



Written by [Joe Wolverton, II, J.D.](#) on March 10, 2012

Utah State Legislature Unanimously Passes Anti-NDAA Resolution

As [reported earlier in *The New American*](#), on February 21, Utah State [Senator Todd Weiler](#) (R-Woods Cross, left) submitted SCR 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 intent of the resolution was to “express disapproval” of the NDAA, specifically the provisions permitting the indefinite detention of American citizens and the suspension of habeas corpus. 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.”

After several weeks of volleying versions of the resolution back and forth between the two houses of the state legislature, lawmakers finally passed a [compromise version of SCR 11](#) without a dissenting vote, sending the measure on to the Governor for his signature.

As originally drafted, SCR 11 expressed “strong disapproval” of sections 1021 and 1022 of the NDAA, calling on the Congress to repeal or clarify the offending provisions.

In fairness, the iteration of the resolution ultimately passed by the legislature was noticeably watered down when compared to the language of the bill as first offered by Senator Weiler. Much of the wording was altered by the Conference Committee and these substitutions likely facilitated the unanimous support from Utah’s legislators.

Specifically, the bill as amended [substituted some of the strong language](#) in the original with less strident verbiage more acceptable to members of both parties in both houses of the legislature.

For example, the amended bill removed the call for repeal of the so-called “kidnapping provisions” and eliminated explicit reference to “detention without trial,” replacing that phrase with a broader citation of the due process requirements of the U.S. and Utah Constitutions.

In fact, four times in the final version references to “indefinite detention” have been removed completely from the bill.

Another alteration changed the expression of “strong disapproval” of Sections 1021 and 1022 of the NDAA to a remarkably weaker expression of “concern.”

Blanket repeal is no longer the aim of the resolution; rather, Congress is called to “clarify or repeal if necessary” the sections in question.

Finally, rather than “expresses strong disapproval of an interpretation and application of Section 1021 or 1022 of the 2012 NDAA that violates a right,” the unanimously approved version “reaffirms our



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rights” as “guaranteed by the United States Constitution and the Utah Constitution.”

Eventually, the wording was worked enough to persuade every Representative and Senator in the Utah state legislature to vote in the affirmative. When asked by *The New American* for a response to his colleagues’ passage of his bill, Senator Weiler said, “I am pleased that the Utah House and Senate unanimously passed the resolution reaffirming our constitutional rights and condemning the NDAA.”

At the time he submitted the resolution, Weiler told a reporter from the [Salt Lake Tribune](#) that he had a “legitimate fear” that the NDAA would expand the power of the federal government.

While Weiler’s efforts on behalf of the Constitution and the right of states to be self-governing is unquestionably laudable, as a concurrent resolution, the measure is non-binding; however, 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,’” Eagle’s Forum’s Dalane England told the *Tribune*.

In order to more completely understand the importance of the stance taken by Utah, 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 explained above, Senator Weiler’s resolution is non-binding and is therefore not strictly a nullification of the NDAA. It is, nonetheless, a worthwhile and praiseworthy reminder to the Congress and the President that the states are aware of these federal usurpations and will not idly permit their sovereignty as states to be eviscerated without opposition.

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. (A writ of habeas corpus is a judicial mandate requiring that prisoners be brought before a judge or into court to determine whether the government has the right to continue detaining them.) The Sixth Amendment right to counsel is also revocable at the President’s will.

So many of the absolute powers provided to the President in the over-500-page NDAA are an affront to liberty. For example, Section 1021 unlawfully 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” — 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 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.



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As has been chronicled by *The New American*, Utah 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.

According to Senator Weiler, Governor Gary Herbert has signaled his intent to sign SCR 11, adding his name to the names of Utah's legislators in openly expressing their defiance of the dictatorial decrees of the unfettered federal government.



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