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**NOTE: “HONEY, THERE’S A DRONE ON THE LAWN”:
ASSESSING THE SUPREME COURT’S UNSPOKEN
PERSPECTIVE ON THE FUTURE OF DRONES IN THE
COMMERCIAL INDUSTRY**

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I. INTRODUCTION.....144

II. THE COMMERCIALIZATION OF DRONES144

III. CURRENT DRONE LAWS & REGULATIONS146

IV. THE LEGAL PRECEDENT OF DRONE CASE LAW148

**V. THE REEVALUATION OF THE RESTATEMENT
SECOND OF TORTS152**

**VI. THE FEDERAL OVERLAP WITH STATE LAW
DOMINANCE.....156**

**VII. THE NEW SUPREME COURT OF THE UNITED
STATES157**

**VIII. THE BUSINESS IMPACT OF DRONE DELIVERY
SYSTEMS160**

IX. CONCLUSION162

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I. INTRODUCTION

The American entertainment industry dedicated a substantial part of the twentieth century to producing thousands of films and television shows depicting future illustrations of what life in the United States would look like in a post-millennium world.¹ These works often conjured up images of flying cars, hover boards, and encounters with extra-terrestrial life forms.² Among these images were also the commonly depicted unmanned aircraft.³ With the rapidly expanding technological industry in the United States, such technology is no longer a figment of the imagination, but rather an emerging reality.

Antonin Scalia's sudden death in February 2016⁴ left the Supreme Court sitting idle without one of its most famous perspectives. With the rapidly growing commercialization of drones in the United States, it is only a matter of time before the Supreme Court will decide whether drones will be permitted in the public sector by commercial delivery corporations. The appointment of Justice Neil Gorsuch in April 2017 provided the Court a more predictable perspective,⁵ but the definitive governance of the Court remains to be seen. This Article will address the growing legal concerns of drones being incorporated into today's open market and the future governance that may help decide the fate of this emerging industry.

II. THE COMMERCIALIZATION OF DRONES

At the forefront of drone commercialization is Amazon Prime-Air, a drone-based delivery system that Amazon started developing in December 2013.⁶ With this development, the way the United States perceives commercial delivery could change entirely. Specifically,

¹ See, e.g., *BACK TO THE FUTURE* (Universal Pictures 1985); *WAR OF THE WORLDS* (Paramount Pictures 2005); *The Jetsons* (Hanna-Barbera Productions 1997).

² See, e.g., *BACK TO THE FUTURE PART II* (Universal Pictures 1989); *E.T. THE EXTRA-TERRESTRIAL* (Universal Pictures 1982).

³ See, e.g., *EYE IN THE SKY* (Raindog Films 2016); *BODY OF LIES* (Warner Brothers 2008).

⁴ Josh Gerstein, *Supreme Court Justice Antonin Scalia Dead at 79*, POLITICO (Feb. 13, 2016, 10:27 PM), <http://www.politico.com/story/2016/02/breaking-news-supreme-court-justice-antonin-scalia-dead-at-the-age-of-79-219246>.

⁵ See generally Ramesh Ponnuru, *Neil Gorsuch: A Worthy Heir to Scalia*, NAT'L REV. (Jan. 31, 2017), <http://www.nationalreview.com/article/444437/neil-gorsuch-antonin-scalias-textualist-originalist-heir> (discussing Scalia and Gorsuch's textualist and originalist views).

⁶ *Amazon Unveils Futuristic Plan: Delivery by Drone*, CBS NEWS (Dec. 1, 2013), <http://www.cbsnews.com/news/amazon-unveils-futuristic-plan-delivery-by-drone/>.

Amazon CEO, Jeff Bezos, envisioned an aerial delivery system that would transmit packages directly to a customer's doorstep within thirty minutes.⁷ Under this system, unmanned aerial vehicles (UAVs), commonly known as “drones,” would pick up a package from a nearby cargo center and fly the contents to a delivery destination if the location was within a ten-mile radius of an Amazon distribution center.⁸ Bezos envisioned this plan requiring approximately four to five years to implement; a plan now coming to fruition as the first drone delivery occurred in April 2017.⁹

Since 2013, Amazon Prime-Air has lobbied for favorable legislation that would make such a new delivery system legally permissible.¹⁰ Currently, the biggest obstacle facing Amazon Prime-Air—and competitors mimicking its model—is overcoming federal regulations. Specifically, while legal steps have been taken since 2013 to help aerial deliveries become a possibility in the United States, the Federal Aviation Agency (FAA) still has not legalized unmanned UAVs for commercial operation.¹¹

In 2012, prior to Amazon Prime-Air's official announcement, Congress enacted the FAA Modernization and Reform Act (Act), which mandated that UAVs would need to be safely integrated into the national air travel system by September 30, 2015.¹² In preparation for Amazon Prime-Air, the FAA permitted Amazon to begin testing its original drone design in March 2015.¹³ As part of this testing, Amazon was required to fly its delivery drones “no higher than 400 feet . . . , no faster than 100 miles per hour . . . and remain within the pilot's line of sight” to comply with the FAA.¹⁴

⁷ *Id.*

⁸ *Id.*; See Nick Lavars, *Amazon to Begin Testing New Delivery Drones in the US*, NEW ATLAS (Apr. 13, 2015), <http://newatlas.com/amazon-new-delivery-drones-us-faa-approval/36957/>.

⁹ See *Amazon Unveils Futuristic Plan: Delivery by Drone*, *supra* note 6; Chris Wetterich & Erin Caproni, *Amazon to Create \$1.5B Air Hub at CVG*, CINCINNATI BUS. COURIER (Feb. 1, 2017), <http://www.bizjournals.com/cincinnati/news/2017/01/31/amazon-to-create-1-4b-air-hub-at-cvg.html>.

¹⁰ Byron Tau, *Amazon Hires Drone Program Lobbyist*, POLITICO (June 18, 2014), <http://www.politico.com/story/2014/06/amazon-drones-lobbyist-k-street-107996>.

¹¹ Lauren Orsini, *To Deliver With Prime Air Drones, Amazon Has to Solve These 3 Problems*, READWRITE (Dec. 2, 2013), <http://readwrite.com/2013/12/02/for-prime-air-to-become-a-reality-amazon-must-solve-these-problems-first/>.

¹² FAA Modernization and Reform Act of 2012, Pub. L. No. 112–95, § 332, 126 Stat. 11 (2012) (codified at 49 U.S.C. § 40101 note).

¹³ Lavars, *supra* note 8.

¹⁴ *Id.*

On January 31, 2017, Amazon Prime-Air took another step towards hitting the open market when it announced that it would be opening a special fulfillment center at the Cincinnati/Northern Kentucky Airport, which would help accommodate drone delivery operations for that particular region.¹⁵ While this hub will likely be the first of many that Amazon starts to develop in the coming months, this is a monumental step towards the system becoming fully-operative. However, although Amazon has cleared many of its foundational hurdles, there are still current and future legal issues that will arise.

III. CURRENT DRONE LAWS & REGULATIONS

While it is no secret that the introduction of commercialized drone delivery will generate excitement amongst consumers, public concern will likely grow as well. The implementation of drones into the commercial sector overlaps with various legal issues, ranging from public safety to privacy to tortious claims of trespass.¹⁶ As a result, Amazon and its competitors will have to clear those obstacles before the market can prosper.¹⁷ Amazon, recognizing this concern, noted that “[s]afety is our top priority.”¹⁸ Amazon, however, failed to acknowledge that safety is only one of several legal hurdles that needs to be overcome. While safety is a pertinent concern for this industry’s success, this industry is also far beyond the scope of what the framers envisioned for the American business industry two hundred and forty years ago.

The FAA, acting as this industry’s primary agency, established a committee in February 2016 to address future regulations for UAVs to deliver products in cities and highly-populated areas across the country.¹⁹ One of the FAA’s primary concerns is privacy.²⁰ Commercial delivery of drones will involve UAVs traveling across

¹⁵ Wetterich & Caproni, *supra* note 9.

¹⁶ Orsini, *supra* note 11.

¹⁷ *Id.*

¹⁸ *Amazon Prime Air*, AMAZON, <https://www.amazon.com/b?node=8037720011> (last visited Sept. 10, 2017).

¹⁹ See Press Release, Fed. Aviation Admin., FAA Unveils Effort to Expand the Safe Integration of Unmanned Aircraft (Feb. 24, 2016), https://www.faa.gov/news/press_releases/news_story.cfm?newsId=20015.

²⁰ See Peter W. Singer, *The Predator Comes Home: A Primer on Domestic Drones, Their Huge Business Opportunities, and Their Deep Political, Moral, and Legal Challenges*, BROOKINGS (Mar. 8, 2013), <https://www.brookings.edu/research/the-predator-comes-home-a-primer-on-domestic-drones-their-huge-business-opportunities-and-their-deep-political-moral-and-legal-challenges/>.

major skylines and landing on helipads in residences' backyards.²¹ By traveling at low altitudes with cameras attached to them, UAVs have the potential to intentionally and unintentionally capture information about the usage of land below them.²² This process will likely result in several individuals bringing claims for both invasion of privacy and physical trespass.²³ Thus, the FAA will be inundated with legal battles well past the date that Amazon and its competitors actually begin deliveries.

Congress made efforts to regulate UAV usage because the FAA has the potential to resolve many problems on a national level before businesses try to dictate the level of innovation for the industry.²⁴ While the FAA has not been as stringent in regulating drone flight for leisure, Americans are cognizant that federal restrictions can hinder economic growth.²⁵ Amazon looks to influence these regulators for the foreseeable future so that the FAA does not try to dismiss this rapidly growing market.²⁶ Demand for UAV deliveries in urbanized communities will only continue to grow as drones become more affordable, intriguing, and capable of tearing down the protected low-altitude airspace that has buffered privacy for decades.²⁷ While it is likely that the FAA will stall this momentum for a brief period, there eventually will come a time when Congress can no longer justify the discouragement of innovation, community competitiveness, and market development.²⁸

The momentum that comes with commercial UAV access will force Congress and the Supreme Court to eventually consider various legal facets that will be impacted by this development. This transition will likely force the FAA to loosen its regulations and permit state and local governments to manage the control of UAVs in their communities.²⁹ If so, local communities will have much wider discretion, so long as the discretion is not abused.³⁰

In 2012, Congress passed the FAA Modernization and Reform

²¹ See *Amazon Unveils Futuristic Plan: Delivery by Drone*, *supra* note 6.

²² *See id.*

²³ *Id.*

²⁴ Michael N. Widener, *Local Regulating of Drone Activity in Lower Airspace*, 22 B.U. J. SCI. & TECH. L. 239, 260 (2016).

²⁵ *Id.*

²⁶ Troy A. Rule, *Airspace in an Age of Drones*, 95 B.U. L. REV. 155, 206 (2015).

²⁷ Widener, *supra* note 24, at 261.

²⁸ *Id.* at 263.

²⁹ *Id.* at 263–64.

³⁰ *Id.* at 263.

Act.³¹ This Act included many provisions addressing the future of airspace regulation in the United States.³² Recognizing this changing climate, the Act introduced a “community-based organization” concept that laid out regulatory guidelines.³³ This provision did not give exclusive control to communities but recognized that Congress wants the FAA to always consider community concerns in adopting future regulations.³⁴

There is a growing belief that segmenting the low-altitude airspace into a regulated entity makes sense for state and local regulators, as they better understand the local needs for development, public safety, and economic success.³⁵ The regulation of low-altitude airspace today will hinge on varying issues of entitlement.³⁶ This conflict will entail a calculated balancing of regulators honoring individual’s rights to airspace, while also allowing the industry to flourish in a business-like manner.³⁷

IV. THE LEGAL PRECEDENT OF DRONE CASE LAW

The commercialization of drones opens the door to litigation from a number of legal fields. While the Supreme Court has already made prior judgments on legal issues that will likely overlap with this industry,³⁸ the use of UAVs is such a novel idea that a majority of these rulings will have to be reanalyzed to address legal problems from this new perspective. Unlike recent judgments, Antonin Scalia’s death in February 2016 leaves the Court poised to decide how drones will be permitted with a new justice on the bench. While a different version of the Court will decide these issues, the unspoken perspective of their long-time colleague will still play a key role in determining

³¹ See FAA Modernization and Reform Act of 2012, Pub. L. No. 112–95, §§ 1, 3, 126 Stat. 11 (2012) (codified at 49 U.S.C. § 40101 note).

³² See Brandon Bellows, Comment, *Floating Toward a Sky Near You: Unmanned Aircraft Systems and the Implications of the FAA Modernization and Reform Act of 2012*, 78 J. AIR L. & COM. 585, 616 (2013).

³³ See FAA Modernization and Reform Act of 2012 § 336(a)(2); Henry H. Perritt Jr. & Albert J. Plawinski, *One Centimeter Over My Back Yard: Where Does Federal Preemption of State Drone Regulation Start?*, 17 N.C. J.L. & TECH. 307, 360 (2015).

³⁴ FFA Modernization and Reform Act of 2012 § 336. The FAA Modernization and Reform Act is an appropriation bill for the years 2011-2014. *Id.* at pmb1. After 2014, the Act was simply not in effect as to the appropriations. See generally *id.*

³⁵ Widener, *supra* note 24, at 264.

³⁶ *Id.* at 265.

³⁷ *Id.*

³⁸ See generally *United States v. Causby*, 328 U.S. 256 (1946) (requiring an easement to be described as temporary or permanent when determining whether the frequency of flight, permissible altitude, or type of airplane qualify as a taking).

future dispositions.³⁹

Before delving into how the Court will rule on some of these legal issues, one must first analyze important cases and eras of the Court that preceded drone commercialization to understand the foundation already in place. Prior to the Air Commerce Act of 1926, Congress considered landowner's airspace rights through the ad coelum doctrine.⁴⁰ The ad coelum doctrine suggests that "to whomsoever the soil belongs, he owns also to the sky."⁴¹ Since this theory was developed during a time when airspace rights were less valuable, the doctrine did not limit the extension of a landowner's rights; theoretically, one owned the airspace to the heavens and back.⁴²

This doctrine could not foresee the impact that modernization would have on the twentieth century. Specifically, Congress passed the Air Commerce Act of 1926, which authorized interstate flights within "navigable airspace," later defined as 500 feet above ground level.⁴³ This regulation seemingly overturned the theory behind ad coelum, thus inspiring the Court to finally address the issue of landowner's airspace rights more definitively in 1946 with *United States v. Causby*.⁴⁴

In *Causby*, a chicken farmer in North Carolina sued the U.S. government because an adjacent municipal airport introduced a level of noise and light so severe that it caused his chickens to fly into walls and die.⁴⁵ The Causby family sued the U.S. government because they believed the military's usage of their land constituted a Fifth Amendment compensable taking.⁴⁶

³⁹ Adam Liptak, *In Judge Neil Gorsuch, an Echo of Scalia in Philosophy and Style*, N.Y. TIMES (Jan. 31, 2017), <https://www.nytimes.com/2017/01/31/us/politics/neil-gorsuch-supreme-court-nominee.html?mcubz=3>.

⁴⁰ See ROBERT R. WRIGHT, *THE LAW OF AIRSPACE* 35 (1968) (noting that *Blackstone's Commentaries* reiterated Edward Coke's "viewpoint on ownership of airspace," which included the ad coelum doctrine, and that these *Commentaries* "burst upon the scene practically on the eve of American independence . . ."); see also EDWARD COKE, *THE FIRST PART OF THE INSTITUTES OF THE LAWS OF ENGLAND*, VOL.1 4.a (1832) ("And lastly, the earth hath in law a great extent upwards, not only of water, as hath been said, but of ayre and all other things even up to heaven; for *cujus est solum ejus est usque ad coelum*.").

⁴¹ Rule, *supra* note 26, at 166 (quoting *Cujus est solum, ejus est usque ad coelum et ad inferos*, BLACK'S LAW DICTIONARY (6th ed. 2009)).

⁴² *Id.*

⁴³ See Air Commerce Act of 1926, ch. 344, § 10, 44 Stat. 568 (1926); Federal Aviation Act of 1958, Pub. L. No. 85-726, § 101(24); *Griggs v. Alleghany*, 369 U.S. 84, 86-90 (1962).

⁴⁴ See *United States v. Causby*, 328 U.S. 256, 264 (1946).

⁴⁵ *Id.* at 258-59.

⁴⁶ See *id.* at 258; Rule, *supra* note 26, at 167.

Justice William Douglas, writing the opinion in *Causby*, established that the ad coelum doctrine had “no place in the modern world” and that landowners should not take the doctrine literally because landowners generally did not have a right to prevent aircrafts from flying in the public domain.⁴⁷ Additionally, Douglas stressed that landowners could still bring claims for aerial trespass because landowners own “at least as much of the space above the ground as he can occupy or use in connection with the land.”⁴⁸ Douglas acknowledged that where government fly-overs are “so low and so frequent as to be a direct and immediate interference with the enjoyment and use of [one’s] land,” there was a high likelihood that these flights could rise to the level of a compensable taking.⁴⁹

Not only was ad coelum no longer the leading theory, but landowners could also no longer exclude aircrafts from high-altitude airspace. This coincided with the rise of commercial aviation as a popular means of transportation.⁵⁰ While landowners established some rights as to low-altitude airspace, the dismissal of ad coelum opened the door to the commercialization and growth of the aviation business sector.⁵¹

After *Causby*, many questions remained unanswered, including how to interpret a landowner’s right to the airspace in the “immediate reaches” of their land.⁵² The *Causby* Court took the approach that this space referred to the area that landowners “occupy or use in connection with the land,” without offering any further clarity.⁵³ While the “immediate reaches” diction sufficed in 1946,⁵⁴ the indefiniteness could not address conflicts that would arise in later years with modern aviation; thus, while *Causby* laid the initial foundation for landowners and low-altitude airspace, the push for drones in the public sector will reintroduce similar legal issues from an unforeseen perspective.

There are numerous legal issues impacted by the commercialization of drones, and aerial trespass appears to be at the

⁴⁷ *Causby*, 328 U.S. at 260–61.

⁴⁸ *Id.* at 264–65.

⁴⁹ *Id.* (alteration in original).

⁵⁰ Not only was ad coelum no longer the leading theory, but landowners additionally could no longer exclude aircrafts from high-altitude airspace, as commercial aviation was becoming a popular means of transportation for the American public. See *id.* at 266.

⁵¹ *Id.*

⁵² See Rule, *supra* note 26, at 169.

⁵³ *Causby*, 328 U.S. at 264.

⁵⁴ Rule, *supra* note 26, at 169.

forefront of these debates.⁵⁵ Specifically, courts must look subjectively at whether or not a drone infiltrates the “immediate reaches” of landowner’s airspace and whether this interferes with a landowner’s use and enjoyment of his land.⁵⁶ Under the Restatement (Second) of Torts, “[f]light by aircraft in the air space above the land of another is a trespass if, but only if, (a) it enters into the immediate reaches of the air space next to the land, and (b) it interferes substantially with the other’s use and enjoyment.”⁵⁷ Additionally, drones could be classified as projectiles, which triggers Section 158 of the Restatement (Second) of Torts, where “it is an actionable trespass . . . to fire projectiles . . . through the air above [another’s land], even though no harm is done to the land or to the possessor’s enjoyment of it.”⁵⁸ As a result, the way the Court will inevitably rule on matters, like trespass and airspace interference, remains unclear as these dispositions will be novel, challenging, and unprecedented.⁵⁹

Constitutional law issues could arise in the form of takings. Airspace takings are analyzed on an ad hoc basis when an “aircraft flying over a landowner’s property [is] low enough and with sufficient frequency to have a direct and immediate impact on the use and enjoyment of the property.”⁶⁰ Currently, the broadness of this language arguably leaves too much discretion to the courts. As a result, the legal parameters for takings by drones will need to be distinguished from the generality that currently classifies airspace takings.

Based on the limited case law currently addressing drones, it is inevitable that the development of Amazon Prime-Air is going to create a new frontier for the legal landscape in the United States. The Supreme Court will need to make important judgments on both federal and state regulations that will shape the future of this industry. A big determinant in the outcome of these decisions will be the Supreme Court’s newest addition, Justice Neil Gorsuch, and the role he plays in these proceedings.

⁵⁵ See Alex Spelman, *Drones: Updating the Fourth Amendment and the Technological Trespass Doctrine*, 16 NEV. L.J. 373, 374–75 (2015).

⁵⁶ See RESTATEMENT (SECOND) OF TORTS § 159(2) (AM. LAW INST. 1965).

⁵⁷ *Id.*

⁵⁸ *Id.* at § 158, cmt. i (alteration in original).

⁵⁹ See Nabiha Syed & Michael Berry, *Journo-Drones: A Flight over the Legal Landscape*, 30 J. MEDIA INFO. & COMM. L. 1, 2–4 (2014).

⁶⁰ *Brenner v. New Richmond Reg’l Airport Comm’n*, 816 N.W.2d 291, 310 (Wis. 2012) (alteration in original).

V. THE REEVALUATION OF THE RESTATEMENT SECOND OF TORTS

Commercial drone delivery will introduce both foreseeable and unforeseeable issues that will likely be highly litigated in the next twelve to eighteen months.⁶¹ With an industry that intersects several fields of law, one cannot address each unique issue that might arise. Instead, this Article will focus on inevitable claims that will find their way to the Supreme Court in one form or another. At the forefront of these claims will be tortious conduct that stems from drones' commercial use.

While the Court first ruled on landowner's control of the air above one's land in *Causby*, establishing the "immediate reaches" doctrine,⁶² invasion of one's privacy, trespass, private nuisance and abatement are all potential issues currently covered under the Restatement (Second) of Torts.⁶³ The Restatement acknowledges that a cause of action exists for "intrusion upon seclusion."⁶⁴ Under this doctrine, "one who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another . . . is subject to liability to the other for invasion of privacy, if the intrusion would be highly offensive to a reasonable person."⁶⁵ Intrusion is an intentional tort, in that intrusion alone suffices for a valid claim; however, a drone that might happen to capture a brief glimpse of an individual's private life will likely not rise to that level.⁶⁶

Drone usage presents new challenges to the American legal system because it is nearly impossible to predict every way in which a growing market will both create and use technology in the immediate future.⁶⁷ A major question for lawmakers will be whether the simple act of flying a drone constitutes a valid claim for intrusion upon seclusion.⁶⁸ So far, judges have not had the occasion to specifically

⁶¹ See Joshua Briones et al., *An Update On Drone Privacy Concerns*, LAW360 (Oct. 12, 2016, 12:16 PM), <https://www.law360.com/articles/848165/an-update-on-drone-privacy-concerns>.

⁶² *United States v. Causby*, 328 U.S. 256, 264 (1946).

⁶³ See Benjamin D. Mathews, Comment, *Potential Tort Liability for Personal Use of Drone Aircraft*, 46 ST. MARY'S L.J. 573, 586–95 (2015).

⁶⁴ RESTATEMENT (SECOND) OF TORTS §652B (AM. LAW INST. 1977).

⁶⁵ *Id.*

⁶⁶ See *Kyllo v. United States*, 533 U.S. 27, 32 (2001) ("The Fourth Amendment protection of the home has never been extended to require law enforcement officers to shield their eyes when passing by a home on public thoroughfares.") (quoting *California v. Ciraolo*, 476 U.S. 207, 213 (1986)).

⁶⁷ John Villasenor, *Observations from Above: Unmanned Aircraft Systems and Privacy*, 36 HARV. J.L. & PUB. POL'Y 457, 461 (2013).

⁶⁸ See WELLS C. BENNETT, CIVILIAN DRONES, PRIVACY, AND THE FEDERAL-STATE BALANCE 1, 4 (2014), [http://www.brookings.edu/~media/Research/Files/Reports/2014/09/civilian-drones-](http://www.brookings.edu/~media/Research/Files/Reports/2014/09/civilian-drones-continued)

address the issue because some of the claims have been resolved by juries.⁶⁹ Additionally, some plaintiffs have failed to prove that a reasonable person could conclude that there was an intentional intrusion upon seclusion.⁷⁰ Specifically, the issue hinges on whether an individual is considered to be in a place where he or she should expect privacy.⁷¹

While some states have proposed general legislation regarding drones, a minority of jurisdictions have wasted no time in issuing strict rules stating that drone flights by private citizens are not permitted.⁷² Meanwhile, other states, like Texas, have been more proactive in creating a balanced approach to private drone usage by passing statutes that give both permitted and prohibited uses.⁷³ So far, states have been given significant discretion on drone law, as the majority of jurisdictions have state-enacted decisions with minimal oversight from the FAA.⁷⁴ Presumably, the FAA will monitor this industry until there are overarching problems that need to be addressed.

Along with individual privacy concerns comes the problem of trespass. Trespass claims for drones will spark debates over the formal meaning of what land trespass means under the doctrine of *trespass quare clasum fregit*.⁷⁵ In plain language, this doctrine refers to the breaking of the imaginary barrier around the outside edge of one's real property.⁷⁶ The intrusion of any "foreign matter" upon a landowner's land is sufficient to establish trespass.⁷⁷ Under this claim,

privacy/civilian_drones_privacy_bennett_NEW.pdf?la=en.

⁶⁹ *Id.* at 7.

⁷⁰ *Compare* Hougum v. Valley Mem'l Homes, 574 N.W.2d 812, 818 (N.D. 1998) (denying recovery for defendant's inadvertent viewing of plaintiff masturbating in a bathroom stall when reasonable persons could only conclude that the intrusion was not an intentional intrusion upon seclusion from the objective view of a reasonable person), *with* Villasenor, *supra* note 67, at 501 ("A person who is unwillingly photographed in his or her own home by a UAV hovering outside an otherwise inaccessible window would have strong grounds for a valid cause of action."); *see also* No, You Can't Use a Drone to Spy on Your Sexy Neighbor, WIRED (June 22, 2012, 6:30 AM), http://www.wired.com/2012/06/ff_dronerules (stating one may not view a fully or partially nude person without their knowledge, so long as they have a reasonable expectation of privacy).

⁷¹ *See* VINCENT R. JOHNSON, STUDIES IN AMERICAN TORT LAW 953 (5th ed. 2013) (acknowledging that a plaintiff must have a reasonable expectation of solitude, seclusion, or privacy).

⁷² *See* Mathews, *supra* note 63, at 589.

⁷³ *See generally* TEX. GOV'T CODE ANN. § 423 (West 2013) (addressing the usage of unmanned aircrafts in the state of Texas).

⁷⁴ Widener, *supra* note 24, at 241.

⁷⁵ *See* JOHNSON, *supra* note 71, at 874.

⁷⁶ *Trespass quare clasum fregit*, BLACK'S LAW DICTIONARY (10th ed. 2014).

⁷⁷ Mathews, *supra* note 63, at 592.

an injured party will need to show that a drone's interference was with "actual use of, or substantial damage to, the person's property."⁷⁸ In the past, tort claims were successful when a physical intrusion occurred on an individual's land in areas ranging from twenty to ninety feet.⁷⁹ These cases did not perceive the law from the perspective of drones because they dealt primarily with human trespass.⁸⁰ While state law will lay the groundwork, some theorists believe that it will be almost "necessary to add specific language to criminal trespassing statutes" for UAVs.⁸¹ Currently, several states have existing trespass laws that could be applied to UAVs, but ambiguity in other states makes uniformity inevitably needed across state lines.⁸²

Another tort that protects an individual's right to use and enjoy his or her land is private nuisance. The major distinction between trespass and nuisance is thin and hinges on the alleged interest being interfered with.⁸³ For trespass, an individual interferes with the possession and physical condition of one's land, whereas with nuisance, an individual interferes with a landowner's use and enjoyment of property.⁸⁴ In addition to interfering with an individual's use and enjoyment, the invasion must be one that is "intentional and unreasonable, or . . . for abnormally dangerous . . . activities."⁸⁵ This requirement pivots on whether one can reasonably conclude that an individual acted with the intention of causing an interference or being substantially certain that an interference would likely occur.⁸⁶

This intentionality requirement will also depend on whether an act is considered to be recurring conduct.⁸⁷ Specifically, when an act or intrusion occurs more than once, there is likely more evidence that the act was intentional.⁸⁸ As a result, the Court will likely not say that one

⁷⁸ *Id.*

⁷⁹ *See* United States v. Causby, 328 U.S. 256, 264 (1946); *see also* Guille v. Swan, 19 Johns. 381, 382 (N.Y. Sup. Ct. 1822) (holding a hot air balloonist, who descended in seek of help, liable for trespass when he subsequently trampled a farmer's crops beneath him).

⁸⁰ *See Causby*, 328 U.S. at 264; *see also Guille*, 19 Johns. at 382.

⁸¹ Villasenor, *supra* note 67, at 500.

⁸² *Id.*

⁸³ *See* Fairlawn Cemetery Ass'n v. First Presbyterian Church, 496 P.2d 1185, 1187 (Okla. 1972).

⁸⁴ *See id.*

⁸⁵ RESTATEMENT (SECOND) OF TORTS § 822 (AM. LAW INST. 1979) (defining private nuisance); Mathews, *supra* note 63, at 594.

⁸⁶ RESTATEMENT (SECOND) OF TORTS § 825 (AM. LAW INST. 1979) (stating intentional invasion elements).

⁸⁷ *Id.* § 825 cmt. d.

⁸⁸ *Id.*

accidental flyover of a drone on an individual's property could rise to the level of nuisance, but that reoccurrences of this issue might give rise to a claim.⁸⁹ Thus, Amazon Prime-Air will likely hope for the Court to relax this parameter, as frequent flyovers will be inevitable, especially for landowners near distribution centers.

Similar to other torts, nuisance claims will vary by jurisdiction because laws between states are not uniform.⁹⁰ Under nuisance, remedies are limited to how a person abates a potential nuisance reasonably.⁹¹ Landowners will need to be cautious in not taking abatement actions that are unreasonably destructive, as extreme actions will likely give a drone operator a counterclaim based on unnecessary self-help remedies.⁹² Thus, if landowners try to abate drones by shooting one down, blowing it up, or destroying it in any manner, the likelihood of that nuisance claim succeeding will diminish due to the unreasonableness of their abatement.⁹³

With the introduction of drones to the commercial market comes the question of whether privately-piloted drones will be considered abnormally dangerous activities, therefore making pilots susceptible to strict liability.⁹⁴ According to the Restatement (Second) of Torts, strict liability is described as "liability aris[ing] out of the abnormal danger of the activity itself, and the risk that it creates, of harm to those in the vicinity."⁹⁵ In order for the Court to find that UAVs fall under this category, the harm of the drone's usage must rise to the level of an abnormally dangerous activity.⁹⁶ Case law does not address matters too closely related to UAVs and abnormally dangerous activities.⁹⁷ Currently, abnormally dangerous activities include, but are not limited to: explosions, poisonous gas exposures,

⁸⁹ Mathews, *supra* note 63, at 594.

⁹⁰ *Id.*

⁹¹ See JOHNSON, *supra* note 71, at 910.

⁹² Mathews, *supra* note 63, at 596; see A. Michael Froomkin & Zak Colangelo, *Self-Defense Against Overflying Drones*, WASH. POST (Oct. 3, 2014), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/10/03/self-defense-against-overflying-drones/?utm_term=.7a91507f8434 (arguing for clearer solutions, other than self-help remedies, for individuals to alert someone when the use and enjoyment of their property is interfered with by drones).

⁹³ See generally Froomkin & Colangelo, *supra* note 92.

⁹⁴ Mathews, *supra* note 63, at 597.

⁹⁵ RESTATEMENT (SECOND) OF TORTS § 519 cmt. d (AM. LAW INST. 1977).

⁹⁶ See RESTATEMENT (SECOND) OF TORTS § 822 cmt. k (AM. LAW INST. 1979) (alteration in original) (distinguishing between the different level of invasive activities when determining a tortious cause of action for strict liability).

⁹⁷ See Geoffrey Christopher Rapp, *Unmanned Aerial Exposure: Civil Liability Concerns Arising from Domestic Law Enforcement Employment of Unmanned Aerial Systems*, 85 N.D. L. REV. 623, 637 (2009).

and radioactive emissions.⁹⁸ Thus, to classify private drone usage as “abnormally dangerous,” it will first take significant efforts to bypass lesser, more applicable standards than strict liability.

VI. THE FEDERAL OVERLAP WITH STATE LAW DOMINANCE

The federal government’s overlap with state laws regarding individual’s drone usage has been both aggressive and lax. While drone laws remain primarily a state issue, the FAA is still responsible for regulating and overseeing civil aviation, regardless of whether it is an aircraft, drone, or any other object in the sky.⁹⁹ Specifically, since the FAA governs national airspace, the agency has the authority to supersede any state laws controlling the use of UAVs by private citizens.¹⁰⁰ In particular, federal law defeats state action: (1) if a statute expressly states an intent to preempt state action; (2) if a court concludes that Congress intended to occupy the regulatory field; or (3) if the action directly conflicts or frustrates the purpose of federal provisions.¹⁰¹

The FAA has not addressed many concerns over drone usage, especially regarding privacy.¹⁰² Additionally, criticism over federal interference with these issues is widespread, as legal scholars prefer state law to dictate drone law, since the Constitution fails to address these privacy concerns.¹⁰³ That is not to say that the FAA should have zero input on the matter, but rather the FAA’s focus should be on the safety of citizens and overarching aviation matters.¹⁰⁴ State law advocates simply believe privacy concerns and other tortious conduct should be handled at the state level.¹⁰⁵

⁹⁸ See RESTATEMENT (SECOND) OF TORTS § 822 cmt. J (AM. LAW INST. 1982) (listing several cases that involved abnormally dangerous activities).

⁹⁹ See Mathews, *supra* note 63, at 600–01.

¹⁰⁰ See generally ALISSA M. DOLAN & RICHARD M. THOMPSON II, CONG. RESEARCH SERV., R42940, INTEGRATION OF DRONES INTO DOMESTIC AIRSPACE: SELECTED LEGAL ISSUES (2013) (discussing Congress’s authority and that of federal agencies to set federal policy on drones).

¹⁰¹ *Id.* For example, a court recently held that the FAA’s regulations on commercial drone use preempted a Massachusetts city ordinance. See *Singer v. City of Newton*, No. 17-10071-WGY, 2017 WL 4176477 at *6 (D. Mass. Sept. 21, 2017), *appeal filed* 2017 WL 4176477 (1st Cir. Oct. 26, 2017); Dave Embree, *FAA Rules Override City’s Drone Restrictions, Judge Says*, 2017 WL 4248304 (Sept. 26, 2017).

¹⁰² See Unmanned Aircraft System Test Site Program, 78 Fed. Reg. 12,259, 12,260 (Feb. 22, 2013) (codified at 14 C.F.R. pt. 91) (discussing FAA’s potential approach to privacy for UAVs).

¹⁰³ See Margot E. Kaminski, *Drone Federalism: Civilian Drones and the Things They Carry*, 4 CAL. L. REV. CIR. 57, 58 (2013).

¹⁰⁴ See *id.* at 67.

¹⁰⁵ See *id.*

Tort law will dictate the response to most problems arising from private drone usage. While current tort laws are sufficient to address some cause of actions, case law will eventually pave the way for areas not sufficiently covered by tort law. Specifically, courts will need new parameters for drone trespass on individual's land and must define invasions of privacy caused by drones.¹⁰⁶ Thus, an inevitable merger will occur between existing tort laws and issues decided by the Court because a new standard of societal conduct will need to emerge for an American infrastructure that is constantly changing.¹⁰⁷

VII. THE NEW SUPREME COURT OF THE UNITED STATES

The start of 2017 brought substantial changes to Washington and the future landscape of the country's political and legal future. First, the death of Antonin Scalia in February 2016 left a vacant seat on the Supreme Court and the country in gridlock until the appointment of Neil Gorsuch in April 2017.¹⁰⁸ Second, the political climate changed drastically with the election of Donald Trump as the forty-fifth President of the United States this past November.¹⁰⁹ Not only have Republicans taken control of the Presidency and Congress, but now they also possess the power to break the tie in the Court's vote for the foreseeable future.¹¹⁰ Thus, the political landscape for when Amazon Prime-Air first announced its development of commercialized UAV delivery in December 2013 and the present day has changed entirely.¹¹¹

With the Supreme Court back at its full capacity of nine justices, there does not appear to be a scenario where the Court's majority leans towards a liberal perspective in the coming years.¹¹² Thus, the best

¹⁰⁶ See generally Froomkin & Colangelo, *supra* note 92.

¹⁰⁷ See Mathews, *supra* note 63, at 602.

¹⁰⁸ Bill Schneider, *How Antonin Scalia's Death Reshapes the 2016 Election*, REUTERS: THE GREAT DEBATE (Feb. 16, 2016), <http://blogs.reuters.com/great-debate/2016/02/15/how-antonin-scalias-death-reshapes-the-2016-election/>.

¹⁰⁹ Geoffrey Kapservice, *When Republicans Take Power*, N.Y. TIMES, (Nov. 12, 2016), <https://www.nytimes.com/2016/11/13/opinion/sunday/when-republicans-take-power.html>.

¹¹⁰ Richard Wolf, *How Neil Gorsuch Could Impact Current and Future Supreme Court Cases*, USA TODAY (Feb. 2, 2017, 7:06 AM), <https://www.usatoday.com/story/news/politics/2017/02/02/neil-gorsuch-supreme-court-cases/97367082/>.

¹¹¹ See generally *Amazon Unveils Futuristic Plan: Delivery by Drone*, *supra* note 6.

¹¹² See Julie H. Davis & Mark Landler, *Trump Nominates Neil Gorsuch to the Supreme Court*, N.Y. TIMES (Jan. 31, 2017), https://www.nytimes.com/2017/01/31/us/politics/supreme-court-nominee-trump.html?_r=0.

way to predict how the Court will analyze upcoming cases is from a conservative point of view. Also, under the assumption that Justice Gorsuch remains similarly-minded to the famously far-right Scalia, the best analysis for understanding future decisions will be to analyze past Courts that consisted of conservative majorities with like-minded perspectives.

The most famous examples of conservative-leaning Courts are the Burger Court (1969–1986) and the Rehnquist/Roberts Court (1986–present).¹¹³ Of the two, the Burger Court was more moderate, as it was a transition Court from the liberal-minded Chief Justice Warren to the strongly-conservative Chief Justice Rehnquist.¹¹⁴ Although drones were non-existent during this era, Burger frequently questioned the need for a judicial remedy; Burger was a strong believer that courts could not cure all injustices and that states should have discretion for particular issues.¹¹⁵ The Court’s judicial philosophy frequently shifted during this era, as four conservatives joined the Court during Richard Nixon’s administration from 1969 to 1974.¹¹⁶

Carrying on Justice Burger’s philosophy, Justice Rehnquist, also an appointment under President Nixon, favored returning power to the states, and was supported by his colleagues O’Connor, Kennedy, Scalia, and Thomas in striking down most federal laws.¹¹⁷ These justices established a strong-right mentality, where Scalia and Thomas (both considered strong conservatives) meshed nicely with the more moderate conservatives of Rehnquist (philosophically the middle of the five), Kennedy and O’Connor.¹¹⁸

The Roberts Court, which began during President George W. Bush’s second term in 2005, developed the nickname “conservative in most cases, liberal in some,” as the Court held a 5–4 conservative majority until Scalia’s death last year.¹¹⁹ Though the Court often does

¹¹³ See Stephen Gillers, *Burger’s Warren Court*, N.Y. TIMES (Sept. 25, 1983), <http://www.nytimes.com/1983/09/25/opinion/burger-s-warren-court.html>.

¹¹⁴ See *id.*

¹¹⁵ See Linda Greenhouse, *Warren E. Burger Is Dead at 87; Was Chief Justice for 17 Years*, N.Y. TIMES, June 26, 1995, at B6.

¹¹⁶ Gillers, *supra* note 113; Jeffrey Rosen, *Rehnquist the Great?*, ATLANTIC (Apr. 2005), <https://www.theatlantic.com/magazine/archive/2005/04/rehnquist-the-great/303820/>.

¹¹⁷ See generally Linda Greenhouse, *William H. Rehnquist, Chief Justice of Supreme Court, Is Dead at 80*, N.Y. TIMES (Sept. 4, 2005), http://www.nytimes.com/2005/09/04/politics/william-h-rehnquist-chief-justice-of-supreme-court-is-dead-at-80.html?_r=0 (discussing Justice Rehnquist’s role in overturning federal laws because they were the domain of the states); see also Rosen, *supra* note 116.

¹¹⁸ Rosen, *supra* note 116.

¹¹⁹ See Richard Wolf, *Chief Justice John Roberts’ Supreme Court at 10, Defying*
continued . . .

divide along ideological lines, Roberts is seen as having a more moderate conservative orientation than his predecessor, Justice Rehnquist.¹²⁰

Roberts' judicial philosophy is seen as more moderate than that of Antonin Scalia and Clarence Thomas.¹²¹ Unlike Scalia, Roberts has not indicated any unwavering loyalty to the framer's intentions.¹²² Roberts' largest effort has been to reestablish the perception that the Court is a neutral, modest body that should make important decisions, while maintaining a low profile.¹²³ Roberts' voting pattern is most closely aligned to Justice Alito, which is a little more libertarian than the historic conservative mindset.¹²⁴

Justice Gorsuch's future dispositions will likely return the conservative-lean to the country's highest federal court. Justice Roberts might try to have the judiciary maintain a low profile, but with all the political turmoil and big decisions looming in 2018, the addition of a conservative swing vote will help lay new precedents on drone commercialization and other legal causes.

President Trump's approach to filling the last spot on the Supreme Court was consistent with wanting a strong conservative that had similar ideological beliefs to the famous originalist/textualist Antonin Scalia.¹²⁵ Justice Gorsuch will likely follow his predecessor in this mentality. Thus, as one considers how this new justice will analyze future legal claims pitting the powers of the federal government against the rights that belong to the states, it is important to note that Scalia often favored the states' positions.¹²⁶ In *Printz v. United States*, Scalia ruled a provision unconstitutional because it imposed duties that violated the Tenth Amendment, which states that the federal government possesses only powers delegated to it by the Constitution

Labels, USA TODAY (Sept. 28, 2015, 4:32 PM),

<http://www.usatoday.com/story/news/politics/2015/09/28/supreme-court-john-roberts-conservative-liberal/72399618/>.

¹²⁰ Adam Liptak, *Court Under Roberts Is Most Conservative in Decades*, N.Y. TIMES (July 24, 2010), <https://www.nytimes.com/2010/07/25/us/25roberts.html>.

¹²¹ *Id.*

¹²² *See id.*

¹²³ *See* Wolf, *supra* note 119.

¹²⁴ *See* Jeffrey Rosen, *Big Chief*, NEW REPUBLIC (July 23, 2012), <https://newrepublic.com/article/104898/john-roberts-supreme-court-aca>.

¹²⁵ *See* Josh Gerstein & Shane Goldmacher, *Inside Trump's Strategy to Remodel the Supreme Court*, POLITICO (Jan. 3, 2017, 5:08 AM), <http://www.politico.com/story/2017/01/trump-strategy-supreme-court-233106>.

¹²⁶ *See* Donald Scarinci, *Antonin Scalia*, CONST. L. REP. (last visited Sept. 9, 2017), <https://constitutionallawreporter.com/us-supreme-court-justices/antonin-scalia/>.

and all remaining powers are reserved for the states or people.¹²⁷

Scalia also felt that Congress could regulate interstate actions if it was a necessary part of a more “general regulation of interstate commerce.”¹²⁸ Since Amazon Prime-Air will involve interstate commerce, just like its parent company, Amazon, Inc.,¹²⁹ the Supreme Court’s analysis of this particular area will be interesting. Specifically, while the new Court will likely favor state law on the majority of issues, one could see that the commercial role that these deliveries will play nationally is a decision that could be important for the FAA and U.S. commerce. Federal oversight is likely needed for more than simply the protection of citizens and overarching aviation matters, as drones, flying with minimal monitoring, may open the door to endless litigation.

In June 2016, the FAA cleared a path for commercial drone use by establishing regulations that address concerns with airspace, speed, pilot certification, and operator guidelines.¹³⁰ The federal government will continually have to regulate drone deliveries, as the emerging industry becomes more familiar, but will do so hesitantly as a conservative-leaning Court will want each state to handle the majority, if not all, causes of action.¹³¹ While more discretion will likely be given to the states for tortious claims, the enigma of drone commercialization makes it seemingly too difficult to predict outcomes for other causes of action, as each will be too case specific. The Court’s first set of cases dealing with Amazon Prime-Air will likely stem more from challenges involving the Commerce Clause, exclusive government functions via state action, and entanglement.

VIII. THE BUSINESS IMPACT OF DRONE DELIVERY SYSTEMS

Amazon’s efforts to launch UAV delivery systems in April 2017 was slowed down by FAA regulations.¹³² While drones are permitted

¹²⁷ See *Printz v. United States*, 521 U.S. 898, 933 (1997); see also U.S. CONST. amend. X.

¹²⁸ *Gonzales v. Raich*, 545 U.S. 1, 37 (2005) (Scalia, J., concurring).

¹²⁹ *Amazon Prime Air: Just 2 Years Away?*, WOLF UAS (June 18, 2015), <http://wolfuas.com/2015/06/18/409/>.

¹³⁰ Alan Morrison, *Are Commercial Drones Ready for Takeoff?*, PWC (July 20, 2016), <http://www.pwc.com/us/en/technology-forecast/commercial-drones-business-impact.html>; see Bart Jansen, *FAA Completes Landmark Rules for Commercial Drones*, USA TODAY (June 21, 2016, 10:29 PM), <http://www.usatoday.com/story/news/2016/06/21/faa-commercial-drone-rules/85641170/>.

¹³¹ See *supra* notes 119–27, and accompanying text.

¹³² Trevir Nath, *How Drones Are Changing the Business World*, INVESTOPEDIA (Jan. 6, 2015, 7:01 PM),

for military, research, and leisure purposes, the regulations on these activities (especially military) are different than what one would expect for commercial delivery.¹³³ UAVs are regulated by the FAA for up to 400 feet of airspace in most populated areas, but the FAA's hesitancy to extend similar regulations to Amazon Prime-Air forced the initial tests of its system to take place in the United Kingdom.¹³⁴

With Amazon Prime-Air less than a year into its first full-time operation at the Cincinnati/Northern Kentucky Airport, delivery drones are poised to become a viable solution for several industries in the immediate future.¹³⁵ The path formed by the FAA in June 2016 gave Amazon clarity on how to finalize Amazon Prime-Air, after three years of work on the program.¹³⁶

In early 2016, PricewaterhouseCoopers estimated the market for drone-enabled services to be roughly \$127.3 billion with exponential growth already occurring in infrastructure, transportation, insurance, and entertainment.¹³⁷ Specifically, the best markets for drone services are infrastructure and agricultural surveys as it is estimated that the global market for those two segments will surpass \$77 billion.¹³⁸ In particular, companies look to utilize this sector for infrastructure inspection, transportation, precision farming, and security.¹³⁹

UAVs will create over 100,000 jobs and states will experience exponential tax benefits from unprecedented economic activity.¹⁴⁰ Consumers will be in line to benefit from these new jobs, and the American economy will be able to maximize job opportunities while removing expenses for more mundane responsibilities, like transportation and distribution.¹⁴¹

Like most societal changes, the commercialization of drones will come with disadvantages as well. While the market impact for UAV services is substantial, not all states and regulators are under the impression that this is a good development.¹⁴² State legislators have

<http://www.investopedia.com/articles/investing/010615/how-drones-are-changing-business-world.asp>.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ See Morrison, *supra* note 130.

¹³⁶ See generally Jansen, *supra* note 130 (discussing how the FAA's 624-page rulebook outlines specific rules and regulations for the operation of commercial drones in order to ensure airspace is safely shared between drones and commercial craft).

¹³⁷ See Morrison, *supra* note 130.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ See Nath, *supra* note 132.

¹⁴¹ *Id.*

¹⁴² *Id.*

been proactive in establishing new laws to regulate and monitor drones both recreationally and commercially.¹⁴³ The primary concern for lawmakers relate to torts, as UAVs utilize cameras that could easily interfere with one's rights to privacy and various features that might rise to a level of aerial trespass.¹⁴⁴ Additionally, the FAA is concerned that wildlife protection measures should be considered, as birds cause more than \$1 billion in damages annually to U.S. aircrafts.¹⁴⁵

Going forward, Amazon's efforts to develop UAV delivery systems will pressure Congress and the FAA to continue regulating drones in new ways,¹⁴⁶ especially since the federal government may be incentivized to keep this new, sustainable, industry growing. Amazon Prime-Air may be at the forefront of laying new legal foundations, but agricultural, public safety, and private recreation are all industries that will benefit from drone research and development.¹⁴⁷ While the disadvantages are important to recognize, the U.S. economy will suffer more by not finding appropriate solutions in a timely manner.¹⁴⁸ In 2015, the estimated cost of delaying drone integration was \$10 billion annually.¹⁴⁹ Therefore, while Amazon might be at the forefront of tackling major issues with UAV commercialization, competitors will waste no time gaining on them in this competitive market.

IX. CONCLUSION

The FAA's regulation announcement in June 2016 established that commercial drone deliveries are officially a viable opportunity.¹⁵⁰ By 2020, the number of potential cases will only expand, especially as drones become more sophisticated and publicly acceptable.¹⁵¹ Congress and the FAA will continue to progress slowly towards making this market more viable, but the inevitability of the Court

¹⁴³ See generally *Current Unmanned Aircraft State Law Landscape*, NAT'L CONF. OF ST. LEGIS. (Jan. 5, 2017), <http://www.ncsl.org/research/transportation/current-unmanned-aircraft-state-law-landscape.aspx> (discussing state laws on drones).

¹⁴⁴ See generally *United States v. Causby*, 328 U.S. 256, 265 (1946) (providing the initial basic framework for aerial trespass); see also Spelman, *supra* note 55.

¹⁴⁵ See Nath, *supra* note 132.

¹⁴⁶ See *id.*

¹⁴⁷ See *id.*

¹⁴⁸ See *id.*

¹⁴⁹ See *id.*

¹⁵⁰ Morrison, *supra* note 130.

¹⁵¹ FED. AVIATION ADMIN., FAA AEROSPACE FORECASTS FISCAL YEARS 2017–2037 32–33 (2017), https://www.faa.gov/data_research/aviation/aerospace_forecasts/media/FY2017-37_FAA_Aerospace_Forecast.pdf.

deciding UAV commercialization issues is obvious.¹⁵² When the Court finally hears these monumental cases as a panel of nine justices, one thing is for certain: a panel of eight justices would have prevented the market from moving forward and cost Americans billions in delayed development.¹⁵³ While delays are still possible in the aftermath of Justice Gorsuch's appointment, the existence of a decisive vote will likely provide more definitive answers. Private, commercialized UAVs will change the lives of Americans forever.¹⁵⁴ Therefore, once federal bodies and state legislators balance their expectations with American businesses, the United States will likely find itself at the forefront of mastering an unprecedented legal and economic landscape.

¹⁵² See Erin Coe, *Commercial Drones Herald Product Liability, Privacy Suits*, LAW360 (Jan. 16, 2014, 9:48 PM), <https://www.law360.com/articles/500825/commercial-drones-herald-product-liability-privacy-suits>; see also Michael Kirkland, *Under the U.S. Supreme Court: Drones in the Sky Over America*, UNITED PRESS INT'L (Aug. 12, 2012, 3:30 AM), <https://www.upi.com/Under-the-US-Supreme-Court-Drones-in-the-sky-over-America/40661344756600/>.

¹⁵³ See Divya Joshi, *Commercial Unmanned Aerial Vehicle (UAV) Market Analysis - Industry Trends, Companies and What You Should Know*, BUS. INSIDER (Aug. 8, 2017, 6:02 PM), <http://www.businessinsider.com/commercial-uav-market-analysis-2017-8>.

¹⁵⁴ See Dylan Love, *A Look at Our Inevitable Drone-Filled Future*, BUS. INSIDER (Dec. 16, 2013, 10:24 AM), <http://www.businessinsider.com/how-drones-will-be-used-in-the-future-2013-12>.

