

## Amending JASTA to Protect U.S. Military and National Security

*Last updated: October 29, 2016*

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While with good intentions, Congress has passed a law that unintentionally erodes the principles of sovereign immunity and will likely bring harm to American interests. JASTA could subject America's internal policy and planning decision making to interference by foreign courts and, as a result, expose our military personnel, intelligence officers and diplomats to foreign legal actions. **The principle that foreign courts cannot sit in judgment over the policies of other governments is a primary pillar of sovereign immunity removed by JASTA and must be restored.**

### The Facts:

- The Obama Administration and governments of 97 countries—either individually or through international organizations—have expressed opposition to JASTA.
- Retaliatory foreign legislation inspired by JASTA poses a significant threat to U.S. military personnel, diplomats and officials carrying out critical U.S. policies abroad. There has already been steps toward retaliatory action in France, Turkey, Iraq and Pakistan.
- The United States has the largest footprint around the globe. Without sovereign immunity the United States and its officials – as well as American companies – could be sued in foreign courts for actions in connection to government policies, such as drone strikes, military actions in Iraq, support for opposition groups in Turkey and Syria, or in detentions facilities such as Abu Gharaib and Guantanamo.
- JASTA broadly dilutes sovereign immunity and opens the door for other countries to do the same, as affirmed by the President, the Secretary of the Defense, the Chairman of the Joint Chiefs of Staff, the Director of the CIA and scores of national security and international legal experts.

### The Solution:

- The principle that courts in one country should not be able to sit in judgment over the official policies of another country must be restored – as contained in the original JASTA legislation and in every prior version of JASTA passed by the Senate. This will reinstate the foreign sovereign immunity protections necessary to maintain international order and safeguard American military personnel and officials.
- This change will keep sovereign immunities intact but does not take away the possibility for victims to sue a government for an act of terrorism.
- The legislative language that would need to be brought back could be summarized as follows:

*JASTA's changes to FSIA shall not apply to any claim based upon a sovereign nation's policy and planning level decisions.*