



Written by [Joe Wolverton, II, J.D.](#) on April 7, 2012

## Rutherford Institute Calls on Va. Gov. to Join Fight Against NDAA

Regarding the NDAA, [on December 31, 2011, with the President's signing of that law](#), the writ of habeas corpus — a civil right so fundamental to Anglo-American common law history that it predates the Magna Carta — is voidable upon the command of the President of the United States. The Sixth Amendment right to counsel is also revocable at his will.



One of the most noxious elements of the NDAA is that it places the American military at the disposal of the President for the apprehension, arrest, and detention of those suspected of posing a danger to the homeland (whether inside or outside the borders of the United States and whether the suspect be a citizen or foreigner).

Furthermore, a key component of the NDAA mandates a frightening grant of immense and unconstitutional power to the executive branch. Under the provisions of Section 1021, the President is afforded the absolute power to arrest and detain citizens of the United States without their being informed of any criminal charges, without a trial on the merits of those charges, and without a scintilla of the due process safeguards protected by the Constitution of the United States.

Beyond that, in order to execute the provisions of Section 1021 described in the previous paragraph, subsequent clauses (Section 1022, for example) unlawfully give the President the absolute and unquestionable authority to deploy the armed forces of the United States to apprehend and to indefinitely detain those suspected of threatening the security of the “homeland.” In the language of this legislation, these people are called “covered persons.”

The universe of potential “covered persons” includes every citizen of the United States of America. Any American could one day find himself or herself branded a “belligerent” and thus subject to the complete confiscation of his or her constitutional civil liberties and nearly never-ending incarceration in a military prison.

In a press release announcing the Senate’s passage of his bill, Virginia State Delegate Bob Marshall said:

Today, the Virginia State Senate nearly unanimously passed my bill, HB 1160, to prevent Virginia’s state and local government agencies from cooperating with the federal government in the indefinite detention of Virginians under the National Defense Authorization Act of 2012 (“NDAA”). I am grateful that the vote in the Senate to accede to the bill as passed by the House of Delegates was 37-1.

Congress, by including this provision in a must pass bill affecting our Armed Forces, made a



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terrible mistake in empowering this or any future President and the military to arrest and detain American citizens indefinitely, without charges, without the chance to confront their accusers, without legal counsel, and without a trial.

On January 16, Marshall introduced HB 1160, with provisions that prohibited “any agency, political subdivision, employee, or member of the military of Virginia from assisting an agency or the armed forces of the United States in the investigation, prosecution, or detention of a United States citizen in violation of the Constitution of Virginia.”

For a month now, the bill has sat on the desk of Governor Bob McDonnell awaiting his signature. In a statement made to *The New American*, representatives from the Governor’s policy team indicated that the Governor still has serious reservations about the language in the measure.

Despite Governor McDonnell’s lamentable lassitude, Virginia’s HB 1170 is but one of many noble efforts on the part of sovereign states and communities to courageously assert their constitutionally protected right to self-determination by standing up to the federal government, particularly in regard to the provisions of the National Defense Authorization Act that provide for the indefinite detention of American citizens.

Marshall’s bill is the first measure in the nation that is based on the Liberty Preservation Act. This model legislation ([a copy of which is available from the Tenth Amendment Center](#)) is designed to block the enforcement of the provisions of the NDAA authorizing the apprehension and indefinite detention of citizens of the United States suspected of posing a threat to national security.

The Liberty Preservation Act calls upon state legislatures to declare Sections 1021 and 1022 of the NDAA to be ...

inimical to the liberty, security and well-being of the people of (STATE), and [that the NDAA] was adopted by the United States Congress in violation of the limits of federal power in the United States Constitution.

Ever diligent, Marshall spoke out in defense of the protections afforded by the Fourth Amendment to the Constitution, specifically reminding constituents that regardless of the attempts by federal officials to reduce the scope of that critical civil liberty, the guarantees enshrined in the Constitution and the Bill of Rights should remain ever sacrosanct.

“The U.S. Constitution provides for suspending habeas corpus in the event of invasion, but Congress did not reference that provision when it passed NDAA. That provision, and a similar one in the Virginia Constitution, are what [separate] us from the likes of Nazis, Communists and other totalitarian governments,” he said.

Lately, Governor McDonnell’s inexplicable failure to sign HB 1160 into law has come under fire from a diverse group of civil rights advocates. The latest appeal to the Republican Governor of Virginia to approve the bill comes from [the Rutherford Institute](#).

In [a letter sent Friday by John W. Whitehead](#), founder and president of the Rutherford Institute, Governor McDonnell is encouraged to sign the bill and proclaim his defense of the fundamental constitutional liberties threatened by the NDAA.

Eloquently, Whitehead tells Governor McDonnell that he is uniquely positioned to reaffirm the Old Dominion’s historic commitment to the rule of law and the checks on federal power established by the Constitution, a document drafted and ratified thanks to the work of his fellow Virginian — James



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Madison.

Explaining that President Obama's promise that he will not use the power granted him by the NDAA to indefinitely detain American citizens is illusory and that it is "no cure for the systemic dismantling of Americans' civil liberties currently taking place at the federal level," Whitehead lays out his case convincingly:

As has been observed over the past ten years, the federal government has taken a keen interest in erecting a state of surveillance and compliance, which is evidenced by events such as the passage of the USA PATRIOT Act, the erection of a massive domestic surveillance network under the authority of the National Security Agency, and most recently, legislation authorizing the use of aerial drones to scan the skies of America. The provision of the NDAA 2012 allowing for the indefinite detention of Americans is one in a long line of federal government abuses in the years since 9/11 and Virginians have had enough.

In support of his plea, Whitehead illustrates the breadth of diversity of the various civil rights and constitutional organizations that have denounced the NDAA:

Interest groups as politically diverse as the American Civil Liberties Union and the John Birch Society are in opposition to the offending provision of the NDAA 2012, and HB 1160 has near unanimous support in the Virginia legislature. To veto the measure would not only be a disservice to the Constitutional rights of Virginians, but would go against the popular will of the people of Virginia.

On March 15, a similar appeal was sent to Governor McDonnell by Senator Rand Paul (R-Ky.). In [his letter, Senator Paul](#) expresses his "sincere hope that [Governor McDonnell] will join [him] and other freedom-loving Americans in support of HB 1160 by signing it into law."

*Photo: Virginia State Delegate Bob Marshall*



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