Senate Committee on Housing and Development
Oregon Legislative Assembly
900 Court St. NE
Salem, OR 97301

March 19, 2025

Subject: Testimony in Support of SB 722

Chair Pham, Vice-Chair Anderson, and Members of the Committee,

My name is Pat Garofalo, and I am the director of state and local policy at the American
Economic Liberties Project, an organization dedicated to reducing the power that dominant
corporations wield over our economy and democracy, in pursuit of economic liberty for all.
Thank you for the opportunity to testify on this critical legislation.

I'm writing to offer our support for SB 722, a bill to ban third-party rent coordination. Last year,
my organization released a joint brief with our partners at Local Progress explaining that there's
a new culprit in the housing crisis: rent-setting software algorithms that facilitate pricing
coordination among landlords and property managers, which this bill directly addresses.[1]

According to extensive work done by independent journalists, and allegations from several
antitrust enforcers, including at the Department of Justice, landlords and property managers in
local rental housing markets are sharing private data regarding their rental properties, including
current rents, available square footage, vacancy levels, and the number of applicants for a
particular unit.

Third-party price setters – of which RealPage is the most prominent, but certainly not the only
market participant – use that data, alongside publicly-available data sets, to recommend rent and

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[1] "A New Culprit in the Housing Crisis: Rent-Setting Software Algorithms," American Economic Liberties Project &
Local Progress, March 2024. http://www.economicliberties.us/wp-content/uploads/2024/03/Policy-Memo-Rent-Setting-Software-Algorithms.pdf

occupancy levels that maximize not just the individual landlord's revenue, but revenue across all clients in the market.[2]

Regardless of any beneficial services they provide, these platforms have the functional result of suppressing competition. Instead of trying to fill units via competitive pricing, landlords and property managers are cooperating to set prices. Again, according to several investigations and legal complaints, these algorithms advise landlords to hold some units off the market, creating artificial scarcity, as well as to maximize churn, I.e. displace renters in order to raise the price of a unit.

The result: Inflated rents, artificially constrained housing supply, and higher profits for corporate landlords, property managers, and third-party rent-setters alike. In fact, according to report released late last year by the Biden Administration's White House Council of Economic Advisors, third-party rent setting costs renters an average of $70 per month, and more in some metro areas, totaling $3.8 billion overall in 2023.[3]

As one of the creators of this software put it, "If you have idiots undervaluing, it costs the whole system."[4] One RealPage executive, when asked about his corporation's role in double-digit rent increases, admitted, "I think it's driving it, quite honestly. … As a property manager, very few of us would be willing to actually raise rents double digits within a single month by doing it manually."[5] An unnamed landlord cited in the DoJ complaint against RealPage said, "I always

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[2] See, for example: United States of America v. RealPage Inc., Case No. 1:24-cv-00710 in the Middle District of North Carolina https://www.justice.gov/opa/media/1364976/dl?inline; District of Columbia v. RealPage, Superior Court of the District of Columbia https://oag.dc.gov/sites/default/files/2023-11/DC%20OAG%20RealPage%20Complaint%20-%20Filed.pdf; State of Arizona v. RealPage et. al, Superior Court for the State of Arizona in and for the County of Maricopa https://www.azag.gov/sites/default/files/2024-02/RealPage%20Complaint.pdf.

[3] "The Cost of Anticompetitive Pricing Algorithms in Rental Housing," White House Council of Economic Advisors, Dec. 17, 2024. https://bidenwhitehouse.archives.gov/cea/written-materials/2024/12/17/the-cost-of-anticompetitive-pricing-algorithms-in-rental-housing/

[4] Vogell, Heather, "Rent Going Up? One Company's Algorithm Could Be Why." ProPublica, Oct. 15, 2022. https://www.propublica.org/article/yieldstar-rent-increase-realpage-rent

[5] Ibid.

liked this product because your algorithm uses proprietary data from other subscribers to suggest rents and term. That's classic price fixing."[6]

Especially as third-party rent setters consolidate control over a local market – and there are allegations of individual third-party rent setters contracting with 70, 80, or event 90 percent of the landlords in a market for particular types of rental units – their power to set prices is amplified.

It's easy to get caught up in discussions about algorithms and artificial intelligence and certain types of data, but focusing on the tech is mostly a distraction. Here is the core point: Participants in rental housing markets are having a third-party synthesize data and recommend rents in order to set common pricing across a market for multiple participants who would otherwise be competing on price.

Where that data originated, whether it is private or public, or how exactly the algorithm works is, at the end of the day, less important than the fact that a third-party is helping to determine, for multiple market participants, what the cost of rent should be, and that landlords and property managers who use these systems understand that their competitors won't undercut them, and vice versa.

To that end, we recommend amending this bill to include the use of public data to facilitate price coordination, rather than limiting it to only non-public, private data.

As the Federal Trade Commission said in guidance released last year, "Landlords and property managers can't collude on rental pricing. Using new technology to do it doesn't change that antitrust fundamental."[7] Indeed, third-party rent-setters are the smoke-filled backroom, moved from a restaurant to an online platform, but the result is the same.

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[6] United States v. RealPage Inc., page 48.
[7] Garden-Monheit, Hannah, and Ken Merber, "Price fixing by algorithm is still price fixing, " Federal Trade Commission, March 1, 2024 https://www.ftc.gov/business-guidance/blog/2024/03/price-fixing-algorithm-still-price-fixing

To be clear, this is not a model unique to housing: There's evidence of third-party price setters in other markets, including hotels[8] and agriculture[9], as well as evidence that these systems are being used to set wages.

The harms of third-party rent setting are also amplified by general consolidation in housing markets, which was already pushing up prices. Importantly, if you do not address this issue, supply-side housing interventions will not have the desired impact. More housing supply is certainly necessary, but will not have the desired effects absent other reforms to ensure rental markets are competitive.

San Francisco last year became the first municipality in America to limit the coordination of prices among landlords and property managers using third-party rent-setting algorithms, and was joined by Philadelphia a few months later, as well as Berkeley, California, earlier this year. Bills to impose statewide bans, such as SB 722, have been introduced in 18 states this legislative session, including in Washington State, where a measure recently passed the State Senate.

There is no silver bullet for the housing affordability crisis, and this bill alone will not solve it. But it is a very important part of the solution. We therefore urge the legislature to swiftly approve this critical measure. Thank you for your time.

Pat Garofalo
Director of State and Local Policy
American Economic Liberties Project
pgarofalo@economicliberties.us

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[8] Garofalo, Pat, "How Big Hotels Use an Algorithm to Make It Rain," Boondoggle, April 9, 2024 https://boondoggle.substack.com/p/how-hotels-use-an-algorithm-to-make
[9] "Justice Department Sues Agri Stats for Operating Extensive Information Exchanges Among Meat Processors," Department of Justice, Sept. 28, 2023 https://www.justice.gov/opa/pr/justice-department-sues-agri-stats-operating-extensive-information-exchanges-among-meat