

June 28, 2005

The Honorable Arlen Specter
Chair, Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Patrick Leahy
Ranking Democratic Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman and Senator Leahy:

Your Committee has on its agenda for prompt consideration S.1088, the “Streamlined Procedures Act of 2005.” The measure would make sweeping changes to important habeas corpus protections, yet it has not been the subject of hearings or other opportunities for its careful consideration. We urge you to postpone consideration of this matter until hearings can be held on it.

Contrary to the “streamlining” claim of the Act’s title, this measure is destined to generate a host of new issues and problems affecting federal court review of state criminal cases. It would override several Supreme Court decisions interpreting Congress’ 1996 habeas corpus reform legislation and would strip federal courts of jurisdiction in most habeas cases. The numerous changes proposed in this bill raise serious constitutional questions and would invite protracted litigation.

While the numerous changes proposed in the bill cry out for hearings, several problems are readily evident:

- Although prisoners are already required to exhaust their state court remedies before pursuing a federal claim in a federal court, the bill would dismiss all claims which lack exhaustion “with prejudice,” ending any federal court review ever of the claims.
- The bill would prevent federal courts from considering claims which the state courts have refused to consider on procedural grounds. Indeed, the federal courts

cannot assess whether the state courts' procedural judgments were legally correct. A state court decision on a federal constitutional question would stand, irrespective of whether it is correct, except in the very limited circumstance that the prisoner can demonstrate actual innocence on the basis of newly discovered facts.

- The bill would prevent federal courts in virtually all cases from considering claims regarding a sentence if the state court has asserted that any constitutional error was "harmless" or "not prejudicial." The federal court could not independently assess whether this assertion is correct.
- The bill would establish timetables for federal courts to follow in processing appeals in habeas cases, which will force the courts to set aside other civil and criminal cases, creating needless backlogs.
- The bill would shift oversight of whether a state's system for providing competent assistance of counsel is adequate from the federal courts to the Attorney General, the nation's highest prosecutor.

The bill is not merely a "Procedures Act"; its effect would be to all but end federal court review of vital habeas corpus protections. We urge your Committee to postpone consideration of this sweeping measure until the opportunity for full hearings on its numerous changes is provided.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Grey, Jr." with a stylized flourish at the end.

Robert J. Grey, Jr.

cc: Members of the Committee