

117TH CONGRESS
2D SESSION

H. R. 9146

To amend title 28, United States Code, to set forth the procedure for actions involving covered speech, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 2022

Mr. COHEN (for himself, Mr. RASKIN, Ms. NORTON, Ms. JACKSON LEE, and Mr. CARSON) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 28, United States Code, to set forth the procedure for actions involving covered speech, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Free Speech Protection
5 Act”.

6 **SEC. 2. SPEECH PROCEEDINGS.**

7 (a) IN GENERAL.—Part VI of title 28, United States
8 Code, is amended by inserting after chapter 181 the fol-
9 lowing:

1 **“CHAPTER 182—COVERED SPEECH**

“Sec.

“4201. Treatment of covered speech.

“4202. Rule modification.

“4203. No preemption.

“4204. Definitions.

2 **“§ 4201. Treatment of covered speech**

3 “(a) IN GENERAL.—A natural person may not be
4 held civilly liable in a court of competent jurisdiction for
5 defamation on the basis of covered speech, unless—

6 “(1) such covered speech was known by the
7 natural person to be false, or the natural person
8 acted negligently with disregard to the falsity of the
9 covered speech; or

10 “(2) in the case that the covered speech is re-
11 lated to a public figure, the covered speech was
12 made with actual malice.

13 “(b) LIABILITY FOR FRIVOLOUS, MALICIOUS, OR
14 BAD FAITH CLAIMS.—

15 “(1) CAUSE OF ACTION.—

16 “(A) IN GENERAL.—A natural person may
17 bring a civil action against an individual or en-
18 tity that files a defamation claim described in
19 paragraph (2) against such natural person in a
20 court of competent jurisdiction to obtain the re-
21 lief described in subparagraph (B).

1 “(B) RELIEF.—A court may award as re-
 2 lief to a plaintiff bringing a civil action under
 3 this paragraph—

4 “(i) actual damages; or

5 “(ii) statutory damages of \$50,000,
 6 whichever is greater.

7 “(C) ATTORNEY’S FEES.—A plaintiff pre-
 8 vailing in a civil action under this paragraph
 9 may be awarded reasonable attorney’s fees.

10 “(2) CLAIM DESCRIBED.—A defamation claim
 11 described in this paragraph is a claim—

12 “(A) for which a court determines that li-
 13 ability is precluded under subsection (a); and

14 “(B) that is shown, by a preponderance of
 15 the evidence, to be filed for the purpose of
 16 harassing, intimidating, or otherwise sup-
 17 pressing covered speech related to a matter of
 18 legitimate public concern.

19 **“§ 4202. Rule modification**

20 “(a) IN GENERAL.—Not later than 3 years after the
 21 date of enactment of this chapter, the Supreme Court
 22 shall, in accordance with chapter 131 of title 28, United
 23 States Code (commonly known as the ‘Rules Enabling
 24 Act’), review the Federal Rules of Civil Procedure and pre-
 25 scribe and modify such rules as may be appropriate to cre-

1 ate expedited procedures for the disposition of claims
 2 brought in violation of section 4201(a).

3 “(b) DECLARATORY JUDGMENT.—The rules that are
 4 prescribed or modified in accordance with subsection (a)
 5 shall provide that after the pleadings are filed and before
 6 discovery commences, a defendant may move for a declara-
 7 tory judgment regarding whether the relevant conduct
 8 constitutes, prima facie, covered speech. Upon such a de-
 9 termination by a court and a showing by the movant that
 10 discovery is unlikely to reveal any material fact, the court
 11 shall proceed to judgment on the pleadings.

12 **“§ 4203. No preemption**

13 “Nothing in this chapter may be construed to pre-
 14 empt any State law that—

15 “(1) provides for an expedited review or proce-
 16 dure for dismissal of suits designed to suppress free
 17 speech; or

18 “(2) requires greater intent than negligence for
 19 a successful defamation claim regarding natural per-
 20 sons who are not public figures.

21 **“§ 4204. Definitions**

22 “In this chapter:

23 “(1) SPEECH.—The term ‘speech’ means—

1 “(A) oral, written, or visual communication
2 or expressive conduct that is intended to convey
3 a particular idea; and

4 “(B) communication or conduct that would
5 be reasonably understood by the intended audi-
6 ence to convey that particular idea.

7 “(2) COVERED SPEECH.—The term ‘covered
8 speech’ means speech, in or affecting interstate com-
9 merce, that is—

10 “(A) understood by the general public to
11 have artistic, educational, social, political, or
12 scientific value regarding a legitimate matter of
13 public concern;

14 “(B) intended for broad consumption; and

15 “(C) made in a public forum or is other-
16 wise disseminated to the general public or a
17 large relevant audience.

18 “(3) LEGITIMATE PUBLIC CONCERN.—The term
19 ‘legitimate matter of public concern’ means a subject
20 that is of interest to the general public or a large
21 relevant audience, including any of the following:

22 “(A) Governmental actions or decisions
23 making, including legislative activity, judicial
24 proceedings, or executive conduct or actions.

1 “(B) Public or official conduct of a public
2 figure.

3 “(C) General newsworthiness and current
4 events.

5 “(D) Public health and safety.

6 “(4) PUBLIC FIGURE.—The term ‘public figure’
7 means a person who—

8 “(A) holds a public office and engages in
9 official actions that are of interest;

10 “(B) assumes a role of especial prominence
11 in the affairs of society;

12 “(C) occupies a position of persuasive
13 power and influence; or

14 “(D) thrusts oneself to the forefront of
15 particular controversies in order to influence
16 the resolution of the issues involved.”.

17 (b) TABLE OF CHAPTERS.—The table of chapters for
18 part VI of title 28, United States Code, is amended by
19 inserting after the item related to chapter 181 the fol-
20 lowing:

“182 Covered speech 4201”.

