



March 30, 2015

The Honorable Terry McAuliffe  
Governor of Virginia  
Patrick Henry Building, 3rd Floor  
1111 East Broad Street  
Richmond, VA 23219

Dear Governor McAuliffe:

I write on behalf of the American Civil Liberties Union of Virginia and our more than 10,000 members and supporters across Virginia to express our deep concern about the amendments that you have proposed to legislation that was intended to provide Virginians with new 21<sup>st</sup> century privacy protections. Your proposed amendments to **HB 2125 (Cline R Rockbridge)** and **SB 1301 (McEachin D Henrico)** (requiring warrants for drones) and **HB 1673 (Anderson R Prince William)** and **SB 965 (Petersen D Fairfax)** (affirming limits on use of mass surveillance technologies like license plate readers, LPRs) turn legislation intended to protect Virginians' privacy into legislation that, among other things, authorizes mass surveillance by law enforcement agencies that is currently prohibited by Virginia's Government Data Collection and Dissemination Practices Act (the Data Act).

Again, we want to thank you for signing **HB 1408 (Marshall R Prince William and Carr D Richmond City)** into law. This legislation provides important protections for Virginians against law enforcement use of surveillance technologies to engage in real time cell phone tracking without a warrant. This bill was supported by law enforcement and civil liberties groups alike and closes a loophole in the real time cell phone tracking data law enacted last year that required a warrant to obtain such information from providers.

That positive action is vastly overshadowed, however, by the adverse effect on Virginians' privacy of the proposed amendments you have offered to the drone and LPR legislation. We hope that you will rethink these amendments and join the legislature in deciding that they should not pass and that the legislation should go into effect as it passed both houses of the legislature nearly unanimously. To do so would demonstrate the priority that should be accorded to protecting Virginians' privacy and would help move us toward constitutional policing.

**Virginians Deserve Protection Against Warrantless Surveillance by Drones**

As we said in our March 13, 2015 letter to you, **HB 2125** and **SB 1301** would require law enforcement and regulatory agencies to obtain a warrant before using unmanned aerial systems ("drones") except in certain circumstances spelled out in the legislation. Those of us seeking more expansive regulation of drone use

accepted many of the exceptions sought by law enforcement and other entities to the bill because the legislation made clear that, when a drone is used in violation of the new statutory warrant requirement, the information and data gathered cannot be used as evidence in civil or criminal proceedings. The amendment you have recommended to this important limitation on the use of drone-acquired data defeats the very purpose of the statutory warrant requirement in the bill, which was intended to provide Virginians greater protection for their privacy than is currently afforded by outdated Fourth Amendment jurisprudence. By allowing drone evidence to be introduced if it meets the standards in Section 19.2-266.2 (even if the drone was used in violation of the statute), your amendments effectively gut the statutory warrant requirement completely as a more meaningful protection of Virginians' privacy.

The standard that would be applied under your amendments in deciding if drone evidence can be admitted would be the same standard used under currently inadequate Fourth Amendment case law, which has exceptions for "plain view" and "open fields" and would impose no limit on the introduction of drone gathered evidence at all. In sum, your amendments would be tantamount to vetoing the law, or, at least, gutting the most important statutory protection of Virginians' privacy offered in the bill. If the amendments are not rejected by the legislature, which we hope that they will be, there will effectively be no warrant requirement for drones in Virginia, and the language requiring a warrant for drone use will be meaningless and a virtual sham on the public.

The 21<sup>st</sup> century demands that we update our laws to ensure that Virginians' privacy is not undermined every time law enforcement deploys a new technology. The proposed amendments you have offered protect the ability of law enforcement to engage in mass surveillance but offer no protections for the privacy of the Virginians' they serve. The amendments change the legislation from a law that offers some limited protections for privacy into one that authorizes the use of drones by law enforcement for mass surveillance.

***The ACLU of Virginia urges you to rethink the amendments you have offered and accede in their rejection by the legislature so that Virginians will have the protection against warrantless government use of drones to conduct surveillance of their homes, businesses or farms offered by HB 2125 and SB 1301 as they passed the legislature unanimously and with strong bi-partisan and broad-based public support.***

**Reaffirm Current Limits on Unjustified Government Collection of Private Data**  
As we said in our letter of March 13, 2015, **HB 1673 and SB 965**, as passed almost unanimously by the legislature, would simply reaffirm protections against government collection of private information included in the Data Act, and provide a new safe harbor for law enforcement use of license plate readers in criminal investigations. The amendments you have offered, however, turn the bill from an affirmation of current privacy protections in the Data Act into their repeal and replacement with broad authority for law enforcement to engage in unlimited mass

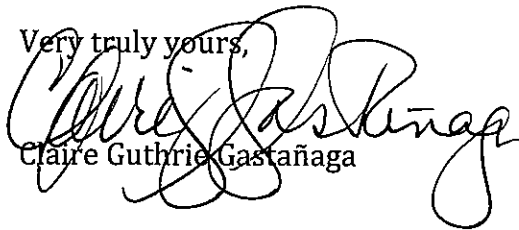
surveillance of innocent Virginians using LPRs and other surveillance technology. Your amendments give comfort to the law enforcement agencies (particularly in Northern Virginia) that have chosen to flout the Data Act and collect unlimited amounts of license plate data on Virginians and to store that information for long periods of time and share it without limit with other agencies.

As passed, **HB 1673** and **SB 965** would affirm clearly that police cannot use surveillance technologies to collect personal information about Virginians unless that information is relevant to and intended to be used in a criminal investigation. At the same time, however, the bills also provided a safe harbor for the use of LPRs that allows LPR data to be collected and maintained for seven days or for longer if related to a criminal investigation. Your amendments would grant Virginia law enforcement free license (like that now employed by federal agencies like the NSA and the DEA) to gather personal information on innocent Virginians, maintain it for a minimum of 60 days (in the case of LPRs), and to disseminate it to other agencies without limit. Virginians (and the legislative patrons) deserve better than to have a privacy bill turned into a surveillance bill without their participation or consent.

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***The ACLU of Virginia urges you to rethink the amendments you have offered and accede in their rejection by the legislature so that Virginians continue to have the protection against mass surveillance by law enforcement offered by HB 1673 and SB 965 as they passed the legislature with strong bi-partisan and broad-based public support.***

Very truly yours,



Claire Guthrie Gastañaga