



**Letter from Claire Kelloway, Open Markets Institute
Supporting the Consumer Grocery Pricing Fairness Act**

March 26, 2025

Dear Representatives and Co-Chairs Vang Her and O'Driscoll,

Thank you for holding this hearing on the Consumer Grocery Pricing Fairness Act. My name is Claire Kelloway, I am a Minnesota resident and the program manager for Fair Food and Farming Systems at the Open Markets Institute. Open Markets is a team of lawyers, economists, and researchers that studies the harms of corporate consolidation and develops policies to establish fair and competitive markets. Open Markets does not accept any funding or donations from for-profit corporations.

The Open Markets Institute supports the Consumer Grocery Pricing Fairness Act as an essential step to level the playing field for independent grocers against their behemoth rivals such as Walmart and Amazon. Dominant grocers should not be able to use their market power to coerce suppliers and wholesalers into granting them special concessions on pricing, rebates, delivery terms, or other terms of sale. Just as corporations are not allowed to compete under federal and state laws by shortchanging their workers on minimum wages and overtime pay, they are not and should not be permitted to compete by squeezing their suppliers and extracting discriminatory favors on pricing and service.

This bill would ensure that any differences in pricing or terms of sale are grounded in demonstrable, genuine cost savings (such as lower per unit shipping costs for larger orders). Any grocer that can purchase orders in a way that saves costs should be able to receive the same pricing and terms of service.

A decentralized, fair market for groceries is essential for Minnesotans. The state ranks 7th worst in the nation for our share of residents with access to healthy foods.¹ Leveling the playing field for independent grocers will improve food access for communities not served by larger chains.

As it stands, independent grocers pay unfair premiums even when they form cooperative buying organizations to purchase in bulk. This makes it harder for independents to fairly compete with dominant chains through no fault of their own. Studies find that independent grocers can offer

¹ Minnesota Department of Health, "Food Access: Access to Healthy and Affordable Food."
<https://www.health.state.mn.us/docs/communities/titlev/foodaccess.pdf>

competitive or even lower prices on fresh produce, providing healthy foods for communities.² However, independents tend to have more expensive packaged goods because the largest retailers can demand unfair price concessions from packaged goods manufacturers. These suppliers feel pressure to accept less favorable terms or offer preferential perks to dominant buyers because they cannot afford to lose their business or risk any kind of retribution. Even the largest manufacturers are in no position to reject the demands of retail giants like Walmart.

According to the U.S. Department of Agriculture, rural areas and low-income communities left behind by regional and national chain stores tend to rely more on independent food retailers.³ Shoppers in these communities deserve fair prices and selection.

A recent Federal Trade Commission (FTC) report exposed the harmful buying might of the largest national chains during the COVID-19 pandemic.⁴ In September 2020, Walmart implemented a 3% cost-of-goods penalty on any supplier that did not deliver 98% of its order in full and on time.⁵ At the time, suppliers could only supply 85% of their orders, so to avoid penalties to Walmart, suppliers shorted their other customers. This forced shoppers, particularly rural shoppers, to drive further to Walmart stores to find scarce goods and hurt local independent retailers who received incomplete orders.

Federal law under the Robinson-Patman Act bans this type of price and service discrimination. The law, however, is under-enforced by the Department of Justice and the FTC and requires strengthening due to significant barriers created by Supreme Court rulings that benefit big business. The Consumer Grocery Pricing Fairness Act would strengthen existing prohibitions on price discrimination and ensure that Minnesotans access fairly priced products from a greater variety of retailers, improving food access and strengthening regional food systems.

Thank you again for considering this important legislation.

Regards,

Claire Kelloway

² U.S. Department of Agriculture, Economic Research Service, “[The Food Retail Landscape Across Rural America](https://www.ers.usda.gov/publications/pub-details?pubid=101355).” <https://www.ers.usda.gov/publications/pub-details?pubid=101355>

³ Ibid

⁴ Federal Trade Commission, “Feeding America in a Time of Crisis.” <https://www.ftc.gov/news-events/news/press-releases/2024/03/ftc-releases-report-grocery-supply-chain-disruptions>

⁵ Hearing on “Beefing up Competition: Examining America’s Food Supply Chain” before the Senate Judiciary Committee. Testimony by David Smith.

https://ci.criticalimpact.com/user/31823/image/7.28.21_SJC_Antitrust_Hearing_David_Smith_AWG_Testimony.pdf

Appendix: Additional Scholarship on the Harms of Unfair Pricing and Terms.

- Brian Callaci, Daniel A. Hanley, & Sandeep Vaheesan, *The Robinson-Patman Act as a Fair Competition Measure*, 97 Temple Law Review 185 (2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4717433.
- Daniel A. Hanley, *Controlling Buyer and Seller Power: Reviving Enforcement of the Robinson-Patman Act*, 52 Hofstra Law Review 313 (2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4648660.
- Brian Callaci & Sandeep Vaheesan, *How an Old U.S. Antitrust Law Could Foster a Fairer Retail Sector*, Harvard Business Review (Feb. 9, 2022), <https://hbr.org/2022/02/how-an-old-u-s-antitrust-law-could-foster-a-fairer-retail-sector>.
- Daniel A. Hanley, *Enforce the Robinson-Patman Act for a Fairer Economy*, American Conservative (Dec. 14, 2023), <https://www.theamericanconservative.com/enforce-the-robinson-patman-act-for-a-fairer-economy/>.
- Alvaro Bedoya, "Returning to Fairness," Prepared remarks for the Midwest Forum on Fair Markets in Minneapolis, MN. (Sept. 22, 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/returning_to_fairness_prepared_remarks_commissioner_alvaro_bedoya.pdf