



December 3, 2020

Governor Charlie Baker
Massachusetts State House, 24 Beacon St.
Office of the Governor, Room 280
Boston, MA 02133

Dear Governor Baker,

We write to strongly support Section 26 of S.2963, which places important and well-balanced limits on face recognition surveillance, and urge you to sign it into law.

Last year, our organization convened a task force of expert stakeholders including law enforcement officials, academics, tech experts, and civil rights and civil liberties advocates to examine the impact of face recognition surveillance.¹ The group concluded that while face recognition may provide benefits to law enforcement, any use of the technology must be accompanied by strong safeguards. Principal among these are a warrant requirement and limiting face recognition to investigating serious offenses, the precise rules that Section 26 creates.

Face recognition can be highly prone to error based on circumstance and manner of use. Research from artificial intelligence experts—including from the Massachusetts Institute of Technology and National Institute of Standards and Technology—have definitively shown that face recognition misidentifies women and people of color at a substantially higher rate. And like any other complex forensic tool, face recognition can be misleading if it is used in a casual way that does not account for its limitations. Yet we have repeatedly documented how in the absence of laws, this technology is used in a cavalier manner that will likely lead to error.²

Misidentifications pose a serious threat to civil rights, civil liberties, effective law enforcement operations, and police-community relations. Strong and sensible regulations such as those in Section 26 are critical to protecting all these vital interests. And these limits would in no way hamper the use of face recognition in high-level investigations, which law enforcement often describes as its key goal for the technology.

The potential for pervasive surveillance facilitated by face recognition is also a major concern. Authoritarian regimes such as those in China and Russia already use face recognition to stockpile

¹ Task Force on Facial Recognition Surveillance, Project On Government Oversight, *Facing the Future of Surveillance* (March 4, 2019). <https://www.pogo.org/report/2019/03/facing-the-future-of-surveillance/>

² Jake Laperruque, "About-Face: Examining Amazon's Shifting Story on Facial Recognition Accuracy," Project On Government Oversight, April 10, 2019. <https://www.pogo.org/analysis/2019/04/about-face-examining-amazon-shifting-story-on-facial-recognition-accuracy/>; Jim Trainum, "Facial Recognition Surveillance Doesn't Necessarily Make You Safer," Project On Government Oversight, July 22, 2019. <https://www.pogo.org/analysis/2019/07/facial-recognition-surveillance-doesnt-necessarily-make-you-safer/>

records of individuals' daily lives and suppress vital activities. But abuse is not limited to those nations; misuse of face recognition—including to target and disrupt peaceful protests—has already occurred in the United States.³

Absent safeguards, facial recognition could be used to scan crowds at First Amendment-protected activities such as political rallies, protests, and religious services. The government could catalog everyone who goes to a mental health clinic, seeks help at a substance abuse treatment center, or meets with an attorney. Unrestricted face recognition also creates the potential that discretion could become a tool for selective prosecution. Even without these abuses occurring, the mere ability to collect and selectively use this type of highly personal and sensitive information could chill participation in political, religious, and other constitutionally protected activities.

It is for this precise reason that both the United States Supreme Court and Massachusetts Supreme Judicial Court have ruled that privacy rights limit pervasive surveillance of public activities. Placing strong rules on how face recognition can be deployed—as Section 26 would do—is essential to preserving this fundamental right.

Signing Section 26 into law will make Massachusetts the national leader in effectively addressing face recognition by demonstrating how strong rules can facilitate worthwhile uses of the technology while also guarding against the dangers it poses.

Sincerely,



Danielle Brian
Executive Director
Project On Government Oversight



Jake Laperruque
Senior Counsel
Project On Government Oversight

³ Kevin Rector and Alison Knezevich, "Social media companies rescind access to Geofeedia, which fed information to police during 2015 unrest," *Baltimore Sun*, October 11, 2016. <https://www.baltimoresun.com/news/crime/bs-md-geofeedia-update-20161011-story.html>