ACLU Testimony in Support of Face Surveillance Ban

Good afternoon.

My name is Emiliano Falcon. I am the Technology and Civil Liberties Policy Counsel at the ACLU of Massachusetts. On behalf of this organization, I am here to support the Ordinance introduced by Councilor Ewen-Campen. This Ordinance provides for a ban on the use of face surveillance by Somerville's government.

Face surveillance is technology that allows the Government to identify, track, and catalogue people based on the unique physical characteristics of their faces. This software works by creating a unique "faceprint" of individuals based on pre-identified photos or set of photos. These "faceprints" are collected and included in a database. This database is then used to search for matches and identify new and unknown faces captured by public video cameras or similar surveillance devices. Some companies are also selling so-called "emotion detection" facial surveillance systems, which they claim can determine whether someone is happy, sad, honest, or deceitful.

Generally speaking, we have three primary areas of concern regarding these technologies. Our concerns relate to (1) unregulated use of the technology, (2) its intrinsic dangers, and (3) civil rights and civil liberties.

First, face surveillance is currently unregulated in Massachusetts. Nonetheless, the spread of this technology is occurring in the dark, absent public debate or democratic oversight. Government agencies are adopting it despite the absence of privacy regulations, the technology's inaccuracy, and the threats it poses to free and open societies.

Second, face surveillance is dangerous. Among other issues, facial recognition technology is not accurate—despite what you may have seen on television shows like CSI. And these inaccuracies are more likely to unfairly harm people of color and other oppressed groups. For example, MIT researchers found that face recognition software is twice as likely to misidentify darker skinned women than white men.[1] Another study found that so-called "emotion detection" software inaccurately classified Black men's faces as more angry and contemptuous than white faces, even in pictures where all the men are smiling.[2] Using technology that is unfair and creates even more racial disparities in policing is a step backwards.

Third, face surveillance is a threat to Somerville residents' civil rights and civil liberties. Especially concerning is how this technology affects First Amendment rights and freedoms. If the Government can track everyone who goes to a place of worship, a political rally, or seeks reproductive or substance use medical attention, we lose our freedom to speak our minds, freely criticize the government, pray to the god we want, and access healthcare in private. The authoritarian government in China is deploying facial

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[1] Joy Buolamwini et al, "Gender Shades," MIT Media Lab. https://www.media.mit.edu/projects/gender-shades/overview/.

[2] Lauren Rhue, "Emotion-reading tech fails the racial bias test," Phys.org. https://phys.org/news/2019-01-emotion-reading-tech-racial-bias.html.

surveillance all across that country to control and oppress its people, because the tool is a perfect weapon for social control.[3] Somerville must chart the opposite course.

Today, Somerville has a unique opportunity: Your City can become the first in the country to pump the brakes on the spread of this dangerous technology. The Ordinance presented by Councilor Ewen-Campen will protect the people of Somerville and free and open society in three key ways. First, it bans the City of Somerville from using both face surveillance technology and information obtained from it. Second, it makes this ban effective by ensuring that information collected or derived from the use of the technology is suppressed and cannot be received as evidence in any trial, hearing, or similar proceeding. Third, it creates a private right of action, allowing Somerville residents to seek relief and ensure compliance with the provisions of the Ordinance.

Somerville is a wonderful place to live in large part because its government prioritizes civil rights and civil liberties for all its people. To carry that tradition into the digital 21st century, we strongly urge you to support this critical and commonsense proposal. The ACLU looks forward to serving as a resource to the City and the Council throughout this process, so please don't hesitate to contact me if you have any questions or seek further information.

Thank you very much.

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[3] Paul Mozur, "One Month, 500,000 Face Scans: How China is Using A.I. to Profile a Minority," NYT. https://www.nytimes.com/2019/04/14/technology/china-surveillance-artificial-intelligence-racial-profiling.html.