TZEDEK DC
Legal Help for People in Debt

Testimony of Tzedek DC

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Before the Committee on Government Operations and Facilities

September 22, 2022 Public Hearing on: B24-0558, The Stop Discrimination by Algorithms Act of 2021

Committee Chair White, Members, and Committee staff:

Thank you for holding this hearing on B24-0558, the Stop Discrimination by Algorithms Act of 2021.

Tzedek DC is an independent, public-interest center headquartered at the University of the District of Columbia David A. Clarke School of Law. Inspired by the ancient Hebrew teaching "*Tzedek tzedek, tzedek tirdof*," or "*Justice, justice, you shall pursue*," Tzedek DC's mission is to safeguard the financial health and legal rights of DC residents with lower incomes facing debt-related problems. Tzedek DC supports the bill and its goals.

If passed, this bill would address an urgent need for systemic reform to help ensure fairness in the algorithms used to determine access to credit, loans, and housing, among other critical life-affecting opportunities. Algorithms in a variety of areas perpetuate historic patterns of discrimination in making the decisions that most directly impact the lives of D.C. residents. This bill would promote greater transparency in how algorithms shape access to important life opportunities and holds those who use such algorithms accountable through annual audits and a private right of enforcement.

One such opportunity is access to credit. Existing credit score algorithms discriminate against people of color, who have historically been denied access to traditional lines of credit. For example, Tzedek DC served a client whose rental applications were rejected because she had not used credit enough to establish a credit score. Even though she paid her bills and rent on time, her decision not to use a credit card or take out loans counterintuitively prevented her from finding new housing. The credit score algorithms keep track of mortgage payments but not rent or utility payments, thereby discriminating against renters. The inputs for these algorithms are based on historic patterns

of discrimination that favored mortgages, which were more available to white Americans. Today, algorithms often continue to perpetuate these patterns. The disclosure and transparency-promoting features of the bill would help ferret out discriminatory algorithms.

Beyond credit scores, certain existing algorithms discriminate against hopeful homebuyers and renters through biased lending and tenant screening algorithms. One study found that mortgage lenders nationally were 40 percent more likely to deny Latino applicants and 80 percent more likely to deny Black applicants for loans compared to white applicants with identical financial portfolios.[1] For renters, automated background reports use biased algorithms that too often falsely report criminal charges for applicants, particularly when consumers are members of marginalized groups with more common last names.[2]

Further, the algorithm used by many lenders penalizes applicants for medical debt, even medical debt that has been paid. In D.C., residents of color are three times more likely to hold medical debt than their white neighbors, and are thereby biased against under this algorithm. The high rates of medical debt hold true despite the widespread use of a hospital algorithm that systemically referred Black patients for care at lower rates than equally sick white patients.[3] Algorithms used by hospitals and health insurance companies have demonstrated biases against people of color, disabled people, and women, with particularly negative consequences when those identities intersect.

This bill would help remove the black box around so many discriminatory algorithms and require self-assessment and make feasible government assessment of such algorithms. Across the range of important life opportunities, it would prohibit any practice that has the effect of making adverse algorithmic determinations on the basis of a protected trait.

One of the features of the bill that we think makes good sense is empowering the Office of the Attorney General to issue regulatory guidance pursuant to the Act if it becomes law. Future regulations and other guidance promulgated by the Office of the Attorney General should, under the bill, as clarified in mark up, provide further guidance to help covered entities comply with these requirements and address questions that may well come up as to implementation.

Importantly, this Act also provides for transparency and enforcement measures through required audits, disclosures, and explanations when algorithms negatively affect an important life opportunity. These measures provide consumers with an opportunity to learn about any illegal or unfair use of protected traits and fight any wrongful adverse decisions through the Office of the Attorney General or a private right of action. One recent high-profile example of the benefit of requiring a review of lender's AI is to be seen in connection with Upstart. Upstart agreed to use an external monitor of its fair lending practices, and a recent report has prompted Upstart to review and alter its algorithm to produce more race-neutral results.[4]

We note and applaud the efforts to create federal protections against algorithmic discrimination, spearheaded by Tzedek DC's partners at Color of Change and other allied organizations.[5] We also urge that the Council proceed, both because progress in Congress is slow and elusive, and because states should act above any floor and limitations set by federal rules.

This bill would be a major step forward. Systemic racism, perpetuated by both conscious and unconscious biases, cannot be allowed to hide behind an algorithm.

Thank you for your leadership and work on these critical issues.