



Written by [Joe Wolverton, II, J.D.](#) on February 20, 2012

## Virginia House Passes NDAA-Nullifying Bill; Other States Join Fight

The sovereign states are courageously asserting their constitutionally protected right to self-determination by standing up to the federal government and refusing to execute the most noxious provisions of the recently enacted National Defense Authorization Act (NDAA).



Evidence of this laudable resistance to federal tyranny was most recently found in the Old Dominion, where on February 14 an impressive majority (96 out of 100 members) of the Virginia House of Delegates passed [HB 1160](#), a bill that prohibits agents of the state government from “assisting an agency of the armed forces of the United States in the conduct of the investigation, prosecution, or detention of a citizen in violation of the United States Constitution, the Constitution of Virginia, or any Virginia law or regulation.”

The bill was sponsored by committed constitutionalist Virginia Delegate Bob Marshall. When asked by *The New American* what prompted him to author this legislation, Marshall referred to his “oath to uphold the U.S. and Virginia Constitutions. “They say this law [the NDAA] is designed to fight terrorists. You don’t defeat terrorists by adopting their tactics.” “I will be faithful to my calling to stand against these predators who would sell their birthright for a mess of pottage,” he added.

“The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.” These words were written by the Father of the Constitution, James Madison. Marshall certainly understands this principle as he is also the author of the Virginia Healthcare Freedom Act, which nullified ObamaCare in his state.

Delegate 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.

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.

Speaking of the inestimable work of the Tenth Amendment Center in the fight against the NDAA, that



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organization's communication's director, Mike Maherry [said](#):

"Most Americans recognize that the federal government rarely, if ever, relinquishes power once it grasps it. So state and local governments are taking James Madison's words to heart and interposing on behalf of their citizens."

"The very fact that so many legal experts come up with so many diverse readings of those NDAA sections should give us all pause," he said. "The language is vague and undefined. Are we really going to trust the judgment and good intentions of Pres. Obama or whichever Republican sits in the White House to protect us? That seems like a pretty bad plan."

In what is music to the ears of constitutionalists, other state and local governments are joining the chorus decrying federal despotism.

In Arizona, the Border Security, Federalism and States Sovereignty Committee of the state Senate passed a resolution that is on track to be taken up by the entire Senate. The bill ([SB 1182](#)), introduced by Senator Sylvia Allen, "prohibits this state and agencies of this state from participating in the implementation of Sections 1021 and 1022 of the National Defense Authorization Act (NDAA) of 2012 and classifies the act of attempting to enforce or enforcing these sections as a class 1 misdemeanor."

As [The New American has reported](#), lawmakers in Tennessee and Washington have already proposed legislation thwarting the federal government's attempt to enforce the NDAA at the state level — that is to say, nullifying an unconstitutional act of the federal government.

A [tally kept by the Tenth Amendment Center](#) of state and local authorities standing up to the federal government and its never-ending quest to quash states' rights records that:

Six local governments have passed resolutions condemning sections 1021 and 1022 of the NDAA. Earlier this week, the Town Council of Macomb, N.Y. unanimously passed a resolution, and Fairfax, Calif. approved a similar resolution 4-1. On Wednesday, New Shoreham, R.I. also passed a resolution opposing NDAA detention.

Basically, nullification is the principle that each state retains the right to nullify, or invalidate, any federal law that a state deems unconstitutional. Nullification is founded on the assertion that the sovereign states 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.

Under the provisions of Section 1021 of the NDAA, 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 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



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prison.

While every effort by the states to use the sword of sovereignty to force the federal government back behind the lines of power drawn for it in the Constitution is commendable and should be encouraged, there are those fighting for this same cause who see trouble with the versions of NDAA nullification bills being considered by state lawmakers in Washington and Virginia.

Richard Fry, the general counsel for the Patriot Coalition, a group committed to restoring the power structure established by our Constitution, [penned the following criticism](#) of the two proposals mentioned above.

The only way to “nullify” a government action directed at citizens is for the state to interpose its authority and protections between the federal government and its citizens. That is to say, for the state to act as a direct shield and a buffer against the actions of the federal government. Generally the only way to do this is for the state to criminalize the action by the federal government such that if the federal government tries to enforce the law within the subject nullifying state or a state officer attempts to assist the federal government they are subject to criminal penalties.

Neither the Virginia nor the Washington [bill] criminalize[s] anything. Without punishment or penalty there really is no law.

While Mr. Fry’s assessment is accurate and his legal distinctions are inarguably insightful, some solace for the friends of liberty is found in the efforts of states to oppose Washington, D.C.’s unconstitutional dictates.

*Photo: St. John’s Episcopal Church in Richmond, Virginia, where Patrick Henry gave his closing speech at the Second Virginia Convention with the famous quotation, “give me liberty or give me death.”*



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