



January 12, 2024

Senator John Cornyn
Senator Marsha Blackburn
Senator Amy Klobuchar
Senator Ben Ray Lujan
Senator Peter Welch
Senator Roger Wicker
United States Senate
Washington, DC 20510

RE: Consumer Reports Support for S. 3457, the “Fans First Act”

Dear Senators Cornyn, Blackburn, Klobuchar, Lujan, Welch and Wicker,

Consumer Reports (CR)¹ strongly supports S.3457, the “Fans First Act”², to promote fairness in ticket sales for concerts, sports and other live entertainment events. The Fans First Act includes very strong provisions to increase transparency in ticket sales, strengthen consumer protections for proof of purchase and refunds, and clamp down on the use of shopping bots and deceptive websites. The bill also directs the GAO to further study the ticket marketplace and make recommendations for further possible actions to promote greater fairness and competition in ticket sales. We commend you for your leadership in introducing this critically important bill to protect consumers and promote economic fairness in ticket sales.

We are especially supportive of the very strong provisions in S.3457 to promote price transparency for ticket buyers, by requiring the upfront disclosure of the full cost of the ticket, inclusive of all mandatory and unavoidable fees, and an itemization of all fees charged. The Fans First Act also requires disclosure of clear terms and conditions for tickets purchase, the specific seat or section the buyer’s seats are in, and whether or not the seller is the original seller

¹ Consumer Reports (CR) is an independent, nonprofit membership organization that works side by side with consumers to create a fairer, safer, and healthier world. Since 1936, CR has provided evidence-based product testing and ratings, rigorous research, hard-hitting investigative journalism, public education, and steadfast policy action on behalf of consumers’ interests. Unconstrained by advertising, CR has exposed landmark public health and safety issues and strives to be a catalyst for pro-consumer changes in the marketplace. From championing responsible auto safety standards, to winning food and water protections, to enhancing healthcare quality, to fighting back against predatory lenders in the financial markets, Consumer Reports has always been on the front lines, raising the voices of consumers.

² S.3457, available at: <https://www.congress.gov/bill/118th-congress/senate-bill/3457>

of the tickets. The bill also requires sellers and resellers to provide proof of purchase for ticket sales, and full refunds when events are canceled.

Over the last 7 years, Consumer Reports has received thousands of stories from consumers who are frustrated by the imposition of expense fees for live entertainment. In 2018, in advance of a workshop on event ticketing at the FTC, CR reached out to its members asking them to share their stories about ticketing and ticket fees; more than 6,600 wrote back sharing their experiences with both CR and the FTC. These consumers, representing all 50 states, the District of Columbia, and Puerto Rico shared a general frustration with the purchase process.

Many gave concrete examples of frustrations with hidden fees raising the price of a ticket well beyond what the individual had understood to be the price; with bait-and-switch tactics that left them uncertain about what they had bought, and whether the tickets were legitimate; and with the opaque operations of the secondary ticket market. Complaints like these are only the tip of the iceberg because many other consumers complain about hidden ticket fees to the FTC, state attorneys general, and other state and local consumer protection agencies.

As Barbara in Ohio wrote:

I actually buy tickets to events, plays, and shows quite often. I search for the best night, best seats, and best prices. After all of that searching and comparing, I proceed to actually placing the order. That is when the added fees show up. After all that effort, and with a time limit to complete the comparing, I proceed to actually placing the order. That is when the added fees show up. After all that effort, and with a time limit to complete the order before the seats are lost, I go ahead and pay what I have to. I feel it is unfair that I don't find out the true cost until the clock is ticking. Please do something about these additional fees. Another consumer provided the other side of the coin—the frustration in discovering late in the purchase process that fees make an already expensive ticket purchase unaffordable.

Michael from Ohio told us:

You get excited; your children or children's children get excited about going to an event that is already on the expensive side. And right before you finish checking out, you realize that the fees, etc. have driven the advertised price beyond what you can afford. Everyone is disappointed. These advertised enticements must stop; they must reflect actual costs!!

And finally, Regan from South Carolina said:

If listing the total price...is liable to reduce sales, then misrepresenting the price is a deliberate tactic to deceive a shopper and snare them with a higher price tag once they're already, proverbially, at the front of the check-out line. I know what the sales tax is in my

state. I can figure that part out. But I've never gone grocery shopping and been hit with a "soup packaging fee" after I've scanned my Campbell's cans, or a "semolina macaroni product-drying surcharge" once I'm ready to pay for my linguine. And with good reason. Seems about time we bring the online purchase of tickets into the realm of reason and require a little truth in advertising.³

As noted by the Federal Trade Commission (FTC)⁴ and the Government Accounting Office (GAO),⁵ the current ticket marketplace for live entertainment events is not transparent, with ticket sellers often hiding the full cost of admission through “drip pricing” methods. Mandatory and unavoidable fees, such as “venue,” “facility” and “ticket processing” fees, increase the price— sometimes by as much as 30 percent. Furthermore, consumers often are not informed about these fees after they have selected their tickets, sometimes only after entering their payment information. The late disclosure of fees at the last minute before purchase increases search costs for consumers, and makes it harder for them to comparison shop. It also creates opportunities for unfair and predatory competition, by obscuring the actual cost of tickets that may be available for sale on competitive platforms.

In December 2016, the National Economic Council issued a report, *The Competition Initiative and Hidden Fees*, which notes that ticket fees are generally structured as they are “in order to drive down the perceived price and lure consumers to make purchasing decisions based on misinformation” and are, at worst, “fraudulent or deceptive; at a minimum, they make prices unclear, hinder effective consumer decision making, and dull the competitive process.”⁶

The additional cost of the ticket fees quickly adds up. In 2018, the GAO estimated that “the average event ticket fee on a primary sale is 27 percent of face value” while fees on resale sites average 31 percent of the (often inflated) price.”⁶

Members of the ticket industry have also testified before FTC and Congress that without a federal requirement to provide “all-in pricing,” it is unlikely that ticket sellers will act to

³ Consumer stories previously submitted in comments submitted by Anna Laitin, Director, Financial Policy, Consumer Reports, at Federal Trade Commission Online Event Ticket Sales Workshop, Project No. P18450 (December 5, 2018) available at: <https://advocacy.consumerreports.org/wp-content/uploads/2018/12/Consumer-Reports-comment-on-Online-Ticketing-120518.pdf>

⁴ Federal Trade Commission, “That’s The Ticket Workshop” Staff Perspective, May 2020, available at: https://www.ftc.gov/system/files/documents/reports/thats-ticket-workshop-staff-perspective/staffperspective_tickets_final-508.pdf See also: *Proposed Rule, Unfair or Deceptive Fees Trade Regulation Commission Matter No R.207011*, *Advanced Notice of Proposed Rulemaking*, November 8, 2022, available at: <https://www.federalregister.gov/documents/2022/11/08/2022-24326/unfair-or-deceptive-fees-trade-regulation-rule-commission-matter-no-r207011>, hereafter “Junk Fee Rule.”

⁵ Government Accounting Office, *Event Ticket Sales: Market Characteristics and Consumer Protection Issues*, GAO-18-347, April 12, 2018, available at: <https://www.gao.gov/products/gao-18-347>, hereafter “GAO Report.”

⁶ National Economic Council, *The Competition Initiative and Hidden Fees* (Dec. 2016), at: https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/documents/hiddenfeesreport_12282016.pdf

⁶ GAO Report, page 15-18.

consistently implement transparent pricing on their own. In its 2022 proposed rulemaking to curb junk fees, the FTC has reported that: “After a market leader took unilateral action to phase out hidden fees, the platform ‘lost significant market share and abandoned the policy after a year because consumers perceived the platform’s advertised prices to be higher than its competitors’ displayed prices.’”⁷ Thus, for an “all-in pricing” requirement to be effective, it should apply to all sellers in the marketplace, so that consumers can make head-to-head comparisons regarding the price of tickets.

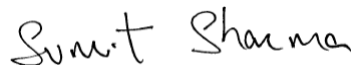
Consumers are also being harmed by the extensive, continuing use of software bots to scoop up tickets and resell them for higher prices. The Fans First Act will strengthen the BOTS Act, signed into law in 2016, to further prohibit the use of bots to purchase tickets on line, and require reporting of BOTS Act violations from ticketing companies to the FTC. The bill further bans speculative ticket sales, which occur when a reseller represents that they have possession of tickets they actually do not own. In addition, the Fans First Act will help protect consumers from online deception by preventing the use of deceptive websites that masquerade as official venues or legitimate sellers. Finally, the bill imposes strong civil penalties on resellers engaging in illegal ticket sale practices, creates a reporting site for fans to file complaints, and gives authority to both the FTC and the states to enforce the law and hold bad actors accountable.

The common-sense consumer protections in the Fans First Act are urgently needed, and long overdue. The bill will help ensure consumers can shop and compare prices for tickets on a fair and transparent basis, as they routinely do for other products and services. By establishing fair ground rules for all ticket sellers and market participants, the Fans First Act also creates a level playing field for all market actors to act appropriately. For all these reasons, Consumer Reports strongly supports the Fans First Act. We urge all Senators to please cosponsor and support this critically important consumer protection legislation, and to secure its final passage through a Senate floor vote.

Sincerely,



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Programs Director



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⁷ FTC Junk Fee Rule, op. cit. note #3.