

February 11, 2025

TESTIMONY OF PROFESSOR GABRIEL WEIL REGARDING:

House Bill No. 5224

**ENTITLED, AN ACT RELATING TO COURTS AND CIVIL PROCEDURE --
PROCEDURE GENERALLY -- CAUSES OF ACTION**

Chairman Craven and Members of the House Judiciary Committee:

As an Assistant Professor of Law at Touro University specializing in artificial intelligence (AI) governance and regulation, I write in strong support of HB5224. My research focuses on developing legal frameworks that maximize AI's transformative benefits while establishing essential safeguards against its risks. This bill is carefully crafted to achieve both objectives.

HB5224 is based on a simple principle: when an AI system engages in conduct that would give rise to tort liability for a human, the victim should not be left without recourse. If the user of the AI system intended or could have reasonably anticipated the wrongful conduct, then they are likely to be held liable under current law. This bill does nothing to change that or to increase the liability of AI system developers in such misuse cases. However, **many AI researchers, including top leadership at leading AI labs like Anthropic, OpenAI, and Google DeepMind, have expressed concern that AI systems will misbehave even when deployed responsibly for socially beneficial purposes.** Under such circumstances, current law would not and should not hold the system user liable. **Unfortunately, current law is unlikely to hold AI system developers and providers liable in many cases where innocent people are harmed by innocent users of their systems.**

This bill takes a balanced, innovation-friendly approach. Instead of imposing onerous ex ante requirements on AI developers, it merely holds them responsible when their systems cause harm. Moreover, it focuses on harm to non-users: innocent people who did not opt in to the risks associated with frontier AI systems. It also excludes cases where users intentionally or negligently misuse AI systems. It is narrowly targeted at cases where developers of advanced AI systems are clearly able to externalize the risks that their products generate. Once they are forced to bear those risks, AI developers will have better incentives to focus their energy on applications where the societal benefits are large enough to readily offset the costs of occasional accidents.

Under current law, the only liability regime that is clearly and generally applicable to AI is negligence. To win a negligence case, a plaintiff must prove that the defendant failed to take some precautionary measure that a reasonable person both would have taken and would have prevented the plaintiff's injury. The scope of this reasonable care inquiry tends to be quite narrow. For instance, if an SUV driver unintentionally runs over a pedestrian, courts do not ask

whether the value of the incremental car trip to the driver justified the risks to pedestrians, or whether the social value of driving a heavy SUV is large enough to justify the extra risk to pedestrians relative to that posed by a compact sedan. Instead, courts ask targeted questions like whether the driver was drunk, texting, or speeding. In the AI context, courts are similarly unlikely to ask whether it is reasonable to deploy an AI system with certain broad parameters, given the current state of AI alignment and safety science. Instead, they are likely to ask whether the developer or provider failed to adopt some well-established alignment technique or safety practice that, if implemented, would have prevented the plaintiff's injury. **Given that the leading AI experts' assessment is that major technical breakthroughs will be required to make the powerful AI systems of the future safe to deploy, the negligence requirement to deploy only the alignment techniques and safety practices that already exist and are widely accepted is likely to be inadequate.**

The other regime that may be applicable to some cases of AI harms is products liability. Products liability is only applicable to commercial sellers of products. AI systems that are released for free public use or provided as a service would not fall under this regime. More importantly, while products liability is often described as strict liability, it tends to operate much like negligence in practice. There are three kinds of defects that can give rise to a products liability claim: manufacturing defects, design defects, and warning defects. The test for manufacturing defects comes the closest to genuine strict liability. If an individual unit comes off the production line deviating from its design specifications in a way that renders it unreasonably unsafe, the seller can be held liable for harms resulting from this defect regardless of the reasonableness of the manufacturer's quality control process. However, manufacturing defects are rare with software products, which can be easily copied with high fidelity.

The tests for design and warning defects are much more negligence-like. For instance, alleged design defects are evaluated under a risk-utility framework, where a product is only defective in design if it could be made safer without sacrificing too much on other dimensions of product quality like price, performance, and durability. In practice, this only offers marginally greater protection than a negligence regime, even in cases where the threshold conditions for the applicability of products liability apply.

Filling the gap in the law that allows AI developers to escape liability when their systems harm innocent people will only become more important as AI becomes increasingly powerful and integrated into our economy. **HB5224 is a sensible measure that encourages AI developers to behave responsibly while developing innovative new products.**

Sincerely,

Gabriel Weil

Gabriel Weil
Assistant Professor of Law
Touro University Jacob D. Fuchsberg School of Law
225 Eastview Dr
Central Islip, NY 11722
631-761-7139 | gweil2@tourolaw.edu