



S. 2040 — Justice Against Sponsors of Terrorism Act (Sen. Cornyn, R-TX)

CONTACT: [Nicholas Rodman](#), 202-226-8576

FLOOR SCHEDULE:

Scheduled for consideration on September 9, 2016 by unanimous consent under suspension of the rules, which requires 2/3 vote for passage.

TOPLINE SUMMARY:

[S. 2040](#) would narrow the scope of foreign sovereign immunity from lawsuits by victims of terrorist acts and grant U.S. district courts jurisdiction over certain terrorism-related cases.

COST:

The Congressional Budget Office (CBO) [estimates](#) that implementing S. 2040 would have no significant effect on the federal budget. CBO estimates that implementing the bill would have no significant discretionary costs over the 2016-2021 period. Because enacting S. 2040 could increase revenues, pay-as-you-go procedures apply. Enacting the bill would not affect direct spending. CBO estimates that enacting S. 2040 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

CONSERVATIVE CONCERNS:

Some conservatives may be concerned that this legislation could increase the involvement of U.S. courts in foreign policy, a field constitutionally reserved to the legislative and executive branches, and that the legislation could increase the risk of subjecting U.S. personnel abroad to reciprocal actions by a foreign government. Others may argue that the legislation would remove sovereign immunity for countries that have been proven to sponsor acts of terrorism occurring on U.S. soil, and that the legislation comports with Congress's authority to establish inferior tribunals and set the appropriate jurisdiction of the courts.

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

S. 2040 would amend [chapter 97 of title 28, United States Code](#) by narrowing the scope of foreign sovereign immunity in terrorism-related cases. The bill stipulates that a foreign state would not be immune from the jurisdiction of the courts of the United States in any case in which money damages are sought against a foreign state for physical injury to person or property or death occurring in the United States and caused by an act of international terrorism in the United States and a tortious act of the foreign state, or of any official,

employee, or agent of that foreign state. The bill would further authorize a national of the United States to bring a claim against a foreign state, if the state is deemed not immune from U.S. courts. A foreign state would not be subject to the jurisdiction of the courts of the United States on the basis of an omission or a tortious act that constitutes mere negligence.

S. 2040 would also amend [section 2333 of title 18, United States Code](#) by allowing U.S. courts to assert liability to any person who aids and abets, by knowingly providing substantial assistance, or who conspires with the person who committed an act of international terrorism.

U.S. courts would have exclusive jurisdiction in any action in which a foreign state is subject to the U.S. court jurisdiction under [section 1605B of title 28, United States Code](#), governing exceptions to jurisdictional immunity for foreign states. The bill would authorize the Attorney General to intervene in any action in which a foreign state is subject to the jurisdiction of a U.S. court for the purpose of seeking a stay of the civil action, in whole or in part. S. 2040 would further stipulate that a court of the United States may stay a proceeding against a foreign state for not longer than 180 days, if the Secretary of State certifies that the United States is engaged in good faith discussions with the foreign state defendant concerning the resolution of the claims against it. The Attorney General would be authorized to petition the court for an extension of the stay for additional 180-day periods. A court would be authorized to grant an extension if the Secretary of State recertifies that the United States remains engaged in good faith discussions with the foreign state defendant concerning the resolution of the claims against it, or any other parties. The bill would clarify that if any of its provisions and its applications to any person or circumstance is held to be invalid, the remainder of the bill and its applications to any other person not similarly situated or to other circumstances, would not be affected by the holding.

The House version of the bill (H.R. 3815) can be found [here](#). More information in support of the bill from the organization “PassJasta.org” can be found [here](#). Testimony from a University of Virginia Law professor in opposition to the legislation can be found [here](#). An op-ed on the legislation from Middle East expert Daniel Pipes can be found [here](#).

COMMITTEE ACTION:

S. 2040 was introduced on September 16, 2015 and was referred to the Senate Judiciary Committee. On May 17, 2016, the bill was passed in the Senate with an amendment by voice vote, and was referred to the House Committee on the Judiciary.

ADMINISTRATION POSITION:

The Statement of Administration Policy is not available.

CONSTITUTIONAL AUTHORITY:

Bills originating in the Senate are not required to have a Constitutional Authority Statement.

NOTE: *RSC Legislative Bulletins are for informational purposes only and should not be taken as statements of support or opposition from the Republican Study Committee.*