

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—113th Cong., 2d Sess.

S. 1535

To deter terrorism, provide justice for victims, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by _____

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Justice Against Spon-
5 sors of Terrorism Act”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) International terrorism is a serious and
9 deadly problem that threatens the vital interests of
10 the United States.

11 (2) The Constitution confers upon Congress the
12 power to punish crimes against the law of nations

1 and therefore Congress may by law impose penalties
2 on those who provide material support to foreign or-
3 ganizations engaged in terrorist activity, and allow
4 for victims of international terrorism to recover
5 damages from those who have harmed them.

6 (3) International terrorism affects the inter-
7 state and foreign commerce of the United States by
8 harming international trade and market stability,
9 and limiting international travel by United States
10 citizens as well as foreign visitors to the United
11 States.

12 (4) Some foreign terrorist organizations, acting
13 through affiliated groups or individuals, raise signifi-
14 cant funds outside of the United States for conduct
15 directed and targeted at the United States.

16 (5) It is necessary to recognize the substantive
17 causes of action for aiding and abetting and con-
18 spiracy liability under the Anti-Terrorism Act of
19 1987 (22 U.S.C. 5201 et seq.), especially given that
20 the United States Courts of Appeals for the 2d and
21 7th Circuits have held that such theories of liability
22 currently are not available. See *Rothstein v. UBS*
23 AG, 708 F.3d 82 (2d Cir. 2013); *Boim v. Holy*
24 Land Foundation for Relief and Development, 549
25 F.3d 685 (7th Cir. 2008) (en banc).

1 (6) The decision of the United States Court of
2 Appeals for the District of Columbia in *Halberstam*
3 *v. Welch*, 705 F.2d 472 (D.C. Cir. 1983), which has
4 been widely recognized as the leading case regarding
5 federal civil aiding and abetting and conspiracy li-
6 ability, including by the Supreme Court of the
7 United States, provides the proper legal framework
8 for how such liability should function in the context
9 of the Anti-Terrorism Act of 1987 (22 U.S.C. 5201
10 et seq.).

11 (7) The United Nations Security Council de-
12 clared in Resolution 1373, adopted on September
13 28, 2001, that all countries have an affirmative obli-
14 gation to “[r]efrain from providing any form of sup-
15 port, active or passive, to entities or persons involved
16 in terrorist acts,” and to “[e]nsure that any person
17 who participates in the financing, planning, prepara-
18 tion or perpetration of terrorist acts or in supporting
19 terrorist acts is brought to justice”.

20 (8) Consistent with these declarations, no coun-
21 try has the discretion to engage knowingly in the fi-
22 nancing or sponsorship of terrorism, whether di-
23 rectly or indirectly.

24 (9) Persons, entities, or countries that know-
25 ingly or recklessly contribute material support or re-

1 sources, directly or indirectly, to persons or organi-
2 zations that pose a significant risk of committing
3 acts of terrorism that threaten the security of na-
4 tionals of the United States or the national security,
5 foreign policy, or economy of the United States, nec-
6 essarily direct their conduct at the United States,
7 and should reasonably anticipate being brought to
8 court in the United States to answer for such activi-
9 ties.

10 (10) The United States has a vital interest in
11 providing persons and entities injured as a result of
12 terrorist attacks committed within the United States
13 with full access to the court system in order to pur-
14 sue civil claims against persons, entities, or countries
15 that have knowingly or recklessly provided material
16 support or resources, directly or indirectly, to the
17 persons or organizations responsible for their inju-
18 ries.

19 (b) PURPOSE.—The purpose of this Act is to provide
20 civil litigants with the broadest possible basis, consistent
21 with the Constitution of the United States, to seek relief
22 against persons, entities, and foreign countries, wherever
23 acting and wherever they may be found, that have pro-
24 vided material support, directly or indirectly, to foreign

1 organizations or persons that engage in terrorist activities
2 against the United States.

3 **SEC. 3. FOREIGN SOVEREIGN IMMUNITY.**

4 Section 1605(a) of title 28, United States Code, is
5 amended—

6 (1) by amending paragraph (5) to read as fol-
7 lows:

8 “(5) not otherwise encompassed in paragraph
9 (2), in which money damages are sought against a
10 foreign state arising out of physical injury or death,
11 or damage to or loss of property, occurring in the
12 United States and caused by the tortious act or
13 omission of that foreign state or of any official or
14 employee of that foreign state while acting within
15 the scope of the office or employment of the official
16 or employee (regardless of where the underlying
17 tortious act or omission occurs), including any statu-
18 tory or common law tort claim arising out of an act
19 of extrajudicial killing, aircraft sabotage, hostage
20 taking, terrorism, or the provision of material sup-
21 port or resources for such an act, or any claim for
22 contribution or indemnity relating to a claim arising
23 out of such an act, except this paragraph shall not
24 apply to—

1 “(A) any claim based upon the exercise or
2 performance of, or the failure to exercise or
3 perform, a discretionary function, regardless of
4 whether the discretion is abused; or

5 “(B) any claim arising out of malicious
6 prosecution, abuse of process, libel, slander,
7 misrepresentation, deceit, interference with con-
8 tract rights, or any claim for emotional distress
9 or derivative injury suffered as a result of an
10 event or injury to another person that occurs
11 outside of the United States; or”; and

12 (2) by inserting after subsection (d) the fol-
13 lowing:

14 “(e) DEFINITIONS.—For purposes of subsection
15 (a)(5)—

16 “(1) the terms ‘aircraft sabotage’, ‘extrajudicial
17 killing’, ‘hostage taking’, and ‘material support or
18 resources’ have the meanings given those terms in
19 section 1605A(h); and

20 “(2) the term ‘terrorism’ means international
21 terrorism and domestic terrorism, as those terms are
22 defined in section 2331 of title 18.”.

1 **SEC. 4. AIDING AND ABETTING LIABILITY FOR CIVIL AC-**
2 **TIONS REGARDING TERRORIST ACTS.**

3 (a) IN GENERAL.—Section 2333 of title 18, United
4 States Code, is amended by adding at the end the fol-
5 lowing:

6 “(d) LIABILITY.—In an action under subsection (a)
7 for an injury arising from an act of international terrorism
8 committed, planned, or authorized by an organization that
9 had been designated as a foreign terrorist organization
10 under section 219 of the Immigration and Nationality Act
11 (8 U.S.C. 1189), as of the date on which such act of inter-
12 national terrorism was committed, planned, or authorized,
13 or that was so designated as a result of such act of inter-
14 national terrorism, liability may be asserted as to any per-
15 son or entity that aided, abetted, or conspired with the
16 person who committed such an act of international ter-
17 rorism.

18 “(e) NON-APPLICABILITY OF LAW OF PRE-
19 CLUSION.—Any civil action or claim that seeks recovery
20 under this chapter for conduct that was the basis of a
21 civil action or claim previously dismissed for lack of sub-
22 ject matter jurisdiction for failure to meet the require-
23 ments for an exception under section 1605(a) of title 28
24 is not subject to dismissal under the law of preclusion.”.

25 (b) EFFECT ON FOREIGN SOVEREIGN IMMUNITIES
26 ACT.—Nothing in the amendments made by this section

1 affects immunity of a foreign state, as that term is defined
2 in section 1603 of title 28, United States Code, from juris-
3 diction under other law.

4 **SEC. 5. PERSONAL JURISDICTION FOR CIVIL ACTIONS RE-**
5 **GARDING TERRORIST ACTS.**

6 Section 2334 of title 18, United States Code, is
7 amended by inserting at the end the following:

8 “(e) PERSONAL JURISDICTION.—The district courts
9 shall have personal jurisdiction, to the maximum extent
10 permissible under the 5th Amendment to the Constitution
11 of the United States, over any person who commits, aids
12 and abets an act of international terrorism, or otherwise
13 sponsors such act or the person who committed such act,
14 for acts of international terrorism in which any national
15 of the United States suffers injury in his or her person,
16 property, or business by reason of such an act in violation
17 of section 2333.”.

18 **SEC. 6. LIABILITY FOR GOVERNMENT OFFICIALS IN CIVIL**
19 **ACTIONS REGARDING TERRORIST ACTS.**

20 Section 2337 of title 18, United States Code, is
21 amended to read as follows:

22 **“§ 2337. Suits against Government officials**

23 “No action may be maintained under section 2333
24 against—

25 “(a) the United States;

1 “(b) an agency of the United States; or

2 “(c) an officer or employee of the United States or
3 any agency of the United States acting within the official
4 capacity of the officer or employee or under color of legal
5 authority.”.

6 **SEC. 7. SEVERABILITY.**

7 If any provision of this Act or any amendment made
8 by this Act, or the application of a provision or amend-
9 ment to any person or circumstance, is held to be invalid,
10 the remainder of this Act and the amendments made by
11 this Act, and the application of the provisions and amend-
12 ments to any other person not similarly situated or to
13 other circumstances, shall not be affected by the holding.

14 **SEC. 8. EFFECTIVE DATE.**

15 The amendments made by this Act shall apply to any
16 civil action—

17 (1) pending on, or commenced on or after, the
18 date of enactment of this Act; and

19 (2) arising out of an injury to a person, prop-
20 erty, or business on or after September 11, 2001.