Written by **Joe Wolverton, II, J.D.** on January 2, 2014

Michigan Passes Law Nullifying NDAA Indefinite Detention

On December 26, 2013, President Barack Obama took time off from his Hawaiian holiday to sign the National Defense Authorization Act (NDAA) for 2014 into law. On that same day, a state governor denied the president the power to exercise many of the powers granted to him in the NDAA within the sovereign borders of the governor's state.

Just after 4:00 p.m. Central Standard Time, Governor Rick Snyder of Michigan signed Senate Bill No. 94, nullifying sections 1021 of the 2012 version of the NDAA. "It is important to recall that indefinite detention first appeared in section 1021 of the 2012 NDAA, which provided warrant for indefinite detention of U.S. citizens," said Snyder.

Although the provisions prohibited by the new Michigan statute are from the 2012 iteration of the NDAA, the unconstitutional assault on the fundamental rights protected by the Constitution continues in the latest version of the defense spending package.

After voting to oppose the NDAA for Fiscal Year 2014 for that very reason, Senator Ted Cruz (R-Texas) issued a statement explaining his vote. That statement begins:

> Today I voted against the National Defense Authorization Act. I am deeply concerned that Congress still has not prohibited President Obama's ability to indefinitely detain U.S. citizens arrested on American soil without trial or due process.
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> The Constitution does not allow President Obama, or any president, to apprehend an American citizen, arrested on U.S. soil, and detain these citizens indefinitely without a trial. When I ran for office, I promised the people of Texas I would oppose any National Defense Authorization Act that did not explicitly prohibit the indefinite detention of U.S. citizens. Although this legislation does contain several positive provisions that I support, it does not ensure our most basic rights as American citizens are protected.

In reporting on Governor Snyder's signing of his state's NDAA nullification bill, the *Washington Times* wrote:

> Michigan State Senator Rick Jones says that no American citizen should fear being thrown in jail or prison without charges.
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> "Historically Michigan first asserted Tenth Amendment rights in 1855 when we passed a law to block the fugitive slave act," says Jones. "I thought of this great history when I drafted and pushed

this bill to nullify section 1021 of the NDAA within the state of Michigan."

Michigan's state legislators have been working for several months on a measure blocking the enforcement of the NDAA's infringement on fundamental liberty.

On April 18, 2013, the Michigan House of Representatives unanimously passed a bill prohibiting state agents and law enforcement from participating with the federal government in the indefinite detention of its citizens.

By a vote of 109-0, state representatives joined their colleagues in the state senate in protecting citizens of the Wolverine State from being apprehended and detained in federal prisons without trial. The state senate unanimously approved an identical measure in March of last year.

Finally, the conference version of the bill worked out by lawmakers from both chambers and signed by Governor Snyder was passed by the state Senate on December 11, 2013 by a vote of 35-0.

Representative Tom McMillin (R-Rochester Hills), the primary sponsor of the House bill, spoke out in favor of his legislation. "We're standing up for the rights of people in Michigan," he said. "Due process should be a no-brainer."

It should be, but it isn't. Not anymore.

The Michigan law is a direct nullification of provisions of the NDAA that purport to authorize the president to deploy the U.S. military to apprehend and detain American citizens inside the United States suspected by the president of aiding enemies of the homeland.

To their credit, the authors of the Michigan measure included "any person" under the protection of the state law. This is consistent with the Constitution's recognition of the rights of all people, not just citizens, to due process, a nuance that the Obama administration has conveniently ignored.

Sections 1021 and 1022 of the 2012 NDAA purport to grant to the president the power to deploy the U.S. armed forces to apprehend and detain any person he suspects of aiding al-Qaeda or "associated forces." Anyone imprisoned under these provisions will be denied their rights under the Fifth and Sixth Amendments, including the right to due process and the right to assistance of counsel.

With regard to those caught in the NDAA trap, in 2011, Senator Lindsey Graham (R-S.C.) infamously told anyone who may be detained indefinitely, "Shut up! You don't get a lawyer!"

If states are to perform their obligation to stand as bulwarks of liberty, lawmakers must stand and refuse to allow Senator Graham, President Obama, or any other agent of the federal government to deprive citizens of those rights given to them by God and protected by the Constitution.

The most potent weapon in the state arsenal against federal tyranny is nullification.

Nullification occurs when a state holds as null, void, and of no legal effect any act of the federal government that exceeds the boundaries of its power as drawn in the Constitution.

States 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 to the people. No lesser authority than James Madison recommended in *The Federalist*, No. 46, that states should refuse "to comply with officers of the Union" in the execution of any unconstitutional act.

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.

Michigan becomes just the second state — Virginia was first — to pass an act nullifying the unconstitutional provisions of the NDAA. As *The New American* has reported, there are several states and local governments considering similar measures.

On December 9, a Missouri lawmaker joined the fight against the federal government's assault on liberty. As reported by the Tenth Amendment Center:

> Missouri state Senator Brian Nieves introduced legislation this month to ban his state from enforcing sections 1021 and 1022 of the 2012 National Defense Authorization Act.
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> These sections purport to give authority to the federal government to indefinitely detain anyone, anywhere — without charge or trial.
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> The legislation, titled the Missouri Liberty Preservation Act, declares the detention provisions in the NDAA "inimical to the liberty, security and well-being of the people of Missouri, and [that the provisions were] adopted by the United States Congress in violation of the limits of federal power in the Constitution of the United States."
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> It bans the state from participating in such actions, "The state of Missouri shall not provide material support or participate in any way with the implementation" of those provisions. The bill further tasks the Missouri department of public safety with reporting on any attempts to enforce these provisions by agents of the federal government.
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> The bill also calls for misdemeanor criminal charges for any state or federal agents who attempt to enforce or assist in the enforcements of Sections 1021 and 1022 of the NDAA.

Nieves has pre-filed the NDAA nullifying bill and the Show Me State legislature will take up the measure when it reconvenes next week.

Local and state lawmakers opposing the tyranny of the NDAA and indefinite detention stand on very sound constitutional ground in their battle against federal overreaching.

Any unconstitutional act of the federal government is prima facie void and must not be given the respect or force of law. In fact, such measures are not law at all.

As Alexander Hamilton explained in *The Federalist*, No. 33:

> If a number of political societies enter into a larger political society, the laws which the latter may enact, pursuant to the powers intrusted [sic] to it by its constitution, must necessarily be supreme over those societies and the individuals of whom they are composed…. But it will not follow from this doctrine that acts of the larger society which are *not pursuant* to its constitutional powers, but which are invasions of the residuary authorities of the smaller societies, will become the supreme law of the land. These will be merely acts of usurpation, and will deserve to be treated as such. [Emphasis in original.]

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