

MEMORANDUM

Date: Wednesday, January 5, 2022

To: All Assembly Members, New York State Assembly; All Senators, New York State Senate

From: Hayley Tsukayama, Legislative Activist, Electronic Frontier Foundation

Re: **Electronic Frontier Foundation Memorandum in Support of A7326/S6541**

I write today on behalf of the Electronic Frontier Foundation (EFF), a San Francisco-based, non-profit organization that works to protect civil liberties in the digital age. EFF represents more than 30,000 active donors and members, including thousands of supporters in New York. We write in support of Assembly Bill 7326 and Senate Bill 6541, which will safeguard New Yorkers' privacy and help establish the trust needed for all successful public health measures.

New Yorkers are increasingly being asked to share their vaccine status to dine indoors, to use exercise facilities, or to access basic services. This means that New Yorkers are presenting proof of medical information in many places and, without protections, this creates a huge amount of information about where they go and who they associate with that can be tracked and abused.

People should not have to worry that their vaccine information will become a universal tracking device that could be used against them—if, for example, it is unexpectedly shared with immigration officials, law enforcement agencies, or private companies. EFF has already expressed privacy and security concerns about the way the Excelsior Pass system was rolled out in New York as well as stated plans for its future expansion¹. We believe, given the way the program has already been deployed, that privacy protections must put in place as quickly as possible.

A.7326 (Gottfried)/S.6541 (Rivera) will break down barriers to vaccination by ensuring that individuals' personal information is kept safe throughout the vaccination process and that information shared to receive a vaccine cannot be used to criminalize or deport anyone or to take away their children. It will also put in place reasonable guardrails for proof-of-immunity records to ensure that the most vulnerable are not cut off from society. For these reasons, EFF strongly supports this legislation.

In particular, this legislation will ensure that every business or governmental service that requires immunity records information will regularly delete personal information it collects, and that no personal information will be transmitted back to the developer of software used to present proof-of-immunity. It will limit the amount of information developers can collect, to ensure they only gather the information needed to verify a vaccination or negative test, and nothing else. Crucially, it also

¹ <https://www.eff.org/deeplinks/2021/08/vaccine-passport-missteps-we-should-not-repeat>

requires that any entity that requests proof of vaccination or a negative test results accepts an analog option. This will ensure that populations who are unable to afford smartphones—or simply prefer the more privacy-protective analog format—are not turned away. It places similarly necessary data collection and use restrictions on vaccine navigators.

We also support the legislation’s provisions to ensure that immunity record information cannot be used to criminalize, deport, or take anyone’s children away. Giving people the assurance that their information will not be used in these devastating ways, again, increases much-needed trust in these public health efforts.

We thank you for addressing this important issue with the strong legislation that New Yorkers need. We urge the legislature to pass it. If you have further questions or would like to discuss anything I have said in more detail, please contact me at hayleyt@eff.org or 415-436-9333 x161.

Respectfully submitted,

/s _____

Hayley Tsukayama

Legislative Activist

Electronic Frontier Foundation