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June 1, 2012

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

Re: Use of Drones Domestically, Particularly by Virginia Law Enforcement

Dear Governor McDonnell:

When asked in a recent radio interview to share your views about whether drones—unmanned aerial vehicles—should be used domestically, you wholeheartedly supported the practice, noting that the domestic use of drones is “great” and “the right thing to do” for the same reasons they are so effective in a “battlefield” environment because they are economical, efficient, and could keep police officers safe.¹ That you evinced few reservations whatsoever about these drones was bad enough, but what I found even more troubling was your inference that economy, efficiency, and the security of law enforcement officials trumps the rights of American citizens.

Your battlefield analogy was particularly inappropriate. America is not a battlefield, and the citizens of this nation are not insurgents in need of vanquishing. Moreover, a rapid adoption of drone technology before properly vetting the safety, privacy, and civil liberties issues involved would be a disaster for your administration and the people of Virginia. What this Commonwealth needs are government leaders who understand that their primary duty is protecting the constitutional rights of its citizens. To this end, it would behoove you to take a more cautious and well-reasoned approach to drone technology.

The Rutherford Institute² has been particularly vocal in recent years in warning against the unprecedented privacy and civil liberties threats posed by allowing drones to take to the skies

¹ Shinkman, Paul D. WTOP Radio, "Gov.: Drones over Va. 'great'; cites battlefield success." Last modified May 29, 2012. Accessed May 30, 2012. <http://www.wtop.com/120/2882193/Governor-Drones-over-Va-great-right-thing-to>.

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.

domestically.³ Unfortunately, these drones—aerial, 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.

Without robust safeguards to the privacy and security of the citizens of Virginia, we will find ourselves operating under a new paradigm marked by round-the-clock surveillance and where privacy is extinct. As Congressmen Edward Markey (D – MA) and Joe Barton (R – TX) pointed out in a recent 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.⁴

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, not the least of which will be traffic enforcement and crowd control.

Drones will clearly pose a serious threat to First Amendment activity in Virginia. In addition to the various surveillance devices affixed to drones, they will be outfitted with crowd control weapons. Vanguard Defense Industries has confirmed that its Shadowhawk drone, which is already being sold to law enforcement agencies throughout the country, will be outfitted with lethal weapons, including a grenade launcher or a shotgun, and weapons of compliance, such as tear gas⁵ and rubber buckshot.⁶ Such aerial police weapons send a clear and chilling message to those attempting to exercise their First Amendment rights by taking to the streets and protesting government policies—the message: stay home or you will be punished. This is not a message police should be sending to Virginians who choose to exercise their First Amendment rights.

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 Zucchini 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

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

⁴ 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>.

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 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).

that the pilotless aircraft suffer from frequent system failures, computer glitches and human error.”⁷ For example, the first drone sent to the Texas-Mexico border in the summer of 2010 experienced a communications failure which led to “pilot deviation.” Drones had to be temporarily grounded while technicians received more training.⁸ Fortunately, no one was hurt.

One can only imagine what would happen if a mechanical failure caused a drone to crash on a street in Richmond or any other city in the Commonwealth. The potential death and injury of innocent people as well as destruction of property is an issue which must be dealt with before drone technology is widespread. The people of Pakistan, who face frequent drone strikes by American forces, know that drone technology can be very dangerous when used improperly. Indeed, 828 Pakistani civilians have been killed by drones since 2004.⁹ I fear that the people of Virginia may learn a similar lesson if police and other government agents are not given the proper training and guidelines before utilizing such technology.

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.¹⁰ 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.

There are many constitutional concerns when it comes to drones recording Americans’ daily activities, with the most obvious being what it means for the Fourth Amendment protection against unwarranted government surveillance by the police and other government agents. As James Madison, the author of the Constitution and the Bill of Rights and a native of Virginia, noted, “The means of defense against foreign danger historically have become the instruments of tyranny at home.” This is what we are seeing with the rapid, uncritical adoption of drone technology around the country, including in Virginia. Indeed, 56 government agencies are now authorized to use drones,¹¹ including Virginia Tech and various police agencies in Virginia,¹² yet guidelines for government use of drone technology are sorely lacking.

The safety and privacy issues posed by the implementation of drone technology are a bi-partisan concern. Conservative thinkers such as Andrew Napolitano, Charles Krauthammer, and

⁷ Zucchini, 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>.

⁸ Perez-Trevino, Emma. “Rogue drone causes pause in operations.” *The Brownsville Herald*, June 16, 2010. <http://www.brownsvilleherald.com/news/drone-113388-unmanned-aircraft.html> (accessed April 20, 2011).

⁹ Milne, Seumas. “America’s murderous drone campaign is fuelling terror.” *The Guardian*, last modified May 29, 2012. Accessed May 31, 2012. <http://www.guardian.co.uk/commentisfree/2012/may/29/americas-drone-campaign-terror>.

¹⁰ 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).

¹¹ 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).

¹² 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>.

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Cal Thomas, as well as liberal strategists and columnists such as Bob Beckel and Glenn Greenwald have come out in opposition to the rapid adoption of drone technology for domestic purposes. As Cal Thomas noted in a recent column in *USA Today*, “The ability of these machines to collect information is almost unlimited — and if we allow it to happen, we will have accepted the Orwellian vision of Big Brother.”¹³

A rush to adopt this technology before it is properly vetted for safety and privacy concerns will invite the wrath of many Virginians, regardless of party and ideological persuasion. Moreover, the potential for abuse by government agents of drone technology is high.

Clearly, this is not the time for rash decision-making. Drone technology poses serious risks to Virginians, and as governor, it is your duty to ensure that this technology is fully vetted by a commission charged with studying its impact on the safety and privacy of Virginians. Additionally, before any drone is allowed to take to the skies over Virginia, it is imperative that you and the members of the General Assembly adopt legislation in keeping with the U.S. Constitution and the Constitution of Virginia assuring the people of this Commonwealth that their privacy, safety, and civil liberties will not be jeopardized for the sake of expedience, economy and security.

Sincerely yours,



John W. Whitehead
President

cc: Virginia General Assembly

¹³ Thomas, Cal, and Beckel, Bob. "Column: Domestic use of drones? Bad idea." *USA Today*, last modified May 30, 2012. Accessed May 31, 2012. <http://www.usatoday.com/news/opinion/forum/story/2012-05-30/domestic-drones-privacy-faa-uavs/55288498/1>.