



Written by [Joe Wolverton, II, J.D.](#) on July 6, 2013

California Senate Committee Unanimously Passes Anti-NDAA Bill; Flaws Remain

A California state Senate committee recently  passed a bill that purports to prevent the federal government from enforcing key provisions of the National Defense Authorization Act (NDAA) of 2011 and 2012.

On June 25, the [California State Senate Public Safety Committee unanimously \(7-0\) approved](#) AB 351, the California Liberty Preservation Act. Although it passed the bill, the committee did add a requirement that the measure be re-submitted to the Appropriations Committee. [That re-hearing is scheduled for August 12.](#)

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 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



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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 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



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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.

Dan Johnson, the founder of [People Against the NDAA \(PANDA\)](#), also recognizes the holes in the California bill that could prove large enough to allow all sorts of tyranny to pass through.

“The NDAA is much bigger than the suspension of habeas corpus,” Johnson wrote in a statement to *The New American*.

In that statement, Johnson discussed additional deficiencies in the California bill:

While AB351 is much stronger than other state laws passed in opposition to the NDAA, since it includes both the AUMF and any other federal law, it does not include the laws of war. In order to fix the root issue of the NDAA, and not just chop at the limbs, the Law of War must be countered in any true piece of anti-NDAA legislation.

Note: Executive Order 9066, which was used to detain 110k Japanese-Americans w/o trial, never said a thing about detention. It only allowed the law of war to be applied to a certain area, and gave the military jurisdiction over the same.

Finally, Johnson wrote:

Overall, we appreciate the effort. The very fact that California is introducing a law like this shows the willingness of the people and Assembly of California to stand up for the Constitutional rights of the people of their state.

However, this law will do nothing to protect those rights. It abdicates the responsibility of the state to stand in, not stand down, and leaves far too many loopholes....

Assemblyman Donnelly seems to understand this. In a press release he wrote, “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.”

Photo: California capitol dome

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