittee hearing, full committee markup and substantial input by legal experts on the subject matter.

H.R. 2765 contains four major provisions, as my colleague from Tennessee has outlined.

Mr. Speaker, this bipartisan legislation provides appropriate and nec-

essary protection for U.S. journalists and authors and represents the strongest constitutionally sound policy in response to libel tourism. The issue has been thoroughly considered by the Judiciary Committee, and I would urge Members to support H.R. 2765.

Mr. Speaker, I have no further speakers. So when my colleague across the aisle is ready to close, I will likewise be ready.

Mr. COHEN. Mr. Speaker, I would like to withdraw the motion.

The SPEAKER pro tempore. The motion to suspend the rules and pass H.R. 2765 is withdrawn.

PROHIBITING ENFORCEMENT OF FOREIGN DEFAMATION JUDGMENTS

Mr. COHEN. Mr. Speaker, I move to suspend the rules and pass 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, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H. R. 2765

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. RECOGNITION OF FOREIGN DEFAMATION JUDGMENTS.

(a) IN GENERAL.—Part VI of title 28, United States Code, is amended by adding at the end the following:

"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) of section 4102.”

(b) CLERICAL AMENDMENT.—The table of chapters for part VI of title 28, United States Code, is amended by adding at the end the following:

“181. Foreign Judgments 4101”.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Tennessee (Mr. COHEN) and the gentleman from Texas (Mr. GOHMERT) each will control 20 minutes.

The Chair recognizes the gentleman from Tennessee.

GENERAL LEAVE

Mr. COHEN. Mr. Speaker, I once again ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

□ 1700

Mr. COHEN. Mr. Speaker, I reserve my time and ask if the gentleman from Texas would like to yield back his time, wherefore I will yield mine.

Mr. GOHMERT. Mr. Speaker, I yield myself such time as I may consume.

The comments I made previously were with regard to this bill, as amended, so I would ask that the RECORD so reflect, and since a lot of people have difficulty hearing me speak very long because of the accent, I won’t repeat those comments.

I yield back the balance of my time.

Mr. COHEN. Mr. Speaker, I appreciate the gentleman from Texas, and I understand him clear and well. Some people don’t understand us as well as we understand each other.

I would like to also request that the previous remarks that I made be incorporated by reference onto this bill.

Mr. KING of New York. Mr. Speaker, today I rise in support of H.R. 2765, legislation that would prohibit the recognition and enforcement of foreign defamation judgments and certain foreign judgments against the providers of interactive computer services. This bill, like legislation (Free Speech Protection Act) that I introduced earlier this year attempts to deal with the issue of “libel tourism” that threatens not only Americans’ first amendment freedom of speech but also their ability to inform the general public about existential threats; namely, who are the terrorists and who are their financial backers.

Let me begin by stating the main threat posed by libel tourism is not just the clever exploitation of foreign courts’ libel laws to win financial judgments against American authors. It’s not even the risk that Americans are losing their First Amendment guarantee of freedom of speech (although that is quite troubling). The danger is that foreign individuals are operating a scheme to intimidate authors and publishers from even exercising that right. And it’s actually scarier because, in many of these cases, the journalists are trying to write on topics of national and homeland security. Therefore it is imperative that Congress address the issue and pass legislation to stop this nefarious activity at once.

The issue of “libel tourism” threatens not only Americans’ First Amendment freedom of speech but also their ability to inform the general public about existential threats; namely, the identity of terrorists and their financial supporters. As the Ranking Member of the Committee on Homeland Security, it is my duty to oversee policies for protecting our nation from potential terrorist attacks—a charge I take very seriously. I receive regular classified briefings on dangerous plots to attack the United States so I know just how grave these threats are. We cannot allow foreigners the ability to muzzle Americans for speaking the truth about these dangers!

Libel tourism is a recent phenomenon in which certain individuals attempt to obstruct the free expression rights of Americans (and the vital interest of the American people) by seeking out foreign jurisdictions (“forum shopping”) that do not provide the full extent of free-speech protection that is enshrined in our First Amendment. Some of these actions are intended not only to suppress the free speech rights of journalists and others but also to intimidate publishers and other organizations from disseminating or supporting their work.

Unlike in the United States where the burden of proof is on the plaintiff to show that the publication was not only false but also malicious, in countries such as the United Kingdom it is actually the reverse. And some of these “tourists” claims of jurisdiction are tenuous at best. In many cases, not only are none of the individuals (author, litigant, or publisher) associated with the case living in the venue of jurisdiction, but the books aren’t even published there. These “libel tourists” stretch the law by claiming a handful of copies of the

book purchased over the internet and delivered to an address in a foreign country gives them standing.

Since the burden of proof is on the author in the United Kingdom, the author must then hire an attorney, travel to the foreign country, and defend herself or likely face a default judgment. Consequences include, but are not limited to, stiff fines, outrageous public apologies, the removal of books from bookstores and libraries, or even their destruction.

We cannot change other countries’ (libel) laws, nor would we want to. We must respect their laws, as they ought to respect ours. However, we cannot allow foreign citizens to exploit these courts to endanger Americans’ First Amendment protected speech; especially, when the subject matter is of such grave importance as terrorism and those who finance it.

Just to be clear, we’re not talking about journalists who carelessly or maliciously slander an individual. In this case we’re talking about authors who, after conducting exhaustive research and carefully sourcing their work, are providing us glimpses into a dark and secretive world. We ought to rely on a variety of sources for this information and we cannot allow foreign litigants or foreign courts to tell us what can be written or published in the United States. That is a dangerous path we do not want to follow.

Some of the plaintiffs bringing such suits are intentionally and strategically refraining from filing their suits in the United States, even though the speech at issue was published in the United States, to avoid the First Amendment protections that Americans enjoy.

But this issue is also very troubling for the authors, journalists, and even publishers who attempt to write on these subjects. Already we have seen examples of authors having difficulty getting their articles or books published because publishers fear of being sued overseas. Some companies have even gone as far as to pay large settlements at the mere threat of legal actions. So not only are authors being injured for the works they have previously written but they and their publishers are being intimidated from writing future articles on these important topics. The free expression and publication by journalists, academics, commentators, experts, and others of the information they uncover and develop through investigative research and study is essential to the formation of sound public policy and thus the security of Americans.

In turn, the American people are suffering concrete and profound harm because they, their representatives, and other government policymakers rely on the free expression of information, ideas, and opinions developed by responsible journalists, academics, commentators, experts, and others for the formulation of sound public policy, including national security policy.

Having said that, the United States respects the sovereign right of other countries to enact their own laws regarding speech, and seeks only to protect the First Amendment rights of Americans in connection with speech that occurs, in whole or part, in the United States.

That is why last year I introduced the Free Speech Protection Act (H.R. 1304) to defend U.S. persons who are sued for defamation in foreign courts. This legislation would allow U.S. persons to bring a federal cause of action against any person bringing a foreign libel suit

if the writing did not constitute defamation under U.S. law. It would also bar enforcement of foreign libel judgments and provide other appropriate injunctive relief by U.S. Courts if a cause of action was established. H.R. 1304 would award damages to the U.S. person who brought the action in the amount of the foreign judgment, the costs related to the foreign lawsuit, and the harm caused due to the decreased opportunities to publish, conduct research, or generate funding. Furthermore, it would award treble damages if the person bringing the foreign lawsuit intentionally engaged in a scheme to suppress First Amendment rights. It would allow for expedited discovery if the court determines that the speech at issue in the foreign defamation action is protected by the First Amendment.

Nothing in H.R. 1304 would limit the rights of foreign litigants who bring good faith defamation actions to prevail against journalists and others who have failed to adhere to standards of professionalism by publishing false information maliciously or recklessly. The Free Speech Protection Act does, however, attempt to discourage those foreign libel suits that aim to intimidate, threaten, and restrict the freedom of speech of Americans. I am proud to have worked closely with Senators ARLEN SPECTER, JOE LIEBERMAN, and CHUCK SCHUMER who introduced companion legislation in the Senate.

The King/Specter/Lieberman/Schumer legislation also has the backing of various organizations including the Association of American Publishers, College Art Association, Anti-Defamation League, American Jewish Congress, American Library Association, 9/11 Families for a Secure America, American Booksellers Foundation for Free Expression, and the American Civil Liberties Union. In addition, various columnists and editorial boards have written in support of our approach including Floyd Abrams, Andrew McCarthy, the New York Times, New York Post, and the Washington Times.

The impetus for a federal law is the case of Dr. Rachel Ehrenfeld, a U.S. citizen and Director of the American Center for Democracy. Dr. Ehrenfeld's 2003 book, "Funding Evil: How Terrorism is Financed and How to Stop it," which was published solely in the United States by a U.S. publisher, alleged that a Saudi Arabian subject and his family financially supported alQaeda in the years preceding the attacks of September 11, 2001. He sued Dr. Ehrenfeld for libel in England because under English law, it is not necessary for a libel plaintiff to prove falsity or actual malice as is required in the U.S. After the English court entered a judgment against Dr. Ehrenfeld, she sought to shield herself with a declaration from both federal and state courts that her book did not create liability under American law, but jurisdictional barriers prevented both the federal and New York State courts from acting. Reacting to this problem, the Governor of New York, on May 1, 2008, signed into law the "Libel Terrorism Protection Act", commonly known as "Rachel's Law."

As I said last year, I believe any libel tourism bill should include punitive measures to discourage these ridiculous lawsuits from being filed in the first place. It was my hope that during this new Congress we could work together to introduce a bill that would solve this problem once and for all, legislation which would not only ban the enforcement of these

foreign libel judgments but would also create a federal cause of action allowing American authors and journalists to sue those foreign plaintiffs here in the United States. This should be the essential component of any libel tourism bill. The real issue here is not the judgment or even the libel case itself. Rather, it is the attempt by certain individuals to muzzle those who dare speak out about terrorism and the financiers of it. Lawyers are cleverly exploiting foreign libel laws not only to injure American authors and publishing companies, but more importantly to shut them up. And it is working. But we must stop it!

In September, I supported and the House passed H.R. 6146, legislation sponsored by Representative COHEN, to prohibit U.S. Courts from enforcing these outrageous defamation suits. At the time, I stated that I believed that bill did not go far enough to combat the threat of libel tourism and that pertains to H.R. 2765 as well.

Nevertheless, I will support H.R. 2765 because it prohibits U.S. (domestic) courts from enforcing these outrageous defamation suits. We must stand up to the terrorists and their financiers, supporters, and sympathizers. However, this bill does not go far enough nor does it resolve the problem of "libel tourism." Foreign litigants will still be allowed to file these libel suits overseas with no worry of being countersued here in the U.S. If this bill were to be signed into law, the litigants would never see a dime of the judgments they are awarded, but it's not money they are after in the first place. They want the publicity, an apology, and they want these books to disappear. Most of all they want to intimidate authors and publishers. And it's working!

Finally, I will support H.R. 2765 because it is a first step in the right direction. H.R. 2765 is an important and necessary part of any "libel tourism" bill. Unfortunately, it doesn't put an end to the problem and doesn't provide any deterrence from these suits being filed in the first place. I regret that we could not have come up with a more comprehensive bill on the House side but I pledge to work with our Senate sponsors to improve this legislation over in the other Chamber.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise today to voice my support for House Resolution 2765, prohibiting recognition and enforcement of foreign defamation judgments and certain foreign judgments against the providers of interactive computer services, introduced by Representative COHEN, which articulates the sense of Congress regarding the United States commitment to freedom of speech. I would also like to thank Congressman COHEN for this important legislation, his leadership in bringing this legislation forth and for working together to see that the First Amendment to the Constitution is not just something we talk about, but something that is achieved. The heart of this bill lies in interactive computer services.

Interactive computer services provide an opportunity for free enterprise to take place. "I am convinced," asserts RICHARD LUGAR "that the majority of American people do understand that we have a moral responsibility to foster the concepts of opportunity, free enterprise, the rule of law, and democracy. They understand that these values are the hope of the world".

TEXAS

In my state of Texas there are a variety of small interactive foreign computer service en-

terprises that are struggling to be valued resources in their community, a community full of individuals that struggle with all the woes of technology and deserve not only local businesses for their convenience but also their relationship.

Many of these businesses promise hope for many citizens unfamiliar with computers and technology by advocating that they do not treat their customers like another invoice number or item on a list of things to do.

CONCLUSION

I urge my colleagues to remember that certain companies that fall within the category of "interactive computer service" providers are extremely beneficial to the communities they serve. I do not advocate that all judgments against these providers are inappropriate, but we must remember the benefits of such a business and its legitimate concurrence with the First Amendment.

If we do not support the improvement of the technological community as it is then we should not support this bill. However, if we are for access to quality computer services, if we are for greater understanding of the communities we serve, if we are for fair enforcement of judgments against and for hardworking American citizens, then we must give our full support to this bill.

I urge my colleagues to join me in support of Resolution 2765, which will work to effectively help Americans prepare for the future with the appropriate resources. This is just one more step to a more responsible society.

Mr. Speaker, I vote in support of House Resolution 2765.

Mr. COHEN. I yield the remainder my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Tennessee (Mr. COHEN) that the House suspend the rules and pass the bill, H.R. 2765, as amended.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

CONGRESSIONAL REVIEW ACT IMPROVEMENT ACT

Mr. COHEN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2247) to amend title 5, United States Code, to make technical amendments to certain provisions of title 5, United States Code, enacted by the Congressional Review Act, as amended.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 2247

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Congressional Review Act Improvement Act".

SEC. 2. TECHNICAL AMENDMENTS TO THE CONGRESSIONAL REVIEW ACT.

(a) GOVERNMENT PAPERWORK REDUCTION.—Section 801 of title 5, United States Code, is amended as follows:

(1) REPEAL OF REQUIREMENT FOR SUBMITTAL OF TEXT OF RULES AND CERTAIN OTHER MATERIALS TO BOTH HOUSES OF CONGRESS.—Subsection (a)(1) is amended—