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January 21, 2013

Chairman Ann Mallek
Albemarle County Board of Supervisors
401 McIntire Road
4th Floor
Charlottesville, VA 22902

Re: Model Resolution to Protect Privacy in the Age of Drone Technology

Dear Chairman Mallek:

The FAA Reauthorization Act, signed into law by President Obama in February 2012, has opened the door for unmanned aerial vehicles—commonly known as drones—to take to the skies over America. Once confined to the battlefields over Iraq and Afghanistan, these drones are now set to patrol the skies over our homeland. The Obama administration is calling for drone technology to be integrated into the national air space by 2015.¹ By 2020, just seven short years from now, it is estimated that at least 30,000 drones will be airborne, serving a wide range of functions, both public and private, governmental and corporate.

The Rutherford Institute² has been particularly vocal in warning against the unprecedented privacy and civil liberties threats posed by allowing drones to take to the skies domestically,³ particularly when it comes to drones recording Americans' daily activities. Unfortunately, these drones—airborne, robotic threats to privacy and security—are being unleashed on the American populace before any real protocols to protect our privacy rights have been put in place and in such a way as to completely alter the landscape of our lives and our freedoms.

A recent editorial in *The Daily Progress* highlighted the pressing privacy concerns posed by drones, citing legislation put forth by Virginia State Senator Frank

¹ http://www.huffingtonpost.com/2012/02/15/obama-signs-bill-moderniz_0_n_1278594.html.

² The Rutherford Institute is a non-profit civil liberties organization that provides free legal representation to individuals whose civil rights are threatened or infringed.

³ HB 1160, <http://lis.virginia.gov/cgi-bin/legp604.exe?121+ful+HB1160ER+pdf>.

Ruff, which is intended to protect citizens engaged in hunting on their private property from drone surveillance by other private citizens.⁴ This legislation is far too narrow in scope to have any serious impact on the widespread threat to privacy and civil liberties posed by drone technology, but it also proves that now is the time to start debating the matter and working to safeguard citizens from the prying eyes of this futuristic surveillance technology. I would also caution against providing law enforcement officials with greater leeway to use drones conditioned only on their first acquiring a court-issued warrant.

You and the other members of the Albemarle County Board of Supervisors have a chance to take the lead in expressing concern about the rapid implementation of drone technology across the United States. It is our hope that you not only give serious consideration to the dangers posed to our freedoms by these aerial devices but ensure that the people of Albemarle are protected against any resulting incursions on their rights as protected under the U.S. Constitution. To that end, I am submitting to you a model resolution to encourage the Commonwealth of Virginia to take rapid action in regulating this technology and to prevent law enforcement agencies from employing drones equipped with anti-personnel devices and from using evidence gathered via drone surveillance technology in court. These two prohibitions will surely be a strong first step in securing our constitutional rights against potential violations by government agents utilizing this new technology. Also included is a concise factsheet explaining the gravity of the situation and why this model resolution is the best approach.

As Congressmen Edward Markey (D – MA) and Joe Barton (R – TX) pointed out in a letter to the Federal Aviation Administration (FAA) concerning the widespread implementation of drone technology in America:

Many drones are designed to carry surveillance equipment, including video cameras, infrared thermal imagers, radar, and wireless network “sniffers.” The surveillance power of drones is amplified when the information from onboard sensors is used in conjunction with facial recognition, behavior analysis, license plate recognition, or any other system that can identify and track individuals as they go about their daily lives.⁵

⁴ “Drones: We need broad protections,” *The Daily Progress*, (January 15, 2013), http://www.dailyprogress.com/opinion/editorials/article_2592fab0-5e8c-11e2-9bd3-001a4bcf6878.html.

⁵ Congressmen Edward Markey and Joe Barton, Letter to FAA Administrator Michael P. Huerta (April 19, 2012), <http://markey.house.gov/sites/markey.house.gov/files/documents/4-19-12.Letter%20FAA%20Drones%20.pdf>.

While drones will undoubtedly be put to some legitimate uses, such as helping to spot wildfires and carrying out search-and-rescue missions, their “beneficence” is a double-edged sword. Indeed, without proper safeguards, rules, and regulations, law enforcement agencies will find a whole host of clever and innovative ways to use drones to invade our daily lives and wreak havoc on our freedoms.

Undoubtedly, these devices, which are capable of videotaping the facial expressions of people on the ground from hundreds of feet in the air, will usher in a new age of surveillance in our society. No person, whether he is at a political rally, exiting a house of worship, or simply walking around downtown, will be safe from the prying eyes of these devices, some of which are deceptively small and agile as a bee.⁶ Moreover, not even those indoors, in the privacy of their homes, will be safe from these aerial spies, which can be equipped with technology capable of peering through walls.⁷

Equally troubling, these devices, which are used for bombing campaigns abroad, will also be equipped with anti-personnel weapons for use domestically. Drone manufacturers have confirmed that they can be equipped with automatic weapons, grenade launchers, rubber buckshot,⁸ tear gas⁹ and tasers. These devices will place a whole new spin on the aggressive police activities witnessed across the nation during the Occupy Wall Street protests in late 2011.¹⁰

Aside from the very serious and grave implications for privacy and civil liberties, there are also a number of safety issues involved with drone technology, with the paramount concern being that drones have a history of malfunctioning mid-air. As David Zucchino reported in the *Los Angeles Times*, “The U.S. military often portrays its drone aircraft as high-tech marvels that can be operated seamlessly from thousands of miles away. But Pentagon accident reports reveal that the pilotless aircraft suffer from frequent system failures, computer glitches and human error.”¹¹

⁶ Video: “Pop-up Fabrication of the Harvard Monolithic Bee (Mabee),” *NY Daily News*, (November 17, 2011), <http://youtu.be/VxSs1kGZQqc?hd=1&t=3m50s>.

⁷ Malou Innocent and Medea Benjamin, “Look up in the sky and see a drone,” (June 17, 2012), http://articles.nydailynews.com/2012-06-17/news/32285738_1_drones-unmanned-aerial-vehicles-faa.

⁸ Morley, Jefferson. “The drones are coming — to America.” *Salon*, April 10, 2012. http://www.salon.com/2012/04/10/the_drones_are_coming_to_america/singleton/ (accessed April 26, 2012).

⁹ Morley, Jefferson. “Drones for “urban warfare”.” *Salon*, April 24, 2012. http://www.salon.com/2012/04/24/drones_for_urban_warfare/singleton/ (accessed April 26, 2012).

¹⁰ Conor Friedersdorf, “14 Specific Allegations of NYPD Brutality During Occupy Wall Street,” *The Atlantic*, (July 25, 2012), <http://www.theatlantic.com/politics/archive/2012/07/14-specific-allegations-of-nypd-brutality-during-occupy-wall-street/260295/>.

¹¹ Zucchino, David. “War zone drone crashes add up.” *Los Angeles Times*, July 6, 2010. <http://articles.latimes.com/print/2010/jul/06/world/la-fg-drone-crashes-20100706>.

There's also the problem of drones being hacked into and potentially hijacked. In 2009, it was discovered that Shiite insurgents had hacked into Predator drones with a software program that cost only \$26 and gained access to video footage shot by American spy planes.¹² One can only imagine what a technically proficient hacker in America might be able to do with the wealth of information he could potentially access from these drones, not to mention what a terrorist could do with a fully armed remote-controlled guided missile, which is what drones really happen to be.

Clearly, the present rapid adoption of drone technology before properly vetting the safety, privacy, and civil liberties issues involved can only be a disaster for the American people. Moreover, the potential for abuse by government agents of drone technology is high. At the very least, if the use of these machines by local police agencies is not regulated immediately, the First and Fourth Amendment rights of Charlottesville residents *will* suffer.¹³

Many local police departments throughout the country, including in Florida,¹⁴ California, and Washington,¹⁵ have already begun implementing drone technology, often without regulation or oversight. In response, ten state legislatures are in the process of considering legal limitations on the use of drone technology within their borders.¹⁶ By preemptively resolving to prevent local police agencies from spying on or harassing the residents of Albemarle with drone technology, the Board of Supervisors will demonstrate that it is ahead of the curve in protecting the basic rights of the citizens it has been elected to serve.

Without a doubt, drone technology poses serious risks to Americans. It is our hope that you will send a strong message that the people of Albemarle will not stand idly by as their basic civil liberties are threatened by an ever growing surveillance state. It is

¹² Gorman, Dreazan, and Cole, Siobhan, Yochi, and August. "Insurgents Hack U.S. Drones." *The Wall Street Journal*, December 17, 2009 <http://online.wsj.com/article/SB126102247889095011.html> (accessed April 20, 2011).

¹³ See generally, https://www.rutherford.org/publications_resources/john_whiteheads_commentary/the_empire_strikes_back_attack_of_the_drones;
https://www.rutherford.org/publications_resources/john_whiteheads_commentary/the_drone-ification_of_america.

¹⁴ Dan Tracy, "Sheriff's Office wants to fly drones over Orange County skies," *Orlando Sentinel*, (January 12, 2013), <http://www.orlandosentinel.com/news/local/breakingnews/os-drones-sheriff-orange-20130112,0,4271383.story>.

¹⁵ Ali Winston, "Drone Surveillance May Be Unconstitutional," *East Bay Express*, (January 2, 2013), <http://www.eastbayexpress.com/ebx/drone-surveillance-may-be-unconstitutional/Content?oid=3426632>.

¹⁶ Dan Tracy, "Sheriff's Office wants to fly drones over Orange County skies," *Orlando Sentinel*, (January 12, 2013), <http://www.orlandosentinel.com/news/local/breakingnews/os-drones-sheriff-orange-20130112,0,4271383.story>.

Albemarle County Board of Supervisors
January 21, 2013
Page 5

imperative that you and the members of the Board of Supervisors adopt this resolution, assuring the citizens of Albemarle that you intend to secure their privacy, safety, and civil liberties against those who would jeopardize them for the sake of expedience, economy and security.

Sincerely yours,



John W. Whitehead
President

Enclosures: Model "Freedom from Drone Surveillance Resolution"
"Freedom from Drone Surveillance Resolution" Fact Sheet

Cc: Steve Sellers, Albemarle County Chief of Police