

## POSITION STATEMENT

### Montana Tea Party Coalition Opposes Language in Military Authorization Bill Allowing for Detention of American Citizens as Violation of Due Process and Fundamental Constitutional Rights

**December 27, 2012,**—The recently passed National Defense Authorization Act which will fund the US Military in 2012 has provisions in the act (sections 1031 and 1032) that may allow for the federal government to detain Americans and legal aliens on the suspicion of engaging in terrorists acts or supporting them without due process of law. While the Montana Tea Party Coalition supports the funding of the military and the federal government's constitutionally-obligated role in providing for the common defense, we are concerned by the implications of the bill and the intent of it's co-sponsors (Sens. Carl Levin and John McCain) and supporters in the Senate. Even though the bill has been recently signed into law by the President, we feel compelled to express our strong opposition to the objectionable language.

Sen. Lindsey Graham (R-SC) explained that the funding bill would "basically say in law for the first time that the homeland is part of the battlefield" and people can be imprisoned without charge or trail "American citizen or not". During the floor debate, Sen. Rand Paul asked Sen. John McCain "would it be possible that an American citizen can be declared an enemy combatant and sent to Guantanamo Bay and detained indefinitely?" McCain responded, "As long as that individual, no matter who they are, if they pose a threat to the security of the United States of America, should not be allowed to continue that threat."

The bill passed the House in May 2011 and was introduced in the Senate in early December with precious little time for a public debate or input. Upon close reading of the bill, the law does not require the military to detain Americans or legal aliens but makes it an option. The language is vague enough to permit US military of American citizens. It also doesn't prohibit another federal agency from detaining citizens. The objectionable language in sections 1031 and 1032 is below.

(1) UNITED STATES CITIZENS- The requirement to detain a person in military custody under this section does not extend to citizens of the United States.

(2) LAWFUL RESIDENT ALIENS- The requirement to detain a person in military custody under this section does not extend to a lawful resident alien of the United States on the basis of conduct taking place within the United States, except to the extent permitted by the Constitution of the United States.

Just who may be targeted by the federal government on the suspicion of being a security threat should be a concern to all Tea Partiers and Americans. The report issued by the Department of Homeland Security on April 5, 2009 less than two weeks prior to the first nationwide Tax Day Tea Partiers, "Rightwing Extremism: Current Economic and Political Climate Fueling Resurgence in Radicalization and Recruitment," should shed some light on potential targets of this new policy. The report indicates that returning Iraq and Afghanistan war veterans, those concerned about the economy, those who may be suffering from a foreclosure, pro-life advocates, gun rights advocates—and to offer some balance—extreme environmentalists.

Just prior to the DHS report, the Missouri Information Analysis Center (MIAC) released the "Modern Militia Movement" document identified supporters of third-party candidates and those displaying the "Don't Tread on Me" flag of the Revolutionary War and even the American flag as objects for added surveillance. MIAC, known as a fusion center "provides a public safety partnership consisting of local, state and federal agencies, as well as the public sector and private entities that will collect, evaluate, analyze, and disseminate information and intelligence to the agencies tasked with Homeland Security responsibilities in a timely, effective, and secure manner." The report states: "It is not uncommon for militia members to display Constitution Party, Campaign

for Liberty, or Libertarian material." The report was blasted by the Missouri Attorney General and others but nonetheless sheds insight on the federal government's view of many Americans, Tea Parties and Ron Paul supporters.

And that brings us to the biggest concern. It is recognized in our founding documents, that our laws are natural laws and that our individual rights and liberties come from God. These liberties can only be taken away after charges have been filed, a trial takes place, and a conviction made.

Several amendments were proposed by both Democrat and Republican Senators, which would have deleted provisions that allow indefinite detention of citizens, from the DOD Authorization bill. Most were overwhelmingly voted down. But, a single compromise amendment was passed that was intended to quell fears, though skeptics on both the political right and left remain uncomfortable with the final outcome. The American Civil Liberties Union reported that "the bill is an historic threat to American citizens and others because it expands and makes permanent the authority of the President to order the military to imprison, without trial American citizens."

The amendment reported to preserve current restrictions on detaining American citizens may turn out to be meaningless as both Sen. Carl Levin and Sen. Graham made clear that they believe the power to use the military against American citizens is not to be affected by the new language.

The Montana Tea Party Coalition recognizes the need to fund our military as providing for the common defense is a Constitutional mandate of the federal government as well as one of its primary purposes. The annual DOD Authorization bill is intended to fulfill that need. However, the objectionable language in the DOD authorization bill grants the federal government unconstitutional authority to detain American citizens without due process. Previous reports issued by the Department of Homeland Security indicate that this federal agency believes that nearly all Tea Parties and many other Americans pose a threat. Even though the bill has been signed into law, we feel incumbent to state our firm opposition. There are laws on the books that can be used to protect the public. Finally, if Congress and the White House were serious about protecting the homeland, the federal government would secure our borders as a logical next step.

As Benjamin Franklin said, "All human situations have their inconveniences, We feel those of the present but neither see nor feel those of the future; and hence we often make troublesome changes without amendment, and frequently for the worse."