

New Jersey Assembly Housing Committee
125 West State Street
Trenton, New Jersey
October 24, 20204



Dear Chair Lopez, Vice Chair Moen Jr., 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. I was also born and raised in New Jersey, and the state is very near and dear to my heart. Thank you for the opportunity to testify on this critical legislation.

I'm here to offer our strong support for A4872, and to commend Chair Lopez and Speaker Pro Tempore Wimberly for introducing it. Earlier this 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.

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 occupancy levels that maximize not just the individual landlord's revenue, but revenue

across all clients in the market.¹ 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.

According to an allegation in a class-action lawsuit that's been consolidated in Tennessee, third-party rent-setters have a high level of penetration in both the New York and Philadelphia submarkets, which as you all know, cover significant parts of New Jersey. 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.

As one of the creators of this software put it, "If you have idiots undervaluing, it costs the whole system."² 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."³ An unnamed landlord cited in the DOJ complaint against RealPage said, "I always liked this product because your algorithm uses proprietary data from other subscribers to suggest rents and term. That's classic price fixing."⁴

¹ 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>.

² 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>

³ Ibid.

⁴ United States v. RealPage Inc., page 48.

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 even 90 percent of the landlords in a market for particular types of rental units – their power to set prices is amplified. According to an economic analysis in a complaint filed by the Arizona Attorney General, RealPage alone is allegedly responsible for 12 and 13 percent rent increases in Phoenix and Tucson, respectively.⁵

Importantly, third-party software platforms enforce participation in these rent-setting schemes. Deviating from their recommended rents is very difficult, and will possibly, according to an allegation from the Washington, D.C., attorney general, earn a landlord expulsion from the data-sharing platform if it deviates too often.

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. Where that data originated 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 or property managers who use these systems understand that their competitors won't undercut them, and vice versa. Multiple market players are jointly delegating their pricing decisions to a common third party in order to circumvent competition.

As the Federal Trade Commission said in recently released guidance, “Landlords and property managers can't collude on rental pricing. Using new technology to do it doesn't change that antitrust fundamental.”⁶ Indeed, third-party rent-setters are the smoke-filled backroom, moved from a restaurant to an online platform, but the result is the same.

⁵ 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>.

⁶ 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 hotels⁷ and agriculture⁸, 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.

A4872 is a necessary and well-crafted bill to address a vital issue of public interest. Crucially, it also includes a provision on pleading standards that will ensure renters are able to pursue justice if they plausibly allege that they have been harmed by price fixing in rental housing markets.

San Francisco recently became the first municipality in America to ban the coordination of prices among landlords and property managers using third-party rent-setting algorithms, and city council members in both Philadelphia and San Jose have proposed similar bans. A bill to impose a statewide ban passed the Colorado House this year, and legislators in several other states have proposed similar legislation – but New Jersey has an opportunity to be a national leader on this issue by being the first to approve a ban on this practice statewide.

There is no silver bullet for the housing affordability crisis in New Jersey, and this bill alone will not solve it. But it is a very important part of the solution. We therefore urge the legislature to

⁷ 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>

⁸ "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>

swiftly approve this critical measure. Thank you for your time, and I'm happy to answer any questions.

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