

The “Use of the Armed Forces” in America under a National Emergency. Repeal of the Posse Comitatus Act.

Unrestricted & Arbitrary Powers conferred to the President & Vice President

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Global Research, November 18, 2020
27 June 2007

Region: [USA](#)
Theme: [Law and Justice](#), [Police State & Civil Rights](#)

This article was published more than 13 years ago.

Is it relevant to the ongoing political crisis in the US in the wake of 2020 Presidential Elections.

Read carefully.

The President of the US namely Donald Trump could invoke the John Warner NDAA 07 and thereby call upon the unrestricted and arbitrary “Use” of the military in police and law enforcement functions, while bypassing the US Congress and the Judiciary.

This is not the only piece of relevant legislation which repeals the Posse Comitatus Act.

Another important piece of legislation (National Defense Authorization Act (NDAA) HR 1540) was adopted under the Obama administration:

HR 1540 (signed into law by president Obama on December 31, 2011) set the stage for the repeal of constitutional government, not to mention the development of the “Surveillance State”, which has recently been the object of heated debate.

The adoption of the “National Defense Authorization Act (NDAA), HR 1540) reinforces NDAA 07. It is tantamount to the militarization of law enforcement, the repeal of the Posse Comitatus Act.

Michel Chossudovsky, November 18, 2020

In October 2006, Bush signed into law the [John Warner National Defense Authorization Act for Fiscal Year 2007](#), (also known under the title [Department of Defense Authorization Act for Fiscal Year 2007](#)) [The John Warner NDAA 07 was adopted on 17 October 2006]

NDAA 07 includes specific provisions which allow the military to take control of normal police and law enforcement functions at the Federal and State levels.

Sec. 1076 of the NDAA 07 overturns the Posse Comitatus Act of 1878, which prevents the

military from intervening in the conduct of civilian government activities, including the conduct of Justice and Law Enforcement. Posse Comitatus has been central to the functioning of constitutional government. (It should be noted that other previous pieces of legislation have already invalidated the substance of Posse Comitatus).

What is significant in these specific provisions of NDAA 07 (Sec. 1076) is that they *dovetail* the provisions of [Bush's National Security Presidential and Homeland Directive \(NSPD 51, HSPD 20\)](#) enacted on May 9, 2007.

NSPD 51 would essentially scrap Constitutional government in the case of a so-called "Catastrophic Emergency". .

If an emergency situation were to be called by the President, NSPD 51 would instate martial law under the authority of the White House and the Department of Homeland Security. It would suspend constitutional government under the provisions of Continuity in Government (COG). It would establish extraordinary powers for the president and vice-president.

The provisions of NSPD 51 are consistent with an existing body of legislation and regulations pertaining to alleged terrorist attacks on the Homeland and the declaration of martial law. Sec. 1076 of NDAA 07 (DDAA 07), however, goes much further in defining the role of the Military in the case of a "Catastrophic Emergency."

Sec 1076 essentially defines the discretionary powers which would be conferred to the president and the vice president if NSPD 51 were to be applied.

Sec. 1076 of the NDAA 07, which was apparently slipped in at the last minute at the request of the White House as an amendment of Sec. 333, pertains to the "Use of the Armed Forces in Major Public Emergencies."

Sec 1076 is extremely explicit; it virtually creates a Pinochet style environment for the mass arrest of political dissidents without trial, the storming of public rallies, etc.

It provides specific details regarding the powers conferred to the President and Vice President in the case of a "Catastrophic Emergency" as envisaged under NSPD 51:

The president "may employ the armed forces ... to restore public order and enforce the laws of the United States"

Unrestricted powers are granted to the White House. The President [Trump] would have the authority to suspend civilian law enforcement at the federal and state levels and call in the Military, which would be in charge of suppressing "domestic violence" "insurrection" (e.g. public rallies), or "conspiracy", meaning anybody who might express dissent, indignation or opposition to the Bush Administration for having scrapped the Constitution.

The emphasis of Sec. 1076 is in relation to actions directed against "domestic enemies" rather than bona fide "defense" in relation to attacks by foreign forces, which is part of the Military's mandate.

Taken together, NSPD 51 and Sec 1076 of the NDAA 07 define the contours of a "democratic dictatorship" in America under the authority of the White House.

We are not dealing, however, with “Military Rule” or “Military Government” as normally understood, because the authority to govern under the provisions of NSPD 51 is vested in the President and the Vice President.

What is at stake *is the unrestricted and arbitrary “Use” of the Military by the President /Vice President in the conduct of police and law enforcement functions*, while bypassing the US Congress and the Judiciary.

Below is the full text of Sec 1076 of NDAA 07 which amends Sec 333.

[Please note a correction was brought to this article on June 28, 2007. What was initially reproduced in Annex was Sec.1042 of the initial bill DDAA 07 which amends Sec. 333. In substance Sec 1076 of NDAA 07 with some minor changes in emphasis is similar to Sec 1042 of DDAA 07. Both amend Sec 333.]

Below is the relevant excerpt (Sec 1076) of the John Warner NDAA 07 signed into law by President Bush in October 2006.]

SEC. 1076. USE OF THE ARMED FORCES IN MAJOR PUBLIC EMERGENCIES.

(a) Use of the Armed Forces Authorized-

(1) IN GENERAL- Section 333 of title 10, United States Code, is amended to read as follows:

“Sec. 333. Major public emergencies; interference with State and Federal law

“(a) Use of Armed Forces in Major Public Emergencies- (1) The President may employ the armed forces, including the National Guard in Federal service, to-

“(A) restore public order and enforce the laws of the United States when, as a result of a natural disaster, epidemic, or other serious public health emergency, terrorist attack or incident, or other condition in any State or possession of the United States, the President determines that-

“(i) domestic violence has occurred to such an extent that the constituted authorities of the State or possession are incapable of maintaining public order; and

“(ii) such violence results in a condition described in paragraph (2); or

“(B) suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy if such insurrection, violation, combination, or conspiracy results in a condition described in paragraph (2).

“(2) A condition described in this paragraph is a condition that-

“(A) so hinders the execution of the laws of a State or possession, as applicable, and of the United States within that State or possession, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State or possession are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or

“(B) opposes or obstructs the execution of the laws of the United States or impedes the

course of justice under those laws.

`(3) In any situation covered by paragraph (1)(B), the State shall be considered to have denied the equal protection of the laws secured by the Constitution.

`(b) Notice to Congress- The President shall notify Congress of the determination to exercise the authority in subsection (a)(1)(A) as soon as practicable after the determination and every 14 days thereafter during the duration of the exercise of that authority.'.

(2) PROCLAMATION TO DISPERSE- Section 334 of such title is amended by inserting `or those obstructing the enforcement of the laws' after `insurgents'.

(3) HEADING AMENDMENT- The heading of chapter 15 of such title is amended to read as follows:...

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