

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

**IN THE SENATE OF THE UNITED STATES—114th Cong., 2d Sess.**

**S. 2040**

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 Mr. CORNYN

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 the*  
10 *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 dam-*  
5        *ages from those who have harmed them.*

6            *(3) International terrorism affects the interstate*  
7        *and foreign commerce of the United States by harm-*  
8        *ing international trade and market stability, and*  
9        *limiting international travel by United States citi-*  
10       *zens as well as foreign visitors to the United States.*

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

15           *(5) It is necessary to recognize the substantive*  
16       *causes of action for aiding and abetting and con-*  
17       *spiracy liability under the Anti-Terrorism Act of*  
18       *1987 (22 U.S.C. 5201 et seq.).*

19           *(6) The decision of the United States Court of*  
20       *Appeals for the District of Columbia in Halberstam*  
21       *v. Welch, 705 F.2d 472 (D.C. Cir. 1983), which has*  
22       *been widely recognized as the leading case regarding*  
23       *Federal civil aiding and abetting and conspiracy li-*  
24       *ability, including by the Supreme Court of the United*  
25       *States, provides the proper legal framework for how*

1        *such liability should function in the context of the*  
2        *Anti-Terrorism Act of 1987 (22 U.S.C. 5201 et seq.).*

3            (7) *The United Nations Security Council de-*  
4        *clared in Resolution 1373, adopted on September 28,*  
5        *2001, that all countries have an affirmative obliga-*  
6        *tion to “[r]efrain from providing any form of sup-*  
7        *port, active or passive, to entities or persons involved*  
8        *in terrorist acts,” and to “[e]nsure that any person*  
9        *who participates in the financing, planning, prepara-*  
10       *tion or perpetration of terrorist acts or in supporting*  
11       *terrorist acts is brought to justice”.*

12           (8) *Consistent with these declarations, no coun-*  
13       *try has the discretion to engage knowingly in the fi-*  
14       *nancing or sponsorship of terrorism, whether directly*  
15       *or indirectly.*

16           (9) *Persons, entities, or countries that knowingly*  
17       *or recklessly contribute material support or resources,*  
18       *directly or indirectly, to persons or organizations that*  
19       *pose a significant risk of committing acts of terrorism*  
20       *that threaten the security of nationals of the United*  
21       *States or the national security, foreign policy, or*  
22       *economy of the United States, necessarily direct their*  
23       *conduct at the United States, and should reasonably*  
24       *anticipate being brought to court in the United States*  
25       *to answer for such activities.*

1           (10) *The United States has a vital interest in*  
2           *providing persons and entities injured as a result of*  
3           *terrorist attacks committed within the United States*  
4           *with full access to the court system in order to pursue*  
5           *civil claims against persons, entities, or countries*  
6           *that have knowingly or recklessly provided material*  
7           *support or resources, directly or indirectly, to the per-*  
8           *sons or organizations responsible for their injuries.*

9           (b) *PURPOSE.*—*The purpose of this Act is to provide*  
10          *civil litigants with the broadest possible basis, consistent*  
11          *with the Constitution of the United States, to seek relief*  
12          *against persons, entities, and foreign countries, wherever*  
13          *acting and wherever they may be found, that have provided*  
14          *material support, directly or indirectly, to foreign organi-*  
15          *zations or persons that engage in terrorist activities against*  
16          *the United States.*

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

18          *Section 1605(a) of title 28, United States Code, is*  
19          *amended—*

20                  (1) *by amending paragraph (5) to read as fol-*  
21          *lows:*

22                  “(5) *not otherwise encompassed in paragraph*  
23          (2), *in which money damages are sought against a*  
24          *foreign state arising out of physical injury or death,*  
25          *or damage to or loss of property, occurring in the*

1        *United States and caused by the tortious act or omis-*  
2        *sion of that foreign state or of any official or em-*  
3        *ployee of that foreign state while acting within the*  
4        *scope of the office or employment of the official or em-*  
5        *ployee (regardless of where the underlying tortious act*  
6        *or omission occurs), including any statutory or com-*  
7        *mon law tort claim arising out of an act of*  
8        *extrajudicial killing, aircraft sabotage, hostage taking,*  
9        *terrorism, or the provision of material support or re-*  
10       *sources for such an act, or any claim for contribution*  
11       *or indemnity relating to a claim arising out of such*  
12       *an act, except this paragraph shall not apply to—*

13                *“(A) any claim based upon the exercise or*  
14                *performance of, or the failure to exercise or per-*  
15                *form, a discretionary function, regardless of*  
16                *whether the discretion is abused; or*

17                *“(B) any claim arising out of malicious*  
18                *prosecution, abuse of process, libel, slander, mis-*  
19                *representation, deceit, interference with contract*  
20                *rights, or any claim for emotional distress or de-*  
21                *rivative injury suffered as a result of an event*  
22                *or injury to another person that occurs outside*  
23                *of the United States; or”;* and

24                *(2) by inserting after subsection (d) the fol-*  
25        *lowing:*

1       “(e) *DEFINITIONS.*—For purposes of subsection  
2 (a)(5)—

3               “(1) the terms ‘aircraft sabotage’, ‘extrajudicial  
4 killing’, ‘hostage taking’, and ‘material support or re-  
5 sources’ have the meanings given those terms in sec-  
6 tion 1605A(h); and

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

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

12       (a) *IN GENERAL.*—Section 2333 of title 18, United  
13 States Code, is amended by adding at the end the following:

14       “(d) *LIABILITY.*—In an action under subsection (a) for  
15 an injury arising from an act of international terrorism  
16 committed, planned, or authorized by an organization that  
17 had been designated as a foreign terrorist organization  
18 under section 219 of the Immigration and Nationality Act  
19 (8 U.S.C. 1189), as of the date on which such act of inter-  
20 national terrorism was committed, planned, or authorized,  
21 liability may be asserted as to any person who aids and  
22 abets, by knowingly providing substantial assistance, or  
23 who conspires with the person who committed such an act  
24 of international terrorism.”.

1           **(b) EFFECT ON FOREIGN SOVEREIGN IMMUNITIES**  
2 *ACT.*—*Nothing in the amendments made by this section af-*  
3 *fects immunity of a foreign state, as that term is defined*  
4 *in section 1603 of title 28, United States Code, from juris-*  
5 *isdiction under other law.*

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

8           *Section 2334 of title 18, United States Code, is amend-*  
9 *ed by inserting at the end the following:*

10           “(e) *PERSONAL JURISDICTION.*—*The district courts*  
11 *shall have personal jurisdiction, to the maximum extent*  
12 *permissible under the 5th Amendment to the Constitution*  
13 *of the United States, over any person who commits or aids*  
14 *and abets an act of international terrorism or who con-*  
15 *spires with the person who committed such act, for acts of*  
16 *international terrorism in which any national of the*  
17 *United States suffers injury in his or her person, property,*  
18 *or business by reason of such an act in violation of section*  
19 *2333.”.*

20 **SEC. 6. LIABILITY FOR GOVERNMENT OFFICIALS IN CIVIL**  
21 **ACTIONS REGARDING TERRORIST ACTS.**

22           *Section 2337 of title 18, United States Code, is amend-*  
23 *ed to read as follows:*

1 **“§2337. Suits against Government officials**

2 “No action may be maintained under section 2333  
3 against—

4 “(1) the United States;

5 “(2) an agency of the United States; or

6 “(3) an officer or employee of the United States  
7 or any agency of the United States acting within the  
8 official capacity of the officer or employee or under  
9 color of legal authority.”.

10 **SEC. 7. SEVERABILITY.**

11 *If any provision of this Act or any amendment made*  
12 *by this Act, or the application of a provision or amendment*  
13 *to any person or circumstance, is held to be invalid, the*  
14 *remainder of this Act and the amendments made by this*  
15 *Act, and the application of the provisions and amendments*  
16 *to any other person not similarly situated or to other cir-*  
17 *cumstances, shall not be affected by the holding.*

18 **SEC. 8. EFFECTIVE DATE.**

19 *The amendments made by this Act shall apply to any*  
20 *civil action—*

21 *(1) pending on, or commenced on or after, the*  
22 *date of enactment of this Act; and*

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