# TERRORISM PREVENTION/No Reform of State Habeas Proceedings

**SUBJECT:** **Comprehensive Terrorism Prevention Act of 1995 . . . S. 735. Hatch motion to table the Biden amendment No. 1217 to the Hatch substitute amendment No. 1199.**

## ACTION: MOTION TO TABLE AGREED TO, 67-28

**SYNOPSIS:** As reported, S. 735 will enact law enforcement provisions to prevent terrorism and to apprehend and punish terrorists, and will reform Federal and State capital and noncapital habeas corpus procedures.

The Hatch substitute amendment to S. 735 would make major revisions to the bill, particularly to the provisions regarding international terrorism, alien removal, and fundraising by terrorist organizations.

**The Biden amendment** would limit the application of the habeas corpus reform provisions to Federal review of Federal criminal cases. ("Habeas corpus" in the context of this debate refers to the collateral (not on the merits) review of criminal convictions. State and Federal prisoners may file habeas corpus petitions alleging that constitutional, legal, or treaty requirements were violated in the process of convicting them. State prisoners may file petitions in State or Federal courts; Federal prisoners may file petitions only in Federal courts; District of Columbia prisoners may file petitions only in non-Federal, District courts. The right of a State prisoner to file a habeas petition in Federal court is a right that was granted by statute.

During debate, Senator Hatch moved to table the Biden amendment. The motion to table is not debatable; however, some debate preceded the making of the motion. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

**Those favoring** the motion to table contended:

Senators who have contended that Federal collateral (habeas corpus) review of State convictions is not germane to this debate are mistaken. The impetus for considering this bill was the Oklahoma City bombing, which brought to everyone's attention the need for increasing anti-terrorism law enforcement efforts. These efforts, to be effective, should include meaningful habeas corpus reforms

(See other side)

| YEAS (67) | | | NAYS (28) | | NOT VOTING (5) | |
|---|---|---|---|---|---|---|
| **Republicans (48 or 96%)** | | **Democrats (19 or 42%)** | **Republicans (2 or 4%)** | **Democrats (26 or 58%)** | **Republicans (4)** | **Democrats (1)** |
| Abraham | Hutchison | Baucus | Hatfield | Akaka | Gramm-[2] | Conrad-[2] |
| Ashcroft | Inhofe | Bingaman | Packwood | Biden | Gregg-[2] | |
| Bennett | Jeffords | Breaux | | Boxer | Santorum-[2] | |
| Bond | Kassebaum | Bryan | | Bradley | Simpson-[2AY] | |
| Brown | Kempthorne | Byrd | | Bumpers | | |
| Burns | Kyl | Exon | | Daschle | | |
| Campbell | Lott | Feinstein | | Dodd | | |
| Chafee | Lugar | Ford | | Dorgan | | |
| Coats | Mack | Graham | | Feingold | | |
| Cochran | McCain | Heflin | | Glenn | | |
| Cohen | McConnell | Hollings | | Harkin | | |
| Coverdell | Murkowski | Johnston | | Inouye | | |
| Craig | Nickles | Kerrey | | Kennedy | | |
| D'Amato | Pressler | Lieberman | | Kerry | | |
| DeWine | Roth | Nunn | | Kohl | | |
| Dole | Shelby | Pryor | | Lautenberg | | |
| Domenici | Smith | Reid | | Leahy | | |
| Faircloth | Snowe | Robb | | Levin | | |
| Frist | Specter | Rockefeller | | Mikulski | | |
| Gorton | Stevens | | | Moseley-Braun | | |
| Grams | Thomas | | | Moynihan | | |
| Grassley | Thompson | | | Murray | | |
| Hatch | Thurmond | | | Pell | | |
| Helms | Warner | | | Sarbanes | | |
| | | | | Simon | | |
| | | | | Wellstone | | |

**EXPLANATION OF ABSENCE:**
1—Official Buisiness
2—Necessarily Absent
3—Illness
4—Other

**SYMBOLS:**
AY—Announced Yea
AN—Announced Nay
PY—Paired Yea
PN—Paired Nay

**Compiled and written by the staff of the Republican Policy Committee—Don Nickles, Chairman**

to stop the ability of convicted criminals to forestall justice with endless frivolous appeals in death penalty cases, and to cripple it with countless suits in noncapital cases. For that reform to be meaningful, it must cover habeas corpus appeals of State as well as of Federal convictions. Most criminal trials, including trials related to terrorism, are tried in State courts. Ending endless frivolous habeas corpus appeals of Federal cases would only result in reforms for a fraction of all terrorist cases.

In the particular case of the Oklahoma City terrorist bombing, the Federal Government intends to seek the death penalty for violations of Federal laws, but if it somehow errs in its prosecution the terrorists may escape Federal punishment entirely on a technicality. Oklahoma also intends to bring charges under State law and to seek the death penalty. If Oklahoma were to obtain convictions and the Federal Government were to fail, though, the terrorists would have no need to worry if the Biden amendment were enacted, because the Biden amendment would make certain that they have the right to file endless frivolous appeals of State convictions. Under current law, death row inmates have a several hundred percent greater chance of dying of old age than they do of being put to death for their crimes. If the only convictions that are obtained in the Oklahoma City bombing case are State convictions, then this amendment would make natural causes the most likely death for the terrorists who committed the bombing.

In summary, if and when all the Oklahoma City bombers are caught, we are certain they will be tried under Federal as well as State law. That Federal prosecution may not be successful. If only the State prosecution is successful then habeas reform of State cases will be necessary to make certain that the convictions will not be subjected to endless collateral challenges in Federal court. Further, though this incident of terrorism will be tried under Federal law, most bombings and other acts of terrorism are tried under State law only. Clearly, to be effective, reforms cannot be limited to habeas corpus appeals of Federal convictions only. We therefore urge the tabling of this amendment.

**Those opposing** the motion to table contended:

The Oklahoma City bombing will be tried under Federal law. Death penalty convictions, we hope, will be obtained, and when they are we want them to be carried out swiftly. To that end, we strongly favor reforming the current system for Federal habeas corpus review of any challenges that are made to Federal convictions. Once these terrorists are convicted, if they have any complaints that there was something unfair in the process--whether their attorneys were incompetent, illegally seized evidence was used, their confessions were coerced, or any other violation of their rights occurred--they must come forward with those complaints within a specified timeframe and have them disposed of quickly, one way or the other. In a death penalty case, justice delayed is truly justice denied.

However, the bill before us will do far more than reform Federal habeas review of Federal cases--it will also change the procedures for Federal review of State criminal cases, which comprise more than 95 percent of all criminal cases. Overhauling habeas corpus proceedings for the States may or may not be a good idea, but it has nothing to do with the subject before us. This bill is about terrorism, which is a Federal crime, and it contains measures to improve Federal law enforcement to combat terrorism. Improving Federal habeas corpus procedures as they apply to Federal review of Federal terrorist convictions is enough to serve the purposes of this bill. If our colleagues wish to debate broader, State habeas corpus reforms, they should wait and do it in the context of the Crime Bill, which we have been given to understand will reach the Senate floor within a few weeks. For now, they should join us in supporting the Biden amendment, which would limit the habeas reforms in this bill to the Federal review of Federal cases.