



Written by [Joe Wolverton, II, J.D.](#) on August 31, 2015

North Dakota Authorizes Police to Use Weaponized Drones

Police in North Dakota may now legally deploy drones equipped with Tasers and tear gas.

In ironic betrayal of a bill's original intent, HB 1328 authorizes law enforcement to weaponize drones and use them against citizens, provided that the weapons are "less than lethal."

The measure, originally drafted by state representative Rick Becker, called for tight regulation on the use of the unmanned aerial vehicles by police and for protection from their misuse against citizens and the Constitution.

In 2012, Becker, a plastic surgeon then serving his first term as a legislator, proposed a bill to the North Dakota state legislature looking to limit the use of drones by law enforcement, including a provision that completely banned the weaponizing of the devices.

Despite the legislative restrictions he sought to impose on the use of the drones, Becker explained that he wasn't trying to offend police, but to defend the Constitution.

"It's a new technology that has really amazing capabilities and can be used in excellent ways for our communities. I don't want to say that drones can't be used," Becker said. "But with the new technology there are also issues, primarily privacy issues, which can come into play."

That was how the bill was written, but that wasn't the bill that was ultimately presented to and passed by state lawmakers.

Bruce Burkett, a lobbyist employed by the North Dakota Peace Officer's Association, was given a green light by Republican legislative leaders to tack an amendment onto Becker's bill that limited the restriction to "less than lethal" weapons. (The congressional drone lobby is equally as powerful and funded by the vehicles' manufacturers, as well).

Burkett's betrayal of the bill's original intent resulted in North Dakota becoming the first state to grant such expansive power to police.

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Becker certainly wasn't pleased by the lobbyist's legerdemain.

"This is one I'm not in full agreement with. I wish it was *any* weapon," he said during a hearing on the amended version of his measure. "In my opinion there should be a nice, red line: *Drones* should not be weaponized. Period."

It's not as if non-lethal weapons have never been lethal.

On a database of people killed by police maintained by *The Guardian* newspaper, 39 people have been killed by Taser.





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Becker sees an even more sinister future for the flying weapons.

“When you’re not on the ground, and you’re making decisions, you’re sort of separate,” Becker said in March. “Depersonalized.”

With the rise of the drones comes the rise of several critical questions of constitutionality of their potential uses. One of the most crucial of those inquiries concerns the application of the Fourth Amendment’s prohibition against “unlawful searches and seizures” and the requirement that warrants be supported by affidavits “particularly describing the place to be searched, and the persons or things to be seized.”

North Dakotans know something of this constitutionally charged controversy.

Constitutional conflicts rising in the wake of the domestic deployment of drones went to court in the case of North Dakota resident Rodney Brossart, who became one of the first American citizens (if not the first) arrested by local law enforcement with the use of a drone owned by a federal agency. Police launched this loaner after Brossart held the police at bay for over 16 hours in 2011.

It is likely Brossart’s case that inspired Becker to put legislative brakes on the runaway zeal of law enforcement to get these all-seeing eyes airborne.

Those brakes were taken off, however, by the powerful drone lobby.

Brossart’s run-in with law enforcement began after six cows found their way onto his property (about 3,000 acres near Lakota, North Dakota), and he refused to turn them over to officers. In fact, according to several sources, Brossart and a few family members ran police off his farm at the point of a gun. Naturally, police weren’t pleased with Brossart’s brand of hospitality, so they returned with a warrant, a SWAT team, and a determination to apprehend Brossart and the cows.

A standoff ensued, and the Grand Forks police SWAT team made a call to Grand Forks Air Force Base, home to one of the Department of Homeland Security’s squadron of Predator drones. No sooner did the call come in than the drone was airborne, and Brossart’s precise location was pinpointed with laser-guided accuracy. The machine-gun toting SWAT officers rushed in, Tased, and then arrested Brossart on various charges, including terrorizing a sheriff.

In 2014, Brossart was sentenced to three years in prison (two and a half of which were suspended) for terrorizing police officers and resisting arrest.

Despite Brossart’s conviction and sentencing, an important question remains: Is there a legal distinction to be made between the level of search conducted by the human eye (whether the searcher is on foot or in a helicopter) and that of a drone’s powerful never-blinking optics?

Such an inarguable increase in police perception is not an insignificant decrease in the privacy expectation enjoyed by landowners and protected for centuries by timeless principles of Anglo-American law.

Given this encroachment into the formerly sacrosanct territory of individual liberty, Americans are right to resist the government’s apparent plan to fill the skies of our Republic with remote-controlled agents of the president and police.

In point of fact, a warrant becomes unnecessary when the search is being conducted using a drone. The target of the hunt will likely be unaware that he is being tracked and thus government (at any level) can keep a close eye on those considered threats to national (or local) security without having to permit the



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eye of the court to look over their shoulder.

Not surprisingly, there are those who claim that a sheriff's use of a Predator is no different from his use of a helicopter, and that those who warn of an impending surveillance state are alarmists who should be paid no mind.

However, as discussed above, there are irrefutable differences in technology between the two vehicles, not to mention the devices used by each to perform their assigned tasks.

The standards presently used to judge the constitutionality of observation by helicopter or patrol car, for example, would be altered appropriately to fit the rapidly advancing drone technology. The improved legal framework would help law enforcement avoid legally suspect surveillance and would maintain the public's protection against unconstitutional searches and seizures.

The weaponization of police drones is a serious development — one that combines both constitutional issues of due process and the Fourth Amendment's search and seizure limitations.

In 2011, Glenn Greenwald, of *The Guardian*, predicted the shift in the use of drones from surveilling suspects to shooting them:

Many dismiss this concern insisting that when it comes to surveillance drones are no different than police helicopters. Some of these same people dismiss concerns over weaponized drones arguing that there's no difference between allowing the police to Taser you or shoot you themselves and using a drone to do the dirty work. History teaches, however, that creeping police state powers are entrenched one step at a time.

North Dakota's new drone law accelerates the necessity to ask the important questions.

For example, what level of weaponization is permissible for the police? Does local law enforcement need the type of weaponry used by the military, whose mission is very different from that of law enforcement?

Of course, drones aren't bad per se. There are many lawful possible uses of drones, including wildfire control, tracking suspected criminals for whom a qualifying warrant has been issued, tracking of stolen vehicles, etc. It is the unconstitutional use of drones that is objectionable and that Americans must be vigilant against, lest we legislatively repeal the Fourth Amendment and the protections it affords against tyranny.

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