Written by **Joe Wolverton, II, J.D.** on May 23, 2014

House Passes NDAA; Critical Amendments Fail, Others Succeed

On Wednesday, the House of Representatives passed the Fiscal Year 2015 National Defense Authorization Act (NDAA). Of the 100 or so amendments that lawmakers attempted to add to the legislation, two — one approved and one rejected — went nearly unnoticed, despite their attempt to force the federal government to adhere to core constitutional principles.

First, there was the unsuccessful attempt by Representative Adam Smith (D-Wash.) to "eliminate indefinite detention in the United States and its territories." The amendment benefited from bipartisan sponsorship (it was cosponsored by Georgia Republican Paul Broun) but was ultimately defeated by a vote of 191-230.

Ever since President Barack Obama signed the Fiscal Year 2012 version of the NDAA on December 31, 2011, the writ of habeas corpus — a civil right so fundamental to Anglo-American common law history that it predates the Magna Carta — is voidable upon the command of the president of the United States. The Sixth Amendment right to counsel is also revocable at his will.

One of the most noxious elements of the NDAA is that it places 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). The endowment of such a power to the president by the Congress 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.

Furthermore, a key component of the NDAA mandates a frightening grant of immense and unconstitutional power to the executive branch. Under the provisions of 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.

Further, in order to execute the provisions of Section 1021, Section 1022 (among others) unlawfully gives the president 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."

The universe of potential "covered persons" includes every citizen of the United States of America. 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.

This is the power Smith and Broun wanted to revoke, but over 200 of their colleagues were apparently fine with leaving it with the president.

Smith marched up this same hill for the last couple of years, only to come down defeated, then, too.

By a vote of 238-182, members of Congress rejected the amendment offered by Smith and Justin Amash (R-Mich.) that would have repealed the indefinite detention provision passed overwhelmingly in 2011 as part of the 2012 NDAA.

The Fiscal Year 2013 NDAA retained the indefinite detention provisions, as well as the section permitting prisoners to be transferred from civilian jurisdiction to the custody of the military.

"The frightening thing here is that the government is claiming the power under the Afghanistan authorization for use of military force as a justification for entering American homes to grab people, indefinitely detain them and not give them a charge or trial," Representative Amash said during House debate in 2013.

After his most recent futile attempt to protect thousand-year-old civil liberties, Smith tweeted that he was "disappointed" but "won't stop fighting to pass this critical legislation."

Notably, President Obama has threatened to veto the 2015 NDAA. He did likewise in 2011, right before "relenting" and granting himself power over life and death only dreamt of by the most ruthless Roman dictators of history.

Another amendment voted on Wednesday night was approved by representatives and is now part of the package being sent to the Senate. House Amendment 30 sponsored by Representative Mike Kelly (R-Penn.) will maintain the funding ban on implementation of the United Nations Arms Trade Treaty signed last year by Secretary of State John Kerry, "on behalf of President Obama and the United States."

Before submitting his amendment to his colleagues for a vote, Kelly rose and explained the purpose behind his proposed NDAA provision:

> I rise in strong support of my amendment to H.R. 4335, the FY15 NDAA, to renew a one year ban on the Obama administration from using any Department of Defense funds to implement the United Nations Arms Trade Treaty.
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> This language is identical to the version of my amendment that was enacted into law in the FY14 NDAA and reflects the consistent will of the American people and the unified position of Congress in opposition to this misguided and dangerous treaty.
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> Renewal of this ban is timely and necessary. In January, the Obama administration unexpectedly and without consultation issued a new arms export control policy, which has not been changed since 1995.
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> The Obama administration's new policy clearly seeks to implement the ATT and is based on the most dangerous part of the treaty — the international human rights law/international humanitarian law standard that can be readily politicized by bad actors to try to stop the U.S. from providing arms to our friends and allies, including Israel.
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> In fact, the Obama administration has been so brazen about this that in a speech to CSIS on April 23rd, 2014, Assistant Secretary of State Thomas Countryman openly stated, "We're already implementing the treaty."

> Amazingly, in that same speech, Mr. Countryman stated, "We don't have to change any laws" to implement the treaty.
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> That is not up to him, and it is not up to the administration to decide: it is up to the Senate to provide its advice and consent on the treaty, and the House and Senate to pass the necessary implementing legislation.
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> The administration's assertion is deeply disrespectful to the Senate and the House and to the Constitution that he is sworn to uphold.
>
> I urge my colleagues to stand with me in support of the Second Amendment, our nation's sovereignty, and vote in support of my amendment to renew the annual ban on funding the ATT.

Kelly is commended for his continuing efforts to shore up the Second Amendment and the rights it was written to protect.

The New American covered the negotiations that resulted in the UN's gun grabbing ATT. Readers are encouraged to read the various articles we have published that outline the many significant threats to the God-given right to keep and bear arms posed by this globalist gun-grab masquerading as a pact for peace.

Kelly's amendment was adopted by voice vote and will now be part of the legislation considered by the Senate.

While it is unlikely that the Senate would ratify the ATT in its present form (67 senators would have to vote to approve it), when it comes to disarming citizens of this country, President Obama has shown that he will not be deterred by congressional inaction or by constitutional limits on his authority.

Although in reality, treaties that violate the Constitution are prima facie null, void, of no legal effect, the Supreme Court has come down on both sides of the supremacy issue. In a pair of contradictory decisions, the Supreme Court has held that "no doubt the great body of private relations usually fall within the control of the State, but a treaty may override its power" (*Missouri v. Holland*) and "constitutional rights cannot be eliminated by a treaty" (*Reid v. Covert*).

This conflict of cases creates a situation where, as Alan Korwin wrote in 2012 at the time of the previous round of negotiations on the Arms Trade Treaty, "While some of us would surely and boldly draw the lines where they are 'supposed' to be, i.e., in line with our natural and historic rights, the forces aligned against the Second Amendment have no problem arguing vigorously for its destruction, regardless of any of these details, and therein lies the greatest threat we face."

It would appear that regarding the preservation of the right to keep and bear arms, the states will be required to uphold the liberties protected by our Constitution in the face of federal collusion with the international forces of civilian disarmament.

The version of the NDAA passed Wednesday by the House will eventually be reconciled with a concurrent version working its way through the Senate before going to the president for his signature or veto.

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