

As Introduced

**130th General Assembly
Regular Session
2013-2014**

H. C. R. No. 41

Representatives Butler, Young

**Cosponsors: Representatives Adams, J., Beck, Becker, Brenner, Henne,
Hood, Lynch, Retherford, Roegner, Sprague, Stebelton, Terhar**

CONCURRENT RESOLUTION

To condemn Section 1021 of the National Defense 1
Authorization Act for Fiscal Year 2012 and to urge 2
the Attorney General of the State of Ohio to bring 3
suit to challenge the constitutionality of Section 4
1021 of the National Defense Authorization Act for 5
Fiscal Year 2012. 6

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF OHIO (THE SENATE CONCURRING):

WHEREAS, On December 15, 2011, the Congress of the United 7
States enacted the National Defense Authorization Act for Fiscal 8
Year 2012 ("2012 NDAA"), 2011 Public Law 112-81; and 9

WHEREAS, On December 31, 2011, the President of the United 10
States signed the 2012 NDAA; and 11

WHEREAS, Section 1022 of the 2012 NDAA requires the armed 12
forces of the United States to detain, pending disposition under 13
the law of war, any person who is a member of al-Qaeda or an 14
associated force and who participated in the course of planning or 15
carrying out an attack against the United States or its coalition 16
partners; and 17

WHEREAS, Section 1022 of the 2012 NDAA specifically excludes 18

lawful resident aliens on the basis of conduct occurring within 19
the United States and United States citizens from its mandatory 20
detention provisions; and 21

WHEREAS, Section 1021 of the 2012 NDAA purports to authorize, 22
but does not require, the President of the United States to 23
utilize the armed forces of the United States to detain persons 24
the President suspects were part of, or substantially supported, 25
al-Qaeda, the Taliban, or associated forces; and 26

WHEREAS, Section 1021 of the 2012 NDAA purports to authorize, 27
but does not require, the President of the United States, through 28
the armed forces of the United States, to dispose of such detained 29
persons according to the law of war, which may include, but is not 30
limited to: (1) indefinite detention without charge or trial until 31
the end of hostilities authorized by the 2001 Authorization for 32
Use of Military Force, 2001 Public Law 107-40; (2) prosecution 33
before a military commission; or (3) transfer to a foreign country 34
or foreign entity; and 35

WHEREAS, Unlike Section 1022 of the 2012 NDAA, Section 1021 36
makes no specific exclusion for lawful resident aliens for conduct 37
occurring within the United States or for United States citizens; 38
and 39

WHEREAS, Section 1021 of the 2012 NDAA seeks to preserve 40
existing law and authorities pertaining to the detention of United 41
States citizens, lawful resident aliens of the United States, and 42
any other person captured in the United States, but does not 43
specify what such existing law or authorities are; and 44

WHEREAS, The specific exclusion of application to United 45
States citizens and lawful resident aliens contained in Section 46
1022 of the 2012 NDAA, and the absence of such an exclusion in 47
Section 1021 of the NDAA, strongly implies that the provisions of 48
Section 1021 are intended to apply to United States citizens and 49

lawful resident aliens, regardless of whether they are captured in 50
the United States; and 51

WHEREAS, The Office of the President of the United States, 52
under the administrations of both George W. Bush and Barack H. 53
Obama, has asserted that the 2001 Authorization for Use of 54
Military Force allows the Office of the President to detain United 55
States citizens and lawful resident aliens captured in the United 56
States indefinitely without charge; and 57

WHEREAS, The United States Supreme Court has not decided 58
whether the 2001 Authorization for Use of Military Force allows 59
the Office of the President to detain United States citizens and 60
lawful resident aliens captured in the United States indefinitely 61
without charge; and 62

WHEREAS, Section 1021 of the 2012 NDAA purports to enlarge 63
the scope of persons the Office of the President may detain 64
indefinitely beyond those responsible for the September 11, 2001, 65
terrorist attacks and those who harbored them, as purportedly 66
authorized by the 2001 Authorization for Use of Military Force, to 67
include, "[a] person who was a part of or substantially supported 68
al-Qaeda, the Taliban, or associated forces that are engaged in 69
hostilities against the United States or its coalition partners, 70
including any person who has committed a belligerent act or has 71
directly supported such hostilities in aid of such enemy forces"; 72
and 73

WHEREAS, United States Senator Carl Levin declared in 74
colloquy on the floor of the United States Senate that the 75
original 2012 NDAA provided that Section 1021, then labeled 76
section 1031, specifically would not apply to United States 77
citizens, but that the Office of the President of the United 78
States requested that such restriction be removed from the 2012 79
NDAA; and 80

WHEREAS, During debate within the Senate prior to the passage 81
of the 2012 NDAA, United States Senator Mark Udall introduced an 82
amendment which was intended to forbid the indefinite detention of 83
United States citizens and which was rejected by a vote of 38-60; 84
and 85

WHEREAS, United States Senator John McCain and United States 86
Senator Lindsey Graham declared in colloquies on the floor of the 87
United States Senate that Section 1021 of the 2012 NDAA authorized 88
the indefinite detention of United States citizens captured within 89
the United States by the armed forces of the United States; and 90

WHEREAS, United States Senator Lindsey Graham declared in 91
colloquy on the floor of the United States Senate that the United 92
States homeland is now part of "the battlefield"; and 93

WHEREAS, The policing of the citizenry of the United States 94
by the armed forces of the United States, as purportedly 95
authorized by the 2012 NDAA, overturns the Posse Comitatus Act, 18 96
U.S.C. 1385, and is repugnant to a free society; and 97

WHEREAS, Section 1021 of the 2012 NDAA, insofar as it 98
purports to authorize (1) the detention without charge of United 99
States citizens and lawful resident aliens captured within the 100
United States, (2) military tribunals for United States citizens 101
and lawful resident aliens captured within the United States, and 102
(3) the transfer of United States citizens and lawful resident 103
aliens captured within the United States to foreign jurisdictions, 104
violates the following rights enshrined in the Constitution of the 105
United States: 106

The Article I, Section 9, Clause 2 right to seek the writ of 107
habeas corpus; 108

The First Amendment right to petition the government for a 109
redress of grievances; 110

The Fourth Amendment right to be free from unreasonable 111

searches and seizures;	112
The Fifth Amendment right to be free from charge for an	113
infamous or capital crime until presentment or indictment by a	114
grand jury;	115
The Fifth Amendment right to be free from deprivation of	116
life, liberty, or property without due process of law;	117
The Sixth Amendment right in criminal prosecutions to a	118
speedy trial by an impartial jury in the state and district where	119
the crime shall have been committed;	120
The Sixth Amendment right to be informed of the nature and	121
cause of the accusation;	122
The Sixth Amendment right to confront witnesses;	123
The Sixth Amendment right to counsel;	124
The Eighth Amendment right to be free from excessive bail and	125
finer and from cruel and unusual punishment; and	126
The Fourteenth Amendment right to be free from deprivation of	127
life, liberty, or property without due process of law; and	128
WHEREAS, Section 1021 of the 2012 NDAA, insofar as it	129
purports to authorize (1) the detention without charge of United	130
States citizens and legal resident aliens captured within the	131
United States, (2) military tribunals for United States citizens	132
and legal resident aliens captured within the United States, and	133
(3) the transfer of United States citizens and legal resident	134
aliens captured within the United States to foreign jurisdictions,	135
is repugnant to the following rights enshrined in the Constitution	136
of the State of Ohio:	137
The Article I, Section 1 right to enjoy and defend life and	138
liberty;	139
The Article I, Section 3 right to petition the General	140
Assembly for the redress of grievances;	141

The Article I, Section 4 requirement that the military be in strict subordination to the civil power;	142 143
The Article I, Section 5 right to trial by jury;	144
The Article I, Section 8 right to seek the writ of habeas corpus;	145 146
The Article I, Section 9 right to be free from excessive bail and from cruel and unusual punishment;	147 148
The Article I, Section 10 rights to be free from charge for an infamous or capital crime without presentment or indictment by a grand jury; to a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; to have the assistance of counsel; to demand the nature and cause of the accusation, and to have a copy thereof; to confront witnesses; to compel witnesses to attend; and to refuse to testify against oneself;	149 150 151 152 153 154 155 156
The Article I, Section 14 right to be free from unreasonable search and seizure; and	157 158
The Article I, Section 16 right to have remedy by due course of law for an injury to one's person, and to have justice administered without denial or delay; and	159 160 161
WHEREAS, The General Assembly finds that Section 1029 of the National Defense Authorization Act for Fiscal Year 2013, which purports that the 2012 NDAA, and other recent laws, should not be interpreted to deny the availability of the writ of habeas corpus or to deny any constitutional rights, is not adequate to protect the constitutional rights of Ohio citizens; and	162 163 164 165 166 167
WHEREAS, The members of the General Assembly have taken an oath to uphold the Constitution of the United States and the Constitution of the State of Ohio; and	168 169 170
WHEREAS, The General Assembly opposes any and all rules,	171

laws, regulations, bill language, or executive orders that amount 172
to an overreach of the federal government and that effectively 173
take away civil liberties; and 174

WHEREAS, It is indisputable that the threat of terrorism is 175
real, and that the full force of appropriate and constitutional 176
law must be used to defeat this threat; however, defeating those 177
that engage in terrorism cannot come at the great expense of 178
mitigating basic, fundamental constitutional rights; and 179

WHEREAS, Undermining our own constitutional rights serves 180
only to concede to the terrorists' demands to change the fabric of 181
what made the United States a country of freedom, liberty, and 182
opportunity; now therefore be it 183

RESOLVED, That the General Assembly condemns in no uncertain 184
terms Section 1021 of the National Defense Authorization Act for 185
Fiscal Year 2012 insofar as it purports to (1) repeal the Posse 186
Comitatus Act and authorize the President of the United States to 187
utilize the armed forces of the United States to police United 188
States citizens and lawful resident aliens within the United 189
States; (2) authorize the indefinite detention without charge of 190
United States citizens and lawful resident aliens captured within 191
the United States until the end of hostilities authorized by the 192
2001 Authorization for Use of Military Force; (3) subject American 193
citizens and lawful resident aliens captured within the United 194
States to military tribunals; and (4) transfer American citizens 195
and lawful resident aliens captured within the United States to a 196
foreign country or foreign entity; and be it further 197

RESOLVED, That the General Assembly urges the Attorney 198
General of the State of Ohio to bring suit to challenge the 199
constitutionality of Section 1021 of the National Defense 200
Authorization Act for Fiscal Year 2012; and be it further 201

RESOLVED, That the Clerk of the House of Representatives 202

transmit duly authenticated copies of this resolution to the	203
Attorney General of the State of Ohio, to the Speaker and Clerk of	204
the United States House of Representatives, to the President Pro	205
Tempore and Secretary of the United States Senate, to the members	206
of the Ohio Congressional delegation, and to the news media of	207
Ohio.	208