FOREIGN RELATIONS LAW — FOREIGN SOVEREIGN IMMUNITIES ACT TERRORISM EXCEPTIONS — SEVENTH CIRCUIT HOLDS THAT FSIA DOES NOT PROVIDE FREESTANDING BASIS TO SATISFY JUDGMENT AGAINST STATE SPONSORS OF TERRORISM. — *Rubin v. Islamic Republic of Iran*, 830 F.3d 470 (7th Cir. 2016).

In recent years, upward of one thousand American nationals have been awarded billions of dollars in damages against the Islamic Republic of Iran by U.S. courts on the basis of state sponsorship of terrorist activity.[1] These successful plaintiffs then have gone on to engage in what courts have described as "The Never-Ending Struggle to Enforce Judgments Against Iran."[2] Under the Foreign Sovereign Immunities Act of 1976[3] (FSIA), foreign governments generally cannot be sued in U.S. courts.[4] One of several exceptions to this rule, however — an exception recently modified by Congress over President Obama's veto[5] — is that U.S. courts may hear suits against certain foreign countries alleging the commission of or support for terrorism.[6] Recently, however, in *Rubin v. Islamic Republic of Iran*,[7] the Seventh Circuit found that plaintiffs holding judgments under the terrorism exception to foreign sovereign immunity are not necessarily entitled to collect on those judgments by seizing assets of the state sponsor of terrorism simply because the judgment is terrorism related, but must first overcome other hurdles to attachment of sovereign assets. This decision has created a split with the Ninth Circuit.[8] The lack of clarity in attachment provisions of the FSIA has forced courts to provide piecemeal solutions to an important policy question, to the detriment of all of the objectives underlying the statute. Congress needs to weigh the strong arguments on both sides of the issue and provide coherent statutory guidance.

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[1] *See, e.g.*, *In re* Islamic Republic of Iran Terrorism Litig., 659 F. Supp. 2d 31, 36 (D.D.C. 2009) (consolidated opinion addressing cases of over one thousand individual plaintiffs who are collectively owed over nine billion dollars by Iran).

[2] *Id.* at 49; *see id.* at 49–58; *see also* Bennett v. Islamic Republic of Iran, 825 F.3d 949, 955 (9th Cir. 2016).

[3] Pub. L. No. 94-583, 90 Stat. 2891 (codified as amended in scattered sections of 28 U.S.C.).

[4] *See* 28 U.S.C. § 1604 (2012).

[5] Justice Against Sponsors of Terrorism Act, S. 2040, 114th Cong. § 3 (2016) (to be codified at 28 U.S.C. § 1605B). This Act, which became law in September 2016, provides that any state can be sued for supporting terrorism that takes place in the United States. The older exception to the FSIA, also still in force, provides for suits against countries designated as state sponsors of terrorism, regardless of the location of the terrorist attack. 28 U.S.C. § 1605A.

[6] 28 U.S.C. § 1605A. The currently designated countries are Iran, Sudan, and Syria. *State Sponsors of Terrorism*, U.S. DEP'T OF STATE, http://www.state.gov/j/ct/list/c14151.htm [https://perma.cc/78RF-UJAE].

[7] 830 F.3d 470 (7th Cir. 2016) (including the Field Museum of Natural History in Chicago and the Oriental Institute at the University of Chicago as respondent-appellees).

[8] *See* Bennett v. Islamic Republic of Iran, 825 F.3d 949, 965 (9th Cir. 2016).

The plaintiffs in *Rubin* were American citizen victims or family members of victims of a Hamas suicide bombing on a pedestrian mall in Jerusalem in 1997.[9] These victims suffered severe, permanent physical and psychological injuries.[10] In 2003, the U.S. District Court for the District of Columbia entered a default judgment of millions of dollars per plaintiff present at the bombing, finding that the attack would not have occurred without material support from Iran.[11] During the following thirteen years, the plaintiffs fought multiple unsuccessful battles in various district and circuit courts to seize assets to satisfy their judgments.[12] The litigation leading to the Seventh Circuit's recent decision was their third major such attempt. This time, they sought to seize several collections of ancient Persian artifacts, including tablets containing some of the oldest known writing in the world, allegedly owned by Iran and on loan to or purchased from third parties by the Field Museum of Natural History in Chicago and the Oriental Institute at the University of Chicago.[13] After the case wound through the Seventh Circuit on procedural issues for several years,[14] it returned to the U.S. District Court for the Northern District of Illinois for judgment on the merits.

Iran and the two institutions in possession of the artifacts moved for summary judgment on the basis that the artifacts were immune from attachment under the FSIA,[15] which provides that property of a foreign state that is present in the United States cannot be attached except pursuant to enumerated exceptions.[16] These exceptions for attachment are separate from jurisdictional exceptions such as the one through which the plaintiffs obtained their original damages award. The district court examined two FSIA exceptions that the plaintiffs claimed allowed for seizure of the artifacts. First, the plaintiffs argued that the FSIA's exception for assets used for commercial activity in the United States applied.[17] Second, they argued that a recently added provision applied broadly to allow for the attachment of assets in ter-

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[9] *Rubin*, 830 F.3d at 473.

[10] *See* Campuzano v. Islamic Republic of Iran, 281 F. Supp. 2d 258, 263–68 (D.D.C. 2003).

[11] *Id.* at 262.

[12] *See* Rubin v. Islamic Republic of Iran, 810 F. Supp. 2d 402 (D. Mass. 2011), *aff'd*, 709 F.3d 49 (1st Cir. 2013) (holding that antiquities allegedly owned by Iran and in the possession of the Boston Museum of Fine Arts and Harvard University were not blocked assets under the Terrorism Risk Insurance Act and thus not attachable); Rubin v. Islamic Republic of Iran, No. Civ.A. 01-1655, 2005 WL 670770 (D.D.C. Mar. 23, 2005), *vacated*, 563 F. Supp. 2d 38 (D.D.C. 2008) (granting writs of attachment against bank accounts used by Iranian consulates that were later vacated).

[13] *Rubin*, 830 F.3d at 474.

[14] *See* Rubin v. Islamic Republic of Iran, 637 F.3d 783 (7th Cir. 2011).

[15] Rubin v. Islamic Republic of Iran, 33 F. Supp. 3d 1003, 1008 (N.D. Ill. 2014).

[16] 28 U.S.C. § 1609 (2012).

[17] *Rubin*, 33 F. Supp. 3d at 1008–09.

rorism cases regardless of the limitations set out elsewhere in the statute.[18] The district court rejected both of these claims and, finding no applicable exception to the immunity the FSIA grants to assets of a foreign sovereign, entered summary judgment against the plaintiffs.[19]

The Seventh Circuit affirmed.[20] Writing for the panel, Judge Sykes[21] agreed with the district court's rejection of each claimed exception as applied to the single collection of artifacts still at issue.[22] Examining the commercial activity exception, she found that the FSIA's statement that holders of awards under the terrorism exception can attach property "used for a commercial activity in the United States"[23] refers only to property used commercially by the foreign state itself and noted that the plaintiffs did not contend that Iran itself used the artifacts for a commercial purpose in the United States. She expressed skepticism that the museums' academic study constituted commercial activity in any case, but did not reach this question in holding that the commercial activity exception did not apply.[24]

The Seventh Circuit panel also agreed with the district court in finding that 28 U.S.C. § 1610(g) does not allow for attachment of assets that are not vulnerable under another part of the FSIA, splitting with a Ninth Circuit decision from only a month earlier.[25] Section 1610(g), added by Congress in 2008, provides in part that "the property of a foreign state against which a judgment is entered under section 1605A [the terrorism exception to jurisdictional immunity], and the property of an agency or instrumentality of such a state . . . is subject to attachment in aid of execution . . . as provided in this section."[26] Section 1610(g) applies "regardless of" a list of factors that closely mirrors a prior common law test to determine whether the property of an agency

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[18] *Id.* at 1012. The *Rubin* plaintiffs had tried to make this argument, based on 28 U.S.C. § 1610(g), in their previous litigation in the First Circuit, but that circuit did not reach the merits of the issue because the plaintiffs impermissibly raised the § 1610(g) argument for the first time in a reply brief. Rubin v. Islamic Republic of Iran, 709 F.3d 49, 54 (1st Cir. 2013).

[19] *Rubin*, 33 F. Supp. 3d at 1017. The plaintiffs also argued that the artifacts were subject to attachment under the Terrorism Risk Insurance Act of 2002 (TRIA), Pub. L. No. 107-297, 116 Stat. 2322 (codified as amended in scattered sections of the U.S. Code), which allows for seizure of assets frozen by an executive order. *Rubin*, 33 F. Supp. 3d at 1014.

[20] *Rubin*, 830 F.3d at 473.

[21] Judge Sykes was joined by Senior Judge Bauer and Chief District Judge Reagan, sitting by designation from the Southern District of Illinois.

[22] *Rubin*, 830 F.3d at 475–76. Judge Sykes rejected claims against other artifacts because, in the case of some, Iran did not claim to own them, and, in the case of others, they were physically returned to Iran during the litigation at the behest of the State Department. *Id.* Also, like the district court, she found that a string of executive orders had put the assets in a status barring them from exception under the TRIA. *Id.* at 488.

[23] 28 U.S.C. § 1610(a).

[24] *Rubin*, 830 F.3d at 479, 481 n.4.

[25] *Id.* at 486–87; *see* Bennett v. Islamic Republic of Iran, 825 F.3d 949, 959 (9th Cir. 2016).

[26] 28 U.S.C. § 1610(g)(1).

or instrumentality could be attached to satisfy a judgment against the state.[27] Judge Sykes compared the near-identical language of this court-developed doctrine, consisting of five factors used to determine whether the holder of a judgment against a foreign state could execute against assets of an instrumentality of that state, and the list of factors that § 1610(g) renders irrelevant in determining whether assets can be attached to satisfy a judgment against a state sponsor of terrorism.[28] She agreed with the Ninth Circuit that § 1610(g) was intended to, and does, abrogate this common law doctrine as applied to terrorism cases.[29] However, she went on to read the "as provided in this section" language as specifically limiting the section's scope.[30] This phrase, as well as other parts of the statute dealing with the terrorism exception, would be superfluous (a result to be avoided in statutory interpretation[31]) if § 1610(g) were interpreted as a freestanding exception that allowed the attachment of assets to satisfy terrorism judgments even if they were not covered by an exception provided elsewhere in § 1610, such as the commercial use exception.[32] No such freestanding exception, Judge Sykes held, exists.[33]

Judge Hamilton, who was not on the *Rubin* panel, filed a dissent to the denial of en banc review.[34] He found that both *Rubin* and the

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[27] *Id.*; *see also Rubin*, 830 F.3d at 482–83 (providing a chart comparing the language of § 1610(g) with factors developed by the courts).

[28] *Rubin*, 830 F.3d at 482–83.

[29] *Id.* at 483; *see also Bennett*, 825 F.3d at 958–59.

[30] *Rubin*, 830 F.3d at 487 (quoting 28 U.S.C. § 1610(g)).

[31] *See, e.g.*, Hibbs v. Winn, 542 U.S. 88, 101 (2004).

[32] *Rubin*, 830 F.3d at 484. Analyzing § 1610(g), the Ninth Circuit had found that "as provided in this section" refers only to § 1610(f), which, like § 1610(g), contains procedures relating to judgments obtained under the jurisdictional exception for terrorism cases. *Bennett*, 825 F.3d at 959. To read § 1610(g) otherwise, the Ninth Circuit contended, would amount to judicial insertion of a limitation that Congress did not include — that the property mentioned in § 1610(g) must also be used for a commercial activity as provided in § 1610(a). *Id.* at 960. Discussing the Ninth Circuit's opinion, the Seventh Circuit panel countered that § 1610(f), the provision to which the Ninth Circuit found that the critical "as provided" language pertains, has essentially never been operative due to the immediate issuance of a presidential waiver allowed by the subsection, so it would have made no sense for Congress to have meant to refer to § 1610(f) when it drafted § 1610(g). *Rubin*, 830 F.3d at 486–87.

[33] *Rubin*, 830 F.3d. at 487. Interestingly, the Ninth Circuit had relied in part upon two other recent Seventh Circuit decisions, *Gates v. Syrian Arab Republic*, 755 F.3d 568 (7th Cir. 2014); and *Wyatt v. Syrian Arab Republic*, 800 F.3d 331 (7th Cir. 2015), *cert. denied*, 136 S. Ct. 1721 (2016), in coming to its conclusion that § 1610(g) does provide a freestanding basis for attachment. *Bennett*, 825 F.3d at 960–61. The Seventh Circuit characterized the Ninth Circuit's interpretation of these cases as "understandable," but, after rejecting that interpretation, went on to hold that "[t]o the extent that *Gates* and *Wyatt* can be read as holding that § 1610(g) is a freestanding exception to execution immunity for terrorism-related judgments, they are overruled." *Rubin*, 830 F.3d at 487.

[34] *Rubin*, 830 F.3d at 489 (Hamilton, J., dissenting from denial of en banc review). The majority did not vote to rehear the case because five judges could not participate in the vote, *id.* at 487

Ninth Circuit's contrary decision in *Bennett v. Islamic Republic of Iran*[35] provided "readings of the text [that] are reasonable, meaning that the text is ambiguous," and noted that "[t]he courts must choose between two statutory readings: one that favors state sponsors of terrorism, and another that favors the victims of that terrorism."[36] Given Congress's apparent intent to make it easier for plaintiffs to attach assets to collect on terrorism judgments and the nature of the parties in this case, Judge Hamilton argued that the *Rubin* panel should have read § 1610(g) as providing a freestanding exception.[37]

In failing to specify the other parts of the section to which § 1610(g) refers, Congress has prolonged the "Never-Ending Struggle" by leaving individual courts free to settle on opposing interpretations with dramatically different policy implications. Both circuits' readings have, in addition to plausible legal arguments, compelling policy reasons to support them. At the same time, commentators advocating for a variety of different political positions have called for clarification and reform of the FSIA.[38] Whatever one's political view, the lack of clarity in § 1610(g) and the resulting efforts of courts to determine the answers to major foreign policy questions — sometimes differently from one another — does a disservice to both Congress's and the Executive's interests, as well as the interests of victims of state-sponsored terrorism. Congress should amend the FSIA to clarify the scope of the exception and to balance more effectively the objectives of the Act.

The major purposes of the terrorism exceptions to the FSIA were deterring state sponsors of terrorism and compensating victims.[39] Congressional desire to pass laws imposing heavy monetary penalties for terrorism is understandable, particularly in the immediate after-

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n.6 (majority opinion), a circumstance with which Judge Hamilton also took issue, *id.* at 489 (Hamilton, J., dissenting from denial of en banc review).

[35] 825 F.3d 949.

[36] *Rubin*, 830 F.3d at 489–90 (Hamilton, J., dissenting from denial of en banc review).

[37] *Id.* at 490.

[38] *See, e.g.*, Danica Curavic, Note, *Compensating Victims of Terrorism or Frustrating Cultural Diplomacy? The Unintended Consequences of the Foreign Sovereign Immunities Act's Terrorism Provisions*, 43 CORNELL INT'L L.J. 381, 385 (2010) (suggesting that Congress should completely repeal the terrorism exception); Ilana Arnowitz Drescher, Note, *Seeking Justice for America's Forgotten Victims: Reforming the Foreign Sovereign Immunities Act Terrorism Exception*, 15 N.Y.U. J. LEGIS. & PUB. POL'Y 791, 796 (2012) (advocating that Congress strengthen victims' ability to collect).

[39] *See* Flatow v. Islamic Republic of Iran, 999 F. Supp. 1, 12, 27 (D.D.C. 1998) (finding, in the first case to be decided against Iran under the terrorism exception to jurisdiction in the FSIA, that Congress made punitive damages available in state sponsorship of terrorism cases in part so that the magnitude of potential liability would have a deterrent effect, and highlighting the compensatory nature of damages in wrongful death causes of action such as that provided by the FSIA); Drescher, *supra* note 38, at 795–96, 804, 807–08 (identifying these as Congress's reasons for passing the terrorism exception to the FSIA and highlighting statements by members of Congress emphasizing deterrence during the passage of the amendments to the FSIA).

math of terrible, and widely publicized, attacks harming Americans.[40] However, a circuit split that renders many assets unavailable for seizure in terrorism cases in the Seventh Circuit — though not in the Ninth — fails to serve fully the goal of deterrence.[41] It also makes for fragmented policy. Further, terror victims' already-fraught path to recovery becomes if anything more complicated, expensive, and painful when the availability of assets turns on the current positions of different courts in different jurisdictions rather than on the nature of the assets or the nature of the victims' claims. The *Rubin* plaintiffs' saga throws into sharp relief the strife faced by victims of terrorism as they navigate the legal maze of exceptions to the FSIA.[42] It has now been over ten years since the *Rubin* plaintiffs were awarded damages against Iran and nearly twenty since they were originally victimized by Hamas suicide bombers, and they have litigated three major efforts at attachment through three district and two appeals courts.[43] Moreover, by directing all of the different groups of victims toward those assets in the jurisdiction of friendly circuits, the circuit split might lead to races to court among the victims.

The policy arguments for clarifying the FSIA to hew more closely to the Ninth Circuit's reading are compelling. Judge Hamilton went even further with his unflattering characterization of a statutory interpretation preventing the collection of assets as "favor[ing] state spon-

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[40] Indeed, many of the major expansions to terrorism exceptions to immunity in the FSIA were passed in the wake of such tragedies. The original version of the terrorism jurisdictional exception to the FSIA was passed largely "in response to public outrage over the dismissal of cases against Libya" stemming from the terrorist bombing of Pan Am Flight 103 (the Lockerbie bombing) in 1988. Drescher, *supra* note 38, at 801. A further amendment making it easier to obtain larger damage awards was supported by and named for a lawyer whose daughter was killed by a suicide bomber in Israel. *Id.* at 802. TRIA was introduced following pressure surrounding the September 11, 2001, terrorist attacks, *id.* at 804, and the September 2016 addition to the FSIA was also a direct response to 9/11, Jennifer Steinhauer et al., *Congress Votes to Override Obama Veto on 9/11 Victims Bill*, N.Y. TIMES (Sept. 28, 2016), http://www.nytimes.com/2016/09/29/us/politics/senate-votes-to-override-obama-veto-on-9-11-victims-bill.html [https://perma.cc/GGA3-YAUU].

[41] There is significant concern over plaintiffs' continuing inability to collect; one of the primary advocates of an expansion of the terrorism exceptions to the FSIA recently stated that this legislation has not had a significant deterrent effect on state sponsors of terrorism because judgments are not enforced. Drescher, *supra* note 38, at 813 (noting the views of Stephen Flatow).

[42] *Cf. In re* Islamic Republic of Iran Terrorism Litig., 659 F. Supp. 2d 31, 62 (D.D.C. 2009) ("Only time will tell whether § 1610(g) will enable plaintiffs going forward with actions under § 1605A to experience greater success in executing civil judgments against Iranian assets. Given the scarcity of assets and the difficulty of locating what assets might be available — it seems unlikely that this provision will be of great utility to plaintiffs. Suffice it to note, however, these latest additions to the FSIA demonstrate that Congress remains focused on eliminating those barriers that have made it nearly impossible for plaintiffs in these actions to execute civil judgments against Iran or other state sponsors of terrorism.").

[43] *See Rubin*, 830 F.3d at 473.

sors of terrorism."[44] But this goes too far: there are in fact substantial interests that weigh against seizure of foreign states' property. Indeed, the executive branch has consistently opposed efforts to collect assets from foreign governments to satisfy terrorism judgments. As it has in similar cases, the U.S. government under the Obama Administration filed a brief supporting Iran's position in *Rubin*.[45] The Clinton and Bush Administrations both opposed similar efforts to seize foreign assets.[46] Given the executive branch's role as the day-to-day manager of the United States' international relations, its reasons for such opposition makes sense: foreign assets present in the United States are useful leverage in negotiations, these assets could assist in normalizing relations with countries not currently U.S. allies, and countries facing seizure of their property by U.S. courts might retaliate with their own similar legislation, putting American assets abroad at risk.[47] The *Rubin* court agreed that a major purpose of the legal barriers to attachment of foreign state assets is that such attachment is seen as a "serious affront" to the sovereignty of the other state.[48]

Unfortunately, however, some of the Executive's feared outcomes occur simply as a result of litigation over asset seizure, even if plaintiffs are ultimately unsuccessful in satisfying their judgment. *Rubin* attracted condemnation from Iranian authorities: the Iranian Foreign Minister called the *Rubin* litigation an "indecent cultural move by the United States" and suggested the possibility of retaliatory legal claims even though the U.S. State Department supported Iran's position throughout the case[49] and Iran ultimately prevailed in court.[50] This type of criticism is, of course, particularly relevant to cases in which culturally significant objects are in play, such as the ancient writing tablets in *Rubin*.[51] Iran's outrage at the attempted seizure of its arti-

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[44] *Id.* at 489–90 (Hamilton, J., dissenting from denial of en banc review).

[45] Brief for the United States as Amicus Curiae Supporting Appellees, *Rubin*, 830 F.3d 470 (No. 14-1935), 2014 WL 6671022.

[46] JENNIFER K. ELSEA, CONG. RESEARCH SERV., RL31258, SUITS AGAINST TERRORIST STATES BY VICTIMS OF TERRORISM 12, 17–18, 21, 27–29 (2008).

[47] *Id.* at 9; *see also* Steinhauer et al., *supra* note 40.

[48] *Rubin*, 830 F.3d at 480.

[49] Peter Slevin, *Iran, U.S. Allied in Protecting Artifacts*, WASH. POST (July 18, 2006), http://www.washingtonpost.com/wp-dyn/content/article/2006/07/17/AR2006071701177_pf.html [https://perma.cc/R5ER-ZC3Y].

[50] *See Rubin*, 830 F.3d at 473.

[51] *See, e.g.*, Claire R. Thomas, "That Belongs in a Museum!" Rubin v. Iran*: Implications for the Persian Collection of the Oriental Institute of the University of Chicago*, 31 LOY. L.A. INT'L & COMP. L. REV. 257 (2009) (surveying international and domestic legal obligations to protect cultural heritage, cataloging likely ramifications of seizure of foreign artifacts, and concluding that seizure in *Rubin* would be impermissible and immoral); Touraj Daryaee, *Auctioning Ancient Iranian Artifacts: Implications for US Cultural Policy*, HUFFINGTON POST: WORLDPOST (May 25, 2011), http://www.huffingtonpost.com/touraj-daryaee/auctioning-ancient-irania_b_378962.html [https://perma.cc/LC2N-XDMG] ("[O]ne can imagine how much dislike, distrust, and suspicion

facts would, presumably, be the same whether those artifacts were located in the Seventh or Ninth Circuits. The *Rubin* panel's protection of the University's and the Field Museum's collections, then, means little as far as the executive branch's interests are concerned.

There are, then, substantial arguments to be made on both sides of the question of foreign sovereign asset immunity in terrorism cases — but they are not arguments to be directed to the courts. As Daveed Gartenstein-Ross has noted, "[b]ecause terrorism is a foreign policy problem, it is best dealt with by the political branches of government rather than by a wide array of courts and judges engaging in their own foreign policy experiments."[52] A reading of statutory language like Judge Hamilton's explicitly makes use of particular jurists' preferences to support certain interests over others, and even a decision based purely on principles of statutory interpretation like the *Rubin* panel's has the practical effect of fragmenting the sources of foreign policy decisions, as is already evident in the conflicting Seventh and Ninth Circuit opinions.[53] Congress can legislate the vulnerability of certain specific assets once they are already embroiled in court proceedings — a practice the Supreme Court upheld last term[54] — but by that point in the process it is too late to prevent most of the detrimental effects of having no clear law in the first place.

Under the current version of the FSIA, it is unclear whether holders of judgments against foreign state sponsors of terror can seize assets owned by those states regardless of whether the assets are covered by another exception. This lack of clarity does a disservice to congressional objectives of deterrence, harms executive interests in managing relationships with foreign states, and leads victims of terrorism through a costly legal maze in an attempt to collect. Given courts' disagreement on the proper interpretation of § 1610(g) of the FSIA and the resulting fragmentation of a key policy decision, Congress should update § 1610(g) to clarify whether it serves as a freestanding exception to foreign sovereign asset immunity. The political branches need to decide whether, as a matter of policy, the benefits are worth the costs of allowing seizure of any kind of asset in state-sponsored terrorism cases.

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would be incurred by a Western power dragging another culture's ancient heritage to the auction block."). Given the greater concerns inherent in seizing cultural artifacts, Congress would be well advised to modify the commercial use exception to apply more definitively to such objects.

52 Daveed Gartenstein-Ross, Note, *A Critique of the Terrorism Exception to the Foreign Sovereign Immunities Act*, 34 N.Y.U. J. INT'L L. & POL. 887, 888 (2002) (footnote omitted).

53 *See* Andrew Rocklage, Case Comment, Leibovitch v. Islamic Republic of Iran, *697 F.3d 561 (7th Cir. 2012)*, 36 SUFFOLK TRANSNAT'L L. REV. 475, 485 (2013) ("[The 2008 FSIA amendment] has spawned foreign policymaking by the courts, and as a consequence, diminution in the political branches' control over foreign policy.").

54 *See* Bank Markazi v. Peterson, 136 S. Ct. 1310, 1317 (2016).