



Model Drone Legislation: No Drones



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Public policy discourse vital to democracy & preservation of constitutional rights

WHEREAS, the premature deployment of unmanned aerial vehicles (“drones”) has outpaced public policy discourse throughout the United States, and poses a serious threat to the privacy and constitutional rights of the residents of [city/county.];

WHEREAS, as of _____, 2013, the Federal Aviation Administration has issued _____ licenses for drones in the United States, [including ___ in or within 500 miles of the Jurisdiction], and has pending another _____ applications for drone licenses in the United States, [including ___ in or within 500 miles of the Jurisdiction];¹

WHEREAS the Federal Aviation Administration’s guidance on the use of drones as of 2013 provides that drone flights may not be conducted over urban or populated areas, heavily trafficked roads, or open-air assemblies of people, absent a convincing showing that such operations can be conducted safely;²

WHEREAS, the Federal Aviation Administration Modernization and Reform Act of 2012 directs the FAA to create regulations that will enable drones to fly throughout U.S. airspace by September, 2015;³

Drones are military technology driven by corporate interests

WHEREAS, military drones have been used overseas for unlawful and extrajudicial targeted killings of foreign nationals and US Citizens,⁴ have killed hundreds of civilians,⁵ including children, and have jeopardized US national security by furthering anti-American sentiment and destabilizing communities that are bombed;⁶

¹ *Drone Flights in the U.S.*, ELEC. FRONTIER FOUND., <https://www EFF.ORG/foia/faa-drone-authorizations> (last visited _____); *Just How Many Drone Licenses Has the FAA Really Issued?*, ELEC. FRONTIER FOUND., <https://www EFF.ORG/deepinks/2013/02/just-how-many-drone-licenses-has-faa-really-issued>.

² *Fact Sheet – Unmanned Aircraft Systems*, FEDERAL AVIATION ADMINISTRATION (Feb. 19, 2013), http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=14153.

³ *Id.*

⁴ Michael Boyle, *Obama’s Drone Wars and the Normalization of Extrajudicial Murder*, THE GUARDIAN (June 11, 2012), <http://www.guardian.co.uk/commentisfree/2012/jun/11/obama-drone-wars-normalisation-extrajudicial-killing>; Stanford International Human Rights & Conflict Resolution Clinic, *LIVING UNDER DRONES*, <http://www.livingunderdrones.org/numbers/> (last visited Apr. 2, 2013).

⁵ *Supra*, LIVING UNDER DRONES.

⁶ Steve Coll, *Kill or Capture*, THE NEW YORKER (Aug. 2, 2012), <http://www.newyorker.com/online/blogs/comment/2012/08/kill-or-capture.html>; Jefferson Morley, *What Drones Sow*, SALON.COM (June 12, 2012), http://www.salon.com/2012/06/12/hatred_what_drones_sow/; David Kilcullen &

WHEREAS the proliferation of drone technology is being driven not by necessity, but by corporate interests poised to profit from drone proliferation;⁷

WHEREAS the lobby group the Association for Unmanned Vehicle Systems International, along with several drone manufacturers, spent at least \$21,960,500 on lobbying in 2011 alone;⁸

WHEREAS drone proliferation threatens the risk of unmanned aerial vehicles becoming increasingly available to journalists, bloggers, news organizations, and others who gather and disseminate public and nonpublic information on the Internet for profit or for political or other reasons;

WHEREAS drone proliferation threatens the risk of unmanned aerial vehicles becoming increasingly available to violent criminal organizations such as “the Cartel” and gangs;

WHEREAS local police forces around the country have attempted to purchase military drone hardware for civilian use, reflecting a broader trend towards the militarization of local police agencies;⁹

WHEREAS the blurring line between civilian police and the military, exemplified by the police deploying drone technology developed to fight the War on Terror, erodes ties and trust between police and community members and thereby damages public safety;¹⁰

WHEREAS the argument that law enforcement requires drones, but will use them only for emergency response, is therefore unpersuasive;

Fourth Amendment implications

WHEREAS persistent or ambient surveillance of the sort enabled by drones entails serious constitutional abuses of police authority by effectively circumventing the Fourth Amendment’s longstanding requirements concerning warrants and due process;

Andrew McDonald Exum, *Death from Above, Outrage Down Below* (May 16, 2009), <https://www.nytimes.com/2009/05/17/opinion/17exum.html?pagewanted=all>.

⁷ Glenn Greenwald, *Domestic Drones and Their Unique Dangers*, THE GUARDIAN (Mar. 29, 2013), <http://www.guardian.co.uk/commentisfree/2013/mar/29/domestic-drones-unique-dangers>.

⁸ See, First Street Research Group, *Drones in U.S. Air Space: The Next Lobby Frontier* (May 1, 2012), <http://firststreetresearch.cqpress.com/2012/05/01/drones-in-u-s-air-space-the-next-lobby-frontier/>; Galius Publius, *Drone Industry Wrote the Legislation Governing Domestic Drone Use*, AMERICABLOG (Feb. 17, 2012), <http://americablog.com/2012/02/drone-industry-wrote-the-legislation-governing-domestic-drone-use.html>.

⁹ Declan McCullagh, *DHS Built Domestic Surveillance Tech into Predator Drones*, CNET.COM (Mar. 2, 2013), http://news.cnet.com/8301-13578_3-57572207-38/dhs-built-domestic-surveillance-tech-into-predator-drones/.

¹⁰ Lenese C. Herbert, *Can’t You See What I’m Saying? Making Expressive Conduct a Crime in High-Crime Areas*, 9 Geo. J. on Poverty L. & Pol’y 135 (2002); David Harris, *War on Terror, Local Police, and Immigration Enforcement: A Curious Tale of Police Power in Post-9/11 America*, 38 Rutgers L.J. 1, 3 (2006); Matthew C. Waxman, *Police and National Security: American Local Law Enforcement and Counterterrorism After 9/11*, 3 J. Nat’l Security L. & Pol’y 377 (2009); David Thacher, *The Local Role in Homeland Security*, 39 Law & Soc’y Rev. 635 (2005); Adam Wolf, *The Adversity of Race and Place: Fourth Amendment Jurisprudence in Illinois v. Wardlow*, 5 Mich. J. Race & L. 711 (2000).

WHEREAS drones can be outfitted with super-sensory technologies such as thermal imaging software¹¹ and the capability to “see through” walls;¹²

WHEREAS drones are capable of hovering outside the windows of private dwellings to peer inside;¹³

WHEREAS drones can be outfitted with technologies such as license plate readers¹⁴ and Internet packet sniffing technology¹⁵ that enable pervasive surveillance without particularity, circumventing the requirements of the Fourth Amendment;

WHEREAS drone technology has the potential to extend closed-circuit television surveillance to every square foot of public land;¹⁶

WHEREAS most drones send the data they obtain in open and unencrypted broadcasts that can be, and have been, intercepted by unintended recipients using common and inexpensive technology;¹⁷

WHEREAS drone control uplinks are vulnerable to both malicious and unintentional interference;¹⁸

WHEREAS, drone technology is developing so rapidly that the potential impacts on privacy and Fourth Amendment rights is difficult to predict;¹⁹

¹¹ *Draganfly Thermal Infrared Camera*, DRAGANFLY INNOVATIONS, INC., <http://www.draganfly.com/uav-helicopter/dragonflyer-x6/features/flir-camera.php>.

¹² Elec. Privacy Info. Ctr., *Domestic Unmanned Aerial Vehicles (UAVs) and Drones*, EPIC.ORG, <https://epic.org/privacy/drones/> (last visited Apr. 2, 2013); William Saletan, *Nowhere to Hide*, SLATE.COM (Sept 17, 2008), http://www.slate.com/articles/health_and_science/human_nature/2008/09/nowhere_to_hide.html.

¹³ Scott Bomboy, *Why a Drone Can Hover Over Your Home, and You Can't Stop It*, NATIONAL CONSTITUTION CENTER (Mar 8, 2013), <http://news.yahoo.com/why-drone-hover-over-home-t-stop-173607447.html>.

¹⁴ Elec. Privacy Info. Ctr., *Domestic Unmanned Aerial Vehicles (UAVs) and Drones*, EPIC.ORG, <https://epic.org/privacy/drones/>.

¹⁵ *Id.*; Jesse Emspak, *Home-made Drone to Help Phone and Wi-fi Hackers*, NEWSIDENTIST (Aug. 5, 2011), <http://www.newscientist.com/article/dn20771-homemade-drone-to-help-phone-and-wifi-hackers.html>; Elec. Privacy Info. Ctr., *US Drones Intercept Electronic Communications*, EPIC.ORG (Feb. 28, 2013), <http://epic.org/2013/02/epic-foia---us-drones-intercept.html>.

¹⁶ *Supra*, *Domestic Drones and Their Unique Dangers*.

¹⁷ Noah Shachtman & David Axe, *Most U.S. Drones Openly Broadcast Secret Feeds*, WIRED (Oct. 29, 2012), <http://www.wired.com/dangerroom/2012/10/hack-proof-drone/>.

¹⁸ Geoffrey Ingersoll, *The US Deliberately Crashed a Predator Drone into an Afghan Mountain*, BUSINESS INSIDER (Sep. 8, 2012), <http://www.businessinsider.com/drone-piloted-by-ohioans-deliberately-crashed-in-afghanistan-2012-9>; Noah Shachtman, *Air Force Insists: Drone Cockpit Virus Just a 'Nuisance'*, WIRED (Oct. 12, 2011), <http://www.wired.com/dangerroom/2011/10/drone-virus-nuisance/>.

¹⁹ Jay Stanley, *We Already Have Police Helicopters, So What's the Big Deal over Drones?*, AMER. CIVIL LIBERTIES UNION (Mar. 8, 2013), <http://www.aclu.org/blog/technology-and-liberty-criminal-law-reform/we-already-have-police-helicopters-so-whats-big-deal>; Michael Rundle, *Camera 'Can See Through Walls' By Turning Plain Surfaces into Mirrors*, HUFFINGTON POST (July 26, 2012), http://www.huffingtonpost.co.uk/2012/07/16/camera-can-see-through-walls_n_1675356.html; Michael Zennie, *Death from a Swarm of Tiny Drones*, DAILY MAIL (Feb. 19, 2013), <http://www.dailymail.co.uk/news/article-2281403/U-S-Air-Force-developing-terrifying-swarms-tiny->

Hybrid 4th Amendment/1st Amendment/14th Amendment concerns

WHEREAS local law enforcement agencies report over-inclusive ‘suspicious behavior’ to national intelligence agencies and fusion centers;²⁰

WHEREAS the extreme focus of local law enforcement resources and attention on people of color,²¹ immigrants,²² low-income people,²³ and activists²⁴ is significantly disproportionate to the actual criminal threat they pose;

WHEREAS, expanded law enforcement capabilities often invite mission creep and grow pervasive and entrenched;²⁵

First Amendment implications

WHEREAS local law enforcement agencies have frequently violated constitutional limits by scrutinizing groups engaging in protected First Amendment activity,²⁶ including anti-war groups,²⁷ Second Amendment rallies, third-party voters and Muslim lobbyists, as potential national security threats;

unmanned-drones-hover-crawl-kill-targets.html; Noah Shachtman, *Army Tracking Plan: Drones that Never Forget a Face*, WIRED (Sept. 28, 2011), <http://www.wired.com/dangerroom/2011/09/drones-never-forget-a-face/>.

²⁰ Raquel Ronzone, *Howard Zinn: (A) Anti-War Activist and Historian or (B) extremist*, DAILY KOS (Oct. 19, 2012), <http://www.dailykos.com/story/2012/10/19/1147007/-Howard-Zinn-A-anti-war-activist-and-historian-or-B-extremist>; *More About Fusion Centers*, AMER. CIVIL LIBERTIES UNION, <http://www.aclu.org/spy-files/more-about-fusion-centers>.

²¹ *Floyd, et al. v. City of New York, et al.*, CTR. FOR CONSTITUTIONAL RIGHTS, <http://ccrjustice.org/floyd> (Apr. 2, 2013); *More About Suspicious Activity Reporting*, AMER. CIVIL LIBERTIES UNION (Jan. 18, 2013), <http://www.aclu.org/spy-files/more-about-suspicious-activity-reporting> (last visited Apr. 2, 2013).

²² *Stories from the History of U.S. Government Surveillance*, TRACKED IN AMERICA, <http://www.trackedinamerica.org/>.

²³ *Poverty & Privacy*, ELEC. PRIVACY INFO. CTR., <https://epic.org/privacy/poverty/> (last visited Apr. 2, 2013).

²⁴ *More About State and Local Police Spying*, AMER. CIVIL LIBERTIES UNIONS, <http://www.aclu.org/spy-files/more-about-state-and-local-police-spying> (last visited Apr. 2, 2013).

²⁵ For example, fusion centers focus on drug crimes rather than the national security purpose they were established for. See, *Investigative Report Criticizes Counterterrorism Reporting*, U.S. SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS (Oct. 3, 2012), <http://www.hsgac.senate.gov/subcommittees/investigations/media/investigative-report-criticizes-counterterrorism-reporting-waste-at-state-and-local-intelligence-fusion-centers>; Nadia Kayyali, *Fusion Centers: Budgetary Salt on Constitutional Wound*, PEOPLE’S BLOG FOR THE CONSTITUTION (Oct. 4, 2012), <http://www.constitutioncampaign.org/blog/?p=10141>; Jamie Doward, *‘Mission Creep’ Fears Grow as Met Calls for More Tasers*, THE GUARDIAN (Mar. 16, 2013), <http://www.guardian.co.uk/world/2013/mar/17/tasers-met-police-increase>; Jennifer Abel, *The TSA’s Mission Creep is Making the US a Police State*, THE GUARDIAN (Apr. 18, 2012), <http://www.guardian.co.uk/commentisfree/cifamerica/2012/apr/18/tsa-mission-creep-us-police-state>; *Surveillance of Political Activity*, AMER. CIVIL LIBERTIES UNION, <http://www.nyclu.org/content/testimony-police-surveillance-of-political-activity-history-and-current-state-of-handschu-de> (Apr. 2, 2013).

²⁶ Shahid Buttar, *COINTELPRO 2.0*, HUFFINGTON POST (Aug. 2, 2010), http://www.huffingtonpost.com/shahid-buttar/cointelpro-20_b_664943.html.

²⁷ *Documents Shed New Light on Surveillance of Peace Activists*, AMER. CIVIL LIBERTIES UNION (Oct. 12, 2006), <http://www.aclu.org/national-security/documents-shed-new-light-pentagon-surveillance-peace-activists>; Raquel Ronzone, *Howard Zinn: (A) Anti-War Activist and Historian or (B) extremist*, DAILY KOS (Oct. 19, 2012), <http://www.dailykos.com/story/2012/10/19/1147007/-Howard-Zinn-A-anti-war-activist-and-historian-or-B-extremist>.

WHEREAS persistent or ambient surveillance, coupled with currently expanding programs to monitor and criminalize nonviolent activism, threatens to chill First Amendment-protected association;²⁸

WHEREAS a potential chilling effect on First Amendment activity from the use of drones is compounded by the capability of some drone models to be armed with tear gas, rubber bullets, and other weapons;²⁹

No need for drones/Drones not safe

WHEREAS many of the drone models currently available to law enforcement have limited flying time,³⁰ cannot be flown in inclement weather,³¹ must be flown in sight of an operator,³² and can only be flown during the day, thus making them ill-suited to search and rescue missions and best suited for pervasive surveillance;

WHEREAS currently existing technology, including helicopters, has proven adequate to capable address emergency situations;

WHEREAS drones are largely unproven in American civilian airspace, and have only seen widespread use in combat theaters, where they are the least safe class of aircraft currently in operation;³³

WHEREAS an FAA official testified to Congress that Customs and Border Protection has reported 52.7 drone accidents per 100,000 hours of flight time, seven times the civil aviation rate of 7.11 accidents per 100,000 hours;³⁴ AND

²⁸ National Lawyers Guild, *Developments in the Policing of National Special Security Events* (2013), available at <http://www.nlg.org/sites/default/files/NLG%20Report%20Developments%20in%20the%20Policing%20of%20NSS%20at%202012%20RNC%20and%20DNC.pdf>.

²⁹ *Groups Concerned Over Arming of Domestic Drones*, CBS.COM (May 23, 2012), <http://washington.cbslocal.com/2012/05/23/groups-concerned-over-arming-of-domestic-drones>; Buck Sexton, *Aerial 'Shadowhawk' Police Drones Can Now Deploy Tasers and Tear Gas*, THE BLAZE (Mar. 12, 2012), <http://www.theblaze.com/stories/2012/03/12/want-to-see-the-aerial-drone-police-could-soon-deploy-in-your-town/>.

³⁰ *Aerial Vehicle Systems*, AERYON LABS, INC., <http://www.aeryon.com/products/avs.html> (last visited Apr. 2, 2013).

³¹ *Homeland Security: Unmanned Aerial Vehicles and Border Surveillance*, CONGRESSIONAL RESEARCH SERVICE (July 8, 2010), <https://www.fas.org/sgp/crs/homesecc/RS21698.pdf>; Eric Beidel, *Army Pilots: Flying Drones Tougher than It Looks*, NATIONAL DEFENSE MAGAZINE (Feb. 2011),

<http://www.nationaldefensemagazine.org/archive/2011/February/Pages/ArmyPilotsFlyingDronesTougherThanItLooks.aspx>; Sara Peck, *Civilian Drones Have Yet to Pass Weather Test*, NATIONAL DEFENSE MAGAZINE (Aug. 2008), <http://www.nationaldefensemagazine.org/archive/2008/August/Pages/CivilianDronesHaveYettoPassWeatherTest.aspx>. But see, Edwin Kee, *Pilotless Robot Plane Smart Enough to Navigate Through Bad Weather*, UBERGIZMO (July 9, 2012), <http://www.ubergizmo.com/2012/07/pilotless-robot-plane-smart-enough-navigate-bad-weather/>.

³² *The FAA Is Set to Issue Rules for Operating Civilian Drones*, STAR TRIBUNE (Feb. 17, 2013), <http://m.startribune.com/business/?id=191499731>.

³³ The Global Hawk, Predator, and Reaper drones have a combined rate of 9.31 accidents for every 100,000 hours of flight time, more than triple the fleetwide average of 3.03. See Brendan McGarry, *Drones Most Accident-Prone U.S. Air Force Craft*, BGOV BAROMETER (June 18, 2012), <http://www.businessweek.com/news/2012-06-18/drones-most-accident-prone-u-dot-s-dot-air-force-craft-bgov-barometer>.

WHEREAS drones currently in production do not have the see-and-avoid capability of manned aircraft, and drone collision avoidance systems seeking to mitigate this problem have thus far proven ineffective.³⁵

NOW THEREFORE BE IT RESOLVED that [city/county] with this resolution and by proclamation, declares [city/county] to be free from drones, and enacts this ordinance to secure those aims.

I. DEFINITIONS

A. “Drones” refers to any powered aerial vehicle controlled autonomously or remotely that does not carry a human operator. Drones include, but are not limited to, powered aerial vehicles that store and/or transmit sensor data, such as photos, video, thermal images, and intercepted wireless communications; and unmanned aerial vehicles capable of firing lethal, less-lethal projectiles, or crowd control measures.

B. “[City/County] airspace” includes all airspace above the territorial boundaries of [city/county], to the extent to which such airspace can legally be regulated by [name of city or county]. This legislation does not seek to interfere with the authority of the Federal Aviation Administration.

C. “Law enforcement agency” means a lawfully established state or local public agency that is responsible for the prevention and detection of crime, local government code enforcement, and the enforcement of penal, traffic, regulatory, game, or controlled substance laws.

D. “Aggrieved party” means a person whose personal information has been captured by unlawful drone use.

E. “Personal information” means information about an individual including but not limited to their effects, papers, affiliation with religious or political ideologies or groups, biometric information, movements, address, or administrative information such as social security number or agency-issued identification.

II. DRONE FREE ZONE

A. [city/county] shall be known as a “drone-free zone” and;

1. Any person operating a drone within [city/county] airspace shall be guilty of a misdemeanor, to wit, Unlawful Drone Use, carrying a maximum penalty of up to one year in jail and a fine not to exceed \$1,000, and each day on which a drone is flown shall be considered a separate offense and will be considered to be an additional misdemeanor, with jail time and fines based on the number of violations.

³⁴ FAA Vice President for Systems Operations Nancy Kalinowski, Statement to Subcommittee on the Role of Unmanned Aerial Systems (July 15, 2010), http://www.faa.gov/news/testimony/news_story.cfm?newsId=11599.

³⁵ *Evaluation of Traffic Alert and Collision Avoidance System*, FEDERAL AVIATION ADMINISTRATION (Mar. 21, 2011), http://www.faa.gov/about/initiatives/uas/media/TCASonUAS_FinalReport.pdf.

2. No agency or department of [city/county] shall purchase, lease, borrow, or otherwise acquire a drone.
3. No officer or employee of [city/county] shall make any use of drones or the data they have collected in the discharge of their duties
4. No officer or employee of [city/county] shall request or accept, handle, analyze, or transmit any kind of data gathered by third parties using drones, including private parties, security contractors, or other government agencies.
5. Under no circumstances shall any officer or employee of [city/county] use drones to monitor or observe any person.
6. Under no circumstances shall any personally identifying information captured by drones, whether by agencies of [city/county] or otherwise, including images of identifiable individuals, be retained or shared with any agency.
7. Failure of a [city/county] officer or employee to comply with the provisions of this chapter shall constitute malfeasance in office under [state law].

B. No information gained through drone surveillance shall be used to support a declaration of probable cause or otherwise justify or further a criminal investigation.

C. Evidence obtained or collected in violation of this ordinance is not admissible as evidence in a criminal prosecution in any court of law [in this county] including use during trial, at sentencing, before a grand jury, as rebuttal evidence, or during administrative hearings in any court of law in the state.

D. No officer or employee of [city/county] shall present such evidence in any court of law, including state or federal courts, for use during trial, at sentencing, before a grand jury, as rebuttal evidence, or during administrative hearings.

E. All information or records of information collected through the use of drones in violation of this Ordinance shall be destroyed as soon as practicable, and within no case later than twenty-four (24) hours after capture or receipt.

III. IMPLEMENTATION

A. This Ordinance shall not be enforced in a selective manner or otherwise be used to interfere with individual lawful investigations undertaken by law enforcement agencies within [city/county], but shall instead be rigorously and consistently enforced.

B. All violations of this Chapter, all investigations into violations of this Chapter, and all reports or complaints regarding Unlawful Drone Use made to any [city/county] office or department, shall be reported to the [appropriate public agency]. The [appropriate public agency] shall

electronically compile all such reports, keep them in perpetuity, and make them available to any person who inquires.

C. [City/county] agencies, including, but not limited to the [city or county counsel], and the [the airport authority], shall work together to establish the scope of this law and ensure that members of the public can understand its particulars. This effort shall include, but not be limited to, a description of all [city/county] airspace not under exclusive Federal jurisdiction.

D. An aggrieved party may initiate a civil action against a law enforcement agency or agent to obtain all appropriate relief in order to prevent or remedy a violation of this Ordinance.

1. Such aggrieved party shall be entitled to reasonable attorneys' fees and costs of suit plus the greater of actual damages or an amount equal to \$1,000 per violation.

2. Such relief shall include the ability to request expungement of all information or records of information where the direct or indirect source of such information is unlawful drone use.

E. Individuals who have reason to believe they have been subject to drone surveillance shall be entitled to request a record of such surveillance, including but not limited to any personally identifying information obtained by such surveillance.

IV. SEVERABILITY

A. The provisions of this Ordinance shall be severable. If any phrase, clause, sentence or provision of this Ordinance is declared by a court of competent jurisdiction to violate the Constitution of the United States or the Constitution of the State of [State], or if its applicability to any agency, person or circumstance is held invalid, the validity of the remainder of the Ordinance and its applicability to any other agency, person or circumstances shall not be affected.

V. DISTRIBUTION AND POLICY STATEMENT

A. [City/county government] calls on the United States Congress and the [city or county's representatives to Congress], to adopt legislation prohibiting the use of drones domestically, and prohibiting information obtained from any domestic use of drones from being introduced into a Federal or State court, and precluding the domestic use of drones equipped with anti-personnel devices, meaning any projectile, chemical, electrical, directed-energy (visible or invisible), or other device designed to harm, incapacitate, or otherwise negatively impact a human being.

B. The [city executive official] shall send copies of this ordinance to our US Congressional and Senate representatives, the US Senate Committee on the Judiciary, the US Senate Select Committee on Intelligence, the US House of Representatives Committee on the Judiciary, the US House of Representatives Permanent Select Committee on Intelligence, the US Attorney General, and the President of the United States.