Written by **Joe Wolverton, II, J.D.** on February 28, 2012

Utah Joins the Fight Against NDAA

Another state legislator is riding to the defense of the Tenth Amendment and the Constitution. On February 21, 2012, Utah State Senator Todd Weiler (R-Woods Cross, left) submitted S.C.R. 11, a resolution calling for the Congress to "repeal or clarify Sections 1021 and 1022 of the National Defense Authorization Act for Fiscal Year 2012."

The Utah lawmakers behind this measure "express disapproval" of the NDAA, specifically the provisions permitting the indefinite detention of American citizens. The bill calls on members of Congress to uphold their oath of office and "to protect the rights guaranteed by the United States Constitution and the Utah Constitution."

In an article in the *Salt Lake Tribune*, Senator Weiler explained that he has a "legitimate fear" that the NDAA will expand the power of the federal government.

As a concurrent resolution, Weiler's proposal is non-binding, but it does count on the support of two organizations rarely on the same side of political issues — the American Civil Liberties Union (ACLU) and the Utah Eagle Forum.

"Our concern is in the definition of 'terrorist,' " the Eagle's Forum's Dalane England told the *Tribune*.

Also in the *Tribune*:

> Marina Lowe, government counsel with the ACLU, said there is concern the law could lead to violations of civil rights, and the fact that there is at least ambiguity about the act means it should be reconsidered.

The text of the Utah resolution opposes the notion that constitutional liberty is a fair trade for security from terrorists. Furthermore, the vagueness of key terms in the "law" makes reasonable people wonder just how one could come to be branded a "belligerent" and exactly who would make that decision.

These concerns are expressed succinctly in the bill:

- there is uncertainty whether Sections 1021 and 1022 could be used to authorize indefinite military detention of United States citizens, legal permanent residents, and others without charge or trial within the United States;

- Section 1021 could be used to allow the President to determine whether or not a trial, and what type of trial, will be held for those arrested under the authority of the 2012 NDAA;

and, finally:

- the indefinite military detention of any person in the United States without charge or trial violates the right to be free from deprivation of life, liberty, or property without due process of law

guaranteed by the United States Constitution, Amendment V and Utah Constitution, Article I, Section 14;

• the indefinite military detention of any person within the United States without trial violates the right to a speedy trial by an impartial jury guaranteed by the United States Constitution, Amendment V and Utah Constitution, Article I, Section 12;

The Beehive State is the ninth state to consider some type of legislation calling upon to Congress to repeal the constitutionally offensive provisions of the NDAA that provide for the arrest, interrogation, and indefinite detention of American citizens.

Most of what is contained in the over 500-page NDAA is in fact "inimical to liberty." For example, under the provisions of Section 1021 of the NDAA, 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.

In order to more completely understand the importance of Senator Weiler's resolution, as well as the other measures that have been put forward by other state and local governments, a cursory understanding of the principle of nullification, as well as of the shocking unconstitutional provisions of the NDAA is of value.

Simply stated, nullification is the principle that each state retains the right to nullify, or invalidate, any federal law that a state deems unconstitutional. Nullification is founded on the assertion that 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 for the NDAA, 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.

As the Utah resolution clearly establishes, 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).

Furthermore, Section 1021 gives the President 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.

In order to execute this immense power, the NDAA unlawfully grants 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."

Regardless of promises to the contrary, the language of the NDAA places every citizen of the United States within the universe of potential "covered persons." 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.

According to published reports, the Ms. Lowe of the ACLU indicated that there had been discussion of offering a binding resolution, but Senator Weiler opted to pursue the other, non-binding, route.

While every effort by the states to use the sword of sovereignty to force the federal government back behind the lines of power drawn for it in the Constitution is commendable and should be encouraged, there are those fighting for this same cause who see trouble with these non-binding attempts to fight the NDAA and the federal usurpation of such obviously unconstitutional power.

For example, Richard Fry, the general counsel for the Patriot Coalition, a group committed to restoring the power structure established by our Constitution, penned the following criticism of bills currently working their way through the state legislatures of Virginia and Washington.

> The only way to "nullify" a government action directed at citizens is for the state to interpose its authority and protections between the federal government and its citizens. That is to say, for the state to act as a direct shield and a buffer against the actions of the federal government. Generally the only way to do this is for the state to criminalize the action by the federal government such that if the federal government tries to enforce the law within the subject nullifying state or a state officer attempts to assist the federal government they are subject to criminal penalties.

According to the website of the Utah State Senate, S.C.R. 11 has been reported out of committee and is scheduled to be read a second time as provided for by the state constitution.

Related article:

Virginia's NDAA Nullifying Bill Passed by State Senate