

1 STATE OF OKLAHOMA

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

3 HOUSE CONCURRENT
4 RESOLUTION 1025

By: Key

5
6 AS INTRODUCED

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8 A Concurrent Resolution expressing belief that the
9 National Defense Authorization Act for Fiscal Year
10 2012 is unconstitutional; directing Oklahoma
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
18 WHEREAS, on December 15, 2011, the 220th anniversary of the Bill
19 of Rights, the United States Senate passed the Conference Report to
20 House of Representatives Bill H.R. 1540, the "National Defense
21 Authorization Act for Fiscal Year 2012 (NDAA)"; and

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

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

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

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

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

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

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

1 WHEREAS, the U.S. Constitution, Article I, Section 9, Clause 2,
2 states: "The Privilege of the Writ of Habeas Corpus shall not be
3 suspended, unless when in Cases of Rebellion or Invasion the public
4 Safety may require it."; and

5 WHEREAS, the Oklahoma Bill of Rights, Article II, Section 10,
6 states: "The privilege of the writ of habeas corpus shall never be
7 suspended by the authorities of this State."; and

8 WHEREAS, the U.S. Constitution, Article III, Section 2, Clause
9 3, states: "The Trial of all Crimes, except in Cases of
10 Impeachment, shall be by Jury; and such Trial shall be held in the
11 State where the said Crimes shall have been committed; but when not
12 committed within any State, the Trial shall be at such Place or
13 Places as the Congress may by Law have directed."; and

14 WHEREAS, the NDAA, as passed into law, authorizes the denial of
15 Article III, Section 2 jury trials in civilian courts to American
16 citizens and lawful residents accused of treason as defined in
17 Article III, Section 3, "levying War against [the United States], or
18 in adhering to their Enemies, giving them Aid and Comfort"; and

19 WHEREAS, the U.S. Constitution, Article III, Section 3, states:
20 "Treason against the United States, shall consist only in levying
21 War against them, or in adhering to their Enemies, giving them Aid
22 and Comfort. No Person shall be convicted of Treason unless on the
23 Testimony of two Witnesses to the same overt Act, or on Confession
24 in open Court."; and

1 WHEREAS, the Oklahoma Bill of Rights, Article II, Section 16,
2 states: "Treason against the State shall consist only in levying
3 war against it or in adhering to its enemies, giving them aid and
4 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 U.S. Constitution, 4th Amendment, states: "The
8 right of the people to be secure in their persons, houses, papers,
9 and effects, against unreasonable searches and seizures, shall not
10 be violated, and no Warrants shall issue, but upon probable cause,
11 supported by Oath or affirmation, and particularly describing the
12 place to be searched, and the persons or things to be seized."; and

13 WHEREAS, the Oklahoma Bill of Rights, Article II, Section 30,
14 states: "The right of the people to be secure in their persons,
15 houses, papers, and effects against unreasonable searches or
16 seizures shall not be violated; and no warrant shall issue but upon
17 probable cause supported by oath or affirmation, describing as
18 particularly as may be the place to be searched and the person or
19 thing to be seized."; and

20 WHEREAS, the U.S. Constitution, 5th Amendment, states: "No
21 person shall be held to answer for a capital, or otherwise infamous
22 crime, unless on a presentment or indictment of a Grand Jury, except
23 in cases arising in the land or naval forces, or in the Militia,
24 when in actual service in time of War or public danger; nor shall

1 any person be subject for the same offence to be twice put in
2 jeopardy of life or limb; nor shall be compelled in any criminal
3 case to be a witness against himself, nor be deprived of life,
4 liberty, or property, without due process of law; nor shall private
5 property be taken for public use, without just compensation."

6 (emphasis added); and

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

10 WHEREAS, the U.S. Constitution, 6th Amendment, states: "In all
11 criminal prosecutions, the accused shall enjoy the right to a speedy
12 and public trial, by an impartial jury of the State and district
13 wherein the crime shall have been committed, which district shall
14 have been previously ascertained by law, and to be informed of the
15 nature and cause of the accusation; to be confronted with the
16 witnesses against him; to have compulsory process for obtaining
17 witnesses in his favor, and to have the Assistance of Counsel for
18 his defence."; and

19 WHEREAS, the U.S. Constitution, 8th Amendment, states:
20 "Excessive bail shall not be required, nor excessive fines imposed,
21 nor cruel and unusual punishments inflicted."; and

22 WHEREAS, the Oklahoma Bill of Rights, Article II, Section 9,
23 states: "Excessive bail shall not be required, nor excessive fines
24 imposed, nor cruel or unusual punishments inflicted."; and

1 WHEREAS, the NDAA, in direct violation of the U.S.
2 Constitution's 8th Amendment, and Oklahoma's Bill of Rights, Article
3 II, Section 9, authorizes "cruel and unusual punishments" in the
4 form of "indefinite detentions", and the transfer of American
5 citizens to "foreign nations", and/or unnamed foreign "entities" for
6 unspecified purposes; and

7 WHEREAS, the U.S. Constitution, 14th Amendment, Section 1,
8 states: "No State shall make or enforce any law which shall abridge
9 the privileges or immunities of citizens of the United States; nor
10 shall any State deprive any person of life, liberty, or property,
11 without due process of law; nor deny to any person within its
12 jurisdiction the equal protection of the laws."; and

13 WHEREAS, our oath of office creates an active duty, not a
14 passive duty; and

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

22 WHEREAS, the Oklahoma Constitution, Article XV, Section 1,
23 states: "All public officers, before entering upon the duties of
24 their offices, shall take and subscribe to the following oath or

1 affirmation: "I, _____, do solemnly swear (or affirm) that
2 I will support, obey, and defend the Constitution of the United
3 States, and the Constitution of the State of Oklahoma, and that I
4 will not, knowingly, receive, directly or indirectly, any money or
5 other valuable thing, for the performance or nonperformance of any
6 act or duty pertaining to my office, other than the compensation
7 allowed by law; I further swear (or affirm) that I will faithfully
8 discharge my duties as _____ to the best of my ability."; and

9 WHEREAS, the United States Constitution, Article II, Section 1,
10 Clause 8, states: "Before he enter on the Execution of his Office,
11 he shall take the following Oath or Affirmation: 'I do solemnly
12 swear (or affirm) that I will faithfully execute the Office of
13 President of the United States, and will to the best of my Ability,
14 preserve, protect and defend the Constitution of the United
15 States.'"; and

16 WHEREAS, enlisted members of the Armed Forces of the United
17 States are bound by the following oath: "I, [name], do solemnly
18 swear (or affirm) that I will support and defend the Constitution of
19 the United States against all enemies, foreign and domestic; that I
20 will bear true faith and allegiance to the same; and that I will
21 obey the orders of the President of the United States and the orders
22 of the officers appointed over me, according to regulations and the
23 Uniform Code of Military Justice. So help me God."; and

24

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

9 WHEREAS, our primary responsibility under our duty as
10 legislators and the representatives of the citizens of Oklahoma, is
11 to protect the fundamental liberties of the citizens of Oklahoma
12 from any infringement, coming from any source, foreign or domestic;
13 and

14 WHEREAS, the execution of parts of the NDAA may require members
15 of the armed forces to violate their oath to support and defend the
16 Constitution of the United States; and

17 WHEREAS, we believe the NDAA unconstitutionally infringes upon
18 the fundamental rights of all citizens of the Republic, and has
19 other flaws, as noted below:

20 1. The NDAA is deceptive in that it purports to "affirm" the
21 authority granted the President under the Authorization for the Use
22 of Military Force (AUMF) as passed on September 14, 2001, when in
23 fact it does expand the temporal scope and the entities to whom such
24 act can apply (See Subtitle D – Counterterrorism, Section 1021:

1 Affirmation of Authority of the Armed Forces of the United States to
2 Detain Covered Persons Pursuant to the Authorization for Use of
3 Military Force);

4 2. The NDAA is deceptive in that it purports not to expand or
5 limit the authority given the President under the subject AUMF or
6 the scope of the subject AUMF, when in fact it does expand the
7 temporal scope and the entities to whom such act can apply (See
8 Section 1021(d): Nothing in this section is intended to limit or
9 expand the authority of the President or the scope of the
10 Authorization for Use of Military Force); and

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

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

16 b. the NDAA does expand the AUMF (See Section 1021(e):
17 Nothing in this section shall be construed to affect
18 existing law or authorities relating to the detention
19 of United States citizens, lawful resident aliens of
20 the United States, or any other persons who are
21 captured or arrested in the United States),

22 c. the provision of the NDAA will result in a different
23 law being applied to "United States citizens, lawful
24 resident aliens of the United States, or any other

1 persons who are captured or arrested in the United
2 States", i.e., the law of war,

- 3 d. due to the fact that there are general limiting
4 provisions in the NDAA which are inconsistent with
5 specific expanding provision in the NDAA, which a
6 court, in interpreting the NDAA, will most likely
7 interpret the subject limiting provision to read:
8 "Nothing in this section shall be construed to affect
9 existing law or authorities...except as otherwise
10 provided in this section." (See Section 1021(e):
11 Nothing in this section shall be construed to affect
12 existing law or authorities relating to the detention
13 of United States citizens, lawful resident aliens of
14 the United States, or any other persons who are
15 captured or arrested in the United States), and
16 e. as the intent and purpose of the NDAA is to treat the
17 United States of America as if it was a "battleground"
18 and thereby justify the application of the law of war
19 to those residing within the United States and its
20 territories, when in fact the United States and its
21 territories are not a "battleground"; and

22 WHEREAS, the NDAA did in fact expand the authority given to the
23 President under the subject AUMF, and expanded the scope of the
24 subject AUMF, in that it expanded the entities that could be

1 targeted beyond those noted in the AUMF and for a different time
2 (See Section 1023(b)(2) - A person who was a part of or
3 substantially supported Al-Qaeda, the Taliban, or associated forces
4 that are engaged in hostilities against the United States or its
5 coalition partners, including any person who has committed a
6 belligerent act or has directly supported such hostilities in aid of
7 such enemy forces); and

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

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

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

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

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

23 WHEREAS, the NDAA would allow United States citizens and lawful
24 resident aliens to be "transferred to the custody or control of the

1 person's country of origin, any other foreign country, or any other
2 foreign entity", which would violate the duty of allegiance owed to
3 such persons by the United States of America as well as certain of
4 their fundamental freedoms; and

5 WHEREAS, the supporters of the NDAA have said the NDAA will have
6 the effect, and we believe it will have the effect, of allowing the
7 President to treat the United States of America as if it was a
8 "battleground", and its citizens as if they were on a
9 "battleground", subjecting them to the law of war and martial law;
10 and

11 WHEREAS, granting the President the authority he would have over
12 a "battleground", when in fact no such battleground exists, is
13 unconstitutional; and

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

18 WHEREAS, the state and federal governments are limited by the
19 U.S. Constitution, including the Bill of Rights of the respective
20 state and federal constitutions; and

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

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

7 NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES
8 OF THE 2ND SESSION OF THE 53RD OKLAHOMA LEGISLATURE, THE SENATE
9 CONCURRING THEREIN:

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

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

22 THAT the Oklahoma Legislature expresses its belief that all
23 provisions of the National Defense Authorization Act for Fiscal Year
24 2012 which are unconstitutional, including as noted herein above,

1 were and are null and void from their inception and are not
2 enforceable in the State of Oklahoma and it is the express policy of
3 the State of Oklahoma that no officer, employee, or agent of the
4 State will implement, enforce or otherwise support, directly or
5 indirectly, any such unconstitutional provisions, and that a
6 violation of such policy will be deemed a violation of their oath of
7 office or employment, and will subject them to discipline up to and
8 including termination.

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

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