Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
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Statement of Senator Patrick Leahy,
Ranking Member, Committee on the Judiciary,
On Habeas Legislation (S.1088)
Executive Business Meeting
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The Committee is returning today to S.1088, the so-called "Streamlined Procedures Act." This bill first appeared on our agenda back in late June. At that time, we were told that the bill was a "rather modest proposal" that was "very narrow" in scope. It was such a "modest" little bill that no hearing was necessary.

What we now know is that this bill is far from modest. Indeed, the only thing "modest" about it are the minor changes that have been made in the intervening period. We have now heard from a wide range of experts and practitioners who work in the criminal justice system and apply the present rules governing habeas corpus on a daily basis. And what we have heard repeatedly from them is that this bill would impose radical and unprecedented restrictions on the Great Writ of habeas corpus, without any compelling justification.

In August, the Conference of Chief Justices and the Conference of State Court Administrators passed Joint Resolution 16, urging us to slow down. The Resolution notes that the far-reaching changes contemplated by S.1088 "may preclude state defendants in both capital and non-capital matters from seeking habeas corpus relief in the federal courts, and may deprive the federal courts of jurisdiction in the vast majority of these matters, all with unknown consequences for the state courts and for the administration of justice." It urges Congress to delay further action on the bill pending additional study and analysis.

When Resolution 16 was adopted in August, it was supported by all but one state chief justice. Chief Justice Wallace Jefferson of the Texas Supreme Court abstained from voting at that time because he wanted more time to familiarize himself with the issues. Having taken that time, he has now joined the Resolution. In a letter dated September 19, 2005, Chief Justice Jefferson - the top judge in the Nation's most active death penalty State - wrote as follows:

"It is an unfortunate fact that some people are wrongfully convicted. Resources for indigent defense are scarce, and, while Texas has made great strides in providing counsel in criminal cases, work still remains to be done. ... When the system fails and an innocent person is convicted, the writ of habeas corpus can play a key role in restoring justice."

The State chief justices are now unanimous in opposing S.1088. We have also heard from the federal judiciary. The Judicial Conference has expressed its strong opposition to virtually every provision of the bill. The Judicial Conference has written to us twice about the bill -- the letters are dated July 13 and September 26. I urge my colleagues to read these letters carefully, if you haven't already. They reflect careful analysis of the changes proposed by S.1088, and assess the real-world consequences of those changes.

Here is what the Judicial Conference had to say about the bill:

"The proposed Streamlined Procedures Act ... attempts to expedite the processing of habeas corpus petitions by creating a stringent system of forfeitures for federal constitutional claims. Not only could it create unreasonable obstacles to resolution of such claims, but it has the potential for complicating and protracting litigation in both state and federal courts. Furthermore ... these procedural requirements may prove very difficult for applicants" -- many of whom do not have lawyers - "to meet."

In analyzing S.1088, the Judicial Conference reviewed the available statistical data. It concluded that the data as a whole does not support the need for another wholesale rewriting of federal habeas corpus law. In fact, the vast majority of habeas cases appear to be moving expeditiously through the system.

Let me briefly mention some of the other opposition that has been voiced to this legislation.

The American Bar Association has expressed strong opposition to the bill. Among other problems, the ABA says "the bill inadequately protects the innocent by proposing virtually unattainable procedural and other requirements to establish innocence."

More than 20 current and former state and federal judges have urged us to reject the bill, calling it "misguided" and "dangerous."

Two former FBI Directors -- William Sessions and William Webster - oppose the bill. They say it would "prohibit habeas review of claims of innocence and wrongful conviction."

In July, we received a letter signed by more than 50 former prosecutors and law enforcement officers, strongly opposing the bill. They wrote us again earlier this month, to say that the new version of the bill, while it drops some objectionable provisions, remains "deeply flawed."

A former District Attorney for the County of Los Angeles wrote a blistering opinion editorial last week in the Los Angeles Times. He wrote, "This legislation, ostensibly designed to make the justice system more efficient, is a Trojan horse whose transparent purpose is to strip the federal courts of virtually all of their jurisdiction to review state criminal court proceedings."

Other opponents of S.1088 include the U.S. Conference of Catholic Bishops, the NAACP Legal Defense Fund, the American Conservative Union, and former Solicitor General Seth Waxman.

We should not approve the bill in its current form. The jurisdiction-stripping provisions would flatly prohibit federal courts from reviewing meritorious claims of constitutional violations. The

actual innocence exceptions remain unrealistically demanding. And in a strange parody of federalism, the bill invites federal courts to second-guess state court rulings on matters of state law. I will have more to say about these and other defects when we begin considering amendments.