

By: Senator(s) McDaniel, Watson, Hill

To: Rules

SENATE CONCURRENT RESOLUTION NO. 644

1 A CONCURRENT RESOLUTION EXPRESSING THE OPPOSITION OF THE
2 STATE OF MISSISSIPPI TO THE NATIONAL DEFENSE AUTHORIZATION ACT OF
3 2012 (NDAA) PROVISION THAT AUTHORIZES INDEFINITE DETENTION; AND
4 FOR RELATED PURPOSES.

5 WHEREAS, the Congress of the United States passed the
6 National Defense Authorization Act, 2011 Public Law 112 81 ("2012
7 NDAA") for fiscal year 2012 on December 15, 2011; and

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

10 WHEREAS, Section 1021 of the 2012 NDAA purports to authorize,
11 but does not require, the President of the United States, through
12 the Armed Forces of the United States, to dispose of such detained
13 persons according to the Law of War, which may include, but is not
14 limited to: (1) indefinite detention without charge or trial
15 until the end of hostilities authorized by the 2001 Authorization
16 for Use of Military Force Against Terrorists, 2001 Public Law 107
17 40, (2) prosecution through a military commission, or (3) transfer
18 to a foreign country or foreign entity; and

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

24 WHEREAS, Section 1021 of the 2012 NDAA purports enlarging the
25 scope of the those persons the Office of the President may
26 indefinitely detain beyond those responsible for the September 11,
27 2001, terrorist attacks, and those who harbored them, as
28 purportedly authorized by the 2001 Authorization for Use of



29 Military Force Against Terrorists, to now include "[a] person who
30 was a part of or substantially supported al Qaeda, the Taliban or
31 associated forces that are engaged in hostilities against the
32 United States or its coalition partners, including any person who
33 has committed a belligerent act or as directly supported such
34 hostilities in aid of such enemy forces"; and

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

41 WHEREAS, the exemption for citizens of the United States in
42 Section 1022 of the 2012 NDAA only exempts them from a requirement
43 to detain and reads as follows: "The requirement to detain a
44 person in military custody under this section does not extend to
45 citizens of the United States"; and

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

50 WHEREAS, the specific exclusion of application to United
51 States citizens and lawful resident aliens contained in Section
52 1022 of the 2012 NDAA, and the absence of such exclusion in
53 Section 1021 of the NDAA, strongly implies that the provisions of
54 Section 1021 are intended to apply to all people, including United
55 States citizens and lawful resident aliens, whether or not they
56 are captured in the United States; and

57 WHEREAS, the Office of the President of the United States,
58 under both the administrations of George W. Bush and Barack H.
59 Obama, has asserted the 2001 Authorization for the Use of Military
60 Persons, including United States Citizens and lawful resident
61 aliens, captured in the United States; and



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

69 WHEREAS, during debate within the Senate and before the
70 passage of the 2012 NDAA, United States Senator Mark Udall
71 introduced an amendment intended to forbid the indefinite
72 detention of U.S. citizens, which was rejected by a vote of 38 60;
73 and

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

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

82 WHEREAS, policing the United States of America by the Armed
83 Forces of the United States, as purportedly authorized by the 2012
84 NDAA, overturns the Posse Comitatus doctrine and is repugnant to a
85 free society; and

86 WHEREAS, Sections 1021 and 1022 of the 2012 NDAA as they
87 purport to authorize, (1) detainment of persons captured within
88 the United States of America without charge or trial, (2) military
89 tribunals for persons captured within the United States of
90 America, and (3) the transfer of persons captured within the
91 United States of America to foreign jurisdictions, are violative
92 of the following rights enshrined in the Constitution of the
93 United States of America:



- 94 • Article I Section 9, Clause 2's right to seek Writ of
95 Habeas Corpus;
- 96 • The First Amendment's right to petition the government for
97 a redress of grievances;
- 98 • The Fourth Amendment's right to be free from unreasonable
99 searches and seizures;
- 100 • The Fifth Amendment's right to be free from charge for an
101 infamous or capitol crime until presentment or indictment by a
102 grand jury;
- 103 • The Fifth Amendment's right to be free from deprivation of
104 life, liberty or property, without due process of law;
- 105 • The Sixth Amendment's right in criminal prosecutions to
106 enjoy a speedy trial by an impartial jury in the state and
107 district where the crime shall have been committed;
- 108 • The Sixth Amendment's right to be informed of the nature
109 and cause of the accusation;
- 110 • The Sixth Amendment's right to confront witnesses;
- 111 • The Sixth Amendment's right to counsel;
- 112 • The Eighth Amendment's right to be free from excessive
113 bail and fines, and cruel and unusual punishment; and

114 WHEREAS, Sections 1021 and 1022 of the 2012 NDAA as they
115 purport to authorize, (1) detainment of persons captured within
116 the United States of America without charge or trial, (2) military
117 tribunals for persons captured within the United States of
118 America, and (3) the transfer of persons captured within the
119 United of America to foreign jurisdictions, is repugnant to the
120 following rights enshrined in the Mississippi Constitution of
121 1890:

- 122 • Article 3 Section 14's right to be free from deprivation
123 of life or liberty without due process of law;
- 124 • Article 3 Section 25's right to have prompt recourse to
125 the laws for all injuries to one's person;



- 126 • Article 3 Section 23's right to be free from unreasonable
127 search and seizure;
- 128 • Article 3 Section 21's right to be free from capital
129 charge absent a grand jury indictment or felony charge absent
130 grand jury indictment absent information signed by the Attorney
131 General;
- 132 • Article 3 Section 29's right to be free from excessive
133 bail;
- 134 • Article 3 Section 26's right to bail and right to Habeas
135 Corpus;
- 136 • Article 3 Section 27's right to a speedy public trial by
137 an impartial jury, right to have the assistance of counsel and the
138 right to be free from deprivation of life, liberty or property,
139 unless by the judge of peers;
- 140 • Article 3 Section 31's right to a trial by jury;
- 141 • Article 3 Article 9's requirement that the military
142 authority is subordinate to the civil authority; and

143 WHEREAS, the members of this Legislature have taken an oath
144 to uphold the Constitution of the United States of America and the
145 Constitution of the State of Mississippi; and

146 WHEREAS, this Legislature opposes any and all rules, laws,
147 regulations, bill language or executive orders, which amount to an
148 overreach of the federal government and which effectively take
149 away civil liberties; and

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

155 WHEREAS, undermining our own inalienable rights serves only
156 to concede to the terrorists' demands of changing the fabric of
157 what made the United States of America a country of freedom,
158 liberty and opportunity; and



159 WHEREAS, the Legislature of the State of Mississippi,
160 condemns in no uncertain terms Sections 1021 and 1022 of the 2012
161 NDAA as they purport to (1) repeal the Posse Comitatus doctrine
162 and authorize the President of the United States to utilize the
163 Armed Forces of the United States to police the United States of
164 America, (2) indefinitely detain persons captured within the
165 United States of America without charge until the end of
166 hostilities as purportedly authorized by the 2001 Authorization
167 for Use of Military Force, (3) subject persons captured within the
168 United States of America to military tribunals, and (4) transfer
169 persons captured within the United States of America to a foreign
170 country or foreign entity:

171 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF
172 MISSISSIPPI, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN, That
173 the Legislature finds that the enactment into law by the United
174 States Congress of Sections 1021 and 1022 of the National Defense
175 Authorization Act of 2012, Public Law Number 112 81, is inimical
176 to the liberty, security and well being of the people of
177 Mississippi and was adopted by the United States Congress in
178 violation of the limits of federal power in the United States
179 Constitution.

180 BE IT FURTHER RESOLVED, That all agencies of the State of
181 Mississippi are instructed to decline requests by federal agencies
182 acting under detention powers of Sections 1021 and 1022 of the
183 National Defense Authorization Act of 2012 that could infringe
184 upon residents' freedom of speech, religion, assembly, privacy,
185 rights to counsel, or other rights not here explicitly enumerated.

186 BE IT FURTHER RESOLVED, That copies of this resolution be
187 immediately transmitted to the Honorable Barack Obama, President
188 of the United States, the President of the United States Senate,
189 the Speaker of the House of Representatives, each member of
190 Congress from the State of Mississippi to the Honorable John
191 Roberts, Chief Justice of the United States Supreme Court, each



192 Justice on the United States Supreme Court, and the President of
193 the Senate and the Speaker of the House of Representatives of each
194 state's legislature.

