RPC-2026-009 RESOLUTION URGING THE OREGON LEGISLATURE TO ENACT A BAN ON SURVEILLANCE PRICING

WHEREAS, surveillance pricing is the practice of using a consumer's personal data—including purchase history, location data, browsing behavior, device identifiers, and inferred demographic characteristics—to set, adjust, or offer individualized prices for the same goods or services, charging different consumers different prices based on their personal data rather than uniformly applied criteria; and

WHEREAS, a 2025 Federal Trade Commission study found that a wide range of consumer personal data is being used by intermediaries and retailers to set individualized prices, confirming that surveillance pricing is not a theoretical risk but an active and expanding commercial practice; and

WHEREAS, surveillance pricing is distinct from dynamic pricing (time-based price changes applied uniformly to all consumers, such as surge pricing or seasonal sales) and from algorithmic price fixing (coordination among competitors via shared data, which is already prohibited under state and federal antitrust law), and this resolution addresses surveillance pricing only; and

WHEREAS, Kroger has deployed electronic shelf labels in stores across the Portland metro region and nationally, enabling real-time, individualized price changes at the point of purchase, and has built extensive "secret shopper profiles" from loyalty program data, as documented by Consumer Reports in 2025 and raised in a letter from U.S. Senators Elizabeth Warren and Robert P. Casey, Jr., to Kroger's CEO expressing concern about electronic shelving and price gouging; and

WHEREAS, a Consumer Reports and Groundwork Collaborative investigation published in December 2025 found that Instacart's AI-enabled pricing experiments were inflating grocery bills for individual consumers, with the company subsequently halting the practice following public scrutiny; and

WHEREAS, surveillance pricing disproportionately harms low-income consumers, seniors, communities of color, and rural residents who have fewer alternatives and less ability to comparison-shop across digital platforms, as documented in academic research on ridehailing price discrimination and in Federal Trade Commission findings; and

WHEREAS, the Oregon Consumer Privacy Act (ORS 646A.570–646A.589), effective July 1, 2024, grants consumers rights to access, correct, delete, and opt out of the processing of their personal data, but does not restrict the use of their personal data to set individualized prices, leaving a critical gap in Oregon's consumer protection framework; and

WHEREAS, the State of Oregon, led by Attorney General Dan Rayfield, joined the U.S. Department of Justice's antitrust litigation against RealPage, Inc., in 2024, and in 2026 announced multimillion-dollar settlements with property management companies Greystar and LivCor for algorithmic rent price coordination affecting thousands of Oregon rental units,

demonstrating that algorithmic pricing abuse is already a documented harm in Oregon's housing market; and

WHEREAS, the City of Portland passed Ordinance No. 192122 in May 2025, prohibiting algorithmic rental price-fixing and including a private right of action for affected tenants, providing an Oregon precedent for legislative action against algorithmic pricing abuse; and

WHEREAS, Portland City Council's proposed Consumers Opposed to Surveillance Technology (COST) Ordinance would add regulation of surveillance pricing demonstrating local interest and concern in the metro area; and

WHEREAS, New York State enacted the One Fair Price Act in June 2026, prohibiting surveillance pricing across all industries while preserving loyalty programs, rewards, membership discounts, and class-based discounts, demonstrating that a broad, cross-industry surveillance pricing ban is politically achievable and legally durable; and

WHEREAS, Maryland enacted HB 895 (Chapter 154) in April 2025, prohibiting surveillance pricing in food retail, and Connecticut enacted a surveillance pricing ban in June 2026, further confirming growing national momentum for legislative action; and

WHEREAS, Colorado's HB26-1210, which would have prohibited both surveillance pricing and surveillance-based wage setting, was vetoed by Governor Jared Polis in June 2026 as overly broad, illustrating that legislation focused specifically on surveillance pricing—rather than encompassing wage-setting or other unrelated practices—has a stronger path to enactment; and

WHEREAS, the Washington County Democrats recognize that surveillance pricing undermines market transparency, penalizes consumers for their personal data, and exacerbates economic inequality in our communities;

NOW, THEREFORE, BE IT RESOLVED that the Washington County Democrats:

1. Urge the Oregon State Legislature to enact, during the 2027 Regular Session, a comprehensive prohibition on surveillance pricing—the use of consumer personal data to set individualized prices—that applies across all industries, builds upon the definitions and covered-entity thresholds of the Oregon Consumer Privacy Act (ORS 646A.570–646A.589), and preserves bona fide loyalty programs, rewards programs, membership discounts, class-based discounts, volume discounts, and uniform promotional offers.

2. Urge that such legislation include a private right of action enabling consumers to enforce their rights directly, with appropriate caps on statutory damages to deter frivolous litigation while providing meaningful recourse for harmed individuals, recognizing that Attorney General enforcement alone cannot scale to the volume of individual surveillance pricing harms and that distributed enforcement imposes no cost on the state.

3. Urge that such legislation be drafted to clearly distinguish surveillance pricing from dynamic pricing (which should remain permissible when applied uniformly to all consumers) and from algorithmic price coordination among competitors (which is already addressed by state and federal antitrust law), so as to maintain a focused scope that maximizes the likelihood of enactment.

4. Direct the Secretary of the Washington County Democrats to send this resolution to the Washington County state legislative delegation for the 2027 term, the House and Senate committee chairs with jurisdiction over consumer protection, the Oregon Attorney General, and the Governor's office.

Prepared by Christian Robertson-Lofthouse on August 24, 2026