

MAR 14 2012

---

# SENATE CONCURRENT RESOLUTION

URGING THE UNITED STATES CONGRESS TO REPEAL THE MANDATORY  
MILITARY DETENTION AND INDEFINITE DETENTION PROVISIONS OF  
THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2012  
AND AMEND THE AUTHORIZATION FOR USE OF FORCE.

1           WHEREAS, the United States Constitution is the foundation  
2 of our nation's rights and freedom and the basis of our  
3 representative democracy; and  
4

5           WHEREAS, no President has the power to take the United  
6 States into war, except, as James Madison wrote, "to repel a  
7 sudden attack on the United States"; and  
8

9           WHEREAS, the Authorization for Use of Military Force,  
10 Public Law 107-40, approved on September 18, 2001, authorized  
11 the President to use all necessary and appropriate force against  
12 the nations, organizations, or persons the President determines  
13 planned, authorized, committed, or aided the terrorist attacks  
14 of September 11, 2001; and  
15

16           WHEREAS, the National Defense Authorization Act for Fiscal  
17 Year 2012, Public Law 112-81, which was signed into law by  
18 President Obama on December 31, 2011, affirmed the President's  
19 authority under the Authorization for Use of Military Force and,  
20 for the first time in United States history, codified the  
21 authority of the United States armed forces to impose indefinite  
22 military detention of individuals captured off of any  
23 battlefield; and  
24

25           WHEREAS, any law authorizing indefinite military detention  
26 of any person in the United States, without charge or trial,  
27 violates the Fifth Amendment, the Sixth Amendment, and Article  
28 III of the United States Constitution and corrodes the United



1 States' commitment to the rule of law, which generations have  
2 fought and died to preserve; and  
3

4 WHEREAS, the Posse Comitatus Act, 18 United States Code  
5 section 1385, prohibits the use of the United States military to  
6 execute the law without express constitutional authority or an  
7 act of Congress; and  
8

9 WHEREAS, there is substantial public debate and uncertainty  
10 whether sections 1021 and 1022 of the National Defense  
11 Authorization Act for Fiscal Year 2012 may be interpreted to  
12 possibly repeal the Posse Comitatus Act, thus authorizing  
13 indefinite military detention within the United States, without  
14 charge or trial, of legal permanent residents and others  
15 residing in the United States; now, therefore,  
16

17 BE IT RESOLVED by the Senate of the Twenty-sixth  
18 Legislature of the State of Hawaii, Regular Session of 2012, the  
19 House of Representatives concurring, that the United States  
20 Congress is urged to restore the system of checks and balances  
21 in the United States by repealing sections 1021 and 1022 of the  
22 National Defense Authorization Act for Fiscal Year 2012; and  
23

24 BE IT FURTHER RESOLVED, that the United States Congress is  
25 urged to amend the Authorization for Use of Military Force and  
26 the National Defense Authorization Act for Fiscal Year 2012 to:  
27

- 28 (1) Prevent the armed forces of the United States from  
29 investigating, arresting, detaining, or trying any  
30 person within the United States;  
31
- 32 (2) Prevent the armed forces from militarily detaining,  
33 without charge or trial, any civilian captured off of  
34 any battlefield;  
35
- 36 (3) Recognize that Congress retains the authority to  
37 declare war and authorize the use of military force,  
38 consistent with Article I of the United States  
39 Constitution; and  
40
- 41 (4) Recognize that the President retains the authority  
42 under Article II of the United States Constitution to  
43 deploy the United States military to repel a sudden



# S.C.R. NO. 138

1           attack on the United States, its territories or  
2           possessions, or its military; and  
3

4           BE IT FURTHER RESOLVED, that the United States Congress is  
5 requested to amend the Authorization for Use of Military Force  
6 to expire upon the end of the current combat operations in  
7 Afghanistan; and  
8

9           BE IT FURTHER RESOLVED that certified copies of this  
10 Concurrent Resolution be transmitted to the President of the  
11 United States, the Majority Leader of the United States Senate,  
12 the Speaker of the United States House of Representatives, the  
13 United States Attorney General, the United States Secretary of  
14 Defense, the Chair of the United States Senate Committee on the  
15 Judiciary, the Chair of the United States Senate Select  
16 Committee on Intelligence, the Chair of the United States House  
17 of Representatives Committee on the Judiciary, the Chair of the  
18 United States House of Representatives Permanent Select  
19 Committee on Intelligence, and the members of Hawaii's  
20 congressional delegation.  
21  
22  
23

OFFERED BY: \_\_\_\_\_

*Will Enyo (BR)*

