

## Chapter 579: The California Anti-Libel Tourism Act

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### *Code Sections Affected*

Code of Civil Procedure §§ 1716, 1717 (amended).  
SB 320 (Corbett); 2009 STAT. Ch. 579.

### I. INTRODUCTION

“Those who won our independence believed that . . . freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth . . . .”<sup>1</sup> Dr. Rachel Ehrenfeld used these words, originally penned by Supreme Court Justice Louis Brandeis, to close her testimony before the California Senate Judiciary Committee.<sup>2</sup> Dr. Ehrenfeld, author of *Funding Evil: How Terrorism Is Financed—And How to Stop It*,<sup>3</sup> made the case that the “true face of terrorism” is not “the stereotype of underprivileged Islamic youth yearning to be religious martyrs, but instead, an international network of corrupt dictators, drug kingpins, and villains . . . .”<sup>4</sup>

A report prepared for the President of the United Nations Security Council lists Khalid Bin Mahfouz as being a principal Saudi sponsor of al-Qaida.<sup>5</sup> Dr. Ehrenfeld believes that Mahfouz has given at least \$74 million to charities that are fronts for terrorism; indeed, she included this allegation in her book.<sup>6</sup> Mahfouz denies the accusations in the United Nations report; his lawyer has stated that the accusations are “false, misleading and defamatory.”<sup>7</sup> In response to

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1. *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring).

2. SENATE JUDICIARY COMMITTEE, WRITTEN STATEMENT OF RACHEL EHRENFELD, at 4 (Apr. 14, 2009).

3. RACHEL EHRENFELD, *FUNDING EVIL: HOW TERRORISM IS FINANCED—AND HOW TO STOP IT* (Bonus Books 2005).

4. SENATE JUDICIARY COMMITTEE, WRITTEN STATEMENT OF RACHEL EHRENFELD, at 2 (Apr. 14, 2009). In *Funding Evil*, Dr. Ehrenfeld “asserts that defendant, Khalid Salim Bin Mahfouz—a Saudi Arabian businessman, financier and former head of the National Commercial Bank of Saudi Arabia—and his family have provided direct and indirect monetary support to al Qaeda and other ‘Islamist terror groups.’” *Ehrenfeld v. Bin Mahfouz*, 881 N.E.2d 830, 832 (N.Y. 2007).

5. JEAN-CHARLES BRISARD, *TERRORISM FINANCING: ROOTS AND TRENDS OF SAUDI TERRORISM FINANCING* 11 (2002), <http://www.investigativeproject.org/documents/testimony/22.pdf> (on file with the *McGeorge Law Review*) (reporting to the President of the United Nations Security Council). Mahfouz is considered the 334th richest person in the world according to *Forbes* magazine. *The World’s Billionaires: #334 Khalid Bin Mahfouz & Family*, FORBES.COM, Mar. 11, 2009, [http://www.forbes.com/lists/2009/10/billionaires-2009-richest-people\\_Khalid-Bin-Mahfouz-family\\_JKTG.html](http://www.forbes.com/lists/2009/10/billionaires-2009-richest-people_Khalid-Bin-Mahfouz-family_JKTG.html) (on file with the *McGeorge Law Review*).

6. SENATE JUDICIARY COMMITTEE, WRITTEN STATEMENT OF RACHEL EHRENFELD, at 2 (Apr. 14, 2009).

7. Letter from Cherif Sedky, Legal Counsel for Khalid Bin Mahfouz and His Immediate Family, to Dr. Gunter Pleuger, Pres. of U.N. Sec. Council (Feb. 5, 2003), available at <http://www.binmahfouz.info/letter.html> (on file with the *McGeorge Law Review*).

the accusations in Dr. Ehrenfeld's book, Mahfouz sued Dr. Ehrenfeld for libel in the United Kingdom, basing jurisdiction on twenty-three copies of the book that were purchased online in the United Kingdom.<sup>8</sup> For several reasons, Dr. Ehrenfeld chose not to appear in the English court, and on December 7, 2004, the court entered a default judgment against Dr. Ehrenfeld and her publisher, awarding damages and enjoining further publication of the allegedly defamatory statements.<sup>9</sup>

This phenomenon—where plaintiffs seek out jurisdictions that are friendly to plaintiffs with libel claims and then try to enforce them in foreign jurisdictions—is called “libel tourism.”<sup>10</sup> Chapter 579 adds an exception under California law that would prevent California courts from enforcing libel judgments from foreign countries if a court determines that the “the defamation law applied by [the foreign jurisdiction] does not provide at least as much protection for freedom of speech and the press as provided by both the United States and California Constitutions.”<sup>11</sup>

## II. BACKGROUND

### A. Existing California Law

In 2007, the California Legislature adopted SB 639,<sup>12</sup> which enacted a new version of the Uniform Foreign-Country Money Judgments Recognition Act (UFMJRA).<sup>13</sup> The original Act was adopted in 1967.<sup>14</sup> The purpose of the 2007 Act is “to clarify its provisions and deal with interpretive issues that have arisen

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8. SENATE JUDICIARY COMMITTEE, WRITTEN STATEMENT OF RACHEL EHRENFELD, at 2 (Apr. 14, 2009). Dr. Ehrenfeld claims to have never lived in England, never published in England, and “never taken any steps to cause the Book to be made available to purchasers in England or to facilitate its availability there through internet sources.” *Ehrenfeld*, 881 N.E.2d at 833 n.3 (holding that Mahfouz did not “transact business” in New York, as required by New York’s long arm statute, by serving on the author in New York documents that were required under English procedural rules). Bin Mahfouz has threatened or filed over thirty similar lawsuits in the United Kingdom, and in a settlement against Cambridge University Press, he successfully prevented a British publisher from further publishing a book that associates him with terrorism. AVI BELL, JERUSALEM CTR. FOR PUB. AFFAIRS, LIBEL TOURISM: INTERNATIONAL FORUM SHOPPING FOR DEFAMATION CLAIMS 6-7 (2008).

9. See *Ehrenfeld*, 881 N.E.2d at 832-33; *Bin Mahfouz v. Ehrenfeld*, [2005] EWHC 1156, 2005 WL 1586238, at \*1 (QB); SENATE JUDICIARY COMMITTEE, WRITTEN STATEMENT OF RACHEL EHRENFELD, at 3 (Apr. 14, 2009).

10. See Yasmine Lahlou, *Libel Tourism: A Transatlantic Quandary*, 2 J. INT’L MEDIA & ENT. L. 199 (2009) (discussing the Ehrenfeld libel case in conjunction with New York law). “British libel law, for example, presumes a statement is false and places the burden of [proving] truth on the defendant.” SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 320, at 3 (Apr. 28, 2009).

11. CAL. CIV. PROC. CODE § 1716(c)(9) (amended by Chapter 579).

12. See 2007 Cal. Stat. ch. 212, § 2 (enacting CAL. CIV. PROC. CODE §§ 1713-1724).

13. ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 639, at 1 (July 3, 2007).

14. *Id.* at 4. “The UFMJRA, a 1962 Act, is in effect in over 30 states and was an effort to codify the law on recognition of judgments from foreign countries.” *Java Oil Ltd. v. Sullivan*, 168 Cal. App. 4th 1178, 1186, 86 Cal. Rptr. 3d 177, 182 (2d Dist. 2008) (citing *Kam-Tech Systems Ltd. v. Yardeni*, 774 A.2d 644, 648 (N.J. Super. Ct. App. Div. 2001)).

in the over 40 years since its enactment.”<sup>15</sup> Both the 1967 and 2007 versions of the UFMJRA provide that a foreign judgment will not be recognized if the foreign court lacked personal jurisdiction over the defendant or did not have jurisdiction over the subject matter of the claim or if the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process.<sup>16</sup> Additionally, both versions of the Act provide that a California court is not required to recognize foreign judgments under certain circumstances.<sup>17</sup> For example, one such provision renders the judgment unenforceable if “the judgment or the cause of action or claim for relief on which the judgment is based is repugnant to the public policy of this state or of the United States.”<sup>18</sup> In interpreting this exception, California courts have stated that “[t]he standard is not simply that the law is contrary to our public policy, but instead that the judgment is so offensive to our public policy as to be ‘prejudicial to recognized standards of morality and to the general interests of the citizens . . . .’”<sup>19</sup>

### B. New York Law

While New York adopted the original version of the URMJRA in 1970, it has yet to adopt the new version.<sup>20</sup> In 2008, the New York Legislature passed the “Libel Terrorism Protection Act,” which has provisions substantially similar to those of Chapter 579.<sup>21</sup> This legislation was a direct response to the New York

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15. ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 639, at 2 (July 3, 2007). “Among the provisions needing clarification [are] the burden of proof, the statute of limitations for filing an action to recognize a foreign-country judgment, the effect of an appeal of the judgment and defective judgments that do not warrant recognition.” *Id.* at 5.

16. See CAL. CIV. PROC. CODE § 1716 (West Supp. 2009); 1967 Cal. Stat. ch. 503 (repealed by 2007 Cal. Stat. ch. 212, § 1). It is important to consider both the old and new versions of the Act because the new version only applies to actions commenced after January 1, 2008. CAL. CIV. PROC. CODE § 1724 (West Supp. 2009) (“This chapter applies to all actions commenced on or after the effective date of this chapter in which the issue of recognition of a foreign-country judgment is raised.”).

17. See CAL. CIV. PROC. CODE § 1716 (West Supp. 2009); 1967 Cal. Stat. ch. 503, § 1 (repealed by 2007 Cal. Stat. ch. 212, § 1). These circumstances include, *inter alia*, where the foreign court lacked personal jurisdiction over the defendant, lacked subject matter jurisdiction, did not provide a fair tribunal, or held a proceeding that was not compatible with the notion of due process. CAL. CIV. PROC. CODE § 1716 (West Supp. 2009); 1967 Cal. Stat. ch. 503, § 1 (repealed by 2007 Cal. Stat. ch. 212, § 1).

18. CAL. CIV. PROC. CODE § 1716(c)(3) (West Supp. 2009). The old act had a substantially similar provision. 1967 Cal. Stat. ch. 503 (repealed by 2007 Cal. Stat. ch. 212, § 1) (stating that a judgment need not be recognized if “[t]he cause of action or defense on which the judgment is based is repugnant to the public policy of this state”).

19. *Java Oil Ltd.*, 168 Cal. App. 4th at 1189, 86 Cal. Rptr. 3d at 184-85.

20. N.Y. C.P.L.R. §§ 5301-5309 (McKinney 1997 & Supp. 2009).

21. 2008 N.Y. Laws ch. 66. New York courts do not have to recognize foreign judgment if:

[T]he cause of action resulted in a defamation judgment obtained in a jurisdiction outside the United States, unless the court before which the matter is brought sitting in this state first determines that the defamation law applied in the foreign court’s adjudication provided at least as much protection for freedom of speech and press in that case as would be provided by both the United States and New

Court of Appeal’s decision in *Ehrenfeld v. Bin Mahfouz*.<sup>22</sup> In that case the court held that New York did not have personal jurisdiction over Bin Mahfouz and therefore it could not reach the merits on whether or not the U.K. judgment against Dr. Ehrenfeld was enforceable in New York under the UFMJRA.<sup>23</sup> “Heeding the Court of Appeal’s invitation that any expansion of the New York long arm jurisdiction statute be done only through the legislative intervention,” the New York Legislature put a provision in the Libel Terrorism Protection Act that conferred jurisdiction over such claims to the courts.<sup>24</sup> There has been concern over whether this statute is constitutional:

[T]he New York law takes a constitutionally dubious approach to the acquisition of personal jurisdiction over libel tourists. U.S. courts have never before claimed jurisdiction over individuals who have no ties whatsoever to the U.S., other than suing an American in a foreign court.<sup>25</sup>

### III. CHAPTER 579

Chapter 579 amends two provisions of the UFMJRA—sections 1716 and 1717 of the California Code of Civil Procedure.<sup>26</sup> As discussed above, section 1716(c) provides eight situations where a California court is not required to enforce a foreign money judgment.<sup>27</sup> Chapter 579 adds a ninth situation where California courts are not required to enforce foreign money judgments.<sup>28</sup> This provision states that a court is not required to recognize a foreign money judgment unless “[a] court determines that the defamation law applied by a foreign court provided at least as much protection for freedom of speech and the press as provided by both the United States and California Constitutions.”<sup>29</sup>

Additionally, Chapter 579 allows Californians subject to libel tourism an opportunity for “declaratory relief with respect to liability for the judgment or a

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York constitutions.

N.Y. C.P.L.R. § 5304 (McKinney 1997 & Supp. 2009) (amended by 2008 N.Y. Laws ch. 66, § 2).

22. *Ehrenfeld v. Bin Mahfouz*, 881 N.E.2d 830 (N.Y. 2007).

23. *Id.* at 831. Whereas California has a long arm statute that confers jurisdiction up to the limits of the United States Constitution, the New York long arm statute “does not confer jurisdiction in every case where it is constitutionally permissible.” *See id.* at 837 (citing *Kreutter v. McFadden Oil Corp.*, 522 N.E.2d 40, 46 (N.Y. 1988)); CAL. CIV. PROC. CODE § 410.10 (West Supp. 2009).

24. Lahlou, *supra* note 10, at 206.

25. David B. Rivkin, Jr. & Bruce D. Brown, ‘*Libel Tourism*’ Threatens Free Speech, WALL ST. J., Jan. 10, 2009, at A11; *see also* Lahlou, *supra* note 10, at 206-10 (discussing the constitutionality of the New York statute). “The [New York] statute’s almost exclusive reliance on the New York plaintiff’s contacts with New York may prove problematic.” *Id.* at 207.

26. CAL. CIV. PROC. CODE §§ 1716-1717 (amended by Chapter 579).

27. *Id.* § 1716(c) (West Supp. 2009).

28. *Id.* § 1716(c)(9) (amended by Chapter 579).

29. *Id.*

determination that the judgment is not recognizable in California.”<sup>30</sup> Chapter 579 does this by amending section 1717 of the California Code of Civil Procedure to grant a court personal jurisdiction to determine whether a foreign judgment is enforceable if the publication at issue was published in California and the judgment debtor either has assets in California that may be used to enforce the judgment or would have to take action in California to comply with the foreign judgment.<sup>31</sup>

#### IV. ANALYSIS

##### A. *Merits of the Anti-Libel Tourism Act*

Libel tourism “threatens both the First Amendment and American national security”<sup>32</sup> and “threatens to internationalize the law of libel, subjecting every writer around the globe to the restrictions of the most pro-plaintiff libel standards available.”<sup>33</sup> By doing so, libel tourism may stymie free speech—especially political speech<sup>34</sup>—which is a cornerstone of American political thought and is embodied in the First Amendment of the United States Constitution.<sup>35</sup> Allowing a libel tourist who seeks out a foreign jurisdiction with low protections for free speech to enforce a judgment against a U.S. citizen usurps constitutional rights.<sup>36</sup>

Chapter 579 protects the fundamental American principle of free speech by providing that no foreign libel judgment will be enforced in California unless the foreign jurisdiction’s defamation law “provide[s] at least as much protection for freedom of speech and the press as provided by both the United States and California Constitutions.”<sup>37</sup> Chapter 579 will “limit the exposure to California

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30. *Id.* § 1717(c) (amended by Chapter 579).

31. *Id.*

32. Rivkin, Jr. & Brown, *supra* note 25. U.S. Senators Arlen Specter, Joe Lieberman, and Chuck Schumer along with Congressman Peter King agreed with this statement. Sen. Arlen Specter et al., *Letters: Confronting Libel Tourism Properly*, WALL ST. J., Jan. 23, 2009, at A14.

33. BELL, *supra* note 8, at 3.

34. *Id.* “Authors in other states may back off from hard-hitting reporting for fear of being hounded by their subjects in a foreign court, especially when the purchase of a few American books by English readers over the Internet could open them to liability.” Editorial, *Libel Over There—And Over Here*, L.A. TIMES, Apr. 9, 2009, available at <http://europenews.dk/en/node/22146>.

35. *See, e.g.*, U.S. CONST. amend. I (“Congress shall make no law . . . abridging the freedom of speech, or of the press . . .”); *New York Times v. Sullivan*, 376 U.S. 254, 269-70 (1964) (“The general proposition that freedom of expression upon public questions is secured by the First Amendment has long been settled by our decisions.”); *see also* *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring) (stating that those who won our independence believed that free speech should be a fundamental principal of the American government). The right to freedom of speech is also included in the California Constitution. “Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.” CAL. CONST. art. I, § 2.

36. *See* Editorial, *Bringing an End to ‘Libel Tourism’*, N.Y. TIMES, Sept. 30, 2008, at A26, available at <http://www.nytimes.com/2008/09/30/opinion/30tue3.html> (discussing how libel plaintiffs “get around” First Amendment protections).

37. CAL. CIV. PROC. CODE § 1716(c)(9) (amended by Chapter 579).

writers, diminish the chilling impact of libel tourism on aggressive reporting about important international issues, and, ultimately, pressure foreign jurisdictions, like Britain, to change their laws to place greater protections on free speech.”<sup>38</sup>

While Chapter 579 will clarify California law regarding libel tourism, it is not entirely clear that an exception already provided under California law would not have prevented libel judgments from being enforced.<sup>39</sup> Indeed, as discussed above,<sup>40</sup> California law already has an exception whereby a foreign judgment will not be enforced if “[t]he judgment or the cause of action or claim for relief on which the judgment is based is repugnant to the public policy of this state or of the United States.”<sup>41</sup> While California courts have interpreted this exception somewhat narrowly,<sup>42</sup> infringing on a citizen’s freedom of speech in what would otherwise be a violation of the First Amendment in a United States court could be repugnant to the public policy of California and the United States.<sup>43</sup>

### B. Personal Jurisdiction

Chapter 579 is based on a similar recently enacted New York statute.<sup>44</sup> That New York statute was created to both prevent libel tourism judgments from being enforced in New York<sup>45</sup> and abrogate a decision by the New York Court of Appeals, which determined that New York’s long arm statute did not confer jurisdiction over the foreign judgment plaintiff.<sup>46</sup> While New York’s long arm statute no longer imposes a restriction on jurisdiction, it remains to be determined whether its grant of jurisdiction is constitutional.<sup>47</sup>

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38. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 320, at 4 (Apr. 28, 2009).

39. See *supra* notes 18-19 and accompanying text.

40. See *supra* Part II.A.

41. CAL. CIV. PROC. CODE § 1716(c)(3) (West Supp. 2009).

42. See generally *Java Oil Ltd. v. Sullivan*, 168 Cal. App. 4th 1178, 86 Cal. Rptr. 3d 177 (2d Dist. 2008).

43. Courts must be careful about making moral judgments regarding foreign law. *Wong v. Tenneco, Inc.*, 39 Cal. 3d 126, 136-37, 702 P.2d 570, 577 (1985). “This is not to suggest, however, that we must blindly defer to the law of another country. Where, for example, such a law directly conflicts with procedural or substantive safeguards designed to insure due process and fairness in our legal system, it will not be enforced.” *Id.* at 137 n.11, 702 P.2d at 577 n.11.

44. ASSEMBLY JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 320, at 8 (June 23, 2009).

45. See *Lahlou*, *supra* note 10, at 210-11 (discussing the provision of New York’s Libel Terrorism Protection Act relating to enforcement of foreign libel judgments).

46. *Ehrenfeld v. Bin Mahfouz*, 881 N.E.2d 830, 833 (N.Y. 2007); see also *Lahlou*, *supra* note 10, at 206-07 (“Heeding the Court of Appeals’ invitation that any expansion of the New York long arm jurisdiction statute be done only through legislative intervention, the New York State Legislature amended the scope of that statute . . .”).

47. See *Lahlou*, *supra* note 10, at 207-10 (discussing the constitutionality of New York’s personal jurisdiction statute).

Chapter 579 includes similar provisions relating to personal jurisdiction.<sup>48</sup> Unfortunately, it seems as if this was put in place simply because the statute was based on the New York law without taking into consideration the differences between each state's long arm statutes.<sup>49</sup> California has an unrestricted long arm statute, permitting personal jurisdiction up to the limits of the United States Constitution.<sup>50</sup> This is already the broadest grant of jurisdiction that the Legislature could give California courts and additional language regarding personal jurisdiction in Chapter 579 is superfluous.<sup>51</sup> As such, the question of personal jurisdiction in California is one of interpreting the United States Constitution and federal personal jurisdiction precedents, not state statutes.<sup>52</sup>

While Chapter 579 may not by itself grant personal jurisdiction over claims for declaratory relief or determinations that a foreign judgment is unenforceable, it is important to consider whether a court sitting in California would have personal jurisdiction over such claims under existing law. In *Yahoo! Inc. v. La Ligue Contre le Racisme et l'Antisemitisme*, the Ninth Circuit considered plaintiff's initiation of a foreign lawsuit against a California resident to be an act purposefully directed at California, thereby granting the federal court personal jurisdiction over the matter.<sup>53</sup> In this case, "Yahoo!, an American Internet service provider, brought suit in federal district court in diversity against La Ligue Contre Le Racisme . . . seeking a declaratory judgment that two interim orders by a French court [were] unrecognizable and unenforceable."<sup>54</sup>

Similar to situations that will arise in the wake of Chapter 579's declaratory relief provision, Yahoo! was seeking a declaratory judgment that a foreign

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48. See *supra* Part III.

49. Compare 2008 N.Y. Laws ch. 66 (enacting the New York Libel Terrorism Protection Act), with CAL. CIV. PROC. CODE § 1717(c) (amended by Chapter 579) (enacting a similar provision).

50. CAL. CIV. PROC. CODE § 410.10 (West Supp. 2009); see also *supra* note 23 (discussing the difference between the California and New York statutes).

51. See 2 B.E. WITKIN ET AL., CALIFORNIA PROCEDURE, *Jurisdiction* § 9 (5th ed. 2008) ("The effect of this general provision is to incorporate in California law, without specific statute or decision by our own courts, any basis of jurisdiction established now or in the future by courts properly appraising constitutional limitations.").

52. See *id.* (discussing personal jurisdiction in California).

53. *Yahoo! Inc. v. La Ligue Contre le Racisme et l'Antisemitisme*, 433 F.3d 1199, 1201 (9th Cir. 2006). The court determined that it had personal jurisdiction over the claim. However, the court did not decide whether or not the claim was unenforceable as a violation of Yahoo!'s First Amendment rights. When combining the judges who dissented on the personal jurisdiction portion of the opinion with the votes of justices who believed the issue was not ripe, a majority of the court voted to dismiss. See *id.* at 1201.

*Yahoo! Inc.* was discussed in detail by the New York Court of Appeals in *Ehrenfeld v. Bin Mahfouz*, 881 N.E.2d 830, 838-39 (N.Y. 2007). However the *Ehrenfeld* court determined that:

The critical distinction between *Yahoo!* and the present case, however, is that the California long-arm statute applicable there is "coextensive with federal due process requirements" and thus "the jurisdictional analyses under state law and federal due process are the same." By contrast, we have repeatedly recognized that New York's long-arm statute "does not confer jurisdiction in every case where it is constitutionally permissible."

*Ehrenfeld v. Bin Mahfouz*, 881 N.E.2d 830, 837 (N.Y. 2007) (citations omitted).

54. *Yahoo! Inc.*, 433 F.3d at 1201.

court's judgment against it was unenforceable because it violated Yahoo!'s First Amendment rights.<sup>55</sup> Using the "effects test," originally discussed by the Supreme Court in *Calder v. Jones*,<sup>56</sup> the *Yahoo! Inc.* court determined that two French court orders that directed Yahoo! to take significant steps at its headquarters in California were purposefully directed at the California forum.<sup>57</sup> The Ninth Circuit determined that this, along with two other contacts that would not have been the basis for personal jurisdiction by themselves,<sup>58</sup> was enough for the California forum to have personal jurisdiction over the foreign defendants who had originally sued Yahoo! in France.<sup>59</sup>

Under the framework created by *Yahoo! Inc.*, it is likely that a court would have jurisdiction over a person who files a libel claim against a California author or publisher if the person's claim caused the California author or publisher to take significant actions within California. This will allow California courts to determine the enforceability of foreign judgments before California authors are faced with enforcement proceedings.

## V. CONCLUSION

Americans have always had a strong belief in the freedom to speak one's mind, especially regarding politics and current events.<sup>60</sup> Chapter 579 is an important change to California law, which will protect California authors from foreign libel judgments that a United States court never would have granted.<sup>61</sup> While Chapter 579 includes language regarding personal jurisdiction, it is not clear how helpful that language will prove in determining whether a California

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55. *Id.* When discussing Dr. Ehrenfeld's claim for declaratory relief, the New York Court of Appeals noted that the facts in *Yahoo! Inc.* and in *Ehrenfeld* were "indeed . . . similar." *Ehrenfeld*, 881 N.E.2d at 837.

56. *Calder v. Jones*, 465 U.S. 783 (1984). The Ninth Circuit describes the *Calder* "effects test" as follows:

*Calder* stands for the proposition that purposeful availment is satisfied even by a defendant "whose only 'contact' with the forum state is the 'purposeful direction' of a foreign act having effect in the forum state." . . . [Under] *Calder*, the "effects" test requires that the defendant allegedly have (1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state.

*Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 803 (9th Cir. 2004) (quoting *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002)) (citations omitted).

57. *Yahoo! Inc.*, 433 F.3d at 1210.

58. The court also considered service of process on Yahoo! in California and a cease and desist order that was sent to Yahoo!'s headquarters in California. *Id.* at 1208-09.

59. *Id.* at 1208, 1211. The *Yahoo! Inc.* court discussed how, within the Ninth Circuit, the "effects test" is used in torts cases while the more traditional "purposeful availment" test is used in contract cases. *Id.* at 1206. The court notes that a claim to determine the validity of a foreign judgment does not fit neatly into one of these two categories, *see id.*, and ultimately determined that the "effects test" is the proper analysis under the circumstances. *Id.* at 1207-08.

60. *See, e.g., supra* note 1 and accompanying text.

61. *See supra* Part IV.A.

court has jurisdiction to hear the claim.<sup>62</sup> However, it is likely that under the current due process requirements of personal jurisdiction, especially the “effects test,” California courts have personal jurisdiction over such claims.<sup>63</sup> Chapter 579 protects free speech and prevents the disregard of such protections by foreign courts that do not to protect this freedom as proactively as the United States.<sup>64</sup>

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62. *See supra* Part IV.B.

63. *See supra* Part IV.B.

64. *See supra* Parts III, IV.A.