Testimony on Behalf of New America's Open Technology Institute

before the D.C. Council

Hearing of the Committee on Government Operations and Facilities

By Spandana Singh

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Chairperson White, Council members, and staff of the Committee on Government Operations and Facilities,

My name is Spandana Singh, and I am a Policy Analyst at New America's Open Technology Institute, also known as OTI. Thank you for the opportunity to testify today.

OTI is based here in the District and works to ensure that every community has equitable access to technology and its benefits. This includes advocating for privacy-related protections[1] and working to ensure that the development and deployment of automated decision-making algorithms – by both businesses and governments – are subject to robust safeguards that prevent bias and discrimination, promote transparency and accountability, and offer meaningful opportunities for redress.[2]

First, we would like to applaud the efforts that Attorney General Racine and the Council are undertaking to address discriminatory algorithms in the District. The development and deployment of big data and emerging technologies has rapidly outpaced legislation, and we strongly need protections that will contextualize and preserve civil rights in the digital ecosystem and protect Black, Brown, and other marginalized communities including immigrants, the LGBTQ community, and individuals with disabilities.

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[1] Christine Bannan and Margerite Blase, *Automated Intrusion, Systemic Discrimination: How Untethered Algorithms Harm Privacy and Civil Rights*, October 7, 2020, https://www.newamerica.org/oti/reports/automated-intrusion-systemic-discrimination/.
"Exploring the Twenty-First Century Privacy Debate," New America's Open Technology Institute, last modified September 17, 2019, https://www.newamerica.org/oti/reports/exploring-twenty-first-century-privacy-debate/.

[2] Spandana Singh, "Holding Platforms Accountable: Online Speech in the Age of Algorithms," New America's Open Technology Institute, last modified July 22, 2019, https://www.newamerica.org/oti/reports/report-series-content-shaping-modern-era/.
Spandana Singh and Leila Doty, *Cracking Open the Black Box: Promoting Fairness, Accountability, and Transparency Around High-Risk AI*, September 8, 2021, https://www.newamerica.org/oti/reports/cracking-open-the-black-box/.

While the District has made some important progress in tackling systemic discrimination, it is still a daily reality for many residents, and these realities can be reproduced and exacerbated by algorithmic systems.

For example, systematic racism and injustice have significantly impacted healthcare outcomes for certain District communities. According to national statistics, Black women are three to four times more likely to die from pregnancy-related causes than white women.[3] According to the District's Maternity Mortality Review Committee, between 2014 and 2018 Black women have comprised approximately half of all births in the District, and a staggering 90% of birth-related deaths.[4]

Several factors, including over policing, underinvestment, and biased historical health stereotypes around Black communities have resulted in these outcomes.[5] Algorithmic systems can identify and exacerbate patterns in historical health data resulting in worse, rather than improved, maternal mortality and morbidity health outcomes for Black communities and other communities of color.

For example, for many years, it has been a standard practice for U.S. healthcare institutions to use the Vaginal Birth After Cesarean or VBAC algorithm to provide labor guidance to pregnant women who had already undergone C-sections. The original VBAC algorithm, included a modifier that assigned a higher risk of a complicated vaginal delivery to Black or Hispanic women who had previously undergone C-sections. As a result, doctors were more likely to recommend a C-section to Black or Hispanic women who had a previous one, compared to other women, raising their risk for infections and internal bleeding.[6] Last year, the race modifier was removed from the VBAC after outcry across the medical field.[7]

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[3] Emily E. Petersen et al., *Racial/Ethnic Disparities in Pregnancy-Related Deaths — United States, 2007–2016*, September 6, 2019, https://www.cdc.gov/mmwr/volumes/68/wr/mm6835a3.htm?s_cid=mm6835a3_w#suggestedcitation.

[4] Maternal Mortality Review Committee, *Maternal Mortality Review Committee 2019-2020 Annual Report*, December 2021, https://ocme.dc.gov/sites/default/files/dc/sites/ocme/agency_content/Maternal%20Mortality%20Review%20Committee%20Annual%20Report_Finalv2.pdf.
Colleen Grablick, "Black People Accounted For 90% Of Pregnancy-Related Deaths In D.C., Study Finds," *DCist*, April 28, 2022, https://dcist.com/story/22/04/28/dc-maternal-mortality-study-2022/.

[5] Grablick, "Black People".

[6] Liz McCaman Taylor, "Race-Based Prediction in Pregnancy Algorithm Is Damaging to Maternal Health," National Health Law Program, last modified July 14, 2021, https://healthlaw.org/race-based-prediction-in-pregnancy-algorithm-is-damaging-to-maternal-health/.
University of Maryland Medicine, "University of Maryland Medicine Eliminates Race in Birthing Decisions," news release, May 3, 2022, https://www.umms.org/ummc/news/2022/eliminates-race-in-birthing-decisions.

[7] William A. Grobman et al., "Prediction of Vaginal Birth After Cesarean Delivery in Term Gestations: A Calculator Without Race and Ethnicity," *American Journal of Obstetrics & Gynecology* 225, no. 6 (May 3, 2021): https://www.ajog.org/article/S0002-9378(21)00587-1/fulltext.
University of Maryland Medicine, "University of Maryland."

This is just one example of an algorithm that can be deployed in healthcare settings with the intention of improving health outcomes, but that can actually exacerbate racial bias and disparities.[8]

Because of this, it is critical that the Committee and the Council introduce meaningful safeguards and requirements around the use of such high-risk and consequential algorithms.

OTI has conducted longstanding research on algorithmic accountability, and we are supportive of the Stop Discrimination by Algorithms Act as it embodies many best practices in this space including increasing transparency for consumers via accessible and comprehensible disclosures, promoting accountability via annual audits and impact assessments, providing opportunities for redress to impacted consumers, and prohibiting the use of biased algorithms in critical areas of life.[9] Overall, this legislation, which is comprehensive and the first of its kind in the United States, will ensure that organizations are using algorithmic systems to augment and improve the lives of District residents and not fail the District's most vulnerable communities.

Accordingly, we ask that the Committee move to pass the Stop Discrimination by Algorithms Act as soon as possible. I welcome any questions and OTI stands ready to support the Council in moving forward this critical piece of legislation. Thank you.

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[8] University of Maryland Medicine, "University of Maryland."
Taylor, "Race-Based Prediction," National Health Law Program.

[9] Singh and Doty, *Cracking Open*.
Spandana Singh, *Regulating Platform Algorithms: Approaches for EU and U.S. Policymakers*, December 1, 2021, https://www.newamerica.org/oti/briefs/regulating-platform-algorithms/.