



Written by [Joe Wolverton, II, J.D.](#) on October 3, 2013

Governor Signs California Indefinite Detention Nullification Bill

It just got a lot harder for President Obama to indefinitely detain residents of California.

On October 1, Governor Jerry Brown (shown) [announced he had signed AB 351 into law](#).

The new statute, called the [California Liberty Preservation Act](#), outlaws the participation of any agency of the state of California, any political subdivision of the state, employee of a state or local agency, or member of the California National Guard from



knowingly aiding an agency of the Armed Forces of the United States in any investigation, prosecution, or detention of a person within California pursuant to (1) Sections 1021 and 1022 of the National Defense Authorization Act for Fiscal Year 2012 (NDAA), (2) the federal law known as the Authorization for Use of Military Force, enacted in 2001, or (3) any other federal law, except as specified, if the state agency, political subdivision, employee, or member of the California National Guard would violate the United States Constitution, the California Constitution, or any law of this state by providing that aid....

... knowingly using state funds and funds allocated by the state to those local entities on and after January 1, 2013, to engage in any activity that aids an agency of the Armed Forces of the United States in the detention of any person within California for purposes of implementing Sections 1021 and 1022 of the NDAA or the federal law known as the Authorization for Use of Military Force, if that activity would violate the United States Constitution, the California Constitution, or any law of this state, as specified.

Interpreted broadly, the Liberty Preservation Act would outlaw state cooperation in any federal act which violates the state or federal constitutions. Although Governor Brown almost certainly didn't intend the provisions of the law to be applied this liberally, the black letter could arguably be used to protect citizens of California from deprivation of a wide panoply of fundamental rights, including the right to keep and bear arms.

It will be worth watching court dockets in California to see if anyone relies on this language to fight the state's infamous disarmament statutes.

Originally sponsored by State Assemblyman Tim Donnelly, a conservative Republican (now running for governor), the bill's senate sponsor was one of that body's ["most liberal lawmakers,"](#) Mark Leno.

"Indefinite detention, by its very definition, means that we are abrogating, suspending, just throwing away the basic foundations of our Constitution and of our nation," Leno said.

After being warned by some of his fellow Democrats that siding with Donnelly was tantamount to political suicide, Leno stood firm in defense of liberty.



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“It doesn’t matter where one finds oneself on the political spectrum,” he said. “These two sections of this national defense act are wrong, unconstitutional and never should have been included.”

After learning of the governor’s signing of the bill he sponsored, Assemblyman Donnelly [released the following statement](#):

The signing of this bill into law is a victory for the people of California, and proof that defending Liberty is not a partisan issue. This law guarantees that our Constitutional civil liberties will be protected from federal overreach. Indefinite detention, by its very nature, discards many of the ideals that our founding fathers enshrined in the Constitution.

This law is the fulfillment of our promise, made to those citizens who were interned in World War II, that never again will our state allow people on California soil to be deprived of life, liberty, or property without due process.

Although Donnelly was the chief architect and promoter of the bill, grassroots support for the measure came from a broad, politically diverse coalition.

AB 351 was backed by the 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.

Undoubtedly, it was the support of such a broad spectrum of constituents that convinced Governor Brown to sign AB 351 into law this week.

Of course, the various protections included in the law appeal to all people concerned about constant federal overreach into areas of privacy and personal freedom. Among these universally valued rights are 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.

Relying on the Tenth [Amendment’s reservation](#) to the states and the people of 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 recognized 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 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.



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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.

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.

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.

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.

While enactment of AB 351 is a significant step toward nullifying the federal government’s assumption of the right to apprehend and indefinitely detain Americans in contravention of their constitutionally-protected rights, the final version of the bill removes all penalties for participation included in the original draft.

As it stands, the act is an example to other state legislatures of the counsel given by James Madison to states who oppose unconstitutional federal acts. In *Federalist* 46, Madison recommended that an effective way to thwart federal overreach is for agents of the states to refuse “to cooperate with officers of the Union.”

Photo of California Governor Jerry Brown: AP Images

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