



Written by [Joe Wolverton, II, J.D.](#) on July 27, 2013

Calif. State Committee Set to Vote on NDAA Nullification Bill

On August 12 at 1:30 p.m., the California State Senate Appropriations Committee is scheduled to [consider and vote on a bill](#) to make it more difficult for residents of the Golden State to be indefinitely detained under provisions of the National Defense Authorization Act (NDAA). The bill, AB 351, is known as the California Liberty Preservation Act.



On June 25, the California State Senate Public Safety Committee unanimously approved AB 351 by a vote of 7-0.

The bill's primary sponsor is [current gubernatorial candidate Assemblyman Tim Donnelly \(R-33rd District\)](#). Donnelly's bill specifically guarantees the right of citizens of California to be free from any federal law, including the NDAA, that would authorize their indefinite detention in violation of habeas corpus.

Known as the [California Liberty Preservation Act, AB 351](#) is backed by a politically diverse coalition, including Taxpayers for Improving Public Safety, the Bill of Rights Defense Committee, the Tenth Amendment Center, the California American Civil Liberties Union, San Francisco Board of Supervisors president David Chiu, the Libertarian Party of California, and the Siskiyou County Board of Supervisors.

Specifically, if enacted, the bill would shield from federal assault several fundamental constitutionally guaranteed civil liberties, "including the right of habeas corpus, the right to due process, the right to a speedy and public trial, and the right to be informed of criminal charges brought against him or her."

Relying on the [10th Amendment's reservation](#) to the states and the people all powers not specifically delegated to the federal government in the Constitution, the bill is a constitutionally sound expression of state sovereignty.

In [a press release issued by his office](#) after the committee approved his bill, Assemblyman Donnelly recognizes his duty to resist attempts by Washington, D.C., to deny Americans of their most basic freedoms.

"The NDAA gives the executive branch — under not only President Obama, but also every future president — unprecedented power to detain US citizens without due process. This runs counter to the very principles that make America great, and violates our nation's commitment to the rule of law," said Assemblyman Donnelly.

He continued, "We have a moral duty to protect Californians from the disastrous consequences made possible by NDAA. When Constitutional protections are ignored, racist hysteria allows vulnerable groups to be targeted. It was not long ago we memorialized the tragedy of Japanese American internment camps on the floor of the California State Assembly. I am grateful for today's committee vote, which shows Californians that their representatives are serious about ensuring similar violations



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of freedom and human rights abuses never happen again within our State.”

While the text of the bill lays out specific ways in which the NDAA denies citizens many of the most basic constitutionally protected civil liberties, the surprising scope of the NDAA is still unfamiliar to most Americans.

President Barack Obama [signed the latest National Defense Authorization Act \(NDAA\) into law](#) on January 2, renewing the power to apprehend and detain Americans indefinitely granted in the previous year’s version.

The Fiscal Year 2014 version of the bill is currently working its way through Congress. At this time, many amendments that would have stricken some of the most pernicious provisions from the act have been defeated.

As for the most unconstitutional parts of the NDAA 2012 that remain in effect, a bit of history is in order.

[On December 31, 2011, with the president’s signing of that law](#), 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 described in the previous paragraph, subsequent clauses (Section 1022, for example) unlawfully give 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.

On the face of the bill, it would seem that Assemblyman Donnelly and the members of the Public Safety Committee are determined to protect their citizens from being seized and imprisoned under the provisions of the NDAA.

While AB 351, as well as Section 1029 of the current version of the NDAA purport to buttress the right to a trial for citizens and permanent residents, it does nothing to prevent their apprehension. Denial of



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habeas corpus (or a trial) comes later; it is the delirium, not the fever, in a manner of speaking.

Put simply, Californians would not need to worry about being held without charge if the president was not authorized in the same act to deploy the armed forces to round up the “suspects” and detain them indefinitely. Being apprised of the laws one is accused of having violated is important, but it’s the detention and the manner of it that must be of more immediate concern to those who are alarmed about the new world order being defined by the NDAA.

Although the bill has flaws and it could do with some textual tightening and constitutional correction, California’s effort to nullify an unconstitutional federal act is laudable and is an example of the last, great means by which the federal beast may be forced back inside its constitutional cage.

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.

In an article published earlier this year, this reporter applied an analogy from everyday that 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.

Citizens of California committed to the restoration of the Constitution and the fundamental principles of individual liberty upon which it is built should contact members of the [state Senate Appropriations Committee](#) and encourage them to approve AB 351.



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Photo: California State Capitol Building

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 can be reached at jwolverton@thenewamerican.com



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