October 1, 2019

Joint Committee on State
Administration and Regulatory Oversight
Sen. Pacheco & Rep. Gregoire, Chairs

SUPPORT FOR S.1876/H.2701

**A COMMISSION TO ENSURE GOOD GOVERNMENT
IN THE AGE OF ARTIFICIAL INTELLIGENCE**

Dear Senator Pacheco, Representative Gregoire, and members of the Committee:

The Undersigned respectfully submit the following testimony in support of S.1876/H.2701, *An Act Establishing A Commission On Transparency And Use Of Artificial Intelligence In Government Decision-Making and An Act Establishing A Commission On Automated Decision-Making, Artificial Intelligence, Transparency, Fairness, And Individual Rights*. This legislation will enable policymakers and the public to better understand the risks and opportunities presented by the use of artificial intelligence, automation, and algorithms in government decision-making.

Government agencies are increasingly turning to automated decision-making and artificial intelligence (AI) systems to aid or supplant human decision-making in various sensitive social domains. They determine where a child will go to school, who will go to jail before their trial, who will have their food subsidies terminated, how much Medicare benefits a person is entitled to, and who is likely to be a victim of a crime. While these new technologies are often marketed for their time-saving, cost-cutting, or even bias reducing potential, actual implementation of these technologies demonstrate a very different reality of hidden or unanticipated costs, rampant discrimination, and in some cases the death[1] of individuals misidentified by such systems.

In Michigan, more than 19,000 residents were improperly disqualified from food assistance benefits after the State Department of Health and Human Services used a matching algorithm to implement the State's "fugitive felon" policy, which attempted to automatically disqualify individuals from food assistance based on outstanding felony warrants.[2] Michigan subsequently lost a class action lawsuit and is still restoring food assistance benefits and issuing settlement

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[1] Ees, A., & Bowman, E. (February 19, 2018). 'Automating Inequality': Algorithms In Public Services Often Fail The Most Vulnerable. *National Public Radio*. Retrieved from
https://www.npr.org/sections/alltechconsidered/2018/02/19/586387119/automating-inequality-algorithms-in-public-services-often-fail-the-most-vulnerab

[2] Richardson, R., Schultz, J. M., & Southerland, V. M.. (September, 2019). Litigating Algorithms 2019 US Report: New Challenges to Government Use of Algorithmic Decision Systems. AI Now Institute. Retrieved from https://ainowinstitute.org/litigatingalgorithms-2019-us.html.

payments to the plaintiffs.[3] The Los Angeles Police Department (LAPD) suspended the use of controversial data driven crime programs after an audit by the Inspector General revealed that the programs potentially facilitated unconstitutional police conduct and questioned its overall effectiveness at predicting crime.[4] In New York City, a school matching algorithm error resulted in 144 students receiving false rejection notifications to one of the City's coveted high schools.[5] In Illinois, the State Department of Children and Family Services abandoned the use of a predictive technology that attempted to identify children at risk for serious injury or death after an agency official found the technology unreliable.[6] The technology misidentified thousands of children as high risk for death or injury, and ignored several high-profile child deaths. These incidents and countless others around the country have diminished public trust and safety, reduced the efficacy of implementing government services, and increased costs (both from hidden costs of implementation and subsequent litigation costs).

These problems are made worse by the fact that technology vendors have few incentives to ensure their products work or are aligned with societal notions of fairness, justice, and safety. Indeed, without adequate accountability, transparency, and oversight mechanisms, there are few ways to access information about these technologies or guarantee that these technologies will not discriminate or cause harm when implemented in real-world conditions.[7] For instance, the City of Boston experienced much public backlash and scrutiny after two failed efforts to address school equity via automated systems. The Boston School District adopted a geographically-driven school assignment algorithm, intended to provide students access to higher quality schools closer to home. The school district's goal was to increase the racial and geographic integration in the school district, but a report assessing the impact of the system determined that it did the opposite: while it shortened student commutes, it ultimately reduced school integration.[8] The Boston School District tried again to use an algorithmic system

[3] Barry V. Lyon: Online Help Center for Disqualification of Public Benefits. (n.d.). Retrieved from https://www.aclumich.org/en/news/barry-v-lyon-online-help-center-disqualification-public-benefits

[4] Los Angeles Police Commission Office of The Inspector General, Review of Selected Los Angeles Police Department Data-Driven Policing Strategies. (2019). Retrieved from https://docs.wixstatic.com/ugd/b2dd23_21f6fe20f1b84c179abf440d4c049219.pdf. *See also* Richardson, R., Schultz, J., & Crawford, K. (2019). Dirty Data, Bad Predictions: How Civil Rights Violations Impact Police Data, Predictive Policing Systems, and Justice. *New York University Law Review Online, Forthcoming* (examining the risks presented by the use of predictive policing systems in jurisdictions with documented histories of discriminatory or unlawful policing including Boston).

[5] Amin, R. (2019, April 9). Initially rejected, 144 students learn they were accepted to NYC's coveted Lab School. *ChalkBeat*. Retrieved from https://www.chalkbeat.org/posts/ny/2019/04/09/admissions-error-lab-school-for-collaborative-studies-new- york/.

[6] Jackson, D. & Marx, G. (2017, December 6). Data mining program designed to predict child abuse proves unreliable, DCFS says. *Chicago Tribune*. Retrieved from https://www.chicagotribune.com/investigations/ct-dcfs-eckerd-met-20171206-story.html

[7] Milligan, J. (2019, April 7). Federal Court Holds Tenant-Screening Services must Comply with Fair Housing Act. *Fair Housing Law Center*. Retrieved from http://fhlaw.org/2019/04/07/federal-court-holds-tenant-screening-services-must-comply-with-fair-housing-act/

[8] O'Brien, D. T., Hill, N. E., Contreras, M., Phillips, N. E., & Sidoni, G. (July, 2018). An Evaluation of Equity in the Boston Public Schools' Home-Based Assignment Policy. *Boston Area Research Initiative*. Retrieved from https://news.northeastern.edu/wp-content/uploads/2018/07/BPSHBAP.pdf

to reconfigure school start times to improve student health and performance based on a recognition of students' circadian rhythms at different ages, and to optimize the use of school buses to produce cost savings.[9] An algorithmic system was developed optimizing for these goals but it was never implemented because of significant public backlash. In both cases, the design process failed to adequately recognize the needs of families, or include them in defining and reviewing system goals. Proactive public engagement and transparency could have helped unearth some of the structural and practical barriers to automation as well as the potential risks of perpetuating existing racial and socioeconomic disparities in the education system.

Though the problems presented by government use of automated decision-making and AI systems are of great concern, they are often avoidable when adequate accountability, oversight, transparency, and public engagement mechanisms are in place. This is why enacting S.1876/H.2701 is an imperative next step for Massachusetts. The automated decision-making and AI issues are both social and technical, and therefore require many different expertise, experiences, and perspectives at the table. In order to identify effective, equitable and holistic mitigation solutions, policymakers must engage in inclusive dialogue with researchers and the public.

The Undersigned are researchers and advocates that are engaged in research and policy advocacy regarding government use of automated decision-making and AI in New York City and other jurisdictions. Based on our research and experience, we urge the Massachusetts legislature to pass S.1876/H.2701 and evaluate the following considerations in the implementation of this legislation:

- **The Commission Should Provide Meaningful Opportunities For Public Engagement**
  The lack of transparency regarding the use of automated decision-making and AI technologies in government can hinder the identification of the existing harms. Insight from the public is crucial to both identifying emerging concerns and possible solutions. In order for the Commission to fully understand the scope and gravity of the risks associated with automated decision-making and AI technologies, it must engage the public early and often. For example, in New York City, residents helped highlight concerns about the use of facial recognition in housing,[10] which has resulted in Congressional legislation on the issue.[11] We also encourage the Joint Committee on State Administration and Regulatory Oversight to consider amending this legislation to include Commission representatives from community organizations and direct service providers, since they are better suited to provide real world insights that may not be provided by the designated representatives currently listed in the bill.

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[9] Scharfenberg, D. (2018, September 21). Computers Can Solve Your Problem. You May Not Like the Answer. *The Boston Globe*. Retrieved from https://apps.bostonglobe.com/ideas/graphics/2018/09/equity-machine/
[10] Durkin, E. (2019, May 30). New York tenants fight as landlords embrace facial recognition cameras. *The Guardian*. Retrieved from https://www.theguardian.com/cities/2019/may/29/new-york-facial-recognition-cameras-apartment-complex
[11] No Biometric Barriers to Housing Act of 2019, H.R. 4008, 116th Cong. (2019).

- **The Commission Should Be Given Adequate Resources To Provide At Least Two Forms Of Public Education**
In order for the public to be an informative ally of the Commission, there must be opportunities to meaningfully inform the public about the existence and goals of the Commission. Public education can take many forms and the Commission can collaborate with community partners to aid in the design and engagement. For instance, a group of Harvard graduate students created the website, automating.nyc, to help educate New York Residents about automated decision system issues. This website and project was created to address the lack of public education on this issue, not in collaboration with the New York City government. Yet, we highlight this as a missed opportunity that we hope the Commission can proactively pursue. The Commission can build on prior efforts in Massachusetts to improve public education and engagement regarding data and technology, which includes using public libraries to enhance public data access and literacy[12] and holding public discussions about the future of technology in cities.[13]

- **The Commission Should Engage Former And Current Members Of Similar Quasi-Government Bodies Examining Government Use Of Automated Decision-making And AI Systems As Well As Relevant Stakeholders From Those Jurisdictions**
There are quasi-government bodies examining these issues in Alabama,[14] New York City,[15] and Vermont,[16] and potentially more jurisdictions once the Commission is formed. The Commission should engage various stakeholders from these jurisdictions to identify the best practices and other considerations learned from these experiences. This can help the Commission avoid replicating mistakes and missed opportunities experienced in other jurisdictions.

- **The Commission Should Empowered to Access Information Regarding Automated Decision-Making and AI Systems Currently and Prospectively Used by Government Agencies**
Regrettably, prior attempts to promote automated decision-making system and AI transparency in other jurisdictions have been hindered by some government agencies' refusal to disclose information about existing and future uses of these systems. In New York City, Automated Decision Systems Task Force members repeatedly called on City officials to provide such information because the local context was necessary to fulfill the statutory mandate, but the New York City Mayor refused to require agency

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[12] Open Data to Open Knowledge. (2017, April 11). Retrieved from https://www.boston.gov/innovation-and-technology/open-data-open-knowledge

[13] Beta Blocks. (2018, October 4). Retrieved from https://www.boston.gov/departments/new-urban-mechanics/beta-blocks

[14] Waggoner, J., & Roberts, D. (2019, September 19). Greg Canfield and Jabo Waggoner to Lead Alabama's Artificial Intelligence Commission. Retrieved from http://www.alsenaterepublicans.com/updates/press-releases/greg-canfield-and-jabo-waggoner-to-lead-alabamas-artificial-intelligence-commission/

[15] New York City Automated Decision Systems Task Force. (n.d.). Retrieved from https://www1.nyc.gov/site/adstaskforce/index.page

[16] Artificial Intelligence Task Force. (n.d.). Retrieved from https://accd.vermont.gov/economic-development/artificial-intelligence-task-force

cooperation.[17] To avoid similar problems, it is essential that the Commission is given authority to request and access information about all existing automated decision-making system and AI systems, without special exemptions or carve-outs that can undermine the goals of the Commission.

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[17] Cahn, A. F. (2019, September 11). The irony behind de Blasio's proposed robot tax. *Ny Daily News*. Retrieved from https://www.nydailynews.com/opinion/ny-oped-the-irony-behind-de-blasios-proposed-robot-tax-20190911-6fwkugtgbfavrp7zkn7u6odeca-story.html ; Lecher, C. (2019, April 15). New York City's algorithm task force is fracturing. *The Verge*. Retrieved from https://www.theverge.com/2019/4/15/18309437/new-york-city-accountability-task-force-law-algorithm-transparency-automation