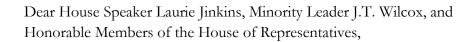Feb 14, 2020

The Honorable Laurie Jinkins
Speaker of the House
Washington State House of Representatives
339C Legislative Building, P.O. Box 40600
Olympia, WA 98504

The Honorable J.T. Wilcox
Minority Leader
Washington State House of Representatives
335C Legislative Building, P.O. Box 40600
Olympia, WA 98504

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Dear House Speaker Laurie Jinkins, Minority Leader J.T. Wilcox, and Honorable Members of the House of Representatives,

The undersigned organizations write to urge you to pass House Bill 2856 – a bill that would establish a moratorium on the procurement and use of facial recognition technology by government agencies in Washington state.

Face surveillance, also known as facial recognition, is a game-changing technology that gives the government unprecedented power to automatically identify a person's identity, track a person's location, and analyze an individual's characteristics based on images associated with the individual's face. Face surveillance has been used by at least 26 agencies in Washington, but largely without public input or debate on what constitutes acceptable or off-limits uses.[1] HB 2856 would pause government use of facial recognition and create a task force to have this important discussion.

Face surveillance poses unique civil rights and civil liberties concerns. The use of facial recognition technology without a warrant or suspicion of criminal activity can leave communities hesitant to engage in constitutionally protected free speech, such as attending protests, going to places of worship, or just going about their daily lives without being watched by the government.

Face surveillance hits historically marginalized and targeted communities hardest. There is a long and ugly history of government use of surveillance

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[1] Face Surveillance Public Disclosure Request by ACLU-WA (Oct 2019)

technologies to target specific communities. To highlight just a few examples, our government used IBM's Hollerith punched card machines to illegally surveil and incarcerate Japanese-Americans during WWII.[2] More recently, law enforcement used automated license plate readers to surveil and religiously profile the Muslim community without suspicion in a decade-long surveillance program that was eventually struck down as illegal.[3]

Face surveillance not only provides government agencies with unprecedented power to track such communities, but also amplifies existing biases. As one example of how this technology can deepen structural inequities, racially biased police practices already subject communities of color to video and image surveillance at a disproportionate rate compared to white neighborhoods. This over-surveillance is likely to be exacerbated with the use of powerful face surveillance technology.

Additionally, it is well documented that face surveillance technology is biased and inaccurate. Multiple expert studies have found facial recognition technology to be less accurate at identifying women, youth, trans and gender non-conforming people, and people of color, leading to the risk of false matches. A December 2019 study from the National Institute of Standards and Technology on Face Recognition Software found that false positives are up to 100 times more likely for Asian and African faces when compared to White faces.[4]

While we do not believe that improved accuracy of facial recognition would justify further use and deployment, facial recognition's clear problems of bias and discrimination add another reason to institute a moratorium.

We support the face surveillance moratorium in HB 2856 over other efforts to regulate government use of face surveillance, such as in SB 6280.

We oppose SB 6280 because it does not protect communities from abuses of the use of powerful face surveillance technology. It creates transparency measures, but no real accountability measures. A moratorium is necessary to

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[2] JSTOR Daily, WWII and the First Ethical Hacker (Feb. 2017), https://daily.jstor.org/wwii-and-the-first-ethical-hacker/
[3] Electronic Frontier Foundation, Third Circuit to the City of New York: Being Muslim is not Reasonable Suspicion for Surveillance (Oct. 2015), https://www.eff.org/deeplinks/2015/10/third-circuit-city-new-york-being-muslim-not-reasonable-suspicion-surveillance
[4] National Institute of Standards and Technology, Face Recognition Vendor Test (FRVT) Part 3: Demographic Effects (Dec. 2019), https://nvlpubs.nist.gov/nistpubs/ir/2019/NIST.IR.8280.pdf

provide the public and impacted community members with a meaningful opportunity to decide if and how face surveillance technology is used. SB 6280 does not provide that opportunity. Further, this bill only prohibits one very specific use case of "ongoing" surveillance, meaning that government could use face surveillance on crowds at places of worship, large events, and every public street. We oppose this bill's lack of a moratorium coupled with its weak provisions.

We urge the House to support HB 2856 and to oppose the provisions in SB 6280.

While we strongly support HB 2856, we recommend two amendments to make its provisions stronger:

(1) Set conditions that must be met before the restrictions in Section 1 can be lifted. We recommend incorporating language from Section 3 of HB 1654, a face surveillance moratorium bill introduced in 2019.
(2) Remove the exemption for the use of facial recognition by the Department of Licensing in Section 3.

There is a growing movement across the United States to ban the use of facial recognition. Many local governments are taking steps to protect their residents against the use of facial recognition for mass surveillance. Washington state has the opportunity to pass the country's first state-wide face surveillance moratorium and protect communities by ensuring that this technology is not deployed without full consideration of its impact.

Signed,

American Civil Liberties Union of Washington
API Chaya
Asian Counseling and Referral Service
Asian Pacific Islander Coalition of Washington
Consumer Federation of America
Council on American-Islamic Relations Washington
Critical Studies Platform Group
Densho
Electronic Frontier Foundation
Entre Hermanos
Fight for the Future
InterIm Community Development Association

Japanese American Citizens League, Seattle Chapter
John T. Williams Organizing Committee
La Resistencia
MAPS-AMEN (American Muslim Empowerment Network)
Puget Sound Sage
Real Change
Restore the Fourth
Urban League of Metropolitan Seattle
Washington Association of Criminal Defense Lawyers
Washington Defender Association
Washington Immigration Solidarity Network