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 ACLU of Massachusetts offers our strong support for S.1876 and H.2701, twin bills that will enable government, policymakers, and the public to better understand the use of artificial intelligence, automation, and algorithms in government decision-making in areas that impact human welfare.

Artificial intelligence might evoke images of advanced robots and flying cars.  In fact, the present-day reality is perhaps less exciting, but no less significant: today, AI mostly involves computer programs that perform specific tasks like making numerically-informed predictions, comparing images, assessing risk on a numerical scale, or making a data-driven recommendation to a human decisionmaker.

As we embrace technological systems and algorithms to help us intervene in complex problems in areas ranging from child welfare to criminal justice, we need to also embrace transparency and fairness, without compromising fundamental rights. S.1876 and H.2701 would establish a commission to examine these issues in the Commonwealth.

### The problem: government entities are currently making decisions using unregulated artificial intelligence

Government entities across the country are increasingly using artificial intelligence and algorithms to make recommendations and decisions that impact individual rights, freedoms, welfare, and access to services.

Here in Massachusetts, government entities are likewise experimenting with automated decision systems. For example:

- The Office of the Commissioner of Probation mandates the use of risk assessment instruments in the juvenile system;
- The Bail Reform Commission is examining the idea of using risk assessment instruments to assist with pre-trial incarceration determinations; and
- The Disabled Persons Protection Commission uses a risk assessment instrument to help caseworkers identify people who may need services.

Despite these significant and life-altering deployments of automated decision systems and AI in Massachusetts government, there are currently no laws on the books to regulate their use, or to

require basic accountability, transparency, or oversight. The lack of a unified approach to considering the Commonwealth's use of these new technologies means that people who are impacted by them may be unaware of their existence, and therefore unable to raise questions about their use.  It also means people are unable to contest the accuracy or propriety of a government decision that is made in whole or in part by a computer. People must have a right to understand how the government makes decisions that can materially alter their lives and impact their interests—especially when these decisions involve losing a child to state custody, a loss of public benefits, detainment in jail apart from one's family and work, or investigation and prosecution by law enforcement.

## **Why do we need transparency for automated government decision-making?**

Transparency regarding the use of automated decision systems in Masschusetts government is important for four primary reasons.

First, people—including government officials—too often think decisions made by computers are objective and legitimate, or even infallible. But automated decision systems are as subjective as the people that program them and the data used to train and feed algorithms. These sytems reflect human choices and actions at every stage of their development and use, meaning they too exhibit human biases and preferences. Technology is not neutral, and it is important that the public and experts therefore have an opportunity to understand how and where these systems are in use in our state government.

Second, transparency protects the public interest. Many times, automated decision and AI systems are sold to state and local governments by private corporations intent on maximizing proft. Too often these systems are proprietary and therefore not open to inspection by independent experts. In other states, like Idaho, the use of proprietary, untested tools has led to prolonged and expensive litigation. In the Idaho case, litigation revealed the state had been sold a highly flawed algorithmic decision making system.[1] Sunlight is the best disinfectant.

Third, people who interact with government agencies want to know that they are dealing with accountable human beings, but increasingly they may instead be subjected to the vagaries of an unaccountable automated decision system. Different people have different opinions about how and where it is appropriate to use automated decision systems, and how and where it is not appropriate to deploy them—no matter what protections may be in place. Surfacing information about how the government is currently using these tools will allow experts and the general public to assess how these systems are implemented; enable people on the receiving end of certain consequential decisions an opportunity to appeal those decisions; and give us all the ability to freely evaluate and debate whether and when these systems ought to be used in the first place.

Finally, using data sets based on historic patterns and practices can exacerbate existing inequalities and injustices, making it more difficult to achieve equality and fairness for all people. In short: Artificial intelligence is a useful tool if you want to make the future look like the past. In many areas, this is an ill-advised approach to providing government services, and we must be vigilant to ensure we are not reproducing historical injustices with new technologies.

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[1] Jay Stanley, "Pitfalls of Artificial Intelligence Decisionmaking Highlighted in Idaho ACLU Case," June 2, 2017, ACLU. https://www.aclu.org/blog/privacy-technology/pitfalls-artificial-intelligence-decisionmaking-highlighted-idaho-aclu-case.

**The proposal: create a commission that will leverage the Commonwealth's technological expertise in service of good government**

S.1876 and H.2701 would create a multidisciplinary Commission of experts and governmental leaders to study and make recommendations about the deployment of automated decision systems in use by government agencies in Massachusetts.

To ensure transparency in this realm, the Commission is tasked with surveying the government's current use of automated decision systems and identifying those areas where legal rights and social benefits may be at risk, making recommendations to the legislature to ensure that the adoption of new technologies does not harm individuals or communities, and issuing a public report to inform the general public about existing uses of automated decision systems in Massachusetts state government operations where those decisions impact human welfare.

The ACLU strongly supports this legislation as a means to shine much-needed light on how Commonwealth agencies use these new technologies. We urge the Committee to give S.1876 and H.2701 a swift favorable report. Thank you.