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Congress Moves to Limit Prisoner Habeas

Marcia Coyle
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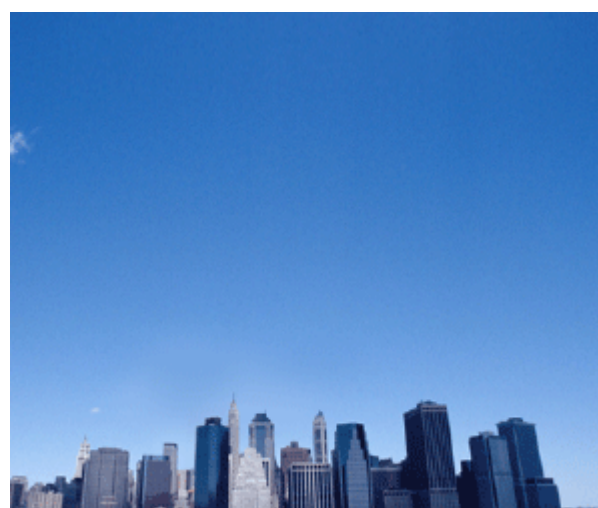
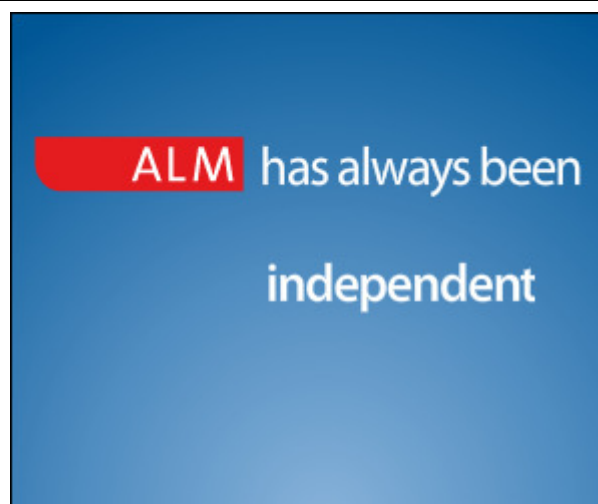
Congress moved on several fronts last week to impose sweeping limits on the ability of prisoners to challenge the legality of their convictions and sentences in federal court.

Most of the Republican-led efforts occurred outside of the traditional committee system, which includes public hearings and public "mark-up" of proposed legislation and amendments.

Just hours before the Senate Judiciary Committee on Nov. 16 was scheduled to hold its second hearing on the so-called Streamlined Procedures Act, S. 1088, which would make the most dramatic changes in federal habeas review in nearly a decade, House and Senate members of a conference committee on legislation to reauthorize the USA Patriot Act inserted a key and controversial provision of S. 1088 into the Patriot Act legislation.

That provision takes away from federal appellate courts the responsibility for determining whether states, through improvements in their indigent defense systems, have met the requirements of the 1996 Antiterrorism and Effective Death Penalty Act in order to "opt in" to the 1996 law's expedited time frames for review of capital habeas petitions.

Under the provision, the U.S. attorney general would set the standards for opt-in status and would decide whether a state complies. An appeal of the attorney general's decision could be made only to the U.S. Circuit Court for the District of Columbia.



During the judiciary committee hearing on S. 1088, former Solicitor General Seth Waxman, now of Washington's Wilmer Cutler Pickering Hale and Dorr, said it was "dismaying" to include the provision in legislation dealing with terrorism. He also called it a "very grave mistake and an unwarranted act" to remove an adjudicative function from the courts and to give it "in the context of an adversarial criminal justice system" to a prosecutor.

But Senator Jon Kyl, R-Ariz., chief sponsor of S. 1088, noted that only Arizona has qualified for opt-in status under the 1996 act. There is "no resolution or reliance" if the decision is left to the courts, he insisted.

U.S. Senior District Judge Howard McKibben of Nevada, chairman of the Judicial Conference Committee on Federal-State Jurisdiction, said preliminary statistics show that "by and large, states have not made the effort Arizona has to opt in. There is no empirical data to indicate the courts have not properly determined opt-in requests."

McKibben and Waxman repeatedly urged the committee to gather data to determine whether there is a systemic problem of delay in habeas review or just isolated cases in certain circuits before approving the comprehensive overhaul in S. 1088. However, the committee chairman, Senator Arlen Specter, R-Pa., indicated that he and his Republican colleagues were ready to send S. 1088 to the Senate floor despite widespread opposition from state and federal judges, the organized bar and others. The bill is supported by a number of state and local prosecutors and victims' groups.

The conference report on the USA Patriot Act reauthorization also was heading for a final vote in both chambers at press time.

GUANTANAMO ACTION

Earlier in the week, the Senate also approved an amendment to the National Defense Authorization Act, which severely restricts the ability of Guantánamo Bay detainees to challenge their detentions through federal habeas petitions as permitted by a 2004 Supreme Court decision.

The amendment allows detainees designated as "enemy combatants" one appeal of that designation, which would be made only to the D.C. Circuit, with possible review by the Supreme Court. And any detainee sentenced by a military tribunal to at least 10 years in prison would receive an automatic appeal to the D.C. Circuit. The amendment appears to eliminate habeas review for detainees not designated "enemy combatants."

Because the House version of the defense spending bill is silent on this issue, House-Senate conferees will address it when they meet to resolve differences between the two measures.

New limits on federal courts' habeas jurisdiction as well as new time limits for disposal of habeas petitions are also proposed in four pending bills: H.R. 3132, the Children's Safety Act of 2005 (already approved by the House); H.R. 3860, Protecting Our Children Act of 2005; S. 1605, Law-Enforcement Officers' Protection Act of 2005; and H.R. 2388, Prevention and Deterrence of Crimes Against Children Act of 2005.