

January 28, 2025

**The Honorable Jarrett Keohokalole, Chair**

Senate Committee on Commerce and Consumer Protection  
State Capitol, Conference Room 229 & Videoconference

**RE: Senate Bill 157, Relating to Antitrust**

**HEARING: Tuesday, January 28, 2025, at 9:30 a.m.**

Aloha Chair Kehokalole, Vice Chair Fukunaga, and Members of the Committee:

My name is Lyndsey Garcia, Director of Advocacy, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawaii and its over 10,000 members. HAR provides **comments** on Senate Bill 157, which prohibits the use of algorithmic price-setting in Hawaii's rental market. Requires the Department of the Attorney General to develop and undertake a public education program regarding the prohibition.

In August 2024, the Department of Justice and eight states filed a lawsuit<sup>1</sup> against a software company called RealPage, alleging an unlawful information sharing scheme that allowed property managers to increase apartment rental prices through the use of RealPage's algorithmic pricing tools. The lawsuit, which is still ongoing, does not currently target the property managers who utilize the tool.

Property managers often rely on property management software to operate their businesses, using market trends and publicly available housing market data to guide decisions. However, they may be unaware or have no knowledge on whether the software they are using has algorithmic processes embedded in these programs.

HAR believes that this measure is premature pending the outcome of the ongoing litigation which will address this issue by determining whether there were any antitrust violations stemming from these software providers using such algorithms.

Mahalo for the opportunity to provide testimony on this measure.

---

<sup>1</sup> U.S. and Plaintiff States v. RealPage, Inc. (August 23, 2024). Case No. 1:24-cv-00710  
<https://www.justice.gov/atr/media/1365471/dl>

Hawaii Senate Committee on Commerce and Consumer Protection  
State Capitol  
415 South Beretania Street  
Honolulu, HI 96813



Jan. 28, 2025

Dear Chair Keohokalole, Vice Chair Fukunaga, 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 here to offer our strong support for SB 157, which prohibits the use of third-party algorithmic price-setting in Hawaii's rental market. 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 attempts to address.

According to extensive work done by independent journalists, and allegations from several antitrust enforcers, including at the Biden Administration's 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.<sup>1</sup> 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.

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.

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 recent report from the Biden Administration’s White House Council of Economic Advisors, third-party rent setting costs renters across the United States an average of \$70 per month – and more in selected metro areas – totaling \$3.8 billion in 2023.

As one of the creators of this software put it, “If you have idiots undervaluing, it costs the whole system.”<sup>2</sup> 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.”<sup>3</sup> 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.”<sup>4</sup>

---

<sup>1</sup> 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>.

<sup>2</sup> 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>

<sup>3</sup> Ibid.

<sup>4</sup> 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.

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, 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 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 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."<sup>5</sup> Indeed, third-party rent-setters are the smoke-filled backroom, moved from a restaurant to an online platform, but the result is the same.

---

<sup>5</sup> 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<sup>6</sup> and agriculture<sup>7</sup>, 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.

SB 157 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 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. Bills to impose statewide bans have been introduced in more than half a dozen states, including yours, this year. This is an idea whose time has come.

There is no silver bullet for the housing affordability crisis, and this bill alone will not solve it. But banning algorithmic price-fixing in rental housing is a critical part of the puzzle. Thank you for your time.

---

<sup>6</sup> 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>

<sup>7</sup> "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>

Pat Garofalo  
Director of State and Local Policy  
American Economic Liberties Project  
[pgarofalo@economicliberties.us](mailto:pgarofalo@economicliberties.us)

**SB-157**

Submitted on: 1/27/2025 9:25:20 AM

Testimony for CPN on 1/28/2025 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Maui Housing Hui	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Keohokalole, Vice Chair Fukunaga and committee members,

The Maui Housing Hui is a grassroots organization on Maui working on educating renters and advocating for renter's rights and the needs of our community after the fires. The statistics are clear: Rent's in Maui County have gone up 44% in last two years and were climbing prior to the fires after the pandemic. The rate of houselessness in the State of Hawaii has grown by 87%. We acknowledge that renters, those making 70% AMI and below, are most at risk of becoming unhoused and face the greatest challenges under our housing crisis.

We would like to thank the legislature and committee members for this forward-thinking bill that seeks to protect Hawai'i's renters from the unrelenting condition of corporate greed and price fixing to the detriment of our community. Hawai'i's renters cannot afford any additional compounding factors. We are in support of this measure and ask that you pass it out of committee so that it can move forward and become law.

Mahalo,

Jordan Hocker  
Education and Outreach Coordinator  
Maui Housing Hui

**SB-157**

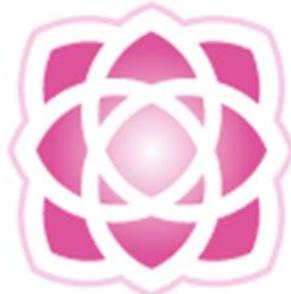
Submitted on: 1/23/2025 9:42:15 PM

Testimony for CPN on 1/28/2025 9:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Michael EKM Olderr	Individual	Support	Written Testimony Only

## Comments:

I support this bill. These algorithmic -AI-driven rent pricing schemes prey on vulnerable tenants and exploit those who are struggling to have enough money to support themselves. They are driven not out of necessity to cover damages, mortgages, or upkeep costs but as a lazy attempt to satisfy a landlord's greed. Our state is already being exploited by billionaires buying up chunks of an island at a time, bending backward to accommodate the well-being of tourists over constituents, and systematically ignoring/denying housing to native Hawaiians. Let's not add any more to this. If we allow this predatory method into these islands, we will only strengthen the exodus of your constituents who are leaving the islands for good.



# MAUI

CHAMBER OF COMMERCE

VOICE OF BUSINESS

HEARING BEFORE THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION  
HAWAII STATE CAPITOL, SENATE CONFERENCE ROOM 229  
Tuesday, January 28, 2025, 9:30 A.M.

To The Honorable Senator Jarrett Keohokalole, Chair  
The Honorable Senator Carol Fukunaga, Vice Chair  
Members of the committee on Commerce and Consumer Protection

### COMMENTS ON SB157 RELATING TO ANTITRUST

The Maui Chamber of Commerce would like to offer **COMMENTS on SB157** which prevents artificially inflated rental prices by prohibiting the use of algorithmic price-setting in Hawaii's rental market.

The Chamber appreciates the focus on addressing the issue of rising rent costs across the state. We share this concern and are increasingly witnessing residents being forced to sleep in their cars due to the lack of affordable rental options. Rents on Maui were unfortunately inflated by FEMA practices, which significantly altered our housing market dynamics. While we recognize the intent behind this bill, we believe it may be challenging to enforce effectively.

We would encourage the consideration of additional proposals and innovative ideas to address the broader issue of escalating rental prices.

We thank you for the opportunity to provide **COMMENTS on SB157**.

Sincerely,

Pamela Tumpap  
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.