



MICHELLE WU
BOSTON CITY COUNCIL

July 29, 2021

Commission on Facial Recognition
Massachusetts State House
24 Beacon St.
Boston, MA 02133

Via Email

We Need Stronger Face Surveillance Regulations in Massachusetts

Dear Chairman Day, Chairman Eldridge, and members of the Commission,

We the undersigned City Councilors and other local elected officials were proud to champion face surveillance bans in our communities—Somerville, Cambridge, Brookline, Northampton, Easthampton, and Boston. As local elected officials, we do not have the authority to regulate the government's use of facial recognition technology, so we did what we could: we took the extraordinary step of banning the use of the technology in our communities.

As you know, in December 2020, Governor Baker signed into law police reform legislation. The law, codified in Chapter 253 of the Acts of 2020, contains several provisions pertaining to government agencies' use of facial recognition technology. Your Commission has sought the public's input on what, if any, increased protections the legislature ought to enact.

We believe that the existing regulations are completely insufficient and must be significantly strengthened. Towards that end, we offer our full support for H.135, An Act To Regulate Face Surveillance, sponsored by Representatives Rogers and Ramos, and S.47, An Act To Regulate Face Surveillance, sponsored by Senator Creem. These bills provide much-needed policy solutions to various problems left unaddressed by the existing law.

First, the existing law only regulates facial recognition technology as used by law enforcement agencies. It neither prohibits nor regulates the use of the technology by non-police entities,

like those with authority over schools and public transportation. H.135 and S.47 address this problem by taking a whole-government approach to regulation.

Second, the existing law does not prohibit or regulate the use of facial recognition technologies for purposes of surveillance of public spaces like streets and parks. Government agencies should not use our biometric characteristics to track our activities or movements in the park, at the library, at school, in our neighborhoods, or on public transit. H.135 and S.47 provide the solution we want to see in the law by prohibiting the use of facial recognition for surveillance of public spaces.

Third, the existing law does not restrict which public agencies can acquire and possess a facial recognition system. The law merely mentions the Registrar of Motor Vehicles and the State Police as possessing facial recognition technology but does not explicitly restrict other agencies. Also, the existing law does not establish any limitation regarding who can directly use and operate face surveillance systems. We believe this has to change. The law should limit the acquisition and possession of facial recognition technology to the RMV and allow its use for issuing IDs and driver's licenses. The law should also authorize only one law enforcement agency—the State Police—to directly use and operate the RMV system to perform facial recognition searches for its own investigations and on behalf of other law enforcement agencies. This centralization, included in H.135 and S.47, not only fosters transparency, compliance, and accountability but also ensures that the bidding process results in government acquisition of the highest quality algorithms.

Moreover, when it comes to facial recognition searches, the existing law merely requires that law enforcement shows a search is "relevant and material" to an investigation of any type of crime. This low standard does not suffice. The law should require what H.135 and S.47 propose: law enforcement agencies must get a warrant to request a facial recognition search, and those searches should only be authorized by state law in the most serious criminal investigations.

Fourth, the existing law does not provide any due process protections for persons identified by facial recognition systems. H.135 and S.47 create a notice-and-disclosure framework that will ensure individuals know when law enforcement and district attorneys used facial recognition in investigations that lead to their prosecution.

Fifth, the existing law does not provide any enforcement mechanism to ensure compliance with the law. H.135 and S.47 establish an exclusionary rule that would apply when law enforcement uses facial recognition in a manner that does not conform with the law. Lawmakers should also institute a private right of action to give Massachusetts residents the power to hold the government accountable.

Finally, the existing law only regulates facial recognition and does not mention or provide protections governing other remote biometric recognition technologies that are as risky and harmful as facial recognition. The legislature should not address remote biometric surveillance in a piecemeal fashion. Automated systems can also use iris, gait, and other remote biometric features to identify and surveil people. We support the provisions in

H.135 and S.47 that prohibit government use of all other remote biometric technology. Should government agencies seek to use these technologies in the future, they can come back to the legislature to craft specific exceptions to the general prohibition. We shouldn't allow a free-for-all approach to take hold.

The Commonwealth needs to strike the right balance between the needs of criminal investigators and the public interests in privacy, racial justice, and free speech and association. The provisions in H.135 and S.47 take us in that direction. Accordingly, we encourage the Commission to recommend that this legislation be adopted and signed into law.

Sincerely,

Councilor Michelle Wu, Boston
Councilor Ben Ewen-Campen, Somerville
Councilor Marc McGovern, Cambridge
Select Board Member Raul Fernandez, Brookline
Councilor Gina-Louise Sciarra, Northampton
Councilor William Dwight, Northampton
Former Councilor Alisa Klein, Northampton
Councilor Homar Gomez, Easthampton
Councilor Tom Peake, Easthampton