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Joint Committee on Transportation  
Sen. Thomas M. McGee and Rep. William M. Straus, Chairs

**SUPPORT FOR S.1664**  
**An Act to regulate the use of unmanned aerial vehicles.**

Dear Senator McGee, Representative Straus, and members of the committee:

On behalf of the ACLU of Massachusetts and its more than 20,000 members and supporters statewide, we write in strong support of S.1664. This is an important, timely effort to regulate the use of unmanned aerial vehicles (UAVs), or drones, by establishing rules and standards for their operation, protections for individual privacy, and transparent public oversight.

In July 2013, we testified in support of the House version of this bill before the Joint Committee on the Judiciary. Since then, the drone landscape in Massachusetts and the United States has changed significantly—another reminder that technology moves much faster than the law, and that the law needs to catch up.

We now know that the Department of Homeland Security and Federal Bureau of Investigation routinely fly drones above our airspace, without any outside oversight, judicial accountability, or probable cause.<sup>1</sup> The FBI's official policy, recently disclosed through public records requests, allows its agents to fly surveillance drones over homes and record what's going on in backyards, behind private fences, without a warrant.<sup>2</sup> We recently learned that federal agencies loan their drones to state and local law enforcement hundreds of times per year, a number that increases each day as law enforcement demand grows for these powerful and unregulated surveillance systems.<sup>3</sup> Perhaps most significant for legislators in Massachusetts, drone deployment in our great Commonwealth is no longer hypothetical. In the last days of 2013, we learned that officials at Joint Base Cape Cod were granted FAA authorization to test drones in the state.<sup>4</sup>

Proponents of drone technology say that the industry will bring thousands of jobs to the Bay State, but in order to responsibly shepherd this exciting growth opportunity, the state legislature must act. While drone technology has the potential to stimulate the economy here in

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<sup>1</sup> Jordy Yager, FBI admits using drones to spy in US, The Hill, June 19, 2013, available at <http://thehill.com/homenews/news/306703-fbi-admits-using-drones-to-spy-in-us>.

<sup>2</sup> Shawn Musgrave, Revealed: The FBI's Internal Guidelines for Warrantless Drone Surveillance, Vice Magazine, December 2013, available at <http://motherboard.vice.com/blog/revealed-the-fbis-internal-guidelines-for-warrantless-drone-surveillance>.

<sup>3</sup> Associated Press, DHS has lent border drones hundreds of times, The Washington Post, January 15, 2014, available at [http://www.washingtonpost.com/world/national-security/dhs-has-lent-border-drones-hundreds-of-times/2014/01/15/2ec3f672-7e2d-11e3-97d3-b9925ce2c57b\\_story.html](http://www.washingtonpost.com/world/national-security/dhs-has-lent-border-drones-hundreds-of-times/2014/01/15/2ec3f672-7e2d-11e3-97d3-b9925ce2c57b_story.html).

<sup>4</sup> Michael P. Norton, Drone testing coming to Cape Cod, State House News Service, December 31, 2013, available at <http://www.capecodtoday.com/article/2013/12/31/23397-drone-testing-coming-cape-cod>.

Massachusetts, its use must respect the privacy and civil liberties interests of law-abiding residents. Passage of the Drone Privacy Act will ensure that this projected economic growth occurs in an environment that protects the public interest. If other cities and states are any indication, the absence of regulation may in fact hurt rather than help the nascent drone industry in Massachusetts.

In the absence of statutes to balance law enforcement needs with legitimate privacy interests, a number of cities in other states have outright banned police drones.<sup>5</sup> In Seattle, Washington, community outcry stopped the police department from acquiring a surveillance drone. Community members worried that, in the absence of regulations, the technology could easily be abused.<sup>6</sup> Commonsense regulation both fosters the Commonwealth's viability as a host for an emerging industry, and ensures that this prosperity doesn't come at the expense of individual freedoms.

Drone technology brings with it many opportunities – from more affordable ways to gather information for traffic reports to more efficient ways to count deer in the forest. Unregulated, however, warrantless drone operations could interfere with residents' reasonable expectation of privacy, chill First Amendment-protected activities, and lead to discriminatory targeting.

Various Massachusetts law enforcement agencies have expressed interest in using domestic drones in the near future. Indeed, a Massachusetts SWAT team has already applied to federal authorities for authorization to fly a surveillance drone.<sup>7</sup> After the Boston Marathon attack, then-Police Commissioner Ed Davis told reporters that he hoped his department would fly surveillance drones above the 2014 race.<sup>8</sup>

The drones that are likely to take to Massachusetts skies in the near future are powerful tools, and the technology is evolving rapidly. Currently in development are drones small enough to fly into houses undetected,<sup>9</sup> as quiet as a mouse.<sup>10</sup> They can hover and observe people's activity secretly, silently, and constantly.<sup>11</sup> Furthermore, drones can be equipped with a host of sophisticated surveillance technologies, including cell phone "sniffers" that intercept cell tower data<sup>12</sup> and invasive biometric tracking tools that acquire information on everyone in a given area, whether or not they are intended surveillance targets.<sup>13</sup>

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<sup>5</sup> Shawn Musgrave, *Joining a Handful of Other Cities*, Lincoln, Nebraska Bans Police Drones, January 16, 2014, Vice Magazine, available at <http://motherboard.vice.com/blog/joining-other-cities-lincoln-nebraska-preemptively-bans-police-drones>.

<sup>6</sup> Christine Clarridge, *Seattle grounds police drone program*, February 7, 2013, The Seattle Times, available at [http://seattletimes.com/html/localnews/2020312864\\_spddrones.xml.html](http://seattletimes.com/html/localnews/2020312864_spddrones.xml.html).

<sup>7</sup> Scott Kirsner, *Drones may soon buzz through local skies*, October 21, 2012, The Boston Globe, available at <https://www.bostonglobe.com/business/2012/10/20/drone-aircraft-adapted-from-military-uses-coming-skies-near-you/h1rQ29NYRywh0o6A1eOqDN/story.html>

<sup>8</sup> John Zarella, *Dave Wedge, Davis: Arm us with cameras, drones*, April 24, 2013, The Boston Herald, available at [http://bostonherald.com/news\\_opinion/local\\_coverage/2013/04/davis\\_arm\\_us\\_with\\_cameras\\_drones](http://bostonherald.com/news_opinion/local_coverage/2013/04/davis_arm_us_with_cameras_drones).

<sup>9</sup> Elisabeth Bumiller and Thom Shanker, *War Evolves With Drones, Some Tiny as Bugs*, June 19, 2011, The New York Times, available at [http://www.nytimes.com/2011/06/20/world/20drones.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2011/06/20/world/20drones.html?pagewanted=all&_r=0)

<sup>10</sup> Robert Beckhusen, *Super-Silent Owl Drone Will Spy on You Without You Ever Noticing*, July 19, 2012, Wired Magazine, available at <http://www.wired.com/dangerroom/2012/07/owl/>

<sup>11</sup> Ryan Gallagher, *Could the Pentagon's 1.8 Gigapixel Drone Camera Be Used for Domestic Surveillance?*, February 6, 2013, Slate, available at [http://www.slate.com/blogs/future\\_tense/2013/02/06/argus\\_is\\_could\\_the\\_pentagon\\_s\\_1\\_8\\_gigapixel\\_drone\\_camera\\_be\\_used\\_for\\_domestic.html](http://www.slate.com/blogs/future_tense/2013/02/06/argus_is_could_the_pentagon_s_1_8_gigapixel_drone_camera_be_used_for_domestic.html)

<sup>12</sup> Declan McCullagh, *DHS built domestic surveillance tech into Predator drones*, March 2, 2013, CNET, available at [http://news.cnet.com/8301-13578\\_3-57572207-38/dhs-built-domestic-surveillance-tech-into-predator-drones/](http://news.cnet.com/8301-13578_3-57572207-38/dhs-built-domestic-surveillance-tech-into-predator-drones/)

<sup>13</sup> Noah Shachtman, *Army Tracking Plan: Drones That Never Forget a Face*, September 28, 2011, Wired Magazine, available at <http://www.wired.com/dangerroom/2011/09/drones-never-forget-a-face/>

Drones are not like helicopters or any other police vehicle. They aren't subject to the same practical limitations as helicopters, which are costly and require trained, human pilots, launch pads and flight and ground crews. Rather, drones are cheap, small and quiet, and therefore – unlike helicopters – every single town and city in the state could conceivably afford to fly multiple drones. Because of these fundamental differences, they are particularly well-suited to secret surveillance, so they need specific legal controls.

The ACLU has serious concerns about the use of unmanned aerial vehicle surveillance technology to collect information about individuals suspected of no crime. The pace at which surveillance technology has evolved in recent years has far outstripped the pace at which laws have adapted to protect individuals' privacy. Congress has required the Federal Aviation Administration (FAA) to open domestic airspace more widely to drones by 2015, yet the FAA has indicated that its mandate is airspace safety, not privacy. Therefore, it is incumbent upon state lawmakers to protect Massachusetts residents' privacy and ensure that this emerging technology is used responsibly in Massachusetts – not for warrantless surveillance of our ordinary, day-to-day lives. It is a core value in our society that we do not watch innocent people just in case they do something wrong.

S.1664 strikes the right balance by permitting law enforcement use of drones only in emergencies or with a probable cause warrant issued by a judge. It requires data minimization by prohibiting law enforcement from identifying anyone other than the target that justified the warrant and drone deployment, and requires that data on bystanders be deleted promptly. When drones are used for purposes other than authorized criminal investigations by law enforcement, the data they collect would be prohibited from being introduced as evidence in court.

In addition, this legislation explicitly bars the use of drones to monitor First Amendment expression. Climate change activists and Tea Party members alike should be free to petition their government without risking being monitored or catalogued by the police.

Finally, the bill contains two important mechanisms for public accountability. First, it would require law enforcement agencies to obtain approval from their local governing body before acquiring drones. Second, it would establish a robust reporting requirement to keep policymakers and the public informed about drone use in the Commonwealth. Transparency is key in a democratic society, and technology shouldn't change that.

Massachusetts should join Florida, Idaho, Illinois, Montana, North Carolina, Oregon, Tennessee, Texas and Virginia in passing legislation to regulate government deployment of this powerful technology, before our friendly skies are swarming with video cameras and other high tech surveillance tools.

Before drones become ubiquitous in our airspace, we need clear rules so that we can enjoy the benefits of this technology without needlessly sacrificing our privacy and liberty. S.1664 will provide the needed checks and balances to prevent indiscriminate mass surveillance.

We urge the committee to give S.1664 a favorable report, and we offer ourselves as a resource to address any concerns and to help strengthen this very necessary legislation.