

EFF to Michigan Court: Governments Shouldn't Be Allowed to Use a Drone to Spy on You Without a Warrant

BY HANNAH ZHAO | SEPTEMBER 13, 2023



Should the government have to get a warrant before using a drone to spy on your home and backyard? We think so, and in [an amicus brief](#) filed last Friday in *Long Lake Township v. Maxon*, we urged the Michigan Supreme Court to find that warrantless drone surveillance of a home violates the Fourth Amendment.

In this case, Long Lake Township hired private operators to repeatedly fly drones over Todd and Heather Maxon's home to take aerial photos and videos of their property in a zoning investigation. The Township did this without a warrant and then sought to use this documentation in a court case against them. In our brief, we argue that the township's conduct was governed by and violated the Fourth Amendment and the equivalent section of the Michigan Constitution.

The Township argued that the Maxons had no reasonable expectation of privacy based on a series of cases from the U.S. Supreme Court in the 1980s. In those cases, law enforcement used helicopters or small planes to photograph and observe private backyards that were thought to be growing cannabis. The Court found there was no reasonable expectation of privacy—and therefore no Fourth Amendment issue—from aerial surveillance conducted by manned aircraft.

But, as we pointed out in our brief, drones are fundamentally different from helicopters or airplanes. Drones can silently and unobtrusively gather an immense amount of data at only a tiny fraction of the cost of traditional aircraft. In other words, the government can buy thousands of drones for the price of one helicopter and its hired pilot. Drones are also smaller and easier to operate. They can fly at much lower altitudes, and they can get into spaces—such as under eaves or between buildings—that planes and helicopters can never enter. And the noise created by manned airplanes and helicopters functions as notice to those who are being watched—it's unlikely you'll miss a helicopter circling overhead when you're sunbathing in your yard, but you may not notice a drone.

Drone prevalence has soared in recent years, fueled by both private and governmental use. We have documented [more than 1,471 law enforcement agencies](#) across the United States that operate drones. In some cities, police have begun implementing “[drone as first responder](#)” programs, in which drones are constantly flying over communities in response to routine calls for service. It's important to remember that communities of color are more likely to be the targets of governmental surveillance. And authorities have routinely used aerial surveillance technologies against individuals participating in [racial justice movements](#). Under this backdrop, states like Florida, Maine, Minnesota, Nevada, North Dakota, and Virginia have enacted statutes requiring warrants for police use of drones.

Warrantless drone surveillance represents a formidable threat to privacy and it's imperative for courts to recognize the danger that governmental drone use poses to our Fourth Amendment rights.