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California Civil Liberties Advocacy
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Tuesday, June 14, 2016

Assemblymember Bill Quirk
P.O. Box 942849
Room 2163
Sacramento, CA 94249-0020

RE: Support for Assembly Bill 1820

Dear Assemblymember Quirk,

The California Civil Liberties Advocacy (CCLA) is writing to register **SUPPORT** for Assembly Bill 1820.

The CCLA believes that law enforcement should never be permitted to use unmanned aerial vehicles absent a warrant based on probable cause. Nor should they be allowed to disseminate images or video footage of persons or property captured by such vehicles to other agencies or to the public absent a warrant, court order, absent the express consent of the persons or lawful owners of the property contained in the footage.

The most significant provision of AB 1820 is the requirement that law enforcement agencies obtain a search warrant based on probable case. Nonetheless, AB 1820 currently contains provisions for exigent circumstances where obtaining a warrant would hinder law enforcement, or where "the colletion of images, footage, or data" may involve another jurisdiction. This should ameliorate any fears from law enforcement that AB 1820 will hinder "hot pursuit" or emergency situations, or the incidental collection of images or footage involving other jurisdictions.

We understand that the American Civil Liberties Union (ACLU) and some of our other contemporaries are opposed to AB 1820. We wish to express that we, regrettably, do not see eye to eye with our highly esteemed colleagues on this matter.

For example, the ACLU has argued that AB 1820 (and formerly that AB 56) would allow law enforcement to use unmanned aerial vehicles to follow someone around when they are in public. Unfortunately, that is already the case when applied to naked-eye surveillance, public surveillance cameras, automated license plate readers, and manned surveillance aircraft. It has been long established in American jurisprudence that no reasonable expectation of privacy

exists when in a public setting. While the CCLA has expressed concerns and sought to limit the government's ability to track citizens by certain technologies, such as automated license plate readers, the efficiency of using unmanned aerial vehicles for this purpose pales in comparison to the aforementioned methods and technologies. The ACLU also argues that the government may use unmanned aerial vehicles to monitor protest rallies. But when compared to police appearing at such rallies with military-style equipment and full riot gear, a quadcopter with a camera seems far less obtrusive or threatening, so long as it is not weaponized — something else that is prohibited by the language of AB 1820. Even so, protest rallies are public events and nothing in current law prohibits law enforcement from performing naked-eye surveillance or capturing images or footage with common photographic, video, or even body cameras (which civil liberties proponents strongly advocate).

The ACLU also argues that the provisions of AB 1820 offer no protection from law enforcement using unmanned aerial vehicles to peer into the interior rooms of a private dwelling, or into the interior rooms of upper story windows so long as it is on public land. This is true. Currently, *no law* prohibits this sort of activity. Quite the contrary, established jurisprudence protects such activities if performed by manned aircraft (see, for instance, *California v. Ciraolo* (1986) 476 U.S. 207, where the Fourth Amendment does not require police to obtain a warrant or shield their eyes from what is plainly visible to the naked eye when in the public airspace.) Furthermore, *United States v. Correa* (2011) 653 F.3d 187, 191, which considered the question of whether there is a reasonable expectation of privacy in an apartment complex's common areas, held that "Fourth Amendment standing turns on legitimate expectations of privacy and not . . . on concepts of property-law trespass," "[i]ndeed many places designated as 'private' by the common law of property do not garner Fourth Amendment protection because they have been knowingly exposed to public view and lose a legitimate expectation of privacy." ([Internal citations omitted.])

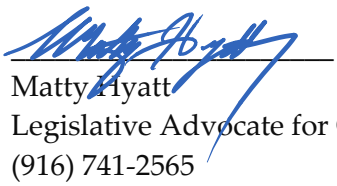
Also confounding the issue is the insistence that AB 1820 does nothing to prohibit law enforcement from utilizing drones that stay airborne for days at a time. First, the examples that opponents have pointed to are not the quadcopters defined as "unmanned aerial vehicles" by the FAA. Instead, these are tethered, unmanned, airships commonly used by the U.S. military. (See Exhibit A.) These airships, or "surveillance blimps," are much larger and more expensive than the small, relatively less expensive quadcopters that have become a staple of modern unmanned aviation. This is not to say that law enforcement utilization is of no concern, but that AB 1820 is not the proper vehicle to address this issue at the present time. Furthermore, quadcopters that are able to fly for days at a time are also tethered to the operator, which means that such aircraft are not simply launched into the atmosphere where they will stay for days at a time. "The Persistent Aerial Reconnaissance and Communications system or PARC from CyPhy Works uses a thin wire tether, 500 feet long, that connects the drone to its human operators . . . 'it gets power and data from the ground, [s]o it can fly 24/7, as long as you need it.' " (Bray, *Local firms show off drones and bots for law enforcement*, The Boston Globe (Oct. 5, 2015) <http://www.betaboston.com/news/2015/10/05/local-firms-show-off-drones-and-bots-for-law-enforcement/> [as of Jun. 13, 2016].) The fact that these sorts of drones must be tethered to the

operator means that they are not simply launched into the air absent line-of-sight operations for days without end. The hypothetical fear that launching multiple units throughout an urban setting for the purpose of mass surveillance would require such a ridiculous amount of dedicated law enforcement personnel as to make it impractical.

Our contemporaries' arguments appear to be based on what law professor Daniel Solove calls the "all or nothing fallacy," a false premise that privacy and security are mutually exclusive terms. (Solove, Nothing to Hide – The False Tradeoff Between Privacy and Security (2011) p. 34.) Civil liberties advocates and law enforcement representatives suffer the same poison by presuming that the adoption of all surveillance measures means a total loss for privacy and vice versa. This is simply not the case. The Fourth Amendment does not prohibit all privacy intrusions — only those that are "unreasonable." Thus the CCLA strongly feels that AB 1820 properly balances the privacy interests of individual citizens with law enforcement's need to detect, prevent, and prosecute crime by requiring sound usage and data retention policies, and by requiring law enforcement to obtain a search warrant in connection with footage obtained for a criminal investigation.

For all of the foregoing reasons, the CCLA strongly **SUPPORTS** AB 1820.

Respectfully,



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Cc: Senate Public Safety Committee

**Exhibit A**