



Written by [Joe Wolverton, II, J.D.](#) on February 22, 2013

Will Sen. Rand Paul Filibuster Brennan Confirmation?

In advance of the Senate's vote on President Obama's nomination of John Brennan to head the CIA, on Thursday, Senator Rand Paul (R-Ky.) tried a third time to get Brennan to answer key constitutional questions regarding the legality of the deadly drone strikes that play a major role in the president's foreign policy. This comes a week after he [threatened a filibuster](#) on Feb. 13.



[In his Feb. 20 letter to Brennan](#), Senator Paul reiterated the point that, ""The question that I and many others have asked is not whether the Administration has or intends to carry out drone strikes inside the United States, but whether it believes it has the authority to do so. This is an important distinction that should not be ignored."

This is a core constitutional issue regarding the prosecution of the drone war that was all but ignored during Brennan's recent confirmation hearing in the Senate Intelligence Committee.

During that proceeding, the questions from senators and the responses by Brennan were little more than pantomime with the dialogue seeming to come from a prepared script rather than from an effort by lawmakers to question Brennan on the legality and constitutionality of a program he has played a central role in developing and expanding.

Over and over again, when pressed about details of the drone war and the use of the unmanned aerial vehicles in the "War on Terror," Brennan hedged, demurred, and generally evaded every question.

It's not surprising that committee members took it easy on Brennan (with the exception of a brief rat-a-tat with Republican Senator Saxby Chambliss of Georgia). After all, [as was noted in *Esquire*](#), these are members of the "national-security priesthood." They are, in several signal ways, co-conspirators in the policy that has killed thousands of individuals, three of whom were Americans, none of whom was ever charged or allowed to answer any charges.

As one watched the confirmation hearing, which appeared to be little more than a glorified job interview, one got the feeling that the candidate knew he was a shoo-in and that the question and answers were sound and fury signifying nothing.

It's difficult to detect in this exchange the "advice and consent" that the Constitution requires the Senate to bring to the nomination process. Such an abdication of authority is especially deplorable given the seriousness of the topic — the government-sanctioned murder of an American citizen without due process and without any attempt whatsoever to apprehend him and present evidence that his alleged crimes were execution-worthy.

There are those, particularly conservatives, who give the president (and Brennan) a pass when it comes to the killing of a man suspected to be the [Svengali](#) of several people who did or allegedly planned to harm innocent Americans. The problem with this thinking, particularly concerning conservatives, is that the Constitution is the law and that document specifically spells out the process by which crimes are



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evaluated. The Constitution is the supreme law of the land, not the opinion of one president, counterterrorism advisor, or other “high-level intelligence official.”

In this latest letter to Brennan, Senator Paul references answers given by Brennan at that committee hearing. The legal justification for Brennan’s position was provided in a Justice Department memo released the day before Brennan’s hearing.

In this “white paper,” the Obama administration claims that with regard to the authority to wage war on these “suspected militants” and their “co-belligerents,” there is no “express geographic limitation on the use of force it authorizes.”

Although the Justice Department had difficulty (reluctance?) in defining “imminent threat,” it is likely that they would have no problem defining “no geographic limit.”

The [National Defense Authorization Act \(NDAA\)](#) placed the United States within the boundaries of the war zone in the “War on Terror.” Now, President Obama, John Brennan, and their co-conspirators have refused to exclude the United States from the drone war, as well.

Senator Paul points particularly to these facts in his letter, telling Brennan:

During your confirmation process in the Senate Select Committee on Intelligence (SSCI), committee members have quite appropriately made requests similar to questions I raised in my previous letter to you — that you expound on your views on the limits of executive power in using lethal force against U.S. citizens, especially when operating on U.S. soil. In fact, the Chairman of the SSCI, Sen. Feinstein, specifically asked you in post-hearing questions for the record whether the Administration could carry out drone strikes inside the United States. In your response, you emphasized that the Administration “has not carried out” such strikes and “has no intention of doing so.” I do not find this response sufficient.

Two paragraphs later, referring to President Obama’s evasion of this question, Paul writes:

Just last week, President Obama also avoided this question when posed to him directly. Instead of addressing the question of whether the Administration could kill a U.S. citizen on American soil, he used a similar line that “there has never been a drone used on an American citizen on American soil.” The evasive replies to this valid question from the Administration have only confused the issue further without getting us any closer to an actual answer.

Then, in a way uncommon to most politicians, Senator Paul asks Brennan directly, whether he believes “that the President has the power to authorize lethal force, such as a drone strike, against a U.S. citizen on U.S. soil, and without trial?”

Regardless of how he might answer Paul’s question, there is little doubt that given Brennan’s substantial role in the development of the deadly drone war, as CIA director, Brennan would oversee its expansion worldwide, without regard to any geographic, constitutional, or moral boundaries.

Sen. Paul understands this, too, and promises in his letter to “use every procedural option at my disposal to delay [his] confirmation” should Brennan fail to provide clear answers to these critical questions of executive authority and the value of due process. This includes a potential filibuster, as he noted on Feb. 13:

I have asked Mr. Brennan if he believed that the President has the power to authorize lethal force, such as a drone strike, against a U.S. citizen on U.S. soil, and my question remains unanswered. I will not allow a vote on this nomination until Mr. Brennan openly responds to the questions and



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concerns my colleagues and I share.

Brennan's nomination faces another challenge, this one from Senator Lindsey Graham (R-S.C.) regarding the attack on the American embassy in Benghazi, Libya.

[Graham told USA Today](#) that he will "not allow the nomination to go forward until the White House turns over items it has declined to provide, such as drone video of the attack and e-mails on talking points that falsely claimed the attack was a protest that got out of control."

Graham's opposition to Brennan is ironic given the [senator's strong support for the drone program](#) and for the president's power to order the death of anyone — including American citizens — if that person is suspected of being an enemy combatant.

Senator Dianne Feinstein (D-Calif.), the chairwoman of the Senate Intelligence Committee, [announced last week](#) that a vote on Brennan's confirmation would be delayed until questions regarding the drone war and the Benghazi attack are answered.

The vote is expected to occur sometime in late February.

Photo of Sen. Rand Paul (R-Ky): AP Images

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