



Written by [Bob Adelman](#) on August 3, 2012

## Senator Rand Paul's Bill to Protect Citizens From Drone Surveillance

When Senator Rand Paul (R-Ky.) [introduced his bill](#) in June, he was responding to growing concerns over privacy by American citizens. The purpose of his bill is elegantly simple: "To protect individual privacy against unwarranted governmental intrusion through the use of unmanned aerial vehicles commonly called drones." Paul's bill is very specific:



[A] person or entity acting under the authority [of], or funded in whole or in part by, the Government of the United States shall not use a drone to gather evidence or other information pertaining to criminal conduct or conduct in violation of a statute or regulation except to the extent authorized in a warrant that satisfies the requirements of the Fourth Amendment to the Constitution of the United States.

Paul explained that "Americans going about their everyday lives should not be treated like criminals or terrorists and have their rights infringed upon by military tactics."

One of those claiming to have had his rights infringed upon is Rodney Brossart of Lakota, North Dakota, who is "the first American citizen to be arrested with the help of a Predator surveillance drone," [according to USNews](#). Brossart's [troubles began](#) in 2010 when six cows wandered onto his 3,000-acre farm in Lakota, a town of 3,100 people about 60 miles west of Grand Forks. Under a disputed open-range law he believed the cattle were unclaimed and therefore belonged to him.

When Nelson County Sheriff Kelly Janke showed up over the matter, Brossart was uncooperative, and Janke escalated the confrontation by bringing in members of the Highway Patrol, a regional SWAT team, a bomb squad, ambulances, and deputies from three other counties. He also called in a Predator B drone.

From two miles up the drone spotted Brossart and his sons with such clarity that Janke knew they were unarmed, and swooped in to arrest them. Brossart was charged with terrorizing a sheriff, theft, and criminal mischief, among other things. Brossart went to court, claiming that his rights under the Fourth Amendment — protection against unwarranted searches and seizures — had been violated.

The attorney for the state [claimed no foul](#), as the drone was used only to locate Brossart and his sons. Wrote state prosecutor Douglas Manbeck:

The use of unmanned surveillance aircraft is a non-issue in this case because they were not used in



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any investigative manner to determine if a crime had been committed.

There is, furthermore, no existing case law that bars their use in investigating crimes.

In other words, the drone wasn't investigating, and even if it were, there are no laws against it. Which is why Paul's bill is so relevant. Unwarranted "non-investigations" like these are making people nervous.

North Dakota District Judge Joel Medd threw out Brossard's complaint on Thursday, ruling that there was no "improper use" of the drone: "It appears to have had no bearing on these charges being contested here," he declared.

John Villasenor, a surveillance expert with the Brookings Institute, [claimed](#) that the Brossart case "may have been the first time a drone was used to make an arrest, but it's certainly not going to be the last." Villasenor says that in trying to claim an improper use of a drone, two Supreme Court cases — [California v. Ciraolo](#) and [Florida v. Riley](#) — are going to be difficult to overcome in court.

In the first, Chief Justice Warren Burger, writing for the 5-4 majority in 1986 said,

The Fourth Amendment simply does not require the police travelling in the public airways at ... altitude to obtain a warrant in order to observe what is visible to the naked eye.

In the second the court ruled in 1989 that the defendant did not have Fourth Amendment protection from aerial surveillance by a helicopter. After all, wrote the court:

Any member of the public could legally have been flying over Riley's property in a helicopter at the altitude of 400 feet and could have observed Riley's greenhouse.

The police officer did no more.

And that's why Paul's bill is so necessary: to rein in the court's "understanding" of the Fourth Amendment and to protect innocent citizens from being observed — not "investigated" — without notice. Says Senator Paul's bill:

No evidence obtained or collected in violation of this Act may be admissible as evidence in a criminal prosecution in any court of law in the United States.

If the bill passes and becomes law, it would apply as well to North Dakota District Judge Medd, but not in time to help Brossart in his legal battle. At present, the bill has just two cosponsors: Senators Tom Coburn (R-Okla.) and Jim DeMint (R-S.C.). Forty-eight more senators are needed to make sure that citizens' rights to privacy under the Fourth Amendment are protected from drone surveillance.



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