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**STATEMENT OF  
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**BEFORE THE  
DEPARTMENT OF CONSUMER AND WORKER PROTECTION**

**FOR A HEARING CONCERNING  
RULES TO IMPLEMENT LOCAL LAW 3 OF 2021**

**PRESENTED  
August 30, 2021**

Good morning, my name is Mahima Arya, and I am a Computer Science Fellow at the Surveillance Technology Oversight Project (“S.T.O.P.”), a New York-based privacy and civil rights group. Thank you for the opportunity to testify today about DCWP’s proposed rule in furtherance of Local Law 3 of 2021 (the “Proposed Rule”). While I commend the Department for moving forward with this process under trying conditions, the current draft of the Proposed Rule is manifestly incompatible with the purpose and intended impact of Local Law 3.

The New York City Council and Mayor enacted Local Law 3 in the hopes of addressing the unprecedented privacy and safety risks posed by biometric tracking tools. Systems like facial recognition, iris scans, and gait detection can transform our own bodies into tracking devices for store owners. Even worse, these biased systems often are more error-prone for Black and Latinx New Yorkers, putting them at heightened risk of profiling by stores and even false arrest by police.

Store owners increasingly rely on automated surveillance systems to alert police to suspected shoplifters and other customers who are barred from the premises. Biometric tracking puts BIPOC New Yorkers at risk, fueling dangerous police encounters that are sparked simply by the color of a customer’s face. Not only can these systems facilitate segregation of places of public accommodation (in violation of New York City Human Rights Laws), not only do they violate customers’ privacy, but they can increase the risks of police violence.

In passing Local Law 3, the New York City Council sought to provide public notice on a scale commensurate with biometric tracking’s risk. While S.T.O.P. urges the Council and DCWP to go further, banning all biometric surveillance in stores, we recognize that public notice is an important first step to an eventual ban on the technology. Sadly, rather than enabling Local Law 3, the Proposed Rule would eviscerate its intended impact, making compliance an empty gesture that is all but guaranteed to hide (not show) how customers’ bodies are being tracked.

#### **A. DCWP’s Proposed Design Will Make Meaningful Implementation Impossible**

When New Yorkers enter a store, they are faced with an array of ads, merchandise, and government-mandated signage, all competing for their attention. In this visually crowded space, which can include information on everything from health codes, energy usage, COVID-19 protocols, and more, the Proposed rule would add a single sheet of white letter-sized paper with black text posted in a “clear and conspicuous manner.” To be frank, there is perhaps no form of signage that could be more inconspicuous.

Such a small signage and typography is all-but-guaranteed to let this sign fade into the visual background. Rather than serving as a crucial, first-in-the-country effort to educate the public about biometric tracking, the sign would become a formality that goes completely unobserved to all but the most eagle-eyed inspector. Even worse, the model warning provided by the Department uses

single-spaced Arial, a sans-serif font that will be even less attention-grabbing than a wide array of freely available alternative.

At a minimum, the size of the warning poster must be increased to at least 11 inches by 17 inches, although a full poster size of 24 inches by 36 inches would be even better aligned with the legislative intent of Local Law 3. The poster must include the word “warning” in red text, against a white background, in no less than 100-point font on the poster’s top line. We also suggest incorporating a yellow caution sign as part of the design as well. The body of the poster should be in at least 36-point font. Lastly, the Department should provide stock images for store owners to use in representing each type of biometric tracking, including facial recognition, iris scans, and fingerprint readers. Adding a graphical representation of each tracking system is not only indispensable as a way to draw customers’ attention to the sign, but it’s also an essential accessibility measure for staff and customers who do not readily communicate in English.

DCWP has a tremendous opportunity to inform, empower, and protect New York’s customers and workers, but only if you act. If the Department updates the Proposed Rule to incorporate basic design and communications principles and ensure that New Yorkers receive proper notice about biometric tracking, you will help transform New York City into a leader in biometric transparency. Alarming, if the Department finalizes the Proposed Rule as currently drafted, you will undermine the City Council’s intent and further help normalize biometric surveillance technology, directly undermining the goal you were tasked with accomplishing. I hope that you will adjust course in light of this feedback and do what is needed to protect New Yorkers.