

# The NDAA's Historic Assault on American Liberty

By signing into law the NDAA, the president has awarded the military extraordinary powers to detain US citizens without trial

by Jonathan Turley - January 2, 2012

President Barack Obama rang in the New Year by signing the NDAA law with its provision allowing him to indefinitely detain citizens. It was a symbolic moment, to say the least. With Americans distracted with drinking and celebrating, Obama signed one of the greatest rollbacks of civil liberties in the history of our country ... and citizens partied in unwitting bliss into the New Year.

Ironically, in addition to breaking his promise not to sign the law, Obama broke his promise on signing statements and attached a statement that he really does not want to detain citizens indefinitely (see the text of the statement here- [www.whitehouse.gov/the-press-office/2011/12/31/statement-president-hr-1540](http://www.whitehouse.gov/the-press-office/2011/12/31/statement-president-hr-1540)).

Obama insisted that he signed the bill simply to keep funding for the troops. It was a continuation of the dishonest treatment of the issue by the White House since the law first came to light. As discussed earlier, the White House told citizens that the president would not sign the NDAA because of the provision. That spin ended after sponsor Senator Carl Levin (D. Michigan) went to the floor and disclosed that it was the White House and insisted that there be no exception for citizens in the indefinite detention provision.

The latest claim is even more insulting. You do not "support our troops" by denying the principles for which they are fighting. They are not fighting to consolidate authoritarian powers in the president. The "American way of life" is defined by our constitution and specifically the bill of rights. Moreover, the insistence that you do not intend to use authoritarian powers does not alter the fact that you just signed an authoritarian measure. It is not the use but the right to use such powers that defines authoritarian systems.

The almost complete failure of the mainstream media to cover this issue is shocking. Many reporters have bought into the spin of the Obama administration as they did the spin over torture by the Bush administration. Even today, reporters refuse to call waterboarding torture despite the long line of cases and experts defining waterboarding as torture for decades.

On the NDAA, reporters continue to mouth the claim that this law only codifies what is already the law. That is not true. The administration has fought any challenges to indefinite detention to prevent a true court review. Moreover, most experts agree that such indefinite detention of citizens violates the constitution. There are also those who continue the longstanding effort to excuse Obama's horrific record on civil liberties by blaming either others or the times. One successful myth is that there is an exception for citizens. The White House is saying that changes to the law made it unnecessary to veto the legislation. That spin is



ridiculous. The changes were the inclusion of some meaningless rhetoric after key amendments protecting citizens were defeated. The provision merely states that nothing in the provisions could be construed to alter Americans' legal rights. Since the Senate clearly views citizens as not just subject to indefinite detention but even to execution without a trial, the change offers nothing but rhetoric to hide the harsh reality.

The Obama administration and Democratic members are in full spin mode – using language designed to obscure the authority given to the military. The exemption for American citizens from the mandatory detention requirement (section 1032) is the screening language for the next section, 1031, which offers no exemption for American citizens from the authorization to use the military to indefinitely detain people without charge or trial. Obama could have refused to sign the bill and the Congress would have rushed to fund the troops. Instead, as confirmed by Senator Levin, the White House conducted a misinformation campaign to secure this power while portraying the president as some type of reluctant absolute ruler, or, as Obama maintains, a reluctant president with dictatorial powers.

Most Democratic members joined their Republican colleagues in voting for this un-American measure. Some Montana citizens are moving to force the removal of these members who, they insist, betrayed their oaths of office and their constituents. Most citizens, however, are continuing to treat the matter as a distraction from the holiday cheer.

For civil libertarians, the NDAA is our Mayan moment: 2012 is when the nation embraced authoritarian powers with little more than a pause between rounds of drinks.

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This template is based on real laws already passed from the municipal to the national level - from Pittsburgh stripping drilling corporations of Constitutional "rights" to Ecuador including legal rights for nature in its Constitution. This style of organizing moves away from traditional activism—mired in letter writing campaigns and lowest common denominator federal and state legislation—toward a new activism in which communities claim the right to make their own decisions, directly.

## Community Bill of Rights of [your city]

### Section 1 - Authority

This Community Bill of Rights is enacted pursuant to the inherent right of the residents of the City of [your city] to govern their own community, including, without limitation, the Declaration of Independence's declaration that governments are instituted to secure the rights of people, and the [your state] Constitution's recognition that all political power is inherent in the people.

### Section 2 - Findings and Purpose

Whereas, the citizens of [your city] recognize that environmental and economic sustainability cannot be achieved if the rights of municipal majorities are routinely overridden by corporate minorities claiming certain legal powers; and

Whereas, the citizens of [your city] believe that local legislation that embodies the interests of the community is mandated by the doctrine of the consent of the governed, and the right to local, community self-government; Whereas, the citizens of [your city] believe that the protection of residents, neighborhoods, and the natural environment constitutes the highest and best use of the police powers that this municipality possesses; Therefore, the residents of the city of [your city] hereby adopt this ordinance which creates a community bill of rights for the residents and communities of the City, and removes certain legal powers from corporations operating within the City of [your city].

### Section 3 - Statements of Law - A Community Bill of Rights

#### 3.1. The Right to a Locally-Based Economy

Residents have the right to a locally-based economy to ensure local job creation and enhance local business opportunities. The right shall include the right to have local monies reinvested locally by lending institutions, and the right to equal access to capital, credit, contracts, incentives, and services for businesses owned by [your city] residents.

#### 3.2. The Right To Affordable And Safe Housing

Residents have the right to affordable housing, the right to a safely-maintained dwelling, and the right to be free from housing discrimination. The City shall ensure the availability of low-income housing stock sufficient to meet the needs of the low-income housing community. People and families may only be denied renting or buying of a dwelling for non-discriminatory reasons and may only be evicted from their residence for non-discriminatory causes.

#### 3.3. The Right To Affordable Preventive Health Care

Residents have the right to affordable preventive health care. For residents otherwise unable to access such care, the City shall guarantee such access by coordinating with area health care providers to create affordable fee-for-service programs within eighteen (18) months following adoption of this provision.

#### 3.4. Rights for Nature

Ecosystems and natural communities within the City of [your city] possess inalienable rights to exist and flourish. The rights of rivers, streams, and aquifers shall include the right to sustainable recharge, flows sufficient to protect native fish habitat, and clean water. The City of [your city] and any resident of the City or group of residents have standing to enforce and protect these rights.

#### 3.5. Right to Water

All residents, natural communities and ecosystems in [your city] possess a fundamental and inalienable right to sustainably access, use, consume, and preserve water drawn from natural water cycles that provide water necessary to sustain life within the City.

#### 3.6. Right to Sustainable Food System

All residents of [your city] possess a fundamental and inalienable right to access, use, consume, produce and distribute foods generated from sustainable farming practices, and to be free of infection, or infestation or drift by any means, from genetically engineered life forms or genetically modified organisms.

#### 3.7. The Right To Affordable And Renewable Energy

Residents have the right to access affordable and renewable energy sources.

#### 3.8. Right to Constitutional Protections in the Workplace

Employees shall possess United States and [your state] Bill of Rights' constitutional protections in the workplace within the City of [your city], and workers in unionized workplaces shall possess the right to collective bargaining.

#### 3.9. Right to Determine the Future of Neighborhoods

Neighborhood majorities shall have the right to approve all zoning changes proposed for their neighborhood involving significant commercial, industrial, or residential development. It shall be the responsibility of the proposer of the zoning change to acquire the approval of the neighborhood majority, and the zoning change shall not be effective without it.

#### 3.10. Right to a Free, Open and Accessible Internet

(a) All residents of the City of [your city] shall possess the right to a free and open internet, which shall include, but not be limited to, the right to access, use, send, post, receive, or offer lawful content, applications, or services of the user's choice.

(b) All residents of the City of [your city] shall possess the right to be free from provider service and performance level discrimination based on the identity, source or type of individual content or service providers.

#### 3.11. Right to a Citizen Managed and Accountable Police Force

All residents of the City of [your city] have a right to a police force managed by a civilian police chief held fully accountable by an elected panel of citizens.

#### 3.12. Right to Clean and Fair Elections Free from Corporate Interference

Residents of [your city] possess the right to fair elections, which shall include the right to an electoral process free from corporate involvement.

#### 3.13. Right to Clean Government

Residents of [your city] have the right to clean government, which shall include the right to a City legislative process free from corporate lobbying and involvement.

#### 3.14. Right to Marriage Equality

Residents of [your city] have the right to gender-neutral marriages for both same- and opposite-sex couples.

### Section 4 - Prohibitions and Corporate Legal Privileges

#### 4.1. Prohibition on Corporate Personhood and Privileges

Corporations and other business entities which violate the rights secured by this Community Bill of Rights shall not be deemed to be "persons," afforded by the United States and [your state] Constitutions, nor possess any other legal rights, privileges, powers, or protections which would interfere with the enforcement of rights enumerated by this Charter.

#### 4.2. Ban on Electioneering

It shall be unlawful for any corporation to make a contribution or expenditure to influence any election within the City of [your city].

#### 4.3. Ban on Lobbying

It shall be unlawful for any corporation to communicate with an elected official within the City of [your city] urging support or opposition to pending legislation. This ban shall not be construed to prohibit open forum communications between corporate lobbyists and elected officials.

### Section 5 - People's Right to Self Government

All residents of [your city] possess the fundamental and inalienable right to a form of governance where they live which recognizes that all power is inherent in the people, that all free governments are founded on the people's authority and consent, and that corporate entities and their directors and managers shall not enjoy special privileges or powers under the law which make community majorities subordinate to them.

### Section 6 - Enforcement

6.1. The City of [your city] may enforce this Community Bill of Rights through an action in equity brought in the [your court of jurisdiction]. In such an action, the City of [your city] shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

6.2. Any resident of [your city] shall have the authority to enforce this Community Bill of Rights through an action in equity brought in the [your court of jurisdiction]. In such an action, the resident shall be entitled to recover all costs of litigation, including, without limitation, expert and attorney's fees.

### Section 7 - Severability

The provisions of this Community Bill of Rights are severable. If any court of competent jurisdiction decides that any section, clause, sentence, part, or provision of this Ordinance is illegal, invalid, or unconstitutional, such decision shall not affect, impair, or invalidate any of the remaining sections, clauses, sentences, parts, or provisions of the Community Bill of Rights.

### Section 8 - Repealer

All inconsistent provisions of prior Ordinances adopted by the City of [your city] are hereby repealed, but only to the extent necessary to remedy the inconsistency.

## Community Environmental Legal Defense Fund.

This model was developed by the Community Environmental Legal Defense Fund. You can learn more about CELDF's theory of change, its democracy school educational programs on corporate power and its global organizing efforts for community rights at their website:

[www.celdf.org](http://www.celdf.org)