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Written Testimony Supporting Senate Bill 148, An Act Concerning the Weaponization of Drones Based on a Program Review and Investigations Committee Study

February 29, 2015

Senator Fonfara, Representative Carpino, and members of the Public Review and Investigations Committee. My name is David McGuire, and I am the Legislative and Policy Director for the American Civil Liberties Union of Connecticut (ACLU-CT). I am submitting this testimony regarding Senate Bill 148.

The ACLU of Connecticut applauds the Public Review and Investigations Committee for its instrumental and change-making work in reviewing the use of drones in Connecticut. Thanks to this committee's Drone Use Regulation report, the legislature and the public are more informed about the troubling gap in Connecticut's current regulations regarding drones and the ways in which the state must move to address it. We also applaud this committee for being on the forefront of seeking to regulate drone use by introducing Senate Bill 974 last year, and for its continued dedication to this issue. We support the spirit of Senate Bill 148 and its content, but we believe that it does not go far enough to regulate drone use in Connecticut, particularly in the area of protection from unwarranted police surveillance. We therefore request that the committee consider amending Senate Bill 148 to align with House Bill 5274, a bill that was raised by the Public Safety and Security Committee, which closely tracks last year's PRI drone bill and offers a more comprehensive approach to regulating drones in Connecticut.

Senate Bill 148 focuses on preventing the public from weaponizing drones. This renewed drone regulation push was likely prompted by the teen in Clinton who equipped drones with a flamethrower and a gun last year. As his example shows, drones can be outfitted with an increasing number of technologies, lethal and non-lethal. The ACLU of Connecticut supports this bill's ban on the public weaponizing a drone, however we are troubled that the bill does not prevent the police from weaponizing drones. This omission deviates from last year's PRI drone bill which followed several other states by explicitly prohibiting law enforcement from operating a drone with a weapon. It is important to note that PRI's Drone Use Regulation report recommended that "law enforcement use of drones to remotely operate weapons shall be prohibited." At a time of unprecedented tension between communities and law enforcement we strongly suggest that this bill be amended to include the law enforcement weaponiziation ban from last year's bill. Doing so would reassure the public during these tense times and help to restore public trust in law enforcement.

As members of this committee are particularly aware, right now, drones are the wild west of technology: Connecticut has zero laws in place to regulate drones. Whether police are using a technology that is one hundred years or one hundred days old, people need and deserve assurances their rights protected and honored. We therefore strongly support requiring police to obtain a warrant based on probable cause before flying a surveillance drone, except in emergencies such as the search for a missing person. By neglecting these important provisions, Senate Bill 148 fails to address serious privacy and Fourth Amendment concerns regarding drones. 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. We therefore support House Bill 5274's provision requiring police to use drones in accordance with the Fourth Amendment, and would encourage members of the Public Review and Investigations Committee to consider amending Senate Bill 148 to include similar language that protects individuals' constitutional rights to privacy.

As the committee has recognized by introducing Senate Bill 148, the need for drone regulations has only increased since last year, when this committee rightfully led the way in introducing drone regulation legislation. In 2016, the Federal Aviation Administration (FAA) is expected to ease restrictions on drones, opening U.S. airspace to more drones, and less than a month ago the FAA announced that more than 325,000 people have registered with the FAA to use a drone in the United States. By passing the language included in House Bill 5274, Connecticut would join more than one dozen other states in requiring police to obtain a search warrant based on probable cause before using a drone to spy on an individual.

A drone is any remote-controlled or pre-programmed unmanned aircraft. 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, infrared or heat-sensing devices, facial recognition technology, and radar and license plate readers.

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. Drones 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. Of course, drones have many laudable and important uses. For example, emergency personnel may be able to use drones in missing person searches. This bill would allow these, and more, legitimate uses of drone technology, including those by law enforcement and emergency personnel.

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 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. In that case, five justices agreed (in two concurrences) that it was the prolonged nature of tracking a car via GPS that infringed on a person's 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."

Just as it is unconstitutional for a police officer to walk through your house without a warrant, it should be unconstitutional for police to videotape your family by sending a drone up to your second story window. This type of snooping would invade on peoples' 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.

Passing Senate Bill 148 in its current form is laudable, but it would not go far enough to reign in the wild west of current drone law in Connecticut. Amending this bill to ban law enforcement weaponization of drones and including language that protect individuals' Fourth Amendment rights, however, would be a more far-sighted step toward ensuring that people in Connecticut can enjoy the benefits of drone technology without becoming subjected to a surveillance society. Please amend Senate Bill 148 to include these provisions.