

- MEMORANDUM OF SUPPORT -

TO: Senator Arlen Specter, Representative Peter King

FROM: Brooke Goldstein; Director, The Legal Project at the Middle East Forum

DATE: September 17, 2008

RE: Support for the Free Speech Protection Act (S.2977/ H. R. 5814)

This memorandum serves to express my support for the prudent and timely introduction of the “Free Speech Protection Act of 2008” (H. R. 5814/ S.2977). The legislation proposes a much-needed First Amendment protection for our country’s valuable counter-terrorism authors, researchers and publishers.

When the American colonies declared independence from Great Britain in 1776, each declared that certain rights are inviolate. The natural right to freedom of the press was most emphatically included among those rights. Virginia and North Carolina both rightfully declared that “the freedom of the press is one of the great bulwarks of liberty.” Delaware, Maryland, and South Carolina all stated that freedom of the press “...be inviolably preserved.” These colonies were followed by New Hampshire and Massachusetts, who both underscored that “The liberty of the press is essential to the security of freedom in a State.”

During the Constitutional debates, freedom of speech was again a crucial matter, with George Mason objecting to the proposed Constitution on the grounds that there was “...no Declaration of any kind for preserving the Liberty of the Press...” In response, Alexander Hamilton asked rhetorically, “Why, for instance, should it be said, that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed?”

To say that the American concept of free speech is unprecedented is to merely state a historical fact. Indeed, our definition of free speech was, and remains, unparalleled.

Nowhere is this natural and inalienable human right better illustrated than as it stands in relation to defamation. In the colonial era, when John Peter Zenger was on trial for libel, the courageous New York jury defied the judge, finding that truth precludes a defamation judgment. The importance of being able to speak the truth has remained central to our conception of rights. Even during the dark period of the Sedition Act of 1798, the Act made certain to spell out that the truth was a defense to a libel action.

Today, libel terrorism is being waged in the form of frivolous and malicious lawsuits designed to intimidate, silence and bankrupt anyone who speaks out against radical Islam, terrorism, or its sources of financing. Forum shopping and foreign lawsuits are creating a chilling effect within this country on the exercise of free speech about matters of grave public concern. If enacted, this legislation has the potential to protect counter-terrorism authors and experts from meritless libel lawsuits filed by libel terrorists who hide in foreign jurisdictions, thus directly strengthening national security by encouraging a fundamental American right. Hence, it is paramount that the Free Speech Protection Act of 2008 be signed into law as soon as possible. The Legal Project supports this critical initiative, which addresses a real and present problem.

The Legal Project at the Middle East Forum is a not-for-profit organization dedicated to providing pro-bono and reduced rate legal representation to U.S. counter-terrorism authors and publishers targeted with strategic lawsuits designed to silence their exercise of free speech.

Sincerely,

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