Written by **Joe Wolverton, II, J.D.** on July 18, 2014

216th Anniversary of Sedition Act: Have We Learned Nothing?

This week is the anniversary of the signing of the Sedition Act into law by President John Adams. This 18th-century "law," described in a History Channel article as one of the "most egregious breaches of the U.S. Constitution in history," has been reborn in the 21st century.

A brief rehearsal of an almost forgotten episode in American history will reveal the contemporary importance of the Sedition Act and the all-out assault on fundamental liberty that it represented.

The story begins with the prosecution of Samuel Jordan Cabell, an event that prompted Thomas Jefferson to set down on paper the principles of nullification in the Kentucky Resolutions.

Cabell was a congressman representing Thomas Jefferson's home district in Virginia. In May 1797, a grand jury returned a presentment of libel against Cabell (incidentally, as a delegate to the Virginia ratifying convention, Cabell voted against ratification of the Constitution). What was Cabell's crime? He sent a letter to constituents criticizing the administration of John Adams. That's it. That was the sum of his seditious plot. A letter to voters in his district calling out some act of the president with which he disagreed.

For this effrontery to his authority, John Adams charged Cabell with "endeavoring at a time of real public danger to disseminate unfounded calumnies against the happy government of the United States."

Sound familiar? How is it that an indictment sworn out by a jury over 200 years ago sounds like it could have been written yesterday?

It's probably because we live in a time when the three branches of the federal government have managed to place themselves above reproach and above the law.

To help them reach that lofty perch, public schools and media have trained generations of Americans to believe that we must look to Washington, D.C. for our salvation. If the federal government ignores the plea, we must meekly accept the decision without question, especially when the Supreme Court rules that the federal position is now "settled law."

That was Samuel Jordan Cabell's predicament — caught in the spokes of a federal conspiracy — until Thomas Jefferson learned of the grand jury's action. In response to the presentment handed down against his congressman, Jefferson anonymously (for even the author of the Declaration of Independence feared being found openly questioning the national government) petitioned the Virginia House of Delegates asking that the members of the grand jury be punished.

Do we not see the sketch of a persecuted and frightened press in the story of Cabell? If a man as

powerful, well-known, and well-regarded as Thomas Jefferson felt compelled to write under a pseudonym to avoid being hunted and hanged by agents of the federal government, is it any wonder that a Pulitzer Prize-winning journalist fears that his work with those labeled "enemy combatants" might get him thrown into a military prison for the duration of the "War on Terror?"

Consider the case of that journalist, Chris Hedges. Hedges is an award-winning foreign correspondent for the *New York Times* who fears a federal government empowered by an unconstitutional act would lock up those who dare challenge its authority.

Hedges (and a small group of other prominent writers, activists, and commentators) filed suit challenging the federal government's potential exercise of a provision in the National Defense Authorization Act (NDAA) that purports to authorize the indefinite detention of Americans suspected of aiding the enemy.

According to the text of Section 1021 of the Fiscal Year 2012 NDAA, the president may authorize the armed forces to indefinitely detain anyone he believes to have "substantially supported" al-Qaeda, the Taliban, or any unnamed "associated forces."

Fearing that this section could be applied to journalists and that the specter of such a scenario would have a chilling effect on free speech and freedom of the press in violation of the First Amendment, Hedges filed his lawsuit on January 12, 2012.

Hedges claimed that his extensive work overseas, particularly in the Middle East, could qualify him as a "covered person" who, by way of such writings, interviews, and/or communications, had "substantially supported" or "directly supported" "al-Qaeda, the Taliban, or associated forces."

Such a classification, Hedges argued, could result in his being sent away indefinitely to a military detainment center without access to an attorney or habeas corpus relief.

NDAA is the 21st-century reincarnation of the Sedition Act.

Chris Hedges would do well to look to Cabell's story as a presage of things to come.

Upon learning of Jefferson's petition in defense of Cabell, James Monroe counseled his fellow Virginian that he would be better off making his request to Congress instead of the state government. Jefferson's response makes it clear what the Sage of Monticello thought of Monroe's understanding of the true seat of sovereignty.

He knew that "the system of the General Government is to seize all doubtful ground." If the people were to sit still, we would lose everything, he warned.

Who did Jefferson believe had the right and the responsibility to protect citizens from federal abuse of power? The states. "It is of immense consequence that the States retain as complete authority as possible over their own citizens," he wrote.

From this masterfully crafted letter in response to Monroe, we see that before he penned his views on the proper constitutional relationship between state and national government in the Kentucky Resolutions, Jefferson understood, shared, and promoted the principle of state authority to check federal overreaching.

If the states would perform their proper constitutional role as restated in the Kentucky and Virginia Resolutions (the latter was a similar proposal written by James Madison), we wouldn't even speak of a state passing bills to nullify unconstitutional federal acts.

Although such expressions of opposition are laudable, they are, constitutionally speaking, unnecessary. States have superior sovereignty and only have to negate federal usurpations by ignoring them. The fact that even patriots — those enlightened enough to understand the proper relationship between state and federal authority — push for passage of nullification bills demonstrates a latent inferiority complex that must be removed from the patriot psyche.

Nullification, as defined by Jefferson and Madison in the Kentucky and Virginia Resolutions, is the most powerful weapon against the federal assault on state sovereignty and individual liberty. By applying the principles restated in those seminal documents, states can simultaneously rebuild the walls of sovereignty once protected by the Constitution — in particular the 10th Amendment — and drive the forces of federal consolidation back to the banks of the Potomac.

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