June 1, 2022

Dear Senators,

We, two major civil society organizations, urge you to oppose S.1817, a dangerous biometric surveillance bill that represents a major intrusion into New Yorkers' safety and rights.

S.1817 would allow bars, restaurants, and stores to use biometric identification technology to digitally "card" people who wish to buy alcohol and tobacco products. The biometric tools could include fingerprinting, iris scanning, or—most likely—facial recognition.

By promoting a rapid expansion of facial recognition, S.1817 fails New Yorkers in four major ways. It will magnify race and gender biases, leading to more discriminatory policing and more Black and brown kids in jail. It will expose New Yorkers to cybercrime and identity fraud. It will significantly infringe on New Yorkers' right to due process. And it will increase the ability of minors to access alcohol and cigarettes.

S.1817 expands racist policing. Extensive research shows that facial recognition is inaccurate, and gives more false matches for Black and brown people, women, and transgender and non-binary people.[1] But even if facial recognition correctly identified every person, it would still be used in accordance with existing biases.[2] Black, brown, and undocumented New Yorkers are already over-policed and over-surveilled.[3] Expanding facial recognition into thousands of stores will magnify racist patterns of policing and lead to more arrests of Black and brown youth—who are already arrested more than twice as often as white youth.[4]

S.1817 harms our safety and security. Although S.1817 promises that biometric data would be encrypted, New York State simply does not have oversight over the private vendors that provide facial recognition technology to businesses. The data could easily be hacked or stolen—or the bar or biometrics company could be persuaded into giving it up.[5,6] S.1817 does not provide any safeguards to prevent a breach from permanently compromising our biometric data, and, unlike a password, our facial features and fingerprints cannot be changed after the fact. With facial recognition, a one-time act of convenience becomes a lifetime security concern.

S.1817 infringes on due process rights. Law enforcement officers routinely search biometrics databases without warrants or reasonable suspicion.[7] If police obtained access to restaurant and

[1] Washington Post:
https://www.washingtonpost.com/technology/2019/12/19/federal-study-confirms-racial-bias-many-facial-recognition-systems-casts-doubt-their-expanding-use/
[2] MIT Technology Review:
https://www.technologyreview.com/2022/04/27/1051517/minneapolis-police-racial-bias-fake-social-media-profiles-surveillance/
[3] MIT Technology Review: https://www.technologyreview.com/2022/02/14/1045333/map-nyc-cameras-surveillance-bias-facial-recognition/
[4] News21 and US government data: https://kidsimprisoned.news21.com/policing-criminalization-kids-america/,
https://www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp?ID=qa05260&selOffenses=1
[5] The Verge: https://www.theverge.com/2019/8/14/20805194/suprema-biostar-2-security-system-hack-breach-biometric-info-personal-data
[6] Bloomberg: https://www.bloomberg.com/news/articles/2022-03-30/apple-meta-gave-user-data-to-hackers-who-forged-legal-requests
[7] Georgetown Law Center on Privacy & Technology: https://www.perpetuallineup.org/

bar data, they could use it against people in court, even if the person never actually broke the law.

S.1817 won't cut down on underage drinking and tobacco use. Facial recognition is unlikely to address the problem of underage purchase, and may actually make it worse. As previously noted, facial recognition technology is extremely inaccurate and it is particularly ineffective at verifying ages.[8] For example, children can unlock their parents' cell phones using facial recognition.[9] As a result, it is likely that minors will be able to fool automated systems into matching a parent or relative in the database and thereby gain access to alcohol or cigarettes more easily than by the use of a modern, scannable ID card.

S.1817 is a bad solution to a problem that doesn't exist: it's not inconvenient to show ID to buy alcohol or cigarettes. This bill would not improve lives. It would only expand New York's surveillance toolkit, criminalizing more of our neighbors and risking our sensitive data in the process. **We ask you to oppose S.1817 and take a stand against facial recognition, a broken technology that threatens our privacy, security, and constitutional rights.**

Sincerely,

Fight for the Future
S.T.O.P. — Surveillance Technology Oversight Project

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[8] "The feasibility of face scanning as an age verification tool from a technical- and UX-perspective," Uppsala University, 2021. https://www.diva-portal.org/smash/get/diva2:1627145/FULLTEXT01.pdf
[9] TechRadar: https://www.techradar.com/news/this-10-year-old-unlocked-his-mothers-iphone-x-using-face-id