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## Terrorism law lowers bar on justice

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Are the rights of U.S. citizens an intolerable obstacle to fighting terrorism?

The suspect in the attempted Times Square bombing, Faisal Shahzad, is a citizen. But that didn't stop law enforcement from tracking him down within days of his botched attack. It didn't prevent them from securing his confession and continuing cooperation. And there's no reason to think it will keep him from being convicted and punished for his crimes.

Despite this, the failed attack has inspired Sens. Joe Lieberman (I-Conn.) and Scott Brown (R-Mass.) to propose the Terrorist Expatriation Act, a bill that would strip citizenship from Americans suspected of providing "material support" to terror groups.

This bill is unnecessary.

Federal law already provides a means for expatriating citizens who have taken up arms against the United States. But to the extent the law would have any real effect, it is disturbingly cavalier about the rights of citizens.

Lieberman and Brown envision a plan that is inconsistent with the level of due process appropriate for revoking citizenship based on criminal acts.

The Immigration and Nationality Act, which the Lieberman bill would amend, covers revocation of U.S. citizenship because of

one of a number of serious crimes — including treason or bearing arms against the United States.

The catch?

To lose your citizenship, you must be convicted of the crime.

But if you voluntarily renounce your citizenship, either explicitly or tacitly, the government has a far easier case to argue. It need only establish that you've done so by a "preponderance of the evidence."

This is, essentially, a standard of 51 percent certainty — short of the "beyond a reasonable doubt" required for imposing criminal penalties.

Current law already provides a means for dealing with someone like Shahzad, because the provision that covers treason and "bearing arms against the United States" says nothing about foreign armies. But revocation of citizenship for these serious criminal offenses requires conviction in either civilian or military court.

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The Lieberman-Brown bill becomes problematic when it adds “material support for terrorism” to the list of offenses that get you voted off the island (in this case, Manhattan) and perhaps onto another, less pleasant one (Guantanamo Bay, Cuba). The problem lies in the wide legal gap between the definitions of “material support for terrorism” and the more explicit “taking up arms.”

“Material support” is a much broader concept — and a lower bar than treason, levying war or fomenting an insurrection against Washington.

As it stands now, humanitarian assistance in areas controlled by State Department-listed terrorist organizations is regarded as providing material support. That means, for example, doctors working for a charity cannot set up a clinic in an area controlled by the Tamil Tigers or Hamas.

If an American doctor decides to violate the government’s broad reading of this amorphous statute, for example, then Lieberman’s proposal would allow him to be stripped of citizenship — even as he is providing medical care halfway across the globe.

The courts would most likely block the worst excesses of the law. The Supreme Court, in fact, is currently reviewing the material support statute as it applies to humanitarian or expert assistance.

The court has ruled in the past that someone performing one of the triggering acts must clearly intend to renounce his citizenship. And Lieberman himself

stresses that his bill would not alter this requirement.

But passing a broad law and saying that the courts will rein in its abuses is no way to legislate.

Citizen terrorists should be tried for their crimes — up to and including treason. For the most serious acts of betrayal, revoking citizenship might be an appropriate collateral penalty.

It not only punishes those who would harm the Republic; it makes a statement of solidarity: “You are no longer a member of ‘We the People.’”

This is a message worth sending. But it must be sent in a way that accords with American traditions of due process.

The Lieberman-Brown bill falls short of that mark.

At best — if properly reined in by the courts — it is a redundant symbolic flourish.

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At worst, it treats the sacred rights of citizenship as an annoyance to be discarded when they become inconvenient.

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