

April 10, 2019

Dear Lawmakers:

We, the undersigned organizations dedicated to protecting civil rights and liberties and safeguarding diverse communities, write to urge you to **oppose SB 5376, which allows and encourages an invasive face surveillance infrastructure to be built in Washington.** Of particular concern are Sections 16 and 17, which legitimize law enforcement use of the technology and preempt local jurisdictions from enacting stronger protections. We urge you to reject this deeply problematic bill in favor of a strong approach that rejects the proliferation of face surveillance technology, given its demonstrated bias.

Section 16 of the bill sets up a permissive regime that will encourage face surveillance to be acquired by law enforcement without any meaningful discussion of the proper place for this technology in our democracy. This provision allows use of face surveillance by law enforcement with a warrant, and allows warrantless use under some circumstances as well. **But this greenlighting of face surveillance technology is premature—at the insistence of well-funded technology companies, it presumes that use of face surveillance by law enforcement is legitimate,** when the reality is that face surveillance is a technology that has the power to change our democracy permanently.

**With or without a warrant, face surveillance is a uniquely powerful technology that gives the government unprecedented power to track, surveil, and impact the lives of anyone moving about in a public place.** A person can choose to not drive their car or not to bring their cell phone to a political protest, but they cannot leave their face at home. Such pervasive surveillance changes the nature of our democracy by putting people under government scrutiny, like suspects, at all times. The use of face surveillance by law enforcement—as in Washington County near Portland, for example—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.

**Green-lighting face surveillance technology will also hit vulnerable communities hardest.**

Growing evidence from multiple studies shows that the technology is biased against people of color, women, youth, and trans and gender non-conforming people, on both identification and affect recognition.<sup>1,2,3,4,5</sup> Other studies demonstrate that the databases used for facial recognition comparison contain disproportionately more people of color.<sup>6</sup> And a long history of previous surveillance technologies shows that they have often been used against people of color, from Japanese Americans, to Black civil rights leaders, to Muslims after 9/11, to protest groups such as Black Lives Matter. The Legislature should not simply greenlight this problematic technology.

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<sup>1</sup> Harwell, D. (2019). Amazon facial-identification software used by police falls short on tests for accuracy and bias, new research finds. *The Washington Post*. Available at: <https://www.washingtonpost.com/technology/2019/01/25/amazon-facial-identification-software-used-by->

<sup>2</sup> Lohr, S. (2019). Facial Recognition is Accurate, if You're a White Guy. *The New York Times*. Available at: <https://www.nytimes.com/2018/02/09/technology/facial-recognition-race-artificial-intelligence.html> [Accessed 31 Jan 2019].

<sup>3</sup> Knight, W. (2018). Facial recognition has to be regulated to protect the public, says AI report. *MIT Technology Review*. Available at: <https://www.technologyreview.com/s/612552/facial-recognition-has-to-be-regulated-to-protect-the-public-says-ai-report/> [Accessed 31 Jan 2019].

<sup>4</sup> Snow, J. (2018). Amazon's Face Recognition Falsely Matched 28 Members of Congress With Mugshots. *The American Civil Liberties Union*. Available at: <https://www.aclu.org/blog/privacy-technology/surveillance-technologies/amazons-face-recognition-falsely-matched-28> [Accessed 31 Jan 2019].

<sup>5</sup> Hao, K. (2019). Making face recognition less biased doesn't make it less scary. *MIT Technology Review*. Available at: <https://www.technologyreview.com/s/612846/making-face-recognition-less-biased-doesnt-make-it-less-scary/> [Accessed 31 Jan 2019].

<sup>6</sup> Moy, Laura, How Police Technology Aggravates Racial Inequity: A Taxonomy of Problems and a Path Forward (February 24, 2019). Available at SSRN: <https://ssrn.com/abstract=3340898> or <http://dx.doi.org/10.2139/ssrn.3340898>

**Our Supreme Court recognized in the recent *Carpenter* decision that people retain their expectation of privacy even in public places, but Section 16 significantly undermines that expectation.** But in hearings around this bill, law enforcement has openly stated that they intend to use face surveillance in public places, where they believe no expectation of privacy applies. The Legislature should not endorse this incorrect assertion.

**Compounding these problems, Section 17 of the bill appears to preempt local jurisdictions from enacting their own stronger protections around face surveillance,** making everyone in our state subject to this invasive technology. The language included in the bill preempts local entities on the processing of personal data by controllers and processors, which may sweep in face surveillance as well. Local jurisdictions should be allowed to make their own choice to reject the proliferation of a technology, or at least to impose rules that limit its impact on our democracy.

**We cannot simply skip over having a discussion of the proper role of this powerful technology in a meaningful way,** rather than in the context of a bill in which it does not belong. We should have that discussion, this interim, with the most impacted communities. Yet SB 5376 is being championed by technology companies, who want to be free to sell this invasive technology with few meaningful restrictions.

**I urge you to oppose SB 5376, and in particular to strip out Sections 16 and 17 from the bill.** We need a moratorium, not a green light to create a face surveillance infrastructure as this bill provides. Please reject the flawed approach of SB 5376 on face surveillance.

Sincerely,

ACLU of Washington  
American Muslim Empowerment Network  
API Chaya  
Asian Counseling and Referral Service  
Asia Pacific Cultural Center  
Council on American-Islamic Relations, Washington State  
Critical Platform Studies Group  
Densho  
El Centro de la Raza  
Entre Hermanos  
Faith Action Network  
Japanese Americans Citizens League – Seattle Chapter  
John T. Williams Organizing Committee  
OneAmerica  
Washington Civil & Disability Advocate