



Written by [Joe Wolverton, II, J.D.](#) on April 13, 2012

Virginia's Governor Ready to Sign Anti-NDAA Bill — Almost

The governor's assent didn't come without exception, however. Virginia's chief executive informed the state legislature that he would sign [HB 1160](#) only if they agree to amend the bill according to his wishes.

If the legislature passes the amended bill, then officers of the state police, members of the Virginia National Guard, and Virginia Defense Force would be forbidden to participate in the apprehension and indefinite detention of Americans and the associated denial of habeas corpus and Sixth Amendment right to counsel. Both these outrageous violations of constitutional liberties are [key components of the NDAA](#).



On March 8 the state Senate of Virginia passed HB 1160, the bill that would prevent the use of any state agency or member of the Virginia National Guard or Virginia Defense Force to participate in the unlawful detention of a citizen of Virginia by the U.S. government in violation of the state and federal constitution as set forth in the National Defense Authorization Act (NDAA). The Senate vote completed legislative action on the bill, which had already been approved by Virginia's House of Delegates where it was introduced by Delegate Bob Marshall.

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.



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Given such egregious and frightening revocations of civil liberties, it is curious why Governor McDonnell would delay signing a bill defending the Constitution, as well as the sovereignty of the Old Dominion.

The amendments demanded by McDonnell alter Marshall's original language by adding the requisite mental state of "knowingly" to the actions of state agents in the detention of citizens.

Additionally, McDonnell has added a provision that would exempt the participation of Virginia's military and police in the federal [Joint Task Force-Civil Support](#) (a Department of Defense command headquartered at Fort Eustis) or other partnerships with federal agencies provided that such activities do not include the carrying out of the indefinite detention provisions of the NDAA.

The bill, as originally introduced by Delegate Marshall on January 16, 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 detainment of a United States citizen in violation of the Constitution of Virginia."

In the days prior to his announcement, several influential opponents of the NDAA sent letters to Governor McDonnell urging him to quit stalling and sign HB 1160.

One such appeal came from [the Rutherford Institute](#). In a letter sent April 6 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.

Earlier, 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."

While not exactly jumping headlong into the fray, at least the Governor has dipped his toe in the waters of state nullification of unconstitutional federal legislation, and has promised to sign the bill if his amendments are approved by the legislature.

A spokesman for the Governor, Taylor Thornely, issued a vaguely worded statement that was about as noncommittal as possible for someone who wants to have his constitutional cake and eat it too.

"The governor believes we must encourage and promote these collaborative efforts while ensuring that core constitutional principles enjoyed by all U.S. citizens are respected," Thornley said. "He believes these standards are expected by all Virginians and wants to take appropriate steps to reaffirm that position. In the governor's view, this legislation now accomplishes that goal."

A [story printed in the Richmond Times-Dispatch](#) quotes Delegate Marshall as saying he was happy that the Governor had decided to sign his bill. "I hope the folks in Washington understand that they've crossed the line," Marshall said, calling the bill "a definitive statement by the governor and legislature of Virginia that we're not going to participate in activities that led to the illegal, unjustified and unconstitutional detentions of American citizens of Japanese descent during World War II."

There may be more to Governor McDonnell's wish for a watered down bill than just an accommodation for the Joint Task Force, however.

Now that Rick Santorum has dropped out of the presidential race and Mitt Romney has been all but ordained the Republican candidate, [several media outlets](#) are reporting that McDonnell is on Romney's short list for potential vice-presidential running mates.



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Regardless of McDonnell's motivations, however, Delegate Marshall is certain that the legislature will accede to his amendments and pass the bill again. Furthermore, he insists that the more important issue is the defense of the Constitution.

"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," Marshall told *The New American*.

While Constitutionlists rightly applaud every effort of noble state and local lawmakers to check the unconstitutional usurpations of the federal government, Virginia's bill (along with similar measures passed in other states) does not truly nullify the NDAA.

In order to rightly nullify an act of the federal government, state legislatures must interpose their authority and criminalize all attempts by a federal agent to exercise unlawful dominion within the borders of the state whose citizens they represent. It is only by fearlessly wielding the sword of sovereignty that states may disarm the federal force and reassert the rightful role of the states as defenders of the Constitution.

Photo of Gov. Bob McDonnell: AP Images



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