



April 3, 2015

BY EMAIL:

Members of the Senate of Virginia  
Members of the Virginia House of Delegates

Dear Members of the Senate of Virginia and House of Delegates:

**We urge you to say NO to the Governor's Amendment Nos. 1 and 2 to the drone legislation (HB 2125 Cline Rockbridge and SB 1301 McEachin) passed unanimously by the General Assembly this year.**

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Amendments 1 and 2 strike at the heart of the purpose of the bills, and rip out the protection this pro-privacy legislation provides.

Neither are these amendments necessary, as some will argue, to allow Virginia law enforcement the authority they need to keep us safe. Exceptions already included in the legislation passed unanimously provide all the authority law enforcement needs to act in any emergency or conduct any criminal investigation.

From the outset of the efforts to regulate drones three years ago, there's been **one issue at the center of the conflict** between those advocating for a statutory warrant requirement for law enforcement drone use and those arguing against. That conflict is over whether the 4<sup>th</sup> amendment protections against unreasonable searches and seizures should be a floor or a ceiling when it comes to the protection of Virginians' privacy.

**The ACLU of Virginia and our allies** in the fight to regulate drones that began three years ago (including the Virginia Tea Party Patriots Federation, the Virginia Farm Bureau, the Virginia Agribusiness Council) **believe that the federal 4<sup>th</sup> amendment provides the minimum protection of privacy Virginians should expect.**

The legislation that all of you voted for during the regular General Assembly Session takes the position, as a matter of policy, that **Virginia should provide its residents more protection of their privacy than antiquated court decisions provide under the minimum federal constitutional standards.**

The bills you voted for unanimously during the General Assembly Session established a **new Virginia statutory warrant requirement** that says that, as a general rule, law enforcement and regulatory agencies **must** get a warrant before they can use a drone to collect information, data and evidence that can be used against you in a court of law.

The bills you voted for contain LOTS of exceptions to this general rule, however, that allow any agency including a law enforcement or regulatory agency to use a drone without a warrant in all of these circumstances:

- when an Amber Alert is activated pursuant to § 52-34.3
- when a Senior Alert is activated pursuant to § 52-34.6,
- when a Blue Alert is activated pursuant to § 52-34.9,
- where use of an unmanned aircraft system is determined to be necessary to alleviate an immediate danger to any person, (v) for training exercises related to such uses,
- if a person with legal authority consents to the warrantless search

The legislation you voted for unanimously also says that the “warrant requirements shall not apply” when drones are used by any agency to “support the Commonwealth for purposes other than law enforcement, including damage assessment, traffic assessment, flood stage assessment, and wildfire assessment.”

Finally, the law you voted for includes a blanket exception that allows “private, commercial, or recreational use or solely for research and development purposes by institutions of higher education and other research organizations or institutions.”

And, most important, remember that **law enforcement can, under the legislation, do anything it wants to do with a drone if they get a warrant** which just isn’t that difficult in today’s technological age, provided, of course, they have probable cause.

**Given all the exceptions already in the legislation, you might reasonably ask what’s left of the warrant requirement and how is the privacy of Virginians protected by this law?**

**The answer is at lines 32 and 33 of the legislation** you voted for unanimously: “E. Evidence obtained through the utilization of an unmanned aircraft system in violation of this section is not admissible in any criminal or civil proceeding.”

This language means that, if a law enforcement or a regulatory agency doesn’t get a warrant as required by the law you passed, the data, information, pictures it gathers can’t be used against any Virginian in a court of law.

**The Governor’s amendment number 2 seeks to gut this remaining privacy protection.**

If the Governor’s amendment is adopted by the legislature, a law enforcement agency would be able affirmatively to choose to violate the state warrant requirement, gather information about a Virginian and have the information introduced in a criminal proceeding if they can show there’s an exception to the **minimum** constitutional warrant requirements under the 4<sup>th</sup> amendment that would allow the evidence to be collected without a warrant.

The effect of Governor’s amendment number 2 is to reverse the policy decision that 140 members of the legislature made – that Virginians privacy deserves greater

protection than the 4<sup>th</sup> amendment now provides – and, in effect, vetoes the policy choice that you made.

**So, if you believe that Virginians deserve better protection than the minimum federal constitutional requirements, you should vote to reject amendment number 2.**

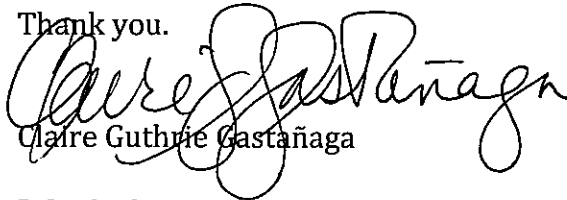
**We would also urge you to reject amendment number 1** which expands the exception to the warrant requirement to allow free use of drones by law enforcement agencies except when part of an “active criminal investigation.” This would mean that law enforcement agencies can engage in 24/7 mass surveillance of Virginians, using drones to collect data and personal information and preserve it in data bases forever, “just in case.” Note: This would be especially true if you vote to approve the Governor’s amendments we oppose to HB 1673 and SB 965 (the license plate reader bills) that eviscerate the current limits on government data collection imposed by the Virginia Government Data Collection and Dissemination Practices Act.

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**Amendments No. 3 and 4 are basically technical and can be rejected or accepted without damage to Virginians privacy.**

Please vote to protect Virginians’ privacy and vote to reject Governor’s amendments No. 1 and 2 on HB 2125 and SB 1301.

Thank you.



Claire Guthrie Castañaga

P.S. The key concern you should have about drones is not about the tech but about their capacity to collect data: <http://nabshow.com/thought-gallery/drone-expert-it%E2%80%99s-not-about-cool-aircraft-it%E2%80%99s-about-data#.VR5xzX4ZbsA.facebook>