Written by **Joe Wolverton, II, J.D.** on August 9, 2012

Senate Soon to Vote on NDAA for 2013

Although it was passed in May by an overwhelming majority by the House of Representatives, the National Defense Authorization Act (NDAA) for Fiscal Year 2013 is stalled in the Senate.

During 45 minutes of partisan debate late last month, Republican leader Mitch McConnell (Ky., pictured at right of Senate seal) verbally sparred with his Democratic counterpart, Harry Reid (Nev., pictured left), the one accusing the other of dragging his feet on bills each sponsored.

For his part, McConnell railed against Reid for holding up the NDAA 2013, a bill he described as critical to the "future of the country."

"It's pretty obvious, here, the reason the Senate is so inactive is because the Majority Leader doesn't want to take up any serious bills that are important to the future of the country. He mentioned "cybersecurity, why isn't it on the floor? Defense authorization, why isn't it on the floor?," McConnell asked.
Reid countered, claiming that Republicans are likewise delaying similarly important bills. Accordingly, Reid told McConnell that he would be putting the NDAA 2013 "on the back burner" until the body can come to an agreement on the issue of cybersecurity. Last week, the Senate rejected a cybersecurity bill sponsored by Reid and others.

"You don't have to have a briefing by General Petraeus to understand how important it is to do something about cybersecurity. There are people out there making threats on this country every day, and we've been fortunate, being able to stop a number of them. And so, we're going to have to get to cybersecurity, before we get to the defense authorization bill," Reid said.

McConnell said that Reid and his fellow Democrats "have an attitude problem."

Regardless of their apparent disagreements, readers know that all of this saber rattling is merely sound and fury signifying nothing, nothing but the death knell of the Constitution.

As *The New American* has reported, on May 18, 299 members of the House voted in favor of next year's defense authorization bill, HR 4310. The bill was then sent to the Senate, where it is being deliberated by the Armed Services Committee.

After the bill was passed by the House Armed Services Committee, the Chairman, Buck McKeon (R-Calif.), issued the following statement:

> I am proud of the bi-partisan way the Committee has worked together to build this bill. It rebuilds a force strained by ten years of war while restoring both fiscal and strategic sanity to the defense

> budget. It keeps faith with our troops and their families while keeping America ready to face the threats of the future.

In his statement, Representative McKeon declares that "every American must have his day in court." Further, he "reaffirms the fundamental right to Habeas Corpus of any person detained in the United States pursuant to the 2001 Authorization for the Use of Military Force."

Section 1033 of the mark-up version passed by the committee is offered as the codification of that protection. Here is the current text of that updated provision:

> This section would state that nothing in the Authorization for Use of Military Force (Public Law 107-40) or the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81) shall be construed to deny the availability of the writ of habeas corpus in a court ordained or established by or under Article III of the Constitution for any person who is detained in the United States pursuant to the Authorization for Use of Military Force (Public Law 107-40).

The double-speak contained in that paragraph is impressive even for a Capitol Hill lawyer.

Read it very closely: The new bill does nothing to prevent the indefinite detention of Americans under the 2013 NDAA; furthermore, it only reiterates that habeas corpus is a right in courts established under Article III of the Constitution. That such a right exists in the courts of the United States has never been the issue. The concern of millions of Americans from every band in the political spectrum is that Americans detained as "belligerents" under the terms of the NDAA will not be tried in Article III courts, but will be subject to military tribunals such as the one currently considering the case of the so-called "Gitmo Five."

There is not a single syllable of the 2013 NDAA currently being considered by the Senate Armed Service Committee on Thursday that will guarantee Americans will be tried in a constitutional court and not a military commission.

Curiously, furthermore, the bill ties the fundamental right of habeas corpus not to the Constitution (or the nearly 900 years of Anglo-American law), but to the Authorization for the Use of Military Force where the protection of that right is severely diminished. Such sleight of hand should not go unnoticed, particularly when it is performed by one who flies under the "Republican" banner.

On the subject of partisanship, it is almost axiomatic that Republicans and Democrats do not agree and that "reaching across the aisle" is an unattainable goal. While such conflict is not only anticipated but is encouraged in the government established by the Constitution, the frighteningly indefinite detention provisions of the NDAA seem to be an area where bipartisanship is becoming more common.

While the broad strokes of the NDAA are by now likely familiar to readers, a brief overview is in order.

Most of what is contained in the over-500-page 2012 version of the NDAA is inimical to liberty. For example, under the provisions of the aforementioned Section 1021, the president is afforded the absolute power to arrest and detain citizens of the United States without their being informed of any criminal charges, without a trial on the merits of those charges, and without a scintilla of the due process safeguards protected by the Constitution of the United States.

In order to execute this immense power, the NDAA unlawfully grants the oresident the absolute and unquestionable authority to deploy the armed forces of the United States to apprehend and to indefinitely detain those suspected of threatening the security of the "homeland." In the language of this legislation, these people are called "covered persons."

Regardless of promises to the contrary, the language of the NDAA places every citizen of the United States within the universe of potential "covered persons." Any American could one day find himself or herself branded a "belligerent" and thus subject to the complete confiscation of his or her constitutional civil liberties and nearly never-ending incarceration in a military prison.

If the past is indeed prologue to the future, soon, the partisan bickering will end, the Senate will pass the NDAA for Fiscal Year 2013, and the president will sign it into law. In the meantime, we will hear honeyed speeches from some lawmakers warning about the threat of "terrorism," while others will remind voters about the NDAA's revocation of habeas corpus and legalization of the indefinite detention of Americans in military prisons based on nothing more than presidential suspicion.

Right now, however, there is time for constitutionalists to contact their senators and remind them of the oath they took to "preserve, protect, and defend the Constitution."

Also, Americans interested in protecting our liberty and the Tenth Amendment can contact their state representatives and encourage them to resist such unconstitutional usurpations of power by passing nullification bills that will stop the enforcement of the NDAA at the state's border.