

# HOUSE JOINT RESOLUTION 12

E2

2lr1486

---

By: **Delegates McDermott and Smigiel**

Introduced and read first time: February 10, 2012

Assigned to: Rules and Executive Nominations

---

## HOUSE JOINT RESOLUTION

1 A House Joint Resolution concerning

2 **Abridgement of Federal and State Constitutional Protections in the 2012**  
3 **National Defense Authorization Act**

4 FOR the purpose of condemning certain provisions of the National Defense  
5 Authorization Act for Fiscal Year 2012 that threaten United States citizens  
6 with unlawful detention without trial in violation of the citizens' right to the  
7 guarantees of habeas corpus and due process and urging the United States  
8 Congress to reconsider and repeal certain provisions of the National Defense  
9 Authorization Act for Fiscal Year 2012.

10 WHEREAS, The Congress of the United States passed the National Defense  
11 Authorization Act, 2011 P.L. 112–81 (2012 NDAA), for Fiscal Year 2012 on December  
12 15, 2011 and the President of the United States signed the 2012 NDAA into law on  
13 December 31, 2011; and

14 WHEREAS, Section 1022 of the 2012 NDAA (Section 1022) requires the armed  
15 forces of the United States (armed forces) to detain, pending disposition according to  
16 the Law of War, any person involved in, or who provides substantial support to acts of  
17 terrorism or belligerent acts against the United States, and who is a member of  
18 Al–Qaeda or an associated force; and

19 WHEREAS, Section 1022 specifically excludes United States citizens and lawful  
20 resident aliens from its mandatory detention provisions for conduct occurring within  
21 the United States; and

22 WHEREAS, Section 1021 of the 2012 NDAA (Section 1021) purports to  
23 authorize, but does not require, the President of the United States to utilize the armed  
24 forces to detain persons the President suspects are part of, or substantially support,  
25 Al–Qaeda, the Taliban, or associated forces; and

26 WHEREAS, Section 1021 purports to authorize, but does not require, the  
27 President of the United States, through the armed forces, to dispose of the detained



1 persons according to the Law of War, which may include but is not limited to: (1)  
2 indefinite detention without charge or trial until the end of hostilities authorized by  
3 the 2001 Authorization for Use of Military Force Against Terrorists, 2001 P.L. 107–40  
4 (2001 Authorization); (2) prosecution through a Military Commission; or (3) transfer to  
5 a foreign jurisdiction; and

6 WHEREAS, Section 1021, unlike Section 1022, makes no specific exclusion for  
7 United States citizens and lawful resident aliens for conduct occurring within the  
8 United States; and

9 WHEREAS, Section 1021 seeks to preserve existing law and authority  
10 pertaining to the detention of United States citizens, lawful resident aliens, and any  
11 other person captured in the United States, but does not specify what such existing  
12 law or authorities are; and

13 WHEREAS, The specific exclusion of application to United States citizens and  
14 lawful resident aliens contained in Section 1022 and the absence of an exclusion in  
15 Section 1021 strongly implies that the provisions of Section 1021 are intended to apply  
16 to United States citizens and lawful resident aliens, whether or not they are captured  
17 in the United States; and

18 WHEREAS, The Office of the President of the United States, under the  
19 administrations of both George W. Bush and Barack H. Obama, has asserted that the  
20 2001 Authorization allows the Office of the President to detain indefinitely without  
21 charge United States citizens and lawful resident aliens captured in the United  
22 States; and

23 WHEREAS, The United States Supreme Court has not decided whether the  
24 2001 Authorization allows the Office of the President to detain indefinitely without  
25 charge United States citizens and lawful resident aliens captured in the United  
26 States; and

27 WHEREAS, Section 1021 purports to enlarge the scope of the persons that the  
28 Office of the President may detain indefinitely without charge beyond those persons  
29 responsible for the September 11, 2001, terrorist attacks, and those who harbored  
30 them, as authorized by the 2001 Authorization, to include “[a] person who is a part of  
31 or substantially supported Al–Qaeda, the Taliban, or associated forces that are  
32 engaged in hostilities against the United States or its coalition partners, including any  
33 person who has committed a belligerent act or has directly supported such hostilities  
34 in aid of such enemy forces”; and

35 WHEREAS, During debate within the Senate and before the passage of the  
36 2012 NDAA, United States Senator Mark Udall introduced an amendment intended to  
37 forbid the indefinite detention of United States citizens, which was rejected by a vote  
38 of 38–60; and

1 WHEREAS, United States Senators John McCain and Lindsey Graham each  
2 declared in colloquies on the floor of the United States Senate that Section 1021  
3 authorized the indefinite detention of United States citizens captured within the  
4 United States by the armed forces; and

5 WHEREAS, Policing of the citizenry of the United States by the armed forces,  
6 as purportedly authorized by the 2012 NDAA, would overturn the Posse Comitatus  
7 Act and be repugnant to a free society; and

8 WHEREAS, Section 1021, as it purports to authorize: (1) detainment of United  
9 States citizens and lawful resident aliens captured within the United States without  
10 charge; (2) military tribunals for United States citizens and legal resident aliens; and  
11 (3) the transfer of United States citizens and legal resident aliens captured within the  
12 United States to foreign jurisdictions, is violative of the following rights enshrined in  
13 the Constitution of the United States of America and the Maryland Constitution as  
14 follows:

15 (1) In the Constitution of the United States of America:

16 (i) The right to seek a Writ of Habeas Corpus as found in  
17 Article 1, Section 9, Clause 2;

18 (ii) The right to petition the government for a redress of  
19 grievances as found in the First Amendment;

20 (iii) The right to be free from unreasonable searches and seizures  
21 as found in the Fourth Amendment;

22 (iv) The right to be free from charge for an infamous or capital  
23 crime until presentment or indictment by a Grand Jury and the right to be free from  
24 deprivation of life, liberty, or property as found in the Fifth Amendment;

25 (v) The right in criminal prosecutions to a speedy trial by an  
26 impartial jury in the state and district where the crime shall have been committed and  
27 the right to counsel and the right to confront witnesses as found in the Sixth  
28 Amendment;

29 (vi) The right to be free from excessive bail and fines and cruel  
30 and unusual punishment as found in the Eighth Amendment; and

31 (vii) The right to be free from deprivation of life, liberty, or  
32 property without due process of law as found in the Fourteenth Amendment;

33 (2) In the Declaration of Rights of the Maryland Constitution:

(i) The right to be informed of the accusation against one, have a copy of the indictment or charge, be allowed counsel, and a speedy trial as found in Article 21;

(ii) The right to be free from deprivation of life, liberty, or property and to be guaranteed due process of law as found in Article 24;

(iii) The right to be free from excessive bail or cruel and unusual punishment as found in Article 25;

(iv) The right to be free of unreasonable searches and seizures as found in Article 26;

(v) The right to have the military, in all cases and at all times, be under strict subordinate to, and control of, civilian power as found in Article 30;

(vi) The right, for all except regular soldiers, marines, and mariners, not to be subject to, or punishable by, martial law, as found in Article 32; and

(vii) The right to have the provisions of the Constitution of the United States and the Maryland Constitution apply as well in time of war, as in time of peace as found in Article 44; and

(3) In Article III of the Maryland Constitution, the right of habeas corpus as guaranteed under Section 55, which prohibits the General Assembly from passing any law “suspending the privilege of the Writ of Habeas Corpus”; now, therefore, be it

RESOLVED BY THE GENERAL ASSEMBLY OF MARYLAND, That the General Assembly of the State of Maryland condemns Section 1021 of the 2012 National Defense Authorization Act as it purports to: (1) repeal the Posse Comitatus Act and authorize the President of the United States to utilize the armed forces of the United States to police United States citizens and lawful resident aliens within the United States of America; (2) indefinitely detain United States citizens and lawful resident aliens captured within the United States without charge until the end of the hostilities authorized by the 2001 Authorization for Use of Military Force Against Terrorists; (3) subject United States citizens and lawful resident aliens captured within the United States to military tribunals; and (4) transfer United States citizens and lawful resident aliens captured within the United States to foreign jurisdictions; and, further, the General Assembly of Maryland urges the United States Congress to reconsider and repeal Section 1021 of the 2012 National Defense Authorization Act; and be it further

RESOLVED, That a copy of this Resolution be forwarded by the Department of Legislative Services to the Maryland Congressional Delegation: Senators Barbara A. Mikulski and Benjamin L. Cardin, Senate Office Building, Washington, D.C. 20510;

1 and Representatives Andrew P. Harris, C. A. Dutch Ruppersberger III, John P.  
2 Sarbanes, Donna Edwards, Steny Hamilton Hoyer, Roscoe G. Bartlett, Elijah E.  
3 Cummings, and Christopher Van Hollen, Jr., House Office Building, Washington, D.C.  
4 20515.