

[By Shay Totten](#)

Rep. Peter Welch has joined 36 House members in challenging controversial provisions — namely, those that would allow the military to indefinitely detain U.S. citizens suspected of being terrorists — contained in the National Defense Authorization Act (NDAA).

The proposed legislation, argue Welch and others, "authorizes indefinite military detention of suspected terrorists without protecting U.S. citizens' right to trial."

Hey, what's a little indefinite detention between friends?

A letter was recently submitted to the House and Senate conferees (see full text below) in an attempt to turn back some of the bill's most egregious violations of constitutional rights, Welch said.

"My preference would be to go with existing law and not have more legislation that curtails or confuses constitutional rights," Welch told Seven Days. However, the congressman noted that many of his fellow House members are adhering to the old whatever-Defense-wants mantra.

"This is part of an ongoing and contentious and serious debate on both sides," added Welch, "between those who are arguing for more arrest latitude and those who would like to see an adherence to constitutional liberty. This has been an ongoing debate since 9/11."

Welch is hopeful that Congress can re-address the detention provisions in separate legislation if the worst of this bill's constitutional impacts can't be undone before they adjourn for the holidays.

Early indications suggest that the more constitutionally questionable language may be removed

or toned down, Welch said. "If that's the case, then I'm glad to hear the committee heard our concerns."

A final vote on the conference committee version of the bill could come this week.

The NDAA passed the House by a 322-96 margin earlier this year and passed the Senate by a 93-7 tally earlier this month. Welch voted against the House bill; Sen. Bernie Sanders (I-VT) voted against the Senate version.

Sen. Patrick Leahy (D-VT) voted in favor of the bill, said spokesman David Carle, because it includes funding for U.S. military and National Guard, plus key amendments authored by Leahy: One eliminates a provision that would have kept some health and safety information at Department of Defense facilities from being released publicly via the Freedom of Information Act, and another elevates the National Guard to be represented among the Joint Chiefs of Staff.

Leahy, however, fought to strip the bill of the detention provisions, but those efforts failed. A last-minute provision was added that gives the president the authority to waive the detention provision, but doesn't ban it. The Senate Judiciary Committee was never consulted about the detention provisions, nor was the Senate Intelligence Committee.

In mid-November, Leahy and Sen. Dianne Feinstein (D-CA) led the charge in the Senate, urging their colleagues to drop the detention provision.

"We concur with the Administration's view that mandatory military custody is 'undue and dangerous,' and that these provisions would 'severely and recklessly undermine' our nation's counterterrorism efforts," the pair wrote with other colleagues to Senate Majority Leader Harry Reid (D-NV).

Below is the full text of the letter signed by Rep. Peter Welch (D-VT), along with 36 other House members, and delivered to members of the House and Senate conference committee:

We write to raise serious concerns regarding three sections of the Fiscal Year 2012 National Defense Authorization Act (NDAA).

The House-passed version of the NDAA, H.R. 1540, contains Section 1034, an expansive authorization for detention of and use of military force against broadly defined adversaries substantially exceeding the scope of such authorizations already in law. The expanded authority has no geographical limits, provides authority for open-ended armed conflict, and is unacceptably broad. We strongly object to the inclusion of this language in the final authorizing bill.

The Senate-passed version of the NDAA, S. 1867, contains Section 1031, which authorizes indefinite military detention of suspected terrorists without protecting U.S. citizens' right to trial. We are deeply concerned that this provision could undermine the Fourth, Fifth, Sixth, Seventh, and Eighth amendment rights of U.S. citizens who might be subjects of detention or prosecution by the military.

Furthermore, Section 1032 of S. 1867 would require that suspected foreign terrorists be taken into custody by the military instead of civilian law enforcement authorities. This would deny civilian law enforcement authorities the flexibility necessary to conduct effective counterterrorism operations. Respected bipartisan members of the national security community — including the Secretary of Defense, the Director of National Intelligence, the Director of the Federal Bureau of Investigation, the Director of the Central Intelligence Agency, and the head of the Justice Department's National Security Division — oppose this provision. We also strongly oppose its inclusion in the NDAA.

As you know, President Barack Obama has issued a veto threat because of these provisions. We urge you to make appropriate changes so that Congress can provide essential resources to our armed forces while ensuring we have the flexibility to confront terrorism as effectively as possible.