

105TH CONGRESS  
2D SESSION

# S. 2614

To amend chapter 96 of title 18, United States Code, to enhance the protection of first amendment rights.

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## IN THE SENATE OF THE UNITED STATES

OCTOBER 9 (legislative day, OCTOBER 2), 1998

Mr. COATS introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend chapter 96 of title 18, United States Code, to enhance the protection of first amendment rights.

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 maybe cited as the “First Amendment Free-  
5 doms Act of 1998.”.

6 **SEC. 2. EXTORTION DEFINED FOR PURPOSES OF RICO.**

7       Section 1961 of title 18, United States Code, is  
8 amended—

1           (1) in paragraph (1)(A), by striking “or threat  
2           involving” and inserting “constituting a conspiracy,  
3           an endeavor, or the commission of”;

4           (2) by striking “As used in” and inserting the  
5           following:

6           “(a) IN GENERAL.—Subject to subsection (b), as  
7           used in”; and

8           (3) by adding at the end the following:

9           “(b) EXTORTION.—Notwithstanding section 1951,  
10          1952, 1956, or 1957 or any other provision of law, con-  
11          duct, in whole or in part, that is alleged to be a violation  
12          of section 1951, 1952, 1956, or 1957 shall not be con-  
13          strued to be racketeering activity for purposes of this  
14          chapter, to the extent that the conduct includes conduct  
15          alleged to be extortion, unless the conduct alleged to be  
16          extortion includes the trespassory taking by any person of  
17          property (tangible or intangible) of another, either for that  
18          person or for another.”.

19          **SEC. 3. PLEADINGS, DISCOVERY, EVIDENCE, AND APPEALS.**

20          (a) PLEADINGS.—Rule 9 of the Federal Rules of Civil  
21          Procedure is amended by adding at the end the following:

22          “(i) CONSTITUTIONALLY PROTECTED CONDUCT.—In  
23          any civil action or proceeding involving conduct that in-  
24          cludes the protected exercise of freedom of religion,  
25          speech, press, peaceable assembly, or petition of govern-

1 ment for redress of grievance, any averment of unpro-  
2 tected conduct of any natural person, its proximate con-  
3 sequences, the association, if any, of any natural person  
4 with another, the unlawful objective, if any, of the associa-  
5 tion, the state of mind of any natural person with regard  
6 to an unlawful objective of the association, and the evi-  
7 dence on which the averment of state of mind is based  
8 shall be stated, to the maximum extent practicable, with  
9 particularity in the complaint.”.

10 (b) DISCOVERY.—Rule 26 of the Federal Rules of  
11 Civil Procedure is amended by adding at the end the fol-  
12 lowing:

13 “(h) CONSTITUTIONALLY PROTECTED CONDUCT.—  
14 Discovery may not be obtained that unduly interferes with  
15 the protected exercise of freedom of religion, speech, press,  
16 or peaceable assembly, or petition of government for re-  
17 dress of grievance.”.

18 (c) EVIDENCE.—Rule 403 of the Federal Rules of  
19 Evidence is amended—

20 (1) by striking “Although” and inserting the  
21 following:

22 “(a) IN GENERAL.—Although”; and

23 (2) by adding at the end the following:

24 “(b) CONSTITUTIONALLY PROTECTED CONDUCT.—  
25 Evidence may not be admitted that would unduly interfere

1 with or unduly put in issue the protected exercise of free-  
 2 dom of religion, speech, press, or peaceable assembly, or  
 3 petition of government for redress of grievance.”.

4 (d) APPEALS.—Section 1292(a) of title 28, United  
 5 States Code, is amended—

6 (1) in the matter preceding paragraph (1), by  
 7 striking “from:” and inserting “from the following:”;

8 (2) in each of paragraphs (1) and (2), by strik-  
 9 ing the semicolon at the end and inserting a period;  
 10 and

11 (4) by adding at the end the following:

12 “(4) Interlocutory orders of the district courts  
 13 of the United States granting or enforcing discovery  
 14 or admitting evidence that is claimed to unduly  
 15 interfere with or unduly put in issue the protected  
 16 exercise of freedom of religion, speech, press, or  
 17 peaceable assembly, or petition of government for re-  
 18 dress of grievance.”.

19 **SEC. 4. LIABILITY LIMITATIONS.**

20 (a) IN GENERAL.—Part VI of title 28, United States  
 21 Code, is amended by adding at the end the following:

22 **“CHAPTER 180—FIRST AMENDMENT DEM-**  
 23 **ONSTRATIONS AND RELATED LITIGA-**  
 24 **TION**

“Sec.

“4001. First amendment demonstrations and related litigation.

1 **“§ 4001. First amendment demonstrations and related**  
2 **litigation**

3 “(a) In any civil action or proceeding that involves  
4 conduct consisting the protected exercise of freedom of re-  
5 ligion, speech, press, or peaceable assembly, or petition of  
6 government for redress of grievance—

7 “(1) no natural person may be held liable in  
8 damages or for other relief—

9 “(A) for the consequences of his protected  
10 conduct; or

11 “(B) for the consequences of his unpro-  
12 tected conduct;

13 except for those consequences established by  
14 clear and convincing evidence to be proximately  
15 caused by his unprotected conduct;

16 “(2) no natural person may be held liable in  
17 damages or for other relief because of his associa-  
18 tions with another where another engages in unlaw-  
19 ful conduct, unless it is established by clear and con-  
20 vincing evidence that the natural person intended,  
21 through the associations of that natural person with  
22 the other proximately to cause or further the unlaw-  
23 ful conduct;

24 “(3) no natural person may be held liable in  
25 damages or for other relief based on the conduct of  
26 another, unless the fact finder finds by clear and

1 convincing evidence that the natural person author-  
2 ized, requested, commanded, ratified, or recklessly  
3 tolerated the unlawful conduct of the other;

4 “(4) no natural person may be held liable in  
5 damages or for other relief, unless the fact finder  
6 makes particularized findings sufficient to permit  
7 full and complete review of the record, if any, of the  
8 conduct of the natural person; and

9 “(5) notwithstanding any other provision of law  
10 authorizing the recovery of costs, including attorney  
11 fees, the court may not award costs, including attor-  
12 ney fees, if that award would be unjust because of  
13 special circumstances, including the relevant dispar-  
14 ate economic position of the parties or the dispropor-  
15 tionate amount of the costs, including attorney fees,  
16 to the nature of the damage or other relief obtained.

17 “(b) For the purpose of this section, a natural person  
18 shall be construed to be acting recklessly if that natural  
19 person consciously disregards a substantial and unjustifi-  
20 able risk, such that the conduct of the natural person con-  
21 stitutes a gross deviation from the standard of conduct  
22 that a law-abiding natural person would observe in the sit-  
23 uation of the natural person.”.

24 (b) TECHNICAL AND CONFORMING AMENDMENT.—  
25 The analysis for title 28, United States Code, is amended

1 by inserting immediately after the item relating to chapter  
 2 179 the following:

**“180. First Amendment Demonstrations and Related Liti-  
 gation ..... 4001”.**

3 **SEC. 5. EFFECTIVE DATE.**

4 (a) IN GENERAL.—Except as provided in subsection  
 5 (b), this Act and the amendments made by this Act shall  
 6 take effect on the date of enactment of this Act.

7 (b) EXCEPTION.—The amendments made by section  
 8 2 of this Act shall apply for purposes of any proceeding  
 9 under section 1964(c) of title 18, United States Code, to  
 10 any conduct in violation of section 1962 of that title that  
 11 occurs before, on, or after the date of enactment of this  
 12 Act, unless that prior conduct has been the subject of a  
 13 final judgment by a court of competent jurisdiction and  
 14 all avenues of appellate review have been fully exhausted  
 15 before the date of enactment of this Act.

16 **SEC. 6. SEVERABILITY.**

17 If any provision of this Act, an amendment made by  
 18 this Act, or the application of such provision or amend-  
 19 ment to any person or circumstance is held to be unconsti-  
 20 tutional, the remainder of this Act, the amendments made  
 21 by this Act, and the application of the provisions of such  
 22 to any person or circumstance shall not be affected there-  
 23 by.

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