



californiacivil liberties.org

California Civil Liberties Advocacy
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Tuesday, March 29, 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.

Under the provisions of AB 1820, law enforcement agencies will be prohibited from using unmanned aerial vehicles absent a usage and data retention policy that must be finalized pursuant to a regularly scheduled public meeting. The bill stipulates—and it is imperative—that local members of the public have an opportunity to weigh in on these policies. To exclude members of the public from the policy-making process would be to circumvent a fundamental component of a democratic republic. Though local legislative bodies and law enforcement groups would likely be opposed, it would be far more ideal if such policies were put to a vote by the local electorate. These pragmatic concerns aside, the opportunity for public comment is necessary at the bare minimum in order to preserve some semblance of a democracy.

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 collection 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.

*“Indifference to personal liberty is but the precursor of the state’s hostility to it.”
— Justice Kennedy, U.S. Supreme Court*

We understand that the American Civil Liberties Union (ACLU) is 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.

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.])

The ACLU's argument is 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 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: Privacy and Consumer Protection Committee