



Written by [Joe Wolverton, II, J.D.](#) on June 5, 2013

Texas Legislature Sends Drone Regulating Bill to Gov. Perry

Late last week the Texas legislature [sent a bill to Governor Rick Perry](#) that aims to prevent the use of drones to conduct warrantless surveillance of citizens of the Lone Star State.

The bill, the [Texas Privacy Act \(HB 912\)](#) charges with a Class C misdemeanor any private or public entity that “uses an unmanned aircraft to capture an image of an individual or privately owned real property in this state with the intent to conduct surveillance on the individual or property captured in the image.”



In a phone conversation with *The New American*, a representative of Governor Rick Perry’s office reported that the governor had not yet decided whether to sign the bill into law.

The members of the state legislature, however, passed the bill by large margins. On May 10, the state House of Representatives approved the measure 119-11. The state Senate followed suit a week later, passing the bill by a vote of 29-1.

While the bill is a laudable attempt to shore up the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” as protected by the [Fourth Amendment to the Constitution](#), there are numerous exceptions to the drone prohibitions.

Law enforcement, for example, may deploy drones in the “immediate pursuit of a person” officers have “reasonable suspicion or probable cause to suspect has committed an offense.”

Other exceptions protect images captured by drone “by or for an electric or natural gas utility;” “for purposes of professional or scholarly research;” and as permitted by the lawful owner of the property under surveillance.

While those exceptions are arguably reasonable, there are others that seem to leave a very large loophole in the law that military and spy drones can fly through to the detriment of Texans’ privacy.

Section 423.002. exempts from the law all drone flights and surveillance conducted by the Federal Aviation Administration “for the purpose of integrating unmanned aircraft systems into the national airspace;” as well, any drone deployment that is “part of an operation, exercise, or mission of any branch of the United States military.”

Given the federal government’s rapid acceleration of the growth of the surveillance state and the transformation of citizens into suspects, it seems that, while commendable, the Texas bill fails to sufficiently nullify the frequent unconstitutional federal assaults on the fundamental liberties protected by the Constitution.

Texas is not alone in its fight against the drone-based encroachment on liberty.



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As *The New American* has reported, [a similar bill was signed into law in Idaho](#) in April by Governor C.L. “Butch” Otter. The Idaho law reinforces “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” by amending the Idaho code. Specifically, the law imposes new restrictions on the use of drones by government or law enforcement, particularly when it comes to the gathering of evidence and surveillance of private property.

Should police in Idaho try to submit in court evidence illegally obtained by drone, they would find themselves running headlong into Section 5, which directs that “no information obtained or collected in violation of the provisions of this act may be admissible as evidence in a criminal proceeding in any court of law in the state or in an administrative hearing.”

Also in April, Governor Rick Scott of Florida signed into law the Freedom From Unwarranted Surveillance Act. The law in the Sunshine State forbids federal agents “from using a drone to gather evidence or other information” on citizens of Florida. Should a state citizen be the target of an unlawful search and seizure in violation of this bill, he or she would be authorized “to initiate a civil action in order to prevent or remedy” that violation.

As [The New American reported earlier](#), the language of the law is not perfect. Section 4(a) of the bill carves out a dangerous exception to its otherwise commendable constitutional protections.

Section 4(a) authorizes the Secretary of the Department of Homeland Security to launch a drone over Florida (and seemingly violate the Fourth Amendment’s protection of “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures”) “to counter a high risk of a terrorist attack by a specific individual or organization.”

As is the case with the Texas anti-drone bill, Section 4(a) of the Florida bill leaves an enormous loophole in the law, one just large enough for a Hellfire missile.

Such an occurrence is not unthinkable in this era when the United States has been declared a battleground and Congress has given the president the power to indefinitely detain any American he believes to be aiding enemies of the state. Ostensibly, drones would be the perfect tool to accomplish such a round-up of potential prisoners. (See, for example, the [comments made by Senator Lindsey Graham](#) [R-S.C.] regarding the search for the suspected Boston marathon bomber.)

Virginia, Tennessee, and Montana have also enacted laws prohibiting the use of drones to conduct warrantless surveillance and forbidding the use in court of any images captured by the unmanned aerial vehicles.

Although the Texas bill suffers from a few unfortunate flaws, it is an otherwise commendable measure — one that Governor Perry should sign.

Meanwhile, there is another bill sitting on Governor Perry’s desk, that were he to sign, would increase his state’s protection of the Fourth Amendment and reaffirm the right of states to refuse to carry out federal acts unconstitutionally imposing on the rights of Americans.

[According to Law360, HB 2268](#) “would establish the strongest email privacy protections in the U.S. by becoming the first measure to override a provision in the federal Electronic Communications Privacy Act that allows law enforcement to access emails that are open or more than 180 days old using only a subpoena.”

Similar federal legislation, S.607 — the Electronic Communications Privacy Act Amendments Act of 2013 — is [currently on the Senate’s calendar for debate](#).



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As with the drone regulating measure, Governor Perry's office would only say that the governor was still considering the electronic privacy bill.

If freedom is to be protected and if the fundamental liberties protected by the Constitution are to be preserved, Texas and all her sister states must quickly recognize that they have "[have the right, and are in duty bound, to interpose for arresting the progress of the evil](#)" resulting from the federal government's habitual disregard for the constitutional limits on its power.

Should these states fail to fearlessly oppose federal overreach, the day may be rapidly approaching when the Constitution and individual liberty will be nothing more than remarkable relics of a once-free republic.

Joe A. Wolverton, II, J.D. is a correspondent for The New American and travels frequently nationwide speaking on topics of nullification, the NDAA, and the surveillance state. He can be reached at jwolverton@thenewamerican.com



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