



Written by [Joe Wolverton, II, J.D.](#) on January 6, 2013

## North Dakota Rep Set to Propose Bill Limiting Drone Use

North Dakota State Representative Rick Becker (R-Bismarck; pictured) knows a threat to liberty when he sees one.

[Becker, a plastic surgeon](#) serving his first term as a legislator, is proposing a bill to the North Dakota State Legislature looking to limit the use of drones by law enforcement. A [story in the Huffington Post](#) reports that Becker's bill is "gaining bipartisan support and fostering unlikely political alignments."



Despite the legislative restrictions he wants to impose on the use of the drones, Becker says he isn't trying to offend police, but to defend the Constitution.

"It's a new technology that has really amazing capabilities and can be used in excellent ways for our communities. I don't want to say that drones can't be used," Becker said. "But with the new technology there are also issues, primarily privacy issues, which can come into play."

Cass County Sheriff Paul Laney resents Becker's meddling in police business and argues that the new law would, as reported by the *Huffington Post*, "set a troublesome precedent."

"Some people have this idea that these drones are some sneak and peek into their private lives," said Laney. "It's no different than a routine patrol when we drive by in a squad car on the road and look down the driveway. We are just doing it from a higher level."

That's where Laney is wrong.

With the rise of the drones comes the rise of several critical questions of constitutionality of their potential uses. One of the most crucial of those inquiries concerns the application of the Fourth Amendment's prohibition against "unlawful searches and seizures" and the requirement that warrants be supported by affidavits "particularly describing the place to be searched, and the persons or things to be seized."

To shore up the strength of this constitutional barrier, in June 2012, [Senator Rand Paul introduced a bill](#) to "protect individual privacy against unwarranted governmental intrusion through the use of unmanned aerial vehicles commonly called drones." [Paul's bill mandates](#): "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."

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

Constitutional conflicts rising in the wake of the domestic deployment of drones have already come up in court in the case of North Dakota resident Rodney Brossart, who became one of the first American citizens (if not the first) arrested by local law enforcement with the use of a drone owned by a federal agency. Police launched this loaner after Brossart held the police at bay for over 16 hours.



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It is likely Brossart's case that inspired Becker to put legislative brakes on the runaway zeal of law enforcement to get these all-seeing eyes airborne.

Brossart's run-in with law enforcement began after six cows found their way onto his property (about 3,000 acres near Lakota, North Dakota), and he refused to turn them over to officers. In fact, according to several sources, Brossart and a few family members ran police off his farm at the point of a gun. Naturally, police weren't pleased with Brossart's brand of hospitality, so they returned with a warrant, a SWAT team, and a determination to apprehend Brossart and the cows.

A standoff ensued, and the Grand Forks police SWAT team made a call to Grand Forks Air Force Base, home to one of the Department of Homeland Security's squadron of Predator drones. No sooner did the call come in than the drone was airborne, and Brossart's precise location was pinpointed with laser-guided accuracy. The machine-gun toting SWAT officers rushed in, tased, and then arrested Brossart on various charges, including terrorizing a sheriff.

At a legal hearing on the matter, Bruce Quick, the lawyer representing Brossart, alleged a violation of the Fourth Amendment's protection against unwarranted searches and seizures. Although the police possessed an apparently valid search warrant, Quick asserts that no such judicial go-ahead was sought for or obtained for the use of the Predator drone to track Brossart. Therein lies the constitutional rub.

Notably, the Associated Press reports that one provision of Becker's planned proposal "would require a warrant when drones are used as a part of a criminal investigation."

This could be an important requirement. In an interview regarding the Brossart case, attorney Quick claimed that the police exceeded their authority in several instances, especially when they decided to bypass the Fourth Amendment and illegally search Brossart's farm. "The whole thing is full of constitutional violations," he says.

North Dakota state prosecutor Douglas Manbeck defends the deployment of the drone, claiming, "The use of unmanned surveillance aircraft is a non-issue in this case because they were not used in 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." On August 1, Judge Joel Medd, agreeing with Manbeck, denied the defense's motion to dismiss.

Predictably, Senator Paul's drone-limiting bill died in committee. Had it been enacted, it would have provided specific guidance to the judicial branch's understanding of the Fourth Amendment and the scope of its prohibitions. It would prevent citizens from being subject to surveillance without notice.

In practice, this would help judges apply the principles of the Fourth Amendment to drones in a very specific way. The standards presently used to judge the constitutionality of observation by helicopter or patrol car, for example, would be altered appropriately to fit the rapidly advancing drone technology. The improved legal framework would help law enforcement avoid legally suspect surveillance and would maintain the public's protection against unconstitutional searches and seizures.

The potential weaponization of police drones is another important consideration, one that combines both constitutional issues of due process and the Fourth Amendment's search and seizure limitations.

Glenn Greenwald, of the *Guardian* (U.K.), warned of the likelihood of the gradual shift in the use of drones from surveilling suspects to shooting them:

Many dismiss this concern insisting that when it comes to surveillance drones are no different than police helicopters. Some of these same people dismiss concerns over weaponized drones arguing



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that there's no difference between allowing the police to Taser you or shoot you themselves and using a drone to do the dirty work. History teaches, however, that creeping police state powers are entrenched one step at a time.

This warning should be heeded. Take the example of the Harris County, Texas, sheriff's department. This agency purchased a \$300,000 ShadowHawk drone and is apparently excited about its potential. "We envision a lot of its uses primarily in the realm of public safety — looking at recovery of lost individuals and being able to utilize it for fire issues," Chief Deputy Randy McDaniel said. But in the future, the drone could be equipped to carry nonlethal weapons such as Tasers or a bean-bag gun, McDaniel mused.

Taking such comments at their face value, it must be asked, what level of weaponization is permissible for the police? Does local law enforcement need the type of weaponry used by the military, whose mission is very different from that of law enforcement?

Of course, drones aren't bad per se. There are many lawful possible uses of drones, including wildfire control, tracking suspected criminals for whom a qualifying warrant has been issued, tracking of stolen vehicles, etc. It is the unconstitutional use of drones that is objectionable and that Americans must be vigilant against.

State Representative Becker deserves the support and gratitude of constitutionalists and civil libertarians alike. Fortunately, he is not alone in his mission to preserve the privacy of citizens from prying eyes of unmanned aerial vehicles controlled remotely by law enforcement. The *Washington Post* reports that similar measures will be debated in the state legislatures of California, Florida, Illinois, New Jersey, Oregon, Missouri, Michigan, and Indiana.

[And, as \*The New American\* has reported, in a joint statement released July 17](#) by Virginia Delegate Todd Gilbert (R-Shenandoah) and the Virginia Chapter of the ACLU, the seemingly disparate pair announced plans to work to fight the unregulated use of drones by law enforcement in the Old Dominion, as well.

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*Photo of Rep. Rick Becker: AP Images*



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