WHEN MACHINES DISCRIMINATE

The critical role of disparate impact liability in AI accountability

Every day, qualified people are unjustly locked out of jobs, housing, and financial opportunities because of faulty AI systems that supercharge discrimination. These AI systems are often accepted as neutral arbiters, but their decisions are usually unexplainable, even by the people who build them. There must be recourse for people when AI gets it wrong.

People who think that AI has discriminated against them can sue if they can prove that there was either **disparate treatment** (the system *intentionally* discriminated) or that there was **disparate impact** (the system's *impact* was discriminatory).

President Trump is trying to eliminate disparate impact, which would require harmed individuals to argue that AI systems discriminated intentionally — something nearly impossible to prove. It would make AI accountability harder, and it would lessen the pressure on companies that build and use AI to prevent harm from happening in the first place.

HOW AI AMPLIFIES DISCRIMINATION

Biased Data

AI learns by analyzing patterns in training data. AI can perpetuate discrimination if it:

- **uses limited data** (i.e., training facial recognition tools only on white faces),
- **uses data with biased labels** (i.e., datasets that label Black vernacular as offensive),
- **embeds stereotypes** (i.e., image recognition that identifies anyone in a kitchen as a woman), or
- **includes historical bias** (i.e., lending algorithms trained on past loans that reproduce redlining).

Biased Design

Choices about how an AI system is built and used can enable discrimination if it:

- **weighs features in biased ways** (i.e., AI credit scoring using ZIP codes to determine credit worthiness),
- **is deployed in contexts different from how they were trained** (i.e., AI trained in urban areas used in rural communities),
- **creates feedback loops** (i.e., predictive policing that sends police to an area and interprets a subsequent rise in arrests as a reason to send more police), or
- **hides bias** (i.e., opaque algorithms that claim to be more neutral than humans, but cannot prove it).

SECTORS + IMPACT

Jobs

Employers use AI to make hiring and promotion decisions. Derek Mobely, a Black man with anxiety and depression, sued after being denied for over 100 jobs by Workday Inc.'s AI-powered platform.

Housing

Rental companies use AI to assess applicants. Mary Louis's application was denied because SafeRent's algorithm ignored her housing voucher and her 16-year spotless rental record.

Lending

Financial institutions use AI to determine loan rates. Upstart used an AI model that would cause a hypothetical HBCU graduate to pay nearly $3,500 more for a 5-year $30,0000 loan than a similar graduate from NYU.

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techcenter@civilrights.org

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