



Written by [Joe Wolverton, II, J.D.](#) on December 20, 2012

Conference Committee Strikes Jury Trial Protection From NDAA

On December 18, the House and Senate Armed Services Committees [completed their conference report](#) on the National Defense Authorization Act (NDAA) for Fiscal Year 2013.

At a press conference held Thursday afternoon, four of the leaders of those committees announced the completion of the compromise version of the bill and pointed out some highlights of the revised bicameral measure.



“The conference report on the National Defense Authorization Act for Fiscal Year 2013, which was adopted today by the conference committee, provides well-deserved support for the men and women of the armed forces and their families and provides them with the means to accomplish their missions,” [announced Senator Carl Levin \(D-Mich.\)](#).

One controversial portion of the NDAA bill passed by the Senate on December 4 didn’t make the cut, however, after the conference committee’s negotiations.

The Feinstein-Lee Amendment, which protects Americans from indefinite detention ([passed by the Senate 67-29](#)), was stripped from the conference report, not surprising given that inveterate warmonger Senator John McCain (R-Ariz.) led the group drafting the compromise version of the bill that will be presented to both houses for their approval this week.

The relationship between McCain’s influence and the exclusion of the Feinstein-Lee Amendment from the conference report was not lost on Senator Rand Paul (R-Ky.), a chief cosponsor of the Feinstein-Lee Amendment.

In [a statement released on December 19](#), Senator Paul did what few lawmakers ever do: named names. He declared,

The decision by the NDAA conference committee, led by Sen. John McCain (R-Ariz.) to strip the National Defense Authorization Act of the amendment that protects American citizens against indefinite detention now renders the entire NDAA unconstitutional.

I voted against NDAA in 2011 because it did not contain the proper constitutional protections. When my Senate colleagues voted to include those protections in the 2012 NDAA through the Feinstein-Lee Amendment last month, I supported this act.

But removing those protections now takes us back to square one and does as much violence to the Constitution as last year’s NDAA. When the government can arrest suspects without a warrant, hold them without trial, deny them access to counsel or admission of bail, we have shorn the Bill of Rights of its sanctity.

Saying that new language somehow ensures the right to habeas corpus — the right to be presented before a judge — is both questionable and not enough. Citizens must not only be formally charged



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but also receive jury trials and the other protections our Constitution guarantees. Habeas corpus is simply the beginning of due process. It is by no means the whole.

Our Bill of Rights is not something that can be cherry-picked at legislators' convenience. When I entered the United States Senate, I took an oath to uphold and defend the Constitution. It is for this reason that I will strongly oppose passage of the McCain conference report that strips the guarantee to a trial by jury.

Although not in the same spirit, Senator Carl Levin also noted McCain's contribution to the quick (by Washington standards) agreement on a compromise version of the NDAA. Said Levin:

As Senator McCain leaves his position as Ranking Member of the Committee, I want to thank him for his dedication and hard work as my partner in moving the annual NDAA through the legislative process these last few years. I know he will continue to be a leading member of our committee and I look forward to continuing to work with him to address issues of importance to our military men and women and their families.

McCain's urgency for passage of the annual Pentagon spending bill was evident [in a speech on the Senate floor on July 23](#) where he pushed hard for consideration of the measure, trying the familiar neocon "if you don't support the NDAA, you don't support the troops" gambit.

"I remind my colleagues that consideration of the defense authorization bill is more than a simple right of this body. It is an obligation to our national defense and a fulfillment of our responsibility to the men and women in uniform that the Senate has honored for the past 50 consecutive years," McCain said.

Apparently, McCain's vote in favor of passage of the Feinstein-Lee Amendment was nothing more than cover fire for what he knew would be his ultimate assault on the measure's guarantee of a trial by jury for all Americans detained under the NDAA.

There is something ironic in McCain's opposition to such a protection given his own five-and-a-half-year imprisonment by the communist regime of Vietnam during that conflict.

While the Feinstein-Lee Amendment did dilate the protection of fundamental civil liberties threatened by the previous year's NDAA, many observers recognized that in some ways it did not go far enough, while in others it went too far.

For example, nowhere in the Constitution are the protections of civil liberties restricted to "citizens." Our Founders recognized and explicitly stated that "persons" — all persons — are by their very nature afforded the same rights as individuals, regardless of nationality.

Finally, the Feinstein-Lee Amendment fails to address the most invasive aspect of the mortal malady that is the NDAA — the placement of the American military at the disposal of the president for the apprehension, arrest, and detention of those suspected of posing a danger to the homeland (whether inside or outside the borders of the United States and whether the suspect be a citizen or foreigner). Giving the president that power is nothing less than a de facto legislative repeal of the Posse Comitatus Act of 1878, the law forbidding the use of the military in domestic law enforcement.

It is this last bit of Stalinist-style authoritarianism that is the NDAA's true threat to liberty. While the Feinstein Amendment buttresses the right to a trial for citizens and permanent residents, it does nothing to prevent their apprehension. Denial of habeas corpus (or a trial) comes later; it is the delirium, not the fever, in a manner of speaking.

Put simply, Americans would not need to worry about being held without charge if the president was



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not authorized in the same act to deploy the armed forces to round up the “suspects” and detain them indefinitely. Being apprised of the laws one is accused of having violated is important, but it’s the detention and the manner of it that must be of more immediate concern to those who are concerned about the new world order being defined by the NDAA.

It would seem that given the perfidy of McCain and others who participated in the approval of a conference report of the NDAA that purposely removed the otherwise unalienable guarantee of a right to due process from the bill, Senator Paul has taken a bolder step than he did in supporting the Feinstein-Lee Amendment. He has declared the whole of the 2013 NDAA “unconstitutional,” and he has called out by name the man he believes chiefly responsible for that egregious editing.

The compromise bill will be sent to the full House on Thursday for its consideration and will move on to the Senate following passage by the House.

Word from Senator Paul’s office is that he will likely make a public statement on the floor of the Senate opposing the compromise version of the NDAA, and he will vote against its passage.

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