INDEX

Charlie Driver, Legislative Representative, DCWP  3
Selvena Brooks-Powers, NYC Council Member          8
Shea Brown, CEO, BABL AI                          13
Scott Allen Cambo, Parity AI                      16
Julia Stoyanovich, Professor, NYU                 19
Cathy O’Neil, ORCAA                               23
Ryan Carrier, ForHumanity                         26
Jason Albert, ADP                                 29
Frida Polli, Pymetrics                            32
Andrew Hamilton, Metro NY Black MBAs              36
Rahsaan Harris, CEO, Citizens Committee NYC       38
Lindsey Zuloaga, chief data scientist, HireVue    41
Janet Helms, Professor                            44
Stephen Malone, Employment Attorney               47
Rob Szyba, Employment Attorney                    50
Annette Tyman, Employment Attorney                51
Kirsten John Foy, Arc of Justice                  54
Camille Carlton, Aspen Tech Policy Hub            57
Sebastian Filipe Duenas Muller, Researcher        59
Ridhi Shetty, Center for Democracy & Technology   61
MR. CHARLIE DRIVER: Alright, folks, since we’ve had some new people join the call, if you are interested in testifying at this hearing, and have not already, let me know that you’re hoping to testify. Please notify me now. I will put my, I can put my email in the chat, you can also just drop it in the chat or unmute yourself to let me know.

Alright, we’ve been having, you know, a lot of people trickle in. Please let me know if you have not indicated that you’re interested in testifying to me already and you want to speak at this hearing. There will be a chance to do it at the end, but if you want to just get on the list, please notify me. I’m going to drop my email in the chat. You can also just unmute or reply directly in the chat. Alright and please make sure you just mute yourself if you’re not talking. Thank you.

Okay, folks again, please let me know if you want to testify and you haven’t already let me know, feel free to unmute yourself and let me know, or drop it in the chat, whichever works. Julia, you’re on the list. Thank you. Dave, a copy of the hearing is not going to be made public, but we do make public a transcript of the hearing. So, you know, functionally the same, we just don’t share the video. And just for
the record, the transcript and our additionally, the comments that we receive for the rules, those all get posted publicly on our website and I will drop the link for that in the chat right now.

For everyone who has just joined, please let me know if you haven’t done so already if you want to testify at this hearing. You can unmute and let me know. You can also drop a message in the chat. I’ll also drop my email as well. We’re going to get started probably a few minutes after 11:00. Ryan, I have you on my list already, thank you. Yeah, we’re going to start a few minutes after 11:00 just to allow time for more people to trickle in and hopefully the pace of these chimes associated with it to slow down and then we will, we will begin.

And just for everyone’s awareness, I’m probably, I’m projecting that this will take somewhere between 60 and 90 minutes, although I don’t have a firm way, you know, of telling you exactly how long it’s going to be. For the folks who have just joined, we’re going to get started, you know, in a few minutes. I’m just letting, you know, any, any people who are coming off maybe 10:00 a.m. meetings to join the call. If you have not already let me know that you’re interested in testifying, and that includes if
you had signed up to testify at a previous hearing
with me, I have the list the same as it was. I can
sign up you that way.

Okay, folks, again, we’re going to probably
wait until 11:05 or so, or when the pace of people
joining the meeting drops off before we get started.
If you haven’t let me know already that you’re
interested in testifying, and would like to testify at
today’s hearing, please do so now. You can either
unmute and let me know, or drop a message in the chat
or you can also email me. I’m putting my email in the
chat right now. Janet, yes, you are on the list.
Thanks for double checking.

Okay, I’m going to give it one more minute
and then, and then we’ll get this started. Thanks
everyone, for your patience. Okay. I’m going to get
this underway. A reminder to everyone to please let me
know if you haven’t already, that you’re interested in
testifying. You can either drop that in the chat or
you can email me. I’m going to drop my email in the
chat. I have a little bit of a, just an intro to read
and then we’ll dive right into the testimony.

So good morning, everyone. My name is
Charlie Driver. I’ve been designated as the hearing
officer for this public hearing of the Department of
Consumer and Worker Protection on proposed rules to implement local law 144 of 2021, relating to automated employment decision tools. This hearing is being held on Microsoft Teams, and it is now 11:07 on Friday, November 4, 2022 and I am hereby convening the public hearing on this proposed rule.

The proposed rule was published in the City Record on September 23, 2022. Published notice and rules are available online on the New York City Rules websites as well as on the department’s website. The department has proposed these rules pursuant to the authority vested in the commissioner of the Department of Consumer and Worker Protection by sections 1043 and 2203F of the New York City Charter and section 20-1 of 4B of the New York City Administrative Code.

This hearing affords the public the opportunity to comment on all aspects of the rules the department has proposed. The department will carefully review all testimony and written comments received at this hearing and throughout the comment period and will give due weight and consideration to proposals and recommendations that are submitted for the record.

A few ground rules before we get started. Please make sure you are muted as long as you are not speaking. I will be quick on the mute button if you
aren’t, but it’s easier if I don’t have to do that at all. Especially, we do have an awful lot of people here. I think it’s a DCWP record, so congratulations to everyone, so just be cognizant of that. There’s a time limit for any oral testimony. The time limit is three minutes. I am not going to cut you off directly at three minutes, but I will ask you to stop shortly after that. Ryan, keep track of time. I can also, if it will be helpful to people, let you know how much time you have. I’ll just maybe put like a one up on my camera when we get to that point.

And then, again, if you’re interested in testifying and you haven’t already let me know, please just drop that in the chat, send me an email. I will drop my email in the chat again now. While there is a limit on the time you can take for oral testimony, again, that limit three minutes, there is no limit for what you can submit as written testimony to the department. You can email me or go to NY-rules.nyc.gov. and comment there, or also email DCWP@rulecomments.dcwp@dcwp.nyc.gov to submit those and we’ll need those comments by midnight tonight to be considered as part of this rulemaking process.

And last thing before we get started, I just want to thank all of you for your patience with this
rulemaking process and your flexibility after we had
to postpone the initial hearing due to some technical
difficulties, you know, figuring out that we had a
participant limit on our Zoom. As everyone I’m sure
has noticed, we don’t have a participant limit of the
same low nature for this Teams call and I’m glad that
you call could make it and, you know, we’re committed
to making sure that you can participate in the process
and have a voice in the way that New York City
government is, is run.

So without any further ado, we’ll dive into
this comments list. Again, please drop in the chat if
you are interested in testifying and haven’t already
let me know to get on my list, but I’m just going to
proceed down the list as I have it right now. And
first up, we have New York City Council majority whip
Selvena Brooks-Powers. Council Member, whenever you’re
ready, your three minutes, and thank you for
participating today.

MS. SELVENA BROOKS-POWERS: Thank you. Are
you able to hear me?

MR. DRIVER: Yeah, I hear you loud and
clear.

MS. BROOKS-POWERS: Perfect. So as you
mentioned, I’m Councilwoman Selvena Brooks-Powers and
I represent New York City’s 31st Council District. I’m proud to be one of the 38 lawmakers who voted yes on Local Law 144 at the end of last year. This legislation is an unprecedented effort to shine a light on the tools employers use to evaluate job applicants with an eye to racial equity consequences.

As the agency works to implement this legislation, we must all keep at the forefront the problem Local Law 144 is intended to solve. For decades, employers have used automated decision making tools to essentially sort individuals into a yes and no pile when they apply for a job. During the Civil Rights Era, advocates realized that certain tools have the tendency to assign a disproportionate number of black and brown people to the no pile. This type of discrimination was coined disparate impact.

Disparate impact is not a complex technical concept. In the educational context, many people are familiar with the SAT as an example as a tool that tends to result in disparate impact for college admission. In the employment context, many different tools have similar effects for determining who gets considered for jobs.

From a practical perspective, when an employer genuinely wants to promote workforce
diversity, one of the most important things they can
do is avoid procedures with significant disparate
impact. Otherwise, the technology will quote unquote
screen out most black and brown applicants. Too many
of these candidates have been turned away from a job
that could change their lives.

Many times applicants are not even aware of
the nature of the tools being used and more
importantly, the tools bias. In one case, a resume
screening tool used to identify and promote Ivy League
schools on employees’ resumes and downgrade resumes
with HBCUs or women colleges. Given how much progress
we still need to make employment equity a reality, it
is safe to assume that disparate impact is a common
issue with many decision making tools in use today.

The challenge however is that we do not have
the necessary information to identify which
technologies are problematic. Many employers and HR
tech vendors collect important data about such racial
consequences, but they tend to keep a very close hold
on evidence their procedures are blocking workforce
diversity.

This lack of transparency and resulting lack
of accountability is a fundamental problem Local Law
144 is intended to solve. For the first time in any
jurisdiction, when an employer wants to use an automated hiring tool to evaluate New Yorkers for jobs, they must publicly disclose a report on how biased the outcomes from the tools tend to be. The disclosures will be known as bias audit reports. They will be produced by a third party investigator who conducts an analysis of disparate impact for the tool.

One way we can think about a bias audit report is as a label that serves to better inform consumers about the negative aspects of hiring tools. Mandated disclosures like this are not new, we have seen them applied to nutrition information for food and emission ratings for cars. The idea is simply that New Yorkers deserve more than empty promises that a food item is healthy and a car is eco-friendly.

The City Council passed Local Law 144 because we felt the next frontier for mandatory disclosure regime was one focused on racial equity. Bias audits will be able to present crucial facts about whether the automated hiring systems an employer relies on are biased against people of color. Public disclosure of such information would be unprecedented.

Now, the task is to ensure this law is implemented in a manner that guarantees meaningful, transparency as the administration continues the rules
for Local Law 144 over the next few weeks, I encourage officials to keep in mind just how powerful transparency can be, because transparency can bring about real systems of accountability, actors who do not want to be held accountable will do everything they can to avoid exposure.

Practically speaking, my recommendation is for the agency to recognize the need for expertise. Previous commenting periods have included tenured professors providing technical guidance, third party validators seeking accountability and transparency and major trade associations concerned with compliance. In enforcing these regulations, I call on the department to ensure the New York City Law Department and DCWP are well capacitated with experts in this field to ensure any regulations hold bad actors accountable without hampering legitimate, inclusive AEDTs that seek to expand the hiring pool in the city.

The path we face is not an easy one, rooting out discrimination in hiring is not something that can be accomplished by a single piece of legislation. Moreover, scores of businesses rely on these tools to capacitate essential workers. As a comment from the NYU at Langone shows and what we witnessed firsthand during the height of the pandemic. We are however at a
turning point in the industry. Systems of evaluating job applicants can either be built to sustain the inequitable status quo or promote progress towards diversity. I firmly believe that this law, if implemented correctly, will be an important first step to a more transparent, fair and balanced hiring process for all New Yorkers. Thank you so much for the opportunity to testify today.

MR. DRIVER: Great. Thank you so much, Council Member. I really appreciate your participation in this process. Next up, I have Shea Brown. Shea, are you on the call?

MR. SHEA BROWN: Can you hear me?

MR. DRIVER: Yeah, I can hear you fine, three minutes whenever you’re ready.

MR. BROWN: Thank you very much. Good morning, and thank you for allowing me the opportunity to speak. My name is Shea Brown and I’m the CEO of BABL AI, a company that audits algorithms for ethical risks, effective governance, bias and disparate impact. BABL believes that the spirit of this law furthers our mission to promote and protect human flourishing in the age of AI. I just want to highlight two things that I think are concerning about the proposed rules. The first is the AEDT definition.
find that the clarified definition of an AEDT is overly stringent. In its proposed form, it allows for serious loopholes for employers to seek exemption from bias audits. To illustrate this, a user of an ML based assessment whose results have shown to recruiters as part of a candidate profile could claim exemption from the bias audit, arguing that this assessment does not overrule or modify recruiter decision making.

While this may be true in some cases, our experience has shown that this is only determined through a careful risk or impact assessment. Given that many such ML systems tend to contain high risk of algorithmic bias, we view their potential exclusion as risky. Therefore, we strongly encourage the department to provide a recalibrated definition of an AEDT, which may include these systems.

The second is that of independence. We’re concerned that this new definition of independence is not sufficiently strong to provide the level of impartiality, which is also required by the law. This definition allows for internal parties with conflicts of interest for a vendor or an employer, for example, operating under the same level of management to conduct the audit, which might hide impartiality.

Also, this definition shifts the discourse
to a semantic debate on the terms using and deploying. For example, the term developing, sorry, developing, the term developing carries a dual meaning in AI fields. There’s a narrow scope as in the development phase of an AEDT, where the AI or model is first built, trained and tested prior to development. And there’s also a broad scope, where the continuous design, procurement, training, testing, deployment and monitoring are all parts of the AEDT’s development. As a result, the number of parties involved in developing depends on its meaning and its scope.

We encourage the department to either consider a different approach to defining independence, for instance, using precedent like Sarbanes-Oxley, or to provide special clarification for the terms using and developing.

Overall, we support this law. This law is a welcome attempt to mitigate potential harm that such systems could cause while strengthening the market position of vendors and employers that invest in thorough due diligence to tackle these issues head on. I’d like to thank the department again for allowing me the opportunity to speak.

MR. DRIVER: Great, thank you so much, Shea, I really appreciate it. Next up, I have Scott Cambo,
Scott, are you on the call? If you want to share your screen, you’re welcome to. I think it’s preferable. It doesn’t really make a difference, because we’re going to release a transcript here. But if you like, we can try and do it.

MR. SCOTT CAMBO: I would love to.

Apparently, Teams is incompatible with Firefox and I didn’t have time to kind of switch browsers around. So unfortunately [unintelligible] [00:42:53] today.

MR. DRIVER: I can also, if you have access to another browser, Scott, I can drop you later in the lineup and you could rejoin the call on a different browser?

MR. CAMBO: Okay. If you feel that it’s that necessary.

MR. DRIVER: I would say it’s absolutely not necessary to share your screen, especially since we’re again, we’re releasing just a transcript of this hearing, so any visual slides that you show will not show up in the permanent record of this.

MR. CAMBO: Yeah. It’s not about privacy, it’s just about compatibility.

MR. DRIVER: Sure.

MR. CAMBO: And I don’t have slides.

MR. DRIVER: Okay. Also, just generally,
you’re welcome to submit any visuals you would have shown as written comments.

MR. CAMBO: Excellent.

MR. DRIVER: Yeah, Scott, if you want to go, whenever you’re ready,

MR. CAMBO: Am I free to get started?

MR. DRIVER: Yeah.

MR. CAMBO: Alright. Thank you.

MR. DRIVER: Three minutes.

MR. CAMBO: Alright. Good morning. My name is Dr. Scott Allen Cambo and I’m here today on behalf of Parity AI, a technology company that provides model audits and responsible AI tools. We applaud New York City’s passage of this landmark and revolutionary law. However, we must state that the recent guidance as currently written would unravel the positive impact that this law was intended to have. We have submitted written comments, which we’ll summarize today. We’ve seen the good, the bad and the complicated in AEDT systems through our work. The good companies actively seek our guidance, not just to comply with this law, but to create AEDT systems that can help their customers make good and fair hiring decisions.

However, there are also companies that are at best pseudoscientific snake oil and at worst
algorithmic frenology. We’ve heard these companies say the audit doesn’t need to be good, it just needs to happen and have been lucky enough to be in a position to turn down these deals. There are of course competitors more than willing to cut corners. Where it gets complicated is that many AEDT are decisions support tools. They seek to any many questions beyond job fit. Do they have the right foundation to be trained into this role, would they respond to a cold call, would they be likely to move for this role. How these metrics are contextualized through UX an UI design make a big impact on how the customer understands the information and how that information may bias the hiring process.

There are even more complications when it comes to demographic information. This guidance seeks to mirror EEOC reports that presume that demographic information has been collected. However, employers themselves rarely build AEDT systems. They rely on vendors. These AEDT vendors avoid collecting this information because of the data minimization and anonymization practices that are mandated by data privacy laws, such as HIPAA and GDPR.

Collecting this information is no easy task and takes a very long time to do right. In the absence
of self-reported data, many are turning to gender and race inference methods from other industries such as Bayesian improved surname geocoding or BISG. BISG references historical data about the races that are associated with names within a zip code to infer race. This practice is only possible because the United States has a horrible history of segregation by race via redlining and white flight, which create monocultural communities. As you can imagine, the more diverse and multicultural a community is, the less accurate BISG can be. And I can’t imagine a more diverse and multicultural place than New York City.

We’ve submitted detailed comments with examples as well as more concrete recommendations and we look forward to your feedback and encourage further scrutiny of the law so that it can be effective in combating algorithmic hiring discrimination.

MR. DRIVER: Great, thank you so much. Next up, Julia Stoyanovich, three minutes whenever you’re ready.

MS. JULIA STOYANOVICH: Yes, I’m ready, thank you. My name is Julia Stoyanovich. Thank you for an opportunity to testimony. I’m a tenured professor of computer science and engineering and of data science at New York University, and the founding
director of the Center for Responsible AI. Most importantly, I am a devoted and proud New Yorker. I see Local Law 144 as an incredible opportunity for the city to lead by example, but only if this law is enacted in a way that is responsible to the needs of all key stakeholders.

The conversation so far has been dominated by the voices of commercial entities, by two vendors and organizations that represent them, by employers who use tools to screen candidates and employees and by commercial entities wishing to conduct audits of these tools. However, as is evident from the fact that we’re testifying in front of the Department of Consumer and Worker Protection, the main stakeholder group that Local Law 144 aims to protect from unlawful discrimination and arbitrary and capricious decision making are job candidates and employees.

And yet, their voices haven’t been heard prominently in the conversation. Therefore, my first recommendation is to involve job seekers, employees and their representatives in defining standards for bias audits and notices. The New York City Center for Responsible AI conducted numerous public engagement and public education activities under my leadership, most broadly on AI and automated decision making and
specifically on hiring tools. And we see substantial interest from members of the public. We will be happy to assist the city in convening diverse groups of stakeholders.

Bias audits are a crucially important component of Local Law 144. My second recommendation is to expand the scope of auditing for bias, based on input from job seekers, employees and their representatives. The most prominent thread in readers’ comments on a New York Times opinion piece I co-authored in March ’21 entitled, “We need laws to take on racism and sexism in hiring technology” concerned age-based discrimination in hiring. Local Law 144 does not currently include any provisions for audit, to audit for this type of discrimination. This is problematic.

My third recommendation is to expand the scope of auditing beyond bias, to also interrogate whether the tools work. There’s evidence that recommendations of many of these tools are inconsistent and arbitrary. Tools that don’t work hurt job seekers and employees subjecting them to arbitrary decisions with no recourse. Tools that don’t work also hurt employers. They waste money paying for software that doesn’t work and they miss out on many well
qualified candidates based on a self-fulfilling prophecy delivered by a tool.

In my own work, that in collaboration with a larger interdisciplinary team, I evaluated the validity of two algorithmic personality tests, tools that are used for pre-hire employment assessment, produced by Humantic AI and Crystal. We found that both tools show substantial instability on key facets of measurements and so cannot be considered balanced testing instruments. For example, Crystal frequently computes different personality profiles if the same resume is given in .PDF versus in raw text. And Humantic gives different personality profiles on a LinkedIn profile and a resume of the same job seeker, violating the assumption that the output should be stable across job irrelevant factors. Such tools cannot be allowed to proliferate and Local Law 144 should help protect candidates and employees from their use.

And wrapping up with my fourth and final recommendation that concerns the crucially important notices portion of Local Law 144. I recommend --

MR. DRIVER: Alright, Julia, I’m going to have to stop you there. I’m sorry.

MS. STOYANOVAICH: Okay.
MR. DRIVER: But just need to keep it to the time limit and we have a lot of people signed up. I think you’ve already submitted your written testimony, but if not, feel free to submit that, you know, at some point before the end of the day today. Next up, I have a representative from ORCAA, is someone from ORCAA here?

MS. CATHY O’NEIL: Yeah, thank you, Charlie.

MR. DRIVER: Hi, Cathy, whenever you’re ready.

MS. O’NEIL: Great. I think I’ll just skip sharing my slides and just read from my slides. So I have three points to make. Before I make those points, I’ll just say this is really exciting. The law is very, very exciting and I’m really glad to see it. And I know it’s, it’s in its first phase, and I think we can make it better over time, and I’m an independent auditor so I have a lot of pretty big stakes for me. The first major point I want to make of three is that the audits should be per employer, not per tool. And this is after speaking to about 40 different tool makers in the last year and a half. One of the big problems with the idea of the toolmaker making the audit is that they often don’t actually have access to the usage data by their clients, i.e.
the employers. They just don’t, they don’t collect it, they don’t save it. And sometimes they, they technically have it, but they have licensing agreements where they’re not allowed to use it.

But even when they do actually have some of the data, which again, isn’t always, they don’t have the downstream outcomes. They basically only have sort of maybe some kind of scores, one to 100 let’s say. But they don’t know how those scores are used. And that’s really, really important. And, you know, sometimes they do even have thresholds, like 77 and above is green lighted, but they don’t know what actually happened to the people that are green lighted. So they don’t know if those people get interviews or they actually end up getting job offers, whereas the employers do have that information.

And then finally, if you aggregate across employers, it could mislead, like the tool level result might look good when things are actually bad for some of the clients, they’re actually using it in a problematic way. Or it could end up looking bad at the tool level, but many of the clients are using it well. So the real, the final point is that like when firms, when the employers, the clients, have to sort of mix up their data, assuming that data exists, it
sometimes makes them look better than they should or worse than they should. That’s not fair for the good actors.

The second point I want to make is that I think the audits, we at ORCAA think that the audits should address the sourcing. There’s a lot of, as we know, a lot of advertising for employment at this point. And there’s ways of creating a biased applicant pool by simply focusing on some types of advertising and not others. And I’m sure we all are aware of that. So we think an analysis should be done on the actual sourcing. So who, you know, what is the sort of demographic layout of the people who applied versus the people we should expect to apply. So that expectation of course, which is like the baseline, has to be also required. For example, you wouldn’t expect exactly the same demographic applicant pool for tech engineers as you would for cashiers in a grocery store. So you have to sort of set up the baseline. But those, such baselines do exist and are available. So we should, the second point is audits should address the sourcing itself.

And then the final point I’ll make is that the rules as stated have problems with sample size issues. Because it’s intersectional, which I think is
a great idea, it has sort of like Native American
males, I’m taking this from your report, there’s only
11 people, or 24 people, just not enough data. So
there should be rules about what to do with small
samples. I think that will be especially true if the
first point is taken seriously, which is that we have
to think about per employer, because then we’ll have
more small data problems.

But other than that, I’ll just stop there
and say we’re really, really glad about the progress
on this law, thank you.

MR. DRIVER: Great. Thank you so much for
sharing those comments. If you haven’t submitted any
written comments and you’re looking to submit written
comments, again, please submit those by the end of the
day. Next up, we have Ryan Carrier, ForHumanity, Ryan,
whenever you’re ready.

MR. RYAN CARRIER: Thanks, Charlie, and
thanks to Majority Whip Brooks-Powers for her
leadership on this really globally cutting edge law.
I’m the executive director of ForHumanity. ForHumanity
is an open community, available for all humans to
participate. We essentially establish and try to build
an infrastructure of trust, supporting all auditors,
supporting all pre-audit service providers when
governments and regulators choose to provide laws in the areas of AI algorithmic and autonomous systems.

And so when this law was passed, we spent 45 weeks meeting together, crowd sourcing a bias audit, which we have submitted to DCWP. They are welcome to use it as they might like. The idea is in support of both what Cathy and Shea have testified which is can we establish uniformity? Uniformity of these audits is the great result so that all AEDTs, all employers are, are essentially achieving bias audit as we define that, in the same sort of way and so that we have trained and certified practitioners and professionals conducting these audits in a consistent and uniform manner across all AEDTs. That should be our end goal.

And so to that end, we have a few comments. We have submitted all of this of course, in writing. One of those would be to echo Shea’s point. The definition of independence offered under rulemaking is, well, quite frankly, it’s a mistake. The law is predefined in four different places already. The Securities and Exchange Commission, PCAOB, Sarbanes-Oxley and the EU Digital Services Act, not that that necessarily applies. But these are very large laws that go and define independence in exactly the same way. And so New York City should aim to follow that
rather than create some new solution. And so the existing definition aims to do that and we think that’s a mistake and should be rescinded.

True independence, when it means no remuneration from the, the auditee except their audit fees, creates objectivity and avoids conflict of interest that’s necessary to avoid fraud and malfeasance on grand scales, such as Enron and WorldCom. Sarbones-Oxley was built and passed and identified independence to help avoid and amend the problems that occurred in those substantial financial malfeasance.

I would also add that the further clarification on terminologies and machine learning of what an AEDT is were probably a mistake. They have gotten too narrow and they have allowed for too many loopholes of tools that will avoid this law through those loopholes. Eventually, they’ll be caught out through jurisprudence, eventually, they’re going to be caught out. But to, to take these steps in rulemaking would neuter the point of the law that the Council, the beautiful point of the law that the Council tried to, that the Council has passed.

Finally, we would continue to ask for further clarification on what a bias audit is. We do
not think a bias audit is disparate impact study, nor
does the law since the law says a bias, a disparate
impact study, but not limited to. Bias exists in many
phases, to pick up on Cathy’s point, right. AEDTs may
have bias and then employers may introduce bias in the
integration of those AEDTs. So we would advocate
actually that, that audits would occur on both points,
at the AEDT level and at the employer level across
three areas of development in these systems in the
data, in the architectural inputs and in the outcomes.
In addition, bias would be --

MR. DRIVER: Ryan, can you just finish up,
we’re at time?

MR. CARRIER: -- yeah, right here, examined
across both statistical bias, cognitive bias, and non-
response bias, or technology barrier bias. Those would
be our recommendations. Thank you, Charlie.

MR. DRIVER: Alright. Thanks so much and
thanks for submitting all your written comments as
well. I appreciate it. Next up, Jason Albert. Jason,
whenever you’re ready.

MR. JASON ALBERT: Thank you so much. I
really appreciate the opportunity to comment at the,
at the hearing today. So I am the global chief at ADP,
and ADP provides a range of administrative solutions
to over a million employers worldwide, enabling
employers of all types and sizes to manage their
employment responsibilities from recruitment to
retirement, including payroll services, employment tax
administration, HR management, benefits
administration, time and attendance, retirement plans,
and talent management.

We’ve been a leader in AI ethics, including
through publication of a set of AI ethics principles
and establishing an AI and data ethics committee
comprised of both internal and external experts.

We congratulate the DCWP on the proposed
rules, as they provide greater clarity as to how the
law operates and by doing so will help companies more
effectively meet the requirements and objectives of
the law. Specifically, we appreciate the added
precision the proposed rules on what constitutes an
AEDT subject to the law’s requirements. By specifying
that the system must be a sole factor or outweigh any
other factor, or overrule or modify human decision
making to be a covered AEDT, the proposed rules ensure
that the law applies in instances where the AEDT is
the primary factor in the decision whether to hire,
promote an individual. Reportedly, this helps ensure
that the law doesn’t inadvertently impinge its
supplemental uses of machine learning technology in
the hiring and promotion process.

We also further appreciate that the DCWP
defined an independent auditor to include persons or
groups who might be part of the same company but who
were not involved in the development or use of the
ADT. Oftentimes, others in the company will be in the
best position to conduct an audit, given their
expertise in the systems the company uses and develops
and the particulars of machine learning the company
employees. While third parties are increasingly
entering the AI audit space, this industry is still
nascent, so enabling companies to rely on internal
experts is very helpful.

We would suggest a couple of areas of
additional work. The first is more clarity on what the
law applies. It’s very clear that the notice
requirements apply to New York City residents, but
otherwise the law applies in the city, leaving unclear
what jobs fall within the law’s scope. To avoid
concerns about long arm jurisdiction and ensure
clarity as to the law’s scope, we’d ask that DCWP
clarify the replies to posted jobs where the role will
be physically located in New York City.

Our other ask would be that DCWP delay the
enforcement of the law until at least 180 days after adoption of the proposed rules, given the short time in between when the proposed rules are proposed and will be adopted and the effective date of the law, a short enforcement delay would give companies time to totally implement the regulations.

Again, we really appreciate DCWP’s efforts in this regard and the proposed rules and appreciate things like the notice to New York City residents being able to be posted on the website so that they’re not dissuaded by delayed consideration of their applications. And again, really appreciate the opportunity to comment in today’s hearing.

MR. DRIVER: Great, thank you, Jason. Two minutes, 58, really good timing. Next up, Frida, I’m sorry if I’m going to pronounce your last name wrong, Frida Polli.

MS. FRIDA POLLI: Absolutely. Thanks so much. So Hi, I’m Dr. Frida Polli, I’m a former Harvard and MIT trained cognitive neuroscientist turned founder of a company called Pymetrics. As an industry outsider, my observations of the HR tech space have led me to be an avid supporter of the transparency objectives of this law and my comments in this hearing are in the capacity as the founder of Pymetrics.
I agree with a lot of what has already been said, so I’m going to cut my comments short, but I really believe the recently enacted, that this law is very similar the recently enacted pay transparency in that it brings much needed transparency to the concept of AEDT bias. It addresses the information asymmetry that exists between companies and the public. Companies and vendors, like Pymetrics usually know if their tools have bias, but candidates, employees and the public do not. In this day and age of increased demand for transparency, candidates, employees and the public deserve to have this information as they make educated decisions about the companies they want to apply to, work for and be customers of. And as a scientist and a tech vendor, I strongly believe that the HR industry and employers should really work to increase trust in this technology, which is becoming more and more deployed, by embracing transparency. The transparency component is really the critical new element of this law. Many other aspects of this law are quite well established, so automatic decision making has been present for decades now, employers have been using automated tools. The notion of using statistical tests to evaluate bias is also not new. For, you know, since the mid-1900s, EEOC has
encouraged employers and HR vendors to voluntarily conduct self audits of their hiring tools. And OFCCP routinely audits companies yearly. Therefore, audits for disparate impacts have been common for half a century.

However, what’s new is that the results -- what’s new about this law is that historically the results have never been readily made available to the public and this has really restricted progress towards reducing bias in these tools.

First, many employers who rely on hiring tools with different impacts face virtually no pressure to revisit their methods despite increased calls to hold companies accountable on equity commitments. No one is sufficiently informed about the extent of bias. And this includes everybody. Nobody knows what brown truth is to draw attention to the problem.

Secondly, vendors of HR technology are not incentivized to apply recent scientific advances to reduce bias in the development of automated tools because information about disparate impact is rarely available on a product level in market. And therefore the amount of bias in the tool is not often a key consideration.
And third, the public, candidates, employees, and the general public have no information about this when they apply and interact with companies.

So really, I think that Local Law 144 represents a remarkable opportunity to bring transparency to automated hiring tools, but in agreement with what a bunch of other people have said, I think a couple of things should happen.

I think the new definition is overly restrictive. Some of the most problematic forms of bias exist in old tools like cognitive testing, which, you know, only passes three African Americans and four Hispanics for every ten Caucasians, and that’s not necessarily -- that doesn’t rely on ML. Secondly, I think bias audits reports should have clear information in the form of disparate impact reporting, which has been around for a long time and we all know how to do it, so I think we should rely on that.

And then I also think that independent audits must be conducted by individuals who are not employed by the organizations that build or use these tools. So, with that, I’m actually done with my testimony. So I think that was under three minutes.

MR. DRIVER: Great. Thank you so much,
Frida, I really appreciate it. Next up, we have Andrew Hamilton. Andrew, are you on?

MR. ANDREW HAMILTON: I am. And thanks for letting me testify. So my name is Andrew Hamilton, immediate past president of the Metro New York Chapter of the Black MBAs. For decades, automated hiring tools have played a significant role in determining who receives serious consideration to employers. Unfortunately, the racial implications of these systems are seldom made clear to employers or public.

Two years ago, I testified before the City Council technology committee in support of Local Law 144. I firmly believe the legislation could disrupt one of the major challenges people of color face in accessing economic opportunity. Once this law goes into effect, critical information that could drive real progress toward diversity and inclusion will be available. Finally, the public audit reports will be able to have frank conversations about the consequences of the methods hiring have for racial equity.

As someone who firmly believes in the spirit of the law, I have a few comments for DCWP’s rules. First, I believe that central to regulators’ implement legislation so that the definition of automated
employment decision tools or AEDTs does not discourage nefarious behavior. The behavior I’m specifically concerned about is employers who will change the hiring processes for the purpose of avoiding important push for transparency. If the rules include overly specific details about which technologies are subject to biases audits like those built with machinery, employers will have incentivized to avoid the old systems all together regardless of racial impacts.

To be clear, while some people associate the term automated with cutting edge artificial intelligence systems, automated decision making tools have been around for many years. Just think about any standardized score by computer scores, used talking with into yes or no piles, a lot of people in the U.S. have a long history of being evaluated by bias technology in context of lending, housing and hiring.

The history is not over. In 2022, whether you apply for a white collar or a blue collar job in the country’s most prominent businesses, there’s a decent chance that you’ll be evaluated by an automated system of the 1970s. One way, and I know many people gave some great eloquent statements, one way regulators make important, more credible to specify which counts as independent auditor. Currently the
rules mention that the auditor cannot have involved or using developing of the tool. From my perspective, at the very least, auditors should not be employed by either the employer or technology vendor. Auditors should be provided key information about how the relevant samples are scored.

My decision to support early on came from the belief innovation can be a popular tool for change, but only if the necessary evidence evaluated. In recent years, many new technologies have developed for use in employment context and vendors often claim that products can promote outcomes. While the statements cannot be led blindly, what Local Law 144 will enable better differentiate tools that were actually built with equity in mind that were not.

I would like to thank the agency for this time this morning for allowing me to testify. Thank you.

MR. DRIVER: Great, thank you so much, Andrew. Next up, we have Rahsaan Harris. Are you on?

MR. RAHSAAN HARRIS: I am.

MR. DRIVER: Okay, great, whenever you have a chance, three minutes.

MR. HARRIS: Well, thank you for this opportunity. I am Dr. Rahsaan Harris, the CEO of
Citizens Committee for New York City. Our organization is committed to providing New Yorkers particularly those in low-income neighborhoods with resources to improve their quality of life. I’ve spent over 20 years working at the intersection of corporate philanthropy, community empowerment and racial and socioeconomic equity.

Also relevant to this conversation, I was the CEO of the Emma Bowen Foundation from 2015 to 2020. It was founded as a foundation for minority interest in media. The Emma Bowen Foundation partnered with major media and technology companies to provide black, Latino, Asian American and Native American college students pathways to careers in the industry. The Emma Bowen Foundation was founded in 1989 and is still fighting for inclusive hiring practices so people of color can be hired, retained and advanced in media and technology organizations.

Local Law 144 represents an overdue effort to unpack the problem of bias in hiring. I am very existing that city officials are actively working to see this law implemented after the new year because it has the potential to bring real change to how workers are evaluated for economic opportunities.

Throughout my career, I’ve witness the power
of transparency in furthering social equity. Today, it is common for executives to have bold claims of wanting to promote diversity and inclusion, but many fail to even take basic steps to involve people of color in the process.

Workers and job applicants are barred from meaningful participation if there are information asymmetries. Business leaders often recognize that certain internal activities are perpetuating racial inequities, but if workers and job candidates aren’t informed, it becomes extremely difficult to push for change. The bias audit called for by the Local Law 144 provide much needed transparency. When employers decide what types of automated hiring tools to use, the decision is ultimately one about equity and diversity.

One of the defining features of any assessment tool technology is the extent to which the particular tool disadvantages people of color. The vendors who build these products and the employers who use them can often keep track of information behind closed doors to comply with regulations under federal employment law. With bias audits, the doors will be open and we’ll certainly have evidence of which hiring tools are responsible for perpetuating racial equity.
Thank you.

MR. DRIVER: Great, thank you, thank you so much. Next up, we have a representative from HireVue, I think Lindsey, whenever you’re ready.

MS. LINDSEY ZULOAGA: Thank you. Hi, everyone, my name is Lindsey Zuloaga. I’m the chief data scientist with HireVue. HireVue is a video interviewing and assessment platform. We support both the candidate and employer interview experience in a broad range of industries for customers around the globe.

Our comments on this bill today are based on our extensive experience with the use of AI in hiring. At HireVue, our mission is to change lives by connecting talent and opportunity. Our approach is to use science, technology, and best practice to enable a hiring process that’s more fair, inclusive and equitable and that allows candidates to showcase their potential.

HireVue shares the New York City’s concern around the potential for bias and supports the idea of auditing AI technologies. However, the bill’s one size fits all approach is problematic in practice, especially with regard to employment. For example, the bill suggests analyzing data such as race and gender
that by law is not required to be provided by candidates. We think there’s more work to be done to ensure any requirements conform to already existing EEOC guidelines as well as federal and state employment and privacy laws.

HireVue also believes it is important to distinguish between static and self-learning algorithms. Our technology uses only static algorithms after auditing the algorithms against established frameworks in hiring. This means our deployed algorithms are locked and don’t learn continually or change from the addition of unaudited or untested data. This approach dramatically reduces the risk of bias and ensures that we’re complying with EEOC guidelines requiring consistency in candidate treatment.

Based on our experience in auditing our own technology, we would like to offer the following points for the Council’s consideration with respect to algorithmic audits. First, the audit criteria should be clearly defined. Much like audit standards in other industries, like finance or banking, an audit of an AI tool should include reference to relevant industry and legal standards. It should explain how a model works, its purpose and limitations and the data it relies
upon to make decisions. And it should do so in clear language that can be easily understood.

Second, the focus of an independent audit should start with product development to ensure tools are designed, developed, trained and tested, including steps to identify and mitigate bias before deployment. Once deployed, the algorithm should also be periodically monitored to identify any unexpected results.

Last, vendors should be responsible for delivering an audit on the products they provide to their customers. Vendors will differ in how their tools are developed and what sort of data they use. The way audits are conducted would not be universal so audits must always consider the industry and the context of where and how the AI is being used.

In addition, HireVue has published an AI explainability statement to help our stakeholders understand how our algorithms are developed, and our approach to reducing bias. We recommend this as a best practice to provide transparency and understanding of the ethical uses of AI. Ongoing dialogue between appropriate stakeholders is key to creating legislation that protects candidates, companies and innovation. HireVue welcomes legislation that
encourages transparency and approves the process and fairness for all candidates. Thanks for your time today.

MR. DRIVER: Great, thank you so much, Lindsey. Next up, Janet Helms. Janet, you have three minutes, whenever you’re ready.

MS. JANET HELMS: Can you hear me?

MR. DRIVER: Yeah, I can hear you great.

MS. HELMS: If only you could see me, we’d be on, let’s see --

MR. DRIVER: It’s becoming a transcript anyway, so ultimately not necessary.

MS. HELMS: Okay. Well, then, I will proceed. My name is Dr. Janet Helms and I have spent much of my 40 year career as a professor of testing and assessment and as a research psychologist focused on racial issues. I’ve received many awards for my theory and research on racial bias in education or employment testing. It is no secret that high scores on standardized tests can open doors for people to better schools, financial aid and good jobs. Yet, my research in standardized tests has led me to believe that assessment developers have continued to purposefully tailor these tools to assure that white people [unintelligible] [01:17:29] black people.
The first employment test was developed during WWI by a white eugenicist. Subsequent tests that used the same design structure as the original test, although the test may have different names. Not surprisingly, ever since [unintelligible] tests were developed, black test takers mean scores were predictably then lower than white test takers mean scores on tests of cognitive abilities, knowledge and skills.

Employers have used tests for almost a hundred years to segregate people of color and personnel and military selection and college admissions by assigning them to conditions where their racial groups predominate. The public respects test scores as objective criteria because they are numbers, where researchers are well aware that they discriminate against people of color.

Last year, the American Psychological Association, the largest and oldest association of psychologists apologized to communities of color for condoning use of tests that support systemic racism and racial hierarchy. Given APA’s confession the testing methodologies advantage white people it is remarkable that business have not rushed to abandon them, although some universities recently have.
Disparate impact and adverse impact are the legal terms for supposedly objective tests whose use results in different outcomes between racial groups. Disparate impact laws exist because black janitors sued their employer for using intelligence tests to segregate them into low paying jobs in the 1970s. Similar suits cannot happen today because interpretation of antidiscrimination law has changed so that the harmed group must provide the evidence of adverse impact, but job applicants do not have access to the type of information necessary to prove disparate impact and employers and test publishers do not have to reveal it.

New York City Law 144 has the capacity to bring adverse impact out into the open by requiring use of employment tools to specify for public view the information necessary to evaluate the adverse impact of each employment tool or assessment tool. However, the laws should pertain to all tests and testing tools, not just automated decision tools.

Nowadays, all employment tests and assessment tools are automated on some ways and are used to assist employers in deciding who to hire or promote. It would be unfortunate if the law did not include standardized tests or judicial measures in its
requirement, because these are the tools that have the longest history of secretly harming people of color. These are the tools that have supported Jim Crow testing. New York City Law 144 has the capacity to take a major innovative step toward ending racial adverse impact in employment testing and citizens should support the law even if businesses and test publishers do not. And I thank you for allowing me to testify.

MR. DRIVER: Great, thank you so much. I really appreciate it. Next up, a representative from Retrain.ai. Is anyone on from Retrain.ai? Last call for now. Okay, if someone does join or makes themselves available later, let me know. We’ll just keep moving. Matthew Scher. Matthew, are you here with us? Okay. We’ll keep moving as well. Steve Malone, I can see you on camera, so three minutes whenever you’re ready.

MR. STEPHEN MALONE: Good morning. Thank you, Charlie, can you hear me alright?

MR. DRIVER: Yep.

MR. MALONE: Okay, terrific, good morning, everyone. My name is Stephen Malone, I’m a practicing attorney based in New York City, focusing on employment law. I’m speaking today as an individual
who has many years of experience working with human resources professionals and the employer community in the New York area. I’m not speaking on behalf of any particular organization or my employer.

I have three brief points to raise today related to the ten-day notice period, the scope of the AEDT definition and the effective date of the new law. First, I would like the department to clarify that the ten-day notice period, the ten-day notice to candidates for employment in section 5303 is only needed on an employer’s jobs website one time. It is not meant to impose a ten-day waiting period on every employer for each and every posting or each and every candidate for employment. NYU Langone has highlighted the problem in this draft regulation in their written comments.

Second, I’d like the department to provide more concrete examples to the employer community as to what computational processes require a bias audit. The written comments from the Seyfarth Law Firm and the Society for Human Resources management make these points very well. AI tools for recruiting are amazing and can help to expand opportunities for candidates [unintelligible] [01:22:24] more opportunity for New York employees, yet Local Law 144 --
MR. DRIVER: Stephen, you dropped for a second. Could you go back for maybe a paragraph or two?

MR. MALONE: Sure.

MR. DRIVER: Don’t worry about the time you have left. I was about to speak about concrete examples to the employer community and specifically what computational processes require a bias audit. The written comments from the Seyfarth Law Firm and Society for Human Resources Management make these points very well. AI tools for recruiting can help to expand opportunities for New Yorkers, yet Local Law 144 and the proposed regulations are so broad that they may deter the employer community from using good AI tools for recruiting whatsoever. Charlie, is the audio still good?

MR. DRIVER: Yep, it’s still good.

MR. MALONE: Terrific. Finally, I recommend that the City Council delay the January 1 effective date of this law, just like they did earlier this year for the pay transparency law. By the time these proposed regulations are finalized, employers will have little or no time to comply with the new law by January 1. This is particularly challenging as employers are trying to get workforces back into empty
New York City offices after COVID and they’re still trying to deal with the New York City pay range disclosure law as well as upcoming laws in other states. An additional six-month delay in the effective date is warranted, or alternatively, a delay in the enforcement. Thank you for the opportunity to speak today.

MR. DRIVER: Great. Thank you so much, Stephen. Next up, Rob Szyba, Rob, whenever you’re ready.

MR. ROB SZYBA: Great, thank you, Charlie, and thank you for the opportunity to provide comments. I have, of the comments that we submitted on behalf of Seyfarth Shaw, I’ll make one point and my partner [unintelligible] [01:24:20] will make a few additional points. First and foremost, on the heels of the prior comment, we point out that the law is scheduled to take effect on January 1, 2023. Presently, there remain many questions regarding the definitions of automated employment decision tools, bias audits, independent auditors and other criteria of the law.

In light of the ambiguity and the timing, even if the law was to go into effect and the regulations were finalized today, that would be insufficient time for employers to collect the data.
necessary and to perform meaningful bias audits by the compliance date. We recommend that at very minimum, the department should either stay enforcement or the City Council should consider pushing back the effective date until at minimum 90 days after final regulations have been posted. Optimally, a longer time period would alleviate any of the concerns that I just raised. Thank you for the opportunity and I’ll leave any remaining time I might have to my partner Annette Tyman.

MR. DRIVER: Great, Annette, whenever you’re ready, three minutes.

MS. ANNETTE TYMAN: Sure. Thank you so much. Good morning, and thanks for the opportunity to share these comments. As noted, my name is Annette Tyman and I’m a partner with Seyfarth Shaw and I am the co-chair of the people analytics practice group here. And in that role, I advise employers on the legal implications of using these sophisticated algorithmic technologies in the workplace. In my experience, employers that do use these tools are focused on improving efficiencies and effectiveness of their employment decisions, while at the same time addressing issues with regard to potential implicit biases that are believed to be at play when it comes
to traditional human decision making. That is part of
the promise of AI tools.

Recognizing that these issues are complex
and do require thoughtful implementation, I’d offer
the following three key observations. The first is
that the, the definitional language as it has been
included with the proposed regulations make the
coverage issues broad and some of it still remains
unclear. For instance, even background checks that
have been traditionally conducted as part of an
employee hiring process could be subject to bias
audits. Presumably Local Law 144 was not intended to
regulate the consumer reporting agencies or to
regulate background checks that are performed by
employers. However the text does not make that clear.

There’s sections, A and B, of section 5301
which do address the bias audits use undefined terms
such as individuals and applicants rather than the
defined terms that are also in the proposed regs of
candidates for employment. So there’s some
inconsistencies there that could be cleaned up to
ensure that employers are able to run these audits in
a compliant way.

The second covers the scope of the audit.
Employers need further clarity regarding the scope of
the pool that is considered to be included in the audit. For instance, I get a lot of questions about whether the audits, you know, have to be limited to New York City candidates only, or conversely can they use a sample set of data.

We would encourage the department to allow employers the flexibility needed to perform the audits to ensure compliance with Local Law 144 in particular being able to have that flexibility when they’re developing a new tool, otherwise, you really can’t use it in New York City.

The third and final issue is the impact ratio metric that relies on average scores. It’s our understanding that that proposed methodology is flawed and that it doesn’t adequately consider variability in scores. Based on our discussions with labor economists and IO psychologists that do this work, the proposed methodology does not provide the requisite insight needed to make inferences about whether there is bias based on that second methodology that’s proposed. So we do encourage the department to work with other professionals who have specific experience with analytics in the employment context to evaluate and assess the viability and reliability of that specific methodology. Thank you for the opportunity to provide
these comments today.

MR. DRIVER: Great. Thank you so much. Next up, we have Kirsten John Foy, whenever you’re ready.

MR. KIRSTEN JOHN FOY: Good morning. I appreciate the opportunity to speak before you all today. I am writing to you, I am testifying, pardon me, I am testifying to you with respect to New York City’s groundbreaking legislation, Local Law 144 of 2021 which will amend the administrative code in relation to automated employment decision tools.

The last four years I have served as the president and the CEO of the Arc of Justice, an organization committed to advancing civil and human rights and liberty to the least advantaged among us. New Yorkers are well aware that racial inequities is not a bygone issue. We repeatedly see political leaders and powerful businesses making promises to disrupt historical patterns of discrimination, but change never occurs without accountability.

Police reform is one context in which clandestine behavior has barred progress. As Local Law 144 correctly identifies, fair employment is another. For years, we have heard employers make bold statements about their desire to do better in terms of granting opportunities to historically disadvantages
communities. The most recent outpouring of such commitment came in the wake of George Floyd’s death in the summer of 2020. And yet while the sentiments expressed by New York’s business community are more impassioned than ever it is still a challenge to hold actors accountable for their promises.

When the City Council passed Local Law 144 last year, a message was sent that New York workers deserve more than vague language about diversity goals. The simple reality is that too little progress towards racial inequity and employment has been made in recent years. Proponents of justice cannot continue to blindly trust that businesses are trying to do better behind closed doors. We deserve to know whether the hiring practices a company uses internally aligned to the progressive rhetoric they communicate externally.

The specific hiring practices that this legislation focuses on are defined as automated decision making tools. These tools are the technologies employers rely upon to evaluate large numbers of candidates in a systemic, systematic manner. And they can include traditional standardized tests or high tech screening platforms. But the details of the technology aren’t what matter. What
matters is the fact that automated decision making
tools can be tested for a tendency to
disproportionately disadvantage people of color and
women.

If it is possible to conduct data driven
tests on hiring tools to look for bias, one might ask
why haven’t employers been doing so all along? The
reality is that many businesses have been for decades,
though they have hidden the results behind closed
doors. Some may have forgotten just how discriminatory
the systems enshrined in their HR departments truly
are, or perhaps the information is kept close to the
chest by a small number of internal attorneys or
processes.

Regardless, once this law is enacted in 2023
for the first time in history, the results of bias
testing on employment tools will be revealed to the
public. As the Department of Consumer and Worker
Protection works to implement this groundbreaking
legislation in the near term, agency staff will
undoubtedly hear complaints from businesses who are
resistant to change.

I strongly encourage our government
officials to consider the motives of an employer who
is so eager to avoid transparency. This law does not
tell employers they must use certain automated
decision making tools and abandon others. It is only
about making clear information available to the
public. If an employer is so concerned about what the
clear reporting will reveal about the integrity of
their diversity commitment, we should all raise our
eyebrows at what exactly is being hidden.

I look forward to seeing this legislation
implemented in a manner that lives up to the spirit of
transparency and accountability for the sake of
equity. Thank you for the opportunity to share my
comments.

MR. DRIVER: Great, thank you so much. Next
up, Camille Carlton. Camille, are you on the call?

MS. CAMILLE CARLTON: Yes. I’m here. I,
thank you so much.

MR. DRIVER: Whenever you’re ready.

MS. CARLTON: Great, thank you. Yeah, thank
you so much for giving me the chance to testify. My
name is Camille Carlton. I’m here commenting on behalf
of myself and fellow team members Michael Yang as well
and Sid Srinivasan. We’re a group of Aspen Institution
of Technology fellows and we spent the laws few months
developing recommendations on how the New York City
DCWP can improve specifically the notification
requirement portion of this new law.

So, as everyone here knows, implementing the notifications correctly is critical to upholding the intent of the law, which is to ensure that New York’s new job applicants can know when they might have been discriminated against by automated tools. We request that DCWP issue clearer guidance, including templates, on how employers can comply with the notification requirements.

So specifically, we ask that DCWP considering three things. First, establishing specific rules for employers regarding what when and how to disclose information about the use of an automated employment decision tool, second establish data disclosure standards, and third, we request that DCWP also supply employers with a list of frequently asked questions and other educational resources to help them comply with the new law.

So we’ve actually pulled together more details and sample templates, a sample FAQ that DCWP can use to help with implementing the notice requirements of this law. It’s, I’m going to drop the link in the chat as well, but it’s available just for the transcript, at

https://www.aspentechpolicyhub.org/project/enforcing-
new-york-citys-ai-hiring-law/ and I’m going to drop that again in the chat for everyone. But again, thank you DCWP and everyone here for considering this.

MR. DRIVER: Great, thank you so much, Camille. Next up Sebastian Filipe Duenas Muller, Sebastian, whenever you’re ready.

MR. SEBASTIAN FILIPE DUENAS MULLER: Can you hear me?

MR. DRIVER: Yeah, three minutes, whenever you’re ready.

MR. MULLER: Okay. Thank you. Well I am Sebastian Duenas, a researcher of the [unintelligible] [01:35:30] technology program of the Catholic University of Chile. Thank you for the opportunity to comment on the proposed rules. This proposal also represents a great example on what we’re going to see in the future in jurisdictions here in South America. Well, first and foremost, in regards [unintelligible] [01:35:45] independence, I think the definition of independent auditor means a person or group that is not involved in use or develop, developing the AEDT, that is responsible for conducting a bias audit of such AEDT. So it’s, it’s likely a weak definition. It may even be an employer or employment agency worker. So a stronger definition should also consider legally
independent entity. I think there are also some
comments about this before.

Also, second point is that it will be very
useful to answer how can a vendor satisfy the
requirements without having access to sensitive data
from employer and if is, if there’s also a privacy
standard that should be met when sharing data. Also,
we should always keep in mind that very often,
[unintelligible] [01:36:36] levels for
[unintelligible] [01:36:36] imply lower levels of
transparency. So there may be a tradeoff between these
two.

Also our third point is that bias audit can
consist only on [unintelligible] [01:36:48]
calculation. It was said before, should also consider
the case when employers or vendors only have access to
a small [unintelligible] [01:36:56] so rate, so
because in that cases, the ratios could be misleading.
Also, when this is the case, can employers or vendors
use data from outside New York City? That would be a
question to answer.

Our fourth point is that the definition of
machine learning, statistical modeling or data
analytics or the artificial intelligence is kind of
very narrow, which may result in a detriment to the
intended scope of the proposed rule. The use of a broader definition, such as the proposal in the blueprint for an AI bill of rights or given by the OECD could make the proposed rule to be more fidget proof.

Well, again, thanks for the opportunity to comment on the proposed rule and congratulations on the great work that has been done so far which certainly will lead and guide other jurisdictions. So thank you very much.

MR. DRIVER: Great. Thank you so much. At this time, I just want to check if any of the people who I passed over earlier are here. Is there anyone here from Retrain.ai looking to testify? Okay. Is Matthew Scher available? It doesn’t look like it. Okay. at this time, that, that’s my full list of people we have commenting. Is there anyone here who has not been called to comment but is looking to provide comments at this hearing orally? Feel free to either message in the chat or unmute yourself? Okay. Ridhi, you can go whenever. Apologies for missing you.

MS. RIDHI SHETTY: Can you hear me?

MR. DRIVER: Yes.

MS. SHETTY: Thank you for the opportunity to speak before the department today. My name is Ridhi
Shetty, and I’m a policy counsel on the Privacy and Data Project at the Center for Democracy and Technology, a nonprofit that advocates for stronger civil rights protections against discriminatory uses of technology. CDT appreciates the department’s effort to clarify the notice and audit requirements for the use of automated employment decisions tools, or AEDTs.

Upon Local Law 144’s passage, CDT published an analysis explaining that the law’s requirements do not go far enough to ensure that AEDTs are examined for potential discrimination or that employers give candidates proper notice regarding how the tools will evaluate them. As they currently read, the proposed rules will reduce the law’s already limited effectiveness against discriminatory hiring technologies. We recommend five changes to the proposed rules to avoid further narrowing the law’s protection.

First, the interpretation of the phrase, substantially assist, as used in the ordinance’s definition of automated employment decision tool should not be so narrow. Employers could easily argue that they do not assign enough weight to a tool’s output for it to fall within this term’s [unintelligible] [01:39:47] definition. The term
should either be left undefined in the rules, or
be defined to include tools whose output is an
important or significant factor in an employment
decision.

Second, the term candidate for employment
should include people who are screened out of targeted
job advertising or recruiting tools that prevent
people from learning of job opportunities for which
they could apply. The tools should protect people
subjected to tools -- excuse me, the tools should
protect people subjected to tools that make a
discrimination determination about whether someone
should be selected or advanced in the hiring or
promotion process, or a determination about whether to
represent that any employment or job position is
available.

Third, the proposed rules use the definition
of employment agency under the department’s
regulations which say that employment agencies only
include persons who provide vocational guidance or
counseling services for a few and who represent that
they perform certain functions to help applicants
obtain jobs. The state’s full definition and the
city’s antidiscrimination laws actually include anyone
who tries to compare employees or employers or tries
to procure job opportunities for workers. The rules should draw upon these broader definitions to more fairly protect more workers.

Fourth, the rules should impose more specific requirement for independent auditors, requiring them to also certify the accuracy and thoroughness of the audit results they report and requiring that conflicts of interest do no compromise their ability to perform and report accurately these results of audit.

And finally, the rules clarify that employers have an affirmative responsibility to provide a foundation even when using AEDT. The rules should also clarify that employers must proactively inform candidates about how an AEDT will evaluate them and how it will use and retain their data.

CDT has submitted written testimony to elaborate on why these improvements to these proposed rules are necessary. We look forward to community engagement as the department’s rulemaking progresses. Thank you.

MR. DRIVER: Thank you so much, and again, apologies for not calling on you earlier. Anyone else looking to testify? Alright. So it looks like at this time, we’ve come to the end of the hearing. Thank you
everyone for tuning in and listening to what everyone has to say. So the deadline for submitting written comments to these rules is 11:59 p.m. tonight. A transcript of this hearing will be made available as fast as we can turn it around, you know, you have to give us a little bit of time for that. We retain an independent partner for that, but we’ll try and get it out as soon as possible.

So, if you want to submit written comments, the website down there that I just put in the chat is one place you can do it. You can also email us at rulercomments@dcwp.nyc.gov. Your written comments can be of any length. There’s no limit of that. We’ll post the written comments that we’ve receive -- we’ll post the written comments that we receive probably on Monday on our website, on that link that I shared earlier and we’ll post a transcript there as well, as soon as we’re able to turn that around.

Yeah, thank you again to everyone for bearing with us, you know, as we were able to make this happen, I’m glad we were able to have everyone here today to give comments who wanted to speak. There’s no anticipated final date for releasing the rules that I can share, but I’ll make sure that everyone who has registered for this meeting gets an
email about it. When you registered for the Teams
call, I think I can then access your email that way
and we’ll make sure that you’re on the distribution
list. Otherwise, you can also check, all of that is
posted on the NYC Rules website as well.

And again, just dropping the link for where
we will post the comments as we receive them and thank
you everyone. Have a great weekend and I appreciate
you participating in this process. Thank you.
CERTIFICATE OF ACCURACY

I, Ryan Manaloto, certify that the foregoing transcript of DCWP AEDT Rules Hearing on November 4, 2022 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By

[Signature]

Date: December 7, 2022

GENEVAWORLDWIDE, INC
256 West 38th Street - 10th Floor
New York, NY 10018