

MEMORANDUM

Date: September 14, 2021

To: All Assembly Members, New York State Assembly; All Senators, New York State Senate

From: Albert Fox Cahn, Esq. Executive Director

Re: The Surveillance Technology Oversight Project (S.T.O.P.) Memorandum in Support of A430/S2628

The Surveillance Technology Oversight Project, Inc. (“S.T.O.P.”), litigates and advocates for New Yorkers’ privacy. We write in support of Assembly Bill A430 / Senate Bill 2628, which would require employers to notify employees before intercepting their electronic communications. While we continue to press lawmakers to go far farther in protecting New Yorkers from electronic surveillance and the abuses it enables, this bill is an important first step towards protecting workers.

Employees deserve to know how they are watched

Employers’ ability to surveil workers has drastically increased over the last few years.¹ However, even as new technologies have given employers once unfathomable power to track their workers in the most intimate moments of their lives, our laws have failed to keep up. Worker surveillance enables harassment and other abuses New York has sought to combat in their analog form. Now we need to update those protections for the digital age. Currently, employers can not only monitor employees’ calls, messages, and internet activity, but they can do so secretly.² This sort of tracking allows employers to expand harassment to every corner of the virtual office, even employees’ bedrooms.

We believe that many worker surveillance tools are unconscionable under any conditions and should be banned completely. However, we recognize that it’s hard to outlaw abuses that we cannot control, and mandatory notification requirements are an important first step to more comprehensive worker protections.

A430/S2628 is a starting point, but New York must further advance workplace privacy. Future legislation should build on notice requirements to require (at a minimum) informed consent for any

¹Natalie Chyi, *The Workplace Surveillance Technology Boom*, Slate, (May 12, 2020 3:40 PM) <https://slate.com/technology/2020/05/workplace-surveillance-apps-coronavirus.html>; Steve Lohr, *Unblinking Eyes Track Employees*, NY Times (June 21, 2014), <https://www.nytimes.com/2014/06/22/technology/workplace-surveillance-sees-good-and-bad.html>.

² American Management Agency & ePolicy Institute, *Electronic Monitoring and Surveillance Survey* (2007), <http://www.epolicyinstitute.com/2007-survey-results>.

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surveillance. But given the inherent coercion of any workplace request, New York needs to also ban invasive forms of surveillance, such as biometric tracking and at-home video monitoring. Furthermore, there is no justification for granting fewer rights to employees who work for New York State and local government. As an employer, our state should be held to a higher standard, not a lower bar.

Respectfully submitted,

/s _____

Albert Fox Cahn

Executive Director