



March 25, 2013

The Honorable Abel Herrero
Texas House of Representatives

RE: TLR Opposes HB 912 by Gooden (The Drone Bill)

TLR strongly opposes the civil cause of action in HB 912.

HB 912 is a legislative proposal concerning the use of drones capable of transmitting photographic images and video content. HB 912 contains both a civil cause of action and a criminal penalty. TLR's mission encompasses civil causes of action and we do not offer an opinion on the criminal penalty, except to say that HB 912's vagueness and ambiguities could create serious problems for law enforcement and raise constitutional issues concerning the criminal penalties.

The cause of action created by HB 912 potentially imposes essentially unlimited liability on those who take, possess, disclose, display or distribute photographs and movies of private property or of an individual located on that property taken by a drone, even when it is legal visually to see the same image, paint the same image, photograph the same image, or view the same image through the eye of a drone.

HB 912 imposes a civil penalty of \$1,000 per violation for each occasion when a photograph is possessed, disclosed, displayed or distributed. The penalty for disclosure, display or distribution is assessed regardless of whether or not the person knows the image was captured in violation of HB 912. It does not matter whether the conduct described by HB 912 is deliberate or accidental or incidental. It does not matter whether the conduct described by HB 912 takes place in Texas or outside of Texas. The bill does not require a showing of physical harm or economic harm to the person making a claim under the bill. In other words, HB 912 imposes an extraordinarily expansive cause of action, which certainly will incite lawsuits.

Consider a photographer standing on the south steps of the Capitol. The photographer sees a portion of Congress Avenue, which includes both public and private property. The photographer can legally see the view, paint the view, photograph the view, or look at the view through the lens of a drone. If, however, the photographer captures an image of the same view with a drone, she is subject to a civil penalty of \$1,000.

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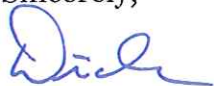
If the photographer then posts the image on her Facebook page, and it is viewed 1,000 times, the photographer is liable for a fine of \$1,000,000.00 (1,000 views times \$1,000). If a viewer of the photographer's Facebook page then shares the image, that person also is liable under HB 912, as is *each* subsequent person who shares the photograph.

Proponents of liberty believe that statutes should be as narrow and precise as possible. Expansive or vague statutes cast a wide net, breed confusion, are wrought with unintended consequences, and produce years, if not decades, of litigation to resolve disputes concerning the statute's reach and meaning. HB 912, however, is vague and expansive.

We recognize the motivation to protect privacy from drones, but we believe that this issue would be best addressed by an interim study, since the widespread use of drones is in its relative infancy and scholarly discussion about the legal implications of drones and the connection between drones and privacy and property rights is just beginning. No state has passed legislation like HB 912.

Thank you for your consideration and your public service.

Sincerely,



Richard J. Trabulsi, Jr.
President

Cc: The Honorable Joe Straus
The Honorable Lance Gooden
The Honorable Members of the House Criminal Jurisprudence Committee