Testimony submitted to the Joint Committee on Judiciary
in support of S.47/ H.135 An Act to regulate face surveillance
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The League of Women Voters of Massachusetts, comprised of 47 Leagues and over 3000 members from Capes Cod and Ann to the Berkshires, strongly supports S.47/H.135 to strengthen the very minimal existing facial recognition law and ensure Massachusetts residents are not subjected to unauthorized surveillance and privacy invasion. Privacy protection has been a focus of the LWV for over 100 years.

As an engineering graduate of MIT who first worked on a computer that actually had vacuum tubes, it is clear to me that use of this evolving technology voids existing privacy protections and presents a concern – a concern for me personally and for the League.

The Fourth Amendment to the U.S. Constitution protects our right to privacy, to be "secure in our persons … against unreasonable searches… without probable cause, … particularly describing the place to be searched, and the persons or things to be seized." Facial recognition systems systematically void this protection.

We learned from the special commission testimony that some AI companies likely violate copyright by scanning all media for any tagged faces and then peddling that data. It was very frightening in terms of our civil rights to hear one company brag about having over one billion images that it provided to law enforcement agencies who purchased or were testing their system. That same company asserted that all prior data suggesting systemic errors in their system were either bogus or now outdated by all the improvements they had made, without presenting any substantiating data.

It isn't just the criminal justice databases and the RMV databases that we need to worry about. This technology is now ubiquitous and remains substantially unregulated, so none of us are safe from tracking, regardless of how careful we try to be. This past summer 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.

Without strong legislative protections with enforceable and enforced regulations, the whole concept of probable cause is rendered mute. We can choose not to take our cell phone with us; we can choose not to be on Facebook or Instagram or LinkedIn, as I have done, but we cannot choose to leave our face at home. And who knows how much

privacy protection the Covid masks we're wearing provide – or how many more errors in recognition they create.

I realize that this legislation does not deal at all with private enterprise use of the technology, but I find that as threatening as overuse and abuse of the technology by government agencies.

In 2020 Governor Baker signed the omnibus police reform legislation, which the League supported, even though we were disappointed that it left out strong regulations governing police use of facial recognition. Nothing was in the bill about agencies other than police and the RMV.

That 2020 law provides few protections for citizens. It neither prohibits nor regulates whether or when this technology can or cannot be used by other public agencies. It does not prohibit or regulate the use of facial recognition technologies for surveillance of public spaces like streets and parks --the very protection I was lacking in the Berkshires. No limitations are placed on which public agencies can or cannot acquire and use such systems; there are no explicit restrictions preventing other agencies from acquiring their own systems.

The LWVMA supports the proposed solutions to the these problems in current bills H.135 and S.47, " An Act To Regulate Face Surveillance," sponsored by Representatives Rogers and Ramos, and by Senator Creem. They prohibit all public entities, including public schools, DOT, and other public agencies from using and possessing this technology. Only the RMV and the State Police will be able to possess these technologies, subject to strict limitations and civil rights protections.

Further, and of major importance in the protection of our Fourth Amendment rights, they will prohibit the use of 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 or fixed camera can "see."

These bills require law enforcement to notify all individuals identified by a facial recognition search within seven days, absent an order for delayed notice. Law enforcement agencies and district attorneys must make available to criminal defendants and their attorneys all records and information pertaining to any such searches performed or requested during the investigation that is the object of the criminal prosecution. Currently, this can be systematically omitted from discovery.

LWVMA encourages you to report out favorably, and not watered down, H.135 and S.47. We need strong regulations with strong disclosure and enforcement mechanisms to <u>restore</u> protection of our civil rights and civil liberties, and this legislation provides an excellent model.

Thank you for your attention and consideration.