

**MEMORANDUM OF SUPPORT FOR THE STOP ONLINE POLICE FAKE
ACCOUNTS AND KEEP EVERYONE SAFE ACT**

A.4638 Assemblymember Mamdani/S.1764 Senator Cleare
May 2023

The Surveillance Technology Oversight Project supports the Stop Online Police Fake Accounts and Keep Everyone Safe Act (A.4638 Mamdani/S.1764 Cleare) and urges the legislature to pass, and the Governor to sign, this bill.

The Surveillance Technology Oversight Project (S.T.O.P.) litigates and advocates for New Yorkers' privacy, working to abolish local governments' systems of mass surveillance. Our work highlights the discriminatory impact of surveillance on Muslim Americans, immigrants, the LGBTQ+ community, indigenous peoples, and communities of color, particularly the unique trauma of anti-Black policing. S.T.O.P. fights to ensure that technological advancements don't come at the expense of age-old rights. We hope to transform New York City and State into models for the rest of the United States of how to harness novel technologies without adversely impacting marginalized communities.

Law enforcement officers in New York and across the country are using an expansive new power to access private social media content, viewing some of our most intimate moments, with absolutely no judicial oversight. Increasingly, police harness new software platforms to deploy networks of fake accounts, tricking the public into giving up what few privacy protections the law affords. Police use internet attribution software or technology sold by private vendors to deploy large numbers of fake credentials.¹ One police officer can run a bot network of hundreds or thousands of fake accounts. These accounts are used to harvest private messages and posts for local police databases. But New Yorkers do not know these requests come from police and none of us truly consent to this new, invasive form of state surveillance.

A.4638 and S.1764 would prohibit law enforcement officers from creating fake social media accounts in New York State and from coercing people into providing their social media passwords. It also creates a private right of action and suppresses evidence derived from acts in violation of this bill.

- **Fake accounts are ripe for abuse and undermine the rule of law.** The Fourth Amendment protects our private communications from government intrusion, but our privacy rights are becoming more and more fictional as police use of fake social media accounts proliferates. This bill is urgently needed to prevent police from continuing to circumvent our privacy rights.

¹ <https://www.businessinsider.com/police-trained-create-fake-social-media-accounts-using-ai-images-2022-1?msclkid=bf5074fba55711ecbccc273caacb928c>

- **Fake accounts are used to surveil people of color, political protestors, and youth communities.** Police departments have used fake accounts to monitor the online activity of Black Lives Matter activists.² Fake accounts have also largely targeted youth,³ restraining them from engaging in digital communities⁴ that have become even more important during the pandemic. This bill would instill confidence that New Yorkers' First Amendment rights are meaningful, and that our online speech will be protected from police surveillance.
- **Private vendors enable this deception at an alarming scale.** Companies sell software products that enable police departments to conduct undercover monitoring using fake social media profiles. The software sold by one such company, Voyager Labs,⁵ surveils more than just the suspect, but also collects data on everyone they know on the platform.⁶
- **Fake police accounts replicate the harms of undercover policing.** Police use of fake social media accounts is a digital version of the infiltration of Muslim communities in the post-9/11 era based on their political and religious beliefs.⁷ The systematic targeting of Muslim New Yorkers⁸ failed to generate even a single credible lead,⁹ but sent a clear message to Muslim New Yorkers that their conversations would be watched. Through fake social media accounts, police can replicate this infiltration for online communications, monitoring Facebook groups, WhatsApp chats, and other digital community spaces. Just because this activity is taking place online, it does not make it any less intimate and sensitive, and certainly does not erode the First Amendment interests at stake.

If implemented, the Stop Online Police Fake Accounts and Keep Everyone Safe Act would do the following:

- Ban police from creating fake social media accounts in New York State.
- Ban police from coercing people into providing their social media passwords.
- Exclude any evidence obtained in violation of the law at trial.
- Give people whose accounts have been accessed in violation of the law a right to sue.

By passing this bill, New York will demonstrate its commitment to New Yorkers' safety from police coercion, civil rights, and the privacy rights enshrined in our Constitution. For these reasons, we urge the legislature to pass and the Governor to sign the Stop Online Police Fake Accounts and Keep Everyone Safe Act (A.4638 Mamdani/S.1764 Cleare).

² <https://theappeal.org/memphis-police-collected-black-lives-matter-activists-private-facebook-posts/>

³ <https://www.theverge.com/2014/12/10/7341077/nypd-harlem-crews-social-media-rikers-prison>

⁴ <https://www.vice.com/en/article/aekedb/chilling-effect-of-mass-surveillance-is-silencing-dissent-online-study-says>

⁵ <https://www.theguardian.com/us-news/2021/nov/17/los-angeles-police-surveillance-social-media-voyager>

⁶ <https://www.brennancenter.org/sites/default/files/2021-11/J945-954- Investigating a Threat Actor.pdf>

⁷ <https://www.ap.org/ap-in-the-news/2012/nypd-muslim-spying-led-to-no-leads-terror-cases>

⁸ https://scholar.google.com/scholar_case?case=13289987455984797590

⁹ <https://www.ap.org/ap-in-the-news/2012/nypd-muslim-spying-led-to-no-leads-terror-cases>