



Written by [Joe Wolverton, II, J.D.](#) on March 17, 2016

Arizona One Step Closer to Nullifying Indefinite Detention

On March 16, by a party-line vote of 4-3, the Federalism and States Rights Committee of the Arizona state House of Representatives approved a bill that would nullify federal efforts to enforce the indefinite detention provisions of the National Defense Authorization Act (NDAA). The measure was approved by the state Senate on February 29, 2016.



Sponsored by state Senator Judy Burges, the bill (SB 1437) — the Liberty Preservation Act — declares that “it is unconstitutional and unlawful for any person” to

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

Actually subject a person in this state or any citizen of this state to disposition under the law of war.

Execute any person in this state or any citizen 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 bill further mandates that the director of the Department of Public Safety or the sheriff of a county report to the governor and the state legislature any attempt to enforce the NDAA or any other federal act that would similarly violate the person’s rights protected by the Bill of Rights and the Constitution.

Wisely, the bill’s language takes the additional step of prohibiting the attempted use of “any treaty, federal, state or local law or authority” that would seek to grant NDAA-type authority to the federal government.

Why has the Arizona state legislature taken this remarkable step to thwart the federal government from arresting (kidnapping) an American citizen inside the United States and indefinitely detaining him without access to an attorney and without even perfunctory due process as guaranteed by the Constitution?

The NDAA.

For those unfamiliar with the NDAA’s assault on liberty — or for those of you who have forgotten that the indefinite detention provisions are still the “law” — a bit of history is in order.

On December 31, 2011, with the president’s signing of the NDAA for 2012, 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



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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 any of the due process safeguards guaranteed 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.

Although it has been over four years since this bill was first enacted by the president, it is still applicable and the threat to our liberty persists.

There is a cure for this disease of despotism: nullification.

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.

Nullification recognizes that states retain the authority 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 central authority or the so-called “supremacy” of federal law over state law, nullification would not lead to anarchy, as it is only unconstitutional federal acts that will be subject to state invalidation.

By passing SB 1437, Arizona can demonstrate its resolve to lawfully and constitutionally resist President Obama’s usurpation of power and the presumption of the NDAA to abolish centuries-old due process and habeas corpus protections.

Furthermore, bills such as this should be passed by every state whose citizens are friends of liberty, the



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rule of law, and the Constitution that protects those liberties and whose legislators are committed to upholding their constitutional oath of office to protect the Constitution.

If enough people demand their representatives push back against federal overreach and force that beast back inside its constitutional cage, they will help restore the states' rightful place as bulwarks of liberty.



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