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Drone Federalism Act Seeks to Curb Call for "Anti-Drone" Technology

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The past decade has seen a rapid increase in the use of unmanned aircraft systems ("UAS") (sometimes, though unusually inaccurately, called "drones"). This has caused concerns among state and federal lawmakers over a wide variety of issues such as privacy, drug smuggling, potential crashes with aircraft, potential crashes with personal property or people, and even national security.

This increasing scrutiny has caused a new market to emerge for "anti-drone" technology. However well intentioned, many of these new technologies may run afoul of other U.S. federal and state laws. The most obvious, and often low-tech means, is by physically capturing or disabling drones. In the now famous "drone slayer" case, the defendant William Meredith used a shotgun to shoot down a UAS which he believed was invading his property. Other types of emerging technology include nets and similar devices to try and ensnare UASs. However, UASs are still considered "aircraft" by the Federal Aviation Administration ("FAA"), and it is a federal offense to damage, destroy, or disable an aircraft operating in U.S. airspace. 18 U.S.C. § 32.

On the more high-tech side, some companies have developed "drone guns," which operate on varying principles, but are typically based on "jamming," interfering with, or intercepting the radio signal between the UAS and its remote pilot. Even if such technology does not outright destroy the UAS, its use may still be a crime by "disabl[ing]" an aircraft. Also, the use of jamming technology may violate the Communications Act of 1934, which broadly prohibits the use of technology to block, jam, or interfere with authorized radio communications, and which also requires any radio transmitting devices to obtain prior operating approval from the Federal Communications Commission.

On May 25, 2017, Senator Dianne Feinstein (D-Calif.) introduced the Drone Federalism Act of 2017. While not a complete solution to the privacy concerns raised by UASs or the legal hurdles for proprietors of anti-drone technology, the bill would require remote pilots flying lower than 200 above ground level or structures to obtain permission of the property owner over which they would fly. The bill would also give state and local governments the authority to place "reasonable" restriction on low-altitude use of UASs. How this lat ter authority would play out is a great unknown, since this could lead to patchwork of varying state laws, and FAA regulations generally preempt state laws. Since the bill's introduction, however, it was referred to the Committee on Commerce, Science, and Transportation, and no action has been taken since.

At the very least, there is a need to address the growing privacy and other concerns raised by the proliferation of UASs, even though no immediate clarification appears on the horizon, whether from Congress, the FAA, the FCC, or elsewhere. In the meantime, those developing anti-drone technology should consult an attorney before taking any actions (including just shooting UASs) as part of any anti-drone pursuits.