



Written by [Joe Wolverton, II, J.D.](#) on March 12, 2012

President Signs Law Placing Prior Restraint on Free Speech

Daniel Webster warned: "It is hardly too strong to say that the Constitution was made to guard the people against the dangers of good intentions. There are men in all ages who mean to govern well, but they mean to govern. They promise to be good masters, but they mean to be masters."

Without fanfare, on March 8, 2012, [President Barack Obama signed](#) into law [H.R. 347](#) the Federal Restricted Buildings and Grounds Improvement Act of 2011.

Readers may assume that there was no grand announcement of this law's enactment as its name sounds like something to do with giving gardeners guidelines for sprucing up the lawns around government buildings in Washington.



Alternatively, perhaps one could see some of those "good intentions" that Daniel Webster described. Most media coverage of this bill paints it as a beefed up effort to protect the President and other top-rank government officials from assassination attempts and other threats of violence.

As readers of *The New American* will suspect, there is much more to this law than mainstream media reports or President Obama's brief announcement of his signing of it would indicate.

For example, in one section of this new legislation, individuals are expressly forbidden under penalty of law from trespassing onto the grounds of the White House. Of course, such an encroachment was already illegal, so why the new provision?

There is already a D.C. ordinance that prosecutes White House trespassers. Violation of this provision of the city code was a misdemeanor.

The penalties for such trespass are much more severe, now, however. Under H.R. 347, Congress may at its discretion impose federal criminal charges on not only those who enter the White House grounds without prior permission, but on anyone who participates in protests at or near a location falling within the greatly enlarged scope of this new prohibited zone.

In addition to the increased legal ramifications for trespassing on White House grounds, the penalty for protesting within the shifting high security zone is enough to give pause to those contemplating participation in a protest against a government official or policy.

One example of how H.R. 347 imposes an unconstitutional prior restraint on political speech and assembly is found in Section (c) of the act. This paragraph defines the key phrase "restricted buildings" as follows:

"[R]estricted buildings or grounds" means any posted, cordoned off, or otherwise restricted area —



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- (A) of the White House or its grounds, or the Vice President's official residence or its grounds;
- (B) of a building or grounds where the President or other person protected by the Secret Service is or will be temporarily visiting; or
- (C) of a building or grounds so restricted in conjunction with an event designated as a special event of national significance

Under the terms of the existing law amended by this act, the Department of Homeland Security is tasked with deciding which events will qualify as being of "national significance."

According to [one report](#):

Nearly three dozen events in all have been considered a National Special Security Event (NSSE) since the term was created under President Clinton. Among past events on the DHS-sanctioned NSSE list are Super Bowl XXXVI, the funerals of Ronald Reagan and Gerald Ford, most State of the Union addresses and the 2008 Democratic and Republican National Conventions.

As the foregoing quoted sections of the bill evince, the Federal Restricted Buildings and Grounds Improvement Act, as with so many other recent laws, contains paragraph after paragraph of vague terms that can be wrested to suit the mercurial whims of our federal overlords.

In addition to control over the fluid and fickle designation of "restricted buildings" afforded to the Congress, the bill endows the President with the power to extend Secret Service protection to anyone he deems worthy. The President accomplishes such an act by way of issuing a memo.

As the aforementioned Section (c) explains:

The term "other person protected by the Secret Service" means any person whom the United States Secret Service is authorized to protect under section 3056 of this title or by Presidential memorandum, when such person has not declined such protection....

When read together, these two subsections make it a federal crime punishable by up to 10 years in prison to "enter or remain" in any designated area without permission, and, that forbidden zone may shift from here to there without prior notice depending on the presence of any person the President has placed under the protection of the Secret Service.

The sponsor of the companion measure introduced in the Senate is Senator Richard Blumenthal (D-Conn.). During deliberations on the measure, Blumenthal explained the purpose behind the proposal:

This bill will improve the law enforcement tools available to the Secret Service in its attempts to protect the President, the Vice President, and others on a day-to-day basis by closing loopholes in the current federal law. The new law should punish and deal more effectively with anyone who illegally enters restricted areas to threaten the President, Vice President, or other Secret Service protectees.

For example, the bill does not require "willful" encroachment into a restricted area, the requisite mental state for committing this new crime is merely the "knowing" encroachment into a restricted area. It is in this nuance that the government lays one of its most well-camouflaged snares.

The distinction between "willful" and "knowing" is a legal construction that needn't be explained fully here, but for purposes of understanding the implications of the difference on a person's First Amendment rights of free speech, one need only understand that a protestor would certainly "know" that he is protesting, where he is protesting, and that his protest is an expression of opposition to a



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person or a policy. However, given the fact that the designation of a restricted zone changes without notice (no special police tape, no signs, no noticeable law enforcement patrolling the area), a protestor would probably not know that he was trespassing into a specially protected "restricted zone" or that he was too close to a person endowed by the President with a Secret Service retinue.

It is possible, therefore, that a person could attend a political speech by one of the GOP contenders or by Attorney General Eric Holder, for example, and unintentionally find himself within the prohibited parameters and be subject to federal fines and imprisonment. Who can deny that this discourages free speech? Furthermore, who can deny that the right to speak out freely against government oppression is one of the chief cornerstones of our Republic?

A straightforward reading of the bill reveals the real threat to the freedoms of association and speech. As written and passed by the Congress, there is nothing that would prevent the application of the relevant provisions of this new act to an innocent person protesting against this or that policy position of a presidential candidate while standing outside a debate venue.

The climate created by the Federal Restricted Buildings and Grounds Improvement Act of 2011 is inhospitable to protest and demonstration, thus it is the very definition of the "chilling effect" on speech that should concern all citizens, regardless of party affiliation.

The United States of America is daily experiencing the "silent and gradual" erosion of our liberties. In the case of H.R. 347, it was packaged to the public in much the same way as was the National Defense Authorization Act (NDAA). A majority of Congressmen from both parties voted overwhelmingly in favor of both these laws. When confronted by constituents concerned about the assault such statutes make on our Constitution and on individual liberty, representatives respond that neither measure expands the scope of current law, rather they merely clarify laws already enacted. For this reason, supporters contend, Americans have nothing to fear from NDAA or H.R. 347.

This answer is disingenuous. The plain fact is that both the NDAA and H.R. 347 codify grand expansions of the power of the President to monitor, manipulate, and punish activities within the United States that he and he alone deems to be a threat to his person, to his friends, or to the security of "the homeland."

These startling suspensions of our most basic civil rights makes one wonder how our Founding Fathers would have responded.



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