

2012 -- S 2803

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

SENATE RESOLUTION

TO PRESERVE HABEAS CORPUS AND CIVIL LIBERTIES OF THE CITIZENS OF RHODE ISLAND

Introduced By: Senators Miller, Moura, Metts, Nesselbush, and Pichardo

Date Introduced: March 21, 2012

Referred To: Senate Judiciary

1 WHEREAS, The Congress of the United States passed the National Defense
2 Authorization Act, 2011 P.L. 112-81 (“2012 NDAA”) for Fiscal Year 2012 on December 15,
3 2011; and

4 WHEREAS, The President of the Unites States of America signed the 2012 NDAA into
5 law on December 31, 2011; and

6 WHEREAS, Section 1022 of the 2012 NDAA requires the Armed Forces of the United
7 States to detain, pending disposition according to the Law of War, any person involved in, or who
8 provided substantial support to terrorism or belligerent acts against the United States, and who is
9 a member of Al-Qaeda or an, associated force; and

10 WHEREAS, Section 1022 of the 2012 NDAA specifically excludes United States
11 citizens and lawful resident aliens for conduct occurring within the United States, from its
12 mandatory detention provisions; and

13 WHEREAS, Section 1022 of the 2012 NDAA purports to authorize, but does not require,
14 the President of the United States to utilize the Armed Forces of the United States to detain
15 persons the President suspects were part of, or substantially supported, Al-Qaeda, the Taliban, or
16 associated forces; and

17 WHEREAS, Section 1021 of the 2012 NDAA purports to authorize, but does not require,
18 the President of the United States through the Armed Forces of the United States, to dispose of
19 such detained persons according to the Law of War, which may include, but is not limited to: (1)

1 indefinite detention without charge or trial until the end of hostilities authorized by the 2001
2 Authorization for use of Military Force Against Terrorists, 2001 P.L. 107-40; (2) prosecution
3 through a Military Commission; or (3) transfer to a foreign country or foreign entity; and

4 WHEREAS, Unlike Section 1022 of the 2012 NDAA, Section 1021 makes no specific
5 exclusion for United States citizens and lawful resident aliens for conduct occurring within the
6 United States; and

7 WHEREAS, Section 1021 of the 2012 NDAA seeks to preserve existing law and
8 authorities pertaining to the detention of United States citizens, lawful resident aliens of the
9 United States, and any other person captured in the United States, but does not specify what such
10 existing law or authorities are; and

11 WHEREAS, The specific exclusion of application to United States citizens and lawful
12 resident aliens contained in Section 1022 of the 2012 NDAA, and the absence of such exclusion
13 in Section 1021 of the 2012 NDAA, strongly implies that the provisions of Section 1021 are
14 intended to apply to United States citizens and lawful resident aliens, whether or not they are
15 captured in the United States; and

16 WHEREAS, The Office of the President of the United States, under both the
17 administrations of George W. Bush and Barack H. Obama, has asserted the 2001 Authorization
18 for the Use of Military Force Against Terrorists allows the Office of the President to indefinitely
19 detain without charge, United States citizens and lawful resident aliens captured in the United
20 States; and

21 WHEREAS, The United States Supreme Court has not decided whether the 2001
22 Authorization for the Use of Military Force Against Terrorists allows the Office of the President
23 to indefinitely detain without charge, United States citizens and lawful resident aliens captured in
24 the United States; and

25 WHEREAS, Section 1021 of the 2012 NDAA purports to enlarge the scope of those
26 persons the Office of the President may indefinitely detain beyond those responsible for the
27 September 11, 2001, terrorist attacks, and those who harbored them, as purportedly authorized by
28 the 2001 Authorization for the Use of Military Force Against Terrorists, to now include a person
29 who was a part of, or substantially supported Al-Qaeda, the Taliban, or associated forces that are
30 engaged in hostilities against the United States or its coalition partners, including any person who
31 has committed a belligerent act or has directly supported such hostilities in aid of such enemy
32 forces; and

33 WHEREAS, United States Senator Carl Levin declared in colloquy on the floor of the
34 United States Senate that the original 2012 NDAA provided that Section 1021 (then Section 1031

1 prior to final drafting) specifically would not apply to United States citizens, but that the Office of
2 the President of the United States had requested that such restrictions be removed from the 2012
3 NDAA; and

4 WHEREAS, During debate in the Senate and before passage of the 2012 NDAA, United
5 States Senator Mark Udall introduced an amendment intended to forbid the indefinite detention of
6 U.S. citizens, which was rejected by a vote of 38-60; and

7 WHEREAS, United States Senator John McCain and United States Senator Lindsey
8 Graham declared in colloquies on the floor of the United States Senate that Section 1021 of the
9 2012 NDAA authorized the indefinite detention of United States citizens captured in the United
10 States by the Armed Forces of the United States; and

11 WHEREAS, United States Senator Lindsey Graham declared in colloquy on the floor of
12 the United States Senate that the United States homeland is now part of “the battlefield”; and

13 WHEREAS, Policing the citizenry of the United States of America by the Armed Forces
14 of the United States, as purportedly authorized by the 2012 NDAA, overturns the *Posse*
15 *Comitatus* doctrine and is repugnant to a free society; and

16 WHEREAS, Section 1021 of the 2012 NDAA as it purports to authorize: 1) Detainment
17 of United States citizens and lawful resident aliens captured within the United States without
18 charge; 2) Military tribunals for United States citizens and legal resident aliens captured within
19 the United States of America; and 3) The transfer of United States citizens and lawful resident
20 aliens captured within the United States to foreign jurisdictions, is violative of the following
21 rights enshrined in Constitution of the United States of America:

- 22 • Article I Section 9, Clause 2’s right to seek Writ of *Habeas Corpus*;
- 23 • The First Amendment’s right to petition the Government for a redress of
24 grievances;
- 25 • The Fourth Amendment’s right to be free from unreasonable searches and
26 seizures;
- 27 • The Fifth Amendment’s right to be free from charge for an infamous or capital
28 crime until presentment or indictment by a grand jury;
- 29 • The Fifth Amendment’s right to be free from deprivation of life, liberty, or
30 property, without Due Process of law;
- 31 • The Sixth Amendment’s right in criminal prosecutions to enjoy a speedy trial by
32 an impartial jury in the State and District where the crime shall have been
33 committed;
- 34 • The Sixth Amendment’s right to be informed of the nature and cause of the

- 1 accusation;
- 2 • The Sixth Amendment’s right to confront witnesses;
- 3 • The Sixth Amendment’s right to Counsel;
- 4 • The Eighth Amendment’s right to be free from excessive bail and fines, and cruel
- 5 and unusual punishment;
- 6 • The Fourteenth Amendment’s right to be free from deprivation of life, liberty, or
- 7 property, without due process of law; and

8 WHEREAS, Section 1021 of the 2012 NDAA as it purports to authorize; 1) Detainment

9 of United 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 captured within

11 the United States of America, and 3) the transfer of United States citizens and lawful resident

12 aliens captured within the United States to foreign jurisdictions, is repugnant to the following

13 rights enshrined in the Rhode Island Constitution;

- 14 • Article 1 Section 2’s right to be free from deprivation of life, liberty, or property,
- 15 without due process of law;
- 16 • Article 1 Section 5’s right to have prompt recourse to the laws for all injuries to
- 17 one’s person;
- 18 • Article 1 Section 6’s right to be free from unreasonable search and seizure;
- 19 • Article 1 Section 7’s right to be free from capital charge absent a grand jury
- 20 indictment, or felony charge absent grand jury indictment absent information
- 21 signed by the Attorney General;
- 22 • Article 1 Section 8’s right to be free from excessive bail;
- 23 • Article 1 Section 9’s right to bail and right to Habeas Corpus;
- 24 • Article 1 Section 10’s right to a speedy public trial by an impartial jury, right to
- 25 have assistance of counsel, and the right to be free from deprivation of life,
- 26 liberty, or property, unless by the judgment of peers;
- 27 • Article 1 Section 14’s right to be presumed innocent until pronounced guilty by
- 28 the law;
- 29 • Article 1 Section 15’s right to a trial by Jury;
- 30 • Article 1 Section 18’s requirement that the military authority is subordinate to the
- 31 civil authority;

32 WHEREAS, The members of this Senate have taken an oath to uphold the Constitution

33 of the United States of America and the Constitution of the State of Rhode Island and Providence

34 Plantations; and

1 WHEREAS, This Senate opposes any and all rules, laws, regulations, bill language, or
2 executive orders, which amount to an overreach of the federal government and which effectively
3 take away civil liberties; and

4 WHEREAS, It is indisputable that the threat of terrorism is real, and that the full force of
5 appropriate and constitutional law must be used to defeat this threat; however, winning the war
6 against terror cannot come at the great expense of mitigating basic, fundamental, constitutional
7 rights; and

8 WHEREAS, Undermining our own Constitutional rights serves only to concede to the
9 terrorists' demands of changing the fabric of what made the United States of America a country
10 of freedom, liberty, and opportunity; now, therefore be it

11 RESOLVED, That this Senate of the State of Rhode Island and Providence Plantations
12 hereby condemns in no uncertain terms Section 1021 of the 2012 NDAA as it purports to: 1)
13 Repeal Posse Comitatus and authorize the President of the United States to utilize the Armed
14 Forces of the United States to police United States citizens and lawful resident aliens within the
15 United States of America; 2) Indefinitely detain United States citizens and lawful resident aliens
16 captured within the United States of America without charge until the end of hostilities authorized
17 by the 2001 Authorization for Use of Military Force; 3) Subject American Citizens and lawful
18 resident aliens captured within the United States of America to military tribunals; and 4) Transfer
19 American Citizens and lawful resident aliens captured within the United States of America to a
20 foreign country or foreign entity; and be it further

21 RESOLVED, That this Senate of the State of Rhode Island and Providence Plantations
22 hereby finds that the enactment into law by the United States Congress of Sections 1021 and 1022
23 of the National Defense Authorization Act of 2012, Public Law Number 112-81, is inimical to the
24 liberty, security, and well-being of the people of Rhode Island, and was adopted by the United
25 States Congress in violation of the limits of federal power in United States Constitution; and be it
26 further

27 RESOLVED, That the Secretary of State be and he hereby is authorized and directed to
28 transmit duly certified copies of this resolution to the Honorable Barack Obama, President of the
29 United States; the Senate Majority Leader; the Speaker of the House of Representatives, each
30 member of Congress from the State of Rhode Island; the Honorable John Roberts, Chief Justice
31 of the United States Supreme Court; each Associate Justice of the United States; and the

- 1 President of the Senate and the Speaker of the House of Representatives of each state's
- 2 legislature.

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