

# Legal and Regulatory Frameworks for UAS Operations: Federal, State and Local considerations

Virginia Beach Unmanned Systems Business Roundtable

**WILLIAMS MULLEN**

# PRESENTER



**Kevin D. Pomfret**

*Partner*

703.760.5204

[kpomfret@williamsmullen.com](mailto:kpomfret@williamsmullen.com)

# TOPICS



- > **Federal Aviation Administration's (FAA's) Authority:**
  - Regulatory Framework
  - Part 107
- > **Additional Federal Developments:**
  - Registration of Unmanned Aircraft Systems (UAS)
  - NTIA Multi-stakeholder Process
- > **State and Local**
  - Federal Preemption and State laws
  - Developments in Virginia

*Please note: This presentation contains general, condensed summaries of actual legal matters, statutes and opinions for information purposes. It is not meant to be and should not be construed as legal advice. Individuals with particular needs on specific issues should retain the services of competent counsel.*

## > **UAS and the FAA:**

- FAA responsible for maintaining aviation safety standards and ensuring the safety and efficiency of the nation's airspace

## > **FAA Modernization and Reform Act of 2012:**

- Modernization of national aviation system
  - Provided funding over four years for the FAA to rebuild air traffic control systems
  - Switching from radar to GPS air traffic control system
- Directed FAA to open up airspace to UAS by the end of September 2015
- Section 336: Special rule for “Model Aircraft”

## > Issued in June, 2016

## > Simplified commercial use of small UAS

- Section 333 exemption no longer required.

## > Operational limitations:

- 55 pounds or less
- Operator to maintain Visual Line of Sight (VLOS)
- Limit flights to daylight
- Max speed (100 mph)
- Max height (400 feet above ground)
- No operations directly over people
- Operations in Class B, C, D and E airspace allowed with ATC permission

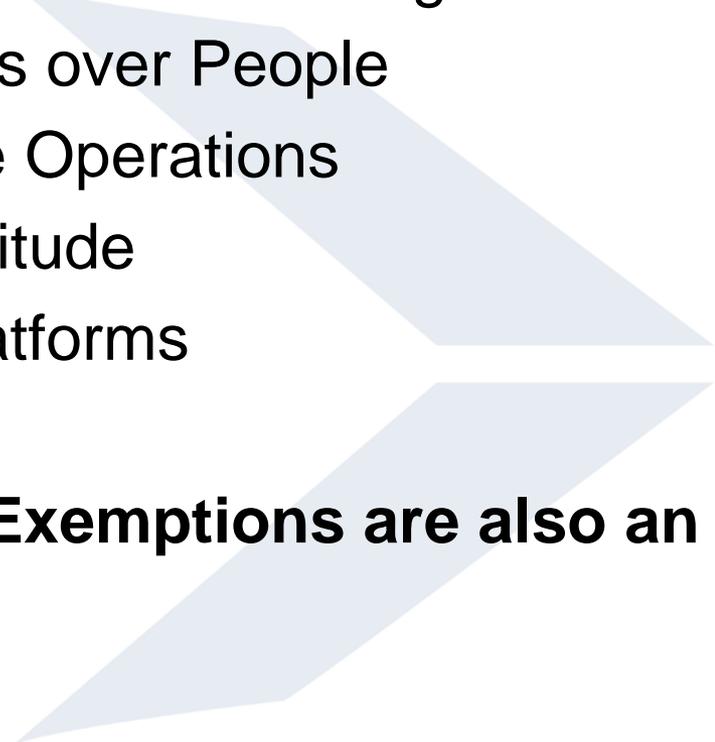
## > **Certifications and responsibilities:**

- “Operator” must be at least 16 years old
- Have passed remote pilot airman certificate with sUAS rating
  - Or under direct supervision of someone who does
  - obtain an FAA UAS operator certificate
    - no other private pilots certification needed
- Maintain documents/records for FAA inspection
- Conduct pre-flight inspection
- Report accidents to FAA within 10 days

# PART 107 WAIVERS



## > **Need a Waiver for Many Operations, including**

- Beyond Visual Line of Sight
  - Operations over People
  - Night-time Operations
  - Higher Altitude
  - Larger Platforms
- 

## > **Section 333 Exemptions are also an option**

# FAA REGISTRATION INITIATIVE



- > **Fill out an electronic registration form through the web**
- > **Immediately receive a personal universal registration number for use on all UAS owned by that person**
- > **Mark the registration number (or registered serial number) on all applicable UAS prior to their operation in the NAS**
- > **\$5 Registration Fee**
- > **Exceptions to registration:**
  - Drones weighing less than 9 ounces
  - Owner is under 13 years old
    - Parent must register

# MODEL AIRCRAFT EXEMPTION



**> Operational requirements of “model aircraft”  
(for exclusion from FAA rulemaking or regulation related to  
UAS):**

- Strictly for hobby or recreational use;
- operated with a community-based set of safety guidelines and within the programming of a nationwide community-based organization;
- limited to not more than 55 pounds unless exception applies;
- operated in a manner that does not interfere with and gives way to any manned aircraft; and
- when flown within five miles of an airport, the operator of the aircraft provides the airport operator and the airport air traffic control tower . . . with prior notice of the operation.

FAA Modernization and Reform Act of 2012, Pub. L. No. 112-95, § 336(a), 126 Stat. 11.

# WHITE HOUSE INITIATIVES



- > Presidential Memorandum: Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems**
  - Released in conjunction with Notice of Proposed Rulemaking (NPRM)
  - Pertains to data collected by UAS by and for federal agencies
- > NTIA Request for Public Comment on Privacy, Transparency, and Accountability Regarding Commercial and Private Use of Unmanned Aircraft Systems**
  - Pertains to data collected by UAS for commercial purposes

# PRESIDENTIAL MEMORANDUM



- > **Applies to federal agencies**
- > **Limits retention of data that may contain personally identifiable information (PII)**
- > **Restricts distribution unless maintained in “system of records”**
- > **Status report within 180 days; publish policies and procedures within one year**
- > **Directs federal agencies to:**
  - Verify existence of rules of conduct and training for federal contractors
  - Policies and procedures for individuals that have access to “sensitive information”
  - Conduct oversight of use (including audits or assessments)

## > **Identify best practices**

## > **Protect privacy, civil rights and civil liberties:**

- Identify privacy safeguards

## > **Accountability:**

- Oversight and privacy training
- Policies on how handle data
- Audits, assessments

## > **Transparency:**

- Identifying operators
- Purpose of flight
- Data practices

- > **Several bills before Congress that would restrict UAS operations**
- > **“Drone Aircraft Privacy and Transparency Act of 2017”**
  - Data Collection Statement
  - Broadens Enforcement Authorities
- > **Private Airspace Bill**
  - Would give property owners rights in airspace up to 200 feet above property
  - Similar to proposal from National Association of Mutual Insurance Companies

# STATE AND LOCAL CONSIDERATIONS



- > **Privacy**
  - > **Trespass/nuisance:**
    - Law is unclear
  - > **Liability:**
    - Who is responsible for injuries?
    - Insurance
  - > **Law enforcement/homeland security concerns:**
    - Enforcement
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# PERCEPTIONS OF PRIVACY ARE CHANGING...



## St. Peter's Square - 2005



Luca Bruno/AP

# ...CREATING A LOCATION PRIVACY PARADOX



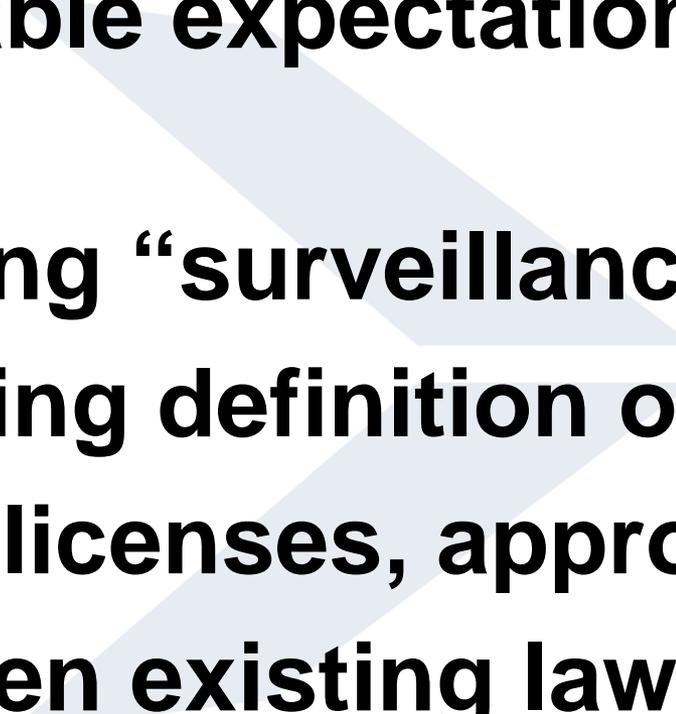
## St. Peter's Square - 2013



Michael Sohn/AP

- > “Substantial air safety issues are raised when state or local governments attempt to regulate the operation or flight of aircraft. If one or two municipalities enacted ordinances regulating UAS in the navigable airspace and a significant number of municipalities followed suit, fractionalized control of the navigable airspace could result. In turn, this ‘patchwork quilt’ of differing restrictions could severely limit the flexibility of FAA in controlling the airspace and flight patterns, and ensuring safety and an efficient air traffic flow.”**

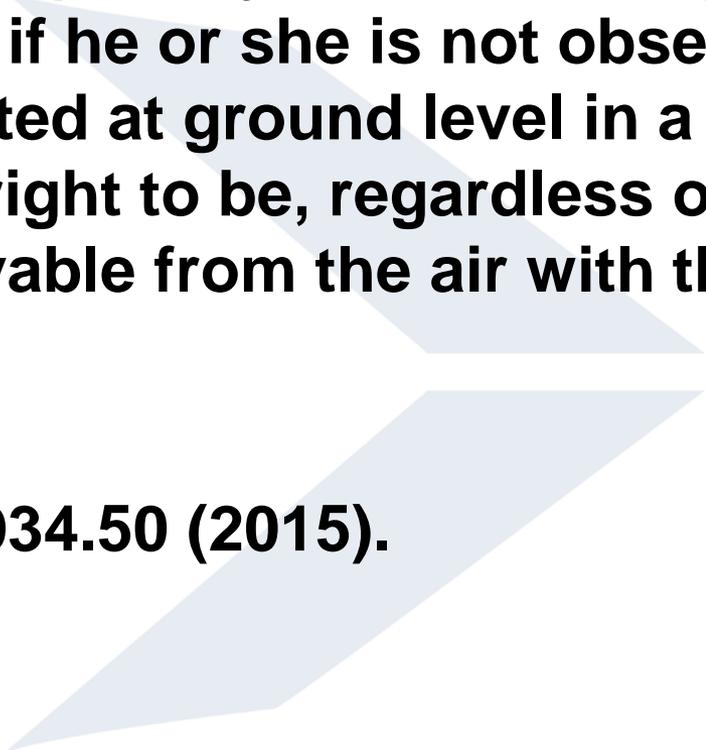
- > “[l]aws traditionally related to state and local police power – including land use, zoning, privacy, trespass, and law enforcement operations – generally are not subject to federal regulation. (emphasis added), citing *Skysign International, Inc. v. City and County of Honolulu*, 276 F.3d 1109, 1115 (9th Cir. 2002). “

- > Redefining what constitutes a “reasonable expectation of privacy”**
  - > Prohibiting “surveillance”**
  - > Broadening definition of “trespass”**
  - > Permits, licenses, approvals**
  - > Strengthen existing laws**
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# Reasonable Expectation Of Privacy

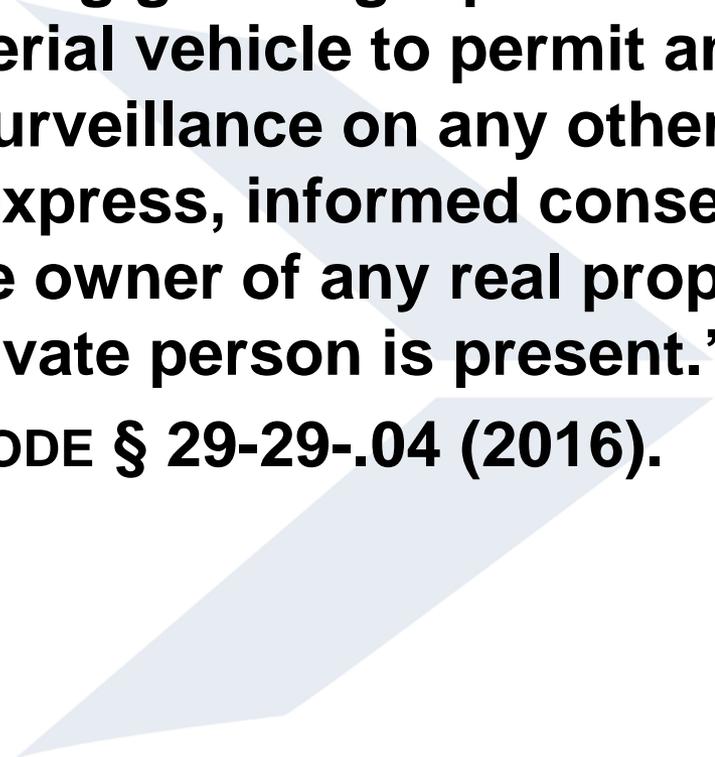


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- > **“... a person is presumed to have a reasonable expectation of privacy on his or her privately owned real property if he or she is not observable by persons located at ground level in a place where they have a legal right to be, regardless of whether he or she is observable from the air with the use of a drone.”**
  - > **FLA. STAT. § 934.50 (2015).**
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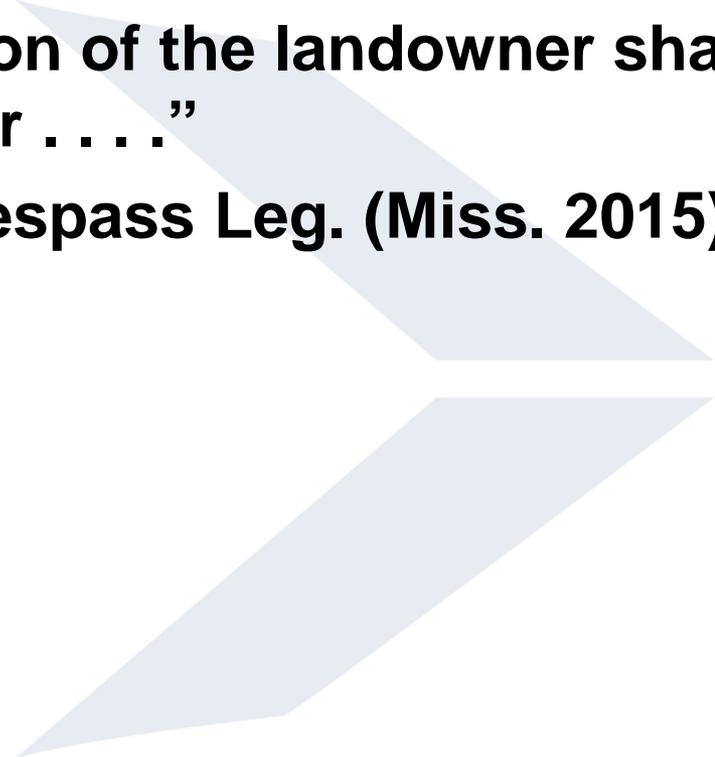
# Illegal To Conduct surveillance



- > “[a] law enforcement agency may not authorize the use of, including granting a permit to use, an unmanned aerial vehicle to permit any private person to conduct surveillance on any other private person without the express, informed consent of that other person or the owner of any real property on which that other private person is present.”
  - > N.D. CENT. CODE § 29-29-.04 (2016).
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# Trespass



- > “[a]ny person who knowingly causes an unmanned aircraft system to enter the lands of another without the permission of the landowner shall be guilty of a misdemeanor . . . .”
  - > H.B.1260, Trespass Leg. (Miss. 2015).
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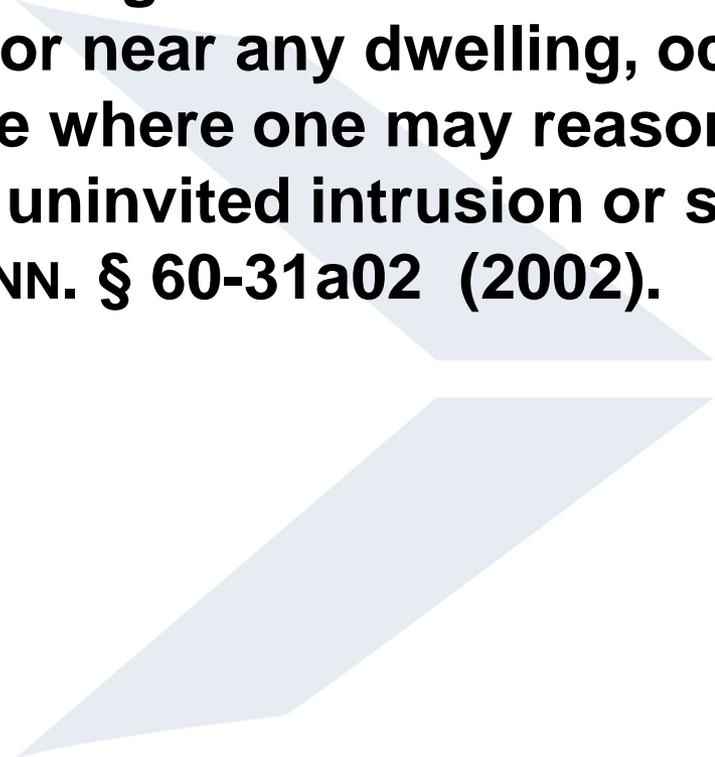
## Licenses, Permits, Etc.

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- > “[n]o person shall operate an unmanned aircraft system, as defined in G.S. 15A-300.1, in this State for commercial purposes unless the person is in possession of a license issued by the Division valid for the unmanned aircraft system being operated.”
- > “[e]ach person operating an unmanned aerial system in the course of an agricultural commercial operation shall obtain a license from the Louisiana Department of Agriculture and Forestry which shall be issued upon the applicant meeting the following requirements . . . any other licensing requirements established by the commissioner by rule.” S.B. 472, 2016 Leg. (La. 2016).

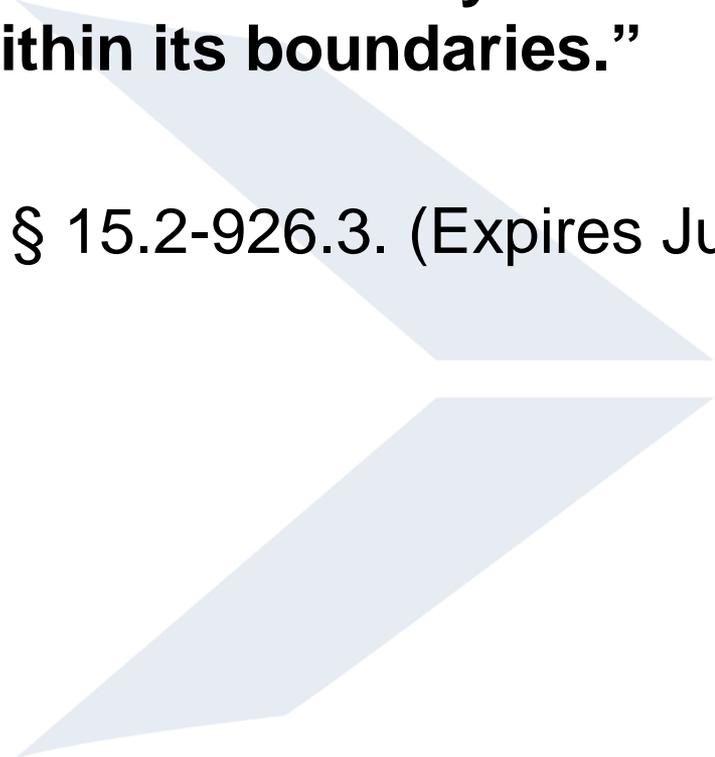
# Strengthen Existing Laws - Harassment



- > **Harassment “shall include any course of conduct carried out through the use of an unmanned aerial system over or near any dwelling, occupied vehicle or other place where one may reasonably expect to be safe from uninvited intrusion or surveillance. “**  
**KAN. STAT. ANN. § 60-31a02 (2002).**
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# Virginia Laws Regarding UAS



- > **“No locality may regulate the use of a privately owned, unmanned aircraft system as defined in § [19.2-60.1](#) within its boundaries.”**
  - > Virginia Code § 15.2-926.3. (Expires July 1, 2019)
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# Virginia Laws Regarding UAS



- > “No state or local government department, agency, or instrumentality having jurisdiction over criminal law enforcement or regulatory violations, including but not limited to the Department of State Police, and no department of law enforcement as defined in § [15.2-836](#) of any county, city, or town shall utilize an unmanned aircraft system except during the execution of a search warrant issued pursuant to this chapter or an administrative or inspection warrant issued pursuant to law.”
- > Exceptions
  - (i) an Amber Alert
  - (ii) a Senior Alert
  - (iii) a Blue Alert
  - (iv) where use is necessary to alleviate immediate danger to person;
  - (v) for training exercises related to such uses.

# Virginia Laws Regarding UAs

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- > **“While any fire department or fire company is in the process of answering an alarm where there is imminent danger or the actual occurrence of fire or explosion or the uncontrolled release of hazardous materials that threaten life or property and returning to the station, the chief or other officer in charge of such fire department or fire company at that time shall have the authority to . . .**
  - **(i) maintain order at such emergency incident or its vicinity, including the immediate airspace; “**

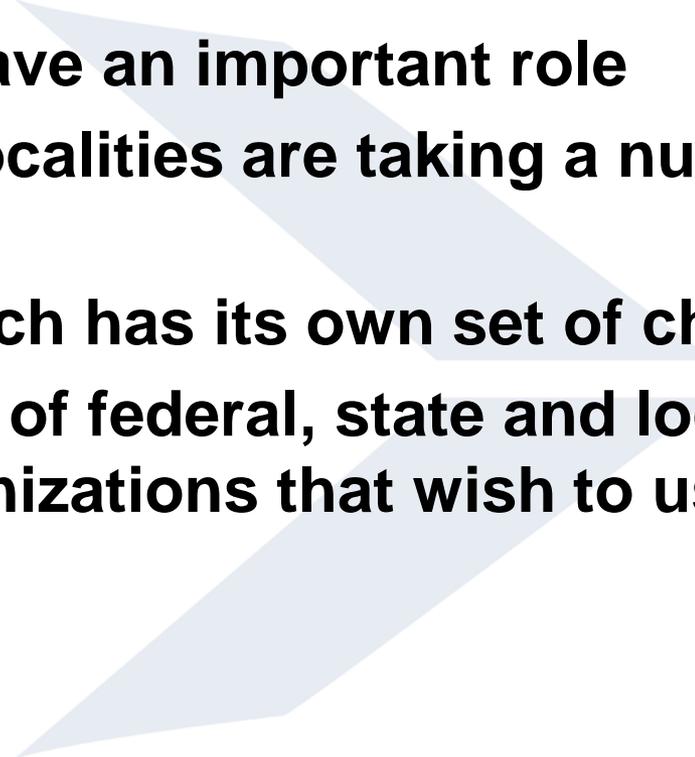
# Virginia Laws Regarding UAS



- > **“It is unlawful for any person to knowingly and intentionally cause an electronic device to enter the property of another to secretly or furtively peep or spy or attempt to peep or spy into or through a window, door, or other aperture of any building, structure, or other enclosure occupied or intended for occupancy as a dwelling, whether or not such building, structure or enclosure is permanently situated or transportable and whether or not such occupancy is permanent or temporary, or to do the same, without just cause, upon property owned by him and leased or rented to another under circumstances that would violate the occupant's reasonable expectation of privacy. A violation of this section is a Class 1 misdemeanor. The provisions of this section shall not apply to a lawful criminal investigation.”**

# Conclusion



- > **A great deal needs to be done at federal level in order for commercial use of UAS to reach potential;**
  - > **States will have an important role**
  - > **States and localities are taking a number of different approaches.**
  - > **Each approach has its own set of challenges;**
  - > **A patchwork of federal, state and local laws would be bad for organizations that wish to use drones;**
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# FOR ADDITIONAL INFORMATION



**Robert E. Korroch**  
*Partner & Co-Chair, Unmanned  
Systems Team*  
757.249.7105  
[rkorroch@williamsmullen.com](mailto:rkorroch@williamsmullen.com)

**Kevin D. Pomfret**  
*Partner & Co-Chair, Unmanned  
Systems Team*  
703.760.5204  
[kpomfret@williamsmullen.com](mailto:kpomfret@williamsmullen.com)

**Anthony H. Anikeeff**  
*Partner*  
703.760.5206  
[aanikeeff@williamsmullen.com](mailto:aanikeeff@williamsmullen.com)

**Joshua B. Brady**  
*Associate*  
703.760.5249  
[jbrady@williamsmullen.com](mailto:jbrady@williamsmullen.com)

**Judy Lin Bristow**  
*Partner*  
804.420.6476  
[jbristow@williamsmullen.com](mailto:jbristow@williamsmullen.com)

**David C. Burton**  
*Partner*  
757.473.5354  
[dburton@williamsmullen.com](mailto:dburton@williamsmullen.com)

**Patrick A. Cushing**  
*Partner*  
804.420.6541  
[pcushing@williamsmullen.com](mailto:pcushing@williamsmullen.com)

**William P. Dickinson, III**  
*Associate*  
804.420.6607  
[wdickinson@williamsmullen.com](mailto:wdickinson@williamsmullen.com)

**M. Bruce Harper**  
*Partner*  
757.473.5357  
[bharper@williamsmullen.com](mailto:bharper@williamsmullen.com)

**Thomas B. McVey**  
*Partner*  
202.293.8118  
[tmcvey@williamsmullen.com](mailto:tmcvey@williamsmullen.com)

**Eliot Norman**  
*Partner*  
804.420.6482  
[enorman@williamsmullen.com](mailto:enorman@williamsmullen.com)

**John M. Paris, Jr.**  
*Partner*  
757.473.5308  
[jparis@williamsmullen.com](mailto:jparis@williamsmullen.com)

**Robert C. Van Arnam**  
*Partner*  
919.981.4055  
[rvanarnam@williamsmullen.com](mailto:rvanarnam@williamsmullen.com)

**William A. Wozniak**  
*Associate*  
703.760.5215  
[wwozniak@williamsmullen.com](mailto:wwozniak@williamsmullen.com)

**Richard A. Zechini**  
*Partner*  
919.981.4074  
[rzechini@williamsmullen.com](mailto:rzechini@williamsmullen.com)