June 4, 2019

Hon. Philip Y. Ting
State Capitol, Room 6026
Sacramento, CA 95814

Re: AB 1215 (Ting) As Amended April 25, 2019: SUPPORT

Dear Assemblymember Ting:

We are organizations dedicated to protecting civil rights and civil liberties, including the right to be free from intrusive, discriminatory, and dangerous government surveillance. We write to express support for your Assembly Bill 1215.

This bill codifies existing constitutional privacy protections for Californians by preventing law enforcement officers from misusing body cameras for face surveillance and other biometric surveillance against the public. We offer four principal reasons to support this bill:

1. This bill implements existing privacy protections guaranteed by the Fourth Amendment of the U.S. Constitution;

2. Body cameras were promised as an officer accountability tool, not as surveillance systems to track and collect identifying information about Californians;

3. Facial recognition software is often inaccurate, particularly for women and people of color; and

4. California voters strongly agree that body cameras should be used solely for public oversight and accountability rather than giving law enforcement a new system to track and identify people.

1. AB 1215 CODIFIES EXISTING FOURTH AMENDMENT PROTECTIONS BY PREVENTING THE USE OF BODY CAMERAS TO COMPEL SOMEONE TO IDENTIFY THEMSELVES

Americans have the constitutional right to walk down the street without being forced to identify themselves to police for no reason. The public deployment of facial recognition-enabled body cameras would be like requiring people to constantly carry and display a photo ID card, which our country's principles prohibit.

The U.S. Supreme Court has ruled that absent specific statutory authority there is no constitutional justification for police officers to compel a person to identify herself to authorities. *Hiibel v. Sixth Judicial District Court of Nevada*, 542 U.S. 177, 187 (2004). No such authorization exists in California, as a one-time California law permitting police officers to question loitering people about their identity was found unconstitutional. *See* CA Penal Code §647(e). That case, *Lawson v. Kolender*, 461 U.S. 352 (1983), involved a black man who was repeatedly asked to identify himself to police for doing nothing more than walking in so-called white neighborhoods. The Supreme Court separately held in *Brown v. Texas,* 443 U.S. 47 (1979) that a state's interest in preventing crime does not justify stopping and demanding identification from an individual without any specific basis for believing he or she is involved in criminal activity.

By preventing the use of facial recognition technology with officer body cameras, AB 1215 implements the U.S. Supreme Court's recognition that, absent valid and clear legal reasons, the U.S. Constitution forbids requiring Californians to identify themselves to government officials.

Our country appropriately values the freedom to walk down the street without being compelled to routinely identify ourselves to law enforcement. In too many communities where Black people, immigrants, and Muslim-Americans live, this right is already under attack. Such liberty is worth defending and extending, and our ability to do just that is one of the differences between this country and others. Governments in China, for example, subject religious minorities and others to intense surveillance and scrutiny using public facial recognition systems.[1] The

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[1] Paul Mozur, *One Month, 500,000 Face Scans: How China Is Using A.I. to Profile a Minority*, The New York Times, Apr. 14, 2019, https://www.nytimes.com/2019/04/14/technology/china-surveillance-artificial-intelligence-racial-profiling.html; Paul Mozur, *Inside China's Dystopian Dreams: A.I., Shame*

Legislature should act to preserve Californians' ability to go about their daily lives without having their identities and private lives needlessly tracked by law enforcement.

Assembly Bill 1215 also reflects the growing bipartisan consensus about the dangers of face surveillance.[2] San Francisco recently enacted a ban on city departments' use of the technology,[3] and other cities on both coasts have proposed bans as well. The state of Michigan's proposed ban, SB 342, is authored by Republican state Senator Peter Lucindo.[4]

2. BODY CAMERAS WERE PROMISED AS A MEANS TO PREVENT POLICE VIOLENCE; NOT AS A NEW SYSTEM TO TRACK THE PRIVATE LIVES OF CALIFORNIANS

As the Legislature has recognized, police body cameras were promised as a way to reduce and document unjustified police violence, strengthen police-community relations, and improve trust.[5] They were not promised as an additional system for mass surveillance, nor as a tool to increase fraught interactions between police and the public.[6] And they were not designed to turn California into a scene from the movie *Minority Report*, where facial recognition helps fuel arrests premised on potential future actions – an inevitable outcome if law enforcement is given the ability to the view the identities and history of every person passing them on the street. Absent legal justification, the government has no right to automatically record who we are, how we go about our daily lives, or who we visit – from doctor's offices to political rallies.

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[2] *and Lots of Cameras*, NY Times, July 8, 2018, https://www.nytimes.com/2018/07/08/business/china-surveillance-technology.html.

[2] Rep. Jim Jordan, the top Republican on the House Oversight and Reform Committee, recently stated that the use of facial recognition technology by the government violates the First and Fourth Amendments, and disproportionately and negatively affects minorities. *Bipartisan thumbs-down to facial recognition technology,* Roll Call, May 29, 2019, at https://www.rollcall.com/news/policy/bipartisan-thumbs-down-to-facial-recognition-technology. See also *Both Democrats and Republicans blast facial-recognition technology in a rare bipartisan moment,* Washington Post, May 22, 2019, at https://www.washingtonpost.com/technology/2019/05/22/blasting-facial-recognition-technology-lawmakers-urge-regulation-before-it-gets-out-control/?utm_term=.29b80b969504.

[3] Kate Conger, Richard Fausset & Serve F. Kovaleski, *San Francisco Bans Facial Recognition Technology*, New York Times, May 14, 2019, https://www.nytimes.com/2019/05/14/us/facial-recognition-ban-san-francisco.html.

[4] Berkeley and Oakland are considering municipal bans, as is the city of Somerville, Massachusetts. A ban on the law enforcement use of facial recognition has also been proposed in the Michigan legislature. https://www.legislature.mi.gov/documents/2019-2020/billintroduced/Senate/pdf/2019-SIB-0342.pdf.

[5] E.g., SB 175 Bill Analysis, Senate Committee on Public Safety (04/13/15), at 4; SB 175 Bill Analysis, Assembly Committee on Public Safety (06/15/15), at 2; AB 1940 Bill Analysis, Senate Committee on Public Safety (06/27/16), at 5; AB 1940 Bill Analysis, Assembly Committee on Public Safety (04/18/16), at 3; AB 66 Bill Analysis, Assembly Committee on Public Safety (04/13/15), at 5.

[6] Marc Jonathan Blitz, *Police Body-Worn Cameras: Evidentiary Benefits and Privacy Threats, American Constitution Society*, May 2015, https://www.acslaw.org/wp-content/uploads/2018/04/Blitz_-_On-Body_Cameras_-_Issue_Brief.pdf. Updated research is available here: *Body Worn Cameras and the Courts: A National Survey of State Prosecutors*, George Mason University Center for Evidence-Based Crime Policy, https://cebcp.org/wp-content/technology/BWCProsecutors.pdf.

Embedding face surveillance into body cameras would be a sweeping transformation of those devices into dragnet surveillance networks.

3. FACIAL RECOGNITION SOFTWARE IS INACCURATE, PARTICULARLY FOR WOMEN AND PEOPLE OF COLOR

If police officers can use body cameras for face surveillance, the consequences for Californians will be grave. This use is not an imagined threat. The Financial Times recently reported that one of the largest body camera companies, Axon, has filed for a facial recognition patent for a system that permits the real-time tracking and identification of people passing by an officer.[7] If a body camera with facial recognition notifies a police officer that a person has a prior conviction or mislabels that person as a "threat" based on a secretive corporate algorithm, police may engage that person with potentially tragic consequences.

Flaws in facial recognition systems raise the risk of such harms. Facial recognition technology has been shown to be inaccurate, particularly as to women and people of color. Peer-reviewed research by academics at MIT has demonstrated that prominent facial recognition technology products perform more poorly for people with darker skin and for women.[8] In fact, when the ACLU ran photos of members of Congress through Amazon's "Rekognition" face surveillance product, 28 members of Congress incorrectly "hit" with mugshot booking photos of arrestees. Of the false matches, 39 percent were people of color, although people of color make up only 19 percent of lawmakers in Congress.

Using Rekognition, former California legislators (and current members of Congress) Mark DeSaulnier, Steve Knight, Jimmy Gomez, and Norma Torres would all be subject to potential arrest for just walking down the street in the vicinity of a police officer with a body camera.[9] If a police body camera with face surveillance misidentified a person, that error could misinform or bias an officer's decision about how to interact with that person. Moreover, fear of misidentification or being added to a government photo face-surveillance database may cause people to avoid seeking or offering assistance to police, undermining public safety.

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[7] "The company [Axon] filed a third patent in 2017…for real-time video analysis software that uses facial recognition to identify individuals captured on police body and in-vehicle cameras. The system takes a photograph of an individual's face and matches it to law enforcement databases, such as mugshot files. It then tells the officer the person's name." *Taser stun gun maker files facial recognition patents*, Financial Times, April 10, 2019, https://www.ft.com/content/c2300a60-5a2b-11e9-939a-341f5ada9d40.

[8] Joy Buolamwini & Timnit Gebru, *Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification*, Proceedings of Machine Learning Research 81: 1-15, 2018, http://proceedings.mlr.press/v81/buolamwini18a/buolamwini18a.pdf; Natasha Singer, *Amazon Is Pushing Facial Technology That a Study Says Could Be Biased*, New York Times, Jan 24, 2019, https://www.nytimes.com/2019/01/24/technology/amazon-facial-technology-study.html.

[9] Jacob Snow, Amazon's Face Recognition Falsely Matched 28 Members of Congress With Mugshots, ACLU, July 26, 2019, https://www.aclu.org/blog/privacy-technology/surveillance-technologies/amazons-face-recognition-falsely-matched-28.

Facial recognition-enabled body cameras would thus make us both less free and less safe. It may be no surprise then that Microsoft, citing "human rights" concerns, recently announced that it refused to provide its facial recognition software to a California law enforcement agency for body camera use.[10]

4. VOTERS AGREE THAT BODY CAMERAS SHOULD BE USED TO RECORD OFFICER CONDUCT AND HOLD LAW ENFORCEMENT ACCOUNTABLE, NOT AS A SURVEILLANCE SYSTEM TO IDENTIFY AND TRACK THE PUBLIC

In a March 2019 poll of likely 2020 California voters, 62% of respondents agreed that body cameras should be used *solely* "to record how police treat people and provide a tool for public oversight and accountability" rather than "to give law enforcement a tool to identify and track people."[11] In that same poll, 82% of likely 2020 voters said they disagree with the government being able to monitor and track a person using their biometric information. Concerns about the use of face and other biometric information by the government, on public cameras, such as officer-worn body cameras, is consistent across Democrats, Republicans, and Independents, both men and women, in all regions of Californian, and regardless of age.

5. CONCLUSION

AB 1215 is a reasonable regulation that enforces existing Fourth Amendment law and prevents the misuse of body cameras for surveillance of Californians with an error-prone technology that will make communities less safe.

Sincerely,

ACLU of California
API Chaya
Anti Police-Terror Project
Asian Law Alliance
Center for Media Justice
Citizens, Rise!
Color of Change
Council on American-Islamic Relations of California
CRASH Space
Data for Black Lives
Defending Rights and Dissent
Electronic Frontier Foundation
Fight for the Future

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[10] Joseph Menn, *Microsoft turned down facial-recognition sales on human rights concerns*, Reuters, Apr. 16, 2019, https://www.reuters.com/article/us-microsoft-ai-idUSKCN1RS2FV?utm_campaign=trueAnthem:+Trending+Content&utm_content=5cb671670f1cfa0001e6919f&utm_medium=trueAnthem&utm_source=twitter.

[11] *California Statewide Survey: Poll Results of Likely 2020 Presidential Voters*, David Binder Research, https://www.aclunc.org/docs/DBR_Polling_Data_On_Surveillance.pdf

Indivisible CA
Justice Teams Network
Media Alliance
Oakland Privacy
RAICES
README @ UCLA
Root Access
San Jose/Silicon Valley NAACP
Secure Justice
National Association of Criminal Defense Lawyers
Library Freedom Project
Tor Project
X-Lab