

**Nullify the NSA!**  
**Guest: Mike Maharrey**  
**December 9**

***Mike Maharrey is communications director for the Tenth Amendment Center.***

**WOODS:** Tell us about this initiative in Utah. Is it Offnow.org?

**MAHARREY:** That is correct. Offnow.org. And we've been referring to it as the OffNow Coalition because it's not just the Tenth Amendment Center, but it's a number of groups that span the political spectrum. We've got the Bill of Rights Defense Committee, and Downsize D.C., and several other organizations—antiwar.com—that are on board with this. This is a national coalition, and it's focused not just on Utah. This is nationwide. We're going to try to get this done in every state in the union, if we possibly can.

**WOODS:** Let's dive right in. I have deliberately not told listeners yet what exactly this is all about, what the strategy is, so I want you to describe for them what exactly are you aiming to do here with this initiative.

**MAHARREY:** Well, I think everybody is aware that the NSA [National Security Agency] has so grossly violated the Constitution, and so grossly violated our basic privacy rights. I don't think there's any question about that. The question then becomes: what are we going to do about it?

Most people want to focus on the D.C. solutions. You know, they're going to call their congressmen, and they're going to send a petition to Barack Obama, and wait for the nine federal employees over at the court to decide one way or the other, and we know from experience that this doesn't work. So we've come up with an idea.

Actually, let me back up a second. We didn't come up with this idea at all. James Madison actually came up with the idea in Federalist #46. And he said one way to protect the Constitution and stop federal overreach is simply to refuse to cooperate with officers of the union. So that's what the whole OffNow campaign is about. We want state governments and local governments to simply refuse to work with the NSA in any capacity whatsoever.

To that end, we've created a whole program with several steps. The first step that we're looking at is this Fourth Amendment Protection Act, which is a piece of legislation that would be at the state level. I'll quickly run through the four things that this would address.

Number one, it would inhibit the state from giving any material support to the NSA. So, for example, in the state of Utah, we've got this data center. It uses some 1.7 million gallons of water every day, or at least it will once it's fully operational. That water is supplied by Bluffdale, Utah, which is a subdivision of the state. The state has the authority and the power to simply say to Bluffdale, "You can't do business with them." That would cut off the water. No water; no cooling. No cooling; no spy computers. So, that's kind of the idea. We want to repeat this in

every state. Every place the NSA tries to go to build these data centers, we want the states to refuse any cooperation and any material support.

Number two, data sharing. We know from the Snowden revelations that the federal government shares this information. NSA gathers it unconstitutionally, and shares it with state and local law enforcement. It is gathered without a warrant. Part of this act would prohibit the state from utilizing any unconstitutionally gathered information that was taken without a warrant in any court or any judicial hearing. So, therefore, it makes this NSA data useless at the state level.

The third part of this deals with universities. One hundred and sixty-six universities across the United States have partnerships with the NSA. They call them centers of academic excellence—nice Orwellian terminology there. And these universities provide assistance to the NSA through research, and also providing recruiting grounds for future NSA spies. Obviously, in a state school, the state government has a great deal of control over the purse strings and over what the policies of the state university are. We're going to harness that to forbid the state universities from working with the NSA.

And then finally, in areas where we have private corporations that are doing business with the NSA, we can do two things. One thing, we can just put public pressure on these corporations. But, importantly, from the state level, the state can refuse to do business with them, and forbid them from having any ability to bid for contracts, either with the state or local government. So it gives them some disincentive to do business with the NSA.

So, that's the legislation in a nutshell.

**WOODS:** Now who came up with this brilliant idea to shut off the water to the NSA compound? Who came up with that? That's great.

**MAHARREY:** Well, really, it was kind of—I don't know. It's "throw a whole bunch of ideas in a big pot," and that's what boiled out of it.

Michael Boldin, our executive director, started off by doing a lot of research, and he came across some articles that revealed that one of the reasons they built this big data center in Utah is that they had maxed out the power grid there in Maryland, where they're currently located. And there were all these articles about how they were afraid that they weren't going to have the power, and they weren't going to be able to do all the spying that they wanted to do because they didn't have access to utilities.

So that's one of the reasons they moved, and Boldin and people that were thinking about this started saying, "You know what? Look at this. We've got city and state governments providing utilities. So why not cut it off?" That's kind of how it developed, and from there, we worked up the legislation and got some of our legal analysts involved in it, and kind of tightened up the legal language, and here we are.

**WOODS:** Well that just blows me away, because that is such a beautiful idea just for its simplicity. It's so wonderful. Now this initiative has gotten some pretty high-profile press so far. I mean, no sooner did I get done blogging at my personal site, TomWoods.com, about the article that appeared in *U.S. News and World Report* about this than I saw an update from Michael Boldin saying that *Time* magazine was covering it. What do you attribute this to? I mean, you guys are just getting started. You're really just kicking this thing off, and already you've got two major titans of the establishment reporting on it.

**MAHARREY:** Yeah, it's interesting. You know that I work in media—at least, I used to work in the media world—so I kind of understand how it operates. And it's very much a follow-the-leader type of thing. So, the key in getting any publicity for anything is getting that first media outlet to bite. And *U.S. News* was the first to bite.

Actually, I sent out a press release earlier this week, after the Utah newspaper, the *Salt Lake Tribune*, actually ran a very nice exposé revealing through record requests that they got the deal that the NSA worked out with the City of Bluffdale for the water. So, when this came out, we press-released that and got *U.S. News*. For whatever reason, it intrigued him, and he wrote the article.

So then, *Time*, obviously that's their competitor, you know, they looked at it and they go, "Uh-oh, we'd better do something." And it has kind of picked up from there. We've gotten a lot of radio requests. We've gotten a request from The Blaze to do a TV interview this evening. So, it's starting to resonate.

I think this issue resonates with people. I mean, you know, there's a lot of things we can debate about, and people get on one side of the aisle or the other, but pretty much nobody wants people peeking around in their personal business. So this resonates with people across the political spectrum, and I think this is one area where everybody can say, "The government is just way over bounds here. Let's do something about it."

**WOODS:** I think this is a great idea for so many reasons, but one of them is it takes the idea of state level resistance and applies it to an issue that is so popular—the idea of resisting the NSA—that it really takes the rug out from under those who would say, "Anybody who wants to use the states for anything probably supports slavery."

I mean, after all, Mike, isn't this—when you peel away all the stuff about wanting to stop the NSA, be honest with me—you just want to reinstitute slavery.

**MAHARREY:** Right. We're what—neo-confederates. [Laughter] And you know what's funny about that? As we were developing the campaign, and as we were working out, okay, how are we going to communicate these ideas to people, one of the things that we've really studied in depth is state resistance to the Fugitive Slave Act.

**WOODS:** I was just going to say that. That is a perfect parallel. All right. Run with this.

**MAHARREY:** Well, I mean, the Fugitive Slave Act resistance is the exact opposite of what you learned in high school. You know, the high school history is, “Oh, the Civil War is all for slavery, and the Confederates, the South, they were all for slavery, and they used nullification and state rights to support slavery.” And this is absurd.

If you actually read the history, it was in fact the centralized government that was necessary to support the institution of slavery, not only during the Civil War era, but really going all the way back to the founding. It was interesting. I found that information about Charles Pinckney in South Carolina. He was a big advocate of strong national power, primarily because he knew it was necessary to sustain the institution of slavery.

So, in the 1800s, you started having these fugitive slave laws. And you had the slave catchers going up into the North and trying to round up their runaway slaves. And, of course, in the process, they also rounded up free blacks, because this is a lucrative market.

The northern states, defying the Supreme Court, defying Congress, defying all of the conventional wisdom out of Washington, D.C., passed a series of personal liberty laws that thwarted these efforts. And one of the primary strategies that they used was non-cooperation—exactly what Madison suggested in Federalist 46, exactly what we’re doing with the NSA. They simply said, “You know what? If you’re gonna try to round up slaves here in Michigan, you’re not going to use our jails.” In Massachusetts, they said, “You know what? If you are a sitting judge or a lawyer in this state, you will not be employed by a fugitive slave commission, or else you’ll be disbarred.”

And, ultimately, they kept ratcheting it up. I mean, by the late 1850s, you actually had the state of Vermont essentially saying, “Any black person that’s within our borders, we consider them free, and if you try to round them up, we’re going to charge you with kidnapping.” That was the ultimate endgame. So, this idea that this was about slavery and that state sovereignty is all about keeping people oppressed is obviously absurd.

**WOODS:** It is so ridiculous. It’s at such obvious odds with the historical record. I mean, for one thing, there were no anti-slavery laws the South would have needed to nullify. It had the federal government in its pocket, for heaven’s sake. It had the Fugitive Slave Act. It had everything it wanted, so it was the North that had to use nullification in order to do this.

This is why this particular initiative is so great, because now it opens up the discussion of state level resistance and nullification on grounds that are favorable to us, where we get the benefit of the doubt, because the cause that we’re involved in is so non-partisan. It’s trans-partisan, really, is what it is.

It's no longer a case of, well, you just don't like Barack Obama because he's black, or that's why you don't like Obamacare, or whatever. This is something that people across the spectrum dislike.

I hosted the Peter Schiff Show a few days ago and I made this exact analogy, that when passing these personal liberty laws and engaging in efforts to thwart the Fugitive Slave Act, the northern states were looking at ways they could deprive the federal government of the use of state resources.

**MAHARREY:** Exactly.

**WOODS:** So, how long has this been going on? I mean, when did you guys launch this program?

**MAHARREY:** Well, we started developing it over the summer. We had our quote/unquote "official launch" on November 12th, in a series of editorials that appeared in quite a number of publications, mostly online publications, and we sent out a press release. We kind of tried to coincide it about a week after the big NSA march on D.C. to kind of try to piggyback off their publicity a little bit. So, this has only been going on officially for a couple of weeks, really.

The interesting thing is we've already got three first commitments from state legislators who say they are going to run this bill. And Brett Hildebrand in Kansas, he's running a bill that doesn't address all four of those issues, but it does address the data sharing, and he has already got his bill drafted. So, essentially, we've got four states already on board, and we haven't even gotten into bill filing time yet.

**WOODS:** So, you guys at offnow.org have put up model legislation, and then individual states can modify it according to their own circumstances. Is that how it works?

**MAHARREY:** Exactly. And what we really encourage people to do, and all of your listeners, is take a few minutes. Go download that legislation, and email a copy of it to your state representative and your state senator. Send them the links to the OffNow website because it's really nicely set up. They did a great job designing this. Mostly Michael Boldin. He just did a fantastic job, and it's easy to get to all the talking points to understand exactly what we're doing. Send these to your state legislators, and encourage them to introduce it. Because that's the key. We need to get the information out there. That's the key right now, is to educate people. And as these legislators hear about it, some of them are going to say, "You know what? This is a pretty good idea."

**WOODS:** Now, when it comes to something like outright nullification of a federal law, there you have some people—I think they're wrong, and they're not always of bad will—who claim there is no such power of nullification, or it's at least dubious.

But here you're not really doing that. Here you're just saying an individual state is simply not going to do X, it's not going to provide X or Y. And almost nobody would deny that the state is

perfectly within its rights to, in fact, deny these particular services and these particular goods to anyone, including the federal government.

So you are on much more secure grounds in the sense that, even though I think the case for nullification is absolutely airtight, not everybody agrees with me. But what are they going to say to you constitutionally when it comes to evaluating your strategy here? It seems perfectly within what the states are permitted to do.

**MAHARREY:** You're absolutely right. Even the federal employees up at the Supreme Court agree. And there is actually a legal doctrine that is well established. It is called the Anti-Commandeering Doctrine, and it rests on four Supreme Court cases that date all the way back to 1842.

Interestingly, the very first case was the fugitive slave case, and it was Justice Story, who loved national power. But he actually did say that the federal government was in charge of fugitive slave rendition, and that states did not have to help out. So that was really kind of a first case where you saw this idea that the federal government can't commandeer the state's resources.

And then we have three more cases that are more modern: *New York v. the U.S.*, and then the Keystone cases, *Prince v. the U.S.*, and then the recent health care ruling. All of these establish very firmly that the federal government cannot commandeer or force state or local government to help them implement or enforce any type of federal act or action. They don't have to do it. It violates state sovereignty. Even the judges on the Supreme Court have agreed with this.

So we are on absolutely solid ground from a legal standpoint. And, of course, I agree with you that the case for nullification is airtight. Quite frankly, the important thing about nullification is the end result. We want to make that law void and inoperative within that given state, and we think that this strategy with the NSA can certainly put a big hurt on them.

**WOODS:** All right, now beyond this particular piece of legislation that you guys have drafted as a model, what other types of strategies are you looking at as a coalition in dealing with this issue?

**MAHARREY:** We're really looking at this as a multi-prong strategy that's actually a long-term type of strategy. We don't expect to wake up on June 1st, and all of a sudden, there's no more NSA. We realize that we're in this for a long fight, and there's a lot of things that we're going to have to do.

This legislation is step number one. We have some other things that we're developing, as well. We talked a little bit earlier about the corporations that do business with the NSA, and obviously the state can have some impact by refusing to allow them to bid for state or local contracts. But let's be honest. The federal government can throw a lot of money that doesn't exist at any corporation it wants to hem in with its plans. So one of the things that we want to do is to work at the grassroots level and bring market pressure on some of these corporations.

**WOODS:** I was just going to say this. That's great. That's a great idea.

**MAHARREY:** Absolutely. And, we've talked with some of our coalition partners. We've even talked about maybe being able to bring in some people in the labor movement that would be friendly to this idea. So there are some things we are working in that direction that aren't really legislative at all, but again are grassroots.

You know, I like to think of Rosa Parks. Thinking of what she did when she refused to give up her seat on the bus. I mean, really, when you think about it, that was pretty insignificant in the big scheme of things. You know, she went to jail, for goodness sake. It wasn't like she created this revolution on that day. But, what she did sparked the imagination of people. It sparked the Montgomery bus boycott. It brought Martin Luther King, Jr. to prominence. And really, her actions, I say, ultimately killed Jim Crow. And all she did was say, "No." So there's no telling what we can do just at the grassroots level by bringing pressure against these corporations.

And another thing that we want to do is to bring pressure into the universities. You might ask, "Well, what about a private school? You know, the state really can't pull many strings on a private university."

Well, we want to work through student government organizations and have student government organizations pass resolutions and put pressure on the administration to get out of these types of agreements with the NSA. So, harness the activism and the energy that you have with students on campus to get them to protest.

A lot of this, the legislative part, is really important. But a lot of this is public opinion, and a lot of this is getting people angry and involved and doing stuff, not calling your congressman and your senator, because they don't care if you call them or not. But, I guarantee you, when you call your state legislator, or when you start putting pressure on university administration, or when you start putting negative publicity on a corporation, those guys will pay attention because it starts to cut into their bottom line.

**WOODS:** Now let me back up a little bit, though.

I know that, as you've just described, the whole plan does not revolve simply around "let's cut off the water." For some reason, there's something I love about that. But I just want to ask you—not that I want to immediately assume this won't work—but, obviously the federal government is not going to say, "Well, we can't get the water, so I guess there's no way we can spy on people." What do you think they would try to do?

I mean, put yourself in their shoes for a minute. What step do you think they would try? They can't deal with every single one of the strategies that you guys are going to throw at them, because some of them—if you're going to organize boycotts against certain corporations that

are in bed with them, there's nothing they can do about that. How do you think they would respond to this water shutoff?

**MAHARREY:** You know, I have absolutely no idea. I'll be honest with you—I have a real hard time with the naysayers. You know, the people—and I know you deal with these people all the time—"Well, there's no sense doing that because the federal government is just going to come in and do X. There's no reason to even try."

I have no idea what they're going to do. That's the beauty of the multi-prong strategy. Okay, maybe they can find some way around the water issue. I mean, who knows? Maybe they will federalize water. I mean, they might try. But here's the interesting thing about that, and it gets back to this whole idea of public pressure. You know, you have a state like Utah, water is a very valuable and very scarce commodity, and I know for a fact that a number of environmental groups have been quite upset when they found out that 1.7 million gallons of water have been siphoned off to this data center to spy on them. So, as we educate people about this, a lot of people are going to be very angry, and water resources, especially out west, electric grid resources—those are important things. So, when you start talking about these things, it's going to mobilize the masses, and when you have people against you, it makes it much more difficult. There's much more pressure. There's much more resistance. Again, if they figure out some way to get around the water issue, you know, maybe we'll turn off their power in Texas. Maybe that'll work. Or, they can't do anything about the other three aspects of it. They can't make the state schools have agreements with them.

**WOODS:** Right.

**MAHARREY:** They can't make the state governments use their data for their court cases. So, there are some things that there's just absolutely no way the federal government can do anything about. And, you know, we've proven, I think, that we can do creative thinking. So, if they come up with some way around it, then, by golly, we'll put our creative heads together, and we'll come up with another way to thwart them because this battle is extremely, extremely important, and we're not just going to lie down.

**WOODS:** Well, I think even if they were to figure out some way around the water thing, it's still valuable because the story that people read reminds them, or educates them for the first time, that people in the states can do something. Right?

It may not be successful every time. You may have to try three or four times before something works, but for one thing, it alerts people to problems, and it alerts people to possible solutions, that there are solutions other than writing to your congressman.

**MAHARREY:** Exactly. And you know, I think the beauty of this strategy that the Tenth Amendment Center has applied not only with the NSA, but you know, the Second Amendment, to indefinite detention, to marijuana laws, all of these, by focusing on the state level, people actually get involved with what we're doing. They realize that a phone call to their state



representative actually matters. Their state representative actually listens to them. They find out that if they send a bunch of emails to a committee chair, and all of a sudden a bill that was bottled up gets a hearing, they realize that what they're doing at the state and local level—they as people, as individuals, still have the power to make a difference at that level.

I think it opens their eyes, and they are like, "Hey, this was pretty cool." Once you are able to do it, it's like a power trip. Let's do it some more! I could call my congressman here in Kentucky, and, you know, I talk to an intern, and the intern would either say something condescending, or else he would try to patronize me, and then I would get a nice email: "Thanks for calling." And that would be the end of it.

It doesn't matter what I do in Washington, D.C. , but what I do in my state really, really matters. And I think you're absolutely right. By doing this, we are teaching people that they actually do have power. The people have power to take back all of this overreach and this garbage that the federal government wants to do.

**WOODS:** Well, Mike Maharrey, you're doing great work. You and Michael Boldin, the Tenth Amendment Center, all the people in this coalition. Offnow.org is the site you should check out. Of course, tenthamendmentcenter.com is also worth checking out. But on this issue specifically, there's a special site, offnow.org, everybody should check out.