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Written Testimony of the North Dakota UAS Council  
Presented by Frank Matus, Chair  
Before the North Dakota Legislative Assembly  
Regarding House Bill 1429

Date: Friday, January 24, 2025

Chairman and Members of the Committee,

The North Dakota UAS Council is submitting written testimony in opposition to House Bill 1429, as it risks undermining North Dakota's leadership in UAS innovation, conflicts with federal airspace regulations, and overextends property rights. While the intent of the bill is understood, there are already mechanisms and programs in place to accomplish what the authors are intending.

### **Impact on Innovation and Economic Growth**

North Dakota has earned a national reputation as a leader in UAS innovation and integration, consistently ranking as one of the most drone-friendly states according to the **Mercatus Center's State Drone Commerce Rankings**. The state's forward-thinking approach has fostered an environment that encourages technological advancements, economic growth, and job creation in the drone industry. However, House Bill No. 1429 could undermine this progress by introducing unnecessary regulatory burdens that conflict with the state's pro-innovation stance. Restrictive regulations could discourage businesses from investing in drone operations within North Dakota, driving economic opportunities to more permissive states and putting North Dakota's competitive edge at risk.

The state has fewer regulatory hurdles compared to others and actively encourages drone innovation. This favorable climate has positioned North Dakota as a national leader in UAS technology, driving advancements in defense, agriculture, emergency response, and infrastructure.

HB 1429 threatens to reverse this progress by criminalizing lawful drone operations without requiring proof of harm. Such restrictions would discourage investment, stifle innovation, and negatively impact critical industries—particularly agriculture, where drones are integral to crop monitoring and livestock management.

### **Federal Preemption**

The regulation of airspace, including the operation of unmanned aircraft systems (UAS), falls under the exclusive jurisdiction of the Federal Aviation Administration (FAA). Federal statutes such as the **Federal Aviation Act of 1958 (49 U.S.C. § 40103)** affirm that the United States government has "exclusive sovereignty of airspace" over the nation. Courts have consistently ruled that state and local governments cannot enact laws that conflict with federal regulations governing UAS operations, such as **Singer v. City of Newton, 284 F. Supp. 3d 125 (D. Mass. 2017)**, where a federal court struck down local drone regulations as preempted by FAA rules. HB 1429 disregards this precedent and introduces a direct conflict with federal law, opening the state to potential legal challenges, wasting taxpayer dollars in litigation.

### **Redundant Provisions Covered by Existing Laws**

This bill introduces unnecessary regulations that are already addressed under existing federal and state laws. Privacy concerns related to drone surveillance are comprehensively covered by federal privacy statutes and North Dakota's privacy laws. The **Fourth Amendment** to the U.S. Constitution and existing federal laws such as the **Electronic Communications Privacy Act (ECPA)** already prohibit unauthorized surveillance activities. Additionally, careless and reckless drone operations are addressed by FAA regulations under **14 CFR § 107.23**, which prohibits operations endangering the safety of persons or property, making this bill redundant.

### **Lack of Exemptions for Law Enforcement and Public Safety**

House Bill No. 1429 does not adequately address critical exemptions for law enforcement and public safety operations. Public agencies rely on UAS for search and rescue missions, disaster response, and surveillance of criminal activity. Restricting their operations without clearly defined exemptions could hinder emergency response capabilities and endanger lives.

Furthermore, the bill provides an overly narrow exception only for "reasonable commercial or agricultural purposes," without consideration of public safety needs. It is imperative that exemptions be clearly stated to ensure law enforcement agencies can continue leveraging UAS technology to protect the public. Existing laws in North Dakota already address privacy, trespassing, and harassment concerns, making HB 1429 unnecessary. A more effective approach would focus on strengthening privacy protections while aligning state regulations with federal FAA guidelines to ensure safe and responsible drone integration.

### **The Vagueness of 'Reasonable Commercial and Agricultural Purpose'**

The bill's language, particularly the phrase "**reasonable commercial and agricultural purpose**," is too vague and leaves significant room for interpretation. What constitutes "reasonable" may vary widely, leading to inconsistent enforcement and legal uncertainty. Vague statutes have historically been struck down in court as unconstitutional under the **void-for-vagueness doctrine**, which requires laws to provide clear standards of enforcement. This ambiguous language makes the bill susceptible to legal challenges and could discourage legitimate drone operators from conducting necessary operations out of fear of misinterpretation.

### **Potential Unenforceability**

The vague and overly broad scope of this bill would make enforcement nearly impossible. Determining whether a drone operator has committed an "intrusion" or "surveillance" violation would require significant resources, including sophisticated tracking technology and extensive legal interpretation. Law enforcement agencies, already stretched thin, would struggle to effectively enforce these provisions without clear, objective criteria.

For these reasons, I respectfully urge the committee to oppose HB 1429 and consider balanced alternatives that safeguard property rights while supporting North Dakota's continued leadership in UAS innovation. The ND UAS Council encourages lawmakers to engage with council members and the Northern Plains UAS Test Site to explore ways to advance our UAS industry while protecting property and privacy rights of North Dakota's citizens in a more constructive manner.

The North Dakota UAS Council