



Written by [Joe Wolverton, II, J.D.](#) on February 14, 2013

States Join the Fight to Nullify Indefinite Detention Under NDAA

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.

In order to protect their citizens from being grabbed and imprisoned under the provisions of the NDAA, many state lawmakers are standing up to the federal government, proposing resolutions nullifying this unconstitutional power 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 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.

The House of Representatives of Washington, for example, is considering the "[Washington State Preservation of Liberty Act](#)." Introduced earlier this month, this bill "condemns and criminalizes" the use of the indefinite detention provision of the NDAA.

H.B. 1581 enjoys bipartisan support. The bill's primary sponsor is state Representative Sharon Tomiko Santos (D), who is joined by at least eight other Democrats and 12 Republicans.

The state senate in the the Evergreen State is considering a companion bill, co-sponsored by Democrats Bob Hosegawa and Maralyn Chase.

Both measures intend to prevent the president from sending the military to arrest and detain Washingtonians, under the authority of Section 1021 of the Fiscal Year 2012 NDAA.

Section 4 of H.B. 1581 prohibits:

state or local official or employee, or agent of the state of Washington, or employee of a corporation providing services to the state of Washington, or member of the national guard or state defense forces acting in his or her capacity as a state or local official or employee, or agent of the state of Washington, or employee of a corporation providing services to the state of Washington, or member of the national guard or state defense forces...



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from knowingly participating in the “investigation or detainment of a United States citizen or lawful resident alien located within the United States of America by the armed forces of the United States of America.”

Another section makes a violation of this prohibition a felony.

As of press time, The Preservation of Liberty Act sits in the House’s [Committee on Public Safety](#).

Sponsors await the scheduling by committee chairmen of a hearing on the bill.

As [reported by the Examiner](#), “last year’s version of the bill died in committee, so supporters are [urged by activists](#) to pressure the chairmen of the committees to act while the tide is high.”

In the nation’s heartland, as well, state representatives are standing up for the constitutional rights of their constituents.

Kansas state Representative Brett Hildabrand has introduced HB 2161, a bill protecting Kansans from being nabbed and detained by the military operating under orders from the president as authorized by the NDAA.

One notable and noteworthy aspect of the Kansas legislation is described by a [report published buy the Tenth Amendment Center](#).

This bill is different from and quite a bit stronger than previous bills introduced around the country to nullify NDAA indefinite detention. It includes kidnapping charges for federal agents attempting to arrest people in Kansas without due process.

Legally speaking, when a suspect is denied of his constitutionally protected rights of due process, any detention — regardless of the detaining authority — is nothing less than government-sanctioned kidnapping. The Kansas bill appreciates this legal reality.

Hildabrand’s bill states, in part: “A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for kidnapping or aggravated kidnapping, [K.S.A. 2012 Supp. 21-5408](#), and amendments thereto.”

Anyone convicted of kidnapping as a result of his participation with the indefinite detention is subject to the following criminal penalties provided in the bill:

Kidnapping is a severity level 3 felony with a potential of 8 years in prison. Aggravated kidnapping is a severity level 1 felony with a prison sentence of over 20 years being possible. Both of these felonies are subject to a fine “to not exceed \$300,000.

“Indefinite detainers” are also subject to being charged with a misdemeanor for the “denial of due process” of anyone apprehended under the terms of the NDAA. Punishment for conviction of violating this section could include “a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one year” and “a sum not exceeding \$2,500.”

“When I first heard that the federal government was considering indefinite detention, I was horrified, but I was unaware of how to fight it at the state level. After reading about anti-NDAA legislation introduced in Texas, I knew we needed to attempt the same thing in Kansas,” said Representative Hildabrand, [as quoted by the Tenth Amendment Center](#).

He continued, “The kidnapping portion was added to convey the seriousness of the offense. If a non-government official were to take someone against their will and hold them without access to the outside



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world, we would consider that a kidnapping. If a government official does the same thing, without granting access to a lawyer or the courts, I see no difference.”

In a final denial of federal usurpation of police power, Representative Hildabrand’s bill protects citizens in the Sunflower State from being placed under the jurisdiction of the U.S. military.

“I believe that a person either supports the whole Constitution, in every circumstance or they do not support it at all. Therefore, when any one is denied due process, I consider it an assault on the Constitution,” Hildabrand explained.

Finally, there is news out of Texas that on February 6, a bill blocking the indefinite detention provision of the NDAA was placed before the Federalism and Fiscal Responsibility Committee of the state House of Representatives.

[The Texas bill \(HB 149\)](#), like those in Washington and Kansas, aims at denying the president the power to apprehend and indefinitely detain citizens without affording them their constitutionally protected due process rights.

Criminal penalties are provided in the bill for federal agents attempting to execute the indefinite detention provisions of the NDAA within the state of Texas. Penalties for conviction are set at “one year, a fine of not more than \$10,000, or both the confinement and the fine.”

These state legislators stand on very sound constitutional ground in their battle against federal overreaching. Acts of the federal government that exceed the constitutional boundaries on its power are null, void, and of no legal effect. In fact, they are not laws at all. As Alexander Hamilton explained in [The Federalist, No. 33](#):

If a number of political societies enter into a larger political society, the laws which the latter may enact, pursuant to the powers intrusted [sic] to it by its constitution, must necessarily be supreme over those societies and the individuals of whom they are composed.... But it will not follow from this doctrine that acts of the larger society which are *not pursuant* to its constitutional powers, but which are invasions of the residuary authorities of the smaller societies, will become the supreme law of the land. These will be merely acts of usurpation, and will deserve to be treated as such.
[Emphasis in original.]

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