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COMMENTS IN SUPPORT OF 17-H 5521– AERIAL PRIVACY PROTECTION ACT February 28, 2017

The ACLU of RI supports restrictions on the use of unmanned aerial vehicles, commonly referred to as drones, by law enforcement. Through a combination of increasingly cheaper, more sophisticated technology and financial incentives provided by the federal government, law enforcement entities nationwide have begun obtaining and using drones. This tremendous step forward in surveillance capability carries serious implications for the privacy rights of all individuals. Yet, Rhode Island’s laws have generally failed to keep up with technology. At least seventeen¹ states have already enacted laws to restrict the use of drones by law enforcement; this legislation can and should make Rhode Island the eighteenth.

Any surveillance equipment raises a number of privacy concerns, including the need for a narrowly tailored warrant and the implications for the privacy of those untargeted individuals who happen to be caught in the surveillance crossfire. Relying on law enforcement to dictate how drones should be used and then on the courts to determine whether that use is unconstitutional would be a long, costly process that will ultimately result in compromised privacy of innocent individuals.

In addition, the technology available with drone use far exceeds that addressed by existing case law, and is only going to become more sophisticated. While each model is different, drones may carry equipment ranging from high-powered zoom lenses to infrared imaging, recording devices, and GPS tracking, all while being virtually unnoticeable by the person surveyed. Each element carries significant concerns for privacy; together, drones represent the largest potential for long-term, invasive surveillance we have seen in decades.

This legislation implements those protections by requiring a warrant based on probable cause or reasonable suspicion be obtained prior to drone surveillance, except in those emergency cases where law enforcement has reason to believe there is imminent threat to the life or physical safety of a person – similar to the requirements of the state wiretapping law, a process law enforcement has been familiar with for decades. The legislation further requires surveillance be conducted only on an articulated target and that any data captured on a non-target individual must be deleted within 24 hours, ensuring that no individual may see their privacy infringed upon because a drone was on its way to monitor some other individual. Surveillance of any one target is limited to 48 hours, unless a court determines that an extension of up to 30 days is warranted. Finally, the legislation requires annual reporting on drone use, allowing the General Assembly to evaluate the technology and its use in Rhode Island.

¹ Alaska, Florida, Idaho, Illinois, Indiana, Iowa, Maine, Montana, Nevada, North Carolina, North Dakota, Oregon, Tennessee, Texas, Utah, Virginia, Wisconsin.

Passage of this legislation will ensure that clear guidelines for drone use within Rhode Island are established before law enforcement obtains this technology and before any individual's privacy is unduly impacted, and the ACLU of Rhode Island encourages its approval.