



Written by [Raven Clabough](#) on January 24, 2012

Montana Launches Recall Efforts Against NDAA Supporters

With a growing number of Americans becoming alarmed at the recent passage of the National Defense Authorization Act because of its provisions allowing American citizens to be indefinitely detained and denied due process, some states and even counties are taking action. The state of Rhode Island, as well as Colorado's El Paso County, have drafted resolutions to nullify the NDAA, a step that other states and counties are soon expected to follow. Likewise, the state of Montana has launched an effort to recall their Senators — Democrats Max Baucus and Jonathon Tester — as well as Republican Congressman Denny Rehberg, all of whom voted for the NDAA.



Montana is just one of nine states with constitutional provisions asserting the right to recall members of its congressional delegation for reasons including a violation of their oath of office. The Montana Code 2-16-603 reads: "(2) A public officer holding an elective office may be recalled by the qualified electors entitled to vote for the elective officer's successor."

The other eight states are Arizona, Colorado, Louisiana, Michigan, Nevada, North Dakota, Oregon, and Wisconsin. In New Jersey, efforts to pass such a law failed when a state judge declared that "the federal Constitution does not allow states the power to recall U.S. senators." Critics of that decision contend that the 10th Amendment to the Constitution in fact does permit such a law.

Montana's recall effort is headed by residents William Crain and Stewart Rhodes. Rhodes declared:

These politicians from both parties betrayed our trust, and violated the oath they took to defend the Constitution. It's not about the left or right; it's about our Bill of Rights. Without the Bill of Rights, there is no America. It is the Crown Jewel of our Constitution, and the high-water mark of Western Civilization.

The draft language of Montana's petition provides the following justifications for recalling the three men:

1. "The Sixth Amendment of the U.S. Constitution guarantees all U.S citizens: "a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed..."
2. The National Defense Authorization Act of 2011 (NDAA 2011) permanently abolishes the Sixth Amendment right to a jury trial, "for the duration of hostilities" in the War on Terror, which was



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defined by President George W. Bush as "task which does not end" to a joint session of Congress on September 20, 2001.

The recall petition adds that the NDAA is a violation of the "spirit and letter of the Constitution and the Declaration of Independence." It also indicates that the Montana Recall Act permits Montanans to recall any officials who violate their oath of office, and the petition highlights just how Baucus, Tester, and Rehberg have done this:

5. Section 1021 of the National Defense Authorization Act reads in substance: "Congress affirms that the authority of the President to detain...a person who was a part of or substantially supported al-Qaeda...or associated forces...including any person who has...directly supported such hostilities in aid of such enemy forces...The disposition of a person...may include...Detention...without trial until the end of hostilities..."

6. "Substantial support" of an "associated force" may imply citizens engaged in innocuous, First Amendment activities. Direct support of such hostilities in aid of enemy forces may be construed as free speech opposition to U.S. government policies, aid to civilians, or acts of civil disobedience.

And the recall petition specifically addresses the last-minute additional provision to the NDAA that was used to defend the rest of the bill and assert that the law would not be used against American citizens:

7. Section 1021 reads: "Nothing in this section shall be construed to affect existing law." But "existing law" may be construed to refer to *Padilla v. Rumsfeld* in the Fourth Circuit Court of Appeals, which upheld the government's claim of authority to hold Americans arrested on American soil indefinitely.

Rhodes was particularly incensed by Denny Rehberg's role in the passage of the NDAA, declaring that Rehberg is "so fond of wrapping himself in the flag and claiming to be defending the Constitution while his votes do the exact opposite." Rhodes added, "In that sense, Rehberg is much like John McCain and Lindsey Graham, two Republicans who, right along with Carl Levin and Joseph Lieberman, are leading a sustained and relentless assault on our Bill of Rights."

While Montanans are working on their recall effort, Americans elsewhere are seeking to nullify the unconstitutional NDAA. El Paso County in Colorado, for example, has passed a resolution that nullifies the NDAA. Entitled the "Resolution to Preserve Habeas Corpus and Civil Liberties," it indicates that it "opposes any and all rules, laws, regulations, bill language or executive orders, which amount to an overreach of the federal government and which effectively take away civil liberties."

El Paso's [resolution](#) was introduced by Commissioner Peggy Littleton and co-authored by Kim Green of Freedom Action Coalition. Montana's Stewart Rhodes worked with Green to change the resolution so that it may be used by other states as well.

Similarly, Rhode Island State Rep. Daniel Gordon drafted a [resolution](#) to express his opposition to the NDAA, releasing this statement along with it on January 16:

Given the fact that the constitutions of Rhode Island and that of the United States are replete with guarantees of individual liberties, right to habeas corpus, and right to freedom of speech, the offending sections of [the NDAA] are repugnant to the sensibilities of anyone [who] has a basic understanding of the foundation of this country.

When I took the oath of office, I swore that I would support the constitutions of Rhode Island and



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the United States. And before one constituent of mine is snatched up in the dead of night, without due process under our laws, they'll have to pry those documents from my cold dead hands.

Gordon's resolution is now making its way through the Rhode Island legislature.

Meanwhile, Pulitzer Prize-winning journalist Chris Hedges sued the Obama administration over the act, warning that its provisions will lead to the growth of fascism in the United States. He labelled it a "catastrophic blow to civil liberties."

The opposition to the NDAA continues to grow. Christopher Anders of the ACLU observed, "This bill puts military detention on steroids and makes it permanent.... American citizens ... are at real risk of being locked away by the military, without charge or trial."

A poll conducted by OpenCongress reveals that just two percent of the American people approve of the National Defense Authorization Act.

Photo: Montana's state capitol in Helena



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