



THE DIGITAL GATEKEEPER

How corporate algorithms learned
to automate discrimination.

THE CASE OF ARSHON HARPER



The Plaintiff:

Detroit-based, African American IT professional with over a decade of expertise. Proceeding pro se (representing himself).

The Incident:

Applied for 150 unique roles at SiriusXM. Qualified or over-qualified for all.

149 of 150

The Result:

Rejected 149 times.

The Catch:

A human recruiter never saw his resume.

THE EXCLUSION ENGINE



1. Data Scoring:

The system scans materials and assigns numerical ranks based on specific, historical variables.

2. Algorithmic Sorting:

The machine groups candidates by these scores, prioritizing similarity to past hires over actual job qualifications.

3. Automated Purge: The software acts as a digital bouncer, quietly eliminating highly qualified talent before human oversight can intervene.



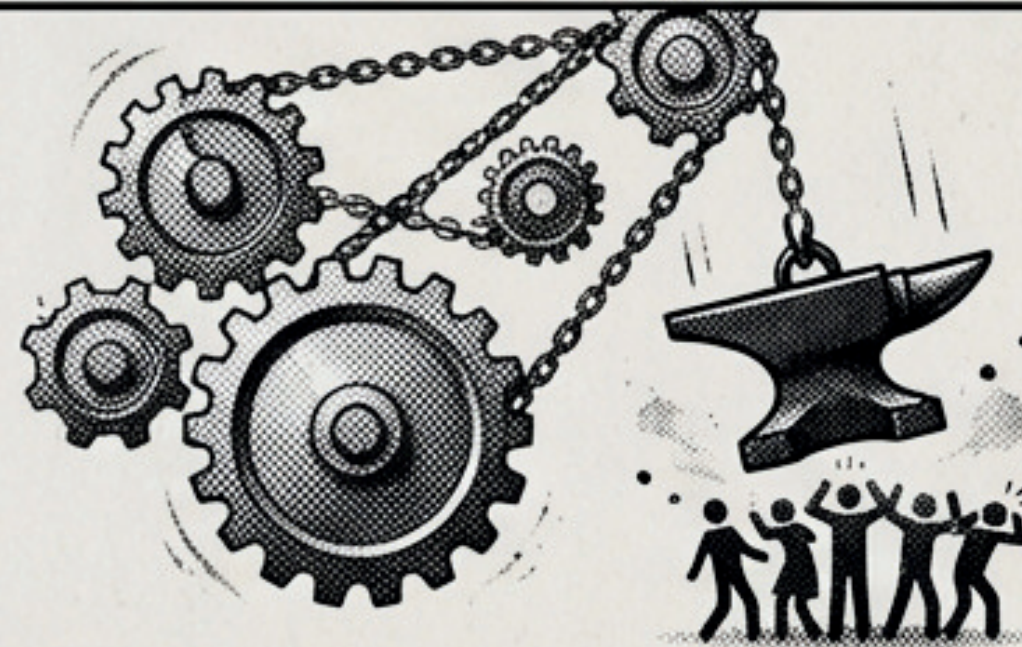
THE ILLUSION OF NEUTRALITY

DISPARATE TREATMENT



Intentional discrimination in the design or active use of a tool.

DISPARATE IMPACT



Accidental but harmful outcomes. The system appears neutral but creates discriminatory results.

MASSIVE CORPORATE LIABILITY

The defense of **"we didn't mean to"** is dead. If a system replicates historical inequity, **the employer is fully responsible.**

ANATOMY OF A DIGITAL PROXY

APPLICANT TRACKING SYSTEM

Zip Code: 48201

DETROIT
=
HISTORICALLY
SEGREGATED
SOCIO-ECONOMIC
DATA

**FILTER TRIGGERED:
EXCLUDE MINORITY
CANDIDATE.**

THE MECHANICS OF PROXY BIAS:

Algorithms use geographical and educational data points as direct stand-ins for race.

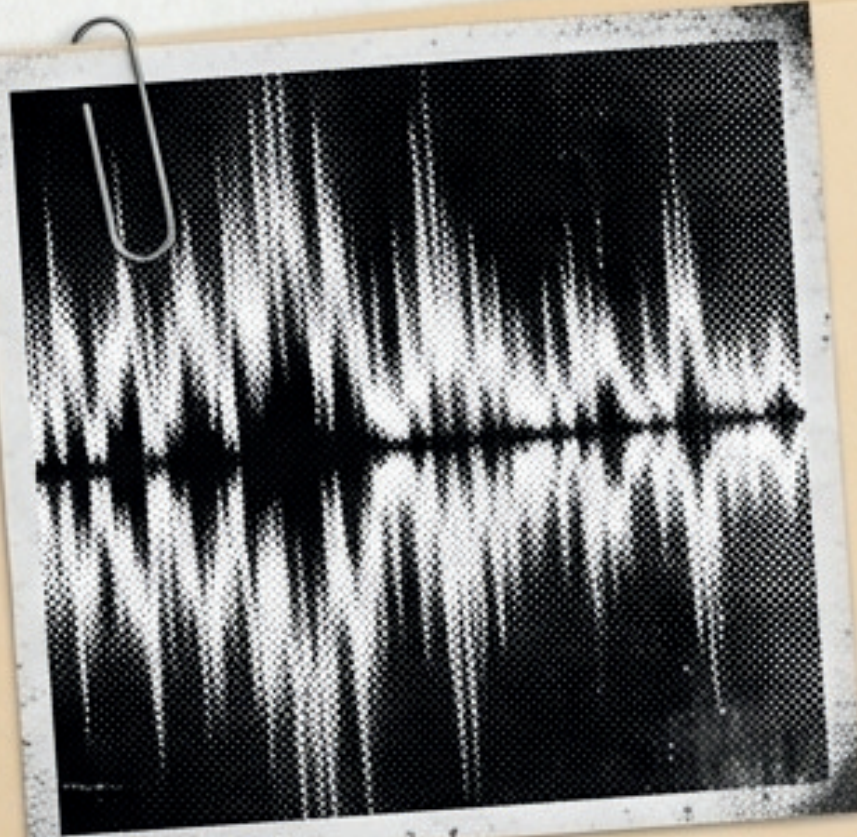
THE RESULT:

The machine learns to seamlessly exclude minority professionals under the protective cover of geographical neutrality.

BEYOND THE RESUME

EVIDENCE

DIALECT BIAS



Linguistic Prejudice: A recent Nature study proves Large Language Models heavily penalize African American English (AAE). When used to screen resumes, the AI flags AAE speakers as unqualified, **translating linguistic bias into immediate economic exclusion.**

CULTURAL BAGGAGE

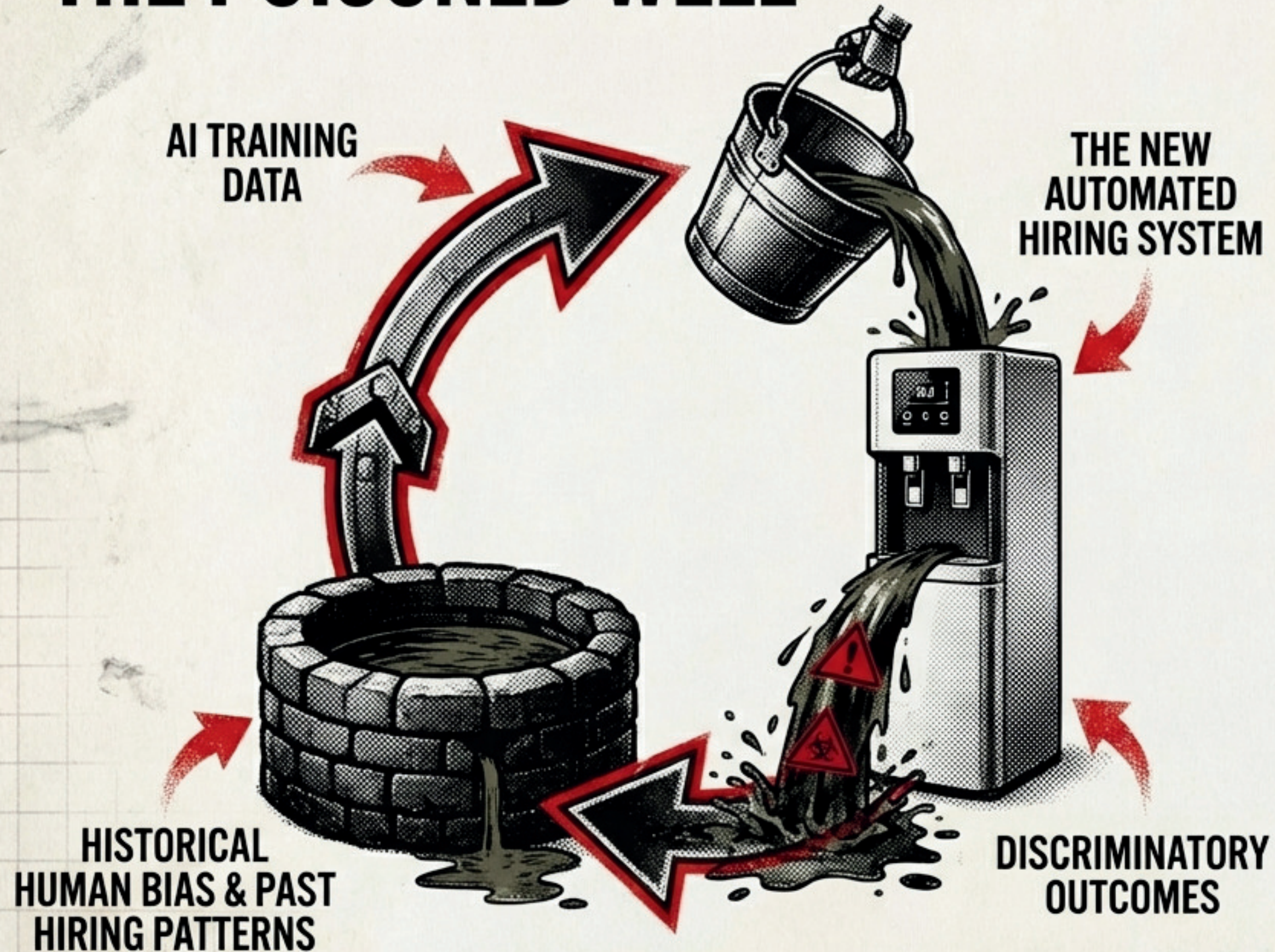


Institutional Memory: AI models ingest public corporate history. SiriusXM's past cultural controversies risk being **baked into the recruitment engine's understanding of company culture.**

EVIDENCE

CONFIDENTIAL

THE POISONED WELL



THE CLOSED LOOP:

AI recruitment tools do not create fairness; they merely study historical human behavior.

THE 'FIT SCORE' TRAP:

When an algorithm is told to find candidates who **'fit'** the profile of historically successful hires, it permanently excludes anyone who does not mirror that biased baseline.

THE PROMISE VS. THE REALITY

THE SALES PITCH

Accelerated candidate screening.

Reduced administrative cost per hire.

Standardized, data-driven decisions.

THE HARSH REALITY

† Systemic exclusion of senior-level minority talent.

† Multi-million dollar settlements and catastrophic legal exposure.

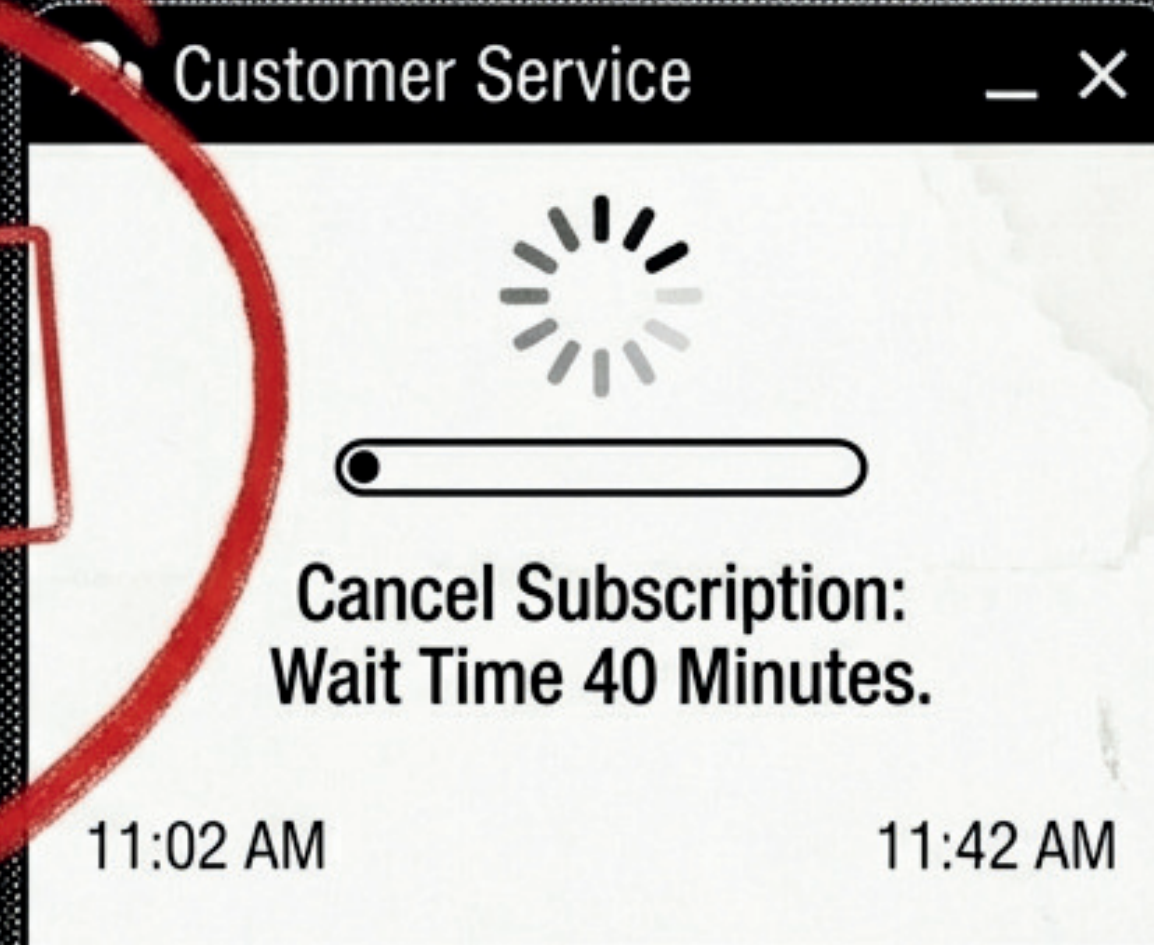
† Institutionalized proxy discrimination and reputational ruin.

A BIAS TOWARD FRICTION

THE ATS



THE CHAT TRAP



THE COMMON THREAD:

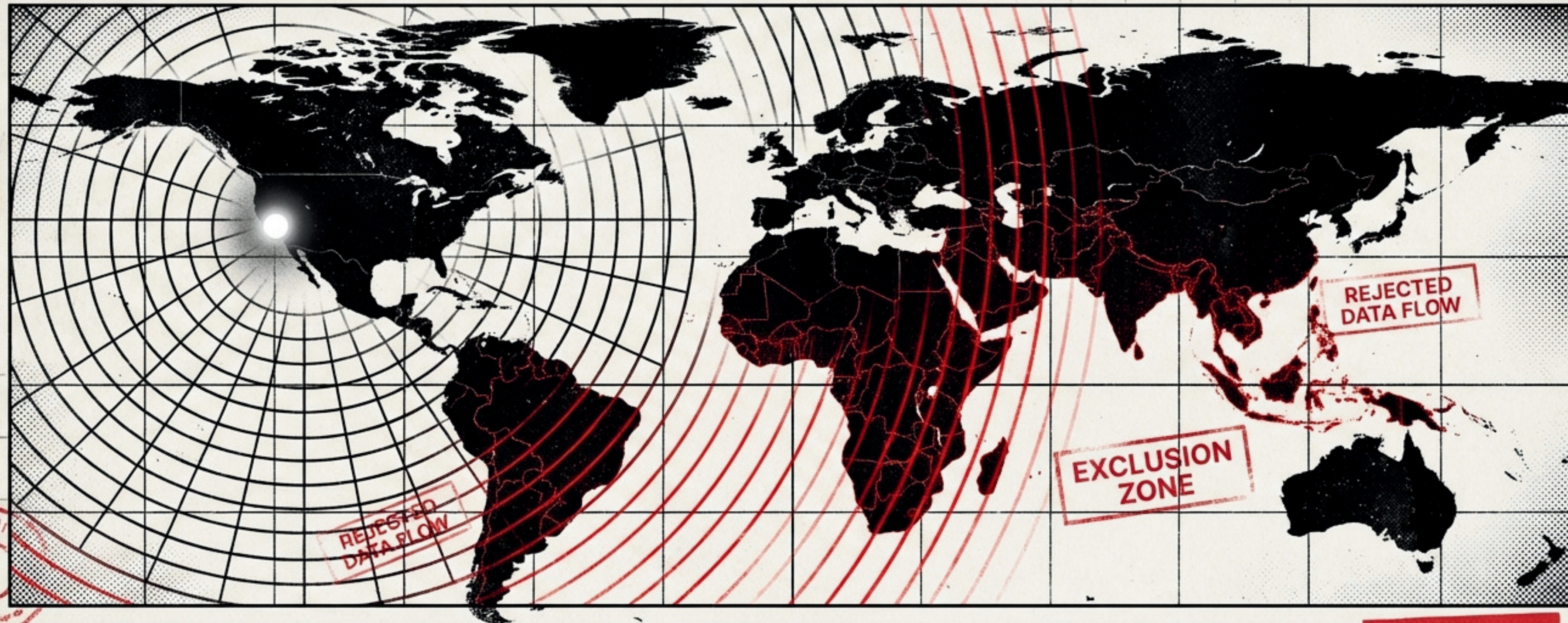
The November 2024 NY Attorney General lawsuit exposed SiriusXM's use of **burdensome automated processes** to trap customers in unwanted subscriptions.

SYSTEMIC INSTITUTIONAL FAILURE:

Whether trapping consumers in 40-minute cancellation chats or instantly purging highly qualified job applicants, the company consistently deploys automation to prioritize **aggressive efficiency** over human rights and fairness.

EXPORTING INEQUALITY TO THE GLOBAL SOUTH

TRUE-CRIME DOSSIER



THE DIGITAL DIVIDE:

Algorithms trained on Western educational prestige and U.S. zip codes systematically undervalue and ignore local talent in the Global South.

THE ECONOMIC THREAT:

The UN warns of a **\$4.8 trillion** AI disruption affecting **40% of jobs**. Using Western fit models internationally creates massive, unprecedented global talent wastage.

THE END OF THE SOFTWARE DEFENSE

MOBLEY V. WORKDAY:

Tests the liability of the software vendor for creating biased agents.

**VENDOR
CONTRACT**

**EMPLOYER
LIABILITY**

HARPER V. SIRIUSXM:

Proves the ultimate liability rests with the employer.

THE BOTTOM LINE: You cannot outsource your civil rights obligations. If you buy and deploy the tool, you own the discrimination it produces.

THE REGULATORY WAVE HAS ARRIVED

OCTOBER 1, 2025



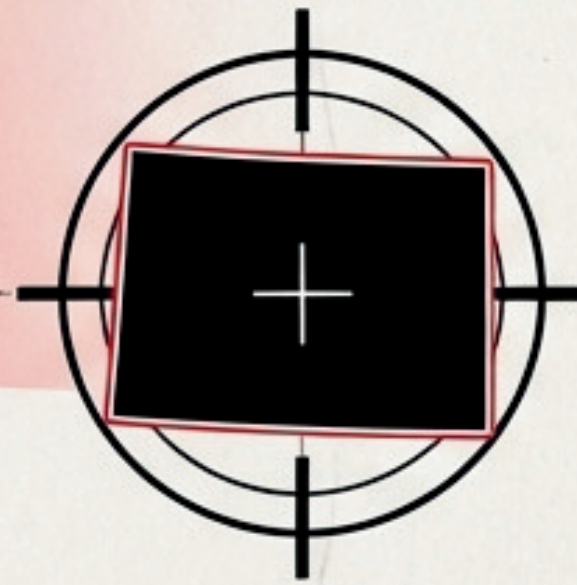
California: Strict ADS regulations take effect, explicitly prohibiting discrimination via automated systems and addressing third-party liability.

JANUARY 1, 2026



Texas: The Responsible AI Governance Act (TRAIGA) enforces strict intent-based standards and mandatory governance.

JUNE 30, 2026



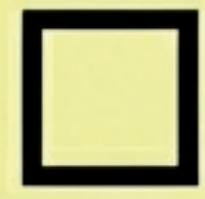
Colorado: SB 205 imposes heavy duty-of-care requirements on all high-risk algorithmic systems.

THE REFORM BLUEPRINT: PHASE 1

GOVERNANCE & TRANSPARENCY



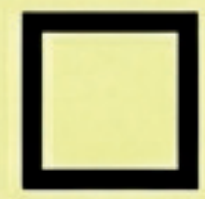
1. Establish AI Governance: Define oversight roles with strict guardrails matching NIST frameworks.



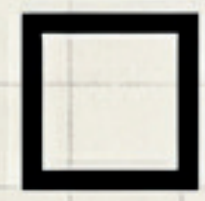
2. Rigorous Vendor Audits: Demand hard documentation of bias testing. Never rely on a vendor's marketing materials.



3. Mandate Transparency: Tell candidates exactly when, where, and how AI is evaluating them.



4. Human-in-the-Loop Pathways: Explicitly provide applicants an option for human review or alternative assessment.



5. Strict Metric Alignment: AI criteria must map exclusively to the essential, legally defensible functions of the job.

THE REFORM BLUEPRINT: PHASE 2

AUDITING & CONTINUOUS TESTING

- | | |
|--------------------------|---|
| <input type="checkbox"/> | 7. Comprehensive Audit Trails: Record the precise data process and rationale behind every single automated decision. |
| <input type="checkbox"/> | 8. Execute Accessibility Audits: Constantly test systems to ensure they do not violate disability accommodations. |
| <input type="checkbox"/> | 9. Continuous Impact Monitoring: Run rolling statistical checks to actively hunt for disparities across protected classes. |
| <input type="checkbox"/> | 10. Track Evolving Standards: Assign legal teams to monitor the rapid shift in state and federal ADS regulations. |

(Note: Mandate 6 is reserved for the final safeguard).

THE FINAL SAFEGUARD



Action Mandate #6: Enforce Human Oversight.

A qualified human professional **must have the power** to review, challenge, and override any **algorithmic recommendation** before a final hiring action is taken.

Algorithms are built to measure the past. Only humans can judge potential. Automating the final decision is simply automating your own liability.

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