



Written by [Joe Wolverton, II, J.D.](#) on January 8, 2014

Emmett, Idaho, Nullifies Indefinite Detention of NDAA

Another American town has decided its citizens will not be denied due process by the president of the United States.

By a vote of 5-1, [the city council of Emmett, Idaho, passed a resolution](#) last month prohibiting the enforcement of Sections 1021 and 1022 of the 2012 National Defense Authorization Act (NDAA).

As readers are likely aware, those particular provisions of the NDAA subject citizens of the United States to indefinite detention in a federal prison upon suspicion by the president and unnamed “high-level security advisors” of aiding enemies of the state.



The Emmet measure — the Restoring Constitutional Governance Resolution — not only explicitly bans the offensive parts of the NDAA, but effectively nullifies any applicable “laws of war” (the Authorization for the Use of Military Force, for one) that designate Emmett and every other city and town in America a “battlefield” in the War on Terror.

Freeing themselves from such tyranny was not enough for the Emmett City Council, however, as the resolution calls upon the Idaho state legislature to take similar steps to stop the enforcement of the NDAA at the borders of the Gem State. Additionally, the measure encourages the state’s federal representatives to sponsor congressional bills repealing the relevant acts.

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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.

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 Emmett resolution — the president is afforded the absolute power to arrest and detain citizens of the United States without their being informed of any criminal charges,



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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.

Fortunately, as the action by the Emmett, Idaho, City Council demonstrates, there are state and local leaders willing to charge into the gap and protect the rights of citizens from being illegally classified by the Obama administration as enemies and imprisoned potentially forever without so much as a hearing.

Emmett is not alone in forbidding federal agents from enforcing the NDAA’s wholesale violations of fundamental civil liberties. As *The New American* has reported, local leaders in El Paso County, Colorado; Las Vegas, Nevada; Albany, New York; Oxford, Massachusetts; and Webster, Massachusetts, have lived up to their oaths of office, voting to protect, preserve, and defend the Constitution of the United States.

People Against the NDAA (PANDA) — perhaps the country’s most active organization in the fight against the despotism of the NDAA — [reported on the laudable action of the Emmett City Council](#). Included in its article, PANDA reprinted key parts of the city’s resolution:

Emmett’s resolution states:

“...it is unconstitutional, and therefore unlawful for any person to:

- a. arrest or capture any person in Emmett, or citizen of Emmett, within the United States, with the intent of “detention under the law of war,” or
- b. actually subject a person in Emmett, to “disposition under the law of war,” or
- c. subject any person to targeted killing in Emmett, or citizen of Emmett, within the United States;...”

Jason Casella, PANDA Idaho’s Take Back Campaign Coordinator, said:

“I want to thank the great people of Emmett for taking the time to study and act on the issue. Once you stop and do your own research, you find how egregious this truly is and how this is not about ‘left’ or ‘right;’ this is about freedom vs. tyranny. We can restore our republic and our human rights city by city and county by county.”

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



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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.

An analogy from everyday life makes the practice of nullification easier to understand.

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 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 see state legislators boldly asserting their right to restrain the federal government through application of that very powerful and very constitutional principle.

By passing similar anti-NDAA resolutions, cities and counties can boldly join Emmett, Las Vegas, and the other towns and counties in steadfastly resisting President Obama’s potential 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.

Photo of Emmett, Idaho

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