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February 12, 2013

The Honorable Robert F. McDonnell
Office of the Governor
Patrick Henry Building, 3rd Floor
1111 East Broad Street
Richmond, Virginia 23219

Re: Virginia House Bill 2012

Dear Governor McDonnell:

Despite President Obama's authorization of the use of drones domestically, no steps have been taken on either the federal or state level to establish effective safeguards for Americans' civil liberties and privacy rights. This oversight must be rectified.

To this end, Virginia House Bill 2012, which would prohibit state and local law enforcement from using drone technology until July 1, 2015¹, will at least ensure that lawmakers have the time necessary to educate themselves on the use of drone technology within the Commonwealth, assess its impact on the rights of Virginians, and take whatever steps are needed to protect citizens from these aerial, robotic threats to privacy, safety and security. Therefore, I urge you to not only approve the two-year moratorium on the use of drones within the Commonwealth but to use the power of your office to insist that an independent, nonpartisan commission be established immediately to explore and address these concerns.

The Rutherford Institute² has been particularly vocal in calling on local communities, state legislatures and Congress to ensure that Americans' civil liberties and privacy rights are not jeopardized by the domestic use of drones. In fact, our attorneys have drafted model legislation aimed at preventing police agencies from utilizing drones outfitted with anti-personnel devices

¹ Jason Koebler, "Virginia Becomes First State to Pass Drone Regulations," *US News*, (February 5, 2013), <http://www.usnews.com/news/articles/2013/02/05/virginia-becomes-first-state-to-pass-drone-regulations->

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.

such as tasers and tear gas and prohibiting the government from using data recorded via police spy drones in criminal prosecutions.³

This issue has become the topic of national and international attention, especially since, at the urging of The Rutherford Institute, the City of Charlottesville became the first city in the nation to call for limits on the use of drone technology by state and local law enforcement agencies. The City of Seattle has since followed suit, with its mayor ordering the police department to abandon its plan to use drones altogether. Moreover, lawmakers in at least eleven states are considering legislation to restrict the use of drones over their skies, again at the urging of The Rutherford Institute.⁴

The urgency of formulating legislative safeguards to address the rapid, uncritical adoption of drone technology around the country, including in Virginia cannot be understated. Indeed, at least 56 government agencies are now authorized to use drones,⁵ including Virginia Tech and various police agencies in Virginia,⁶ yet guidelines for government use of drone technology are sorely lacking. Many local police departments throughout the country, including in Florida, California, and Washington, have already begun implementing drone technology, often without regulation or oversight. The Sheriff's Office in Russell County has already purchased two drones for use as soon as possible.

Law enforcement agencies cannot be expected to self-regulate their use of drone technology. Without clear guidelines for how drones can and should be used, civil liberties and privacy rights would inevitably fall prey to the priorities of law enforcement officials. For example, Charlotte County Sheriff Thomas Jones, speaking on behalf of the Virginia Sheriffs' Association, has already expressed opposition to attempts to regulate law enforcement's use of drones, going so far as to admit that the reason officers wish to use drones is to avoid seeking a warrant before performing a search.⁷

No matter where one stands on the issue of drone use domestically, it is clear that we need to take a more cautious and well-reasoned approach to how drone technology will be implemented and what safeguards are necessary to ensure that Americans' safety, privacy, and civil liberties are not jeopardized. Without a moratorium ensuring that the General Assembly has the necessary time to take the necessary legislative precautions against drones being used and abused, it will not be long before we begin to see major violations of Virginians' First, Fourth, and Fifth Amendment rights, among others.

³ "Freedom from Drone Surveillance Act," The Rutherford Institute, https://www.rutherford.org/files_images/general/2012_State_Drone_Legislation.pdf.

⁴ "Seattle mayor scraps plans for police drones after complaints from residents and privacy advocates," *Daily Mail* (Feb. 8, 2013), <http://www.dailymail.co.uk/news/article-2275822/Seattle-mayor-scraps-plans-police-drones-complaints-residents-privacy-advocates.html?ito=feeds-newsxml#axzz2Kh1kLKjO>.

⁵ 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).

⁶ WTOP, "FAA lists show agencies able to use drones." Last modified April 24, 2012. Accessed May 30, 2012. <http://www.wtop.com/?nid=41&sid=2838940>.

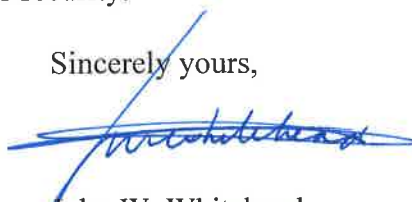
⁷ Kathy Adams, "Virginia House panel passes drone moratorium bill," *Pilotonline.com*, (February 2, 2013), <http://hamptonroads.com/2013/02/virginia-house-panel-passes-drone-moratorium-bill>.

The Honorable Robert F. McDonnell
February 12, 2013
Page 3

Just as Charlottesville led the way in being the first city in the nation to call for limits on the use of drone technology by state and local law enforcement agencies, you have an opportunity to make Virginia the first state in the nation to recognize the need for a more studied and cautious approach to the use of drones domestically. In doing so, you can also send a strong message to the Commonwealth, the nation and the world that as governor, you remain committed to protecting the privacy, safety, and civil liberties of Virginians against those who would jeopardize them for the sake of expedience, economy and security.

As always, I am glad to be of assistance to your administration in establishing a more nuanced dialogue about how best to balance individual freedoms against the needs of the community, without jeopardizing either liberty or security.

Sincerely yours,



John W. Whitehead
President