LWV LEAGUE OF WOMEN VOTERS®
OF MASSACHUSETTS

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Special Commission on Facial Recognition
Senator James Eldridge and Representative Michael S. Day, Co-Chairs

Public Comment
Government Use of Facial Recognition Technology

Dear Senator Eldridge, Representative Day, and members of the Commission:

I am writing on behalf of the League of Women Voters of Massachusetts (LWVMA) to comment on the use of facial recognition technology in Massachusetts. The League respectfully asks the Commission to recommend that the legislature strengthen existing facial recognition law to ensure people in Massachusetts not subjected to unauthorized surveillance and privacy invasion. The LWVMA is comprised of 47 Leagues and over 3,000 members from Cape Cod to the Berkshires.

As the volunteer specialist for the LWVMA in Good Governance since 2012 and an engineering graduate of MIT by training who first worked on a computer with vacuum tubes, it is obvious to me that this new technology and the ways it voids existing privacy protections are a major threat to our privacy and are, therefore, a concern, for me personally and for the LWVMA. I was taught in elementary school that the Fourth Amendment to the US Constitution protects our right to privacy: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."   The LWVMA and the LWVUS have for over 100 years strongly supported these protections.

As facial recognition technology has become ubiquitous and remains substantially unregulated, none of us are safe from tracking, regardless of how careful we try to be. I would note that my privacy concerns are why I don't use Facebook. Without strong legislative protections and follow-on appropriate enforcement, none of us are protected anywhere, and the whole concept of probable cause is rendered mute. Just two weeks ago I was sitting in a breakfast restaurant in the Berkshires overlooking a public lake when I noticed a drone outside the window systematically photographing every person inside that was facing the window. I had no protections available.

In December 2020, Governor Baker signed into law "An Act Relative to Justice, Equity and Accountability In Law Enforcement In The Commonwealth," omnibus police reform legislation. While the LWVMA supported that bill, we were disappointed that it left out strong regulations governing police use of facial recognition. Nothing was in the bill about use of facial recognition by other agencies or the private sector. These necessary protections are well-

addressed in legislation filed this session: H.135/ S.47, An Act to Regulate Face Surveillance, sponsored by Representatives Rogers and Ramos, and by Senator Creem.

The 2020 bill only regulates facial recognition technology as used by law enforcement agencies, and then with few protections for citizens. It neither prohibits nor regulates whether or when this technology can or cannot be used by other public agencies, for example schools or local parks departments. Further, it does not prohibit or regulate the use of facial recognition technologies for purposes of surveillance of public spaces like streets and parks--the protection I was lacking in the Berkshires. Since it places no limitations on which public agencies can or cannot acquire and possess such systems, there are no explicit restrictions preventing other agencies from buying or leasing their own systems.

The LWVMA is supporting the proposed policy solutions to these problems in H.135/ S.47. This bill will prohibit all public entities, including public schools, the Department of Transportation, and other public agencies in the Commonwealth, from using and possessing this technology. Only the Registry of Motor Vehicles and the State Police, subject to strict limitations and civil rights protections, will be allowed to use and possess this technology. Further, and of major importance in the protection of our Fourth Amendment rights, it will prohibit the use of facial recognition for surveillance of public spaces. As a result, government agencies would be forbidden from using our biometric characteristics to track our activities and locations in the park, at the library, at school, at a polling place, on public transit, or anywhere else a drone can "see."

To restore privacy protections and due process to individuals, this bill creates a notice-and-disclosure framework that will let persons know when facial recognition was used to identify them. First, the bill requires law enforcement to notify all individuals identified by a facial recognition search within seven days, absent an order for delayed notice. Second, law enforcement agencies and district attorneys must make available to criminal defendants and their attorneys all records and information pertaining to any facial recognition searches performed or requested during the investigation of the crime or offense that is the object of the criminal prosecution.

I encourage you to consider recommending passage of H.135/S.47 when you decide on further regulations of the use of biometric surveillance technology by government entities. We need strong regulations with strong enforcement mechanisms to restore protection of our civil rights and civil liberties, and this legislation provides an excellent model.

Thank you for your attention and consideration.

Carolyn Lee, Sudbury, MA.
LWVMA volunteer specialist in Good Governance