

The Plan to Fix JASTA

December 2016

Background: The Justice Against Sponsors of Terrorism Act (JASTA), vetoed by President Obama but overridden by on September 28, 2016, is now law. The bill's unintended consequences on veterans, national security and the principle of sovereign immunity could be extremely damaging. If JASTA is reciprocated by foreign governments, the U.S.'s military, diplomatic and intelligence personnel would be at risk of facing lawsuits in foreign courts. Furthermore, the risk of lawsuit against U.S. servicemen and women would severely limit the U.S.'s ability to conduct counterterrorism and national security abroad

During the lame duck session, Senators John McCain (R-AZ) and Lindsey Graham (R-SC) introduced a plan to fix JASTA. While the proposal was not successful in 2016, fixing JASTA in 2017 to protect national security and veterans interest should remain top priority in Congress.

The Fix: During the lame duck session, Senators McCain and Graham introduced a plan to fix JASTA, but Congress unfortunately could not, stand up for veterans and support the proposal. When introducing their plan to fix JASTA, Senators McCain and Graham argued that the law must be narrowed to only hold liable governments that knowingly engage with a terrorist organization.

“If we don't make this change, here's what I fear: That other countries will pass laws like this and they will say that the United States is liable for engaging in drone attacks or other activity in the War on Terror and haul us into court as a nation and haul the people that we give the responsibility to defend the nation into foreign courts,” Senator Graham stated on November 30, 2016.



“If we don't fix JASTA, our ability to defend ourselves will be undermined and the people we ask to go into harm's way on our behalf will be placed in jeopardy,” argued Senator McCain on December 8, 2016. “America must pursue justice, but in the long run, JASTA will make it harder, not easier, to bring terrorists to justice and prevent terrorism in the first place.”

Both Senators expressed that they would make modifying JASTA a top legislative priority in 2017. Congress should support this proposal to fix JASTA in order to protect the safety and wellbeing of the U.S.'s service men and women.



Widespread Opposition and Second Thoughts: Senators McCain and Graham were not the only leaders to express concern over JASTA. Congress passed the legislation in September despite widespread opposition from the country's top defense and national security leaders, the White House and Congressional leadership, national and international editorial boards and a growing number of foreign nations, including some of the U.S.'s closest allies.

- **Defense Secretary Ash Carter, Chairman of the Joint Chiefs of Staff General Joseph Dunford and CIA Director John Brennan** all wrote letters to Congress prior to the veto override warning of the legislation's implications on national security.
- **9 National Security Experts**, including Former Secretary of Defense William Cohen, Former U.S. Attorney General Michael Mukasey, and Former National Security Advisor Stephen Hadley, wrote an open letter outlining their concerns and opposition to JASTA.
- **19 retired military leaders** wrote an open letter to Congress highlighting their opposition to JASTA. They stated, "The unintended consequences of this legislation could bring a chain reaction around the world, giving other countries license to target the U.S. military and enable foreign courts to bring suits against American servicemen and women for actions taken in the line of duty."
- **Former CIA Director David Petraeus** stated, "if this undoes that bedrock principle of international law of sovereign immunity, we will be the ones most likely will prove to be the most targeted, the most vulnerable."

Congress also began expressing second thoughts. A bi-partisan group of 28 Senators signed an open letter agreeing to address JASTA's "unintended consequences."

- **Senate Foreign Relations Committee Chairman Bob Corker (R-TN)** said, "I have tremendous concerns about the sovereign immunity procedures that could be set in place by other countries as a result of this vote."
- **House Armed Services Committee Chairman Mac Thornberry (R-TX)** argued that, "JASTA increases the risk posed to American military and intelligence personnel, diplomats, and others serving our country around the world... and calls further into question the reliability of the U.S. as an ally."

What You Can Do: It is clear that JASTA's unintended consequences are too risking for the U.S., its military personnel and its foreign allies. Now, it's critical that veterans and all concerned parties weigh-in with Congress through calls, emails and in-person meetings to urge them to fix JASTA in 2017.