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Res. 11-229, Propos
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CITY CLERK
HONOLULU, HAWAII

Agency: City Council, City and County of Honolulu
Hearing Date/Time: Friday, September 16, 2011, 2:00 p.m.
Place: City Council Chamber
Re: Testimony of the ACLU of Hawaii in Opposition to City & County of Honolulu Resolution No. 11-229, Proposed CD1, Relating to Overt Video Monitoring

Dear Chair Martin and Council Members:

The American Civil Liberties Union of Hawaii (“ACLU”) writes in opposition to Resolution 11-229, CD1, which authorizes the use of overt video monitoring for the Asia-Pacific Economic Cooperation Conference. Blanketing our public spaces and streets with government video surveillance will ultimately change the core experience of going out in public – and effectively turn our Aloha State into a police state – without making us any safer.

The ACLU is opposed to the widespread use of video surveillance cameras, and the short-lived and ill-fated “van cams” demonstrate that the people of Oahu are opposed to constant surveillance as well. Video surveillance systems infringe on the freedom of speech and association guaranteed by the First Amendment, threaten the anonymity and privacy protected by the Fourth Amendment, and raise significant Fourteenth Amendment equal protection concerns, all of which are also protected in the analogous provisions of the Hawaii Constitution (and expanded upon by the Hawaii Constitution’s privacy clause, Article I, § 6). These surveillance systems are also expensive, and they are far less effective than proven techniques like improving lighting, increasing foot patrols, and establishing community watch programs.

There is little doubt that when people know a camera is aimed at them, they worry about who might be watching, what others are thinking, and how the pictures might be used – or misused. In a public context, video cameras deter people from engaging in activity that is both perfectly legal and constitutionally protected by the First Amendment. The right to express oneself not just through action, but also in the choice to stay still or “repose,” has been continually affirmed by the U.S. Supreme Court. In *Chicago v. Morales*, 527 U.S. 41, 53-54 (1999), the Court stated:

Freedom to loiter for innocent purposes is part of the “liberty” protected by the due process clause of the Fourteenth Amendment... Indeed, it is apparent that an individual’s decision to remain in a public place of his choice is as much a part of his liberty as the freedom of movement inside frontiers that is “a part of our heritage,” or the right to move “to whatsoever place one’s own inclination may direct.”

Video cameras in public places also chill speech and associational activity by preventing people from remaining anonymous. Installing cameras in public spaces is tantamount to

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requiring people to identify themselves whenever they walk, speak or meet in public. The U.S. Supreme Court has held that requiring people to identify themselves in public is unconstitutional, as is requiring identification of a person's association with others or with organizations. See *Buckley v. Am. Constitution Law Found.*, 525 U.S. 182 (1999); *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995); *Lamont v. Postmaster General*, 381 U.S. 301; *Talley v. California*, 362 U.S. 60 (1960); *NAACP v. Alabama*, 357 U.S. 449 (1958).

Video surveillance may also offend the Fourth Amendment, as well as the Hawaii Constitution's privacy clause and the analogous provisions of the Hawaii Constitution, because it invades people's privacy. Privacy and freedom of expression in public places are the values on which American society was forged. Without them, it would be very difficult to speak freely, join and support causes, and assemble to criticize government and safeguard democracy. People have a right not only to engage in speech and protest on public streets, but also to do so anonymously so that they can speak without fear of reprisal from the government. *Id.* This right to anonymity, or namelessness, is necessarily tied to privacy. A person cannot remain anonymous if personal information and identity do not remain private.

The potential for discriminatory and abusive use of the cameras raises significant equal protection issues. Human operators bring to the job all their existing prejudices and biases and may be tempted to abuse the systems for personal purposes, including stalking and/or harassing women, estranged spouses or other individuals; threatening motorists after traffic altercations; and voyeuristically spying on people, particularly women. Indeed, studies in Great Britain and the United States have reported numerous abuses of surveillance systems. See *Under the Watchful Eye: The Proliferation of Video Surveillance Systems in California* (hereinafter "ACLU Report") at 10.¹ In Britain, for example, mostly male operators used cameras to voyeuristically spy on women in Britain, with one in ten women targeted for entirely voyeuristic reasons.

Although the ACLU has no objection to cameras at specific, high-profile public places that are potential terrorist targets, such as the U.S. Capitol, we are opposed to attempts to blanket our public spaces and streets with video surveillance. As you are asked to approve and install more video surveillance cameras and programs, we strongly urge you to consider their impact on the civil rights of Hawaii citizens as well as the millions of tourists that visit Hawaii every year.

Like any intrusive technology, the benefits of deploying public video cameras must be balanced against the costs and dangers. This technology (a) would not significantly protect us against crime; (b) has the potential to change the core experience of going out in public in

¹ This Report is available at http://www.aclunc.org/issues/government_surveillance/aclu_issues_report_on_the_proliferation_of_video_surveillance_systems_in_california.shtml

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America because of its chilling effect on citizens; and (c) carries very real dangers of abuse. Given that, its benefits – preventing at most a few street crimes, and probably none – are disproportionately small. And again, these measures are expensive and far less effective than traditional measures like improved lighting, neighborhood watch programs, and additional foot patrols.

For all these reasons and more, the ACLU respectfully requests that the Council defer this measure.

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 45 years.

Thank you for this opportunity to testify.

Sincerely,



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