

APPROVAL MEMORANDUM - No. 5 Chapter 66

MEMORANDUM filed with Senate Bill Number 6687-C, entitled:

"AN ACT to amend the civil practice law and rules, in relation to enforceability of certain foreign judgments"

APPROVED

This bill addresses a matter of great public importance. With increasing frequency, individuals who believe that they have been defamed by authors of books or other publications who reside in New York are filing lawsuits in foreign jurisdictions that do not afford the same protections for speech as provided under the First Amendment. This allows individuals to "shop around" for a favorable foreign jurisdiction in which to bring a lawsuit. For example, this bill was prompted by the case of a New York-based author of a book about funding for terrorism, who was sued in England -- where libel judgments are much easier to obtain than in the United States -- even though only 23 copies of the book had been sold there.

This bill seeks to thwart the efforts of those who engage in such "libel tourism," by restricting New York jurisdiction over such judgments, and vesting New York courts with full authority to hear certain declaratory judgment actions by authors seeking to establish the unenforceability of foreign libel judgments that have the potential to chill speech. These steps are fully warranted, and have my wholehearted support.

With the signing of this bill, New York State will have acted to protect authors to the greatest extent possible. However, there is a significant limit to what New York alone can do on this issue. Even with this legislation, New Yorkers seeking to speak out on issues of public concern will still live in fear of libel actions in foreign courts governed by restrictive doctrines inconsistent with our most basic principles, so long as a few copies of their writings may be purchased internationally via the Internet. If the author has assets in other states, or may one day move to a different State that does not afford similar protections as New York, his or her speech can still be chilled.

Ultimately, this is a problem of international scope, demanding a solution that New York State alone cannot deliver. I therefore urge Congress and the President to use all legislative and diplomatic means at their disposal to address this issue, and ensure that the speech of our citizens is not restrained by plaintiffs seeking the cover of foreign laws at odds with our constitutional protections.

The bill is approved.

(signed) DAVID A. PATERSON
