Written by **Joe Wolverton, II, J.D.** on January 2, 2015

Missouri Bill Bans Use of Local Resources for NSA Surveillance

A bill filed late last month in Missouri would step into the breach left by a federal government unwilling to restrain the unconstitutional surveillance of Americans.

The bill, HB 264, or the Missouri Fourth Amendment Protection Act, was filed by state representative Keith Frederick and would not only offer support to the effort of sister states to shut down the NSA's facilities (such as the mammoth data center in Utah), but would mandate that counties, cities, and towns in the Show Me State:

> shall not assist, participate with, or provide material support or resources to enable or facilitate a federal agency in the collection or use of a person's electronic data or metadata without such person's informed consent, or without a warrant, based upon probable cause that particularly describes the person, place, or thing to be searched or seized, or without acting in accordance with a legally-recognized exception to the warrant requirements.

This resistance to federal overreach is widespread in Missouri. In August, voters in the state expressed their opposition to the expansion of the federal surveillance apparatus within the sovereign borders of their state by passing Amendment 9.

To its credit, rather than wrangle over what is or is not included in the constitutional definition of the "persons, houses, papers, or effects" protected from unreasonable searches and seizures by the Fourth Amendment, the bill passed by the Missouri legislature explicitly places "electronic data and communication" within the Fourth Amendment's safeguards.

In a deft move, the amendment replaced the "privacy rights" provisions of the state constitution with language specifically surrounding electronic communications within the sphere of Fourth Amendment protection:

> That the people shall be secure in their persons, papers, homes [and], effects, and electronic communications and data, from unreasonable searches and seizures; and no warrant to search any place, or seize any person or thing, or access electronic data or communication, shall issue without describing the place to be searched, or the person or thing to be seized, or the data or communication to be accessed, as nearly as may be; nor without probable cause, supported by written oath or affirmation.

By specifically outlawing the wholesale, warrantless collection of electronic communication and data, the Missouri amendment makes great strides toward thwarting the Obama administration's ever-extending reach of surveillance aimed at making every citizen a suspect and revealing the full catalog of a person's electronic and digital life to the prying eyes of the rulers of the incipient federal police state and its state allies and agents.

When taken together the Missouri Fourth Amendment Protection Act recently introduced by Representative Fredericks and the amendment that preceded it would seem to stymie all attempts by the NSA to set up shop in Missouri. Similar efforts are underway in Utah, although the road in that state seems rockier, but just as valuable as the Missouri legislation.

As *The New American* reported in November, Utah state Representative Marc Roberts is ready to try again to cut off the water to the massive National Security Agency (NSA) data center near Salt Lake City.

Although the legislation won't be considered by the state House of Representatives until sometime early in 2015, Roberts' bill, H.B. 161, is already facing scrutiny from some of his fellow lawmakers. Members of the Public Utilities and Technology Interim Committee met to conduct preliminary hearings into the ends and means of the measure. As reported by the *Salt Lake Tribune*:

> A Utah legislative committee on Wednesday asked a lawmaker to refine a bill that seeks to — eventually — shut off water to the National Security Agency's data center in Bluffdale.
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> Committee members expressed some concerns with the bill but no outright opposition. They asked the bill's sponsor, Rep. Marc Roberts, R-Santaquin, to better define who would be impacted by the bill.
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> The committee heard a report on how Bluffdale issued $3.5 million in bonds to pay for water lines leading to the Utah Data Center. Bluffdale agreed to sell the NSA water at a rate below the city guidelines in order to secure the contract.
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> Bluffdale leaders believe the agreement will bring long-term benefits to the town by helping finance infrastructure that will attract new businesses.

The bill is similar to one offered by Roberts during the last legislative session.

In fairness, HB 161 wouldn't immediately close the spigot at the massive surveillance complex. The bill would prohibit a renewal of the current contract which is due to expire in 2021.

Regardless of the difficulty of shepherding such measures through the state legislatures, the need for vigilance has never been more urgent. As the Tenth Amendment Center reported, "The NSA has been aggressively expanding in states like Utah, Texas, Colorado and elsewhere, generally focusing on locations that can provide cheap and plentiful resources like water and power."

The Missouri bill represents a sound understanding of the method of state resistance to federal tyranny espoused by James Madison in *Federalist*, No. 45, where he encouraged state lawmakers, in order to prevent federal abridgment of fundamental liberties, to refuse "to co-operate with the officers of the Union."

Additionally, the authority of states to withhold funds from federal officials who consider the states nothing more than ATMs is upheld in a principle of constitutional law known as the anti-commandeering doctrine.

Anti-commandeering prohibits the federal government from forcing states to participate in any federal program that does not concern "international and interstate matters."

While this expression of federalism ("dual sovereignty," as it was named by Justice Antonin Scalia) was first set forth in the case of *New York v. United States* (1992), most recently it was reaffirmed by the high court in the case of *Mack and Printz v. United States* (1997).

The Tenth Amendment Center report on the Missouri bill cites another Supreme Court case supporting the anti-commandeering principle:

> In *Prigg v. Pennsylvania* (1842), Justice Joseph Story held that the federal government could not force states to implement or carry out the Fugitive Slave Act of 1793. He said that it was a federal law, and the federal government ultimately had to enforce it.
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> The fundamental principle applicable to all cases of this sort, would seem to be, that where the end is required, the means are given; and where the duty is enjoined, the ability to perform it is contemplated to exist on the part of the functionaries to whom it is entrusted. The clause is found in the national Constitution, and not in that of any state. It does not point out any state functionaries, or any state action to carry its provisions into effect. The states cannot, therefore, be compelled to enforce them; and it might well be deemed an unconstitutional exercise of the power of interpretation, to insist that the states are bound to provide means to carry into effect the duties of the national government, nowhere delegated or intrusted to them by the Constitution.

Finally, as Missouri, Utah, and others states expected to join the fray fight against federal usurpation, *nullification* must be the weapon of choice if the concept of federalism is to be restored.

Nullification, as explained by Thomas Jefferson and James Madison, is the most powerful weapon against the federal assault on state sovereignty and individual liberty.

By applying the principles set out in the Kentucky and Virginia Resolutions, states can simultaneously rebuild the walls of sovereignty once protected by the Constitution, in particular the Tenth Amendment, and drive the forces of federal consolidation back to the banks of the Potomac.

House Bill 264 will go to a committee of the Missouri state House of Representatives sometime after the legislative session begins on January 7. The measure being offered in Utah will begin its journey through the legislative process on January 26.

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