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Via e-mail: sandra.popp@mlis.state.md.us

Senator William C. Smith, Jr.
Chair, Judicial Proceedings Committee
Maryland Senate

Senator Jeff Waldstreicher
Vice Chair, Judicial Proceedings Committee
Maryland Senate

Re: **Senate Bill No. 702 – Proposed Drone Legislation**

Dear Chairman Smith and Vice Chairman Waldstreicher:

On behalf of the Consumer Technology Association, the Association for Unmanned Vehicle Systems International, the Drone Service Providers Alliance, and the Small UAV Coalition, we urge the Maryland State Senate to reject Senate Bill 702 (“SB 702”). SB 702 would criminalize the operation of drones, or UAS, over correctional facilities unless authorized by the Secretary of Public Safety and Correctional Services (“Secretary”). The legislation would criminalize drone operations regardless of the altitude of the drone, whether the drone operator knows, or even had reason to know, the operator is flying over a correctional facility, and whether the drone is operating over a correctional facility for no purpose other than to fly to another destination. Although well-intentioned, SB 702 is preempted by Federal law, would curtail industry growth and harm those who benefit from this versatile technology.

The growth of the UAS industry has prompted legislators in many states and localities to propose legislation regulating the industry or otherwise trying to address potential concerns related to UAS. Before considering new legislation, however, lawmakers should evaluate whether (i) proposed regulations are preempted, (ii) the conduct at issue may already be addressed by existing state laws, and (iii) UAS-specific legislation is warranted. In this case, SB 702 should not be adopted because it is preempted to the extent it creates drone no-fly zones in the National Airspace (“NAS”) over correctional facilities. Laws and regulations governing the operation of drones in the NAS may only be adopted by the federal government.

The Supremacy Clause of the U.S. Constitution states that “the Constitution and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the

land.”¹ As noted by the Supreme Court, this gives Congress the power to preempt state law.² There are three types of preemption: express preemption (when Congress specifically preempts a state law);³ field preemption (when a federal framework of regulation is “so pervasive . . . that Congress left no room for the States to supplement it” or where a “federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject”);⁴ and conflict preemption (when state laws “conflict with federal law, including when they stand ‘as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress’”).⁵ Congress has occupied the field with regard to air navigation⁶ and has directed the FAA to integrate UAS into the NAS.

SB 702 directly conflicts with this approach by effectively prohibiting UAS flights over correctional facilities without the Secretary’s consent. The FAA has issued numerous letters to localities cautioning against the adoption of no-fly zones.⁷ Additionally, the FAA has released a UAS Fact Sheet reminding state and local jurisdictions that they lack authority to regulate airspace.⁸ Through these letters and the UAS Fact Sheet, the FAA has made clear that regulations imposing operational bans or otherwise regulating navigable airspace are problematic.⁹ It notes that “[s]ubstantial air safety issues are raised when state and local governments attempt to regulate the operation or flight of aircraft” and “[a] navigable airspace free from inconsistent state and local restrictions is essential to the maintenance of a safe and sound air transportation system.”¹⁰ SB 702 would intrude into this purely federal regulatory system by effectively establishing no-fly zones over correctional facilities.

For the above reasons, we respectfully oppose enactment of SB 702.

¹ U.S. Const., Art. VI, Cl 2.

² See, e.g., *Arizona v. United States*, 132 S. Ct. 2492 (2012).

³ *Id.*

⁴ *Id.* (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).

⁵ *Id.* (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

⁶ See *Burbank v. Lockheed Air Terminal*, 411 U.S. 624, 633-34 (1973); accord *Singer v. City of Newton*, 284 F.Supp. 3d 125 (D. Mass. 2017).

⁷ See, e.g., Letter from Christopher R. Stevenson, FAA Office of the Chief Counsel, Enforcement Division, to Mark A. Winn, Assistant City Attorney, City of Petersburg (Sept. 16, 2016); Letter from Brandon C. Goldberg, FAA Office of the Regional Counsel, Southern Region to Alexander Karden, City Prosecutor, City of Orlando, Florida (Jan. 21, 2016); Brandon C. Goldberg, FAA Office of the Regional Counsel, Southern Region to Austin D. Roberson, Cobb County Attorney’s Office (Jun. 9, 2016); Brandon C. Goldberg, FAA Office of the Regional Counsel, Southern Region to David Wolpin, Esq., Counsel for the City of Aventura, Florida (May 26, 2016).

⁸ State and Local Regulation of Unmanned Aircraft Systems (UAS) Fact Sheet, Federal Aviation Administration Office of the Chief Counsel (Dec. 17, 2015) (“UAS Fact Sheet”) https://www.faa.gov/sites/aa.gov/files/uas/resources/policy_library/UAS_Fact_Sheet_Final.pdf.

⁹ UAS Fact Sheet at 3.

¹⁰ UAS Fact Sheet at 2; accord Letter from Reginald C. Govan, Chief Counsel, FAA, to Victoria Mendez, Esq., City Attorney, City of Miami (Dec. 9, 2015).

Sincerely,

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