



July 28, 2005

Dear Senator:

We understand that the Senate Judiciary Committee is scheduled to mark up S. 1088, the Streamlined Procedures Act, this morning.

We are conservatives who write to convey our serious concerns about S. 1088 and to any other legislation that rewrites the habeas corpus laws.

Legislation of this kind should not be acted upon in haste or without real consideration of the unintended consequences of acting without knowledge of what those consequences might include.

At the very least, we urge the Committee to delay any action on such proposals until there has been adequate time to study their impact, and whether any legislation in this area is needed.

As conservatives, we believe in a limited government. We share a profound distrust of the government's ability to "get it right."

This distrust is especially applicable in the criminal justice arena. In recent years a re-examination of evidence in numerous cases has led to the exoneration and release of men and women held for and convicted of crimes they never committed. We believe the guilty should be held accountable, but that we must make certain that those we punish are, in fact, guilty and the sad fact is that this has not always and probably never will always be the case. When we don't "get it right," the innocent suffer by being wrongly incarcerated or even executed and of course the real perpetrators remain free to commit new crimes.

Given this reality, we are extremely concerned about any laws that would decrease the ability of reviewing courts to identify and remedy error in criminal cases and, frankly, we fear that S. 1088 would do just that.

A number of us support the death penalty and swift and certain justice for perpetrators of crime. We believe that the rights of victims of crime should be protected. We are not at

all sure, however, that the enactment of S. 1088 will further any of these laudable objectives.

Any rewrite of the extremely complicated body of law that is habeas corpus will result in countless new issues that will have to be resolved by the courts and this will inevitably result in delay and confusion for prosecutors, victims, courts, and criminal defendants.

We wonder if there is any real need for legislation in this area. At the very least, there should be a careful study of the impact of the 1996 Anti-Terrorism and Effective Death Penalty Act, and whether it has already accomplished the objectives the sponsors seek.

We believe the Committee should spend far more time than it has thus far examining the very real concerns inherent in such proposals. It would be a fundamental mistake to strip the federal courts of their jurisdiction to consider habeas corpus petitions from state prisoners without a real understanding of the possible consequences of doing so. Because the criminal justice system can, as we have seen, convict innocent people and sentence them to prison or even to death, we should be *expanding* the courts' ability to consider petitions raising egregious constitutional violations and evidence of actual innocence.

We urge the Committee to postpone any action on S. 1088, and any other legislation that rewrites the habeas corpus laws, until it has more carefully examined these proposals.

Sincerely,

Bob Barr, former Member of Congress

Mickey Edwards, former Member of the House Republican Leadership

David A. Keene, American Conservative Union

Chuck Muth, Citizen Outreach

John M. Snyder, Citizens Committee for the Right to Keep and Bear Arms