



Written by [Joe Wolverton, II, J.D.](#) on February 9, 2014

N.H. House Passes Bill Nullifying NDAA's Indefinite Detention

On February 6, the New Hampshire state House of Representatives approved HB 1279, a bill that would protect citizens from being indefinitely detained by the federal government, as permitted by the National Defense Authorization Act (NDAA).

Although State Representative Tim O'Flaherty, a Democrat from Hillsborough, is the primary sponsor of the bill, it enjoys the bipartisan support of two other Democrats and two Republicans.



"Some things are so bad that people know it's time to drop party affiliations and work together. Indefinite detention is really nothing more than kidnapping sanction by law, and the resistance to it from both parties in the state is refreshing news," said Mike Maherry, communications director for the Tenth Amendment Center.

Specifically, the New Hampshire bill declares that "indefinite detention or transfer to jurisdictions outside the United States of citizens of New Hampshire in particular and citizens of the United States in general are unlawful" pursuant to the state constitution of New Hampshire and the Fourth, Fifth, and Sixth Amendments of the U.S. Constitution.

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Then, citing the powers reserved to the states by the Ninth and Tenth Amendments, the bill mandates that:

No New Hampshire agency, political subdivision, or employee of either acting in his or her official capacity, and no member of the New Hampshire national guard under the command of the governor, may knowingly engage in any activity that aids an agency of or the armed forces of the United States in the execution of ... the National Defense Authorization Act for Fiscal Year 2012, Public Law 112-81, section 1021, or any other similar law, order, or regulation, in the investigation, arrest, detention, extra-judicial transfer to foreign jurisdictions or entities, military tribunal, or trial, of any person within the United States.

O'Flaherty's efforts, as well as those of like-minded lawmakers in other states, are critical if the protections afforded by the Bill of Rights are to be preserved and handed down to future generations.

The hour is now late, though. 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.



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One of the most offensive aspects 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.

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 bill passed by the New Hampshire state House — 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 U.S. Constitution.

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 U.S. armed forces 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 New Hampshire House of Representatives demonstrates, there are state and local leaders willing to protect the rights of citizens from being illegally classified by the Obama administration as enemies and imprisoned potentially forever without so much as a preliminary hearing, a right afforded to the most cold-blooded murderers.

New Hampshire 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.

To one degree or another, all these leaders are employing the most effective weapon in the war against federal tyranny: 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 exceeding the boundaries of its constitutional powers.

In *The Federalist*, No. 45, James Madison explained this balance of power we call federalism: “The powers delegated by the proposed Constitution to the federal government, are few and defined. Those which are to remain in the State governments are numerous and indefinite.”

Nullification recognizes the obligation states have to invalidate any federal measure that doesn’t fall within those few and defined powers allowed the federal government as enumerated in the U.S. Constitution.

States (and their legal subdivisions, such as cities and counties) retain the right to act as defenders of the Constitution. States retain the authority to decide the constitutionality of federal acts because they formed the union, and as creators of the compact, they must enforce the limits on the power of the



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federal government.

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.

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, other state legislators can stand with Tim O’Flaherty and the New Hampshire House of Representatives; Las Vegas; Emmett, Idaho; and the other towns and counties boldly resisting President Obama’s potential use of the NDAA to abolish centuries-old due process and habeas corpus protections. And by nullifying unconstitutional federal overreach, they can help restore the states’ rightful place as bulwarks of liberty.

HB 1279 will next be considered by the Federal Relations and Veterans Affairs committee of the New Hampshire state Senate.

Photo: New Hampshire State House

Joe A. Wolverton, II, J.D. is a correspondent for The New American and travels nationwide speaking on nullification, the Second Amendment, the surveillance state, and other constitutional issues. He is the co-founder of Liberty Rising, an educational endeavor aimed at promoting and preserving the Constitution. Follow him on Twitter @TNAJoeWolverton and he can be reached at jwolverton@thenewamerican.com.



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