



Written by [Joe Wolverton, II, J.D.](#) on March 25, 2013

Las Vegas City Council Passes NDAA Nullification Resolution

The National Defense Authorization Act (NDAA) will not be enforced in Las Vegas. Rejection of the unconstitutional provisions of that controversial federal act was the purpose of a resolution [passed by the city council](#) just after noon on March 20.

[By a vote of 5-2](#), the council passed [R-18-2013](#). The resolution, offered by Ward 2 Councilman Bob Beers, will now be presented to the Clark County (Nevada) Commission.



[People Against the NDAA \(PANDA\) reports](#) that if the measure is approved by the county commission, it would be the first joint city/council resolution passed in the nation seeking to prevent enforcement of the NDAA.

The specific target of the measure is the sections of the NDAA purporting to grant to the president of the United States the power to apprehend and indefinitely detain any American whom he suspects of cooperating with the nation's enemies.

Two sections of the 2012 version of the NDAA authorize this imprisonment at the will of the president and deny those held under the act access to an attorney and a public trial, as well as other fundamental aspects of due process.

Referring to relevant articles of the national and state constitutions, the Las Vegas resolution declares that no person may be denied "life, liberty, or property without due process of law."

In a paragraph addressing a rarely discussed aspect of the NDAA, the Las Vegas measure declares that it is "never appropriate" for U.S. armed forces to be used as domestic law enforcement.

According to the text of R-18-2013, the prohibition against such action is the federal Posse Comitatus Act. While they got the spirit right, the Posse Comitatus Act is not the relevant law governing such use of the military.

As with any act of Congress, the Posse Comitatus Act may be repealed by subsequent act of Congress. In the case of the Posse Comitatus Act, the John Warner National Defense Authorization Act of 2007, signed into law by President George W. Bush on October 17, 2006, amended the law by adding the following language: "The President may employ the armed forces to restore public order in any State of the United States the President determines hinders the execution of laws or deprives the people of a right, privilege, immunity, or protection named in the Constitution and secured by law or opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws."

Fortunately for our Republic and the rule of law that has kept us free, the sweeping changes made by the Warner Act were completely repealed by passage of the National Defense Authorization Act for Fiscal Year 2008. Accordingly, the present state of the applicable law governing the use of federal



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troops in matters of domestic law enforcement is the Insurrection Act of 1807.

According to that law, the national government may mobilize the federal army only if the “constituted authorities of that State are unable, fail, or refuse to protect that right, privilege or immunity, or to give that protection.”

Of course, the president and Congress have shown that they will not be bound by law or by Constitution when it comes to depriving Americans of their most basic civil liberties.

Fortunately, as the action by the Las Vegas City Council demonstrates, there are state and local leaders willing to charge into the gap and defend the rights of citizens to be free from federal tyranny.

The most potent weapon in the state arsenal against federal tyranny is [nullification](#). Nullification occurs when a state holds as null, void, and of no legal effect any act of the federal government that exceeds the boundaries of its constitutional powers.

Nullification recognizes that states possess the right to invalidate any federal measure that exceeds the few and defined powers allowed the federal government as enumerated in the U.S. Constitution.

States retain the right to act as arbiters of constitutionality of federal acts because they formed the union, and as creators of the compact, they hold ultimate authority as to the limits of the power of the central government to enact laws that are applicable to the states and the citizens thereof.

Despite criticism by those who advocate for a more powerful federal government, nullification would not lead to anarchy, as it is only the unconstitutional federal acts that will be subject to state invalidation.

An analogy from everyday makes the practice of nullification easier to understand.

Imagine that a person entered into a contract with a homebuilder to construct a new home. The blueprints contained the agreed upon specifications of the house and the contract set out the duties and obligations of the homeowner and the homebuilder.

As long as both parties abide by the terms of the contract, the relationship will continue on as set forth in the contract. What would happen, however, if the homebuilder decides to exceed the scope of the contract and begins digging a pool? On a visit to the construction site, the homeowner notices the pool and confronts the contractor. When the homebuilder hands his client the bill for the cost of the pool, would the homeowner be required to pay for it?

Absolutely not.

However, when it comes to the bills sent to the states by the federal government demanding payment for unconstitutional acts, for some reason the states forget the contract and pay the bills, and now they are going broke.

As Congress continues to surrender to the president all legislative, executive, and judicial power, the need for nullification is urgent, and liberty-minded citizens are encouraged to see state legislators boldly asserting their right to restrain the federal government through application of that very powerful and very constitutional principle.

The Las Vegas city council appreciates their authority to protect citizens of their city from a federal government that has exceeded its constitutional power.

In response to the city council’s vote, the head of the Clark County Chapter of PANDA, Daphne Lee,



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said, "I am so incredibly grateful to the honorable Council members for supporting our efforts. I would especially like to thank Councilman Beers for helping me introduce this resolution to the board, and to Mayor Goodman for her amazing vocal support for the rights of all persons in Nevada. This action will support other cities, counties and states all over the country who seek to take a stand to protect constitutional rights."

Christopher Corbett of PANDA Nevada echoed Lee's praise for the resolution. "This is an important first victory in the fight to restore and protect civil liberties in Nevada," Corbett said. "Hopefully this resolution will encourage the rest of Nevada to pass similar resolutions and state legislation."

PANDA reports that "there is already action under way to pass similar Resolutions in Northern Nevada. Both the Washoe County Commission and Reno City Council have agreed to look at this issue in the next 30 days."

At the state level, Nevada state Senator Don Gustavson has sponsored the Nevada Liberty Preservation Act ([SB378](#)), which enjoys the bipartisan support of 15 of Gustavson's colleagues.

The state bill currently awaits a hearing by the state senate judiciary committee.

By passing similar anti-NDAA resolutions, cities and counties can proudly join Las Vegas in taking a stand against the federal government's use of the NDAA to abolish centuries-old due process and habeas corpus protections, and help restore the states' rightful place as bulwarks of liberty.

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