



Written by [Joe Wolverton, II, J.D.](#) on June 7, 2013

Illinois Legislature Sends Drone-Restricting Bill to Governor

On May 31, the state Senate of Illinois approved amendments to a drone surveillance restriction bill, [sending the measure to the desk of Governor Pat Quinn](#).

[SB 1587 — the Freedom From Drone Surveillance Act](#) — was passed overwhelmingly by the House on May 30 by a vote of 105-12. On April 18, state senators gave their approval, voting 52-1 in favor of the measure.



Two amendments tacked on by a House committee were passed unanimously by the state Senate, thus sending the bill in its final form to Governor Quinn.

In contrast to the typical case where bills are gutted by last-minute amendments, the [Tenth Amendment Center \(TAC\) reports](#) that the add-ons to the Illinois anti-drone bill sharpened the teeth of the measure. TAC writes:

The first tightened up admissibility provisions. It now provides that if the court finds by a preponderance of the evidence that a law enforcement agency used a drone to gather information in violation of the information gathering limits in of the Act, then the information shall be presumed to be inadmissible in any judicial or administrative proceeding. It does allow that the State may overcome this presumption by proving the applicability of a judicially recognized exception to the exclusionary rule of the Fourth Amendment to the U.S. Constitution or Article I, Section 6 of the Illinois Constitution to the information. It also provides that nothing in the Act shall be deemed to prevent a court from independently reviewing the admissibility of the information for compliance with the aforementioned provisions of the U.S. and Illinois Constitutions.

The second amendment deleted a provision that permitted the use of drone by a law enforcement agency if the law enforcement agency possesses reasonable suspicion that, under particular circumstances, swift action is needed to prevent serious damage to property.

Although not perfect, the Illinois bill makes significant strides toward thwarting the federal government's quest to make every citizen a suspect and place every thought, word, and deed under the never-blinking eye of the federal overlords.

The act provides five exceptions to the prohibition on the use of drones.

First, and most disconcerting of all the exemptions, the secretary of the Department of Homeland Security is permitted to deploy a drone over the Land of Lincoln "To counter a high risk of a terrorist attack by a specific individual or organization." Unfortunately, the bill allows such an operation based solely on the determination of the Homeland Security secretary that such a situation exists.

The Constitution, of course, sets a significantly higher bar on such surveillance. [The Fourth Amendment guarantees](#) that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon



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probable cause, supported by oath or affirmation, and *particularly describing the place to be searched, and the persons or things to be seized.*" (Emphasis added.)

The second exemption provided by the bill falls in line with constitutional strictures, requiring that law enforcement obtain "a search warrant based on probable cause." The duration of the warrant is limited to 45 days, "renewable by the judge upon a showing of good cause for subsequent periods of 45 days."

Illinois' legislators should be congratulated for reaffirming the constitutional requirement that law enforcement demonstrate "probable cause" before placing anyone under surveillance.

One particular benefit of the bill concerns the state's substantial farming community. [As reported by CattleNetwork.com](#):

A bill passed by the Illinois House and Senate will prevent PETA members from using unmanned aerial surveillance to disrupt hunters in the state.

[PETA announced plans in April](#) to use drones to monitor farmers and hunters for any illegal activity. If signed by Illinois Gov. Pat Quinn, the bill prohibits anyone from flying unmanned aircraft over state hunting grounds with intent to disrupt hunters.

Rep. Mike Bost told the [Associated Press](#) anti-hunting groups have unique ways to stop and disrupt hunting.

"It's everything, deer hunting, goose hunting, duck hunting. They use these drones to interfere with that, and this (bill) basically makes that illegal."

Anyone violating the proposed wildlife bill faces a misdemeanor charge for using a drone to interfere with legal hunting and fishing activities.

PETA president Ingrid Newkirk said the PETA drones will be used to save lives. PETA Spokeswoman Alicia Woempner says the bill won't disrupt her organization's objectives.

"The program we're designing is meant to monitor and report on illegal hunting activities such as hunting with illegal firearms or ammunition, using spot lights or food and other tricks to lure in animals," Woempner told the [Associated Press](#).

With the action of the Illinois legislature, Governor Quinn now becomes the second governor with a drone-restricting bill sitting on his desk.

As [The New American reported](#), 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 Texas 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."

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.

If freedom is to be protected and if the fundamental liberties protected by the Constitution are to be preserved, Illinois and all her sister states must quickly recognize that they "[have the right, and are](#)



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[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. This resistance to federal consolidation of power is called nullification.

Nullification is a concept of constitutional law recognizing the right of each state to nullify, or invalidate, any federal measure that exceeds the few and defined powers allowed the federal government as enumerated in the U.S. Constitution.

Nullification exists as a right of the states because the sovereign states formed the union, and as creators of the compact, they hold ultimate authority as to the limits of the power of the central government to enact laws that are applicable to the states and the citizens thereof.

These state legislators stand on very sound constitutional ground in their battle against federal overreaching. Acts of the federal government that exceed the constitutional boundaries on its power are null, void, and of no legal effect. In fact, they are not laws at all. As Alexander Hamilton explained in [The Federalist, No. 33](#):

If a number of political societies enter into a larger political society, the laws which the latter may enact, pursuant to the powers intrusted [sic] to it by its constitution, must necessarily be supreme over those societies and the individuals of whom they are composed.... But it will not follow from this doctrine that acts of the larger society which are *not pursuant* to its constitutional powers, but which are invasions of the residuary authorities of the smaller societies, will become the supreme law of the land. These will be merely acts of usurpation, and will deserve to be treated as such. [Emphasis in original.]

Perhaps if more states would defy, not only the intrusion of drones on privacy, but every federal deviance from the enumerated powers of the Constitution, then federal legislators might be disabused of their shared delusion that their counterparts on the state level and the citizens of the Republic can be easily herded into the corrals of despotism.□

According to reports in local media, Governor Quinn “has not indicated whether he will sign” the bill.

Photo of Illinois State Senate Chamber at the Illinois State Capitol in Springfield

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