



STATEMENT SEEKING AN AMENDMENT TO S3183 (SARLO)

The New Jersey Press Association (“NJPA”) is a non-profit organization incorporated in 1857 under the laws of the State of New Jersey. It has a membership of 20 daily newspapers, over 160 weekly newspapers, over 50 digital news websites, as well as over 60 corporate and non-profit associate members. NJPA respectfully submits this position paper seeking an amendment to S3183.

The Federal Aviation Administration (“FAA”) is in the process of developing rules and regulations concerning the use of drones. As a result, NJPA suggests that it is prudent for the Legislature to refrain from adopting legislation in this area until the FAA has issued its specific regulations.

Aside from the confusion and potential inconsistencies created by the simultaneous introduction of state and federal laws and regulations governing the operation of drones, S3183 presents significant constitutional issues.

S3183 makes it a fourth degree crime to “use[] a civilian unmanned aerial vehicle to conduct surveillance of, gather evidence or collect information or data about, or photographically or electronically record any critical infrastructure” or to fly “a civilian unmanned aerial vehicle over any critical infrastructure without the prior written consent of the entity that owns or operates the critical infrastructure.”

“Critical infrastructure” is defined broadly as:

any system, facility, or asset that is vital to this State such that the incapacity or destruction of the system, facility, or asset or any part thereof would have an impact on the physical or economic security or the public health or safety of this State including, but not limited to, communications; financial; computers; transportation; military; government services; emergency services; sewerage, including a public sewage facility; water, including a water treatment facility or a public water facility; waste water; waste treatment facility; energy, including a power generation facility or a nuclear electric generating plant; public utility, including utility company property; telecommunications; health care; research, including a research facility; chemical refining, including any facility which stores, generates, or handles any hazardous chemical or chemical compounds; pharmaceutical services; ports; bridges; tunnels; overpasses; or highways.

The Bill also requires the registration of civilian unmanned aerial vehicles with the Director of the Division of Aeronautics in the Department of Transportation and requires that civilian unmanned aerial vehicles be insured against loss resulting from liability imposed by law for bodily injury, death and property damage, under provisions approved by the Commissioner of Banking and Insurance.

Earlier this year, the FAA issued a Notice of Proposed Rulemaking (“NPRM”), allowing limited commercial use of certain drones, subject to certification and operating requirements. The FAA also released a memorandum, which specifically addresses the use of drones by media outlets. The requirements for the operation of drones contained in S3183 interfere with the FAA’s procedure for

adopting rules and regulations and will create confusion as to the rules and regulations applicable to the operation of drones.

In addition to creating confusion, S3183 is also unconstitutional. Specifically, Section 1(b) of S3183, which prohibits the use of a drone to conduct surveillance of, gather information about, or record any critical infrastructure or to fly a drone over any critical infrastructure without the prior written consent of the owner or operator, clearly violates the First Amendment, as it is a prior restraint against the gathering of news -- a constitutionally protected activity.

Numerous federal courts have recognized that the First Amendment protects the specific right to gather information of public interest using videotape or photography. See, e.g., Pomykacz v. Borough of W. Wildwood, 438 F. Supp. 2d 504, 513 (D.N.J. 2006). Indeed, the First Amendment prohibits the government from limiting the stock of information from which members of the public may draw. First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765, 783 (1978). Without some protection for seeking out the news, freedom of the press could be eviscerated. Branzburg v. Hayes, 408 U.S. 665, 681 (1972) . The New Jersey Constitution's right of free speech is, of course, even broader than that found in the First Amendment of the United States Constitution. N.J. Coal. Against War in the Middle E. v. J.M.B. Realty Corp., 138 N.J. 326, 353 (1994).

Under S3183, a news organization would be prohibited from using a drone to obtain footage of a dam break, a train derailment or a hurricane -- events that are often difficult to capture using traditional equipment. The use of drones to gather photographs and/or video of these events would facilitate the dissemination of information about undoubtedly newsworthy events, which would be of great interest to, and indeed in certain situations could help to protect, the public. S3183's prohibition against the use of drones without prior written consent of the owner or operator of the infrastructure, conversely, prevents the news media from obtaining and, therefore, publishing that information.

While NJPA urges the Legislature to refrain from taking action on any Bills governing the operation of drones until the FAA has issued its regulations regarding same, if the Legislature nonetheless determines to move forward with S3183, NJPA strongly suggests that the following language be added to the Bill, so that it does not create an unconstitutional prior restraint on the gathering of news:

Nothing in this act shall be construed to impose liability on the news media, as defined in N.J.S.A. 2A:84A-21a, acting in the course of pursuing their professional activities, as also defined in N.J.S.A. 2A:84A-21a.

For the foregoing reasons, NJPA requests that S3183 be amended as set forth herein. If S3183 is not so amended, NJPA will be forced to oppose the Bill.

Thank you for your consideration.

December 10, 2015

New Jersey Press Association

George H. White, Executive Director

609-406-0600, ext. 30

gwhite@nipa.org