Written by **Joe Wolverton, II, J.D.** on December 12, 2013

Congress Rushing to Approve 2014 National Defense Authorization Act (NDAA)

The House and Senate Armed Services Committees have reached an agreement on the fiscal year 2014 National Defense Authorization Act (NDAA).

As approved by the committees, the text of the latest iteration of the bill is derived from H.R. 1960, which passed the House on June 14 by a vote of 315-108 and S. 1197, a version passed by a Senate committee by a vote of 23-3, later that same day.

House and Senate leaders hurried to hammer out a mutually acceptable measure so as to get the whole package passed before the end of the year.

Reading the mainstream (official) press, one would believe that the NDAA is nothing more nefarious than a necessary replenishing of Pentagon funds. Readers of *The New American* know, however, there is much more than budget issues contained in the legislation.

For two years, the NDAA included provisions that purported to authorize the president of the United States to deploy the U.S. military to apprehend and indefinitely detain any person (including an American citizen) who he believes "represent[s] an enduring security threat to the United States."

Such an immense grant of power is not only unconscionable, but unconstitutional, as well.

Regardless of promises to the contrary made every year since 2011 by President Obama, the language of the NDAA places every citizen of the United States within the universe of potential "covered persons." 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 to nearly never-ending incarceration in a military prison.

Finally, there is in the NDAA for 2014 a frightening fusion of the federal government's constant surveillance of innocent Americans and the assistance it will give to justifying the indefinite detention of anyone labeled an enemy of the regime.

Section 1071 of the version of the 2014 NDAA approved by the House and Senate committees this week expands on the scope of surveillance established by the Patriot Act and the Authorization for the Use of Military Force (AUMF).

Section 1071(a) authorizes the secretary of defense to "establish a center to be known as the 'Conflict Records Research Center.'" According to the text of the latest version of the NDAA, the center's task would be to compile a "digital research database including translations and to facilitate research and analysis of records captured from countries, organizations, and individuals, now or once hostile to the United States."

In order to accomplish the center's purpose, the secretary of defense will create an information exchange in cooperation with the director of national intelligence.

Key to the functioning of this information exchange will be the collection of "captured records." Section 1071(g)(1), defines a captured record as "a document, audio file, video file, or other material captured during combat operations from countries, organizations, or individuals, now or once hostile to the United States."

When read in conjunction with the provision of the AUMF that left the War on Terror open-ended and the prior NDAAs' classification of the United States as a battleground in that unconstitutional war, and you've got a powerful combination that can knock out the entire Bill of Rights.

Finally, when all the foregoing is couched within the context of the revelations regarding the dragnet surveillance programs of the NSA, it becomes evident that anyone's phone records, e-mail messages, browsing history, text messages, and social media posts could qualify as a "captured record."

After being seized by the NSA (or some other federal surveillance apparatus), the materials would be processed by the Conflict Records Research Center created by this bill. This center's massive database of electronic information and its collaboration with the NSA converts the United States into a constantly monitored holding cell and all its citizens and residents into suspects. All, of course, in the name of the security of the homeland.

Although the outlook is dire, there are those willing to stand and oppose the threats to liberty posed by the NDAA.

For example, libertarian icon and former presidential candidate Ron Paul recently interviewed Daphne Lee, a lady who calls herself "just a mom" but who made an impassioned speech in Nevada against the indefinite detention provisions of the 2012 NDAA. After talking to Lee, Paul announced that he would work to fight enforcement of unconstitutional provisions of the NDAA nationwide.

Additionally, the People Against the NDAA (PANDA) organization is promoting passage of anti-NDAA legislation in towns, counties, and states. On a website devoted to chronicling these efforts, PANDA lists 27 cities, 17 counties, and 25 states that have enacted or are considering bills or resolutions refusing to execute any element of the NDAA that violates the constitutionally protected liberties of its citizens.

While these bills are at various spots along the process of becoming laws, one state recently signed on to thwart the abuse of power authorized by the NDAA.

On October 1, Governor Jerry Brown announced that he had signed AB 351 into law.

The new statute, called the California Liberty Preservation Act, outlaws the participation of any agency of the state of California, any political subdivision of the state, employee of a state or local agency, or member of the California National Guard from

> knowingly aiding an agency of the Armed Forces of the United States in any investigation, prosecution, or detention of a person within California pursuant to (1) Sections 1021 and 1022 of the National Defense Authorization Act for Fiscal Year 2012 (NDAA), (2) the federal law known as the Authorization for Use of Military Force, enacted in 2001, or (3) any other federal law, except as specified, if the state agency, political subdivision, employee, or member of the California National Guard would violate the United States Constitution, the California Constitution, or any law of this state by providing that aid….
>
> … knowingly using state funds and funds allocated by the state to those local entities on and after January 1, 2013, to engage in any activity that aids an agency of the Armed Forces of the United States in the detention of any person within California for purposes of implementing Sections 1021

> and 1022 of the NDAA or the federal law known as the Authorization for Use of Military Force, if that activity would violate the United States Constitution, the California Constitution, or any law of this state, as specified.

Interpreted broadly, the Liberty Preservation Act would outlaw state cooperation in any federal act which violates the state or federal constitutions. Although Governor Brown almost certainly didn't intend the provisions of the law to be applied this liberally, the black letter could arguably be used to protect citizens of California from deprivation of a wide panoply of fundamental rights, including the right to keep and bear arms.

It will be worth watching court dockets in California to see if anyone relies on this language to fight the state's infamous disarmament statutes.

Originally sponsored by State Assemblyman Tim Donnelly, a conservative Republican (now running for governor), the bill's senate sponsor was one of that body's "most liberal lawmakers," Mark Leno.

"Indefinite detention, by its very definition, means that we are abrogating, suspending, just throwing away the basic foundations of our Constitution and of our nation," Leno said.

After being warned by some of his fellow Democrats that siding with Donnelly was tantamount to political suicide, Leno stood firm in defense of liberty. "It doesn't matter where one finds oneself on the political spectrum," he said. "These two sections of this national defense act are wrong, unconstitutional and never should have been included."

Then, in November, a similar bill was introduced to the Ohio State House of Representatives by state Representatives Jim Butler and Ron Young. This concurrent resolution condemns "Section 1021 of the National Defense Authorization Act for Fiscal Year 2012" and urges "the Attorney General of the State of Ohio to bring suit to challenge the constitutionality of Section 1021 of the National Defense Authorization Act for Fiscal Year 2012."

While neither the California law nor the Ohio resolution is a perfect example of absolute nullification of an unconstitutional federal act, both stand as examples to other state legislatures of attempts to heed the counsel given by James Madison to states that want to resist federal consolidation of all power.

In *The Federalist*, no. 46, Madison recommended that an effective way to thwart federal overreach is for agents of the states to refuse "to cooperate with officers of the Union."

In order for Fiscal Year 2014 NDAA to become the "law," the House of Representatives must pass the bill this week and the Senate would have to follow suit by the end of next week. This gives Americans only a few short days to contact their federal representatives and senators and encourage them to reject any version of the NDAA that infringes on the timeless civil liberties protected by the Constitution.

Joe A. Wolverton, II, J.D. is a correspondent for The New American *and travels frequently nationwide speaking on topics of nullification, the NDAA, and the surveillance state. He is the host of The New American Review radio show that is simulcast on YouTube every Monday. Follow him on Twitter @TNAJoeWolverton and he can be reached at jwolverton@thenewamerican.com*