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Albany Bill Would Grant 'Libel Terrorism' Jurisdiction

BY JOEL STASHENKO

ALBANY—In December, the Court of Appeals acknowledged growing media concerns over the use of plaintiff-friendly foreign libel laws to muzzle New York journalists, but held it was beyond the Court's authority to intervene under the state's long-arm statute.

Yesterday, legislation to allow New York courts to do just that cleared a major hurdle with unanimous passage in the state Senate.

The Libel Terrorism Protection Act would amend the long-arm statute, Civil Practice Law and Rules §302, to give state courts jurisdiction over a foreign libel plaintiff who secures a judgment against an author or publisher with sufficient physical or financial ties to New York.

The measure would allow courts here to declare the foreign judgments unenforceable if the courts determine that libel laws in foreign countries do not protect the freedom of speech and the press to the extent that statutes in New York and the United States do. The

of jurisdiction to New York courts would be limited to an action by a writer or publisher seeking a finding that the foreign court's libel judgment is unenforceable.

The bill (A9652/S6687) has made unusually swift progress toward passage in Albany since its introduction last month. New legislation typically takes several months, if not years, to reach the floor of the Assembly or Senate.

Floyd Abrams, the First Amendment expert from Cahill Gordon & Reindel, is backing the legislation. He said it has moved unusually quickly in Albany because it has united powerful forces that are not always aligned on public policy questions.

"It has brought together two propositions that have widespread support. There is considerable support, if not total support, for the notion that First Amendment rights should be protected," Mr. Abrams said yesterday in an interview. "There is total support for the notion that when an American writes a book

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about terrorism, she shouldn't be dragged around the world to defend herself and then find herself with a foreign judgment that is enforceable here."

Mr. Abrams said he knows of no foreign libel laws that could be found by a New York judge to provide freedom of speech and press protections equal to or greater than those in New York and the United States.

"For all intents and purposes, this legislation would bar any defamation judgment obtained outside the United States from being enforced in New York," said Assemblyman Rory I. Lancman, D-Queens, chief sponsor of the bill in his chamber.

The bill has cleared the Assembly's Judiciary Committee and is now before the chamber's Codes Committee. Mr. Lancman said he expected the bill to pass the full Assembly by next month. Governor Eliot Spitzer's office will not discuss pending legislation until it reaches the governor's desk.

The legislation stems from a book by New York-based author Rachel Ehrenfeld titled "Funding Evil—How Terrorism Is Financed and How to Stop It." In the book, Ms. Ehrenfeld identified Saudi banker and financier Khalid Bin Mahfouz as having bankrolled Al Qaeda and other terrorists prior to the Sept. 11, 2001, attacks on the World Trade Center and the Pentagon.

Mr. Bin Mahfouz, who has long denied supporting terrorism, sued for defamation in England and won \$225,000 in damages and legal fees from Ms. Ehrenfeld. She did not con-

test the action out of principle and the expense of litigating the case in England.

Mr. Bin Mahfouz did not seek to enforce the ruling in the United States, a move Ms. Ehrenfeld argued was an intentional attempt to discourage her from investigating terrorism further and publishers from publishing her works.

She sued in federal court in New York instead, seeking a declaratory judgment that Mr. Bin Mahfouz could not enforce a British libel judgment against her in U.S. courts on constitutional and public policy grounds.

Southern District Judge Richard C. Casey dismissed Ms. Ehrenfeld's action on personal jurisdiction grounds (NYLJ, April 26, 2006). In *Ehrenfeld v. Mahfouz*, 489 F.3d 542 (2nd Cir. 2007), the U.S. Court of Appeals for the Second Circuit asked the New York Court of Appeals in a certified question whether New York's long-arm statute might provide for personal jurisdiction in the case (NYLJ, June 11, 2007).

The state Court of Appeals responded that it did not (NYLJ, Dec. 21, 2007).

In the course of her ruling, Judge Carmen Beauchamp Ciparick acknowledged a growing controversy over "libel tourism" and how critics argue it is being used to "chill free speech" by authors and publishers in the United States. But she said it was up to the Legislature, not the Court, to expand the reach of the long-arm statute.

"Our task is to interpret the New York statute as written," Judge Ciparick explained. "Thus, plaintiff's arguments regarding the enlargement of

CPLR §302(a)(1) to confer jurisdiction upon 'libel tourists' must be directed to the Legislature."

Mr. Lancman said he began working on the legislation just after Judge Ciparick's ruling with the bill's sponsor in the Senate, Dean G. Skelos, R-Rockville Centre.

"The Court of Appeals invited the Legislature to act, and we are acting," Mr. Lancman, who is also of counsel at Morelli Ratner, said in an interview.

Among those also supporting the Lancman-Skelos bill are the New York City Bar Association's Committee on Communications and Media Law, Manhattan District Attorney Robert M. Morgenthau, the New York State Trial Lawyers Association and the Association of American Publishers, Inc.

The legislation's supporters argue the bill extends to libel judgments protections that are already in New York law regarding the enforcement of foreign money judgments. CPLR, Article 53, empowers New York courts to decline to recognize and enforce foreign money judgments where the "cause of action on which the judgment is based is repugnant to the public policy of this state."

Authors and publishers would qualify to seek redress in the courts under the Libel Terrorism Protection Act if they are residents of the state, have New York as their principle place of business, published the materials at issue in the case in New York or have assets in New York being sought by plaintiffs in a libel action.

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