



Written by [Joe Wolverton, II, J.D.](#) on February 9, 2014

States Step Up Efforts to Stymie NSA Surveillance

Ironically, as many conservatives have given up hope on nullification as a way to fight back against federal overreach, several national news stories are highlighting those very state efforts.

For example, in a big story for February 5, the Associated Press reports, “State lawmakers around the nation are proposing bills to curtail the powers of law enforcement to monitor and track citizens.”



The message from these states to Capitol Hill, the story says, is “if you don’t take action to strengthen privacy, we will.”

AP reports that 14 states are currently considering surveillance-nullifying bills, a figure also reported by the Tenth Amendment Center.

Focusing on the efforts in Missouri, AP quotes Missouri state Senator Rob Schaaf on the urgent need to shore up the protections of civil liberties. “We need to stand up and protect our liberty,” Senator Schaaf said.

On January 8, Schaaf introduced [SJR 27, which declares:](#)

That the people shall be secure in their persons, papers, homes [and], effects, and electronic communications and data, from unreasonable searches and seizures; and no warrant to search any place, or seize any person or thing, or access electronic data or communication, shall issue without describing the place to be searched, or the person or thing to be seized, or the data or communication to be accessed, as nearly as may be; nor without probable cause, supported by written oath or affirmation.

The OffNow Coalition, the country’s leader in promoting state-based solutions to the problem of dragnet NSA surveillance, [identifies the benefit of the Missouri bill:](#)

The effect of this resolution would be significant. The addition of electronic communications to the list of privacy items would make emails, phone records, Internet records and other electronic information gathered without a warrant inadmissible in state court. That would include data gathered illegally by overzealous state and local law enforcement as well as the federal government.

Shane Trejo, the national campaign leader for OffNow, focused his remarks on the bill’s effect on the sharing of unconstitutionally obtained data. “While we’re certainly concerned about the NSA collecting and storing data, because that itself is a violation of our right to privacy, we’re possibly even more concerned with what they do with that data, because that is what could affect our liberty even more. Since we know they’re sharing information collected without warrant with local law enforcement, legislation like this takes a big step towards blocking what the NSA wants to do with all that information,” said Trejo.

It’s this problem of data collection and sharing by and among law enforcement that troubles many



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constitutionalists and civil libertarians. As the AP reports:

Supporters say the measures are needed because technology has grown to the point that police can digitally track someone's every move.

Devices such as license plate readers and cellphone trackers "can tell whether you stayed in a motel that specializes in hourly rates, or you stopped at a tavern that has nude dancers," said David Fidanque, director of the American Civil Liberties Union of Oregon.

"It's one thing to know you haven't violated the law, but it's another thing to know you haven't had every one of your moves tracked," he said.

In Missouri, if Schaaf's bill is passed by the state legislature, it will appear as a ballot measure for voters to decide in November.

"The people in Missouri, if they get the chance to approve it, will send a message that other states can, and must, do the same thing," Schaaf said, as quoted in the AP story. "We can't wait on Congress to pick up the banner," he added.

Thankfully, Missouri isn't the only state pushing back against the expansion of the surveillance state and the corresponding reduction in fundamental liberty.

[Watchdog.org reports](#) on a bill proceeding through the state legislature in Arizona that takes aim at the federal government's de facto repeal of the Fourth Amendment:

In Arizona, SB1156, which has 14 Republican sponsors, was introduced by state Sen. Kelli Ward. It would bar the state from providing material support to the agency's activities and ban any data collected without a warrant from being used in court.

Ward announced her intentions in December to introduce a bill that would keep Arizona from supporting the NSA.

In New Hampshire, HB 1533 is a bipartisan bill sponsored by two GOP lawmakers and one Democrat. The measure requires law enforcement to obtain "a warrant to search information in a portable electronic device."

Section IV of the bill mandates that "A government entity that purposely violates the provisions of this section shall be guilty of a class A misdemeanor."

One of the sponsors of HB 1533 is also behind HB 1619, a bill specifically protecting a person's:

expectation of privacy in personal information, including personal identifiers, content, and usage, given or available to third-party providers of information and services, including telephone; electric, water and other utility services; internet service providers; social media providers; banks and financial institutions; insurance companies; and credit card companies.

To the credit of the bill's author, the protections it affords are extended to "individuals," not just to "citizens."

The bill's provisions protect the rights guaranteed by the Fourth Amendment, which states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.



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Preserving the protections of the Fourth Amendment is the subject of a proposed statute in Tennessee, as well.

As reported by the Tenth Amendment Center: “The Tennessee Fourth Amendment Protection Act was introduced by State Sen. Stacey Campfield (R-Knoxville) late Tuesday evening. Rep. Andy Holt (R-Dresden) will file the companion bill in the House.”

Based on model legislation drafted by OffNow, SB1849 would prohibit the state of Tennessee from “providing material support to...any federal agency claiming the power to authorize the collection of electronic data or metadata of any person pursuant to any action not based on a warrant” as required by the Fourth Amendment.

The rights protected by the Constitution are natural rights that are the birthright of all people — American citizens or otherwise — and the Bill of Rights should be sufficient to restrain the government, but, it is not.

In 1798, Thomas Jefferson, a man familiar with fighting tyranny, explained how and why states can stop unconstitutional acts of the federal government at the state borders. In the Kentucky Resolution he wrote:

In cases of an abuse of the delegated powers, the members of the general government, being chosen by the people, a change by the people would be the constitutional remedy; but, where powers are assumed which have not been delegated, a nullification of the act is the rightful remedy.

Whenever the federal government does anything not listed in the limited roster of its enumerated powers, those acts are unconstitutional and don't merit state sponsorship or support. Alexander Hamilton says such measures are not the law at all and calls them “merely acts of usurpation” that “deserve to be treated as such.”

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