

Florida Legislature Passes Bill On Non-Recognition of Foreign Defamation Judgments

After Passing Both Houses Unanimously, Bill Awaits Signature by Governor

By Jennifer A. Mansfield

Although Florida is internationally known for its tourism industry, there is one form of tourism that its legislature seeks to quash: libel tourism. To that end, on April 30, 2009, the Florida Senate passed by a vote of 40-0 a bill providing for the non-recognition of a foreign defamation judgment unless a Florida court first determines that the defamation law applied in the foreign country provided at least as much free speech and press protections as would be provided by the United States and Florida constitutions.

The Florida House of Representatives had previously passed the bill, HB 949, on April 16, 2009, by a vote of 115 to 0. Identical bills were filed in the Florida Senate and House on January 29, 2009 and February 17, 2009, respectively. The Senate bill, [SB1066](#), was tabled in favor of the House version. It is currently awaiting transmittal to the Florida Governor, Charlie Crist, who is expected to sign the bill into law.

Like legislation pending in other states, the Florida legislation is a reaction to “libel tourism,” where plaintiffs go to foreign countries with plaintiff-friendly defamation laws because similar suits in the United States would not withstand First Amendment scrutiny. The Florida Senate Judiciary Committee’s bill analysis refers to English defamation law specifically, but notes that while England is the primary destination for libel tourism, Singapore, New Zealand, Kyrgyzstan, and Australia are also considered plaintiff-friendly. The legislation addresses the libel tourism problem by ensuring that free speech and press protections cannot be evaded by plaintiffs obtaining defamation judgments in foreign courts, only to return to Florida in order to enforce the judgments obtained.

The legislation also provides for personal jurisdiction over both plaintiffs and defendants in the Florida courts for the purpose of determining whether a foreign defamation judgment should be deemed non-recognizable. If approved by the Florida Governor, the bill will take effect July 1, 2009. However, the legislation specifically states that it is to be retroactive, “appl[ying] to judgments rendered in defamation proceedings outside the United States before, on, or

after July 1, 2009.” The Florida Senate Judiciary Committee’s bill analysis notes that the constitutionality of the retroactivity provision will hinge on whether the courts interpret the legislation as affecting substantive rights, noting that statutes that relate only to remedies or procedure can be applied retroactively.

Last year, New York became the first state to pass libel tourism legislation, titled the “Libel Terrorism Protection Act,” 2008 N.Y. Sess. Laws ch. 66 (S. 6687-C), which provided for the non-recognition of foreign defamation judgments. That legislation, also referred to as “Rachel’s Law,” was passed in reaction to the situation of Rachel Ehrenfeld (“Ehrenfeld”), who wrote a book in 2003 alleging that a prominent Saudi businessman, Khalid bin Mahfouz, financed terrorism. The book was only published in the United States, but a few copies were sold over the Internet and made their way to England, which the British courts found sufficient for jurisdiction over the Saudi’s libel suit. The British court then allowed a default judgment against Ehrenfeld of \$250,000 plus other penalties. She attempted to have a federal court in New York declare the foreign judgment non-enforceable but the court dismissed the suit for lack of personal jurisdiction over Khalid bin Mahfouz, thus prompting the New York legislation. In a written statement to Congress on February 12, 2009, Ehrenfeld stated that instances such as hers cause self-censorship, chilling free speech and the press.

Illinois was the next state to pass libel tourism protection legislation, effective August 19, 2008. Illinois Public Act 95-0865 (2008), codified at 735 Ill. Comp. Stat. §2-209, §12-621 (9/2009). A California bill was also unanimously passed by the state senate on April 28, 2009, and the New Jersey Senate Judiciary Committee this month recommended passage of a bill, S-1643, also aimed to prevent libel tourism. Like the Florida legislation, the foregoing states’ legislation is substantially similar to the New York law.

On the federal level, in 2008, two bills were introduced in the United States House of Representatives in an effort to combat libel tourism. The first, H.R. 5814, 110th Congress

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(2008) died in committee. The second, H.R. 6146, 110th Congress (2008), passed the House, but was not taken up by the Senate. The Senate also failed to move ahead on its own libel tourism bill, S.2977, in 2008. This year, however Congress is considering the Free Speech Protection Act of 2009, (S. 449 and H.R. 1304), which is considered a stronger bill than last year's, as it would, among other things, allow writers subjected to libel tourism suits in foreign countries to countersue in the United States for treble damages.

Upon the unanimous passage of the Florida bill by the House of Representatives, the bill's sponsor, Representative Charles E. Van Zant (R-Keystone Heights), was quoted by the American Center for Democracy as saying: "This bill protects all Floridians' fundamental right to the freedom of

speech and press without fear of reprisal from foreign courts. Political speech is a right we as Americans and Floridians hold dear. This law will ensure that no Floridian will ever have to answer to terrorists as a result of their criticism of terrorism, or its enablers."

The American Center for Democracy also quoted Florida House Majority Leader, Adam Hasner (R-Boca Raton) as stating, "This bill protects Floridians from having their right to free speech suppressed by those with radical ideologies. Foreign courts that do not place the same value on our constitutionally guaranteed freedom of speech will no longer be used to intimidate Florida citizens."

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Libel Tourism Bill Introduced in New Jersey Judiciary Committee Reports Out Bill to Limit Enforcement of Foreign Libel Judgments

The New Jersey Senate Judiciary Committee this month reported out a libel tourism bill designed to restrict the enforcement of foreign libel judgments. The bill, [SB 1643](#), was introduced this month by State Senators Loretta Weinberg and Robert Singer.

The current version of the bill provides in relevant part that "A foreign country money-judgment need not be recognized if ...

the cause of action resulted in a defamation judgment obtained in a foreign country, unless, prior to the collection of the judgment, a court in this State first determines that the defamation law applied in the foreign country provides at least as much protection for freedom of speech and press as is provided by the Constitutions of the United States and New Jersey.

If enacted the bill would take effect immediately.