



Written by [Joe Wolverton, II, J.D.](#) on April 15, 2013

## California Bill Would Nullify NDAA, Protect Citizens From Indefinite Detention

A bill protecting the fundamental due process and habeas corpus rights of Californians is working its way through the state assembly.

On April 9, the assembly's Public Safety Committee unanimously [approved the measure by a vote of 6-0](#).

The bill, AB 351, is sponsored by [Assemblyman Tim Donnelly \(R-33rd District\)](#) and it specifically guarantees the right of citizens of California to be free from any federal law that would authorize their indefinite detention in violation of habeas corpus, including the National Defense Authorization Act (NDAA).



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 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 unfamiliar to many.

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.

Next, as for the most pernicious 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.

It seems 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. Nullification is the weapon chosen by these representatives to combat the federal onslaught and stop unconstitutional federal deprivations of liberty at the state borders.

Nullification is a concept of constitutional law recognizing the right of each state to nullify, or invalidate, any federal measure that exceeds the few and defined powers allowed the federal government as enumerated in the U.S. Constitution.

Nullification exists as a right of the states because the sovereign states formed the union, and as creators of the compact, they hold ultimate authority as to the limits of the power of the central



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government to enact laws that are applicable to the states and the citizens thereof.

As President Obama continues accumulating 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.

Some advocates of a more powerful federal government insist that allowing states to be the arbiters of the constitutionality of federal acts would lead to anarchy. This charge is baseless, however, as the principle of federalism and compact that undergird the Constitution permits that only unconstitutional federal acts are 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 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.

Assemblyman Donnelly appreciates this dynamic and recognizes that it is not an issue particular to Republicans or Democrats, but an issue of basic constitutional federalism and individual liberty. "This is not an issue of partisanship, but of freedom, which we must be vigilant to protect. Our Constitution affirms that no government is responsible for bestowing our rights; they are only entrusted with securing them," Donnelly wrote in his press release.

The bill now will be considered by the [Committee on Appropriations](#).

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