Systemic Equality and AI in Colorado

Policies, Implications, and Recommendations

ACLU
Colorado

Summary

Artificial intelligence (AI) is rapidly developing. Some corporations are taking advantage of this rapid growth by employing AI-powered algorithms to collect sensitive data from consumers. These companies are using consumer data to maximize profit and feed off economic inequality. Studies show that these algorithms have far-reaching impacts.[1] Absent federal regulations to address this issue, state legislators must prioritize advocating for consumer-protection laws that identify and disarm AI algorithms' potential for harm. Resulting policies, in Colorado and across the nation, will protect economic freedom while also safeguarding data privacy, ensuring everyone can exercise their civil rights and autonomy.

Introduction

Economic freedom and data privacy are key components of a prosperous democratic society. Both represent individuals' ability to exercise autonomy over their finances and personal information, which creates an environment built on transparency, fairness, and equal treatment. Violations of these principles can open the door to pronounced inequality and practices that stifle competition and economic exchange.[2]

The ongoing development of AI can, and will, play a large role in various industries.[3] For example, AI-powered algorithms can aggregate personal data to influence how much individuals are charged for a certain product or service. Similar algorithms can be used to help landlords maximize profit at the expense of consumers and competitors alike. Often, AI-powered software capitalizes off a lack of public awareness, which negatively impacts consumers' and small businesses' financial autonomy.[4]

When data privacy and economic freedom are compromised by unregulated or under-regulated AI technology, civil liberties become vulnerable.[5] That is why it is imperative for legislators to prioritize regulation of this rapidly growing technology. In fact, empirical studies have shown how economic freedom positively correlates with governments' respect for individuals' rights.[6] Subsequently, having control over one's economic decisions means individuals are more equipped to overcome political coercion and control. In the same vein, data privacy enables individuals to maintain their personal and

economic autonomy by allowing them to choose how their data is used, especially if that data might be used to withhold resources or economic opportunity from certain people.[7]

Despite AI technology becoming widespread throughout the years, many — if not most — consumers remain unaware of the connection between economic freedom, AI regulation, and civil liberties.[8] Furthermore, many internet users are unaware of the extent to which companies can access their personal data, and how access to that data impacts not only their privacy, but their economic freedom as well. Similarly, many people are unaware of how landlords can use AI systems to circumvent antitrust laws and impede access to affordable housing. Governments at all levels must codify and enforce policies that limit these unfair and deceptive practices.

Policies

Colorado lawmakers have been working to pass laws that limit AI overreach in our markets to help ensure economic freedom in our state. This report details two bills from the 2025 legislative session that, although they did not pass, represent important ways the state can protect both consumers and small businesses in Colorado.

HB25-1264

In Colorado's 2025 legislative session, advocates promoted new legislation, HB25-1264. This bill would have prohibited companies from using algorithms to set individualized prices and wages, also known as surveillance pricing and wage setting.[9] HB25-1264 would have also given Coloradans the ability to defend their consumer rights through a private right of action against anyone who violates the bill's provisions.

The legislation was created to combat the data-tracking capabilities of AI-powered software, which has become an inherent part of

daily life. Every person who surfs the internet, browses social media platforms, or shops online, generates a vast amount of data. Since the 1990s, websites have tracked consumer information such as purchase history, browsing habits, and location.[10] Powered by large troves of those datasets, AI algorithms can use individuals' data to impact the prices of goods and services as well as wages.

Because technology is a major part of society today, and some schools offer digital literacy courses, some people know that their online activity generates data for websites to collect. Yet, most people remain unaware of how far this data collection goes.[11] Along with purchase and browsing history, companies may access — directly or through third-party data brokers — sensitive information regarding geolocation (including specific locations people travel to, like health clinics), age, gender, race, ethnicity, political speech, finances, and employment. The use of this data for the purposes of surveillance pricing and wage-setting can pose a threat to individuals' data privacy and economic freedom.

Over the past several years, there have been many reports of how AI-powered algorithms negatively impact consumers and workers. Recently, the Federal Trade Commission (FTC) found that companies can use personal data to charge individuals different prices for the same product, maximizing profit where possible.[12]

As of July 2025, lawmakers have introduced **51 bills across 24 states** that would regulate algorithmic pricing.

Source: Consumer Reports

Additionally, some physical stores may use technology like electronic shelf labels to track consumer behavior and environmental factors to set prices in real time.[13] Similarly, studies have explained how companies can use the same sensitive data to set individualized wages for employees, even if the data does not reflect the person's performance or qualifications.[14] For example, ride-share drivers and other gig workers report discriminatory pay for the same job, ride, or delivery based on factors like the employee's race, immigration status, gender, and location.[15]

While HB25-1264 did not make it through the Colorado House Judiciary Committee, advocates will continue the fight against AI-driven discrimination.

HB25-1004

In 2025, Colorado lawmakers attempted to pass HB25-1004, which would have prohibited the use, sale, and distribution of algorithmic devices to engage in pricing coordination between landlords.[16] Violations of this law would be subject to the Colorado State Antitrust Law of 2023, allowing the Attorney General to bring forward a civil action on behalf of the state or an aggrieved individual.[17]

HB25-1004 was proposed because AI-powered systems infiltrated the housing market. Corporations like RealPage, a property management software company, encourage landlords to charge tenants extraordinarily high costs for rent.[18] This type of software relies on sensitive data from competing landlords to maximize profit. This behavior not only harms economic competition by allowing landlord collusion to set rent and manipulate the number of off-market units for monetary gain — it also leaves thousands of renters with less access to affordable housing.

In 2024, the Department of Justice and the Attorneys General of North Carolina, California, Colorado, Connecticut, Minnesota, Oregon, Tennessee, and Washington filed a lawsuit against RealPage.[19] The complaint alleges that the software allows major landlords to engage in anti-competitive practices that are costing Americans millions of dollars. Rather than competing independently based on public, market-based trends, the suit explains that RealPage enables landlords to share nonpublic, sensitive data with the platform to "align their rents."[20]

While RealPage affects residential markets throughout the country, its technology has far-reaching impacts in Colorado that have resulted in rising rents throughout the state.[21] In Denver, 45% of apartment units listed for rent used RealPage software in 2023.[22] On average, these units were $136 more expensive per month. Compared to other large cities in the United States, Denver has the third-highest concentration of property portfolios using RealPage software.[23]

The lawsuit alleges that large property management companies that maintain portfolios throughout Colorado (Greystar Real Estate Partners, LLC and Cushman & Wakefield Inc.) are involved in these deceptive pricing practices.[24 25] If the use of AI-powered software like RealPage goes unchecked, these companies will continue pricing Coloradans out of their homes. With half of renters already spending more than 30% of their income on housing as the cost of living continues to rise, price-fixing schemes are a great threat to Colorado's socio-economic stability.[26]

Both the lawsuit and HB25-1004 target technology that uses algorithms to set or recommend rents in ways that rely on problematic landlord behavior which include highlighting confidential leases, rental prices, and occupancy data from rival landlords. Both also emphasize that these practices raise rents, reduce affordability, and eliminate concessions that benefit tenants. They frame the issue as an antitrust violation — collusion or price-fixing

facilitated by algorithms — and seek to stop the use of these tools to restore fair competition in rental housing markets. Despite HB25-1004 promoting necessary consumer protections for Colorado residents and direct alignment with the lawsuit against RealPage, Governor Jared Polis vetoed the bill after the end of the legislative session, ensuring an override to the veto was impossible. Still, advocates will continue pushing for protections against AI overreach in the Colorado housing market and economy.

Implications & Recommendations

The ACLU of Colorado is committed to ensuring that Colorado remains a firewall for freedom.[27] In doing so, we support legislation that serves as a safeguard against potential violations of civil rights and liberties. The unregulated expansion of AI has meant that individuals' access to economic opportunity, data privacy, and autonomy are compromised.[28] Surveillance pricing and wage-setting have already been used to discriminate against and extort individuals.[29] Smaller businesses may also have trouble competing with larger companies using this technology as they have less access to vast datasets and instead base pricing off market trends.[30] AI-powered rent-setting algorithms, in turn, prevent individuals from accessing

affordable housing and hinder smaller competitor landlords from freely and fairly participating in the residential market. Regulation is necessary in these areas to promote the economic stability of the state and its residents.

So far, Colorado has enacted policies that empower data privacy and consumer protection. The state adopted the Colorado Consumer Protection Act (CCPA) and the Colorado Privacy Act (CPA), which establish protections against deceptive trade practices and data privacy violations, respectively.[31] But additional regulation is needed to provide adequate protection, enforcement, and remedies. The significant impact standard, which looks at how many consumers were impacted by the trade practice in question, in the CCPA must be altered.[32] Coloradans cannot access necessary relief when harmed by unfair or deceptive trade practices unless they can prove that the harm also impacted potentially hundreds if not thousands of other individuals. While the CPA is one of the most robust data privacy statutes in the country, it does not include a private right of action. The state relies heavily on the Attorney General's office to investigate and enforce the law without the necessary resources to adequately do so. The law should also expand data minimization to ensure that only the necessary amount of data is collected, processed, or stored for a particular reason, prohibit the sale and purchase of all sensitive data — not just biometric — and many of the provisions should extend to the government sector as well. Our data is not safe if robust regulation only exists for private companies.

Existing regulations are inadequate. The Colorado Anti-Discrimination in AI Act mandates that high risk AI system developers and deployers use reasonable care to prevent algorithmic discrimination in consequential decisions[33] — but this law has weak enforcement mechanisms, does not explicitly prohibit companies from using

> On average, 2023 Denver apartments for rent with algorithmic pricing were **$136 more expensive per month.**
>
> **Source: KDVR**

discriminatory AI systems, and does not allow a private right of action. The law also provides loopholes from accountability for deployers and developers through a rebuttable presumption and affirmative defenses if the company acted in good faith. This is a unique statutory formula for an anti-discrimination law with the rebuttable presumption given to the defendant, as well as the existence of the affirmative defenses. The fact that there is a duty of care, rather than a prohibition on the use of AI systems that are known to discriminate, is also an area of the law that needs to be remedied. Clearer definitions throughout the law are also necessary for implementation and meaningful enforcement.

While AI continues to be a dominant force in many industries, lawmakers, organizations, and individuals should continue to push for changes to strengthen current law and protections that would have been enacted by HB25-1264 and HB25-1004. Colorado must ensure that landlords do not use anticompetitive software like RealPage to collude with other landlords to set extremely high rents. Additionally, the state should regulate AI's broader commercial use, especially concerning economic discrimination based on sensitive information. To enforce these policies, individuals, organizations, and the state should be able to pursue justice, whether monetary or procedural, to rectify violations.

In the age of rapidly developing technology, lawmakers must stay ahead of the curve and ensure that Coloradans are protected from deceptive, AI-powered economic practices. □

Endnotes

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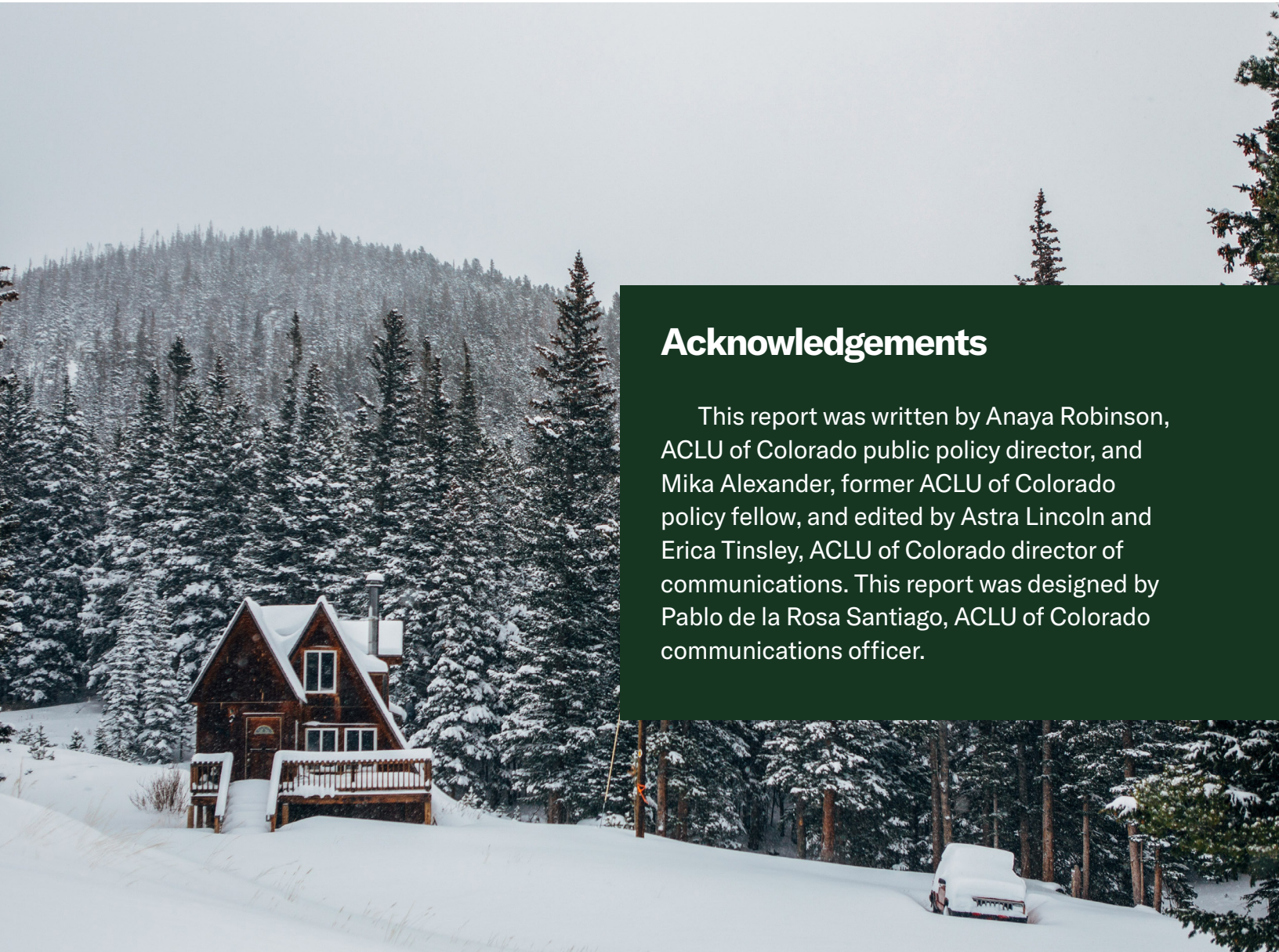
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