



P.O. Box 32159
Newark, NJ 07102

Tel: 973-642-2086
Fax: 973-642-6523

info@aclu-nj.org
www.aclu-nj.org

Frank Corrado
President
Udi Ofer
Executive Director
Edward Barocas
Legal Director

TESTIMONY ON ASSEMBLY BILL NO. 1039 – DRONE REGULATION

**ARI ROSMARIN, PUBLIC POLICY DIRECTOR
AMERICAN CIVIL LIBERTIES UNION OF NEW JERSEY**

ASSEMBLY HOMELAND SECURITY AND STATE PREPAREDNESS COMMITTEE

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Thank you Chair Quijano and other members of the committee for the opportunity to speak today about A1039. My name is Ari Rosmarin and I am the Public Policy Director of the American Civil Liberties Union of New Jersey. Founded in 1960, the ACLU-NJ is a not-for-profit, nonpartisan organization with 12,000 members in New Jersey and hundreds of thousands across the country. The ACLU-NJ is the state's leading organization dedicated to advancing and defending civil rights and liberties.

The ACLU-NJ is committed to protecting New Jerseyans' privacy rights and supports efforts to put reasonable, commonsense checks on law enforcement's capacity to collect information about New Jerseyans using rapidly developing drone technology.

Today, there exists no regulation of law enforcement agencies' use of drones in New Jersey. Despite drones' extraordinary and unprecedented capacity for surveillance and their use's potential impact on civil liberties, the public has virtually no knowledge of which law enforcement agencies, if any, are using drones, no knowledge of how much money, if any, has been spent on acquiring drones, no knowledge of for what purposes, if any, law enforcement agencies are using drones, and, critically, no knowledge of any basic protections to guard against law enforcement misuse of drone technology.

We know that drone technology has tremendous potential for government use in firefighting, search and rescue, disaster recovery, traffic management, and other beneficial uses. That's in addition to the uses by private parties, including in journalism, photography, art, and scientific research. The ACLU's priority, however, is not to regulate private use of drones; rather, we seek to ensure that there is a system of rules in place for law enforcement so that we can enjoy the benefits of drone technology without sacrificing New Jerseyans' fundamental rights and privacy.

As the committee likely knows, the Federal Aviation Administration (FAA) has established test sites in southern New Jersey to conduct research into integrating drones into U.S. airspace.¹ The

¹ Ed Beeson, *Unmanned drones coming to N.J. skies as FAA names test sites*, NJ.com (Dec. 30, 2013), http://www.nj.com/business/index.ssf/2013/12/unmanned_drones_to_take_to_nj_skies_as_faa_names_test_sites_for_drone_research.html.

² Elisabeth Bumiller & Thom Shanker, *War Evolves With Drones, Some Tiny as Bugs*, N.Y. Times (June 19, 2011),

research project is being run jointly by Virginia Tech University, the University of Maryland, and Rutgers University. Under the FAA Modernization and Reform Act, the FAA is required to issue a comprehensive plan and regulations to integrate drones into domestic airspace by September 2015. Each testing site is required to establish its own privacy regulations. It is our understanding that the test site in New Jersey does not include testing conducted by law enforcement, and therefore should not be impacted by the enactment of A1039.

Putting sensible checks and balances on law enforcement's capacity to use drones to capture information about New Jerseyans is important for the legislature to accomplish now because drones' technological capacity is increasing at a remarkably rapid pace. We already know that researchers are developing drones that will be small enough to fly into houses undetected,² drones that can operate silently,³ drones that can take pictures of objects six inches across from 17,000 feet in the air,⁴ drones with facial recognition technology,⁵ and drones that can conduct surveillance of the movements and activities of people across an entire city at one time.⁶ As these technologies develop, are commercialized, and their price decreases, they will inevitably move into the technological arsenal of state and local law enforcement agencies. The legislature need not wait until the first drone surveillance scandal occurs. We have an opportunity to put into place sensible limits on law enforcement's use of drones that accommodate legitimate policing and investigatory needs while guarding against potential abuse of this very powerful technology.

Around the country, legislatures are taking action to regulate law enforcement use of drones. As of July 2014, drone regulation legislation has been introduced in at least 36 states, and laws have been enacted in 13 states in 2013 and 2014.⁷ While each state's approach differs, the trend has focused around a few key provisions in common:

- **Warrant Requirements:** A requirement that law enforcement agencies obtain from a judge a search warrant based on probable cause is an essential component of any reasonable check on law enforcement agencies' unfettered use of drones. Nearly all of the drone privacy bills proposed and laws enacted around the country, including those in Texas, Florida, Montana, and Tennessee, require law enforcement to obtain a search warrant in order to gather evidence using a drone in a criminal investigation.

² Elisabeth Bumiller & Thom Shanker, *War Evolves With Drones, Some Tiny as Bugs*, N.Y. Times (June 19, 2011), http://www.nytimes.com/2011/06/20/world/20drones.html?pagewanted=all&_r=0.

³ Robert Beckhusen, *Super-Silent Owl Drone Will Spy on You*, Wired (July 19, 2012, 1:00 P.M.), <http://www.wired.com/dangerroom/2012/07/owl/>.

⁴ Ryan Gallagher, *Could the Pentagon's 1.8 Gigapixel Drone Camera Be Used for Domestic Surveillance?*, Slate (Feb. 6, 2013, 10:14 A.M.), 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.

⁵ Noah Shachtman, *Army Tracking Plan: Drones That Never Forget a Face* Wired (Sept. 28, 2011, 6:30 A.M.), <http://www.wired.com/dangerroom/2011/09/drones-never-forget-a-face/>.

⁶ Conor Friedersdorf, *Eyes Over Compton: How Police Spied on a Whole City*, THE ATLANTIC MAGAZINE (Apr. 21, 2014), <http://www.theatlantic.com/national/archive/2014/04/sheriffs-deputy-compares-drone-surveillance-of-compton-to-big-brother/360954/>.

⁷ Florida, Idaho, Indiana, Iowa, Illinois, Montana, North Carolina, Oregon, Tennessee, Texas, Utah, Virginia, and Wisconsin. See Allie Bohm, *Status of 2014 Domestic Drone Legislation in the States*, ACLU Blog of Rights (updated June 30, 2014), <https://www.aclu.org/blog/technology-and-liberty/status-domestic-drone-legislation-states>.

- **Data Retention and Minimization:** Images of identifiable individuals captured by law enforcement drones should not be retained, shared, or identified unless they are of the target of the investigation that justified drone deployment, and there is reasonable suspicion that the images contain evidence of criminal activity or are relevant to an ongoing investigation or pending criminal trial.
- **Public Reporting of Drone Use:** Drones have the capacity to gather an immense amount of information about New Jerseyans' everyday lives. The public deserves to be kept informed about how and when law enforcement is using drone technology.

A1039, as amended, establishes these basic protections and will go far in protecting New Jerseyans' privacy rights while meeting the needs of law enforcement and other public safety agencies. We strongly encourage the committee to support and release A1039 as amended.