



Written by [Jack Kenny](#) on November 30, 2011

U.S. Senate Votes for Indefinite, Unconstitutional Detention

Most Democrats voted against the provisions but only two Republicans voted nay — despite the fact that it is the Republicans more than the Democrats who talk about the importance of abiding by the Constitution. The two Republican Senators who have both read and respected the Constitution of the United States and therefore voted against the travesty were Mark Kirk of Illinois and Rand Paul of Kentucky.



The vote is such a blatant thumbing of senatorial noses at the Constitution of the United States that it might even be called revolutionary — or counterrevolutionary, meaning that it is an attempt to at least partially overthrow the revolution against the tyranny of the British crown beginning with the Declaration of Independence in 1776. When former Senator Russ Feingold (D-Wis.) was criticized by some of his Senate colleagues for following a line of reasoning that is “pre-911,” the Senator, who cast the lone Senate vote against the controversial Patriot Act, replied that his critics were exhibiting a manner of reasoning that might be called “pre-1776.”

It might even be called, for the historically minded, “pre-1215,” the year English noblemen forced King John to sign the Magna Carta, which guaranteed, among other things, the right of *habeas corpus*.

That is, lest we forget, the right to appear before an independent magistrate and hear the charges against the defendant and to be given a right to challenge those charges, any and all witnesses and the evidence behind the charges. That is what the U.S. Senate would now deny you. Ironically the Obama administration, whose defense of civil liberties has been well short of stalwart, has opposed these provisions that the Senate overwhelmingly passed Tuesday night. The attorney general has said the legislation is not needed and would, indeed, be counterproductive. The Secretary of Defense has said the same. The President has reportedly threatened a veto should the measure pass the House. It is bad enough that this war-making President is seen as the peace candidate when compared to the militaristic Republicans and their neocon, dot.com warriors in the Fourth Estate. It is even more outrageous if the Republicans will now make Barack Obama the defender of the Bill of Rights.

The War Party line, as found in, for example, National Review Online, is that nothing much has changed



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and only the libertarian "fanatics," like Ron Paul and Andrew Napolitano, are sounding the alarm. It merely reflects what was accomplished by the passage of Authorization of the Use of Military Force in the immediate aftermath of the terrorist attacks of September 11, 2001. It merely broadens the definition of the enemy to include more than members of al-Qaeda. That, however, leaves untouched the argument that the legislation is radically inconsistent with and unmistakably violates the Constitution of the United States, which the *National Review* and other allegedly conservative publications purport to hold in minimum high regard.

One can fairly easily anticipate the defense by Jonah Goldberg, who has already endorsed President Obama's policy of targeting American citizens for assassination without charges or trial. Surely, Goldberg will argue (or perhaps already has), if the commander in chief has authority to put together an assassination list and kill people — even American citizens — without trial, what is the big deal about imprisoning citizens indefinitely without trial?

These truly noxious provisions were crafted in secret by Republican John McCain of Arizona, the 2008 GOP standard-bearer, and Democrat Carl Levin of Michigan. A key supporter was South Carolina Republican Senator Lindsey Graham. For years Graham has been pushing the concept that the whole world is a battlefield and, therefore, any terror suspect captured anywhere may be held as an "enemy combatant." He pushed that line in his questioning of Attorney General Eric Holder during Holder's confirmation hearings. He did the same during the confirmation hearings for Supreme Court Justice Elena Kagan. He got both nominees to confirm his contention that the whole world is a battlefield. At Graham's suggestion, Holder conceded that a hypothetical "little old lady in Switzerland" who sent money to an al-Qaeda front organization could be classified as an "enemy combatant."

Graham appears to have a disciple in freshman Senator Kelly Ayotte, a Republican of New Hampshire. Ayotte has been often mentioned as a rising Republican star, designated in 2010 as a "Mamma Grizzly" by Sarah Palin. Presidential candidate Mitt Romney has said he might want Senator Ayotte as his running mate should he secure the GOP nomination. She is the of the right party, of course (unlike Sen. Joseph Lieberman, who, according to many accounts, was McCain's first choice for running mate in 2008), and, being young and female, is of the right demographic profile. She has even been described as someone who could help Romney shore up support on "the right flank" of the Grand Old Party.

If so, then what in the names of Bob Taft and Barry Goldwater has happened to "the right flank"? While not unalterably libertarian, Republican conservatives used to hold fidelity to the Constitution, which has a frequently inconvenient Bill of Rights attached to it, as a requirement of conservative bona fides. Indeed, it is a requirement for holding federal office, regardless of political or ideological affiliation.

I leave it to the voters of Arizona and South Carolina to decide when and how to retire John McCain and Lindsey Graham, respectively. But in the "Live Free or Die State" of New Hampshire, where I live, I am already looking for an opportunity to retire Senator Kelly Ayotte in the Republican primary of 2016. I hereby announce the formation of a new political action committee: Anybody But Ayotte, or ABA 2016.



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