

## MEMORANDUM

**Date:** April 03, 2023

**To:** New York State Senate Codes Committee, New York State Assembly Science and Technology Committee, Majority Leader Stewart-Cousins, Speaker Heastie

**From:** The Surveillance Technology Oversight Project (“S.T.O.P.”)

**Re: S.T.O.P. Memorandum in Opposition to S5583 / A4217**

---

S.T.O.P. is a community-based civil rights group that advocates and litigates against discriminatory surveillance. Our work highlights the discriminatory impact of surveillance on Muslim Americans, immigrants, the LGBTQ+ community, Indigenous peoples, and communities of color, particularly the unique trauma of anti-Black policing.

We write to express our opposition to S5583 / A4217, which, while laudable in its objective, would enact a broad, unenforceable, and ultimately unconstitutional censorship regime. Lawmakers are right to raise concerns about the very real emotional and economic harm that “deep fakes” can have on New Yorkers, but this bill fundamentally misunderstands the nature of deep fakes and satire, creating a scheme that will criminalize visual artists, journalists, and countless others.

S5583 / A4217 overbroadly criminalizes visual media completely unrelated to deep fakes, criminalizing “digitized images which are altered to incorporate a person’s face or their identifiable body part onto an image and such image depicts a pornographic or lewd sex act or graphic violence.” The bill broadly attacks images created to “harass, annoy, threaten, or alarm,” regardless of how realistic these images are.<sup>1</sup> Routine photo, video, and audio editing techniques used by New Yorkers every day could suddenly become a crime, including countless forms of news, commentary, and satire.

Satirists routinely incorporate images of public figures into their comedy and commentary, not merely entertaining viewers but contributing an essential form of public discourse to democratic self-government.<sup>2</sup> This is an especially valuable means of political expression and education, with more political online users turning to satirical websites for information on current events and elections.<sup>3</sup> Criminalizing satire is dangerous to the stability and health of our entire society. Under this bill, an individual who photoshops Donald Trump’s head onto the body of a naked baby could

---

<sup>1</sup> S5583 (2023); A4217 (2023).

<sup>2</sup> See Thomas E. Kadri, *Drawing Trump Naked: Curbing the Right of Publicity to Protect Public Discourse*, 78 Md. L. Rev. 899 (2019), <https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=3836&context=mlr>.

<sup>3</sup> See Aaron Smith, *The Internet as a Source of Political News and Information*, Pew Research Center (July 1, 2022), <https://www.pewresearch.org/internet/2009/04/15/the-internet-as-a-source-of-political-news-and-information/>.

face up to one year in jail. The bill contains no provision that requires that the edited image is intended, or even likely, to deceive a viewer—exposing artists and activists to expensive litigation, chilling creativity.

Furthermore, the law’s provisions on sexual content raise even more uncertainty. There is no definitive measure of what type of content would be a “lewd sex act.”<sup>4</sup> Labels of this sort are often levied against LGBTQ+ representations in media regardless of their actual content. Criminalizing this sort of artistic representation would give a perceived state-sanctioned authority to those attempting to erase LGBTQ+ artists.

Rather than an overly broad and carceral bill that does not solve the problem it purports to address, we recommend legislation that creates civil penalties for the creation of actual deep fakes, which should be an extension of the existing libel law. We should not allow the creation of realistic videos to make it seem like New Yorkers are engaged in embarrassing or illegal conduct. However, S5583 / A4217 does not address this issue, and a serious attempt to address deep fakes does not need to criminalize art. Thank you for your consideration of our concerns.

Sincerely,

Surveillance Technology Oversight Project

---

<sup>4</sup> S5583 (2023); A4217 (2023).