

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 53rd Legislature (2012)

4 HOUSE CONCURRENT
5 RESOLUTION 1025

By: Key

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7 AS INTRODUCED

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9 A Concurrent Resolution expressing belief that the
10 National Defense Authorization Act for Fiscal Year
11 Congressional Delegation to commence efforts to
12 repeal certain sections of the act; expressing belief
13 that the unconstitutional sections of the act are not
14 enforceable within the state and prohibiting state
15 officers from enforcing them; and directing
16 distribution.

17 WHEREAS, on December 15, 2011, the 220th anniversary of the Bill
18 of Rights, the United States Senate passed the Conference Report to
19 House of Representatives Bill H.R. 1540, the "National Defense
20 Authorization Act for Fiscal Year 2012 (NDAA)"; and

21 WHEREAS, on December 31, 2011, President Barack Obama signed the
22 Conference Report to House of Representatives Bill H.R. 1540, the
23 National Defense Authorization Act for Fiscal Year 2012, into law;
24 and

1 WHEREAS, the NDAA contains provisions repugnant to the Bill of
2 Rights contained within the Constitution of the State of Oklahoma
3 and the Constitution of the United States of America; and

4 WHEREAS, the State of Oklahoma entered the Union in 1907 for the
5 purposes described in the Preamble to the Constitution of the United
6 States, to include securing the "Blessings of Liberty" for
7 themselves and their "Posterity"; and

8 WHEREAS, the citizens of Oklahoma did "ordain and establish" the
9 Constitution of the State of Oklahoma, including a Bill of Rights,
10 many of which suffer violations and infringements of the Rights of
11 the People at the direction of the NDAA; and

12 WHEREAS, the Oklahoma and United States constitutions are
13 infringed, endangered, or usurped by provisions of the NDAA which
14 authorize the "indefinite detention" of persons at the discretion of
15 the President; and

16 WHEREAS, the Preamble to the U.S. Constitution states: "We the
17 People of the United States, in Order to form a more perfect Union,
18 establish Justice, insure domestic Tranquility, provide for the
19 common defence, promote the general Welfare, and secure the
20 Blessings of Liberty to ourselves and our Posterity, do ordain and
21 establish this Constitution for the United States of America."; and

22 WHEREAS, the Preamble to the Constitution of the State of
23 Oklahoma declares: "Invoking the guidance of Almighty God, in order
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1 to secure and perpetuate the blessing of liberty; to secure just and
2 rightful government; to promote our mutual welfare and happiness,
3 we, the people of the State of Oklahoma, do ordain and establish
4 this Constitution.”; and

5 WHEREAS, the U.S. Constitution, Article I, Section 9, Clause 2,
6 states: “The Privilege of the Writ of Habeas Corpus shall not be
7 suspended, unless when in Cases of Rebellion or Invasion the public
8 Safety may require it.”; and

9 WHEREAS, the Oklahoma Bill of Rights, Article II, Section 10,
10 states: “The privilege of the writ of habeas corpus shall never be
11 suspended by the authorities of this State.”; and

12 WHEREAS, the U.S. Constitution, Article III, Section 2, Clause
13 3, states: “The Trial of all Crimes, except in Cases of
14 Impeachment, shall be by Jury; and such Trial shall be held in the
15 State where the said Crimes shall have been committed; but when not
16 committed within any State, the Trial shall be at such Place or
17 Places as the Congress may by Law have directed.”; and

18 WHEREAS, the NDAA, as passed into law, authorizes the denial of
19 Article III, Section 2 jury trials in civilian courts to American
20 citizens and lawful residents accused of treason as defined in
21 Article III, Section 3, “levying War against [the United States], or
22 in adhering to their Enemies, giving them Aid and Comfort”; and
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1 WHEREAS, the U.S. Constitution, Article III, Section 3, states:
2 "Treason against the United States, shall consist only in levying
3 War against them, or in adhering to their Enemies, giving them Aid
4 and Comfort. No Person shall be convicted of Treason unless on the
5 Testimony of two Witnesses to the same overt Act, or on Confession
6 in open Court."; and

7 WHEREAS, the Oklahoma Bill of Rights, Article II, Section 16,
8 states: "Treason against the State shall consist only in levying
9 war against it or in adhering to its enemies, giving them aid and
10 comfort. No person shall be convicted of treason, unless on the
11 testimony of two witnesses to the same overt act, or on confession
12 in open court."; and

13 WHEREAS, the U.S. Constitution, 4th Amendment, states: "The
14 right of the people to be secure in their persons, houses, papers,
15 and effects, against unreasonable searches and seizures, shall not
16 be violated, and no Warrants shall issue, but upon probable cause,
17 supported by Oath or affirmation, and particularly describing the
18 place to be searched, and the persons or things to be seized."; and

19 WHEREAS, the Oklahoma Bill of Rights, Article II, Section 30,
20 states: "The right of the people to be secure in their persons,
21 houses, papers, and effects against unreasonable searches or
22 seizures shall not be violated; and no warrant shall issue but upon
23 probable cause supported by oath or affirmation, describing as

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1 particularly as may be the place to be searched and the person or
2 thing to be seized.”; and

3 WHEREAS, the U.S. Constitution, 5th Amendment, states: “No
4 person shall be held to answer for a capital, or otherwise infamous
5 crime, unless on a presentment or indictment of a Grand Jury, except
6 in cases arising in the land or naval forces, or in the Militia,
7 when in actual service in time of War or public danger; nor shall
8 any person be subject for the same offence to be twice put in
9 jeopardy of life or limb; nor shall be compelled in any criminal
10 case to be a witness against himself, nor be deprived of life,
11 liberty, or property, without due process of law; nor shall private
12 property be taken for public use, without just compensation.”

13 (emphasis added); and

14 WHEREAS, the Oklahoma Bill of Rights, Article II, Section 7,
15 states: “No person shall be deprived of life, liberty, or property,
16 without due process of law.” (emphasis added); and

17 WHEREAS, the U.S. Constitution, 6th Amendment, states: “In all
18 criminal prosecutions, the accused shall enjoy the right to a speedy
19 and public trial, by an impartial jury of the State and district
20 wherein the crime shall have been committed, which district shall
21 have been previously ascertained by law, and to be informed of the
22 nature and cause of the accusation; to be confronted with the
23 witnesses against him; to have compulsory process for obtaining

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1 witnesses in his favor, and to have the Assistance of Counsel for
2 his defence.”; and

3 WHEREAS, the U.S. Constitution, 8th Amendment, states:
4 “Excessive bail shall not be required, nor excessive fines imposed,
5 nor cruel and unusual punishments inflicted.”; and

6 WHEREAS, the Oklahoma Bill of Rights, Article II, Section 9,
7 states: “Excessive bail shall not be required, nor excessive fines
8 imposed, nor cruel or unusual punishments inflicted.”; and

9 WHEREAS, the NDAA, in direct violation of the U.S.
10 Constitution’s 8th Amendment, and Oklahoma’s Bill of Rights, Article
11 II, Section 9, authorizes “cruel and unusual punishments” in the
12 form of “indefinite detentions”, and the transfer of American
13 citizens to “foreign nations”, and/or unnamed foreign “entities” for
14 unspecified purposes; and

15 WHEREAS, the U.S. Constitution, 14th Amendment, Section 1,
16 states: “No State shall make or enforce any law which shall abridge
17 the privileges or immunities of citizens of the United States; nor
18 shall any State deprive any person of life, liberty, or property,
19 without due process of law; nor deny to any person within its
20 jurisdiction the equal protection of the laws.”; and

21 WHEREAS, our oath of office creates an active duty, not a
22 passive duty; and

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1 WHEREAS, the U.S. Constitution, Article VI, Clause 3, states:
2 "The Senators and Representatives before mentioned, and the Members
3 of the several State Legislatures, and all executive and judicial
4 Officers, both of the United States and of the several States, shall
5 be bound by Oath or Affirmation, to support this Constitution; but
6 no religious Test shall ever be required as a Qualification to any
7 Office or public Trust under the United States."; and

8 WHEREAS, the Oklahoma Constitution, Article XV, Section 1,
9 states: "All public officers, before entering upon the duties of
10 their offices, shall take and subscribe to the following oath or
11 affirmation: "I, _____, do solemnly swear (or affirm) that
12 I will support, obey, and defend the Constitution of the United
13 States, and the Constitution of the State of Oklahoma, and that I
14 will not, knowingly, receive, directly or indirectly, any money or
15 other valuable thing, for the performance or nonperformance of any
16 act or duty pertaining to my office, other than the compensation
17 allowed by law; I further swear (or affirm) that I will faithfully
18 discharge my duties as _____ to the best of my ability."; and

19 WHEREAS, the United States Constitution, Article II, Section 1,
20 Clause 8, states: "Before he enter on the Execution of his Office,
21 he shall take the following Oath or Affirmation: 'I do solemnly
22 swear (or affirm) that I will faithfully execute the Office of
23 President of the United States, and will to the best of my Ability,

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1 preserve, protect and defend the Constitution of the United
2 States.'"; and

3 WHEREAS, enlisted members of the Armed Forces of the United
4 States are bound by the following oath: "I, [name], do solemnly
5 swear (or affirm) that I will support and defend the Constitution of
6 the United States against all enemies, foreign and domestic; that I
7 will bear true faith and allegiance to the same; and that I will
8 obey the orders of the President of the United States and the orders
9 of the officers appointed over me, according to regulations and the
10 Uniform Code of Military Justice. So help me God."; and

11 WHEREAS, commissioned officers of the Armed Forces of the United
12 States are bound by the following oath: "I, [name], do solemnly
13 swear (or affirm) that I will support and defend the Constitution of
14 the United States against all enemies, foreign and domestic; that I
15 will bear true faith and allegiance to the same; that I take this
16 obligation freely, without any mental reservation or purpose of
17 evasion; and that I will well and faithfully discharge the duties of
18 the office on which I am about to enter. So help me God."; and

19 WHEREAS, our primary responsibility under our duty as
20 legislators and the representatives of the citizens of Oklahoma, is
21 to protect the fundamental liberties of the citizens of Oklahoma
22 from any infringement, coming from any source, foreign or domestic;
23 and

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1 WHEREAS, the execution of parts of the NDAA may require members
2 of the armed forces to violate their oath to support and defend the
3 Constitution of the United States; and

4 WHEREAS, we believe the NDAA unconstitutionally infringes upon
5 the fundamental rights of all citizens of the Republic, and has
6 other flaws, as noted below:

7 1. The NDAA is deceptive in that it purports to "affirm" the
8 authority granted the President under the Authorization for the Use
9 of Military Force (AUMF) as passed on September 14, 2001, when in
10 fact it does expand the temporal scope and the entities to whom such
11 act can apply (See Subtitle D – Counterterrorism, Section 1021:
12 Affirmation of Authority of the Armed Forces of the United States to
13 Detain Covered Persons Pursuant to the Authorization for Use of
14 Military Force);

15 2. The NDAA is deceptive in that it purports not to expand or
16 limit the authority given the President under the subject AUMF or
17 the scope of the subject AUMF, when in fact it does expand the
18 temporal scope and the entities to whom such act can apply (See
19 Section 1021(d): Nothing in this section is intended to limit or
20 expand the authority of the President or the scope of the
21 Authorization for Use of Military Force); and

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UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 3. The NDAA is deceptive in that it purports not to affect
2 existing law or authorities relating to the detention of United
3 States citizens, et al., when in fact:

4 a. the Congress could not agree on what were the existing
5 "law or authorities",

6 b. the NDAA does expand the AUMF (See Section 1021(e):
7 Nothing in this section shall be construed to affect
8 existing law or authorities relating to the detention
9 of United States citizens, lawful resident aliens of
10 the United States, or any other persons who are
11 captured or arrested in the United States),

12 c. the provision of the NDAA will result in a different
13 law being applied to "United States citizens, lawful
14 resident aliens of the United States, or any other
15 persons who are captured or arrested in the United
16 States", i.e., the law of war,

17 d. due to the fact that there are general limiting
18 provisions in the NDAA which are inconsistent with
19 specific expanding provision in the NDAA, which a
20 court, in interpreting the NDAA, will most likely
21 interpret the subject limiting provision to read:
22 "Nothing in this section shall be construed to affect
23 existing law or authorities...except as otherwise
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1 provided in this section." (See Section 1021(e):
2 Nothing in this section shall be construed to affect
3 existing law or authorities relating to the detention
4 of United States citizens, lawful resident aliens of
5 the United States, or any other persons who are
6 captured or arrested in the United States), and

7 e. as the intent and purpose of the NDAA is to treat the
8 United States of America as if it was a "battleground"
9 and thereby justify the application of the law of war
10 to those residing within the United States and its
11 territories, when in fact the United States and its
12 territories are not a "battleground"; and

13 WHEREAS, the NDAA did in fact expand the authority given to the
14 President under the subject AUMF, and expanded the scope of the
15 subject AUMF, in that it expanded the entities that could be
16 targeted beyond those noted in the AUMF and for a different time
17 (See Section 1023(b)(2) - A person who was a part of or
18 substantially supported Al-Qaeda, the Taliban, or associated forces
19 that are engaged in hostilities against the United States or its
20 coalition partners, including any person who has committed a
21 belligerent act or has directly supported such hostilities in aid of
22 such enemy forces); and

1 WHEREAS, it is deceptive for the NDAA to assert it does not
2 affect existing law or authorities in that:

3 1. There was no agreement within Congress as to what the
4 existing law is on the relevant subject;

5 2. The "authorities" on the subject issue are unclear at best;

6 3. The provision of the NDAA will result in a different law
7 being applied to "United States citizens, lawful resident aliens of
8 the United States, or any other persons who are captured or arrested
9 in the United States"; and

10 4. Due to the fact there are general limiting provisions in the
11 NDAA which are inconsistent with specific expanding provision in the
12 NDAA. A court in interpreting the NDAA will most likely interpret
13 the subject limiting provision to read: "Nothing in this section
14 shall be construed to affect existing law or authorities...except as
15 otherwise provided in this section." (See Section 1021(e)); and

16 WHEREAS, the NDAA would allow United States citizens and lawful
17 resident aliens to be "transferred to the custody or control of the
18 person's country of origin, any other foreign country, or any other
19 foreign entity", which would violate the duty of allegiance owed to
20 such persons by the United States of America as well as certain of
21 their fundamental freedoms; and

22 WHEREAS, the supporters of the NDAA have said the NDAA will have
23 the effect, and we believe it will have the effect, of allowing the
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1 President to treat the United States of America as if it was a
2 "battleground", and its citizens as if they were on a
3 "battleground", subjecting them to the law of war and martial law;
4 and

5 WHEREAS, granting the President the authority he would have over
6 a "battleground", when in fact no such battleground exists, is
7 unconstitutional; and

8 WHEREAS, as the NDAA contains deceptive language in that it
9 misrepresents what it does and it uses vague and ambiguous terms,
10 such sets the stage for the abuse of the Constitution, American
11 people and their fundamental rights; and

12 WHEREAS, the state and federal governments are limited by the
13 U.S. Constitution, including the Bill of Rights of the respective
14 state and federal constitutions; and

15 WHEREAS, no law is enforceable save those which are consistent
16 with the moral unalienable rights given to all men by God, as
17 declared in the Declaration of Independence and acknowledged in the
18 U.S. Constitution; and

19 WHEREAS, "Any person having knowledge of any treasonable project
20 is bound to disclose it to the President, or to a United States
21 judge, or to a Governor of a State or a State judge, or he is guilty
22 of misprision of treason, and may be fined One Thousand Dollars and
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1 imprisoned for seven years." (Treatise on Law of the American
2 Rebellion, page 20, Gard. Inst., 326; 1 U.S. St. L. 112, 119).

3 NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES
4 OF THE 2ND SESSION OF THE 53RD OKLAHOMA LEGISLATURE, THE SENATE
5 CONCURRING THEREIN:

6 THAT the Oklahoma Legislature hereby expresses its belief that
7 the National Defense Authorization Act for Fiscal Year 2012 is
8 unconstitutional in authorizing the President to use war powers in
9 the United States and its territories and over the citizens and
10 lawful resident aliens of the United States, as if they were in a
11 battlefield or war zone when in fact such is not the case.

12 THAT the Oklahoma Legislature directs the Congressional
13 Delegation of Oklahoma to commence immediately efforts to repeal the
14 harmful sections of the National Defense Authorization Act for
15 Fiscal Year 2012, to-wit, Sections 1021 and 1022, and any other
16 section or provision which will have the same or substantially the
17 same effect on America, its citizens and lawful resident aliens.

18 THAT the Oklahoma Legislature expresses its belief that all
19 provisions of the National Defense Authorization Act for Fiscal Year
20 2012 which are unconstitutional, including as noted herein above,
21 were and are null and void from their inception and are not
22 enforceable in the State of Oklahoma and it is the express policy of
23 the State of Oklahoma that no officer, employee, or agent of the
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1 State will implement, enforce or otherwise support, directly or
2 indirectly, any such unconstitutional provisions, and that a
3 violation of such policy will be deemed a violation of their oath of
4 office or employment, and will subject them to discipline up to and
5 including termination.

6 THAT a copy of this resolution be distributed to each member of
7 the Oklahoma Congressional Delegation, to the President of the
8 United States and to the Secretary of the Department of Defense.

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10 COMMITTEE REPORT BY: COMMITTEE ON XXXXX, dated XX-XX-XXXX - DO PASS,
11 As Amended and Coauthored.

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