



Written by [Joe Wolverton, II, J.D.](#) on March 4, 2018

Idaho House Passes Bill Nullifying NDAA Indefinite Detention Provisions

In a heavily one-sided vote, the Idaho state House of Representatives passed a bill outlawing the execution of a federal law that purports to grant the president power to indefinitely detain Americans he suspects of being threats to the homeland.

As reported by the People Against the NDAA (PANDA):



The Restoring Constitutional Governance Act, H473, passed out of the Idaho House of Representatives on Monday, 2/26/2018 with a final vote of 63-4-3. This legislation is the strongest in the nation as it explicitly prohibits the laws of war from being used on non-soldiers in Idaho, and Idaho citizens anywhere, and will punish any person, including Federal or international agents, who attempts to utilize those powers.

The National Defense Authorization Act (NDAA) includes provisions that are noxious to liberty and absolutely abhorrent to the Constitution and the rights to life, liberty, and property it protects.

Here's a bit of history on the legislation partially banned by the Idaho House.

On December 31, 2011, with the then-President Barack Obama's signing of the NDAA for fiscal year 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 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, 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.



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Additionally, in order to execute the provisions of Section 1021 described in the previous paragraph, subsequent clauses (Section 1022, for example) unlawfully give 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 Idaho bill was supported by a coalition of citizens from across a broad spectrum of political ideologies.

One of those supporters was a prominent citizen of the Gem State, Ammon Bundy, who issued a statement praising the state’s representatives for their rejection of indefinite detention of Americans. Of course, Bundy knows something about government abuses of power, having been incarcerated unconstitutionally and denied a speedy trial for his role in the protest in Burns, Oregon. Bundy said:

As you may be aware; The Restoring Constitutional Governance Act was passed in the Idaho House with a final vote of 63-4-3. To this I loudly applaud the Idaho house representatives. This combined effort to defend each other against secrete acts of violence from our government is a great example of how people unite in maintaining and defending individual rights. I humbly remind each of you that the primary taker of life, liberty and happiness in the past has been those working in government position, especially on national levels. For this reason our nation was built upon constitutional limits including checks and balances between local, State and federal. The only purpose for any government is to assist individuals in claiming, using and defending their rights so they can live happy and free. The Idaho house of representatives have taken great steps to defend the people’s rights. I thank and honor them for this and ask that the Senate and Governor do the same by making the Restoring Constitutional Governance Act protective law in Idaho. I also want to thank those at PANDA for their great efforts in bringing needed awareness to the perverse and horrifying act of US Congress known as the NDAA.

Idaho’s House of Representatives (and liberty-minded legislators in several other states) are determined to protect their citizens from being seized and imprisoned under the provisions of the NDAA. Nullification is the weapon chosen by these representatives to combat the federal onslaught and stop unconstitutional federal deprivations of liberty at the state borders.

Nullification is a concept of constitutional law recognizing the right of each state to nullify, or invalidate, any federal measure that exceeds the few and defined powers allowed the federal government as enumerated in the U.S. Constitution.

Nullification exists as a right of the states because the sovereign states 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.

As the federal government continues usurping powers beyond those granted to it by the states in the Constitution, 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.



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Some advocates of a more powerful federal government insist that allowing states to be the arbiters of the constitutionality of federal acts would lead to anarchy. This charge is baseless, however, as the principle of federalism and compact that undergird the Constitution permits that only unconstitutional federal acts are subject to state invalidation.

An analogy from everyday 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 forget the contract and pay the bills, and now they are going broke.

In Idaho, however, state Representative Bryan Zollinger understands this balance very well, and he is obviously committed to being faithful to the oath he swore as set out in Article VI of the Constitution, which reads in relevant part:

“The Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution.”

The bill now passes to the state Senate’s Committee on State Affairs. We will update you as the bill progresses.

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