

Statement in Support of the Free Speech Protection Act of 2008 (S. 2977)

The undersigned organizations express their strong support for the Free Speech Protection Act of 2008 (S. 2977). Libel suits filed in foreign countries pose a grave danger to the free speech rights of American authors, journalists, publishers, and readers. S. 2977 provides authors with weapons to protect their right to express themselves freely and helps ensure that the libel laws of countries that provide less protection for free speech will not undermine American laws or chill protected speech.

Increasingly in recent years, individuals who challenge the accuracy of published materials have attempted to strike back at their authors by filing lawsuits in foreign countries, most commonly England. U.S. law requires the party alleging libel to prove that the statements objected to are actually false. To avoid this burden, libel plaintiffs have engaged in forum shopping – filing lawsuits in countries with either different burdens of proof or different definitions of libel or both.

The most notorious recent example of this libel tourism is the lawsuit filed by Saudi billionaire Khalid Salim bin Mahfouz, who sued Dr. Rachel Ehrenfeld, an American expert on terrorism, over statements in her book, *Funding Evil: How Terrorism Is Financed and How to Stop It*. Despite the fact that the book was never published in England and that a mere 23 copies had been sold there by online booksellers, Bin Mafouz brought suit in an English court. Under British law, the burden of proof in the first instance is on the *defendant* to prove the truth of any allegedly libelous statement. Faced with the prospect of enormous legal costs to meet this burden, and objecting as a matter of principle to having to litigate in England without having published her work there, Ehrenfeld refused to defend the suit. The English court entered a default judgment, enjoined further distribution of the book in the United Kingdom, and awarded substantial damages and legal fees.

Bin Mafouz's English lawsuit had the predictable effect of chilling Ehrenfeld's free speech rights and effectively silencing anyone who might consider publishing similar statements. It sent the message that he is willing and able to challenge any investigation of his family's and the Saudi royal family's alleged ties to the funding of terrorism. He has refused to disclaim an intention to attempt to enforce the judgment in the United States, further reinforcing its chilling effect.

New York has passed a law that broadens the jurisdiction of New York courts over such cases to ensure that foreign libel judgments not be enforced unless they meet New York and U.S. constitutional standards. S. 2977 is modeled on the New York law. It provides that foreign libel judgments cannot be enforced in the United States if the speech is not actionable under U.S. law. S. 2977 also authorizes authors to countersue the foreign plaintiffs in a U.S. court for damages of up to three times the amount of the foreign judgment if the foreign plaintiff acted to suppress the speech of the U.S. person.

We believe that passage of the Free Speech Protection Act is essential to protect the right of American authors to investigate and reveal wrongdoing anywhere in the world and to ensure that weaker protections for free speech elsewhere do not undermine First Amendment freedoms at home.

American Association of University Professors
American Booksellers Foundation for Free Expression
American Library Association
American Society of Newspaper Editors
Association of American Publishers
Association of American University Presses
The Defending Dissent Foundation
DKT International
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