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**Written Testimony in Opposition of Senate Bill 974,
An Act Implementing The Recommendations Of The Legislative
Program Review And Investigations Committee Concerning The Use
Of Drones By Law Enforcement Officers And Other State Employees**

February 25, 2015

Senator Fonfara, Representative Carpino and distinguished members of the Program Review and Investigations Committee, I am David McGuire, staff attorney for the American Civil Liberties Union of Connecticut. I'm here to testify in opposition of Senate Bill 974, An Act Implementing The Recommendations Of The Legislative Program Review And Investigations Committee Concerning The Use Of Drones By Law Enforcement Officers And Other State Employees. This timely legislation is based on the thoughtful Program Review and Investigations (PRI) Committee drone use regulation study. We strongly support the committee's decision to require registration of government drones and reporting of drone use by law enforcement, as well as the ban on arming drones. We urge this committee to pass this proposed legislation, but only after amending it to correct the major constitutional deficiency in Section 3(c)(3). I will outline below the reasons for this necessary amendment and also will summarize our great approval for and less weighty concerns with other aspects of this legislation. In sum, we urge the committee to amend the bill to remove Section 3(c)(3) and therefore require police to get a search warrant based on probable cause before flying a surveillance drone, except in emergencies, such as a search for a missing person.

Section 3(c)(3) as currently drafted would allow police to surveil individuals or privately owned property without satisfying the warrant requirement in the Fourth Amendment to the Constitution of the United States or any of its narrow exceptions. The Fourth Amendment mandates that the government may not invade and search places where we have a reasonable expectation of privacy unless the search is conducted pursuant to a search warrant issued by a neutral magistrate with the place and time of search specified in the warrant. Section 3(c)(3)

would allow police to surveil individuals or privately owned property without court approval when there is a reasonable and articulable suspicion that an offense has been or is being committed by such individual or on such property.

A drone is any remote-controlled or pre-programmed unmanned aircraft, but in its most ubiquitous form a drone is essentially a small, flying camera—inexpensive, highly maneuverable and capable of unprecedented invasions of personal privacy. Drones can carry a variety of high-powered surveillance equipment, including high-resolution video cameras, microphones, night-vision cameras and infrared or heat-sensing devices that can literally see through walls, as well as facial recognition technology, radar and license plate readers.

Later this year the Federal Aviation Administration (FAA) must open U.S. airspace to drones and predicts that there will be 30,000 of them buzzing around the nation's skies within 15 years. Unlike manned airplanes and helicopters, which are expensive to purchase, operate and maintain, drones are affordable. They require no licensed pilots, hangars or runways and they have the ability to explore hidden spaces, peer in windows, or even, potentially, enter homes. Drones are nothing like the aerial surveillance we're used to, not an airplane flying thousands of feet above a neighborhood or a noisy helicopter a few hundred feet overhead. They can hover outside a window and record what happens inside your house. They can take high-resolution video of your family in your yard and record your conversations. Drones turn aerial surveillance into ground-level spying, and they can take police into places where the Constitution expressly forbids them to set foot without permission or a warrant, unless there is an emergency.

Over a dozen states have passed laws that require police to obtain a search warrant based on probable cause before using a drone to spy on an individual. None of these states allow police to follow and record people or private residences for any amount of time based on only an assertion of reasonable and articulable suspicion.

This legislative session is likely the last opportunity to regulate drones before police start using the technology in Connecticut communities. It is incumbent upon the Connecticut General Assembly to ensure that we reap the benefits of this burgeoning technology without violating the Fourth Amendment and jeopardizing our core privacy rights.

The Connecticut Police Chiefs Association will likely assert that drones are the same as airplanes and helicopters and will claim the right to operate drones for individual surveillance without a warrant, based on U.S. Supreme Court rulings in the 1980s that permitted manned

aerial surveillance from airplanes and a helicopter without a warrant. But the Supreme Court has signaled that the rapid evolution of technology has changed the playing field. While the Court has not yet specifically addressed drones, it recently issued a meaningful ruling on another form of advanced surveillance technology. In *United States v. Jones*, the Court found that police conducted an unlawful search and seizure in violation of the Fourth Amendment when they deployed a GPS device to track a suspect's vehicle without a warrant.¹ In that case, five justices agreed (in two concurrences) that it was the prolonged nature of tracking a car via GPS that infringed a reasonable expectation of privacy, suggesting that at least prolonged location tracking through other technologies might also constitute a search for Fourth Amendment purposes. Significantly, Justice Alito, in a concurrence joined by three other justices, wrote: "in circumstances involving dramatic technological change, the best solution to privacy concerns may be legislative."²

We're confident that the reasonable suspicion standard in Section 3(c)(3) would not withstand a constitutional challenge in the context of drone surveillance of an individual at home or in some other private place. Just as it would be unconstitutional for a police officer to walk through your house without a warrant, it would be unconstitutional for police to send a drone to take video of your family through your second-story window.

This type of snooping would invade privacy without promoting public safety because evidence gathered in this way will be challenged by criminal defense lawyers and will likely be deemed inadmissible in court. Meanwhile, as those questions are adjudicated, law enforcement agencies will be ostensibly enabled by Section 3(c)(3) to conduct frequent and more invasive drone surveillance than is lawful under the constitutionally mandated standard of probable cause.

In addition to the constitutionally-mandated amendment to Section 3(c)(3), we offer our comments and concerns regarding several other aspects of the proposed legislation:

- This bill's drone registration and reporting requirements will provide the means for the public and legislators to evaluate how well the regulations are working in their communities.
- Drones can also be equipped with weapons, including Taser-like devices and tear gas, and we are pleased that this bill prohibits the use of weaponized drones.

¹ <http://www.supremecourt.gov/opinions/11pdf/10-1259.pdf>

² *Id.*

- The requirement that all video and data unrelated to the specified target be deleted or obscured within 48 hours of review will protect the privacy of innocent individuals. In its current form this section gives police departments ninety days to review drone footage. We believe this is too long to keep potentially sensitive footage of innocent individuals. We recommend that the review period be shortened from ninety to thirty days.

Please take this opportunity to remove Section 3(c)3. Passing this bill into law with the warrant standard comports with the Fourth Amendment and ensures that Connecticut can enjoy the benefits of drone technology without becoming a surveillance society.