

(Published in the official county newspaper on the 5<sup>th</sup> day of March, 2012)

**RESOLUTION NO. 2 - 2012**

**A RESOLUTION Condemning Section 1021 of the 2012 National Defense Authorization Act;**

**A RESOLUTION Rendering it Unlawful for Cherokee County, Kansas, Officials and Employees to Cooperate With an Investigation and/or Detainment of United States Citizens and resident legal aliens by, or by in-part, the Armed Forces of the United States; and**

**A RESOLUTION Rendering it Unlawful for Individuals in the Armed Forces of the United States to Conduct Investigations or Detainments Within Cherokee County, Kansas, of United States Citizens and resident legal aliens,**

**BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF CHEROKEE COUNTY, KANSAS:**

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

**WHEREAS**, the President of the United States of America signed the 2012 NDAA into law on December 31, 2011;

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

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

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

**WHEREAS**, Section 1021 of the 2012 NDAA purports to authorize, but does not require, the President of the United States, through the Armed Forces of the United States, to dispose of such detained persons according to the Law of War, which may include but is not limited to: (1) indefinite detention without charge or trial until the end of hostilities authorized by the 2001 Authorization for Use of Military Force Against Terrorists, 2001 P.L. 107-40, (2) prosecution through a Military Commission, or (3) transfer to a foreign country or foreign entity.

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

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

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

**WHEREAS**, the Office of the President of the United States, under both the administrations of George W. Bush and Barak H. Obama, has asserted the 2001 Authorization for the Use of Military Force Against Terrorists allows the Office of the President to indefinitely detain without charge United States Citizens and lawful resident aliens captured in the United States;

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



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

**WHEREAS**, United States Senator Carl Levin declared in colloquy on the floor of the United States Senate that the original 2012 NDAA provided that section 1021 (then section 1031 prior to final drafting) specifically would not apply to United States citizens, but that the Office of the President of the United States had requested that such restriction be removed from the 2012 NDAA;

**WHEREAS**, during debate within the Senate and before the passage of the 2012 NDAA, United States Senator [Mark Udall](#) introduced an amendment intended to forbid the indefinite detention of U.S. citizens, which was rejected by a vote of 38–60;

**WHEREAS**, United States Senator John McCain and United States Senator Lindsey Graham declared in colloquies on the floor of the United States Senate that Section 1021 of the 2012 NDAA authorized the indefinite detention of United States Citizens captured within the United States by the Armed Forces of the United States;

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

**WHEREAS**, the Office of President in issued a signing statement upon signing the NDAA into law that he will “not authorize the indefinite military detention without trial of American citizens” as is purportedly permitted by Section 1021 of the 2012 NDAA;

**WHEREAS**, the Office of President’s signing statement does not legally bind this administration or subsequent administrations;

**WHEREAS**, the Office of President's signing statement indicates that the President believes the Office of President possesses the authority to indefinitely detain United States Citizens pursuant to section 1021 of the 2012 NDAA;

**WHEREAS**, Retired four star marine generals Charles C. Krulak and Joseph P. Hoar stated publicly that as a result of the indefinite detention provision of the 2012 NDAA that "due process would be a thing of the past," and "this provision would expand the battlefield to include the United States";

**WHEREAS**, Retired four star marine generals Charles C. Krulak and Joseph P. Hoar also stated publicly that the mandate of military custody for most terrorism suspects "would violate not only the spirit of the post-reconstruction act limiting the use of the armed forces for domestic law enforcement but also our trust with service members, who enlist believing that they will never be asked to turn their weapons on fellow Americans";

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

**WHEREAS**, Section 1021 of the 2012 NDAA as it purports to authorize, 1) detainment of United States Citizens and legal resident aliens captured within the United States of America without charge, 2) military tribunals for United States Citizens and legal resident aliens captured within the United States of America, and 3) the transfer of United States Citizens and legal resident aliens captured within the United States of America to foreign jurisdictions, is violative of the following rights enshrined in the Constitution of the United States of America;

- Article I Section 9, Clause 2's right to seek Writ of *Habeas Corpus*;
- Article III Section 3's requirement that treason must be proven by the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.
- The First Amendment's right to petition the Government for a redress of grievances;



- The Fourth Amendment's right to be free from unreasonable searches and seizures;
- The Fifth Amendment's right to be free from charge for an infamous or capitol crime until presentment or indictment by a Grand Jury;
- The Fifth Amendment's right to be free from deprivation of life, liberty, or property, without Due Process of law;
- The Sixth Amendment's right in criminal prosecutions to enjoy a speedy trial by an impartial jury in the State and District where the crime shall have been committed;
- The Sixth Amendment's right to be informed of the nature and cause of the accusation;
- The Sixth Amendment's right confront witnesses;
- The Sixth Amendment's right to Counsel;
- The Eighth Amendment's right to be free from excessive bail and fines, and cruel and unusual punishment;
- The Fourteenth Amendment's right to be free from deprivation of life, liberty, or property, without Due Process of law;

**WHEREAS**, Section 1021 of the 2012 NDAA as it purports to authorize, 1) detainment of United States Citizens and legal resident aliens captured within the United States of America without charge or trial, 2) military tribunals for United States Citizens and legal resident aliens captured within the United States of America, and 3) the transfer of United States Citizens and legal resident aliens captured within the United States of America to foreign jurisdictions, is repugnant to the rights enshrined in the Kansas Constitution.

**WHEREAS**, this Board of County Commissioners of Cherokee County, Kansas, opposes any and all rules, laws, regulations, bill language or executive orders, which amount to an overreach of the federal government and which effectively take away civil liberties;

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

**WHEREAS**, undermining our own Constitutional rights serves only to concede to the terrorists' demands of changing the fabric of what made the United States of America a country of freedom, liberty and opportunity.

**NOW BE IT RESOLVED THAT**, the Board of County Commissioners of Cherokee County, Kansas, condemns in no uncertain terms Section 1021 of the 2012 NDAA as it purports to 1) repeal *Posse Comitatus* 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 of America without charge until the end of hostilities authorized by the 2001 Authorization for Use of Military Force, 3) subject American Citizens and lawful resident aliens captured within the United States of America to military tribunals, and 4) transfer American Citizens and lawful resident aliens captured within the United States of America to a foreign country or foreign entity;

**NOW THEREFORE**,

1. No Cherokee County, Kansas, official or employee, acting in her or his capacity as such an official or employee, or a person contracting with Cherokee County, Kansas, or employees of a corporation contracting with the Cherokee County, Kansas, shall knowingly cooperate with an investigation and/or detainment of a United States citizen or lawful resident alien located within the United States America by, or by in-part, the Armed Force of the United States of America, excepting those of 1) the United States Coast Guard when it is not operating as a service in the Navy, 2) National Guard units and State Defense Forces while under the authority of the governor of the State of Kansas, and 3) excepting internal investigations and detainments by the Armed Forces of the United States of America of active duty members of the Armed Forces of the United States of America;

2. No member of the Armed Forces of the United States of America, nor any person acting directly with, or on behalf of, the Armed Forces of the United States of America, shall conduct investigations and/or detainments within Cherokee County, Kansas, of United States citizens and lawful resident aliens; excepting investigations or detainments by 1) the United States Coast Guard when it is not operating as a service in the Navy, 1) National Guard units and State Defense Forces while under the authority of



the governor of the State of Kansas, and 3) Internal investigations and detentions by the Armed Forces of the United States of America of active duty members of the Armed Forces of the United States of America,

3. Any violation of the preceding sections #1 or #2 immediately above shall be punishable a fine not to exceed \$500.00 and/or 30 days in jail.

4. The Sheriff of Cherokee County, Kansas, is hereby directed to report to the Board of County Commissioners of Cherokee County, Kansas, any attempt by agencies or agents of the United States Federal Government to secure the implementation of Sections 1021 and 1022 of the National Defense Authorization Act of 2012 through the operations of that or any other state department.

5. If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this resolution, or the application thereof to any circumstances, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this resolution.

6. This resolution shall take effect and be in full force from and after its passage and publication once in the official county newspaper.

Adopted this \_\_\_\_ day of March, 2012, by the BOARD OF COMMISSIONERS OF CHEROKEE COUNTY, KANSAS.



Patrick W. Collins  
County Commissioner



Richard J. Hilderbrand  
County Commissioner



Jack G. Garner  
County Commissioner

ATTEST:



Crystal Gatewood  
County Clerk of Cherokee County,  
Kansas

Resolution No. 2 - 2012

Prepared by:

Kevin Cure, Attorney