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**SUBMISSION OF
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**FOR THE NEW YORK CITY AUTOMATED DECISION SYSTEMS TASK FORCE:
PUBLIC FORUM ON TRANSPARENCY**

May 30, 2019

* My sincerest thanks to James Blum, S.T.O.P. Civil Rights Intern, for his invaluable assistance in preparing these remarks.

Good evening, my name is Albert Fox Cahn, and I serve as the Executive Director for the Surveillance Technology Oversight Project (“STOP”). STOP advocates and litigates for New Yorkers’ privacy rights, fighting discriminatory surveillance. I thank the members of the Automated Decision System (“ADS”) Task Force for providing this public forum and the opportunity for public comments on the Task Force’s crucial work.

Students have long been taught the adage “show your work” as a reminder that process can be as important as outcome. We should demand no less from the city agencies who control those students’ educational fates, nor from the Task Force meant to safeguard those students, and all New Yorkers, from the growing impact of ADS.

I. ADS Transparency Reduces Discrimination and Legal Challenges

There is no reason for agencies to resist ADS transparency the way they have, as it serves both the interest of the public and the agencies. Nationwide, we see the consequences of hasty and covert ADS adoption. Arkansas’s disastrous 2016 transition to algorithmic Medicare benefits haphazardly rolled-back attendants’ hours and left vulnerable patients without clean clothing or even food.¹ When the cuts were challenged, Arkansas failed to defend an algorithm it did not understand in court.

Idaho transitioned to an opaque ADS in 2011 that severely cut Medicaid services for Idahoans with developmental disabilities. As in Arkansas, the cuts were challenged. And, as in Arkansas, the agency lost.² In the end, Idaho settled to scrap the ADS and develop a replacement system with the input and consent of affected Idahoans.

ADS promise to increase efficiency and cut costs, but faulty systems will do neither. New York decisionmakers learned this lesson at the expense of large swaths of the Bronx.³ Transparency and community engagement throughout the ADS development cycle mitigates these harms and promotes ADS that best serve New Yorkers.

II. Best Practices in ADS Transparency

This Task Force, by ensuring agency transparency in ADS adoption and use, can protect New Yorkers from discrimination, ensure the rights of the city’s most vulnerable residents, and limit future agency liability. In drafting its recommendations, the Task Force should look to the research community for best practices.

ADS complexity often confounds disclosure efforts. Without adequate explainability tools and proper training, decisionmakers may not know a model’s methodology or limits. And, decisionmakers may be unduly deferential to the model or unable to explain the ADS’ role in a particular decision. “Model cards” that explain a model’s methodology and limits should be

¹ *Ledgerwood v. Ark. Dep’t of Human Services*, No. 60CV-17 (Pulaski Ct. (ark.) Cir. Ct. Jan. 26, 2017).

² *See K.W. ex rel. D.W. v. Armstrong*, 789 F.3d 962 (9th Cir. 2015).

³ Joe Flood, *Why the Bronx Burned*, N.Y. POST (May 16, 2010) <https://nypost.com/2010/05/16/why-the-bronx-burned/>.

considered to properly limit human deference to ADS.⁴ The Task Force should consider human-training practices that teach decisionmakers how bias (conscious and unconscious) impacts ADS outputs and informs decisionmakers of the danger of “automation bias.”⁵ These best practices that inform and train decisionmakers can safeguard against arbitrary, unexplainable, and therefore opaque applications of ADS.

III. The Task Force Should Compile a List of Existing ADS

Opening Task Force meetings to public scrutiny is necessary but not sufficient to promote public discourse.⁶ Nearly every New Yorker has encountered an ADS. And, nearly every New Yorker was and is unaware of those encounters. A comprehensive list of active ADS will increase public awareness and engagement. And, since the Task Force’s effectiveness depends on public engagement, it cannot make meaningful recommendations without a list of active ADS.

The Task Force must compile a list of active ADS to make meaningful recommendations for ADS use and adoption. This Task Force may have been first in the nation but it was not first in the field. Legal scholars and data scientists have written at length about fairness, accountability, and transparency in automated systems, often with the understanding that overly generalized, academic recommendations have clear limits.⁷ A law review article or white paper to add to the towering stack is not the intended end product of this Task Force. Its recommendations should effectuate the academic ideas of this growing interdisciplinary field in New York City.⁸ To do so, the Task Force must know how ADS operate in New York City. Which agencies use them? Who developed them? Where is their impact felt? Before compiling a list and answering these questions, the Task Force’s work will be little more than academic.

⁴ Model cards explain the training materials, methodology, limitations, known biases, and unknown or untested capacities that the models might harbor. Understanding how narrow the focus of a model is, or whether it includes racial features or racial proxy features like zip Code can impact the decision-making of a human agent involved in reading the output of the algorithm.

⁵ “Automation bias” is the phenomenon that people presented with an algorithmic prediction will confirm its truth rather than deny it. As we saw in the Boeing 737 case, poor training can result in catastrophic outcomes, especially when the machines and the humans disagree.

⁶ Cary Coglianese & David Lehr, *Transparency and Algorithmic Governance* 71 ADMIN. L. REV. 1, 20-21 (2019) (discussing Fishbowl and Reasoned Transparency).

⁷ See, e.g., *Id.* at 29 (noting the limitations on the general analysis of transparency procedures for ADS because any process will “depend on how government actually uses machine learning—and even on what kind of machine-learning algorithm it uses”); Robert Brauneis & Ellen P. Goodman, *Algorithmic Transparency for the Smart City* 20 YALE J. L. & TECH 103, 136 (2018) (complaining that because there are “no means of knowing how many algorithms are currently in use, who has developed them, or which governments are using them” there is no way “to generalize from [the authors’] finding”).

⁸ *Id.* at 29 (noting the limitations on the general analysis of transparency procedures for ADS because any process will “depend on how government actually uses machine learning—and even on what kind of machine-learning algorithm it uses”).

IV. The Task Force Meetings Should Be Open to Aid Meaningful Public Discourse

A Task Force created, in large part, to increase transparency should be transparent and must be transparent to be effective. So, we applaud the Task Force's recent efforts to increase public engagement. But, the two public forums held over the past month and the upcoming community-based events should be the beginning and not the end of these efforts.

For this public discourse to meaningfully inform the Task Force's upcoming recommendations, the public needs to see the Task Force's work. Task Force meetings have been kept private over the protestations of the public and members of the Task Force itself. This lack of transparency surprised city councilmembers and the justification for it is unpersuasive. Private meetings without video, audio, or minutes, officials maintain, create a safe space to encourage Task Force members to speak openly about their perspectives. We contest the claim that privacy is necessary to effectively make recommendations meant to promote transparency.

The lethargic pace of the Task Force largely undermines claims that privacy is necessary for Task Force effectiveness. The Task Force has no published draft of its recommendations. And, as of the last glimpse into its progress, the Task Force has no definition of ADS. It appears only marginally closer to fulfilling its legislated duty than it did a year ago at its founding. The time has come for the public to understand what the Task Force is struggling with and be given the opportunity to assist in working through those struggles.

V. Next Steps

New York City led the national movement for ADS transparency. This Task Force has lost that lead. By recommitting to the independence of the Task Force implicit in Local Law 49 and by recommitting to the transparency mandated by Local Law 49, this city can once again lead the march towards the fairer, more transparent, and more effective use of ADS.