

## MEMORANDUM OF SUPPORT FOR THE OMNY PRIVACY ACT

S.6142 Senator Fernandez  
May 2023

**The Surveillance Technology Oversight Project supports the OMNY Privacy Act (S.6142 Fernandez) 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.

New York City is in the process of shifting its public transit system to a payment method known as "OMNY." OMNY allows New Yorkers to swipe their credit cards, or an OMNY card linked to their bank account, to ride the subway or bus. While OMNY has its advantages, the ability to link an individual to a complete history of their transportation is ripe for abuse. Worse, nothing stops the MTA or its vendors from sharing this data directly with NYPD or ICE.

S.6142 would prevent the transit authorities, their vendors, and those with whom they share data from sharing individuals' fare payment data with law enforcement without a warrant. They would also require the ability to purchase an OMNY card with cash in each station and cap the cost of such cards.

- **Law enforcement can access OMNY data.** New Yorkers have a right to travel through the city without being tracked by the government and private entities. Cell phones, or at least their location history storage, can be turned off. But if a subway ride is tied to one's bank account, tracing movements across the city becomes trivial. In light of New York's commitment to being a sanctuary, communities particularly affected by this could include undocumented New Yorkers, individuals coming from out-of-state for abortion care or gender affirming care, and political protesters, among others.
- **Electronic payments exclude unbanked New Yorkers.** Not every New Yorker has a credit card. Not every New Yorker has a bank account. Electronic payment systems – whether they accept credit cards directly or specialized cards tied to bank accounts – exclude individuals who do not have access to these financial services. This excludes the most vulnerable New Yorkers, particularly poor and undocumented, and disproportionately Black, brown, and

immigrant New Yorkers. These are also the New Yorkers who rely most heavily on public transportation.

If implemented, the OMNY Privacy Act would do the following:

- Prohibit the MTA and other state public transit authorities from sharing individuals' fare payment data with law enforcement without a warrant.
- Prohibit vendors and others with whom such data is shared from sharing private data with law enforcement without a warrant.
- Require the MTA and other state public transit authorities to include a cash payment option for transit cards in each station.

By passing this bill, New York will help create a transit system that is safe, affordable, accessible, and privacy-preserving. For these reasons, we urge the legislature to pass and the Governor to sign the OMNY Privacy Act (S.6142 Fernandez).