



**Testimony of Travis Hall, Director for State Engagement
Center for Democracy & Technology
Before the New York Senate Standing Committee on Internet and Technology
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About CDT

Thank you for the opportunity to address the committee. I am the Director for State Engagement for the Center for Democracy & Technology (CDT), a nonprofit, nonpartisan organization fighting to advance civil rights and civil liberties in the digital age. Prior to my time at CDT, I spent ten years working on technology and telecommunications policy at the National Telecommunications and Information Administration, an agency within the U.S. Department of Commerce. CDT works on many issues touching on various aspects of artificial intelligence, algorithmic systems, and related technologies. It also has workstreams specifically focused on digital rights in fields relevant to automated decisions, including workers' rights and disability rights. I will be describing some of the risks from the use of artificial intelligence systems and the ways in which SB1169a helps to mitigate these potential harms.

Artificial intelligence systems are frequently hidden from the workers and consumers they affect and carry significant risks, particularly to those from vulnerable and marginalized communities

Artificial intelligence is rapidly reshaping how Americans learn, work, and are evaluated. If deployed responsibly, AI has the potential to expand opportunity, improve access to services, and support consumers and workers in meaningful ways. Generative AI systems have allowed for the introduction of consumer-facing chatbots that perform leaps and bounds better than their predecessors from just a few years ago. AI is also showing promise in the areas of scientific and medical research. But without clear guardrails, transparency, and accountability, AI systems risk reinforcing existing inequalities, eroding civil rights protections, and shifting power further away from students, workers, and families.

Not all applications of AI are beneficial, particularly when it comes to their impacts on vulnerable workers and consumers. Entities increasingly use AI systems when determining who to hire, mortgage rates for bank customers, who can access public benefits like SNAP or Medicaid, and how much we all pay for life's necessities like health care and rent. Unfortunately, there is [considerable evidence that many such AI systems](#) are [biased](#) (or simply [do not work](#)) and that removing such bias [is quite difficult](#). At the same time, the lack of transparency surrounding companies' AI practices means that workers, consumers, and regulators only rarely catch glimpses of when, how, and on whom these tools are used.

We do not have a clear picture of how, nor how many, companies use these technologies because information disclosure about AI system use is sporadic and inconsistent,

if there is disclosure of the AI system use at all. That said, considerable anecdotal evidence suggests that the practice is already widespread. Surveys of companies indicate that anywhere from [one-third](#) to [the vast majority](#) already use AI systems in recruitment and hiring alone. But we often don't know *which* companies are using these tools, nor which workers and consumers are being affected by them.

Stories about harmful uses of AI systems have come to light thanks to whistleblowers and investigative journalism. ProPublica has published a trio of reports on how the health care giant Cigna [secretly used](#) an [algorithm](#) to mass-reject policyholders' claims—and then [threatened to fire a physician](#) who pushed back. The significant information asymmetry surrounding ADSs provides a strong reason for regulation because existing civil rights, labor, and consumer protections cannot be enforced effectively when the role of AI is hidden or obscured.

In the cases where consumers and workers have to interact with the system, as is the case with many automated employment assessments, the systems are often inaccessible and offer people with disabilities few or no options for accommodation or alternative assessment methods. CDT have found extensive discriminatory impact caused by AI systems. A 2020 CDT report highlighted how algorithmic hiring tools can discriminate against disabled job candidates, [noting](#) that “as these algorithms have spread in adoption, so, too, has the risk of discrimination written invisibly into their codes.” Other CDT publications have highlighted how [electronic surveillance and algorithmic management \(or “bossware”\) systems](#) are used in ways that can violate the rights and threaten the health and safety of disabled workers, how [surveillance technology discriminates](#) against disabled people, and how [tenant screening algorithms](#) can disproportionately exclude disabled people, among other marginalized groups.

These biases and barriers to accessibility cannot be addressed without basic transparency regarding when and how automated decision systems are being used, what those systems measure or assess, and how they measure or assess it. Systems that are unreliable, inaccurate, or biased against individuals with disabilities or people from other marginalized communities likewise will not be detected unless companies conduct impact assessments to identify potential sources of inaccessibility, bias, and invalidity.

SB1169a Would Provide Needed Protections for High-Risk AI Systems

SB1169a would put in place a number of necessary provisions providing transparency and accountability to developers and deployers who use these systems in high risk, consequential decisions. The focus of this bill is solely on those systems that are “a substantial factor in making a consequential decision; or (b) will have a material impact on the statutory or constitutional rights, civil liberties, safety, or welfare of an individual in the state.” This is a narrow tailoring of the scope of the bill, focusing on only those systems that affect an individual's life, livelihoods, or fundamental rights. It correctly includes both protections for whistleblowers in addition to its transparency requirements, and empowers individuals harmed through irresponsible use of high risk AI systems to pursue remedies through a private right of action.

Conclusion

Guardrails and protections for the rights of individuals foster trust and adoption and are the only way in which technologies that are responsive to the needs of society can be responsibly developed. We appreciate the effort and thought put into the development of SB1169a, and I look forward to answering your questions and working with you on refining the text to ensure that New Yorkers are able to enjoy the benefits of these systems while being shielded from consequential harms.