



Written by [Joe Wolverton, II, J.D.](#) on February 28, 2012

Virginia's NDAA Nullifying Bill Passed by State Senate

On January 16, Virginia Delegate Bob Marshall (left) 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.”



After being passed on Valentine's Day by an [overwhelming majority \(96-4\) in the House](#), the bill was sent to the Senate for deliberation by that chamber.

In a telephone conversation yesterday with this reporter, Delegate Marshall broke the latest news of the procedural progress of his very important legislation.

When asked about the future of his bill, Marshall said, “This is on the razor's edge. There was a 20-20 tie yesterday on sending it back to committee in the Senate. Fortunately, the Lieutenant Governor broke the tie and voted to have it be reconsidered rather than sent back to committee.”

Of his opinion of the prospects on this second vote, likely to be taken today (Feb. 28), Delegate Marshall was guardedly optimistic, announcing to this reporter that he was “talking to a key Democrat that might be able to be persuaded.”

This current measure in Virginia 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.

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.

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



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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.

Most of what is contained in the over-500-page NDAA is in fact “inimical to liberty.” For example, 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.

In order to more completely understand the importance of Delegate Marshall’s bill and similar measures being proposed by other state and local governments, a cursory understanding of the principle of nullification, as well as of the shocking unconstitutional provisions of the NDAA 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.

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).

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.

When asked during our interview what, in his opinion, was the most noxious aspect of the NDAA, Delegate Marshall responded, “Within the Constitution, there are all kinds of offsets in the balance of



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power to prevent the creation of a powerful executive. In fact, our whole legal tradition is built up on not loading the executive with unlimited power, but these guys did it in Washington.” “How can you does having an all-powerful executive help us fight terrorists?” he continued.

When speaking of the gross usurpation of power on the part of the president accomplished only by the willing complicity of his congressional lictors, Delegate Marshall spoke eloquently and forcefully:

We [the states] needn’t become mere administrative appendages of the federal government. We will not fall for the farce. We don’t have to collaborate in prostituting the Constitution. We will be faithful to the original meaning of the Founders. The federal government is committing political adultery and we will not participate.

Marshal concluded our conversation by telling us his reaction to today’s latest action by the Senate:

I am happy about the Senate’s action today, but am concerned about the amendments that remove the provisions in my bill that prohibit state and local authorities from participating in the apprehension and interrogation of American citizens under the NDAA. Fortunately, the part preventing any state officer (including the governor, the state police, the sheriffs, and the National Guard) from participating in the detention of American citizens arrested under the NDAA is still in the bill.

The amended version of the bill will now be sent back to the House for its consideration. If the House passes the Senate’s amended version, then the measure will be sent to the Governor for his signature.

However, its enactment is still in jeopardy, as according to [published reports](#), Virginia’s Governor Bob McDonnell opposes the bill.

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