

THE RUTHERFORD INSTITUTE

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INTERNATIONAL OFFICE
CENTRAL AND EASTERN EUROPE
Budapest, Hungary

September 18, 2012

The Honorable Patrick J. Leahy, Chairman
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

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

Dear Senator Leahy:

The FAA Reauthorization Act, signed into law by President Obama earlier this year, 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 eight 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.

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 American people are protected against any resulting incursions on their rights as protected under the U.S. Constitution.

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>.

To that end, I am submitting to you model legislation which will prohibit Federal agencies from employing drones equipped with anti-personnel devices and from using evidence gathered via drone surveillance technology. 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 ordinance 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.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.

Indubitably, 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.⁵ 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.⁶

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,

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

⁶ 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.

grenade launchers, rubber buckshot,⁷ tear gas⁸ 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 2011.⁹

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 that the pilotless aircraft suffer from frequent system failures, computer glitches and human error."¹⁰

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.¹¹ 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, state and federal police agencies is not regulated immediately, Americans' First and Fourth Amendment rights *will* suffer.¹²

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

⁷ 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).

⁸ 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).

⁹ 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/>.

¹⁰ 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>.

¹¹ 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).

¹² *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.

Krauthammer, and 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 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

Without a doubt, drone technology poses serious risks to Americans. It is our hope that you will ensure that this technology is fully vetted by a commission charged with studying its impact on the safety and privacy of Americans. In the meantime, however, it is imperative that you and the members of the Senate Judiciary Committee adopt legislation in keeping with the U.S. Constitution assuring the citizens of this country 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

Enclosures:

cc: The Honorable Chuck Grassley, Ranking Member
The Honorable Herb Kohl
The Honorable Dianne Feinstein
The Honorable Orrin G. Hatch
The Honorable Chuck Schumer
The Honorable Jon Kyl
The Honorable Dick Durbin
The Honorable Jeff Sessions
The Honorable Sheldon Whitehouse
The Honorable Lindsey Graham
The Honorable John Cornyn
The Honorable Amy Klobuchar
The Honorable Michael S. Lee
The Honorable Al Franken
The Honorable Christopher A. Coons
The Honorable Tom Coburn
The Honorable Richard Blumenthal

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>.