February 4, 2020

The Honorable Zack Hudgins
House Innovation, Technology & Economic Development
Committee, Chair
Washington State House of Representatives
205A John L. O'Brien, P.O. Box 40600
Olympia, WA 98504-0600

The Honorable Norma Smith
House Innovation, Technology & Economic Development
Committee, Ranking Minority Member
Washington State House of Representatives
205A John L. O'Brien, P.O. Box 40600
Olympia, WA 98504-0600

ACLU
AMERICAN CIVIL LIBERTIES UNION
Washington

P.O. Box 2728
Seattle, WA 98111-2728
(206) 624-2184
aclu-wa.org

Tana Lin
Board President

Michele Storms
Executive Director

Jennifer Lee
*Technology & Liberty
Manager*

Dear Representatives Hudgins, Smith, and Members of the House
Innovation, Technology & Economic Development Committee:

We, the undersigned organizations dedicated to protecting civil rights and
liberties and safeguarding communities, write to you to urge your support
for House Bill 2856, concerning a moratorium on the procurement and use
of facial recognition technology by government agencies in Washington.
Face surveillance, also known as facial recognition, is game-changing
technology that gives the government unprecedented power to automatically
identify, locate, track, and analyze people based on images of their faces.
Face surveillance is being widely adopted, including by many agencies in
Washington, but without safeguards and without considering what
constitutes acceptable and off-limits uses of this technology. HB 2856
would pause government use of face surveillance and create a task force to
have this important discussion.

Face surveillance poses unique civil rights and civil liberties concerns. A
person can choose to not drive their car or to not bring their cell phone to a
political protest, but they cannot leave their face at home. 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 history of government use of surveillance technologies to target specific communities, and face surveillance provides unprecedented power to track such communities and amplify existing biases. As one example, racially biased police practices already subject communities of color to much more video and image surveillance than white neighborhoods; such over-surveillance is likely to be exacerbated with the use of powerful face surveillance technology.

Additionally, current 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 Science 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.[1]

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.

While we support this bill, 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.

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[1] 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

(2) Remove the exemption for 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. The Legislature 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
Asian Counseling and Referral Service
Consumer Federation of America
Council on American-Islamic Relations Washington
Critical Studies Platform Group
Densho
Electronic Frontier Foundation
Electronic Privacy Information Center
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)
New America's Open Technology Institute
Puget Sound Sage
Real Change
Restore the Fourth
University of Washington School of Law Technology Law & Public Policy Clinic
Urban League of Metropolitan Seattle
Washington Association of Criminal Defense Lawyers
Washington Defender Association
Washington Immigration Solidarity Network