



Written by [Joe Wolverton, II, J.D.](#) on January 30, 2014

## Miss. State Senate Considers Bill to Nullify NSA Surveillance

The unconstitutional dragnet surveillance of millions of Americans by the National Security Agency (NSA) may have the president's blessing, but many state legislators recognize it as the curse it is.

Mississippi is the latest state to see state lawmakers step into the breach and act as the last line of defense of liberty that our Founders intended them to be.

On January 20, state Senator Chris McDaniel introduced [Senate Bill 2438, the Fourth Amendment Protection Act](#).



The bill declares it the policy of the Magnolia State to

refuse material support, participation or assistance to any federal agency which claims the power, or with any federal law, rule, regulation or order which purports to authorize the collection of electronic data or metadata of any person(s) pursuant to any action not based on a warrant that particularly describes the person(s), place(s) and thing(s) to be searched or seized.

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The Fourth Amendment protects the right of the people "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. Further, it declares that "no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

With that guarantee in mind, the Mississippi measure makes perfect constitutional sense and is nothing more than a restatement of a fundamental principle of liberty.

Section 2 of SB 2438 specifically mandates that

no agency of this state, political subdivision of this state, or employee of an agency or political subdivision acting in his or her official capacity, or corporation providing services on behalf of this state or a political subdivision of this state shall:

- (a) Provide material support, participation or assistance in any form, with any federal agency which claims the power, or with any federal law, rule, regulation or order which purports to authorize, the collection of electronic data or metadata of any person(s) pursuant to any action not based on a warrant that particularly describes the person(s), place(s) and thing(s) to be searched or seized.

The punishments for violation of these prohibitions range from denial of state budget funds to permanent ineligibility to hold "any office of trust, honor or emolument under the laws of [Mississippi]."

There is a paragraph prohibiting state agencies, municipalities, or their employees or agents from providing services or participating "in any way"



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with the providing of services to a federal agency, federal agent or corporation providing services to the federal government which is involved in the collection of electronic data or metadata of any person(s) pursuant to any action not based on a warrant that particularly describes the person(s), place(s) and thing(s) to be searched or seized.

This provision seems to forbid cities from providing utilities — water and electricity — to any agency of the federal government that violates the rights guaranteed under the Fourth Amendment.

Admittedly, the NSA doesn't have a physical presence in Mississippi, but at one time the same could have been said about any of the states that now host NSA surveillance centers.

In [an article published on January 24](#), Michael Boldin, the founder and executive director of the Tenth Amendment Center, describes the purpose of the Mississippi proposal:

SB2438 would also ban the state from entering into any agreements to provide water or electricity to a physical location within the state. And while there is no current facility in Mississippi, OffNow coalition representative Shane Trejo said he would like to see things stay that way.

"This legislation makes sure that the NSA doesn't get any bright ideas while bills in places like Tennessee and Utah will consider turning off the power or water to their spy centers," he said. "NSA advocates tell us that those bills won't work because the NSA would just set up shop in another state. Well that's not going to happen if the other states, like Mississippi, preemptively tell the NSA 'You're not welcome here!'"

The efforts underway in Mississippi, Missouri, Tennessee, Kansas, Indiana, Oklahoma, Arizona, California, and Washington to nullify the NSA's assault on the Fourth Amendment recognize that any acts of the federal government that exceed the powers granted to it in the Constitution are null, void, and of no legal effect.

Or, as Alexander Hamilton explained in *Federalist* 33, such federal overreaches are "merely acts of usurpation, and will deserve to be treated as such."

It is a well-settled principle of Anglo-American law that a party to a contract may rightfully seek remedies if another party is in breach of the agreed-upon terms. One such remedy available to an aggrieved party is to require that the party in breach amend his behavior to conform to the terms of the contract. The aggrieved party may point to the violated provisions of the contract and remind the offending party of the obligations undertaken in the contract.

This reasonable approach is analogous to nullification. As the aggrieved parties, the states (or a single state) may remind the federal government of its repeated violations of key terms of the original agreement and demand that it cease such excesses and that it restrain itself according to the mutually approved contractual rights and responsibilities.

Should a state (or states) decide not to continue silently suffering constant breaches of that agreement by one of the other parties or by the agents of the general government created by it (or them), it (or they) may lawfully demand a halt to the offending behavior and a performance by the breaching party of its contractual obligations.

If the breaches are significant enough, however, the states may demand rescission of the entire contract and return to their pre-contractual position. And remember, there is no requirement that the states expressly retain this right of rescission in the agreement — it is available as an independent operation of law.



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James Madison was no lawyer, but he knew and understood this legal principle. In fact, he summed it up perfectly in a speech he made at the Philadelphia convention:

Clearly, according to the expositors of the law of nations ... a breach of any one article, by any one party, leaves all other parties at liberty to consider the whole convention to be dissolved, unless they choose rather to compel the delinquent party to repair the breach.

While this path is open to the states, it isn't always necessary. Truthfully, no one who has witnessed the repeated violations of the original compact by the federal government would blame the states for severing the ties that bind them to that inveterate tyrant.

That said, there are yet millions of Americans who recognize the genius of the Constitution and earnestly want it to succeed, not only just for the sake of political stability, but for the sake of demonstrating the deference to the founding generation who took the time to distill the wisdom of ages into that unique document.

State legislators across the country proposing and fighting for passage of the various bills nullifying unconstitutional federal acts are demonstrating their understanding and respect for the basic facts of the creation of our Constitution and the limited and enumerated powers granted to the federal government by representatives of the states.

As of the date of publication of this article, Mississippi's Fourth Amendment Protection Act is waiting for consideration by the Senate Rules Committee.

*Photo of Mississippi State Capitol in Jackson, Miss.*

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