

**Two articles on:
Suing Sponsors of Terrorism**

With associated editorial

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Suing Sponsors of Terrorism

On September 28, 2016, the House and Senate (of the United States Congress) overrode President Obama's veto of legislation that would allow United States citizens to bring lawsuits against foreign sponsors of terrorism. The impetus for this legislation came from the 9/11 attacks, now dubbed as the 9/11 Act.

The figure below provides a summary of the topic of this article. While the act is general in nature, the immediate target is Saudi Arabia, because several of the 9/11 terrorists were citizens of that nation. The bill is effective for any act of terrorism on or after September 11, 2001.



The screenshot shows the title "S.2040 - Justice Against Sponsors of Terrorism Act" for the 114th Congress (2015-2016). It includes a "LAW" tag and a "Hide Overview" button. The details listed are: Sponsor: Sen. Cornyn, John [R-TX] (Introduced 09/16/2015); Committees: Senate - Judiciary | House - Judiciary; Latest Action: 09/28/2016 Became Public Law No: 114-222. (All Actions); Roll Call Votes: There have been 2 roll call votes; Notes: Public Law enacted over veto.

The veto count was overwhelming, well above the two-thirds majority needed to override a presidential veto. The House vote was 348-77; the Senate 97-1 in favor of the override. The President protested, declaring the law would impede a president's ability to conduct foreign policy.

No matter, both Democrats and Republicans weighed-in to support what John Cornyn, R-Texas (sponsor of the bill) declared: The bill "gives the victims of the terrorist attack on our own soil an opportunity to seek the justice they deserve." Furthermore, Senator Ben Cardin, D-Md, stated, "We cannot in good conscience close the courthouse door to those families who have suffered unimaginable losses."

Major Aspects of the Law (See [www.congress.gov/bill/114th congress/senate-bill/2040](http://www.congress.gov/bill/114th/congress/senate-bill/2040).)

Section 3 of the law "authorizes federal court jurisdiction over a civil claim against a foreign state for physical injury to a person or property or death that occurs inside the United States. ..."

A key point: the law does not deal with an act of war. It deals only with attackers who have not made a formal, internationally recognized declaration of war. It is not the stuff of FDR addressing the nation December 8, 1941 with his "day of infamy" speech after Pearl Harbor, followed by a request for Congress to declare war. The 9/11 Bill is more modest in its scope, and is focused on terrorist victims finding redress in civil litigation.

Thus, Section 4 of the bill amends the U.S. criminal code to impose *civil* liability on a person who conspires or provides support to commit an act of international terrorism. The word civil is important, because civil cases involve individuals and usually result in monetary settlements. Criminal cases usually are settled with prison time.

As of this writing, it appears that suits from individuals will be filed against a country, and not a person. Nonetheless, the potential exists for lawsuits to be filed against individuals.

Which Courthouse?

Section 5 establishes an “exclusive federal court jurisdiction over civil claims under this bill.” Although the bill is not precise about this new institution, it appears another level of government bureaucracy (an exclusive U.S. federal court) will have the power to put this bill into place. Thus, this mandate does not include international courts of law, three of which are located at The Hague in the Netherlands: the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Court of Justice (ICJ), and the International Criminal Court (ICC).

The question becomes: Will a nation such as Saudi Arabia, allow itself and perhaps its citizens to be subjects of a U.S. civil suit brought by an aggrieved American citizen? How would the Saudis deal with the possibility that their anti-American Wahhabis might indeed be found to have had a hand in 9/11? The Wahhabis are known to have had an influence on some of the 9/11 terrorists.

How about Russia, China, Iran, and the Syrian regime with regard to other terrorist activities? Your guess is as good as mine, but my guess is no nation will accept a U.S. civil court proceeding, whose very creation will be interpreted as an act that will compromise their sovereignty.

Which Culprit?

The 9/11 Act deals with foreign sponsors, but how is it determined if the terrorist is an American or a foreigner? For example, if the Boston Marathon bombers, who were U.S. residents, had foreign sponsors, who brings lawsuits on whom? On the two men? On their sponsors? On the sponsor’s country of origin or current residence? On the country from which they received their propaganda? On the bombers’ parents, for their not reading Dr. Seuss, and were therefore derelict parents? The latter possibility is written as parody, but it is not that far-fetched.

Who Becomes the Defendant?

This act will open the flood gates of lawsuits against the U.S. and quite possibly, U.S. citizens (military and intelligence personnel) for America’s military operations around the globe. The second piece of this article describes three of what could be thousands of examples.

Suing Sponsors of Terrorism

This is the second article about the recently passed Justice Against Sponsors of Terrorism Act, also known as the 9/11 Act. Congress overwhelmingly overrode President Obama's veto of this bill. We continue our analysis of this act with a brief examination of three examples why this act, as presently written, is not in the best interests of America and America's military and intelligence personnel.

The use of Agent Orange in Vietnam: With no war declared, America's use of Agent Orange decimated segments of the Vietnamese civilian population. This writer's heart condition and exposure to Agent Orange during the Vietnam War results in Uncle Sam sending him a disability check each month. As a result of the 9/11 Act, will injured Vietnamese citizens receive checks from Uncle Sam; or shamefully calamitous, from an individual American warrior?

The Vietnamese could form their own civil court and let their citizens sue America and perhaps personnel who were associated with the program. Was the Agent Orange program a terrorist program? Of course not, but the Vietnamese could sue America's warriors for redress. Irony in action: I am a victim of my government's use of Agent Orange but I might be sued because of my government's very use of this chemical. As stated, it appears initial lawsuits will be brought against nations, but there is no guarantee this practice will hold.

Attacks in Iraq and Afghanistan: Hundreds of attacks by U.S. forces resulted in civilian deaths. Yet our warriors were carrying out orders. Who would these courts in other countries go after? The G.I. doing the killing and injuring? The commander in charge of the operations? The intelligence personnel who targeted the attacks? The nation itself?

The U.S. Drone and Missile Programs: The BureauInvestigates.com research facility has compiled the number of drone and missile strikes (and estimated casualties) the U.S. has conducted in four countries, as shown in the tables below. Due to the ambiguity of warfare, these figures might be imprecise. Nonetheless, they reflect that the attacks have resulted in the deaths of non-combatants. These attacks could easily be considered acts of terrorism by the countries that have been attacked.

Recorded US drone strikes to date

	<i>Pakistan (June 2004 to date)</i>	<i>Yemen (Nov 2002 to date)*</i>	<i>Somalia (Jan 2007 to date)*</i>	<i>Afghanistan (Jan 2015 to date)</i>
US drone strikes	421	107-127	15-19	48
Total reported killed	2,476-3,989	492-725	25-108	420-619
Civilians reported killed	423-965	65-101	0-5	14-42
Children reported killed	172-207	8-9	0	0-18
Reported injured	1,158-1,738	94-223	2-7	24-28

Recorded US air and cruise missile strikes to date

	<i>Pakistan (June 2004 to date)**</i>	<i>Yemen (Nov 2002 to date)*</i>	<i>Somalia (Jan 2007 to date)*</i>	<i>Afghanistan (Jan 2015 to date)</i>
US air & cruise missile strikes	N/A	15-72	8-11	35
Total reported killed	N/A	156-365	40-141	79-104
Civilians reported killed	N/A	68-99	7-47	0-30
Children reported killed	N/A	26-28	0-2	0
People reported injured	N/A	15-102	11-21	5-6

Sleeping on it

Shortly after the passage of this veto, the leaders in Congress said they needed to modify some of their views on the subject. Their rethinking came less than a day after they overrode Obama’s veto. Here are several paraphrases and quotes that came forth the day after the 9/11 Act override vote occurred:

Speaker Paul Ryan, R-Wis, and Senate Majority Leader Mitch McConnell, R-Ky, both acknowledged Thursday that the bill, which narrows a foreign nation’s immunity from legal challenge, could backfire by exposing the United States to retaliatory lawsuits by foreign victims of terrorism.

Ryan said lawmakers were focused on giving 9/11 families “their day in court.” However, now the speaker is worried that other countries will retaliate---as the White House had warned---by adjusting their own laws to target the United States and its military personnel with lawsuits.

How obtuse can the members of Congress be? By the very nature of this act, they could subject America’s warriors to lawsuits for our men and women doing their mandated duty. A probable effect: “I’m not going to fire into that group of terrorists. There may be civilians among them. It’s not worth my being hauled into courts for who knows how many months or years, maybe fined with the loss of any financial security I have labored to obtain.”

I am not suggesting this intellectual self-debate would occur during the heat of battle, but any reasonably intelligent person is certainly going to think about this situation at some point before a battle occurs.

I admire Paul Ryan. I believe him to be a reasonable man, but his statement below is mushy, wishful thinking:

“I would like to think there may be some work to be done to protect our service members overseas from any kind---any kind of legal ensnarements that could occur....I’d like to think that there’s a way we could fix [the act] so that our service members do not have legal problems overseas, while still protecting the rights of the 9/11 victims.”

Mr. Ryan, you should have thought of that idea before you cast your override veto vote. But no, the override of the veto was an easy political call. It entailed the universal acceptance of a bill that is meant to be patriotic and solicitous of a revered part of America's population.

But the 9/11 Act could very well result in a counter effect of placing more burdens on our military and intelligence personnel, with the possibility of making them more hesitant in carrying out their duties. As the act reads today, our U.S. warriors could bear the burden of Congressional short-sightedness.

If the 9/11 Act remains in force, it should be amended to make clear that any lawsuit brought against a United States citizen who has been tasked with carrying out his/her military or intelligence duties in accordance with U.S. military law will have America build a wall around that warrior. This wall should shield this person *completely* from the political and economic maelstrom that this bill will create. This is one wall whose construction is feasible and the right thing to do.