Debates Over Suspension of the Writ of Habeas Corpus

**Objective**
Students will learn the definition of the writ of habeas corpus and arguments for and against Lincoln’s suspension of the writ in the Civil War. Students will learn the arguments for and against suspending the writ in recent habeas corpus cases.

**Grade Levels** 8, high school government

**Voluntary State Curriculum Standards Correlations**

**Grade 8**
1.C.2.c. Examine the use of Presidential power in Lincoln’s suspension of the writ of habeas corpus

**High School Government**

**Content Standard 1.A.1.** The student will evaluate how the principles of government assist or impede the functioning of government.

**Assessment Limit g.** Explain the powers denied to the national and state governments including: bills of attainder, ex post facto laws and the suspension of habeas corpus in the Constitution.

**Time** Two 45 minute class periods (three class periods for high school)

**Background**
As a border state, Maryland was caught between North and South in the years leading up to the Civil War. The state's geographic and topographic diversity resulted in a state whose regions were very different politically, economically, and socially.

As the sectional crisis intensified, most Marylanders wanted to remain neutral, although they sympathized with the South. The election of 1860 illustrates this point. Southern Democrat John Breckinridge, who supported the extension of slavery into the territories, received 45.9% of the vote in Maryland. John Bell of the Constitutional Union Party, which took no position on slavery and supported peace and the Union, received 45.1% but carried all but 6 counties, albeit by narrow margins. Both candidates were from border states and were viewed as moderates who wanted to restore peace. Northern candidates Abraham Lincoln (Republican) and Stephen Douglas (Northern Democrat) received just 9% of the Maryland vote combined.

Despite Maryland's sympathy for the South, the state never seceded. Even when Southern sentiment reached its zenith after a secessionist mob attacked Northern troops passing through the city in April 1861, Maryland did not move to secede, although it was much discussed. After the riots, President Lincoln established de facto martial law in Maryland, suspending the privilege of the writ of habeas corpus and occupying the city with Federal troops. This ended any chance that the state would actually join the Confederacy.
In response to the arrival of federal troops, Baltimoreans, with the consent of the mayor of Baltimore and governor of Maryland, burned railroad bridges leading into the area. One of these participants, John Merryman, was arrested on May 25 and held in Fort McHenry, which served as a military prison during the Civil War. His lawyers served a writ of habeas corpus to the federal circuit court, which was presided over at the time by Chief Justice of the Supreme Court Roger Taney. At the time, justices would preside over circuits while the Court was not in session, a practice known as circuit riding that ended in 1869. When Gen. Cadawaler, head of U.S. military forces in Maryland, refused to present Merryman to the court, Taney wrote the much cited opinion in *Ex Parte Merryman*, which argued that the President did not have the power to suspend the writ of habeas corpus. Lincoln ignored the ruling, and Merryman remained in Fort McHenry through July 4, when he was interviewed by Secretary of War Simon Cameron, and released sometime thereafter Congress formally suspended the writ in 1863.


**Materials**
Photocopies of documents and worksheets
Podium or lectern

**Advanced Preparation**
Make photocopies of worksheets, documents, timeline

**Motivation (optional)**
Ask students what basic protections people in the U.S. can expect when arrested for a crime, as outlined in the Constitution. Review these as a class.
Or, split the students into groups. Assign articles from the Constitution and amendments in the Bill of Rights related to protections related to trial. Have the students write a list of the protections they can find in 5-10 minutes. Record their responses on the board.

Explain that, among the protections outlined in the Constitution, a very important one is the writ of habeas corpus.

**Procedure**
Explain to the students that they will be examining an important part of the Constitution, the writ of habeas corpus. Explain that they will look at what this term means, what power the government has to withhold the right, and debates over the government’s use of that power.

**Part I: Defining the Writ**
Have students read and complete the worksheet "What is habeas corpus?” Discuss their responses.

Have students read and complete the worksheet "When can the right to petition for a writ...be suspended?” Discuss their responses.

**Part II: Suspension of the Writ in the Civil War (Day 1)**
Explain to students that this right was suspended, right here in Maryland, during the Civil War. President Lincoln felt the need to allow the suspension of the writ of habeas corpus by military
authorities along the military line between Philadelphia and Washington, in response to events in this state.

Provide each student with a copy of “The Massacre in Baltimore.” Have students read the text at the bottom, examine the image, and describe what they see. Explain that this event was called the Pratt St. riots, and is considered the site of the first bloodshed of the Civil War.

Explain to students that they will look at two documents that describe events that led up to the suspension of the writ. Provide each student with a copy of the “Letter from James Dorsey Describing the Riots” and the Letter of April 21. Have the students read the document individually or as a class and ask the students to summarize the events of the day using the worksheet “What events led up to...” Discuss their responses.

Explain that Marylanders’ loyalties were divided; while it never seceded, there were many Marylanders who felt sympathy toward the Southern cause. Explain that, as they read, in addition to the riots themselves, shortly after the riots other action was taken to hinder the movement of troops through the state. Explain that, on orders from the mayor and police board, members of the state militia burned railroad bridges to prevent the entrance of troops to Maryland. Among these militia members was a man named John Merryman who was arrested after suspension of the writ.

Explain that they will now read a little bit about John Merryman, to learn what happened to him as a result of the suspension of the writ.

Have students read complete the worksheet “What happened when habeas corpus was suspended?” Discuss their responses.

Part III: Debating the Suspension of Habeas Corpus (Day 2)
Explain that the decision to suspend the writ was very controversial. Explain that they will now read six documents on opposing sides of the question: “Was Lincoln justified in authorizing suspension of the writ?”

Provide students with the documents labeled A through F. Students will use the Yes/No worksheet to complete the activity, following the directions at the top of the page. If necessary, model the activity with the excerpt from Ex Parte Merryman. Students may complete the activity in pairs or individually.

When students have finished examining their documents, they should record their own response to the question. Do they believe the suspension of the writ was justified? Why or why not?

Options for Conclusion:
The summary activity for this section will depend on your students. A simple review of the arguments and the students’ positions may suffice, but a semi-formal debate may also be appropriate, especially if there is a large difference of opinion among the students.

Hand out copies of the “Debate Roles and Procedures” and review these with the students. Ask students to decide among themselves which group member will perform each role. Explain to students that the key to a successful debate is not only representing their own argument, but also refuting the opposing side’s argument and evidence.
Basic arguments and evidence are as follows:

**Side A**

*Main idea:* Suspension of writ is not a specific right of Congress and the state was in rebellion, which is the appropriate time for suspension.

*Sub-arguments:*
- revoking this right will uphold other rights
- the influence of rebel leaders could have been restrained had they been arrested by an earlier suspension

*Evidence of rebellion:*
- riots and murder of U.S. soldiers
- threats to take over Fort McHenry
- arrival of troops
- debates over secession

**Side B**

*Main idea:* Suspension of the writ is a right of Congress, not the Presidency

*Evidence/Sub-arguments:*
- location of the writ in the Constitution shows suspension is a right of Congress
- action is tyrannical
- innocent people are imprisoned as a result

Ask the students why they think it might be important for them to understand habeas corpus and its history.

**Part IV: Habeas Corpus and Current Events (Day 3, high school government only)**

Remind students that some of them (may have) argued that Lincoln was right to suspend the writ. Tell them that the debate over the right the government has to suspend civil liberties in wartime is ongoing. Explain to the students that people are currently debating the right to suspend the writ of habeas corpus today, in the context of the war on terror.

Ask the students if they have heard of Guantanamo Bay or enemy combatants. Explain that, since September 11, 2007, the government has put into place a variety of methods for capturing and detaining “unlawful enemy combatants”, who, according to the Military Commissions Act is “a person who has: (1) engaged in or supported hostilities against the United States or its co-belligerents who is not a lawful enemy combatant; or (2) been determined to be an unlawful enemy combatant by a Combatant Status Review Tribunal. [A lawful enemy combatant is “a member of: (1) the regular forces of a State party engaged in hostilities against the United States; (2) a militia, volunteer corps, or organized resistance movement belonging to a State party engaged in hostilities against the United States; (2) a militia, volunteer corps, or organized resistance movement belong to a State party engaged in such hostilities, which are under responsible command, wear a fixed distinctive sign recognizable at a distance, carry their arms openly, and abide by the law of war; or (3) a regular armed force who professes allegiance to a government engaged in such hostilities, but not recognized by the United States.”]—or people the government suspects of being involved in terrorist plots. A recent action is the Military Commissions Act of 2006, which includes provisions relating to habeas corpus.
Explain to the students that they will now learn about the Act and its relationship to habeas corpus. Divide the students into two groups. Give group 1 the White House Fact Sheet on the Military Commissions Act: http://www.whitehouse.gov/news/releases/2006/10/20061017.html and group 2 the ACLU’s fact sheet: http://www.aclu.org/safefree/detention/29145res20070322.html Ask each group to explain what the Military Commissions Act allows, according to their sheet. Consider the differences in perspective. Ask the students where they might look for a more balanced account of the Act.

Distribute Excerpts from the Military Commissions Act [see www.thomas.loc.gov, search under Public Laws for Public Law 109-366, see sec. 5(a) and sec. 7(e)]. Ask the students to explain what the Act provides for and which of the two articles provided the most accurate picture of the Act. Have students complete the first part of the worksheet Rights of Detainees.

Distribute the article Senate Rejects Expanding Detainee Rights: http://abcnews.go.com/Politics/wireStory?id=3626039 and Supreme Court Hears Guantanamo Arguments: http://www.npr.org/templates/story/story.php?storyId=16962449. Ask what measures the Senate and Supreme Court are taking to address the rights of detainees. Have the students complete the second part of the worksheet Rights of Detainees.

Ask the students whether they would support allowing habeas corpus rights to detainees, considering the limitations on suspension of habeas corpus outlined in the Constitution. Ask them if they consider this a time in which the public safety requires it, and which of the views expressed in the articles they most agree with.

**Extension Activities:**
Have the students write an editorial to a local newspaper expressing their opinion about President Lincoln’s suspension of the writ.

**High School Government Only:**
Have students follow the debate over habeas corpus rights for detainees. Ask students to make a scrapbook of at least one article per week related to detainees, habeas corpus, the Military Commissions Act, etc.

Research Hamdi v. Rumsfeld and Hamdan v. Rumsfeld. Using Justice Scalia’s dissent in Hamdi, record other instances in which habeas corpus has been suspended, and research a selected case.

Have students imagine themselves as Roger Brooke Taney. Would he have supported the Military Commissions Act, based on his arguments in Ex Parte Merryman? Ask students to write a response to President Bush in Taney’s voice.
What is habeas corpus?

Habeas corpus is a Latin phrase meaning 'you have the body.' It's an ancient concept. In old English law, it was used to refer to a judge's order (or "writ") to bring a prisoner before a court to determine whether his imprisonment was lawful.

The Founding Fathers put the writ into the Constitution as a check on the government's power to arbitrarily put someone in prison...

From: What You Should Know about Habeas Corpus from www.aclu.org

"What is Habeas Corpus?"
The ‘Great Writ’ of habeas corpus is a fundamental right in the Constitution that protects against unlawful and indefinite imprisonment. Translated from Latin it means 'show me the body.' Habeas corpus has historically been an important instrument to safeguard individual freedom against ar-

From: Merriam-Webster's Main Entry: habeas corpus
Etymology: derived from the Latin phrase, meaning literally "you should have the body," used as the opening words of a legal order to jailers to bring the prisoner to court

1: a legal order for an inquiry to determine whether a person has been lawfully imprisoned

2: the right of a citizen to obtain a writ of habeas corpus as a protection against illegal imprisonment

So...what do you think that means? What is habeas corpus? What does habeas corpus protect?

Response: __________________________________________

__________________________________________________

__________________________________________________

__________________________________________________

__________________________________________________

__________________________________________________
When can the right to petition for a writ of habeas corpus be suspended?

U.S. Constitution
Article 1: The Legislature
Section 9: Limits on Congress
The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

When can this right be suspended? What are some examples of times when you think it might be justified to suspend the writ?

Response: ________________________________

________________________________________

________________________________________

________________________________________

________________________________________

________________________________________
THE MASSACRE AT BALTIMORE.

THE SIXTH REGIMENT, MASSACHUSETTS VOLUNTEERS RESISTING THE MOB WHILE PASSING THROUGH THE CITY ON THEIR WAY TO WASHINGTON, APRIL 19TH, 1861.
What events led up to the suspension of habeas corpus?

Using the documents provided, describe two events that took place before Lincoln’s suspension of the writ.
Stay a little longer with me. I don't want to leave. I need you. I love you. I can't stand it when you're gone. I miss you. I can't sleep without you. I need you. I love you. I can't stand it when you're gone. I miss you. I can't sleep without you. I need you. I love you. I can't stand it when you're gone. I miss you. I can't sleep without you. I need you. I love you. I can't stand it when you're gone. I miss you. I can't sleep without you. I need you. I love you. I can't stand it when you're gone. I miss you. I can't sleep without you. I need you.
Balt Friday Night April 19th

Dear Sir

We have had a bloody tragedy in our city today. Some troops from Boston were passing through to Washington when they were attacked in Pratt St. with stones or pistols, some two or three were killed, when they returned fire and killed some ten or twelve citizens. It has caused a great excitement here. The stores were all closed a town meeting called which was [...] by the Mayor the Governor and several others. You will find a detailed account in the paper I send you. The Gov & Mayor had ordered no more troops from the North to pass through here. We are now to be in continual excitement, our city will doubtless be the battle ground, and I would like for Sally & the children to come down and stay awhile with you. But she will not consent to leave me behind, and you know that I would not think of leaving in time of trouble. It may be now and I think it very likely that every man will be called to defend his home and fireside which I am very willing to do....

I will try to take care of myself for the sake of those whom God has given me, otherwise I should feel but little came from my life now that our country has gone to ruin. ....

James Dorsey
My Dear Sister

By one of the most astonishing performances recorded in history, Maryland has fully redeemed her tarnished character, and old Baltimore may now hold up her head again. The proudest city west of the Atlantic. That which the united efforts of our statesmen were unable to do has been triumphantly accomplished by the people by a sort of spontaneous combustion. Besides what the papers will tell you I suppose you will like to hear some of the details as gained from personal observation. All last week we were apprehending trouble here from The Messes without knowing from which side it would come. Consequently we were keeping strong guard at our armory and had also a big flag, the hoisting of which was to call all our men to the armory at once. Friday was to be my first day of guard mounting and without being able to say why I had had a presentiment that it was to be the particular day of the season. When at six in the morning I went on duty with 16 others, and I as well as the whole Battalion have pretty much been on duty ever since picking up rest the best way we could. (Bill Murray told me this afternoon that for three days and nights he had not had his clothes off, or slept a wink. And I may say of him also that a truer man in time of danger I have never seen.) But to return. About 9 o'clock Friday morning news was brought to us (for we could not get out) that 2000 men from New York were at the Philadelphia depot and were going to pass through the city - and that the citizens were pulling up the railroad track on Pratt Street and were going to stop them. At half past 11 our captain was notified that before 12 we would be called out as the Police had notified the Commissioners that they could not keep the mob down. This you may imagine gave us no little trouble as we were on the side of the mob, and we were sorely exercised in mind as to how far our duty required us to go in the matter.

I will say for our credit, however, that we resolved that if called out we would do our best to put down the mob short of firing on them. In a few minutes our men came running in fearfully excited and crying, "They are firing on our people in the streets and shooting them down like Dogs." Then came the news. "Frank Ward, one of our men, is shot dead." And then followed such a scene as pen could not describe. Men insisting that if the battalion would not turn out they would take the guns and go on their own hook. This of course would have been madness.

Up to this time we only had three of the guard stations, the rest being in reserve but we had fortunately twelve of our muskets loaded with ball cartridge. And the next moment the alarm was given that a desperate crowd were below, come to take our arms. "Fall in guard Everyone of you," shouts the Captain. "Take the loaded guns down to the door and defend it with your lives." Off we rushed and got around half way down, where our three men were stationed, when we met the infuriated mass. Fortunately we met them in a narrow passage, and by filling it up with our men with bayonets pointed at them we kept them off till Col. Brush came. On seeing him they immediately demanded that he should "fling out the flag" that we must fight the enemy ourselves or they must have our guns. This was just what we wanted. Against the real enemy we were crazy to march. But the Colonel steadily refused until he should receive orders from the Mayor. In a short time we heard him sing out below. "Now then - Throw out the flag." And such a shout as went up would have done your heart good. I'll undertake to say that never a flag was flung to the breeze with such a will as ours was on that occasion. Their thinking it was of course for the purpose of going to fight the northern soldiers. The next hour after that was one of the most exciting ever passed. I was on guard at the street door, and to see our fellows rushing in from all sides, with their
firm resolved faces and eagerness to avenge the murder of our citizens was
something for patriotism to feed on. All our West River men were there looking as
cool as cucumbers and ready for the flight. At the same time applicants for
enlistment crowded on us, and men were so anxious to get in that it was as much
as we could do to keep them off. Old men would come and with tears in their eyes
beg us to take them along. Others would come and ask for their sons or brothers
to bid them goodbye and some of the parting scenes were really affecting. By
this time the fighting spirit of Baltimore was fully roused, as the papers will
show you, but before anything could be done, the enemy had escaped, part by part
of Washington and the other part back to Philadelphia. The rest of the incidents
of the day you will get from the papers. But be assured it was a thing to live
for, to see a large town like this that up to this time had been on the eve of
civil war in its own midst, uniting almost to a man, in one common cause, and
that cause the one I have had at heart so long. The first flood shed in our
streets settled the vexed question and the union cause is dead in Maryland. How
singular it is that this affair, so similar an incident to the battle of Lexington,
should have happened on the anniversary of that battle.

Scene No. 2. About half past two that night I was aroused by a violent
pulling at the street bell, and going to the window was hailed by one of our men
with, "All our men are wanted at once at the armory — some more soldiers are
coming through." This sounded like battle indeed, and by the time I got into the
street I found our men were about, hurrying in from all sides. The scene at the
armory was splendid — every man at his post and evidently resolved to do some
desperate deed. A body of thirty men, of which I was fortunate enough to be
one, was immediately detailed to do work which ought to make us famous. In
face of the momentary expectation of the arrival of 1700 men from Philadelphia
we were sent with about 30 of the police, out to Harris Creek to burn the bridge if
possible before the cars got there, and to keep the enemy in play till the
bridge was destroyed. After a slapping march of over two miles we reached the
bridge, and in less than no time it was taking night day with blaze. Before the
destruction of it was complete we heard the whistle of the cars and in a moment
up they came and halted. I doubt much if any men in our company counted on more
than five minutes of life from that time, and yet granite rock could not have stood
firmer than they did. Officers and men had come there to kill time while the
bridge burned, and but for an unforseen event, I truly believe Thermopylae would
have had a rival.

That event was, the non arrival of the expected troops but being told they
were coming on a special train, we took possession of the train which had just
arrived and started off to burn the bridges on the road, provided we did not
meet the enemy in the meantime. We went on very slowly, till we had passed the
farthest bridge (at Bush River) and then we went to work and burnt that down,
taking care to place ourselves on the side towards town, then we came down to the
Gunpowder Bridge and burnt that and then we started for town thinking we had done
a very smart thing. And I can tell you, you would think the soldiers and citizens
thought so too if you had heard them cheer us as we returned to the armory.

Last night we were called out again on special duty and 100 of us were sent
down to within a half a mile of Fort Mickleary to prevent an attack on it that
night - the people are in a state of excitement that makes them ready for any-
things and we were informed that they were going down to attack the fort - and
knowing that the attempt must be a failure we were ordered out to stop it. We
did not get back till half past one last night. We are regularly in service now
and are required to wear uniforms and equipment wherever we go, and as we never
know when we are to be called out. This morning three of us amongst others left
What happened when habeas corpus was suspended?

Characters
Justice Roger Brooke Taney: Supreme Court Chief Justice sitting on the United States Circuit Court in Baltimore
John Merryman: prominent Baltimore County farmer who participated in burning of railroad bridges

From Ex Parte Merryman
Chief Justice Roger Brooke Taney

...[John Merryman] resides in Maryland, in Baltimore County. While peaceably in his own house, with his family, it was, at two o'clock, on the morning of the 25th of May, 1861, entered by an armed force, professing to act under military orders. He was then compelled to rise from his bed, taken into custody, and conveyed to Fort McHenry, where he is imprisoned by the commanding officer, without warrant from any lawful authority....

The case then is simply this. A military officer, residing in Pennsylvania, issues an order to arrest a citizen of Maryland, upon vague and indefinite charges, without any proof, so far as appears. Under this order his house is entered at night; he is seized as a prisoner, and conveyed to Fort McHenry, and there kept in close confinement. And when a habeas corpus is served on the commanding officer, requiring him to produce the prisoner before a Justice of the Supreme Court, in order that he may examine into the legality of imprisonment, the answer of the officer is, that he is authorized by the President to suspend the writ of habeas corpus at his discretion.

What happened to John Merryman? What was the result of the suspension of habeas corpus?

Response:
Focus Question: Was Lincoln justified in suspending the writ of habeas corpus?

Directions: Read documents A-F in order. As you read each, determine if the author agrees with Lincoln’s suspension of the writ or not. Record the letter of the document, the opinion expressed, and the evidence presented under the corresponding category below.

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What do you think? Based on your understanding of the documents you have read, what is your opinion? Do you think Lincoln was justified in suspending the writ of habeas corpus? Why or why not?

Your opinion: ____________________________

Reasons: ____________________________

Document: ___

Reasons: ____________________________

Document: ___

Reasons: ____________________________
In the Case of John Henryman, Before the Chief Justice of the Supreme Court of the United States, at Chambers.

The application in this Case for a Writ of Habeas Corpus is made to me, under the 14th Section of the Judiciary Act of 1789, which renders it effective for the Court on the Constitution's Privilege of the Writ of Habeas Corpus.

That act gives to the Courts of the United States, as well as to each Justice of the Supreme Court, and to every District Judge, power to grant Writs of Habeas Corpus, in the Supreme Court on inquiry into the cause of commitment. The habeas corpus was presented to me at Washington, under the impression that I would order the prisoner to be brought before me there, but as he was on hind in Fort at Harpers Ferry, the City of Baltimore, which is in my Circuit, I resolved to keep it in the late City, to obedience to the Court, under such circumstances, would not withstand.
When his house is entered in the night, he is taken as a prisoner, and conveyed to Fort McHenry, and there kept in irons in confinement. And when a habeas corpus is seized on the command of a judge of the supreme court, in order that he may examine into the legality of the imprisonment, the answer of the officer is, that he is authorized by the President to suspend the writ of habeas corpus at his discretion, and, in the execution of that discretion, suspend it in this case, and on that ground refuses obedience to the writ.

The case comes before me, therefore, to understand that the President not only claims the right to suspend the writ of habeas corpus himself, at his discretion, but to delegate that discretionary power to a military officer, and to leave it to him to determine whether he will or will not obey justifiable proofs that may be presented against him.
No official notice has been given to the
Court of Justice, nor to the public, by
clamation or otherwise, that the
President claims this power, and has
exercised it on the main or State in the
revenue. I was certainly astonished at it with
some surprise. In that supposed it to be one
of those points of constitutional law upon
which there was no difference of opinion,
and that it was as much, on all hands,
that the privilege of the seat command
the
.........
that I have not ventured to question the legality of his act without a careful and deliberate examination of the whole subject.

The clause of the Constitution, which declares the suspension of the privilege of the writ of habeas corpus, is in the 9th section of the first article.

This article is devoted to the Legislative department of the United States, and has not the slightest reference to the Executive department.

It begins by providing "that all legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." And after prescribing the manner in which these two branches of the Legislative Department shall be chosen, it proceeds to enumerate specifically the Legislative powers which it thereby grants, and a Legislative power amounting to expressly

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Ex Parte John Merryman
Chief Justice Roger Taney
1861

...As the case comes before me, therefore, I understand that the President not only claims the right to suspend the writ of *habeas corpus* himself, at his discretion, but to delegate that discretionary power to a military officer, and to leave it to him to determine whether he will or will not obey judicial process that may be served upon him.

...I had supposed it to be one of these points of constitutional law upon which there was no difference of opinion, and that it was admitted on all hands that the privilege of the writ could not be suspended, except by act of Congress.

...The clause in the Constitution which authorizes the suspension of the privilege of the writ of *habeas corpus*, is in the ninth section of the first article.

    This article is devoted to the Legislative Department of the United States, and has not the slightest reference to the Executive.
The May term of our Circuit Court comes to-morrow, with a large docket.

The late President, Mr. Lincoln, was duly appointed a clerk in the place of W. A. Donoho, who left the bar a short time since, to go to the regular drill duty, and at 12 o'clock, among the military here is Capt. Patrick H. King, from the United States Court of Claims, who served in the war with the United States, but has been discharged by the President from that office.

I further state that the President has requested that the events of the military companies which are now stationed here, so go through the regular drill daily; and at night, among the military here is Capt. John A. Mullen, who has resigned his commission in the late military company, and has been appointed a clerk in the District Court.

On this very day of the 1st of May, a petition was presented to the District Court, after the notice published on the 1st instant, by the body of said John G. Mullen, with the cause of his confinement, at the bar for the return of the jury on the 1st instant.

The proceedings of the Courts are as follows:

Proceedings of the Courts—Judge McKean—No proceedings are reported.

Correction.—In the notice published on the 1st instant, a sign error was made in the name of Judge McKean, who is named James McKean.

The paragraphs are from the Baltimore Sun.
LOCAL MATTERS.

The Habeas Corpus Refusal.—On Saturday it was stated that a habeas corpus, issued by Judge Giles, of the United States court, for the surrender of the body of John G. Mullen, has been refused by the commandant of Fort McHenry. On Saturday Judge G. issued the following order, to be entered on the record of the court....

"This is the first time within my experience of thirty-three years at the bar and on the bench that the writ of habeas corpus has failed in this State to procure obedience to its mandate. It is a writ so dear to every freeman that the Constitution of the country has, with great care, provided that it shall not be suspended unless, when in case of rebellion or invasion, the public safety may require it. With no suspension of this writ by competent authority—with no proclamation for its suspension by any one claiming to possess such power, with no state of affairs existing as would authorize its suspension—the court learns, with deep regret, that an officer of the United States Army has thought it his duty to refuse obedience to the writ. Unwilling to aggravate existing excitement by more immediate action, the court will at present only pass an order that the commanding officer at Fort McHenry show cause, on or before Wednesday next, the 9th inst., at ten o’clock, why an attachment should not issue against him for his refusal to obey the said writ; and the court sincerely hopes that in a crisis like the present wiser counsels may prevail at the post, and that no unnecessary conflict of authority may be brought in between those owing allegiance to the same government and bound by the same laws."
provided that this will of Congress may be sus-
pended, in case of rebellion, if the public safety requir-
k. You however alleging, that there is "an oath that, of
affair existing as would authorize its suspension."
On this point it is with regret that I am compelled
to differ from your excellency's opinion; and I am
further constrained to add, that the question is one
of fact rather than of opinion.
At the date of issuing your
wish and for two weeks previous, the City in which
you live and where your Court has been held, was
entirely under the control of revolutionary authorities
within that period, United States soldiers while com-
mitting no offense had been perjuredly attacked
and inhumanly murdered in your streets; no penal-
mants had been awarded, and I believe our arrests
had been made for three atrocious crimes; supplies
of provisions intended for this quarter had been
stopped; the intention to capture this fort had been
boldly proclaimed; your bright public thoroughfries
were daily patrolled by large number of troops
armed and clad in blue, in part with articles
stolen from the United States, and the federal
flag while waving over the federal office was cut
down by some persons wearing the uniform of a Phila-
land soldier. To add to the foregoing an assembly
elected in defiance of law took claiming to be the legis
latin body of your state and so recognized by the
executives of Maryland was adventitious. The force of
abrogating the Federal Compact of all this be first
rebellion I know not what to call it. I certainly
regard it as sufficient legal cause for suspending
the writ of habeas corpus.

Besides there were certain
grounds of expediency on which I declined obeying
your mandate.

1st. The writ of habeas corpus in the hands
of an unfriendly power ought to be-populated. This fortifi-
cation and garrisoned at the point of the Baltimore
nest in which less time than it could be done by all
the appearances of good warfare.

2d. The ferocious spirit exhibited by your
Community towards the United States Arm would
counter one any cause from appearing publicly and
unprotected by the City of Baltimore to defend the
interests of the body to which I belong. A few days
since a soldier of this command, while outside the
walls was attacked by a friend or friend in human
shape almost at crotchets of life, and left unprotected
about half a mile from garrison. He was found in
this situation and brought in covered with blood.

One of your evening prints was quite forced over
this laughable occurrence.

And now, sir, permit me to say...
in conclusion that as one can equal more than I this conflict between the Civil and Military authorities.
If I am exonerated of Thirty three years and if 
I have been in the "Barbey Corps to be disloyal 
only because such a contingency in political affairs 
as the present has not before visited. I claim it be a 
loyal citizen and I hope my former conduct both 
official and private will justify this pretension. 
No condition of affairs except that of civil war 
would cheerfully obey your orders and as soon as 
the present excitement shall pass away I will hold 
myself ready not only to produce the soldiers but 
also to appear in person to answer for my own conduct 
but in the existing state of sentiment in the city of Bal 
timore I think it my duty to sustain the Federal 
military and to strengthen their hands instead of 
endeavoring to strike them down.

They the honor to be 

Very Respectfully,
your obedient servant.

Wm. J. Monis

Majr. Genl. Artillery

Baltimore, Md.
Letter from Major W. Leonis, 4th U.S. Artillery
to Hon. William Fell Giles May 6, 1861

Fort McHenry Md
Monday 6th May 1861

Hon. William Fell Giles
Judge of U.S. District Court
For the District of Maryland

...and now I wish most respectfully to inform your Honor that I regard the writ of Habeas Corpus as the very basis of free government and that under all ordinary circumstances I am very ready to acknowledge the supremacy of the civil authorities. But as you admit the Constitution of the United States has provided that this writ of Habeas Corpus may be suspended in case of rebellion if the public safety requires it. You however allege that there is “no such state of affairs existing as would authorize its suspension.” On this point it is with respect that I am compelled to differ from so eminent an authority; and I am further constrained to add that the question is one of fact rather than opinion.

At the date of issuing your writ and for two weeks previous, the city in which you live and where your court has been held was entirely under the control of revolutionary authorities; within that period United States soldiers while committing no offense had been perfidiously attacked and inhumanly murdered in your streets; no punishments had been awarded and I believe no arrests had been made for these atrocious crimes; supplies of provisions intended for this garrison had been stopped; the intention to capture this fort had been boldly proclaimed; your most public thoroughfares were daily patrolled by larger numbers of troops armed and clothed at least in part with articles stolen from the United States; and the federal flag while waving over the federal offices was cut down by some person wearing the uniform of a Maryland soldier. To add to the foregoing an assemblage elected in defiance of law but claiming to be the legislative body of your state and so recognized by the executive of Maryland was debating the forms of abrogating the federal compact. If all this be not rebellion I know not what to call it. I certainly regard it as sufficient legal cause for suspending the writ of Habeas Corpus...

...I claim to be a loyal citizen and I hope my former conduct both official and private will justify this pretension. In any condition of affairs except that of civil war I would cheerfully obey your order and as soon as the present excitement shall pass away I will hold myself ready not only to produce the soldier but also to appear in person to answer...
Letter from Major W. Leonis, 4th U.S. Artillery to Hon. William Fell Giles May 6, 1861

for my own conduct, but in the existing state of sentiment in the city of Baltimore I think it your duty to sustain the federal military and to strengthen their hands instead of endeavoring to strike them down.

I have the honor to be
Very Respectfully
Your obedient servant
WW Leonis
Major 4th U.S. Artillery
Comdg the Post

Vocabulary

Perfidiously: adv. Acting in a way that is treacherous

Assemblage: noun A collection of people or things; a gathering

Abrogating: verb Abolishing, doing away with, especially by authority
vasion, the public safety may require it," is the provision which specially applies to our present case. This provision plainly attests the understanding of those who made the Constitution, that ordinary courts of justice are inadequate to "cases of rebellion"—attests their purpose that, in such cases, men may be held in custody whom the courts, acting on ordinary rules, would discharge. Habeas corpus does not discharge men who are proved to be guilty of defined crime; and its suspension is allowed by the Constitution on purpose that men may be arrested and held who can not be proved to be guilty of defined crime, when, in cases of rebellion or invasion, the public safety may require it." This is precisely our present case—a case of rebellion, wherein the public safety does require the suspension. Indeed, arrests by process of courts, and arrests in cases of rebellion, do not proceed altogether upon the same basis. The former is directed at the small percentage of ordinary and continuous perpetration of crime; while the latter is directed at sudden and extensive risings against the Government, which at most will succeed or fail in no great length of time. In the latter case arrests are made, not so much for what has been done as for what probably would be done. The latter is more for the preventive and less for the vindictive than the former. In such cases the purposes of men are much more easily understood than in cases of ordinary crime. The man who stands by and says nothing when the peril of his Government is discussed, can not be misunderstood. If not hindered, he is sure to help the enemy; much more, if he talks ambiguously—talks for his country with "buts," and "ifs," and "ands." Of how little value the constitutional provisions I have quoted will be rendered, if arrests shall never be made until defined crimes shall have been committed, may be illustrated by a few notable examples. Gen. John C. Breckinridge, Gen. Robert E. Lee, Gen. Joseph E. Johnston, Gen. John B. Magruder, Gen. William B. Preston, Gen. Simon B. Buckner, and Commodore Franklin Buchanan, now occupying the very highest places in the Rebel war service, were all within the power of the Government since the Rebellion began, and were nearly as well known to the traitors then as now. Ungenerously if we had seized and held them, the insurgent cause would be much weaker. But no one of them had then committed any crime defined in the law. Every one of them, if arrested, would have been discharged on habeas corpus, were the writ allowed to operate. In view of these and similar cases, I think the time not unlikely to come when I shall be blamed for having made too few arrests rather than too many.

By the third resolution, the meeting indicate their opinion that military arrests may be constitutional in localities where rebellion actually exists, but that such arrests are unconstitutional in localities where rebellion or insurrection does not actually exist. They insist
have had no cause for exultation when the petition of right was signed, or the habeas corpus act passed, which, under this opinion, would have been worth only so much blank paper as they were enrolled on. It assumes that all provisions of the Constitution are to be interpreted to that which imposes upon him the oath of office, and that the power implied from that oath overrides all other powers and provisions with which it may come in conflict; and so this great zeal for the preservation of the Constitution makes it a thing of wax, to be twisted and moulded at the discretion of the Executive, instead of an inexorable fundamental law of the land, beyond the reach of President or Congress, and only to be altered by the people in prescribed form and mode. I regret to be obliged to say all this, because I have always had great respect for not only the private but the professional character of the Attorney General.

Equally unfounded in law or fact is the allegation that the suspension of this constitutional privilege by the President was necessary.

I am fully aware that never before in the history of this country has it been deemed necessary to suspend the habeas corpus even by Congress; that though upon a message of Mr. Jefferson to Congress, during the alleged treasorable conspiracy of Aaron Burr, the Senate did pass such a bill, (in secret session, I think,) it was rejected overwhelmingly by the House of Representatives, the vote being 113 to 19. I know, too, that Mr. Jefferson, that great apostle of liberty, whom so many gentlemen here profess to revere as the founder of the political creed in which they place the most implicit confidence, and faith, declared himself, at the very time of the formation of the Constitution, as opposed to any suspension whatsoever, even by legislative authority, of the privilege of the writ of habeas corpus; declared himself in favor of its eternal and unremitting force; and, sir, I very much incline to think he was right. I doubt very much whether the good to be effected by its suspension, in any condition of things in which the country can be placed, will be at all commensurate with the evil consequent upon the loss of this great constitutional protection of the people. If necessity, which is an odious plea, known for hundreds of years as "the tyrant's plea," a plea by which you may overthrow all constitutional provisions—if that plea is efficacious here; if that is a justification for a violation of one provision of the Constitution, it is equally a justification for any and all violations of it. As well may you justify the President for breaking into the Treasury and taking from it all the millions and the very last dollar in it, not in pursuance of appropriations made by law, but without appropriations, and in the face of appropriations made for other purposes, that he may apply it as he thinks needful; as well may you do that, under the plea of necessity, as justify the usurpation of the habeas corpus under this plea. I incline to think that the necessity in that latter case would often be much stronger than it would be in regard to the suspension of the personal right of the citizen. Indeed, sir, the greatest danger is to be apprehended from infractions of the law which seem to be sanctioned by good motives. It is not easy in other cases to make breaches in the Constitution, but this may be tolerated when purposes of corruption and oppression are not supposed to be intended, when a solemn duty only is supposed to prompt a little largeness of construction, some straining of the Constitution for a purpose of high patriotic duty, which disguises the purpose of the exemplo. But breaches in the Constitution once made, others are more easy; and soon its enemies, with the worst purposes, rush in to its destruction. As to the necessity in fact, or rather as to the danger to the country of permitting to go at large those persons who have been arrested by order of various military men under the alleged authority of the President—I know many of these cases, and can confidently say that many of the persons arrested are wholly without any general personal influence for good or for evil, and that they will derive any political importance which they may acquire solely from the bunglers by which they have been made into political martyrs. Many of them evict political influence no more than they do the restraints upon their liberty. They wonder at the baseness of the unknown informer and the folly of the zealous agent of the Executive; but are not the less indignant at the disregard of law and constitutional privilege which leaves them without the time-honored remedy for the wrong they suffer in the deprivation of their liberty.

So, too, sir, these domiciliary visits, which are equally in violation of a provision of the Constitution, are sought to be justified by necessity. Now, let us see where these things are done. Nowhere, so far as I am informed, excepting in Maryland, unless there be some exceptions in the State of Missouri. I believe there have been some in that State. I recollect to have seen one or two cases of a suspension of the habeas corpus there; but chiefly it has been exercised in Maryland, a loyal State—a State proved in its loyalty; a State whose remarkable quiet now, under much whether the good to be effected by its sus-
“Passage through Baltimore.” Etching by Adalbert Volck, 1861. Allan Pinkerton's agents recommended that President-elect Lincoln slip through divided Baltimore in the dead of night, thus prompting Volck to pick up his poison pen.

MHS
Debate Roles and Procedures

Roles
Judges
Judges time the debate and determine a winner. The winning side will not only be the most persuasive but will also be the side that follows the rules of its roles. Judges also provide a brief outline of the Merryman case at the start of the debate.

Speakers
Opening Argument: Provide basic outlines of the argument, without specific evidence.
Rebuttal: Provide specific arguments against the opposing side.
Closing Argument: Summarize the arguments offered by his/her side, without introducing new evidence.

Remaining group members will offer arguments in an open exchange, making sure to speak only once until every other group member, excluding the speaker making the closing argument, has spoken.

Procedures
Side A Opening Argument (2 minutes)
Side B Opening Argument (2 minutes)

Side A Rebuttal (1 minute)
Side B Rebuttal (1 minute)

Open discussion (10 minutes)

Side A Closing Argument (1 minute)
Side B Closing Argument (1 minute)
Debate Worksheet

Opening Argument Main Idea:

Evidence:

1.

2.

3.

4.

5.

Closing Argument Main Idea:
Rights of Detainees

Part I

What does the Military Commissions Act allow for or prevent, based on the article provided?

What does the Military Commissions Act allow for or prevent, based on the text of the Act?

Part II

Based on the articles Senate Rejects Expanding Detainee Rights and Supreme Court Hears Guantanamo Arguments, what are the arguments for and against expanding detainees' access to habeas corpus?

For                   Against

•                       •

•                       •

•                       •
Fact Sheet: The Military Commissions Act of 2006

President Bush Signs Military Commissions Act of 2006

For Immediate Release
Office of the Press Secretary
October 17, 2006

Fact Sheet: The Military Commissions Act of 2006

"It is a rare occasion when a President can sign a bill he knows will save American lives. I have that privilege this morning. The Military Commissions Act of 2006 is one of the most important pieces of legislation in the War on Terror. ... And now, in memory of the victims of September the 11th, it is my honor to sign the Military Commissions Act of 2006 into law."

- President George W. Bush, 10/17/06

Today, The President Signed The Military Commissions Act Of 2006, Which Will Preserve The Tools Needed To Help Save American Lives. This bill will allow the CIA to continue its program for questioning key terrorist leaders and operatives like Khalid Sheikh Mohammed - the man believed to be the mastermind of the 9/11 attacks. This program has been one of the most successful intelligence efforts in American history, and the Military Commissions Act will ensure that we can continue using this vital tool to protect the American people for years to come. With this bill, America reaffirms our determination to win the War on Terror.

The Military Commissions Act Will Also Allow Us To Prosecute Captured Terrorists For War Crimes Through Full And Fair Trials. With this legislation, those believed to have orchestrated the murder of nearly 3,000 innocent people on 9/11 will face justice. We will also seek to prosecute those believed to be responsible for the attack on the USS Cole and an operative believed to have been involved in the bombings of the American embassies in Kenya and Tanzania.

The Military Commissions Act Will Allow The CIA To Continue Its Program For Questioning Terrorists

When The President Proposed This Legislation, He Explained That His One Test For The Bill Congress Produced Would Be Whether It Would Allow The CIA Program To Continue - And This Bill Meets That Test. It allows for the clarity our intelligence professionals need to continue questioning terrorists and saving lives. This bill:

- Provides legal protections that ensure our military and intelligence personnel will not have to fear lawsuits filed by terrorists simply for doing their jobs;
- Spells out specific, recognizable offenses that would be considered crimes in the handling of detainees - so that our men and women who question captured terrorists can perform their duties to the fullest extent of the law; and
- Complies with both the spirit and the letter of our international obligations.

The CIA Program Has Saved American Lives

Were It Not For This Program, Our Intelligence Community Believes Al-Qaeda And Its Allies Would Have Succeeded In Attacking The American Homeland Again. Information from terrorists in CIA custody has played a role in the capture or questioning of nearly every senior al-Qaeda member or associate detained by the United States and its allies since this program began. The CIA program helped us:

- Gain vital intelligence from Khalid Sheikh Mohammed and Ramzi bin al Shibh - two of the men believed to have helped plan and facilitate the 9/11 attacks;
• Break up a cell of 17 Southeast Asian terrorist operatives being groomed for attacks inside the United States;
• Uncover key operatives in al-Qaeda's biological weapons program - including a cell developing anthrax to be used in terrorist attacks;
• Identify terrorists who were sent to case targets inside the United States - including financial buildings in major cities along the East Coast; and
• Stop a planned strike on U.S. Marines in Djibouti, a planned attack on the U.S. Consulate in Karachi, and a plot to hijack passenger planes and fly them into Heathrow Airport and Canary Wharf in London.

The Military Commissions Authorized By This Legislation Are Lawful, Fair, And Necessary

With The Military Commissions Act, The Legislative And Executive Branches Have Agreed On A System That Meets Our National Security Needs. In the months after 9/11, the President authorized a system of military commissions to try foreign terrorists accused of war crimes. These commissions were similar to those used for trying enemy combatants in the Revolutionary War, the Civil War, and World War II. After the legality of this system was challenged and the Supreme Court ruled that military commissions need explicit authorization by Congress, the President asked Congress for that authority - and Congress provided it.

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Return to this article at:
Fact Sheet: Military Commissions Act

The Military Commissions Act of 2006 gives the president absolute power to decide who is an enemy of our country and to imprison people indefinitely without charging them with a crime.

Eliminates due process.
This law removes the Constitutional due process right of habeas corpus for persons the president designates as unlawful enemy combatants. It allows our government to continue to hold hundreds of prisoners more than four years without charges, with no end in sight.

Rejects core American values.
Habeas corpus, the basic right to have a court decide if a person is being lawfully imprisoned, is what separates America from other countries. To do away with this American value makes us more like those we are fighting against. It is time to restore due process, defend the Constitution, and protect what makes us Americans.

The last Congress was asleep at the wheel.
The only thing scarier than a government that would take away our basic freedoms is a Congress that would let it happen. Congress must correct that mistake and restore habeas corpus and due process, and define enemy combatants as only those who engage in hostilities against the United States.

Permits coerced evidence.
The act permits convictions based on evidence that was literally beaten out of a witness, or obtained through other abuse by either the federal government or by other countries.

Turns a blind eye to past abuses.
Government officials who authorized or ordered illegal acts of torture and abuse would receive retroactive immunity for their crimes, providing them with a 'get out of jail free' card.

Makes the president his own judge and jury.
Under the Military Commissions Act, the president has the power to define what is — and what is not — torture and abuse, even though the Geneva Conventions already provide us with a guide.

Congress must fix the Military Commissions Act.
By giving any president the unchallenged power to decide which non-citizen is an enemy of our country — and eliminating habeas corpus due process for them, we allow the government to imprison people indefinitely without charging them with a crime. It is time for Congress to restore due process, defend the Constitution and protect what makes us Americans.

MILITARY COMMISSIONS ACT FACTS
> Printable Version (pdf)
> Download: ACLU Legislative Priorities: 2007 (pdf)
What You Should Know About Habeas Corpus

What is Habeas Corpus?
The "Great Writ" of habeas corpus is a fundamental right in the Constitution that protects against unlawful and indefinite imprisonment. Translated from Latin it means "show me the body." Habeas corpus has historically been an important instrument to safeguard individual freedom against arbitrary executive power.

Why Did Congress Pass the Military Commissions Act?
In June 2006, the Supreme Court found in Hamdan v. Rumsfeld that military commissions at Guantanamo created by President Bush were invalid. The court said that the rules violated Common Article 3 of the Geneva Conventions regarding the treatment of detainees being held indefinitely.

After the decision, President Bush asked Congress to pass legislation that would make the military commission trials legal and strip detainees of their due process habeas rights — which they did by passing the Military Commissions Act right before November 2006 elections.

How Does the Military Commissions Act Take Away Habeas Rights?
Section 6 of the Military Commissions Act strips any non-citizen, declared an "enemy combatant" by any president, of the right to be heard in court to establish his or her innocence, regardless of how long he or she is held without charge. This habeas-stripping provision applies to the detainees held in U.S. custody at Guantanamo Bay and elsewhere. It violates the Constitution and basic American values.

Is it Constitutional to Strip a Person of Their Habeas Rights?
No, Section 6 of the Military Commissions Act is unconstitutional and will eventually be struck down by the U.S. Supreme Court. Several cases challenging the law are already working their way through the courts.

What Can I Do?
Two bills have been introduced in Congress that would restore habeas corpus rights — the Restoring the Constitution Act of 2007 (H.R. 1415, S. 576) and the Habeas Corpus Restoration Act (H.R. 1416, S. 185). Help us: Urge members of Congress to cosponsor and support this vital legislation and spread the word in your community:

- Write a letter to the editor about the elimination of Habeas Corpus and the other problems in the Military Commissions Act. Get the word out through newspapers, newsletters, blogs, personal websites, academic publications and more.
- Take Action through ACLU Action Alerts. Join the ACLU Action Network to find out important ways that you can take action to help restore the Constitution. You'll keep up
MILITARY COMMISSIONS ACT OF 2006

Public Law 109-366
109th Congress

SEC. 5. <<NOTE: 28 USC 2241 note.>> TREATY OBLIGATIONS NOT ESTABLISHING GROUNDS FOR CERTAIN CLAIMS.

(a) In General.—No person may invoke the Geneva Conventions or any protocols thereto in any habeas corpus or other civil action or proceeding to which the United States, or a current or former officer, employee, member of the Armed Forces, or other agent of the United States is a party as a source of rights in any court of the United States or its States or territories.

SEC. 7. HABEAS CORPUS MATTERS.

(a) In General.—Section 2241 of title 28, United States Code, is amended by striking both the subsection (e) added by section

1005(e)(1) of Public Law 109-148 (119 Stat. 2742) and the subsection (e) added by section 1405(e)(1) of Public Law 109-163 (119 Stat. 3477) and inserting the following new subsection (e):

``(e)(1) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.''

(b) Effective <<NOTE: 28 USC 2441 note.>> Date.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply to all cases, without exception, pending on or after the date of the enactment of this Act which relate to any aspect of the detention, transfer, treatment, trial, or conditions of detention of an alien detained by the United States since September 11, 2001.
Senate Rejects Expanding Detainee Rights
By ANNE FLAHERTY – 5 days ago

WASHINGTON (AP) — The Senate narrowly rejected legislation on Wednesday that would have given military detainees the right to protest their detention in federal court.

The 56-43 vote fell four shy of the 60 votes needed to cut off debate on the bill, co-sponsored by Sens. Patrick Leahy, D-Vt., and Arlen Specter, R-Pa. It was a blow for human rights groups that say a current ban on habeas corpus petitions could lead to the indefinite detention of individuals wrongfully suspected of terrorism.

President Bush and conservative Republicans counter that the ban, enacted last year, was necessary to stem the tide of legal protests flooding civilian courts.

Among the 56 senators voting in favor of expanding detainees’ rights were six Republicans: Specter, Olympia Snowe of Maine, Chuck Hagel of Nebraska, Richard Lugar of Indiana, John Sununu of New Hampshire and Gordon Smith of Oregon.

Leahy said he would try again to repeal it, although he was not sure when he would get another chance.

"The truth is that casting aside the time-honored protection of habeas corpus makes us more vulnerable as a nation because it leads us away from our core American values," Leahy said. "It calls into question our historic role as a defender of human rights around the world."

In 2006, Congress passed and Bush signed into law the Military Commissions Act, which established a military-run tribunal system for prosecuting enemy combatants. The provision barring habeas corpus petitions means that only detainees selected for trial are able to confront charges against them, leaving most military detainees in custody without a chance to plead their case.

Sen. Lindsey Graham, R-S.C., one of the architects of the law, said the system includes checks and balances to determine whether a person is being held unlawfully. Granting a ban on habeas corpus petitions would allow terrorism suspects to go "judge shopping" around U.S. courts to find a sympathetic ear, he said.

Added Sen. Jon Kyl, R-Ariz.: "Never has such an unprecedented legal right been granted to a prisoner of war or detainee."

In June, the Supreme Court agreed to consider whether the ban on habeas corpus petitions is constitutional, although no argument date has been set.

Specter, the lone Republican to co-sponsor the bill, has said he anticipates the court will rule the ban unconstitutional.

Habeas corpus "is a constitutional right that has existed since the Magna Carta in 1215," he said.

(This version CORRECTS Smith’s first name to Gordon.)
The question facing the court is whether the detainees have the right to go into the U.S. courts to challenge their detentions, using the constitutionally guaranteed procedure called a writ of habeas corpus. The Founding Fathers put the writ into the Constitution as a check on the government's power to arbitrarily put someone in prison.

But the Bush administration, backed by the federal appeals court in Washington, contends that the detainees have no constitutional rights because they are being held outside the United States, and that even if they do, the Constitution allows suspension of the writ of habeas corpus if an alternative is put into place that is adequate and effective.

The Bush administration argues that Congress approved just such an alternative when it stripped the courts of the right to hear the detainees' habeas corpus challenges. The detainees, however, counter that the system for evaluating them is so rigged as to be unconstitutional because they are denied lawyers, denied access to much of the evidence against them, and because the Combat Status Review Tribunals are subject to command influence and presume the government's evidence to be accurate.

Justices Samuel Alito and Ruth Bader Ginsburg wondered whether detainees held at other bases in Germany or Iraq, for instance, would also have a right to habeas corpus. [Former Solicitor General Seth] Waxman said that Guantanamo is different because it is the only place where U.S. law has exclusive jurisdiction.

[Solicitor General Paul] Clement reiterated the government's argument that never before in the history of warfare has a U.S. prisoner of war had a right to challenge his detention with a habeas corpus petition in the U.S. courts.

"The problem with your prisoner-of-war point is, the United States is not treating them as prisoners of war. That argument, on the government's part, is entirely circular," said Justice [David] Souter.

Justice Alito then posed this question: "If the court holds that the [Detainee Treatment Act] is not an adequate substitute for habeas, what will happen? Will these petitioners then have access to all of the procedures that normally apply in habeas proceeding...? The same right to discovery, subpoena, witnesses, access to classified information, presence in court?"
"The government will certainly take the position that they are not entitled to those things," Clement said. "Presumably, the petitioners will be arguing that they are entitled to those things. And there will be difficult questions that will need to be worked out."

The final argument of the day was the rebuttal from former Solicitor General Waxman. The writ of habeas corpus, he contended, has always allowed prisoners to challenge their detention if they claim they are not warriors and are being wrongly held. The current system, he argued, does not allow for such an argument.
Timeline

March 3, 1861  36th Congress closes its second session
April 12, 1861  Shots fired on Ft. Sumter, first engagement of Civil War
April 19, 1861  Pratt St. Riots: Massachusetts soldiers attacked on transport through Baltimore
               State militia burns railroad bridges to prevent transport of troops
April 27, 1861  Lincoln orders the writ of habeas corpus be suspended along the military line between Philadelphia and Washington
May 25, 1861  Soldiers arrest Baltimore County resident John Merryman for burning railroad bridges
May 1861  Justice Roger Brooke Taney writes Ex Parte Merryman
July 4, 1861  37th Congress opens its first session
March 3, 1863  Congress authorizes suspension of the writ of habeas corpus

Session Dates for Congress 1861-1863

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<tr>
<th>Congress</th>
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<tr>
<td>36th</td>
<td>2nd</td>
<td>December 3, 1860-March 3, 1861</td>
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