



Written by [Joe Wolverton, II, J.D.](#) on February 1, 2012

Virginia Lawmaker Introduces Bill to Nullify NDAA

[Virginia Delegate Bob Marshall](#) (R-Manassas) understands this principle. Accordingly, the author of the Virginia Healthcare Freedom Act, which nullified ObamaCare in his state, has now proposed legislation nullifying the President's latest usurpation — the [National Defense Authorization Act](#) (NDAA).



On January 16, Marshall, [now a candidate for the U.S. Senate](#), introduced [HB 1160](#), a bill designed to

prevent 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 detainment of a United States citizen in violation of the Constitution of Virginia.

The bill has cleared its first hurdle toward enactment, [being recommended 6-3 by the Courts Subcommittee](#) for reporting to the full committee.

Delegate Marshall's bill reads:

Notwithstanding any contrary provision of law, no agency of the Commonwealth as defined in § 8.01-385 of the Code of Virginia, political subdivision of the Commonwealth as defined in § 8.01-385 of the Code of Virginia, employee of either acting in his official capacity, or any member of the Virginia National Guard or Virginia Defense Force, when such a member is serving in the Virginia National Guard or the Virginia Defense Force on official state duty, may engage in any activity that aids an agency of or the armed forces of the United States in the execution of 50 U.S.C. 1541 as provided by the National Defense Authorization Act for Fiscal Year 2012 (P.L. 112-18, § 1021) in the investigation, prosecution, or detainment of any citizen of the United States in violation of Article I, Section 8 or 11 of the Constitution of Virginia.

When asked by The New American what prompted him to author this legislation, Mr. 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.

Fortunately for the perpetuation of our Republic, a handful of states and local governments have taken action to resist the federal government's attack on freedom. [As reported by The New American:](#)

The state of Rhode Island, as well as Colorado's El Paso County, have drafted resolutions to nullify the NDAA, a step that other states and counties are soon expected to follow. Likewise, the state of Montana has launched an effort to recall their Senators — Democrats Max Baucus and Jonathon



Tester — as well as Republican Congressman Denny Rehberg, all of whom voted for the NDAA.

Montana is just one of nine states with constitutional provisions asserting the right to recall members of its congressional delegation for reasons including a violation of their oath of office. The Montana Code 2-16-603 reads: "(2) A public officer holding an elective office may be recalled by the qualified electors entitled to vote for the elective officer's successor."

The other eight states are Arizona, Colorado, Louisiana, Michigan, Nevada, North Dakota, Oregon, and Wisconsin. In New Jersey, efforts to pass such a law failed when a state judge declared that "the federal Constitution does not allow states the power to recall U.S. senators." Critics of that decision contend that the 10th Amendment to the Constitution in fact does permit such a law.

In order to understand the importance of such state and local efforts to combat Washington's crusade against the Constitution, a cursory understanding of the principle of nullification, as well as of the shocking unconstitutional provisions of the National Defense Authorization Act is of value.

Simply stated, 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.

Apart from his designation as the "Father of the Constitution," Madison may also rightly be called the "Father of Nullification." Madison and Thomas Jefferson united in their opposition to the expansion of the federal government's powers and gave expression to their stance in the Kentucky and Virginia Resolutions of 1798. The impetus for the drafting of these resolutions was the passage by the national government of a law very similar in tone to the NDAA — the Alien and Sedition Acts. As with the NDAA, the unvarnished aim of these 18th-century statutes was to quash political dissension and silence foes of the administration then in power.

Next, as for 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). 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 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



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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 prison.

Delegate Marshall’s legislation being considered in the Old Dominion 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.

As other states follow the path of nullification being blazed by Virginia, *The New American* will report those noble efforts to restore state sovereignty and constitutional freedom.

Photo of Bob Marshall: AP Images



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