

August 30, 2021

The Honorable Kathy Hochul
Governor of New York State
633 3rd Ave, 38th Floor
New York, NY 10017

Re: Veto of New Vaccine Card Crime Bill (S.4516-C/A.7536-B)

Dear Governor Hochul,

The undersigned group of civil rights, health care, and privacy advocates, public defenders, and health care providers urge you to veto S.4516-C/A.7536-B, which would make falsifying a COVID-19 vaccine card a class A misdemeanor and would create a new E felony for intentional alteration or destruction of “computer material” regarding COVID-19 vaccine provision. This bill will do nothing to stem the spread of COVID-19, but will further marginalize the very communities who have already borne the brunt of the pandemic.

Unfortunately, it is still gallingly difficult to obtain a vaccine in many of New York’s most marginalized communities. The reasons for this difficulty are varied. Most irrationally given the biased impact of the pandemic, vaccination sites are not widely available in these communities.¹ And, even when vaccination sites are available, too many New Yorkers – particularly Hispanic and Latinx New Yorkers – fear that there will be negative immigration consequences associated with receiving a vaccine and that the personal information they share to receive one will not remain confidential.² In addition, too many in New York’s most marginalized communities do

¹ E.g. Natasha Williams, Haleigh Tutrow, Paulo Pina, et al, *Assessment of Racial and Ethnic Disparities in Access to COVID-19 Vaccination Sites in Brooklyn, New York*, JAMA NETWORK OPEN 1 (2021) (“The median (range) number of vaccination sites (4 [0-5]) among districts with less than 40% White (non-Hispanic) race/ethnicity was less than the number of vaccination sites (6 [3-8]) among districts with greater than or equal to 40% White (non-Hispanic) race/ethnicity . . . Of note, district 16 had the highest percentage of the population below the poverty threshold (29.4%) and has 0 vaccination sites.”).

² See Press Release, Kaiser Family Foundation, *Vaccine Monitor: Unvaccinated Hispanic Adults are Twice as Likely as White Adults to Want a COVID-19 Vaccine ASAP, Highlighting a Key Outreach Opportunity for Vaccination Efforts* (June 14, 2021) (<https://connect.kff.org/vaccine-monitor-unvaccinated-hispanic-adults-are-twice-as-likely-as-white-adults-to-want-a-covid-19-vaccine-asap>) (“4 in 10 unvaccinated Hispanic adults (39%) say they are concerned that they might be required to provide a Social Security number or government-issued identification to get vaccinated, and about a third (35%) are concerned that getting a vaccine might negatively affect their own or a family member’s immigration status.”); Rachel Roubein & Dan Goldberg, *Rush to close vaccination gap for Hispanics*, Politico, June 27, 2021, <https://www.politico.com/news/2021/06/27/hispanic-vaccination-gap-covid-barriers-496394> (One-third of unvaccinated Hispanics said they believed receiving a Covid vaccine could complicate immigration status for themselves or their family, despite the Biden administration’s assurances that it would not, according to a national survey from the African American Research Collaborative and the Commonwealth Fund this month.”).

not speak English or have access to the internet, and yet vaccine sign-ups have taken place primarily in English and primarily online.³

In addition to these direct hurdles to vaccination, the initial roll-out strategy which focused on mass vaccination sites and the pharmacy network for vaccine delivery sidelined community-based organizations, safety-net providers, senior centers, and others who knew how to reach our Black, Latinx, brown, immigrant, and low-income communities.⁴ Current efforts to support community-based delivery are hindered by the distrust that these early failures caused and by ongoing reliance on external contractors and agencies rather than utilizing local expertise and building community-level capacity. Some low-income New Yorkers remain unvaccinated because they cannot afford to take time off from work to recover from vaccine side effects, which most often occur the day after vaccination.⁵ Other individuals have been turned away from vaccination sites, because they lack identification.⁶ Overcoming COVID-19 vaccine hesitancy and access barriers requires building trust with impacted communities and community-engaged campaigns that address historical and ongoing injustices, not the use of a punitive system that continues to threaten these very communities.

A bill directed not at vaccine access, awareness, and education but at criminalization of workarounds borne of that lack of access, awareness, and education will effectively penalize

³ See generally NYCLU, TESTIMONY BEFORE THE NEW YORK CITY COUNCIL COMMITTEES ON HEALTH, AGING, AND TECHNOLOGY ON OVERSIGHT - COVID-19 AND SENIORS: ADDRESSING EQUITY, ACCESS TO THE VACCINE, AND SCHEDULING VACCINATION APPOINTMENTS ONLINE IN NYC (2021); Letter from COVID-19 Working Group to Dr. Howard Zucker, Commissioner, New York State Department of Health, Dr. Dave A. Chokshi, Commissioner, New York City Department of Health & Mental Hygiene, & Dr. Mitchell Katz, President & Chief Executive Officer, New York City Health + Hospitals (Feb. 12, 2021) (<https://static1.squarespace.com/static/5e6fd0a65abcc54f238eae48/t/602b288efcff027e852f7129/1613441167335/Vaccine+Equity+Sign-on+Letter+2-11-21.pdf>).

⁴ Letter from COVID-19 Working Group to Dr. Howard Zucker, Commissioner, New York State Department of Health, Dr. Dave A. Chokshi, Commissioner, New York City Department of Health & Mental Hygiene, & Dr. Mitchell Katz, President & Chief Executive Officer, New York City Health + Hospitals (Feb. 12, 2021) (<https://static1.squarespace.com/static/5e6fd0a65abcc54f238eae48/t/602b288efcff027e852f7129/1613441167335/Vaccine+Equity+Sign-on+Letter+2-11-21.pdf>); see generally NEW YORK CITY COUNCIL COMMITTEES ON HEALTH, AGING, AND TECHNOLOGY ON OVERSIGHT - COVID-19 AND SENIORS: ADDRESSING EQUITY, ACCESS TO THE VACCINE, AND SCHEDULING VACCINATION APPOINTMENTS ONLINE IN NYC (2021); NEW YORK CITY COUNCIL COMMITTEES ON HEALTH AND HOSPITALS ON OVERSIGHT OF NYC'S COVID-19 TESTING AND CONTACT TRACING PROGRAM, PART II (2020).

⁵ See Press Release, Kaiser Family Foundation, Vaccine Monitor: Unvaccinated Hispanic Adults are Twice as Likely as White Adults to Want a COVID-19 Vaccine ASAP, Highlighting a Key Outreach Opportunity for Vaccination Efforts (June 14, 2021) (<https://connect.kff.org/vaccine-monitor-unvaccinated-hispanic-adults-are-twice-as-likely-as-white-adults-to-want-a-covid-19-vaccine-asap>) (“Among all unvaccinated Hispanic adults, nearly two thirds (64%) are concerned about missing work due to side effects”). Although New York grants workers four hours paid leave to receive a vaccine, *Paid Leave for COVID-19 Vaccinations*, NEW YORK DEP'T OF LABOR, May 2021, <https://dol.ny.gov/system/files/documents/2021/05/cd6-paid-leave-for-covid19-vaccinations-5-18-21.pdf#:~:text=Every%20employee%20shall%20be%20provided,by%20the%20employer%2C%20to%20be,that time applies only to receipt of the actual vaccine and not to recovery time for side effects.>

⁶ Conversation with Melissa Baker, Chief Operating Officer, National Black Leadership Commission on Health (June 17, 2021).

Black, Latinx, brown, immigrant, and low-income communities. Many of these communities are home to essential workers, who have not been able to work from home during the pandemic and who may seek fake vaccine cards as a solution because they cannot afford to stay home from work. This bill will criminalize individuals from these communities, who have been unable to receive a vaccine, simply for doing what they can to survive.

We know that our Black, Latinx, brown, immigrant, and low-income communities are already disproportionately over-surveilled and over-policed.⁷ As our nation stands in the midst of a long-overdue reckoning on racism, police brutality, and white supremacy, we are concerned that this new crime will disproportionately impact Black, Latinx, brown, and low-income communities and offer police officers yet another reason to surveil, stop, search, investigate, and detain members of these communities.⁸

In fact, in the last two years – in recognition of the structural racism that plagues our policing and criminal legal systems – New York has enacted numerous policing and criminal justice reforms.⁹ Creating a new crime that will disproportionately impact Black, Latinx, brown, immigrant, and low-income New Yorkers is incongruous with these historic reforms and a step backwards.

A new crime will not encourage individuals to get vaccinated, because a new crime does nothing to make it easier to get vaccinated nor does it assuage individuals' legitimate concerns around

⁷ E.g. Joshua Solomon & Emilie Munson, *New data: In New York, nearly half of police use of force cases involved Black people*, TIMES UNION, July 10, 2021, <https://www.timesunion.com/news/article/Nearly-half-of-use-of-force-cases-by-police-16302282.php> (“Half the time police in New York say they wielded force it was used on a person who is Black . . . [T]he state's overall population . . . is 18 percent Black. Some Capital Region police departments, including Albany, Troy and Schenectady, reported that Black people accounted for more than 60 percent of cases in which they used force . . .”); *Annual Stop-and-Frisk Numbers*, NYCLU, 2019, <https://www.nyclu.org/en/stop-and-frisk-data> (documenting that in 2019, 59% of people subjected to stop and frisk in New York City were Black, 29% were Latinx, and only 9% were white); Jake Offenhartz, *NYPD's Enforcement of Marijuana Laws Still Plagued By Extreme Racial Disparities*, GOTHAMIST, Mar. 10, 2021, <https://gothamist.com/news/nypds-enforcement-marijuana-laws-still-plagued-extreme-racial-disparities> (“93% of those arrested for marijuana in NYC [in 2020] were Black or Hispanic. White people — who make up 45% of the city's population, and have been shown to use marijuana at equal rates as other racial groups — accounted for less than 5% of citywide arrests.”).

⁸ This would not be the first time that COVID-19-related enforcement actions have fallen disproportionately on communities of color. According to data released by the NYPD, more than 80 percent of those ticketed for social distancing-related enforcement are Black and Latinx. Erin Durkin, *Black and Latino New Yorkers Get Vast Majority of Social Distancing Summonses*, POLITICO, May 8, 2020, <https://www.politico.com/states/new-york/albany/story/2020/05/08/black-and-latino-new-yorkers-get-vast-majority-of-social-distancing-summonses-1283223>.

⁹ E.g. HALT Solitary Confinement Act, S.2836-A/A.2277-A, 2021-2022 Reg. Sess. (N.Y. 2021); Marijuana Regulation & Taxation Act, S.854-A/A.1248-A, 2021-2022 Reg. Sess. (N.Y. 2021); Less is More Act, S.1144-A/A.5576-A, 2021-2022 Reg. Sess. (N.Y. 2021); a bill to establish a 9-8-8 suicide prevention & mental health crisis hotline, S.6194-B/A.7177-B, 2021-2022 Reg. Sess. (N.Y. 2021); 50-a repeal, S.8496/A.10611, 2019 -2020 Reg. Sess. (N.Y. 2020); Police Statistics and Transparency (Police STAT) Act, S.1830-B/A.5472-A, 2019-2020 Reg. Sess. (N.Y. 2020); a bill to create an office of special investigation within the office of the attorney general, S.2574-C/A.1601-C, 2019-2020 Reg. Sess. (N.Y. 2020).

sharing personal information to get vaccinated. But, a new crime does threaten to cut off the very people who have carried us through the pandemic – disproportionately Black, Latinx, brown, immigrant, and low-income essential workers – from society. We urge you in no uncertain terms to veto S.4516-C/A.7536-B and to instead use your executive powers and work with the legislature to advance measures that will make it easier and safer for all New Yorkers to get vaccinated.¹⁰

Sincerely,

ACT UP NY

The Bronx Defenders

Brooklyn Defender Services

Callen-Lorde Community Health Center

Center for Appellate Litigation

The Center for HIV Law & Policy

Commission on the Public's Health System

Electronic Frontier Foundation

High Impact Strategies

Immigrant Defense Project

John Jay College Institute for Justice and Opportunity

Latino Commission on AIDS

Legal Action Center

The Legal Aid Society of NYC

Legal Aid Society of Westchester

National Black Leadership Commission on Health, Inc.

Neighborhood Defender Service of Harlem

New York Civil Liberties Union

New York State Association of Criminal Defense Lawyers

Positive Women's Network-USA

Release Aging People in Prison/RAPP

S.T.O.P. – The Surveillance Technology Oversight Project

Treatment Action Group

CC. Assembly Member Michaelle C. Solages, Chair,
Black, Puerto Rican, Hispanic & Asian Legislative Caucus

¹⁰ For example, New York should expediently enact vaccine confidentiality, A.7326/S.6541, 2021-2022 Reg. Sess. (N.Y. 2021), which passed the Assembly unanimously, but which the Senate failed to take up.