Written by **Joe Wolverton, II, J.D.** on January 20, 2015

Virginia Bill Shines Light on Federal NDAA Indefinite Detention Efforts

A representative of the people in Virginia has stepped up to prevent the federal government from robbing them of their most precious — and formerly protected — civil rights.

Delegate Benjamin L. Cline understands his constitutional oath "to support the Constitution," and his bill blocks federal agents from kidnapping Americans under the authority allegedly granted them by the National Defense Authorization Act (NDAA) of 2012.

Cline's bill, HB2144, adopts James Madison's counsel to "refuse to cooperate with the officers of the Union" when those officers exceed their constitutionally enumerated authority. To Cline's credit, however, he takes the fight to the feds in a much more direct way.

If the federal government enters Virginia for the purpose of apprehending and indefinitely detaining a citizen of that state, Cline's measure imposes two mandates.

First, "the U.S. Secretary of Defense shall provide notification within 24 hours of the detention to both the Secretary of Public Safety and the chief law-enforcement officer of the locality in which the citizen is detained."

Second, "the U.S. Secretary of Defense or his designee shall seek authorization from the chief law-enforcement officer of the locality in which the citizen is detained prior to removal of the citizen from the locality."

The Tenth Amendment Center reports on the practical impact of the Cline anti-NDAA bill:

> A series of events is triggered upon detainment of any person in the state of Virginia by the [Department of Defense]. The state of Virginia will gather and publish Memoranda of Understanding (MOUs). These are essentially partnerships with state funds attached to them. These agreements are not necessarily legally binding, but usually offer some privacy between state, private enterprises (contractors), and federal partnerships. Much of this kind of information usually remains hidden from the general public.
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> This provision in and of itself provides a great service to the people of Virginia, allowing them to see exactly what types of agreements exist between the state and various federal agencies.

Like rats in the basement, federal agents will run for the shadows at the prospect of having their unconstitutional usurpations exposed to the light of public disclosure. As Mike Maharrey of the Tenth Amendment Center explains:

> This is a brilliant approach. First, it shines some sunlight on what's going on between the state and federal government. That provision alone is a win for Virginians. Then it creates significant

> consequences for the feds if they kidnap somebody on Virginia soil. It would allow the state to deny important resources to the federal government if its agents snatch up somebody in the night and hold them without due process. I love seeing this kind of boldness and creativity from state legislators.

The hour is urgent. It is vital to remember the history of the enactment of these unconscionable and unconstitutional provisions and to remind lawmakers of their obligation to prevent them from being imposed upon the people they represent.

As for the NDAA's assault on liberty, a bit of history is in order.

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). The endowment of such a power to the president by the Congress is nothing less than a de facto legislative repeal of the Posse Comitatus Act of 1878, the law forbidding the use of the military in domestic law enforcement.

Furthermore, a key component of the NDAA 2012 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.

Further, in order to execute the provisions of Section 1021, Section 1022 (among others) unlawfully gives 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.

As demonstrated by Delegate Cline (and others who have proposed similar legislation in other states), the most effective weapon in the war against federal tyranny is nullification. Nullification occurs when a state, county, city, or other local entity holds as null, void, and of no legal effect any act of the federal government that exceeds the boundaries of its constitutional powers.

Nullification recognizes that states retain the prerogative to invalidate any federal measure that exceeds the few and defined powers allowed the federal government as enumerated in the U.S. Constitution.

States (and their legal subdivisions) retain the right to act as arbiters of the constitutionality of federal acts because *they formed the union*, and as creators of the compact, they hold ultimate authority as to the limits of the power of the central government to enact laws that are applicable to the states and the

citizens thereof.

Despite criticism by those who advocate for a more powerful federal government, nullification would not lead to anarchy, as it is only unconstitutional federal acts that will be subject to state invalidation.

Nullification is the "rightful remedy" and can not only restore the rule of law in this Republic, but can restore the independence of states and cities, freeing them from the financial chains that have them bound to the federal behemoth.

And, as Congress continues to surrender to the president all legislative, executive, and judicial power, the need for nullification is urgent, and liberty-minded citizens are encouraged to demand that state legislators begin honoring their oath and obligation to restrain the federal government through application of that very powerful and very constitutional principle.

With regard to Virginia, the Tenth Amendment Center points to its unique relationship with the seat of the federal government:

> Virginia is one of DC's (specifically the DoD's) prime real estate providers. It serves as home to many government, private security, and intelligence contractors, particularly in the Northern Virginia area. HB2144 demands the feds comply or creates a climate where the state can end those contracts of cooperation that the DoD relies on through either the legislature or the governor.

According to information published on the Tenth Amendment website, seven states are considering or have passed various versions of anti-indefinite detention legislation.

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