



Written by [Joe Wolverton, II, J.D.](#) on March 1, 2014

Arizona Bill Would Nullify NDAA's Indefinite Detention

A committee of the Arizona state Senate has approved a bill that would nullify any and all federal laws, including the National Defense Authorization Act (NDAA), that would permit the indefinite detention of American citizens.

By a vote of 4-3, the Committee of Government and Environment passed [SB 1291](#), prohibiting the federal government from trampling the Bill of Rights and permanently incarcerating citizens upon the order of the president, as provided for in the NDAA beginning in the 2012 version.



The measure, sponsored by State Senator Judy Burges, declares that it is “unconstitutional and unlawful for any person to”:

arrest or capture any person in this state or any resident of this state within the United States with the intent of detention under the law of war.

actually subject a person in this state to disposition under the law of war.

execute any person in this state or any resident of this state within the United States without judicial sentencing after trial and conviction in a court ordained and established under Article III of the United States Constitution or under the Constitution of Arizona.

The specific language of this bill makes it an especially powerful defense against federal efforts to curtail fundamental civil liberties in the name of fighting the “War on Terror.”

For example, rather than simply refusing to enforce the offensive provisions of the NDAA (Sections 1021 and 1022), Burges’ bill outlaws participation with “any treaty, federal, state or local law or authority” that would seek to grant similar authority to the government.

The bill was drafted by the Arizona state coordinator of the Tenth Amendment Center and Dan Johnson, founder of the People Against the NDAA (PANDA).

“This will be Arizona’s third attempt to essentially nullify the NDAA’s kidnapping and indefinite detainment provisions — which blatantly violate several portions of the Constitution,” Henriksen said, as quoted in a PANDA press release. “I look forward to working with Dan to stop that.”

Referencing a recent statement by Supreme Court Justice Antonin Scalia, Johnson said, “We would be kidding ourselves if we didn’t think the Supreme Court would approve another WWII, Japanese-American style, internment. With SB 1291, Arizona has a chance to join several states to head this off and avoid repeating a dark part of American history.”

The hour is urgent. It is vital to remember the history of the enactment of these unconscionable and unconstitutional provisions and to remind lawmakers of their obligation to prevent them from being imposed upon the people they represent.

As for the NDAA’s assault on liberty, a bit of history is in order.



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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.

One of the most noxious elements of the NDAA is that it places the American military at the disposal of the president for the apprehension, arrest, and detention of those suspected of posing a danger to the homeland (whether inside or outside the borders of the United States and whether the suspect be a citizen or foreigner). The endowment of such a power to the president by the Congress is nothing less than a de facto legislative repeal of the Posse Comitatus Act of 1878, the law forbidding the use of the military in domestic law enforcement.

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 — one of the sections specifically nullified in the Arizona bill — 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.

Further, in order to execute the provisions of Section 1021, Section 1022 (among others) unlawfully gives the president the absolute and unquestionable authority to deploy the armed forces of the United States to apprehend and to indefinitely detain those suspected of threatening the security of the "homeland." In the language of this legislation, these people are called "covered persons."

The universe of potential "covered persons" includes every citizen of the United States of America. Any American could one day find himself or herself branded a "belligerent" and thus subject to the complete confiscation of his or her constitutional civil liberties and nearly never-ending incarceration in a military prison.

The most effective weapon in the war against federal tyranny is nullification. Nullification occurs when a state, county, city, or other local entity holds as null, void, and of no legal effect any act of the federal government that exceeds the boundaries of its constitutional powers.

Nullification recognizes that states possess the right to invalidate any federal measure that exceeds the few and defined powers allowed the federal government as enumerated in the U.S. Constitution.

States (and their legal subdivisions) retain the right to act as arbiters of the constitutionality of federal acts because they 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.

Despite criticism by those who advocate for a more powerful federal government, nullification would not lead to anarchy, as it is only unconstitutional federal acts that will be subject to state invalidation.

In a previous article, I've used an analogy from everyday life that makes the practice of nullification easier to understand. The Arizona bill fits that analogy perfectly, so I'll repeat it here.

Imagine that a person entered into a contract with a homebuilder to construct a new home. The blueprints contained the agreed-upon specifications of the house and the contract set out the duties and obligations of the homeowner and the homebuilder.

As long as both parties abide by the terms of the contract, the relationship will continue as set forth in



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the contract. What would happen, however, if the homebuilder decides to exceed the scope of the contract and begins digging a pool? On a visit to the construction site, the homeowner notices the pool and confronts the contractor. When the homebuilder hands his client the bill for the cost of the pool, would the homeowner be required to pay for it?

Absolutely not.

However, when it comes to the bills sent to the states by the federal government demanding payment for unconstitutional acts, for some reason the states and cities have forgotten the terms of the contract and unnecessarily pay the bills, and now they are going broke.

There is a better way. Nullification is the ["rightful remedy"](#) and can not only restore the rule of law in this Republic, but can restore the independence of states and cities, freeing them from the financial chains that have them bound to the federal behemoth.

And, as Congress continues to surrender to the president all legislative, executive, and judicial power, the need for nullification is urgent, and liberty-minded citizens are encouraged to demand that state legislators begin honoring their oath and obligation to restrain the federal government through application of that very powerful and very constitutional principle.

By passing similar anti-NDAA resolutions, states can join Arizona, Alaska, [California](#), [Michigan](#), and [Virginia](#) in powerfully resisting President Obama's usurpation of power to use of the NDAA to abolish centuries-old due process and habeas corpus protections, and help restore the states' rightful place as bulwarks of liberty.

SB 1291 will need the approval of one more committee before being put before the entire state Senate for a vote.

Photo: AP Images

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