



Written by [Joe Wolverton, II, J.D.](#) on June 11, 2014

## Massachusetts Town Nullifies NDAA Indefinite Detention

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

Last year, the town of Rutland, Massachusetts, celebrated the 300th anniversary of its incorporation. Just days ago, the town honored that legacy of liberty by passing a measure nullifying the indefinite detention provisions of the 2012 National Defense Authorization Act (NDAA).



At a Town Meeting, citizens of Rutland came together to vote on the Restoring Constitutional Governance Resolution (RCGR). The resolution passed unanimously, protecting residents of this central Massachusetts town from being apprehended and detained under the power unconstitutionally granted to the president by the Congress in Sections 1021 and 1022 of the 2012 NDAA.

“The overwhelming support for Rutland RCGR once again tells elected officials throughout Worcester County and all of Massachusetts that the citizens here in the cradle of liberty will never give up their cherished civil rights,” reads a press release issued by the People Against the NDAA (PANDA).

As is the case with many towns in New England, citizens of Rutland retain the power to vote on issues presented for their consideration. After achieving a requisite number of signatures, items are placed on the Town Meeting agenda and voters present at the gathering vote up or down on the issue.

“Rutland residents voted unanimously in favor of the PANDA-sponsored resolution. Local resident Al Hopfmann successfully presented the case for a Yes vote,” PANDA reports.

In a statement issued by PANDA, Hopfmann says, “It was truly gratifying to see the voters of Rutland support the sanctity of the American judicial system and the Constitution. The traditional protection of individual liberty in our nation can only be preserved when citizens speak up in opposition to the overreach of government.”

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 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 Rutland and every other city and town in America a “battlefield” in the War on Terror.

Additionally, the measure explicitly outlaws the “arrest or capture [of] any person in Rutland, or citizen of Rutland, within the United States, with the intent of ‘detention under the law of war.’”

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



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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 Rutland 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, 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 people of Rutland, Massachusetts, demonstrates, there are still Americans who remember their God-given rights and they and a growing number of their state and local leaders are 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.

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.

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



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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 Rutland, Massachusetts; Emmett, Idaho; Las Vegas, Nevada; and other cities 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.

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