



Written by [Joe Wolverton, II, J.D.](#) on March 25, 2012

Maine Joins the Fight Against NDAA; Other State Efforts Continue

By now, readers should be familiar with the purpose behind passage of this joint resolution — the [National Defense Authorization Act of 2012](#). Specifically, Sections 1021 and 1022 of the NDAA, which endow President Obama with the power to deploy the American armed forces to arrest and indefinitely detain American citizens he suspects of posing a threat to national security.



Here are the relevant provisions of the [Maine resolution](#):

WHEREAS, the United States Congress passed the National Defense Authorization Act for fiscal year 2012 on December 15, 2011, and the President of the United States signed the Act into law on December 31, 2011; and

WHEREAS, the Act directs the Armed Forces of the United States to detain any person who is captured in the course of hostilities authorized by the federal Authorization for Use of Military Force Against Terrorists and who is determined to be a member of or part of al-Qaeda or an associated force that acts in coordination with or pursuant to the direction of al-Qaeda and to have participated in the course of planning or carrying out an attack against the United States or its coalition partners; and

WHEREAS, the disagreements and uncertainty in interpretation of the law has raised significant concerns about due process for United States citizens; and

WHEREAS, the prospect of the indefinite detention of United States citizens violates, without due process of law, basic rights enshrined in the United States Constitution, such as the right to seek a writ of habeas corpus, the right to petition for a redress of grievances, the right to be free from unreasonable searches and seizures and the right to counsel; and

WHEREAS, it is crucial to national security that funding contained in the National Defense Authorization Act for the Department of Defense and members of the military and their dependents remain intact; and

WHEREAS, the members of this Legislature have taken an oath to uphold the United States Constitution and the Constitution of Maine; now, therefore, be it

RESOLVED: That We, your Memorialists, most respectfully urge and request that the President of the United States and the United States Congress amend the National Defense Authorization Act



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to clarify that any provisions contained within will not deprive United States citizens of the rights of due process...

The chief sponsor of this joint resolution is [state Representative Richard Cebra \(R-Naples\)](#). When asked by *The New American* what motivated him to memorialize his opposition to the NDAA, Cebra replied, "I believe it is one of the state legislature's functional, foundational pillars to constantly keep the federal government in check and to respond when her citizens' constitutional rights are threatened."

In a [story published by the Tenth Amendment Center](#), the director of the Maine Tenth Amendment Center explained that "the primary opposition to the resolution came not from those opposed to challenging NDAA detention provisions, but from lawmakers wanting to expand the language to cover all 'persons,' not just citizens."

On March 20, the state Senate of Maine followed the example of their colleagues in the other house of the legislature and adopted HP 1397.

In order to more completely understand the importance of the stance taken by the state legislature of Maine, as well as the other measures that have been put forward by other state and local governments, it is important to have a cursory understanding of the principle of nullification, as well as of the shocking unconstitutional provisions of the NDAA.

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 this explanation reveals, state Representative Cebra's resolution is not strictly a nullification of the NDAA since it's nonbinding. It is, nonetheless, a worthwhile and praiseworthy reminder to the President that the states are aware of these federal usurpations and will not idly permit their sovereignty 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*, Maine has become the 11th state to consider some type of measure 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.

In other news regarding state efforts to thwart the NDAA's indefinite detention provisions, Utah state Senator Todd Weiler reports to *The New American* that both houses of the state legislature unanimously passed [the resolution he sponsored](#) and that 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.

In the state of Rhode Island where state Representative Dan Gordon has sponsored an anti-NDAA bill, Gordon informed *The New American* last week that he had a meeting with the committee chairman and leadership on the bill. If they approve the measure, it will be sent to the floor of the House for deliberation by the whole body.

Finally, state Senator Brian Nieves of Missouri reports to *The New American* that his resolution, [SJR 45](#), has been heard and voted out of committee and now he is waiting for floor time for consideration of the bill.

As more state legislators join the fray and commit to assuming their rightful role as the "guardians of liberty," we will bring them to the attention of our readers.

Photo: Maine State House



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