



Congressional Update

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I. Congress Overrides Presidential Veto to the Justice against Sponsors of Terrorism Act (JASTA)

On Friday, September 23 President Obama sent his veto [message](#) for **S2040**, the **Justice against Sponsors of Terrorism Act (JASTA)** to the Senate. The President cited his objection to removing sovereign immunity in US courts from foreign governments that are not designated state sponsors of terrorism. (See [Arab Center Special Report](#)).

The veto message set up a showdown with Congress which was certain to override the veto. On Wednesday, September 28 the Senate voted to override the veto by a vote of 97-1. Senator Harry Reid (D-Nevada) was the only no vote. Senators Tim Kaine (D-Virginia) and Bernie Sanders (I-Vermont) did not vote. The House quickly followed suit, voting [348-77](#) to override the veto.

With the veto overturned, JASTA becomes law despite unanimous opposition from senior Obama Administration officials, including Vice President Joe Biden, Secretary of State John Kerry, Secretary of Defense Ashton Carter, and CIA Director John Brennan.

Members Having Second Thoughts? Although the vote to override was overwhelming in both chambers, a number of Senators, who voted to override, have continuing concerns about the potential retaliation against the US and its citizens. Following the Senate vote, *Senator Lindsey Graham (R-South Carolina) and 27 Senators including Senate Armed Services Committee (SASC) Chairman John McCain (R-Arizona), SASC Ranking member Jack Reed (D-Rhode Island), Senate Foreign Relations Committee (SFRC) Chairman Bob Corker (R-Tennessee), and Ranking member Ben Cardin (D-Maryland), signed a letter to JASTA sponsors Senators John Cornyn (R-Texas) and Charles Schumer (D-New York), asking them to work to “appropriately mitigate those unintended consequences of the new law.” The text of the letter follows:*

Dear Senators Cornyn and Schumer:

We are writing regarding the anticipated override of the president's veto of S. 2040, the Justice Against Sponsors of Terrorism Act (JASTA).

We appreciate the efforts that you have undertaken to allow the families who lost loved ones on September 11, 2001 to have additional recourse.

We have a great deal of compassion for the families and respect their desire for justice. We understand your purpose in drafting this legislation is to remove obstacles so those who commit or support terrorist acts in the United States face the full range of consequences of the U.S. legal system. However, concerns have been raised regarding potential unintended consequences that may result from this legislation for the national security and foreign policy of the United States. If other nations respond to this bill by weakening U.S. sovereign immunity protections, then the United States could face private lawsuits in foreign courts as a result of important military or intelligence activities.

We would hope to work with you in a constructive manner to appropriately mitigate those unintended consequences."

The letter is vague and Graham and others have not publicly announced how they intend to "tweak" the legislation when Congress returns in November. Amending the JASTA legislation is likely to be an uphill struggle given the overwhelming vote in both chambers.

Other Senators who signed the letter are: Senators Dianne Feinstein (D-California), Lamar Alexander (R-Tennessee), Mark Warner (D-Virginia), Mike Rounds (R-South Dakota), Pat Roberts (R-Kansas), Chris Coons (D-Delaware), Jeff Flake (R-Arizona), Tom Udall (D-New Mexico), Dan Coats (R-Indiana), Bill Nelson (D-Florida), John Thune (R-South Dakota), Jeanne Shaheen (D-New Hampshire), Angus King (I-Maine), Tom Carper (D-Delaware), Tom Cotton (R-Arkansas), Claire McCaskill (D-Missouri), Dan Sullivan (R-Alaska), Jeff Merkley (D-Oregon), Jim Risch (R-Idaho), Brian Schatz (D-Hawaii), Heidi Heitkamp (D-North Dakota), Mazie Hirono (D-Hawaii, and Michael Bennet (D-Colorado).

On September 29, Senator Bob Corker spoke on the Senate floor about the passage of the JASTA legislation. In his [statement](#) Corker said the bill was not as satisfactory as some in the Senate would have hoped. He hoped that between now and the "Lame Duck" session, or shortly thereafter Congress will have a way to rectify some of the issues that have concerned members of Congress. Senator Mark [Warner](#) also spoke on the Senate floor on the need to amend the legislation.



II. Continuing Resolution

After weeks of partisan wrangling over the contents of the Continuing Resolution (CR) Congress passed a short-term CR (HR5325) to fund the US Government through December 9, avoiding a government shutdown. Congress then quickly skipped town until after Election Day. The House will reconvene on November 14; the Senate will reconvene on November 15.

The Senate passed the CR by a vote of 76-26. A few short hours later the House passed the CR by a vote of 342-85. The CR provides \$1.1 billion to combat the Zika virus and \$500 million to Louisiana and other states, facing flooding and other natural disasters. Republicans and Democrats haggled for weeks over adding funds to aid the people of Flint, Michigan who have been drinking lead-contaminated water. Republicans, however, refused to add the funds promising to address the issue in a water bill pending in Congress.

The CR funds the US Government agencies at current year levels, i.e., FY 2016, and other than the funding for Zika and Louisiana does not include any new funding for other programs. When Congress returns in November it likely will consider an Omnibus Continuing Resolution, which will include the FY 2017 State, Foreign Operations bill which funds US foreign assistance programs, increases FMF for Israel in the Senate version of the bill, which the Administration opposes, and also includes an anti-BDS provision.

III. Middle East-Related Bills and Resolutions Introduced

(1) Palestine/Israel

Condition Aid to the West Bank and Gaza (S3414) – Introduced on September 28 by Senators Lindsey Graham (R-South Carolina), Dan Coats (R-Indiana), Roy Blunt (R-Missouri), Marco Rubio (R-Florida), Mark Kirk (R-Illinois), Tom Cotton (R-Arkansas), John Boozman (R-Arkansas), Ted Cruz (R-Texas) and Tim Scott (R-South Carolina), the bill would condition assistance to the West Bank and Gaza on steps by the Palestinian Authority to end violence and terrorism against Israeli citizens. The bill has been referred to the Senate Foreign Relations Committee (SFRC).

Israeli-Palestinian Conflict (SConRes54) – Introduced on September 28 by Senators Mark Kirk (R-Illinois) and Richard Blumenthal (D-Connecticut), the resolution expresses the

sense of Congress and reaffirms longstanding US policy in support of a direct bilaterally negotiated settlement of the Israeli-Palestinian conflict and opposition to UN Security Council resolution imposing a solution to the conflict. The resolution has been referred to the SFRC.

Israeli-Palestinian Conflict (HConRes65) – On September 28, Representatives Ed Royce (R-California) and Eliot Engel (D-New York) introduced an identical resolution to SConRes54 which was referred to the House Foreign Affairs Committee.

Anti-BDS/Israel (S3465) – Introduced on September 29 by Senators Ben Cardin (D-Maryland) and Rob Portman (R-Ohio), the bill would amend the Export Administration Act of 1979 to include in prohibitions on boycotts against allies of the US, boycotts fostered by international governmental organizations against Israel and to direct the Export-Import Bank of the US to oppose boycotts against Israel. The bill has been referred to the Senate Banking Committee.

(2) Iran

Cash Payments to Iran (S3443) – Introduced by Senator David Perdue (R-Georgia), the bill would prohibit the US Government from making cash payments to state sponsors of terrorism. The bill has been referred to the SFRC.

The House passed similar legislation, HR5931 by a vote of 254-163. The House bill would prohibit the US from making any kind of direct or indirect cash payment to Iran following Republican accusations that the \$400 million Tehran received in January amounted to a ransom for the release of detained Americans. The Senate has not yet acted on the bill.

(3) Victims of Terrorism

Claims against a Foreign State (HR6225) – Introduced on September 28 by Representatives Darrell Issa (R-California) and Juan Vargas (D-California), the bill would amend Title 28 of the US Code to provide that a national of the US may only bring a claim against a foreign state for an injury which was caused by international terrorism and which occurred on September 11, 2001. The bill has been referred to the House Judiciary Committee.



The purpose of the bill is to limit any lawsuits against the Kingdom of Saudi Arabia by victims of terrorism specifically to the 9/11 attack thereby preventing any future lawsuits against Saudi Arabia or any other country. Issa and Vargas voted to sustain the presidential veto.

IV. Hearings Week of September 19-26

(1) Libya’s Descent: Causes and Solutions: On September 27, the House Foreign Affairs Subcommittee on Terrorism, Nonproliferation, and Trade [held](#) a hearing titled “Libya’s Terrorist Descent: Causes and Solutions.” Witnesses included Dr. Frederica Saini [Fasanotti](#), Non-Resident Fellow at the Center for 21st Century Security and Intelligence at The Brookings Institution, Thomas [Joscelyn](#), Senior Editor of the Long War Journal at the Foundation for Defense of Democracies, and Benjamin [Fishman](#), Former Director for North Africa at the National Security Council.

Representative Paul Cook (R-California) filled in as Chairman for this hearing. He began the session asserting that Libya is a “virtual incubator of terrorist groups,” and that US policy has transformed Libya into the complete failure it is today. He specified that leaving Libya to its own devices after the fall of Gaddafi led the country to become a failed state and allowed for groups like ISIS to take root. Ranking Subcommittee Member Bill Keating (D-Massachusetts) wanted to know what the role of the US and international bodies like the United Nations should be, both diplomatically and militarily, to help the situation. The hearing was thus called to garner insight into possible strategies for stabilizing Libya and minimizing the terrorist threat in the country.

The witnesses discussed a series of options for stabilizing Libya and combatting terrorism in the country, agreeing that a stable Libya is essential for countering radicalization. Fasanotti stressed that the West should do everything it can to help, through measures such as a weapons buy-back program, helping the Libyan armed forces rebuild into a unified group, and helping the country diversify its economy so that it is no longer wholly reliant on oil. She added that a united Libya might not be possible in the short term due to regional divides, and offered that a three part confederal system with regional governments might be necessary before reconstructing at a national level. Joscelyn spoke about counterterrorism tactics, noting that Special Forces have been successful in combatting ISIS in Sirte, but there is a need to vigilantly monitor local groups to look for ties to Al-Qaeda. Fishman added his opinion that more access is needed on the ground to monitor the situation, stressing that U.S. diplomats need to be more effective as interlocutors.

(2) “Identifying the Enemy: Radical Islamist Terror”: On Thursday, September 22, the House Committee on Homeland Security’s Oversight and Management Efficiency Subcommittee [held](#) a hearing titled “Identifying the Enemy: Radical Islamist Terror.” Witnesses included George [Selim](#), Director of Office of Community Partnerships at the US Department of Homeland Security, Peter [Hoekstra](#), former Chairman, House Permanent Select Committee on Intelligence, Dr. M. Zuhdi [Jasser](#), President of the Islamic Forum for Democracy, Sahar F. [Aziz](#), Professor of Law at Texas A&M University School of Law, and Shireen [Qudosi](#), Senior Contributor at CounterJihad.com.

Chairman Scott Perry (R-Pennsylvania) set the tone for the hearing, worried about the “willful ignorance” of the Obama administration in combatting Islamist terror. He hoped those testifying would provide the committee with an outside perspective on the threats the United States faces, as well as best practices to counter them. Ranking Member Bonnie Watson Coleman (D-New Jersey) voiced her concerns about the Department of Homeland Security’s Countering Violent Extremism program (CVE). While she was pleased with the Administration’s renewed focus on countering extremism, she stressed that the Committee needed more information about the CVE implementation strategy. She called on Selim, director of the CVE program, to provide the Committee with his goals and strategies, and asked the other speakers to offer their insight as well.

The hearing’s first testimony was from George Selim, the Director of Office of Community Partnerships at the Department of Homeland Security. Selim manages the CVE program, which “[aims](#) to address the root causes of violent extremism by providing resources to communities to build and sustain local prevention efforts and promote the use of counter-narratives to confront violent extremist messaging online.” The program has been operational for 12 months, and works with local law enforcement, local government agencies, and communities to provide them with tools for counterterrorism prevention. However, members of Congress from both parties were dissatisfied with the lack of information about the program’s goals. Watson Coleman worried that the grant program had no metrics, no enforcement strategies, and was frustrated by a lack of information about NGOs and community groups that would be working alongside law-enforcement. Barry Loudermilk (R-Georgia) thought the CVE could easily become a “black hole of money,” and Scott Perry (R-Pennsylvania) was worried about how resources would be directed. Ultimately, Selim didn’t have adequate answers to most of their questions, and was unable to give a timeframe for when Congress could expect to receive his strategy plan or list of NGO collaborators.

Sahar Aziz offered an alternative to CVE, arguing that it is an unnecessary program. She cited that approximately 60% of terrorist plots have been prevented through pre-existing law enforcement channels, and 18% of them were stopped by Muslim Americans contacting



authorities and raising concerns. However, she noted that since ISIS relies on alienation and marginalization to fuel its narrative, there will be attacks that can't be prevented where the Muslim community, family, and friends of the terrorist are all shocked to discover their radicalization. CVE would not change that reality. Thus, she said it would be preferable to spend CVE money on countering alienation and marginalization, thus combatting the allure of radical ideology. The empowerment of Muslim communities could be achieved through enhancing social services, executing education initiatives, and providing better refugee resettlement services. Aziz also stressed that Muslims need to be protected with the same assumption of innocence as all other communities, and shouldn't be viewed as threats first, and as people second.

According to the *Brennan Center for Justice*, the CVE program is, like Aziz asserted, [flawed](#) and potentially destructive to Muslim communities in the U.S. While CVE is intended to be a “soft” counterterrorism initiative, the Brennan Center argues that it stigmatizes and targets Muslim communities, and is too closely linked to law enforcement. An *ACLU* report echoes this sentiment, [noting](#) that the program stigmatizes Muslim groups and encourages community spying, which sows discord in Muslim communities.

(3) “15 Years after 9/11: The State of the Fight against Islamic Terrorism”: On Wednesday, September 21, the House Committee on Armed Services [held](#) a hearing titled “15 Years After 9-11: The State of the Fight against Islamic Terrorism.” Witnesses included James [Jeffery](#), Former US Ambassador to Turkey and Iraq, Brian Michael [Jenkins](#), Senior Advisor to the President of RAND Corporation, and Lt. Colonel Bryan C. [Price](#), Counterterrorism Expert.

Chairman Mac Thornberry (R-Texas) introduced the hearing, inviting Committee members and witnesses to think about the state of terrorism over the past 15 years since 9/11. He hoped to examine how the terrorist threat has changed over the past decade and a half, and whether or not the US is well-equipped to handle the evolving threat. In his opinion, the US hasn't been successful at combating Islamic ideology, citing the recent bombs in New Jersey and New York as proof of the difficulty in preventing attacks. Moving forward, he stated, it is essential that the government develops a strategy that will be successful.

Each witness spoke to the nature of jihadist terror threats and the role the US should play in combating terrorism both at home and abroad. Jenkins and Price cautioned against viewing Islamic terrorism as an existential threat, with Jenkins maintaining that Americans are safer now than they were on 9/11. In recent years, he stated, the federal government and local police have uncovered and thwarted around 90 percent of jihadist terror plots. Price noted that terrorism cannot be likened to an existential threat such as that which the US faced during the

Cold War, but rather argued that the fight against radical jihadism is a part of modern life that can only be managed and contained - not defeated entirely. Jenkins also cautioned against divisive rhetoric in the US, noting that “The United States’ frightened, angry, and divided society remains the country’s biggest vulnerability.”

Committee members were particularly concerned about mitigating ill-feelings towards America in the Middle East while still maintaining a military presence. Walter Jones (R-North Carolina) cited the damage that civilian drone-strikes have caused in “enhancing those who hate us” and wondered if there are other foreign policy options, while Ranking Member Adam Smith (D-Washington) asserted that trying to impose an outcome in the region has not only been ineffective, but has also damaged US credibility with local actors. In response, Jeffery stressed that the US can only help fight Islamic terror at the margins, and should not attempt to fix the Middle East on its own. Price offered a series of lessons learned, such as not relying on decapitation tactics, and coupling military endeavors with improving the political conditions of the region. He echoed former Secretary of Defense Robert Gates, who said “we cannot kill or capture our way to victory” in the fight against terrorism.

V. At the Think Tanks

(1) AEI Event: “Winning the War Against Islamist Terror: A Conversation with Michael McCaul”: On Tuesday, September 20, American Enterprise Institute (AEI) invited House Committee on Homeland Security Chairman Michael McCaul (R-Texas) to introduce his new national counterterrorism [strategy](#). The document, “A National Strategy to Win the War against Islamist Terror,” is critical of the Obama Administration’s counterterrorism efforts, and includes over 100 policy principles designed to combat terrorism at home and abroad. His policy prescriptions include increased intelligence sharing with foreign countries, advanced technology for refugee vetting, and more robust aviation security. McCaul hopes his plan will serve as a guideline for the future administration, noting that he has given the report to Hillary Clinton and Rudi Guiliani.

In his report, McCaul specified that the greatest threat facing the US is “radical Islamic terror,” without noting other forms of radicalization within the country. His use of language reinforces the idea of a global, cohesive jihadist movement creating an existential threat to the US, which plays to a sense of fear that could marginalize Muslim communities. Numerous scholars would refute Islamic terror as a cohesive movement, arguing instead that radical terrorist groups are fragmented, with many terrorists *inspired* by radical movements rather than directed by them. The Obama Administration has been hesitant to label radicalization or terrorism as “Islamic”



for these reasons, as this labelling not only gives groups such as ISIS legitimacy, but can negatively affect Muslim communities.

A fundamental aspect of McCaul's plan is the integration of new technologies into government security programs, which he views as inefficient and outdated. For example, he advocates for robust reform within the Transportation Security Administration (TSA) which has "failed to provide the level of security and efficiency that the flying public deserves." He also stresses the need for increased vetting and surveillance of refugees and US visitors. Although the US has one of the most vigorous refugee vetting programs in the world, McCaul worries that nobody knows who Syrian refugees really are, and supports biometric screening processes. While paying lip service to constitutional privacy rights, he stresses that the US must also monitor social media for people coming into the country to check for radicalization. These policies are in line with his legislative efforts to enhance counterterrorism, such as his sponsored bill titled the *Community Counterterrorism Preparedness Act (H.R.5859)*, which passed into the Senate on September 21st, 2016. The bill would require the Department of Homeland Security to "carry out a grant program for emergency response providers to prevent, prepare for, and respond to the most likely terror attack scenarios."

McCaul's strategy plan has been met with bipartisan critique. Daniel Horowitz and Nate Madden of *Conservative Review* [criticized](#) McCaul's plan, writing that it exhibits the "same systemic misdiagnosis of the problem" when attempting to counter extremism. They write that the strategy plan is too vague and doesn't include specific threats, and that McCaul's prominent role advising presidential contender Donald Trump on homeland security "should concern everyone who wants a bold change in direction."

(2) McCain Institute/National Defense University: Advancing Democracy and Human Rights Promotes US National Security Interests: On Wednesday, September 21, the McCain Institute and the National Defense University's Institute for National Strategic Studies hosted an event titled "Advancing Democracy and Human Rights Promotes US National Security Interests." The event featured a number of speakers including Senator John McCain (R-Arizona), Thomas Carothers, Vice President for Studies at the Carnegie Endowment for International Peace (CEIP), and Carl Gershman, President of the National Endowment for Democracy (NED).

Senator McCain opened the discussion stressing that democracy around the world is essential to US security. A particular obstacle for democracy promotion he mentioned was continued US reliance on authoritarian regimes as allies, stating that "we do people in those countries no favors by keeping quiet" regarding human rights abuses. Continued reliance on "friendly

tyrants” was a pervasive theme throughout the afternoon. Gershman detailed historical US entanglements with authoritarian regimes, and Carothers worried about the hypocrisy of US foreign policy. In the Arab World, Carothers specified, fear of instability has resulted in the US supporting democracy in Tunisia, but also designates US support for an authoritarian regime in Egypt. Democracy and security are not always linked the way he would like, with security remaining the paramount US foreign policy priority - sometimes at the expense of human rights, good governance, and democracy promotion.

Coupled with the event was the release of a [report](#), “Advancing Freedom Promotes U.S. Interests,” compiled by the Democracy & Human Rights Working Group. The publication offers an analysis of 12 countries, examining democracy and rule of law and offering country-specific policy recommendations. Overall, the report notes that the environment for democracy and human rights has become more challenging, citing both turmoil in the MENA region and global economic crises as significant obstacles. As the report notes, “the spread of ISIS, and the aftermath of movements in the Arab World have created multiple global challenges to the efforts of democracy and human rights activists.” To enhance democracy and human rights worldwide, the report stresses the need for a more robust US foreign policy agenda that partners with democracies to spread universal values, while taking into account local specificities.

One of the countries highlighted in the report was Egypt. As the most populous Middle East country and one of the most significant US allies in the region, the report argues that the US is not doing enough to promote democracy and human rights in the country. On the contrary, the state of human rights and freedom in Egypt has deteriorated tremendously under President Abdel Fatah al-Sisi, with what the *Washington Post* calls “the most severe political repression in Egypt in more than half a century.” While Egypt and the US work together to counter terrorism and radicalization in the region, the report argues that repression under the Sisi regime is serving “to increase radicalism and fuel terrorism, not deal with it effectively.” To counter this trend, the report recommends a rebalancing of current US assistance, with a smaller investment towards security assistance and a larger investment towards education for Egyptian youth. It also recommends attaching human rights conditions to US assistance, restoring assistance to civil society organizations, meeting with Egyptian activists, and coupling economic aid with incentives that would encourage Egypt to strengthen rule of law.

Another MENA country included in the report is Saudi Arabia, also a US authoritarian ally in the region. The Obama Administration has largely refused to criticize Saudi Arabia for human rights abuses due to a long-standing strategic relationship which includes business, arms deals, Saudi oil, and counterterrorism efforts. The report states, “No other country is treated with such kid gloves,” and argues that the next administration should press Saudi leaders to make



changes to their domestic policies. Policy recommendations include making it US policy to address human rights and democracy issues in bilateral discussions, encouraging religious freedom and respect for women's and worker's rights, and bringing the military, business, and civil society leaders together in strategic discussions to develop an economic approach that links human rights with development.