



Memorandum in Support of Assembly Bill A9212, “The Consumer Grocery Pricing Fairness Act.”

February 25, 2026

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Dear members of the Assembly Consumer Affairs and Protection Committee,

The Institute for Local Self-Reliance writes this memorandum in support of **Assembly Bill A9212, “The Consumer Grocery Pricing Fairness Act.”** ILSR is a public-interest research and advocacy organization. For over five decades, we’ve worked to advance policies that disperse economic power and strengthen local communities. In recent years, we have researched and advocated to address problems and downstream effects of price discrimination in the grocery sector. If enacted, this bill would help bring fairness and transparency to New York’s grocery industry. A9212 is crucial to supporting the state’s independent grocery sector and, in doing so, would add and preserve the competition needed to ensure low prices for shoppers, open markets for producers, and fair wages for workers.

Congress enacted the federal Robinson Patman Act in 1936, at a time when supermarket chains like Kroger and A&P were spreading rapidly across the country and were beginning to wield the economic power needed to dominate markets. A comprehensive study by the U.S. Federal Trade Commission (FTC) at the time showed that A&P had used its rising power to extract prices and other services from its suppliers that independent stores and smaller chains couldn’t access, even when buying the same goods in similar amounts. The Robinson Patman Act prohibited this unfair treatment, called “price discrimination,” and the vigorous enforcement of the Act created a retail food industry in which stores of every size, from major chains to mom-and-pop grocers, could thrive while serving the communities in which they were located. From the 1950s through the early 1990s, independent stores accounted for at least half of all grocery sales in America.¹

Today, the food retail landscape is vastly different. U.S. policy towards corporate concentration changed drastically during the 1970s and 1980s, when federal enforcers and judges came to embrace corporate bigness, rather than fairness, as a major economic policy goal. This policy

¹ Stacy Mitchell, “The Policy Shift That Decimated Local Grocery Stores,” ILSR Factsheet, Nov 2024

transformation led the FTC to largely end Robinson Patman Act enforcement and allowed large chain stores to dominate the food retail industry with impunity. Since then, independent grocers nationwide have been put at a significant and unfair disadvantage, while policies at the federal and often local level have intentionally favored the largest retail food chains. These policies created staggering concentration in the industry nationwide. Between 1990 and 2019, concentration in the national food retail industry increased by more than 450 percent.² Likewise, New York grocery markets are highly concentrated in many upstate communities, according to ILSR's research of grocery market concentration and food deserts.³

As the retail food industry concentrated in the hands of a few mega-chains, those chains have gained the power as dominant buyers to demand discounts for themselves while leaving independent stores to pay more for the same goods.⁴ Along with traditional grocers, this includes predatory dollar stores — at least 1,000 of which operate in New York — which use their buying power to force suppliers into providing them with special package sizes at lower prices than the prices and sizes available to independent groceries.⁵ Because these products often include packaged, processed foods, they cut into the already-thin margins of nearby grocers, often forcing them out of business and increasing retail food concentration in the process.⁶ Today, we have significant evidence that the lack of competition faced by dominant grocery chains has directly contributed to higher food prices.⁷

For nearly half a century, price discrimination by large, powerful retailers and suppliers against independent grocers has been widespread and endemic to the industry. This has led to two significant harms for shoppers, workers, and communities. First, price discrimination in practice actively raises food prices for shoppers. Walmart, for example, has conspired with major suppliers to increase the wholesale price charged to Walmart's rivals as a way to ensure no other stores could compete with the prices Walmart offered to shoppers. These schemes force independent grocers and small chains to raise their prices, even when those stores are willing to match or beat Walmart's price.

Second, the refusal to enforce the Act has significantly contributed to food deserts and food access problems nationwide.⁸ Without enforcement of the Robinson Patman Act ensuring economic fairness, independent grocers have died off en masse. Between 1990 and 2015, the number of independent grocers have declined by nearly 40%, with an average of 30 grocers

² Eliana Zeballos, "Food Retailing Market Concentration Increased More at National Level Than County Level Over Past Three Decades," *U.S. Department of Agriculture Economic Research Service*, January 25, 2023

³ ILSR, "Mapping Food Deserts and Grocery Store Consolidation," originally published January 2026

⁴ Stacy Mitchell, "The Case for Reviving the Robinson-Patman Act," ILSR, August 12, 2024

⁵ New York dollar stores calculated based on information from the websites of Dollar Tree, Family Dollar and Dollar General; Stacy Mitchell, Kennedy Smith and Susan Holmberg, "The Dollar Store Invasion," ILSR, March 2023.

⁶ Mitchell, Smith and Holmberg, "The Dollar Store Invasion"

⁷ Vardges Hovhannisyian, Clare Cho and Marin Bozic, "The Relationship Between Price and Retail Concentration: Evidence From the US Food Industry," *European Review of Agricultural Economics*, 46,2, p 319-345, April 2019: <https://doi.org/10.1093/erae/jby026>

⁸ Stacy Mitchell, "The Great Grocery Squeeze," *The Atlantic*, December 2024

shuttering every year.⁹ The loss of small, independent grocers has left many communities without nearby access to food, forced to either rely on subpart offerings at dollar stores or drive many miles to the nearest supermarket. Food deserts are endemic in parts of New York, including many upstate communities.¹⁰

While the FTC, under former Chair Lina Khan, began once again to enforce the Act, the federal law remains broadly under-enforced, and it includes several significant loopholes that allow powerful suppliers and their dominant retail customers to favor themselves at the expense of independent grocers. A9212 would put a strong price discrimination law on the books in New York, allowing local officials to ensure fairness within the state's grocery market, while bright-line thresholds would ensure the law targets only the largest, most powerful retailers and suppliers operating in the state.

A9212 would also close two of the most significant loopholes in the federal price discrimination law, including "channel of trade" discrimination, in which suppliers sell the same products at different prices to retailers in different "channels," such as traditional grocery, dollar stores, box stores and so on.¹¹ It also bans the kind of access discrimination that was so rampant at the start of the COVID pandemic, where dominant retailers would demand that suppliers give them preferential access to crucial goods like toilet paper and cleaning supplies.¹²

The protections from corporate bullying proposed in A9212 are crucial to ensuring the state's many independent grocers can compete on even ground with major supermarkets, chain dollar stores, Walmart and other mega-retailers. Ensuring fairness for independent grocers will help lower prices, provide crucial employment, ensure farmers have multiple pathways to market, and help ensure food access throughout New York.

Sincerely,

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Senior Researcher and Policy Advocate
Institute for Local-Self Reliance

⁹ Supermarket News, "5 Things: Independent grocers are dwindling," January 17, 2025

¹⁰ ILSR, "Mapping Food Deserts and Grocery Store Consolidation"

¹¹ "*Power Buyers, Economic Discrimination, and the Grocery Supply Chain*," Prepared Testimony of Michael Needler, CEO Fresh Encounter, Inc. On Behalf of the National Grocers Association, Hearing on "Reviving Competition, Part 5: Addressing the Effects of Economic Concentration on America's Food Supply," Before the House Subcommittee on Antitrust, Commercial, and Administrative Law, January 19, 2022.

¹² Ron Knox, "Pandemic-Era Corporate Bullying," *The American Prospect*, March 25, 2024.