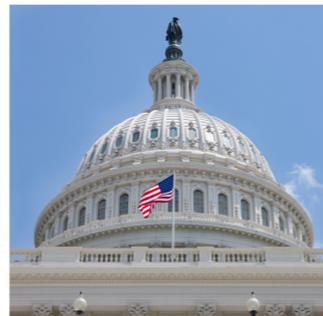


# WIDESPREAD OPPOSITION TO JASTA

THE CHORUS OF CONCERN FROM THE MILITARY, CONGRESS, AND THE PRESS CONTINUES



EDITORIAL OPPOSITION - MILITARY LEADERS - CONGRESS - INTERNATIONAL CONCERNS - WHITE HOUSE OPPOSITION - MEDIA ATTENTION

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# OVERVIEW

## GROWING OPPOSITION TO JASTA

**By a large margin, Congress recently voted to override President Obama’s veto of Senate Bill 2040. This legislation would open the door to more lawsuits against foreign countries—and, ultimately, more foreign lawsuits against the U.S. and its military personnel. A bipartisan group of U.S. national security experts, a growing chorus of Congressional Leaders and the editorial boards of several major publications agree that the bill is deeply flawed.**



- **Military Personnel:** American military personnel are engaged in combat operations in many locations in the world. The logic of JASTA could let hostile foreign governments define our activities as terrorism and place American soldiers at risk.



- **Diplomats and USG Officials Abroad:** The U.S. sends more of its people out into the world than any other country. The safety and security of our diplomats and their ability to perform their duties without foreign influence or intervention would be seriously imperiled by JASTA retaliation that could deny them international immunities.



- **Intelligence Officers and Special Operations Forces:** Given the United States of America’s global use of intelligence agents, Special Operations forces and drones, all of which could be construed as state-sponsored “terrorism” when convenient, countries could easily turn against the United States and our personnel.



- **U.S. Corporations:** The uncertainty of the reciprocal actions of a country could prompt backlash against military contractors and defense companies with assets in foreign countries participating in what could be perceived as “terrorist acts.” Additionally, protectionist barriers could be erected, favoring European companies and other countries’ companies that do not have JASTA-type legislation.



- **International Allies:** Our closest allies from the EU, France, UK, and Gulf states have expressed significant concerns of how the implementation might also have unwanted consequences as other States may seek to adopt similar legislation, leading to a further weakening of the principles of State sovereignty immunity.



- **Trial Lawyers:** Conversely to the aforementioned targets, the trial bar is the only group that benefits as they have their eyes on Saudi-owned assets. As the the Wall Street Journal says, “the Saudis would be foolish to keep assets in the U.S. where they could be confiscated” which will lead to sell-offs and economic downturn in their investments.

# WIDESPREAD EDITORIAL BOARD OPPOSITION

CONTINUING OPPOSITION TO JASTA

The editorial boards of major publications, including *The Wall Street Journal*, *The Washington Post*, and *The New York Times*, cautioned against enacting JASTA and derided members of Congress for its passage.

**The New York Times**

***“Congress Has Itself to Blame for 9/11 Bill”***

September 30, 2016

**THE WALL STREET JOURNAL.**

***“Instant Senate Remorse”***

September 30, 2016

**The Washington Post**

***“Mob legislating by Congress”***

October 1, 2016

**Bloomberg**

***“U.S. Could Pay a High Price for Suing the Saudis”***

September 9, 2016

**Los Angeles Times**

***“Allowing Americans to sue foreign governments over terrorist acts may sound like a good idea. It’s not.”***

April 30, 2016

**“Congress seems determined to set a new standard for craven incompetence.** Less than 24 hours after the Senate and House delivered a stinging rebuke to President Obama by overriding his veto of a bill that would let the Sept. 11 families sue Saudi Arabia, Republican leaders raised the possibility of a do-over.”

“Sometimes even politicians admit mistakes, though usually they wait longer than the same day they voted. Yet that’s what 28 Senators did when they signed a letter to Senators Chuck Schumer and John Cornyn expressing what amounts to regret for overriding President Obama’s veto of the Justice Against Sponsors of Terrorism Act (Jasta) this week... **Congress should repeal Jasta, but at a minimum the President needs a waiver so critical decisions about U.S. foreign policy are made by Presidents and not trial lawyers.**”

“‘EMBARRASSING’ IS the word White House Press Secretary Josh Earnest applied to Congress’s decision to override President Obama’s veto of the Justice Against Sponsors of Terrorism Act. **“Pathetic” might be more apt. House and Senate leaders not only orchestrated a terrible vote; they also then expressed concerns about what they had just done — and blamed Mr. Obama for their having done it.**”

“It is abundantly clear, by contrast, that the bill would undermine the longstanding principle of sovereign immunity, under which such disputes are resolved between nations, not in courts. The unraveling of this doctrine makes any nation vulnerable to suits by the citizens of another -- and **no state will be more vulnerable than the U.S.**”

**“Given the U.S. government's disproportionate role in foreign affairs, the potential exposure such a measure would bring to the U.S. is inestimable.** Expect to see civil claims by victims of collateral damage in military attacks, lawsuits by people caught up in the nation's post-9/11 detention policies, including Guantanamo Bay, and challenges over atrocities committed by U.S.-backed Syrian rebels.”

# MILITARY LEADERS' CONCERNS

CONTINUING OPPOSITION TO JASTA

On Thursday September 22 at a Senate Armed Services Committee, The Secretary of Defense and Chairman of the Joint Chiefs of Staff expressed deep concerns with the threat to military personnel as a result of JASTA.



**Sen. Angus King (I-ME):** “Gen. Dunford do you or both of you do you have concerns about what the affect on our troops our liability around the world would be if that bill becomes law?”



**Defense Secretary Ash Carter:** “First of all I completely associate myself with the intention of this which is to honor the families of 9-11 perished. You did raise one thing that I am aware of that would be a complication from our point of view namely that **were another country to behave reciprocally towards the United States that could be a problem for some of our service members, that is I am told something that we at the Department of Defense should be concerned about.**”



**Chairman of the Joint Chiefs of Staff, General Dunford:** “Senator the potential second order affect the secretary has raised os one that has been brought to my attention so **that is my concern as well.**”



**Sen. Graham (R-LA):** JASTA, are you concerned that we could be creating an environment where something like this bill could be used against our troops down the road?

**Defense Secretary Ash Carter:** “This is a law enforcement matter but we are watching it closely...I am concerned about **I'm concerned about exactly what you are talking about.**”

# MILITARY AND INTELLIGENCE LEADERS EXPRESS CONCERNS

CONTINUING OPPOSITION TO JASTA

**Both prior to and after the enactment of JASTA, prominent members of the United States military and intelligence community have warned about its consequences.**



**CIA Director John Brennan:** “The principle of sovereign immunity protects U.S. officials every day, and is rooted in reciprocity. If we fail to uphold this standard for other countries, we place our own nation's officials in danger. **No country has more to lose from undermining that principle than the United States**—and few institutions would be at greater risk than CIA.”



**Chairman of the Joint Chiefs of Staff, General Joseph Dunford:** “**Any legislation that affects the long-standing principles of sovereignty should carefully consider any risk** to the close security cooperation relationships between the United States and our allies and partners.”



**Defense Secretary Ash Carter:** “Allowing our partners and allies—not just designated state sponsors of terrorism—to be subject to lawsuits inside the United States will inevitably undermine the trust and cooperation our forces need to accomplish their important missions. **By damaging our close and effective cooperation with other countries, this could ultimately have a chilling effect on our own counterterrorism efforts.**”

# INCREASING DOUBTS IN CONGRESS

CONTINUING OPPOSITION TO JASTA

**Increasing Doubts in Congress: Although JASTA passed through Congress unanimously, the absence of a dedicated hearing or meaningful debate have caused lawmakers to express concerns about potential unintended consequences.**



***"I worry about legal matters. I worry about trial lawyers trying to get rich off this and I worry about the precedence."***

Congressman Paul Ryan (R-WI), Speaker of the House of Representatives – ([Roll Call](#))



***"I think it could bring on a whole host of unintended consequences."***

Senator Diane Feinstein (D-CA), Ranking Member of Intelligence Committee – ([Politico](#))



***"I have tremendous concerns about the sovereign immunity procedures that could be set in place by other countries as a result of this vote."***

Senator Bob Corker (R-TN), Chairman of Senate Foreign Relations Committee



***"We should not go down this road. Americans are in countries all over the world. Many of those countries do not respect the rule of law and we cannot expect their responses to be as measured and narrow as ours. We have more at stake than anyone else—and our personnel will incur the most risk."***

Congressman Mac Thornberry (R-TX), Chairman of the House Armed Services Committee

# INCREASING INTERNATIONAL CONCERN

## U.S. ALLIES STRONGLY OPPOSE THE LEGISLATION



**Delegation of the EU to the US, September 21: Letter to the US State Department – European Union asks Obama to stop 9/11 Saudi bill:**

"The European Union considers that the adoption of the bill and its subsequent implementation might also have unwanted consequences as other States may seek to adopt similar legislation, leading to a further weakening of the principles of State sovereignty immunity."



**France: Pierre Lellouche, MP: Quoted in The Independent Journal Review**

"At a minimum, I feel it is critical to make it known that France remains firmly attached to the principles of international law, that it does not intend to stand by and witness it being picked apart in national legislations that are completely contrary to human rights. But that, when confronted with this fait accompli, it has no other choice than to implement equal measures, in the hope that Congress rapidly amends the JASTA bill, excluding States that are allies of the United States, or victims of terrorism from this area of applications."



**United Arab Emirates, Ministry of Foreign Affairs & International Cooperation, September 12:**

"This law is not equal with the foundations and principles of relations among states, and represents a clear violation given its negative repercussions and dangerous precedents."



**Sudan, Office of the President, September 13:**

"The Republic of Sudan hopes that US authorities would reconsider this bill; and not allow executing it for interests of the entire world; and to ensure that no negative impact is put on international efforts to combat terrorism. [The bill] would undermine the most important element that countries rely on which is sovereign immunity, and would be a breach to international law, where the equality of sovereign immunity and sovereignty of states nations are of the most important principles."



**United Kingdom: Tom Tugendhat, MP: "Why a US law to let 9/11 families sue Saudi Arabia is a threat to Britain and its intelligence agencies"**

"Modern diplomacy is based on an old concept, sovereign immunity, which Britain adopted in 1648. It prevents the courts of any nation being used to harass government officials. The bill before Congress would see the US abandon that principle."



**Iraq: The Iraqi National Project, an Iraqi advocacy group, is preparing a lawsuit against the U.S. to recover damages related to the invasion of Iraq in 2003.**

The INP argues that if JASTA allows American citizens to sue foreign governments, it also opens the door for Iraqis "who have lost their sons and daughters in military operations by U.S. military forces" to sue the U.S. government "to pursue compensation... for what they have endured." The group alleges the U.S. acted on "sketchy information and very discriminatory methods," which led to injustices against the Iraqi people including, "bombings of civilians, arrests, torture."



**Qatar, October 5:**

"The Cabinet denounces the US passing of the JASTA bill as a violation to international law and the principle of the sovereignty of states. Passing the law represents a dangerous precedent in relations between countries and will have negative consequences"



**Morocco, Ministry of Foreign Affairs and Cooperation, September 13:**

"Morocco calls for the respect, by all, of the principles enshrined in the UN Charter. The Kingdom recalls as well the principle of jurisdictional immunity of states, which is well established in international law and remains essential to peaceful international relations."



**Organization of Islamic Cooperation, October 3:**

"This law is a violation of the principle of immunity of sovereign states, which is a basic and established legal principle in international relations and international law...**Regrettably, this unilateral law is an invitation to serious chaos in international relations.** It upsets a firm and established international legal order and diminishes the integrity of the entire international legal system because it opens the door to states to pass similar laws, which is expected in reaction to protect their rights."



**Kuwait, October 5:**

"The Cabinet sees that JASTA is a source of extreme worry to the international community, where the rules of relations among the States have been established by the laws that are based on the principles of equality and sovereign immunity. The adoption of laws that violate such principles would negatively affect all world countries, including the U.S., and undermine international efforts and cooperation against terrorism."



**Jordan, September 13:**

"this legislation may contradict the principles of sovereign equality of states enshrined in the UN Charter. "



**Bangladesh, Office of the Chairman and Former President September 22:**

"This kind of law is also contradictory to the United Nations Charter. If this JASTA bill passes it will remain as a bad paradigm which other countries might follow. By which, any country can be accused in any ways. This will create chaotic situation in the world. The President of the United States also opposed this bill. Agreeing with the US President. I am also opposing this bill. We cannot accept the fact that, in a country like the US, which is the advocate of Human Rights, this provision which is repugnant to International law, can exist. I hope that US will revoke this bill without any delay."



**Bahrain, Ministry of Foreign Affairs, September 12:**

"The Kingdom of Bahrain expresses its deep concern over the decision of the US Congress on the legislation entitled "Justice Against Sponsors of Terrorism Act", which it **considers contradictory to the Charter of the United Nations and the principles of international law, and that this legislation is contrary to the foundations of international relations** based on the principles of sovereign equality and immunity of states, mutual respect and non-imposition of the domestic laws of any country on other countries."



**Netherlands: Second Chamber of the Dutch Parliament, Binding Motion on JASTA, July 6, 2016 – Adopted by the Second Chamber of the Dutch Parliament, Initiated by the Member Jeroen Recourt (Labour Party)**

The Chamber, after hearing the deliberations, noting that the US House of Representatives as part of its considerations with regards to the Justice Against Sponsors of Terrorism Act (JASTA) is organizing a hearing: considering that JASTA can lead to liability in the United States for action of the Dutch Government within the territory of the Netherlands and can subsequently lead to astronomical damages...



**Pakistan, Ministry of Foreign Affairs, September 14:**

"Pakistan believes that the promulgation of national laws with extra-territorial application sets a dangerous precedent that is likely to further complicate an already complex global environment. Pakistan is convinced that the world today is better served through initiatives promoting amity and cooperation, rather than xenophobia and confrontation, particularly, those targeting countries or religions."



**Turkey, Speech by President Erdogan, October 1:**

"The allowing by the US Congress of lawsuits to be opened against Saudi Arabia over the 9/11 attacks is unfortunate...It's against the principle of individual criminal responsibility for crimes. We expect this false step to be reversed as soon as possible."

# WHITE HOUSE OPPOSITION

THE WHITE HOUSE HAS FIRMLY STATED THE PRESIDENT'S OPPOSITION TO THE BILL



## President Barack Obama, September 23 - Veto Message

**“Enacting JASTA into law would neither protect Americans from terrorist attacks nor improve the effectiveness of our response to such attacks.** As drafted, JASTA would allow private litigation against foreign governments in U.S. courts based on allegations that such foreign governments' actions abroad made them responsible for terrorism-related injuries on U.S. soil. This legislation would permit litigation against countries that have neither been designated by the executive branch as state sponsors of terrorism nor taken direct actions in the United States to carry out an attack here. **The JASTA would be detrimental to U.S. national interests more broadly, which is why I am returning it without my approval.**”



## Josh Earnest, September 20 - White House Press Briefing

“Rather than leaving that designation subject to individual decisions by individual judges that could result in contradictory outcomes, **we believe the process that we have in place is the most forceful way to respond to state sponsors of terrorism.**”

## Josh Earnest, September 12 - White House Press Briefing

“The concept of sovereign immunity is one that protects the United States as much as any other country in the world, given the way the United States is engaged in the world. **So it's not hard to imagine other countries using this law as an excuse to haul U.S. diplomats or U.S. service-members, or even U.S. companies into courts all around the world.**”

# NATIONAL SECURITY LEADER OPPOSITION

CONTINUING OPPOSITION TO JASTA

**Prominent national security experts had repeatedly voiced opposition to the bill – including a group of nine bipartisan former government officials who authored an open letter to President Obama and Congress expressing concern about JASTA.**

**THE  
WALL STREET  
JOURNAL**

“Most significant, Jasta shifts authority for a huge component of national security from the politically accountable branches—the president and Congress—to the judiciary, the branch least competent to deal with international matters of life and death and least politically accountable.”

**OPEN LETTER TO THE PRESIDENT  
OF THE UNITED STATES AND  
MEMBERS OF CONGRESS**

September 20, 2016

*“The safety and security of our diplomats, intelligence offices, military and other senior officials of the US Government, and their ability to perform their duties without foreign influence or intervention would be seriously imperiled by a process intent on denying them the international immunities that have been accepted by all civilized nations since the 16th century and earlier.”*

**SIGNED BY:**  
**William S. Cohen**  
**Michael B. Mukasey**  
**Stephen J. Hadley**  
**Michael Morell**  
**Richard Clarke**  
**Rand Beers**  
**Thomas Pickering**  
**Frank Wisner**  
**Daniel Kurtzer**

**CSIS**

**CENTER FOR STRATEGIC &  
INTERNATIONAL STUDIES**

“What makes this legislation troubling is not the politics of anger directed against Saudi Arabia, but rather the precedent it establishes...we are on the edge of doing potentially great damage to our own interests.”

#### **CSIS MEMORANDUM**

To: CSIS Board of Trustees, Advisers, and Friends  
From: John J. Hamre  
Date: September 22, 2016 (Number 435. Two pages.)  
Subject: Smoot-Hawley of the 21<sup>st</sup>-century

Washington is roiling these days by something called JASTA, which is the acronym for Justice Against Sponsors of Terrorism Act, a bill passed by the Congress and now heading to the President who will likely veto it. JASTA is written in generic language, but it is widely seen as a way to punish Saudi Arabia for giving support to the terrorists who attacked the World Trade Center and other places on September 11, 2001. JASTA doesn't mention Saudi Arabia, but everyone knows it is directed at them. The bill would let American citizens sue foreign governments for injuries, death or damages that occur inside the United States or anywhere it might occur if sponsored by a foreign state or official.

Obviously JASTA has enormous political overtones. It was brought up for vote in the Senate on the anniversary of 9/11. It would take a courageous politician to stand up against that juggernaut, and not many did. President Obama is now scrambling to find 34 Senators who will sustain his veto. This is Washington theater at its finest.

The passions of politics occasionally obscure important dimensions of governing. This legislation would amend federal judicial code to dramatically narrow sovereign immunity. To be sure, radicalism has flourished in the Muslim world for decades, with much of it financed by individuals in the Kingdom. Yet, there is no evidence that the government of Saudi Arabia was

# ATTENTION IN THE MEDIA

NEWS MEDIA OUTLETS COVERED THE HISTORIC OVERRIDE AND QUESTIONED CONGRESS'S ACTIONS



## Fared Zakaria *GPS* - October 2

**Jeffrey Toobin, Legal Correspondent:** “[JASTA] is a breach in the wall that has traditionally forbidden individuals in one country from suing governments of other countries, the concept known as sovereign immunity, which is an important aspect of international law. **This is a breach in that tradition.**”

**General Michael Hayden, former NSA Director:** “When you punch a hole in sovereign immunity, **the country on this planet that has the most to lose with the erosion of sovereign immunity is the United States.** In fact, people in my old agency or the armed forces or are about the world doing things I think broadly and appropriately, but doing things that are controversial or things that other countries object to. now, you put the world on the path in which the traditional protection, sovereign immunity, for those kinds of actions has begun to be eroded.”



## Fox News' *The Five* - September 29

**Greg Gutfeld:** “The argument is that the bill risks cooperation in terms of security with a military ally... **I think President Obama might have a point here, especially when 37 Senators sent a letter to alleviate the consequences of the legislation. So the people that actually overrode the veto are going, ‘There are some serious problems here.’**”

**Dana Perino:** “I think the President is right...to have foreign governments conflate **what terrorists do to what we do**, we know that Spain, Belgium, Italy, have tried to bring lawsuits against our intelligence community and our military for things that they think we have done that is wrong and sovereign immunity has protected those Americans.

**Juan Williams:** “It’s our agents over there working for us. If they break a law, all of sudden, they’re subject, our government is subject to a lawsuit. **If we are using the drones, for example, and some country says, ‘Oh, you know what, you destroyed property, you killed some civilians,’ all of a sudden, we’re subject [to a lawsuit].**”