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October 28, 2016

EEOC Executive Officer

131 M Street NE

Washington, DC 20507

Submitted via email: commissionmeetingcomments@eeoc.gov

Dear Madam:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States, we appreciate this opportunity to provide comments in connection with the October 13 meeting convened by the U.S. Equal Employment Opportunity Commission on the use of big data in the workplace.

The Leadership Conference believes that big data is a civil and human rights issue. Big data can bring greater safety, economic opportunity, and convenience, and at their best, data-driven tools can strengthen the values of equal opportunity and shed light on inequality and discrimination. Big data used correctly can also bring more clarity and objectivity to the important decisions that shape people's lives, such as those made by employers and others in positions of power and responsibility. However, at the same time, big data poses new risks to civil and human rights that may not be addressed by our existing legal and policy frameworks.

On February 27, 2014, The Leadership Conference and many other civil rights and media justice organizations released the attached Civil Rights Principles for the Era of Big Data. These principles recognize the importance of ensuring that big data technologies be designed and used in ways that enhance, rather than threaten, civil rights. Since their release, the principles have been cited extensively, including in the White House's final report from its 90-day review of big data's impact on how we work and live, "[Big Data: Seizing Opportunities, Preserving Values.](#)" John Podesta, who led that review in his capacity as counselor to the President, wrote in the cover letter transmitting the report to President Obama that "[a] significant finding of this report is that big data analytics have the potential to eclipse longstanding civil rights protections in how personal information is used in housing, credit, employment, health, education, and the marketplace." The interim White House [report](#) released in 2015 acknowledged the important role that the civil rights community, and specifically, the Civil Rights Principles, played in informing the Podesta review. This point was underscored in the most recent White House report on big data, released earlier this year, "[Big Data: A Report on Algorithmic Systems, Opportunity, and Civil Rights.](#)"

In the face of rapid technological change, we urge the EEOC to protect and strengthen key civil rights protections in the workplace. Though U.S. workplaces today are more inclusive than ever before, ensuring equal employment opportunity in an increasingly automated world will pose new and significant challenges, as new technologies allow employees and

prospective employees to produce more data than ever, and employers and the third party companies that assist them increasingly apply analytical tools to these various data streams.

A September 2014 report from the firm Upturn, ["Civil Rights, Big Data, and Our Algorithmic Future,"](#) provides important workplace-related examples that highlight the potential harms in using data analytics, especially for disadvantaged groups. For example:

- The E-verify program, provided by the government to let employers check if new employees are eligible for work, has been plagued by an error rate that is 20 times higher for foreign-born workers than those born in the United States.
- The report also noted the potential problems in recent machine learning systems that vendors provide to screen job applicants for entry-level service sector jobs. These systems analyze several factors that correlate with job performance, and give a hiring preference to applicants who have those factors. One such factor is shorter commute times—people who live nearer the job site tend to stay in the job for longer. A machine learning system with a preference for short commute times may hurt people living in disadvantaged areas, who are disproportionately people of color.
- The report highlighted the important research of Professor Latanya Sweeney, which revealed that digital indicators of race, religion, or sexual preference can foster "discriminatory outcomes or giv[ing] preference to members of one group over another" when combined with complex big data systems.

As data grows to have a greater impact on the daily lives of all people in the workforce, we encourage the EEOC to take appropriate steps to protect workers from errors in data, flawed assumptions, and uses of data that may result in a discriminatory impact. We stand ready to work with you to ensure that the voices of the civil and human rights community are heard in this important, ongoing national conversation. If you have any questions about these comments, please contact Corrine Yu, Leadership Conference Managing Policy Director, at 202-466-5670 or yu@civilrights.org.

Sincerely,



Wade Henderson
President & CEO



Nancy Zirkin
Executive Vice President