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On Behalf of the New York Civil Liberties Union

Before the New York City Council Committee on Technology Regarding the Use of Automated Decision Systems and Artificial Intelligence by New York City Agencies.

October 28, 2024

The New York Civil Liberties Union ("NYCLU") respectfully submits the following testimony on the use of automated decision systems and artificial intelligence by New York City agencies. The NYCLU, the New York affiliate of the American Civil Liberties Union, is a not-for-profit, non-partisan organization with eight offices throughout the state and more than 180,000 members and supporters. The NYCLU's mission is to defend and promote the fundamental principles, rights, and values embodied in the Bill of Rights, the U.S. Constitution, and the Constitution of the State of New York. The NYCLU works to expand the right to privacy, increase the control individuals have over their personal information, increase transparency and accountability in the use of algorithms, artificial intelligence ("AI"), and automated decision systems ("ADS"), and ensure that civil rights and liberties are enhanced rather than compromised by technological innovation.

AI and ADS broadly – software tools or processes that automate, replace, or aid human decision-making – are widely used to administer services, allocate resources, tailor offerings or customize products, and make inferences about individuals, groups, or places. Whether across government agencies or in private businesses, their ubiquity and opaque deployment risk severely undermining the civil, human, and privacy rights of New Yorkers. The use of ADS is often accompanied by an acute power imbalance between those deploying these systems and those affected by them, particularly given that ADS operate without transparency or even the most basic legal protections. Especially where New Yorker's fundamental rights are at stake – such as in welfare, education, employment, housing, health care, finance, insurance, the family regulation system, or the criminal legal system, these technologies all too often replicate and amplify bias, discrimination, and harm towards populations who have been and continue to be disproportionately impacted by bias and discrimination: women, Black, Indigenous, and all people of color, religious and ethnic minorities, LGBTQIA people, people living in poverty, people with disabilities, people who are or have been incarcerated, and other marginalized communities.

The proposed legislation before this Committee, Intros. 199-2024, 926-2024, 1024-2024, and 1099-2024, laudably attempt to tackle the issues and harms arising from government use of AI. While well-intentioned, unfortunately, these bills would not create the necessary protections and fail to deliver on their stated goals. The NYCLU therefore opposes Intros. 199, 926, and 1024 in their current form and makes recommendations to strengthen these bills. The New York City Council must act to provide meaningful transparency and accountability to ADS and ensure they do not digitally circumvent New York's laws against discrimination. Any regulation must cover ADS broadly, mandate comprehensive and impartial impact assessments that assess the validity of these tools, their potential for disparate impact on any protected class, their impact on accessibility for people with disabilities, and potential remedies to address those impacts. It must require transparency and clear notice to affected people; provide opportunities to contest the results of such tools as well as viable paths to request reasonable accommodations; and mandate clear prohibitions of tools that violate laws, threaten welfare, or have discriminatory impact.

New Yorkers should be fully informed about when and how algorithms are making decisions impacting their lives, they should be able to trust these systems are accurate, and they should have proof that their demographics don't lead to disparate outcomes. To achieve these goals, we provide the Digital Fairness Act, A.3308/S.2277; the Bossware and Oppressive Technology Act (BOT Act), A.9315-A/S.7623-B; and the NY Department of Financial Services AI Circular Letter as exemplary frameworks for consideration by the Council as it engages further on issues related to AI and ADS.

The Need for Regulation of Automated Decision Systems

While the use of ADS undoubtedly boosts speed and scale, such efficiency is only valuable if the underlying decisions are desirable. Even with the little public information available about ADS, researchers and experts consistently reveal their failures with respect to accuracy and

neutrality. Many studies have challenged their opaque or "black box" operation[1] and provided evidence of harmful,[2] discriminatory,[3] sexist,[4] and racist[5] outcomes.

Software systems are often wrongly perceived as more neutral than humans or as offering a scientific and objective truth.[6] Their proponents are able to make these assertions because the vast majority of ADS are opaque systems, secretly deployed and shielded from independent review due to their proprietary nature. This secrecy obscures the potential errors, outright flaws, biased data, subjective decisions, and personal choices that find their way into these systems. Every ADS is a product of human design, input, and operation. Raji et al. (2022) provide a taxonomy of AI system failures that can also be used to understand types of algorithmic error – including failures or errors stemming from engineering and design processes, post-deployment processes, and communications about AI systems wherein developers make deceptive claims about AI systems' capabilities.[7]

Unfair and discriminatory ADS have also become pervasive in all areas where New Yorkers' fundamental rights are at stake, including in welfare, education, employment, housing, health care, finance, insurance, the family regulation system, or the criminal legal system. Landlords and property managers use various ADS products that unfairly screen out potential tenants based on past criminal records. The data that they rely on may contain records that are severely outdated and include sealed and expunged records that should not serve as a basis to

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[1] *See e.g.:* CATHY O'NEIL, WEAPONS OF MATH DESTRUCTION: HOW BIG DATA INCREASES INEQUALITY AND THREATENS DEMOCRACY (2016); FRANK PASQUALE, THE BLACK BOX SOCIETY (2015).
[2] *See e.g.:* VIRGINIA EUBANKS, AUTOMATING INEQUALITY: HOW HIGH-TECH TOOLS PROFILE, POLICE, AND PUNISH THE POOR (2018); Ed Pilkington, *Digital dystopia: how algorithms punish the poor*, THE GUARDIAN, October 14, 2019, https://www.theguardian.com/technology/2019/oct/14/automating-poverty-algorithms-punish-poor; Colin Lecher, *A healthcare algorithm started cutting care, and no one knew why*, THE VERGE (2018), https://www.theverge.com/2018/3/21/17144260/healthcare-medicaid-algorithm-arkansas-cerebral-palsy.
[3] SOLON BAROCAS & ANDREW D. SELBST, *Big Data's Disparate Impact* (2016), https://doi.org/10.2139/ssrn.2477899.
[4] *See e.g.:* Jeffrey Dastin, *Amazon scraps secret AI recruiting tool that showed bias against women*, REUTERS, October 10, 2018, https://www.reuters.com/article/us-amazon-com-jobs-automation-insight-idUSKCN1MK08G; Galen Sherwin, *How Facebook Is Giving Sex Discrimination in Employment Ads a New Life*, AMERICAN CIVIL LIBERTIES UNION , https://www.aclu.org/blog/womens-rights/womens-rights-workplace/how-facebook-giving-sex-discrimination-employment-ads-new.
[5] *See e.g.:* Kate Crawford, *Opinion | Artificial Intelligence's White Guy Problem*, THE NEW YORK TIMES, June 25, 2016, https://www.nytimes.com/2016/06/26/opinion/sunday/artificial-intelligences-white-guy-problem.html; Alistair Barr, *Google Mistakenly Tags Black People as 'Gorillas,' Showing Limits of Algorithms*, WSJ (2015), https://blogs.wsj.com/digits/2015/07/01/google-mistakenly-tags-black-people-as-gorillas-showing-limits-of-algorithms/.
[6] danah boyd & Kate Crawford, *Critical Questions for Big Data: Provocations for a cultural, technological, and scholarly phenomenon*, 15 INFORMATION, COMMUNICATION & SOCIETY 662–679 (2012).
[7] Inioluwa Deborah Raji et al., *The Fallacy of AI Functionality*, Assoc. for Computing Machinery (June 20, 2022), https://dl.acm.org/doi/abs/10.1145/3531146.3533158.

disqualify tenants. In other instances, they infer such classifications from other data, or they falsely attribute criminal history based on identical names or address history.[8]

Obtaining access to ADS's underlying source code and data is difficult and resource intensive, but absolutely critical to understanding the extent to which errors occur and whether they are likely to cause discriminatory harm. For example, it was revealed that a Medicaid ADS in Arkansas had failed to correctly assess care needs of patients with cerebral palsy or diabetes: a fact only discovered through lengthy litigation and subsequent disclosure of the code.[9] And in New York City, an independent review of the source code of a DNA analysis tool used by the Office of the Chief Medical Examiner raised serious questions about its validity, including whether the code may have been intentionally skewed to create more matches.[10]

Many automated systems purport to predict the future by observing the past. Chief among them are "risk assessment tools," designed to use past policing and court data to "predict" the future behavior of an individual criminal defendant. Specifically, risk assessment tools attempt to determine which attributes are shared by people who previously failed to show up to court. Certain weights are placed on each of the attributes to produce a formula and "score" a person's future risk of flight. Risk assessment tools reflect a troubling philosophy toward criminal justice policy: Using past cases to determine what might happen in future cases disregards time-specific influences that may have affected prior case outcomes and freezes a government judgment in the realities of the past. Critically, it also strips the person who is awaiting trial of independent agency and the ability to make the case that they will appear in court.

But even those who philosophically agree with using past statistics to predict future individual human behavior acknowledge that the value of such a predictive system lies in the value of the data input into it. When an ADS deploys machine learning that relies on large historic datasets to train the underlying models, the quality of that underlying data is of paramount importance. If that data includes false or biased data, every output will repeat this pattern and in turn result in false and biased decision-making. In the context of policing, utilizing data from unconstitutional and racially biased stop-and-frisk practices by the NYPD will create outputs reflecting these practices.[11] This behavior is commonly known by the

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[8] Ariel Nelson, *Broken Records Redux: How Errors By Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing* (Dec. 2019), https://www.nclc.org/wp-content/uploads/2022/09/report-broken-records-redux.pdf; see also Lauren Kirchner & Matthew Goldstein, *Access Denied: Faulty Automated Background Checks Freeze Out Renters* (May 28, 2020), https://themarkup.org/locked-out/2020/05/28/access-denied-faulty-automated-background-checks-freeze-out-renters.

[9] Litigating Algorithms 2018, AI NOW INSTITUTE, https://ainowinstitute.org/litigatingalgorithms.pdf.

[10] Lauren Kirchner, *Thousands of Criminal Cases in New York Relied on Disputed DNA Testing Techniques*, PROPUBLICA (2017), https://www.propublica.org/article/thousands-of-criminal-cases-in-new-york-relied-on-disputed-dna-testing-techniques.

[11] Rashida Richardson et al., *Dirty Data, Bad Predictions: How Civil Rights Violations Impact Police Data, Predictive Policing Systems, and Justice,* 94 N.Y.U. L. REV. ONLINE 192 (2019), https://ssrn.com/abstract=3333423.

computer-science idiom "garbage in, garbage out," or in this scenario, as Sandra Mayson coined, "bias in, bias out."[12]

In another recent example, researchers discovered that a widely used health care algorithm used to identify patients' health risks failed to identify many Black patients, making them less likely to be enrolled for medical treatment.[13] And where these systems operate in the dark, people may not even realize that they are suffering at the hands of a flawed algorithmic system. One ADS in Indiana blocked hundreds of thousands of people from receiving vital support services and left them struggling to challenge these decisions.[14]

Given the enormous human impacts from automated systems – and the very real possibility of simply automating existing human error and bias – meaningful regulation is the bare minimum our democracy demands. The growing power imbalance between people affected by ADS and those who deploy them is at its height when affected people are not even aware that their lives have been impacted by an ADS. In particular in governmental decision-making, access to information about what systems are in use, whether their accuracy has been tested and their impact assessed, and the mechanisms to obtain redress for harm is essential for the public to be able to engage in a fully-informed discussion regarding what role – if any – these systems should have in our society.

In November 2018, New York City joined the Cities Coalition for Digital Rights and signed its Declaration. It clearly states that people have "sovereignty over their data, including the right to know what happens to their data, who uses it and for what purposes. […] Everyone should have access to understandable and accurate information about the technological, algorithmic and artificial intelligence systems that impact their lives, and the ability to question and change unfair, biased or discriminatory systems."[15] We urge the Council to uphold this promise by enacting legislation that will serve our democratic values and create the regulatory mechanisms necessary to protect against harmful and discriminatory algorithms.

Unfortunately, the City's forays into ADS issues have fallen short of these goals. The NYCLU and our partners repeatedly sought to offer input and recommendations through open

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[12] Sandra G. Mayson, *Bias In, Bias Out*, 128 YALE LAW JOURNAL (2019), https://www.yalelawjournal.org/article/bias-in-bias-out. Archived at: http://archive.is/nzP1D.
[13] *See:* Beth Haroules & Simon McCormack, *How an Algorithm Puts Black People's Health in Danger*, NEW YORK CIVIL LIBERTIES UNION (2019), https://www.nyclu.org/commentary/how-algorithm-puts-black-peoples-health-danger; Ziad Obermeyer et al., *Dissecting racial bias in an algorithm used to manage the health of populations*, 366 SCIENCE 447–453 (2019).
[14] Alyssa Edes & Emma Bowman, *"Automating Inequality": Algorithms In Public Services Often Fail The Most Vulnerable*, NPR.ORG (2018), https://www.npr.org/sections/alltechconsidered/2018/02/19/586387119/automating-inequality-algorithms-in-public-services-often-fail-the-most-vulnerab; Virginia Eubanks, *We created poverty. Algorithms won't make that go away*, THE GUARDIAN, May 13, 2018, https://www.theguardian.com/commentisfree/2018/may/13/we-created-poverty-algorithms-wont-make-that-go-away.
[15] Declaration of Cities Coalition for Digital Rights, https://citiesfordigitalrights.org/assets/Declaration_Cities_for_Digital_Rights.pdf.

letters in January 2018,[16] August 2018,[17] March 2019,[18] a comprehensive Shadow Report in December 2019, [19] repeated testimonies before this Committee, [20] and comments to the Department of Consumer and Worker Protection on the proposed rulemaking for Local Law 144 of 2021.[21]

Earlier this year, the City has incorporated premature and erroneous AI tools into MyCity with the release of the MyCity AI Chatbot. Its goal is to advise New Yorkers on business matters. However, its results are wildly inaccurate, providing errors, fabrications, and falsehoods to many inquiries, sometimes explicitly encouraging businesses to break the law. Reporters uncovered the bot provided many falsehoods on matters relating to labor issues, worker rights and housing policy[22] and during our own test the chatbot advised to ignore New York City's Employment ADS law, Local Law 144 of 2021. Bafflingly, the City never sufficiently responded to these harms: instead of taking the bot down due to the high risk of misinformation it provides, the City merely placed a beta warning and disclaimer ahead of any chat and promises it is "aligned with the city's AI principles."[23] What might be acceptable for a tech startup to advertise and test their product is certainly not the right approach for a government service offering information business owners must comply by.

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[16] Letter to Mayor de Blasio: Regarding NYC Automated Decision Systems Task Force, NEW YORK CIVIL LIBERTIES UNION (2018), https://www.nyclu.org/en/publications/letter-mayor-de-blasio-regarding-nyc-automated-decision-systems-task-force (last visited Nov 10, 2020).
[17] Open Letter to Automated Decision Systems Task Force, NEW YORK CIVIL LIBERTIES UNION (2018), https://www.nyclu.org/en/publications/open-letter-automated-decision-systems-task-force (last visited Nov 10, 2020).
[18] Letter to the Automated Decision Systems Task Force - March 1, 2019, NEW YORK CIVIL LIBERTIES UNION (2019), https://www.nyclu.org/en/publications/letter-automated-decision-systems-task-force-march-1-2019 (last visited Nov 10, 2020).
[19] *See*: Rashida Richardson, ed., *Confronting Black Boxes: A Shadow Report of the New York City Automated Decision System Task Force*, AI NOW INSTITUTE, December 4, 2019, https://ainowinstitute.org/ads-shadowreport-2019.html.
[20] NYC Council Testimony In Relation to Automated Decision Systems Used by Agencies, NEW YORK CIVIL LIBERTIES UNION, Jan 22, 2020, https://www.nyclu.org/resources/policy/testimonies/testimony-technology-relation-automated-decision-systems and NYC Council Testimony Regarding Oversight and Regulation of Automated Decision Systems, NEW YORK CIVIL LIBERTIES UNION, Nov 13, 2020, https://www.nyclu.org/resources/policy/testimonies/testimony-oversight-and-regulation-automated-decision-systems.
[21] NYC DCWP Testimony Regarding the Proposed Rules to Implement Local Law 144 of 2021, NEW YORK CIVIL LIBERTIES UNION, Oct 24, 2022, https://www.nyclu.org/resources/policy/testimonies/testimony-regarding-proposed-rules-implement-local-law-144-2021-tackling-bias-automated.
[22] Colin Lecher, NYC AI Chatbot Touted by Adams Tells Businesses to Break the Law | THE CITY — NYC News, https://www.thecity.nyc/2024/03/29/ai-chat-false-information-small-business/ and Colin Lecher, Katie Honan & Maria Puertas, *Malfunctioning NYC AI Chatbot Still Active Despite Widespread Evidence It's Encouraging Illegal Behavior – The Markup*, (2024), https://themarkup.org/news/2024/04/02/malfunctioning-nyc-ai-chatbot-still-active-despite-widespread-evidence-its-encouraging-illegal-behavior.
[23] NYC MyCity Chatbot, https://chat.nyc.gov/.

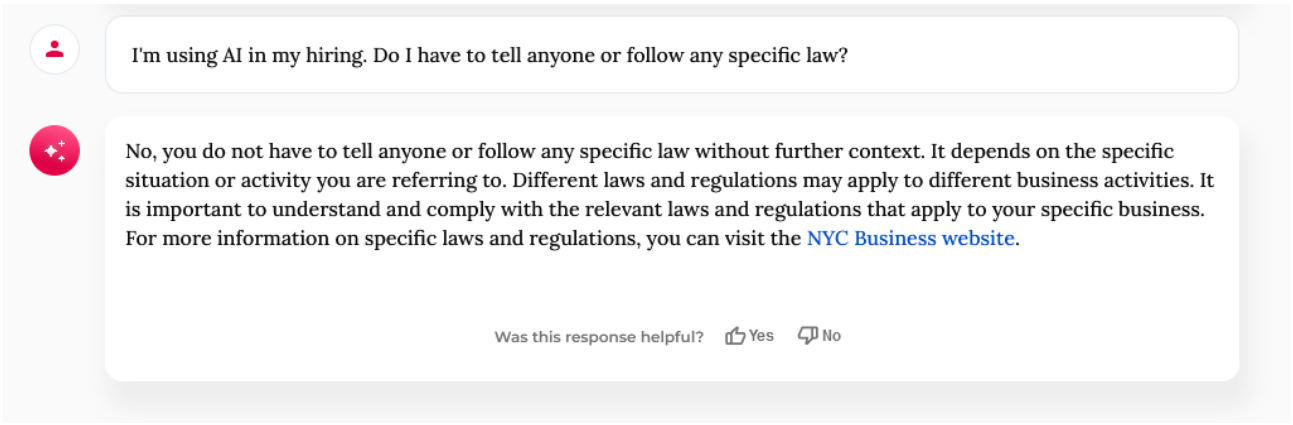

Figure 1: MyCity AI Chatbot when asked about Employment ADS, Local Law 144 of 2021.

Recommended Regulatory Approaches

A bill in the New York Legislature, the **Digital Fairness Act, A.3308/S.2277**, would address many of the tangible harms that arise from the abuse and misuse of personal information in the digital age by making clear that it is both unlawful discrimination and an unfair trade practice to use personal information to circumvent our civil and human rights laws. It would create comprehensive privacy protections by requiring meaningful notice and affirmative, opt-in consent from people before their personal information is captured or used, as well as heightened protections for biometric information, and provide people with the ability to access and delete their personal information and to transfer their personal information to another company. In addition, it would provide guardrails for government use of ADS. It would ban discriminatory tools and require that any governmental ADS undergo and pass a civil rights audit conducted by a neutral third party before it is deployed. It would also require that individuals subjected to government automated decisions receive notice of the decision made, the involvement of an automated system, and an opportunity to contest the decision and seek human review. And the bill would require government entities that use automated decision-making systems to have appropriate governing policies in place, adhere to transparency requirements, and have the approval of the relevant governing body – following a public hearing – before acquiring any new systems. The Digital Fairness Act is a comprehensive solution to tackle the worst harms of digital technologies by protecting privacy and addressing the civil rights abuses associated with misuse and abuse of personal information. **The NYCLU strongly supports this legislation**.[24]

A particular area of concern is the use of ADS in the employment context. Here, too, ADS are widely used; yet their operation is shrouded in secrecy, and they risk undermining existing

[24] *See:* Legislative Memorandum - Digital Fairness Act, A.3308 / S.2277, NYCLU (2024), https://www.nyclu.org/uploads/2023/12/2023-2024-legislativememo-digitalfairnessact.pdf.

labor and civil rights protections.[25] Examples abound with racist, sexist, ableist, or other biased ADS, with resume scanners that prioritize male candidates,[26] systems that are inaccessible to applicants with disabilities,[27] and racially biased video interview platforms.[28] To stop these practices from occurring, **the Bossware and Oppressive Technology Act ("BOT Act"), A.9315-A/S.7623-B**, would require employers to conduct impartial impact assessments that assess the validity of these tools, their potential for disparate impact on any protected class and potential remedies to address those impacts, and their impact on accessibility for people with disabilities. Employers would be required to publish the results of these assessments in a public registry. The bill would also mandate meaningful notification regarding the use of ADS, alternative selection procedures, requests for human review, appeals processes, and clear prohibitions of tools that violate laws, threaten welfare, or have discriminatory impact.

The BOT Act incorporates lessons learned from prior efforts to address discriminatory algorithms in the workplace. New York City attempted to tackle bias in ADS by enacting Local Law 144 of 2021 ("LL144"). Unfortunately, this measure fell far short of providing comprehensive protections for job candidates and workers.[29] LL144 requires employers to conduct what amounts to little more than severely limited bias audits of only a narrow scope of tools they use and only share certain results of these already inadequate audits publicly. It also fails to provide workers with the information they need to meaningfully assess the impact an ADS has on them and whether they need to request an alternative selection process or accommodation; does not ensure there are alternative selection procedures; does not prohibit technologies with discriminatory impact; and lacks sufficient enforcement mechanisms. More than a year after LL144 came into effect, it has become abundantly clear that it is far too weak to protect against bias and to hold employers and vendors accountable.[30] In contrast to A.9315-A/S.7623-B, it also does not include any protections against workplace surveillance. All these gaps and loopholes – to say nothing of the lack of even these minimal protections outside of New

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[25] Olga Akselrod & Cody Venzke, *How Artificial Intelligence Might Prevent You From Getting Hired*, AMERICAN CIVIL LIBERTIES UNION (Aug. 23, 2023), https://www.aclu.org/news/racial-justice/how-artificial-intelligence-might-prevent-you-from-getting-hired.

[26] Jeffrey Dastin, Amazon scraps secret AI recruiting tool that showed bias against women, REUTERS, October 10, 2018, https://www.reuters.com/article/us-amazon-com-jobs-automation-insight-idUSKCN1MK08G.

[27] Lydia X. Z. Brown, Ridhi Shetty & Michelle Richardson, *Report – Algorithm-Driven Hiring Tools: Innovative Recruitment or Expedited Disability Discrimination?*, CENTER FOR DEMOCRACY AND TECHNOLOGY (Dec. 3, 2020), https://cdt.org/insights/report-algorithm-driven-hiring-tools-innovative-recruitment-or-expedited-disability-discrimination/.

[28] Ifeoma Ajunwa, *Automated Video Interviewing as the New Phrenology*, (2021), https://papers.ssrn.com/abstract=3889454.

[29] Daniel Schwarz, *Testimony Regarding Tackling Bias in Automated Employment Decision Tools*, NYCLU (2022), https://www.nyclu.org/resources/policy/testimonies/testimony-regarding-proposed-rules-implement-local-law-144-2021-tackling-bias-automated.

[30] Daniel Schwarz & Simon McCormack, *Biased Algorithms Are Deciding Who Gets Hired. We're Not Doing Enough to Stop Them*, NYCLU (2023), https://www.nyclu.org/commentary/biased-algorithms-are-deciding-who-gets-hired-were-not-doing-enough-stop-them.

York City – underscore why the BOT Act is urgently needed, and **the NYCLU strongly supports its passage**.[31]

We have also encouraged the Legislature to look to the guidance by the Department of Financial Services (DFS), which issued a circular letter on the use of artificial intelligence systems and external consumer data and information sources in insurance underwriting and pricing in July 2024.[32] The letter emphasizes that insurers must ensure that their use of ADS does not result in unfair or unlawful discrimination against protected classes. Insurers are required to demonstrate that their data and models show validity and have a clear, empirical relationship to risk. The DFS mandates comprehensive assessments, including proxy assessments,[33] to identify and mitigate any disproportionate adverse effects on protected classes. Insurers must implement robust governance frameworks, including board oversight, documented policies and procedures, and regular audits of their AI and data usage. The letter stresses the importance of transparency, requiring insurers to disclose their use of AI and consumer data to impacted people. In cases of adverse decisions, insurers must provide detailed reasons, including all information upon which the decision was based and the source of that information; and they must provide a process for the applicant to review the accuracy of the data.

The NYCLU urges the Council to look to these bills and the DFS guidance as guiding frameworks for its approach to AI and ADS. It is imperative that the Council enacts legislation that will serve our democratic values and create the regulatory mechanisms necessary to protect against harmful and discriminatory algorithms. Effective regulation will necessarily include mandatory, independent racial, disability, and non-discrimination impact assessments; data privacy audits; and holistic consultation with domain experts and people directly affected by the consequences of any ADS – in particular from marginalized groups – prior to any ADS rollout and throughout the entire life cycle. The Council must recognize that technologies showing significant discriminatory impact against any class protected under the New York Human Rights Law, as well as systems that pose high risks of discrimination – e.g. biometric surveillance, analyzing facial features or movements, body language, emotional state, affect, personality, tone of voice, or pace of speech – require outright bans or moratoria.

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[31] *See:* Legislative Memorandum - Bossware and Oppressive Technology Act, A.9315-A / S.7623-B, NYCLU (2024), https://www.nyclu.org/uploads/2024/05/2024-LegMemo-BOTAct.docx.pdf.
[32] New York Department of Financial Services, Insurance Circular Letter No. 7, July 11, 2024, https://www.dfs.ny.gov/industry-guidance/circular-letters/cl2024-07.
[33] The American Academy of Actuaries has noted that "algorithm[s] may learn to identify and rely upon seemingly facially neutral variables that have a close correlation to protected characteristics or traits" and that such "problematic proxy variables . . . may cause protected classes to be disparately impacted[.]" American Academy of Actuaries, Discrimination: Considerations for Machine Learning, AI Models, and Underlying Data (Feb. 2024), https://www.actuary.org/sites/default/files/2023-08/risk-brief-discrimination.pdf.

Introduction 199-2024 – Establishing an Office of Algorithmic Data Integrity

The NYCLU commends the sponsor and the Council for raising and attempting to tackle the issue of bias and discrimination by ADS. Unfortunately, Introduction 199-2024 does not achieve this goal, and we oppose it in its current form because it would entrench ineffective regulation, with its lack of clear requirements and sufficient coverage.

The legislation would only cover a subset of ADS due to the limited definition of "algorithmic tools" in Local Law 35 of 2022 (§ 3-119.5 of the Administrative Code). While ADS that rely on machine learning and predictive analytics are an important area that requires inclusion, many other simpler algorithms and automated tools fall outside the law's definition. We strongly urge the Council to amend the Law to adopt a more inclusive definition that includes the many varieties of ADS in use and on the market – many of which have been reported to have dangerous consequences for people.[34]

While Intro. 199 includes a requirement for the new Office of Algorithmic Data Integrity to analyze agencies' algorithmic tools, screen them for bias and discrimination, and to conduct pre-deployment assessments, these requirements are not specified in sufficient detail. For this mandate to be effective, the legislation should require comprehensive and impartial impact assessments that assess the validity of these tools, their potential for disparate impact on any protected class under our Human Rights Law, their impact on accessibility for people with disabilities, and potential remedies to address those impacts. These should happen pre-deployment and annually thereafter, be conducted by clearly defined independent auditors, and they should be publicly accessible. The legislation should also include clear prohibitions of tools that violate laws, threaten welfare, or have discriminatory impact.

Importantly, the bill should also include meaningful notice to impacted people, provide opportunities to contest the results of such tools, as well as viable paths to request reasonable accommodations.

Introduction 926-2024 – Creation of Appropriate and Responsible Use Practices for Artificial Intelligence Tools Used by City Agencies

Introduction 926 suffers from similar weaknesses and gaps as Intro. 199. Instead of clearly requiring and specifying the mechanisms to ensure equitable and safe use of these technologies, the bill is deferential to the Mayor's office to set their own rules. This is not a workable solution, clearly evidenced by the office's track record. Any serious legislative effort

[34] See, e.g.: Testimony of Ritchie Eppink, Hearing AI in Government Before the S. Comm. On Homeland Security & Government Affairs (May 16, 2023), https://www.hsgac.senate.gov/hearings/artificial-intelligence-in-government.

must provide for actual protections and requirements, and not further abdicate oversight responsibilities.

The legislation would only cover AI, per subsection (3) of section 9401 of title 15 of the United States Code. As we noted earlier, it is crucial to include other (simpler) ADS as well, which are of particular concern in the legislation's area of focus where they impact people's rights, liberties, benefits, safety or interests, such as access to city services and resources. In the current hype cycle around AI tools it is easy to forget about less flashy algorithms, yet their impact can be disastrous as well.[35]

We repeat the call for inclusion of language to mandate comprehensive and impartial impact assessments that assess the validity of these tools, their potential for disparate impact on any protected class under the New York Human Rights Law, their impact on accessibility for people with disabilities, and potential remedies to address those impacts. It must require transparency and clear notice to affected people; provide opportunities to contest the results of such tools as well as viable paths to request reasonable accommodations; and mandate clear prohibitions of tools that violate laws, threaten welfare, or have discriminatory impact.

Introduction 1024-2024 – A Centralized List of Artificial Intelligence Tools Approved to Be Used by Agencies

As currently drafted, it is unclear what this legislation would accomplish since it does not require tools be approved or included in this list for use by agencies. At best this seems to provide a procurement endorsement, which could result in dangerous and negligent scenarios since it would be removed from the specific deployment context by an agency. Furthermore, the legislation only mandates extremely sparse and limited disclosure requirements for how an approval decision was made and details about the algorithmic tool. The NYCLU does not support this bill.

Introduction 1099-2024 - Require Agencies to Report on the Impacts of Algorithmic Tools on City Employees and Employment Responsibilities

Introduction 1099 would amend Local Law 35 of 2022 for additional statistics on algorithmic tools' impact on agency staff. The NYCLU is supportive in principle of the bill's goals, but the taken approach is unlikely to protect workers in meaningful ways. More information in the reporting is helpful; however, we question the measurability of these requirements. Instead, we strongly recommend providing for actual labor protections and requirements on the use of AI and ADS, ensuring job security through protections against

[35] Ibid.

displacement or replacement, empowering workers through informed decision-making, procuring fair and equitable technologies, and protecting privacy, civil rights, and civil liberties.

Conclusion

The NYCLU thanks the Committee for the opportunity to provide testimony and for recognizing the need for oversight for the use of AI and automated decision systems by government agencies. However, the bills before the Committee do not do enough to protect against biased, discriminatory, or faulty technologies.

Thank you for your attention to these matters. For any questions or further discussion, please contact Daniel Schwarz, Senior Privacy & Technology Strategist, dschwarz@nyclu.org.