



SENATE CLERK

SENATE NO. 1
DATE 3/21/13
HB 522

American Civil Liberties Union
of Montana
P.O. Box 1317
Helena, MT 59624
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March 21, 2013

Dear Chairman Murphy and Members of the Senate Judiciary Committee,

The American Civil Liberties Union of Montana supports HB 522 by Representative Nicholas Schwaderer. This bill would prohibit state agencies from supporting the indefinite detention provisions enacted in Sections 1021 and 1022 of the federal National Defense Authorization Act (NDAA) of 2011.

As you may know, Sections 1021 and 1022 of the NDAA are the dangerous detention provisions authorizing the president — and all future presidents — to order the military to capture and indefinitely imprison people without charge or trial. These provisions can include United States citizens, captured anywhere in the world, far from any battlefield. Sections 1021 and 1022 codify into law the practice of indefinite military detention for the first time in American history. This kind of sweeping detention power violates the 5th and 6th Amendments to the United States Constitution, which guarantee due process of law, the right to a trial and the right to counsel. The use of indefinite detention is completely at odds with our American values and corrodes our nation's commitment to the rule of law.

The law does not require even an allegation that a detained person caused any harm or threat of harm to the United States or to any U.S. interest. Mere allegation of membership in, or support of, an alleged terrorist group could be the basis for indefinite detention. Under the American justice system, we do not hold people indefinitely based on mere suspicion. If there is evidence of wrongdoing, these civilians should be prosecuted in our federal courts, not detained without charge or trial.

We commend Rep. Schwaderer for crafting a bill that threads the needle of proactively ensuring that the state's resources are not commandeered in support of a questionable federal law, but does not run afoul of the United States Constitution's Supremacy Clause. Similar to the approach that the legislature adopted in the REAL ID bill of 2007, HB 522 provides that state officials may not support or participate in the enforcement of Sections 1021 and 1022, but does not attempt to nullify or obstruct federal enforcement of federal laws. Accordingly, as you may have noticed, HB 522 does not have a Legal Review Note from the Legislative Services Division.

We urge you to reject the view that indefinite detention can or should be used in the United States and respectfully request a "do pass" on HB 522 to prohibit our state from supporting indefinite detention.

Sincerely,

ACLU of Montana

