Written by **Joe Wolverton, II, J.D.** on September 17, 2013

Sen. Levin: Senate Vote on 2014 NDAA May Be Delayed

Owing to its preoccupation with the situation in Syria and the impending "shutdown" of the government, it appears that Congress won't turn its attention to passing the National Defense Authorization Act (NDAA) for Fiscal Year 2014 until later in the year. That may be a very good thing.

A story published in *The Hill* reports that Senate Armed Services Committee Chairman Carl Levin (D-Mich.) said Wednesday that this year's iteration of the defense spending bill will probably not come up before the current fiscal year ends on September 30. "It'll be another cliffhanger, probably," Levin said, as reported by *The Hill*. "It will probably end up closer to the end of the session than I'd like."

Although for over half a century the NDAA has been the vehicle for doling out the hundreds of millions of dollars in the Defense Department budget, the last few versions of the bill have created controversy over the significant attacks on fundamental freedoms contained in key provisions.

While the future of the measure in the Senate remains up in the air, the House of Representatives passed the bill on June 14 by a vote of 315-108.

Several amendments to the defense spending legislation were proposed, many of which were approved either by voice vote or en bloc. The first method of voting requires no report on how individual members voted, while the second method aggregates amendments, allowing them to be voted on in groups.

A few of the amendments represent significant improvements to the NDAA of 2012 and 2013. The acts passed for those years infamously permitted the president to deploy U.S. military troops to apprehend and indefinitely detain any American he alone believed to be aiding enemies of the state.

While the 2014 iteration doesn't go far enough in pushing the federal beast back inside its constitutional cage, there are at least a few congressmen willing to try to crack the whip and restore constitutional separation of powers and shore up a few of the fundamental liberties suspended by the NDAA of the past two years.

First, there is the amendment offered by Representative Trey Radel (R-Fla.). Radel's amendment requires the Department of Defense to submit to the Congress a report every year containing: (1) the names of any U.S. citizens subject to military detention, (2) the legal justification for their continued detention, and (3) the steps the Executive Branch is taking to either provide them some judicial process or release them. It requires that an unclassified version of the report be made available, and in addition, that the report must be made available to all members of Congress.

Radel's amendment was passed by voice vote.

Next, an amendment offered by Representative Bob Goodlatte (R-Va.) would require the federal government, in habeas proceedings for U.S. citizens apprehended in the United States pursuant to the Authorization for the Use of Military Force (AUMF), to prove by "clear and convincing evidence" that the citizen is an unprivileged enemy combatant and there is not presumption that the government's evidence is accurate and authentic.

The House approved the Goodlatte amendment by a vote of 214-211.

Finally, an amendment by Representative Paul Broun (R-Ga.) forbids the Department of Defense from killing a citizen of the United States by a drone attack unless that person is actively engaged in combat against the United States.

This trio of amendments represents a laudable attempt to restrain the power of the executive. As constitutionalists and civil libertarians are aware, recent occupants of the Oval Office have usurped sweeping unconstitutional powers, including the authority to target Americans for indefinite detention, to withhold from them rights that have been recognized as unalienable since before the Magna Carta, and to kill American citizens who have been charged with no crime and been given no opportunity to defend themselves from the accusations that qualified them for summary assassination.

In 2014, the more things change, the more they stay the same. Members of Congress — mostly Republican members — have united in firm defense of the president's unconstitutional power to apprehend and indefinitely detain Americans.

There are very few more powerful reminders that there is no party in Washington, D.C., that is committed to faithfully adhering to the oath of office or to the upholding of the manifold God-given rights that are guaranteed by the Constitution.

Finally, there is in the NDAA for 2014 a frightening fusion of the federal government's constant surveillance of innocent Americans and the assistance it will give to justifying the indefinite detention of anyone labeled an enemy of the regime.

Section 1061 of the 2014 NDAA approved by the House expands on the scope of surveillance established by the Patriot Act and the AUMF. Sec. 1061(a) authorizes the secretary of defense to "establish a center to be known as the 'Conflict Records Research Center.'" According to the current text of the NDAA, the center would be tasked with compiling a "digital research database including translations and to facilitate research and analysis of records captured from countries, organizations, and individuals, now or once hostile to the United States."

In order to accomplish the center's purpose, the secretary of defense will create an information exchange in cooperation with the director of national intelligence.

Key to the functioning of this information exchange will be the collection of "captured records." Section 1061(g)(1) defines a captured record as "a document, audio file, video file, or other material captured during combat operations from countries, organizations, or individuals, now or once hostile to the United States."

When read in conjunction with the provision of the AUMF that left the War on Terror open-ended and previous NDAAs' classification of the United States as a battleground in that unconstitutional war, you've got a powerful combination that can knock out the entire Bill of Rights.

Finally, when all the foregoing is couched within the context of the revelations regarding the dragnet surveillance programs of the NSA, it becomes evident that anyone's phone records, e-mail messages,

browsing history, text messages, and social media posts could qualify as "captured records."

After being seized by the NSA (or some other federal surveillance apparatus), the materials would be processed by the Conflict Records Research Center created by this bill. This center's massive database of electronic information and its collaboration with the NSA converts the United States into a constantly monitored holding cell and all its citizens and residents into suspects. All, of course, in the name of *security*.

It is not certain, of course, that these pernicious provisions will make it into the final version of the bill debated in the Senate. There will be a conference report, and the more malevolent parts of the legislation will likely receive more attention as time for a vote approaches.

Besides, the recent success of voters in persuading the Senate that they will not stomach the legislature's sanctioning of another war of aggression may augur well for also gutting the NDAA.

The delay in deliberation anticipated by Senator Levin leaves a gap wide enough for the will of the American people to be communicated to Congress. Americans must make it known that they are weary not only of war, but of the constant assault on the Constitution spearheaded by the very government created to protect it.

Photo is of a Guantanamo Bay prisoner being escorted

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