

**PROTECTING CONSUMERS' POCKETBOOKS: LOW-  
ERING FOOD PRICES AND COMBATTING COR-  
PORATE PRICE GOUGING AND CONSOLIDATION**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON  
ECONOMIC POLICY  
OF THE  
COMMITTEE ON  
BANKING, HOUSING, AND URBAN AFFAIRS  
UNITED STATES SENATE  
ONE HUNDRED EIGHTEENTH CONGRESS  
SECOND SESSION  
ON  
EXAMINING LOWERING FOOD PRICES AND COMBATTING CORPORATE  
PRICE GOUGING AND CONSOLIDATION

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MAY 22, 2024

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Printed for the use of the Committee on Banking, Housing, and Urban Affairs



Available at: <https://www.govinfo.gov/>

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U.S. GOVERNMENT PUBLISHING OFFICE

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# **PROTECTING CONSUMERS' POCKETBOOKS: LOWERING FOOD PRICES AND COMBAT- TING CORPORATE PRICE GOUGING AND CONSOLIDATION**

**WEDNESDAY, MAY 22, 2024**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SUBCOMMITTEE ON ECONOMIC POLICY,  
*Washington, DC.*

The Committee met at 2:30 p.m., via Webex and in room 538, Dirksen Senate Office Building, Hon. Elizabeth Warren, Chair of the Subcommittee, presiding.

## **OPENING STATEMENT OF CHAIR ELIZABETH WARREN**

Chair WARREN. Good afternoon. This hearing will come to order. The American people are angry about rising costs. And they are right to be angry, especially in the grocery aisle.

It is infuriating to go to the store week after week and see that a pound of chicken breasts that cost \$5 last week was marked up to \$6 this week or that that loaf of bread that was \$2.99 last week now costs three-and-a-half bucks.

It is even more frustrating to open a box of cereal and think, hmm, I could have sworn there were a whole lot more Cheerios and a lot less air in this box the last time I opened one up or to notice that a package of spaghetti that used to feed four or five people now appears only to be enough to feed three.

High grocery prices and shrinkflation hurt seniors on fixed income, hurt college students struggling to get by, hurt working families all across this country, and that is why we are holding this hearing today.

Grocery prices skyrocketed during the pandemic and in many cases, they have kept going up even though the pandemic is over. Supply chains have been restored. Food manufacturers' costs are going down. The millions of Americans who produce, package, and sell our food are now back at work.

Food inflation has slowed over the past year but not nearly fast enough. In too many places, including in Boston, grocery prices continue to strain family budgets. So what exactly is going on? Why did grocery prices grow up so much, and why have they stayed so high?

The answer is pretty obvious when you dig in on the numbers. Grocery prices are up because of good, old-fashioned corporate price gouging. And they can gouge consumers on prices because there is

only a small number of companies controlling every level of the food chain.

In plain English, giant grocery stores and massive food conglomerates are ripping people off. And they can get away with it because there is not enough competition to keep them in check. Four big companies, Walmart, Costco, Kroger, and Ahold, the corporate behemoths behind Hannaford, Giant, Food Lion, and Stop & Shop control over 70 percent of the grocery market in most major cities.

Food producers are even more consolidated. A couple of big cereal manufacturers, Kellogg's and General Mills control nearly 60 percent of the market. A single company, Cal-Maine, controls about 20 percent of the egg market. Four corporations control 85 percent of the beef industry and 75 percent of the pork industry.

Everything you see as you stroll down the grocery aisle, lettuce in Aisle 1, beer in Aisle 5, pretzels and potato chips in Aisle 9, ice cream in the frozen food aisle is dominated by a handful of Big Food producers.

Now the pandemic gave these Big Food conglomerates an excuse to jack up prices on grocery staples beyond what was necessary to cover increases in their costs from inflation or from supply chain disruptions.

And now we are past the market shock of the pandemic. Corporations' costs are coming down and their profits are rising. But because of the lack of competition, companies are keeping their prices high.

Meanwhile conglomerates hit small farmers by charging sky high prices for fertilizer and seed and by locking farmers into unfair contracts that limit their ability to make a living off their own farms.

As a result, Big Food is doing great. Kraft Heinz, which sells everything from Oreos to pasta sauce to coffee, increased its profits by 44 percent—oh, I read it wrong, increased its profits by 448 percent—it really is a staggering number—in 2022.

Cal-Maine, the largest egg producer in the United States, increased its profits by 718 percent. These are profit increases. And it is not simply supply and demand that is pushing up corporations' eye-popping profits. It is greedflation. Those big corporate profits accounted for more than half of the increase in food prices between 2020 and 2021. And that creates problems for families at the grocery store and then it reverberates throughout our Nation.

For most of 2023, corporate profiteering accounted for more than half of all inflation economywide. The facts are clear. Massive corporate profits are a big reason why grocery prices have gone up and stayed up. But policymakers don't have to stand by and watch. We can actually do something about it. We can rein in these massive food companies and grocery stores and protect competition in order to lower prices.

And new polling from Data for Progress shows that nearly 70 percent of Americans, both Republicans and Democrats, support the U.S. Government doing more to regulate grocery stores and corporate food producers that raise prices to pad their profits.

The Biden administration recognized early on and has taken major steps to fight Big Food greedflation and to help American families. Congress can help the Administration do even more.

I appreciate our witnesses joining us here today to talk about how we can do that. I will now hand it over to Ranking Member Kennedy to deliver his opening statement.

#### **OPENING STATEMENT OF SENATOR JOHN KENNEDY**

Senator KENNEDY. Thank you, Madam Chair. For the last 3 years, the American people have been ravaged by inflation. That inflation, like all inflation, is manmade. That man's name is Joe Biden.

Since President Biden has been President, the average electricity bill in America, the average, has gone up 27 percent. Louisiana gasoline, I know every State is different, but Louisiana gasoline under President Biden is up 59 percent. Eggs are up 79 percent, bread 30 percent, coffee 30 percent, milk 15 percent under President Biden, ice cream, 26 percent. Housing in general is up 19 percent because of President Biden's inflation, clothing 12 percent, used cars and trucks 20 percent, new cars 19 percent. Mortgage rates are up a staggering 160 percent.

If you add it all up under President Biden, inflation in the last 3 years has been 20 percent in Louisiana and 19.2 percent nationwide.

Louisiana is not a wealthy State. The median household income in my State for a family of four is between \$55,000 and \$60,000 a year, mom, dad, two children. That's not a lot of money when you think about it. A working family, mom and dad both work. They both have to drive to work so they have car payments. They have a house note. They have to buy food. Sometimes they have to pay tuition for their children.

As a result of President Biden's inflation, the average family in Louisiana is paying today an extra, an extra, \$900 a month. That's almost \$11,000 a year.

Now I know that each of you makes more than \$55,000 or \$60,000 a year. But imagine that for a moment that you make \$60,000 a year, and you are the provider for your family. And all of a sudden, you've got to find an extra \$11,000 a year? Wow.

You know, you max out your credit cards. You go through your savings. You spent all your stimi checks long ago. Inflation is gutting the American people like a fish. It has become a cancer on the American dream. And quite frankly, that's why President Biden is polling right up there with hemorrhoids.

I mean, the American people can't sit down and explain to you the difference between disinflation and deflation. The American people, they don't read Aristotle every day. They just get up every day and go to work and obey the law and pay their taxes and try to do the right thing by their children and maybe save a little money for retirement.

But they are really being hurt. Now why? Because President Biden has spent money like it was pondwater. It started with the American Rescue Plan, the Infrastructure Bill, the CHIPS Act, the Inflation Reduction Act. He has spent trillions and trillions and trillions of dollars, money that we had to borrow.

Now unless you were playing frisbee in the quad during Econ 101, you know whether you are Milton Friedman or John Maynard

Keynes that when you spend this kind of money, you are going to have inflation.

Dr. Jason Furman, who was a chief economic advisor to President Obama tried to tell President Biden, he said if you do this, you are going to have inflation. Former Harvard President Larry Summers said the same thing. You don't have to be Euclid to figure this out.

We are all entitled to our opinions. That is the beauty of America. You know, you are not free if you can't say what you think, and you are not free if you can't express yourself.

I do not believe that there is some nationwide conspiracy between and among small businesspeople, medium-sized businesspeople, large businesspeople who have conspired to raise these prices. I don't think most of these businesses wanted to have to raise these prices. They did have to, though, because their costs have gone up dramatically. And you don't have to look any further for the reason than 1600 Pennsylvania Avenue. And I think the evidence bears that out.

I don't blame President Biden. I don't blame him for trying to get re-elected. I don't. OK? When I run again, I am going to try to get re-elected. I don't blame him for trying to blame inflation on somebody else. I get that. But the truth of the matter is he has blamed inflation on everything but murder hornets. And we still got time left. He may blame it on murder hornets.

But the truth of the matter, it is his own economic policies, and his own economists tried to tell him this. And he wouldn't listen. And the American people are paying the consequences.

They are going to have a say though this November. And everyone should vote, vote your conscience. If dead people can vote, you can too. Vote for the candidate of your choice. But I can tell you this. The only place you are going to find lower prices is in the voting booth. It's not going to change.

Thank you, Madam Chair.

Chair WARREN. Thank you, Senator Kennedy. So now let's introduce our witnesses. First, I am pleased to introduce Dr. Lindsay Owens. Dr. Owens is the executive director of Groundwork Collaborative, a research organization focused on ensuring the economy works for all of us.

She has advised multiple Members of Congress, including me, on economic policy. Thank you, Dr. Owens.

Next, Dr. E.J. Antoni. Dr. Antoni is a research fellow in The Heritage Foundation's Grover M. Hermann Center for the Federal Budget. His research focuses on fiscal and monetary policy. Thank you for being here, Dr. Antoni.

Dr. Norbert J. Michel, Dr. Michel is vice president and director of the Cato Institute's Center for Monetary and Financial Alternatives, where he specializes in issues pertaining to financial markets and monetary policy.

Dr. Michel was most recently director for data analysis at The Heritage Foundation. Thank you, Dr. Michel for being with us.

Joe Maxwell is the cofounder and chief strategy officer of Farm Action. He previously served as Missouri's lieutenant Governor and is a Missouri family farmer. Thank you for being with us today, Mr. Maxwell.

And finally, we have one of those small businessowners that you were talking about, Senator Kennedy. Mr. Alap—am I saying it right?

Mr. VORA. Alap.

Chair WARREN. Alap. Mr. Alap Vora is the owner of Concord Market, an independent grocery store in Brooklyn, New York. Mr. Vora opened Concord Market after graduating from George Washington University.

His family has been opening and operating small businesses in New York City for nearly 50 years. Thank you for being with us today, Mr. Vora.

So thank you to all of our witnesses. I am going to start out by turning to Dr. Owens for her opening statement. Dr. Owens, you are now recognized for 5 minutes.

**STATEMENT OF LINDSAY OWENS, EXECUTIVE DIRECTOR,  
GROUNDWORK COLLABORATIVE**

Ms. OWENS. Thank you. Chair Warren, Ranking Member Kennedy, Members of the Committee, thanks for inviting me to testify today. My name is Lindsay. I the executive director of the Groundwork Collaborative, a Washington, DC-based economic policy think tank.

By a large margin, when Americans are asked which factors they look at to decide how the national economy is doing, they pick grocery prices. They do this for two reasons. First, nearly everyone buys groceries. Second, grocery prices are top of mind because they are particularly high right now. While prices overall have risen 19 percent in the last 3 years, grocery prices are up 25.

Factors like climate change, international conflict, and disease in plant and animals have all contributed to food price increases.

But grocery industry consolidation and the profiteering and price gouging it allows is another key driver. The grocery sector is very concentrated. Just four grocery retailers account for over a third of national grocery sales and Walmart, America's largest grocer, now singlehandedly captures nearly a quarter of all grocery dollars.

This consolidation grants the remaining corporate giants the freedom to hike prices without fear of being undercut by the competition. In areas with fewer grocery stores, like rural areas and low-income ones, grocery price inflation runs above grocery inflation in places with more competition.

Grocers and suppliers are also using new technologies to facilitate price hikes. Innovations in cloud computing, AI and surveillance targeting have enabled companies to collect reams of data on their competitors and their customers.

They can use this data to collude on prices as we have seen with the meat packing data company Agri Stats. And as I lay out in my written testimony, my organization's review of public marketing materials by a new cottage industry of pricing data service providers shows that they are boasting about their ability to use data to help their clients hike prices higher, faster, and for longer. Those are quotes.

Industry consolidation and technological advances have come together in the shadow of the pandemic, where inflation gave compa-

nies the cover they needed to execute their most mercenary and egregious pricing strategies.

A recent report by the Federal Trade Commission found that some firms seem to have used rising costs as an opportunity to further hike prices to increase their profits, and that prices and profits remain elevated even as supply chain pressures have eased. These moves have contributed according to the CEA to a 20 year high in grocery profit margins.

Because of these shifts in the food and grocery sector, what used to be a fairly uneventful weekly trip to the grocery is now rife with tricks, traps, and outright land mines. A few recent examples.

Walmart, America's largest grocer, recently settled a class action lawsuit alleging they have rigged the produce scales, inflating product weights for pork, seafood, and citrus.

Food giant ConAgra has been caught swapping out oil for water in its popular Wishbone Italian salad dressing, a practice known as skimflation.

Companies like grocery giant Albertsons are using AI and surveillance targeting to maximize price hikes and track closely their competitors' prices.

Digital price tags are now becoming commonplace on the shelves at stores like Kroger, allowing grocers to raise prices more frequently and paving the way for the implementation of surge pricing in the future.

Online grocers, more people are shopping online for their groceries, are using dark patterns and vast troves of data, including your own personal browsing and purchasing history, to determine the maximum price you are willing to pay for an item, a practice known as personalized pricing.

So what can be done? The Biden-Harris administration has taken a number of steps, including challenging the Albertsons merger and suing Agri Stats. They have also helped families afford rising food costs by expanding nutrition assistance.

But Congress has a role to play as well and should take up new legislation from Senator Casey to ban shrinkflation and broad-based anti-price gouging legislation like Senator Warren's Price Gouging Prevention Act of 2024 to ensure that firms are not profiting off of crises with excessive price hikes.

The legislation can also stop price gouging further upstream, like collusion in the energy sector, which filters into higher food prices.

High food costs are taking a toll on Americans, particularly low-income families. Food is a necessity not a luxury. And when grocery profiteering and price gouging are spiking food prices, Congress must act.

American families can't afford to wait and see if the chair of the Federal Reserve manages to bring down prices. Dinner needs to be on the table tonight.

Thank you. And I look forward to your questions.

Chair WARREN. Thank you, Dr. Owens.

Dr. Antoni.

**STATEMENT OF E.J. ANTONI, PUBLIC FINANCE ECONOMIST,  
THE HERITAGE FOUNDATION**

Mr. ANTONI. Chair Warren, Ranking Member Kennedy, Members of the Subcommittee, thank you for the invitation to discuss with you today the cause of food price inflation and its impact on American families, particularly those in low-income households.

I am a public finance economist and the Richard F. Aster fellow at The Heritage Foundation, where I research fiscal monetary policy with a particular focus on the Federal Reserve. I am also a senior fellow at the Committee to Unleash Prosperity.

Since January of 2021, prices have risen across the American economy a cumulative 19.3 percent and food prices on average have risen 20.4 percent. These price increases have outpaced wage growth with the average American worker's weekly paycheck growing just 14.1 percent during this time but falling 4.4 percent in inflation-adjusted terms.

Despite that paycheck being about \$150 larger, it buys about \$50 less than it did in January 2021. That reduced purchasing power hits lower income families hardest in part because inflation changes consumer spending habits. As people switch to relatively inexpensive food to save money amidst ever rising prices, demand increases for those foodstuffs, which were disproportionately purchased by lower income families.

That increased demand further drives up prices on top of the increase from inflation. Unprecedentedly large Federal deficits over the last 4 years financed by the Federal Reserve's purchase of Treasury securities increased the money supply by trillions of dollars, much faster than the increase in the real economy.

That transferred wealth from the people to the Government and devalued the dollar at rates not seen in over 40 years. Consequently, it now takes more dollars to purchase the same products and services. This phenomenon is perhaps best explained if we remember that one of the functions of money is to serve as a measuring tool.

If a yard stick were to shrink to just 30 inches, it would take 120 yards to cover the distance between end zones on a football field where it previously only took 100 yards. The field is not larger. The yard stick is smaller. This is precisely what we have observed over the last several years with inflation. Products and services are not worth more. The dollar is worth less. That fact is just as true for food as it is for everything else. Nevertheless people, particularly in the public sector, continue to create scapegoats for inflation, blaming anyone and anything except profligate Government spending.

Businesses are a prime target in this regard with claims of corporate greed and so-called price gouging being rife in the current political environment. However, these claims are negated by empirical evidence.

First, the idea that food price inflation is caused by corporate greed does not even pass the smell test. No one can explain why beginning in January 2021, corporations suddenly became greedier than at any point in the prior 40 years. But putting aside the faulty logic of such claims, the data simply do not support the assertion that corporate greed causes inflation.

According to the Biden administration's own figures, prices paid by businesses and consumers alike have risen about 19 percent since January of 2021. In fact, for nearly all that time, cumulative inflation for businesses was larger than cumulative inflation paid by consumers. In other words, businesses were effectively shielding consumers from cost increases. It has only been within the last several months that the total increase in consumer prices has caught up to the total increase paid by businesses.

A close examination of corporate profits further dismantles the narrative that inflation is the result of corporate greed or so-called price gouging.

In the last 3 years, corporate profits within the food industry have increased 13.9 percent on average but are down 4.2 percent after adjusting for inflation. Therefore, corporate profits have only increased in the same sense that the average American's weekly paycheck has increased, which is to say in strictly nominal terms. What that paycheck can buy and what those corporate profits can buy has decreased since the beginning of 2021.

The source of inflation is not businesses seeking higher profits or consumers seeking higher wages, things which are constant in the economy, rather the inflation, which American families have suffered under for the last several years, is the result of runaway Federal deficit spending, measured in the trillions of dollars and financed by the Federal Reserve's expansion of the money supply.

Americans today are paying for those trillions of dollars in Government spending not only through explicit taxes like Federal income tax, but also through the hidden tax of inflation, including higher prices for food.

Thank you kindly for your time, and I look forward to answering your questions.

Chair WARREN. Thank you, Dr. Antoni.

Dr. Michel.

**STATEMENT OF NORBERT J. MICHEL, VICE PRESIDENT AND  
DIRECTOR, CENTER FOR MONETARY AND FINANCIAL AL-  
TERNATIVES, CATO INSTITUTE**

Mr. MICHEL. Good afternoon, Chair Warren, Ranking Member Kennedy, and Members of the Committee. Thank you for the opportunity to testify today. My name is Robert Michel. I am vice president and director for the Center for Monetary and Financial Alternatives at the Cato Institute. The views that I express in this testimony, however, are my own and should not be construed as representing any official position of the Cato Institute.

My testimony today argues that Congress should not have been surprised by abnormally high inflation in the wake of the COVID relief spending, and members should not waste their time searching for novel explanations of what happened.

For most of the 20th Century and all of the 21st, modern fiscal policy has been predicated on stimulating aggregate demand with deficit financed Government spending. The idea has always been that this spending would put upward pressure on both prices and profits, thereby causing businesses to supply more goods and services to meet the increased demand, thereby reversing a slowdown. And it has always been understood that too much spending and/



or severely constrained resources would result in inflation. And I think nobody serious thought on the economist side that inflation would be painless or easy to precisely control. And I want to make three additional points.

First, the abnormal levels of inflation experienced in the wake of the COVID pandemic and the shutdowns were primarily caused by excessive fiscal policy accommodated by the Fed. With just one bill, Congress injected roughly three times more than the estimated amount needed to fill the economy's demand shortfall.

In just the first quarter of 2021, per capita disposable personal income increased 13 percent, an artificial boost that was 10 times greater than average. And this injection occurred while many different segments of the economy still faced major supply constraints from COVID and the shutdowns.

So it should surprise no one that inflation soon followed. People were given unusually large amounts of money to spend in markets that were still struggling to supply goods and services.

My second point is that the month-to-month levels of inflation that the U.S. has experienced since June of 2022 have been well within the normal range for the entire post-World War II era. Between 1973 and 2019, the average monthly change for the CPI is .32 percent, and the change for food prices is virtually the same. Annualized, those rates are about 4 percent. But as we know, following the COVID pandemic and the shutdowns, the U.S. experienced an unusually large spike in inflation. What most people forget though is that this increase came after a short bout of falling prices. The CPI actually declined in March, April, and May of 2020. Only then did inflation take off.

And then from June of 2020 through June of 2022, the monthly change in the CPI was .57 percent, with nearly the same average change for food prices. These were annualized rates of more than 6 percent, rates not seen in the U.S. since the 1970s.

And because that spike was so high, even if inflation had quickly flattened out to rates of increase near zero for a full year, the annual rates of change would have remained above average for at least 1 year and in fact that's what happened. Those rates did stay elevated.

But between July of 2022 and April of '24, the average month-to-month change for the overall CPI is just .27 percent. And that's below average for the post-World War II era.

When considering the typical variation in the CPI, these rates are even well within the normal rates of change for the low inflation period that started in the U.S. in 1983. And if we look at only the most recent changes in food prices, we again see a normal trend. The most recent CPI release shows a change in food prices of zero for April of 2024.

For the preceding 6 months, the rates were all within the typical range of food price increases during the entire post-World War II period and, again, considering the typical volatility, within the range seen for the entire post-1983 period.

Finally, causal explanations for inflation such as corporate greed, profiteering, price gouging, greedflation, and industry consolidation do not hold up for multiple reasons, with one of the most obvious problems being timing. We must believe, for example, that virtually

all companies colluded and decided not to be greedy for decades, and then to be altruistic for several months, and then to be very greedy for nearly 2 years, and then for the most recent 2 years to revert to being not so greedy. And that's why these explanations quickly fall apart for inflation.

Thank you for your consideration. I am happy to answer any questions you may have.

Chair WARREN. Thank you, Dr. Michel.

Mr. Maxwell.

**STATEMENT OF JOE MAXWELL, COFOUNDER AND CHIEF  
STRATEGY OFFICER, FARM ACTION**

Mr. MAXWELL. Five hundred and twelve thousand, a number I will always remember, the number of those of us who were raising hogs in America when I began farming. Today, there is less than 61,000. I have lived the negative impact that Government policies have had on competition.

Chair Warren, Ranking Member Kennedy, Members of the Subcommittee, thank you for this opportunity to present my testimony on this critical issue consumers, farmers, and ranchers are facing.

My testimony and submitted statement provide clear evidence of why Government must take action against the monopolistic corporations to combat corporate price gouging. By taking action retail grocery prices will be fair for America's consumers and farmers will thrive.

Today, four corporations control 85 percent of beef processing, at least 67 percent pork processing, 60 percent poultry, 75 percent of the nitrogen fertilizer, two companies supply all of the potash for North America. Two seed companies account for 72 percent of corn and 66 percent of soybeans.

In my submitted written statement, I referenced three cases, studies conducted by Farm Action demonstrating how dominant firms exercised opportunistic behavior to price gouge.

In 2022, egg prices soared over 300 percent, pushing corporate profits up tenfold. For one corporation it went from \$50 million gross margin to \$500 million. The industry excused away price gouging blaming the avian flu and higher prices yet egg production drop less than 7 percent, and costs were up only 19 percent.

When no competitor increased production to curb the leading producers' excessive pricing, USDA noted the market had not responded as expected. A fire in a Kansas beef plant idled 6 percent of processing capacity. Using the fire as an excuse the dominant firms were able to push down the price they paid farmers and ranchers and raised the price they charged grocers.

The result was the largest recorded spread between what farmers were paid and what consumers had to pay. The beef industry had exercised opportunistic market behavior to extract excessive profits while killing 5,000 more head of cattle 3 weeks following the fire than the 3 weeks prior to the fire.

In the fall of 2021, fertilizer prices went up as much as 210 percent excessively pushing company profits up. CF Industries reported a 530 percent margin increase while only reporting 120 percent cost increase. Nutrien reported as high as 680 percent margin increase and only a 51 percent increase in cost.

Potash production capacity actually exceeded demand at the time, and one nitrogen producing company had curtailed production in 2020 because of excess supply. What was the basis for price gouging? Fertilizer companies base 50 percent of their pricing on how much farmers are paid for their commodities. Commodity prices had risen. They hiked the cost and shortage excuse to justify price gouging farmers out of their profits.

In 2021 President Biden issued an Executive order on promoting competition in the American economy, pushing back against 40 years of Presidential precedents of letting corporations have their way in the market.

DOJ and FTC have aggressively tackled consolidation with new acquisition and merger guidelines and legal actions. DOJ made history by invoking the Packers and Stockyard Act provisions to put an end to the payment scheme called the tournament system and 15 percent of the poultry market.

USDA has made investments in local and regional processing to stimulate competition. Much is left to be done. Without directing Government procurement to secure USDA's investments in the markets, these investments will fail. Antitrust law enforcement is critical to putting a check on price gouging. The Chair's legislation, Senate Bill 3803, the Price Gouging Prevention Act provides FTC with the tools they need to address price gouging and opportunistic behavior.

Most importantly USDA must issue and finalize rules that provide individual farmers and ranchers with the right to be protected by the Packers and Stockyards Act for an individual harm on their individual operation. Dominant food and agriculture firms are exhibiting opportunistic behavior that result in price gouging.

We call on the Government to free itself from the undue influence of corporate special interest and own its role as safeguarding the market accountability and competitiveness in the food and agriculture markets, taking bold actions against monopolistic corporations will free the markets, giving consumers fair prices and farmers opportunities to thrive.

Thank you very much for allowing me to be here.

Chair WARREN. And thank you, Mr. Maxwell. I appreciate it.

Mr. Vora.

**STATEMENT OF ALAP VORA, OWNER, CONCORD MARKET, NEW YORK CITY, SMALL BUSINESS MAJORITY NETWORK MEMBER**

Mr. VORA. Chair Warren, Ranking Member Kennedy, and Members of the Subcommittee, thank you for the opportunity to speak about the impact of anticompetitive behavior impacting America's grocery prices and food prices.

My name is Alap Vora. My family owns Concord Market in Brooklyn, New York. Concord Market has been a family owned neighborhood grocer since 2009 and in the 15 years of business, we faced snowstorms, blackouts, protests, global pandemics and have found a way to stay open every single day for our community.

Our late father, Ashok Victor Vora, who started our family business over 50 years ago, taught us the importance of being job creators and how to be an integral part of the communities that we serve, a personal approach that bigger box stores simply don't take.

Today I will discuss how consolidation, unexpected price hikes, and practices like shrinkflation continue to place disproportionate impacts on small businessowners like us.

In recent years, we have seen price increases vary 20 to 30 percent on everyday products on our shelves, milk, eggs, soda, snack items. And there isn't much that we can do about it because of our limited purchasing powers as a small business.

We suspect these fluctuations are the result of our distributors taking advantage of the slightest market changes to upcharge us and our peers. Despite the fact that supply chain challenges have mostly eased since the darkest days of COVID, companies have passed on price increases to grocers to us like us still have not eased prices.

Customers and employees of Concord Market have witnessed shrinkflation first-hand, watching canned goods and other shelf staple items fluctuate in size and substance while driving business away for us. Some distributors claim that they had to increase prices due to supply challenges, but when shortages are resolved, the distributors keep charging the same high prices or even more.

While small business struggle to make payroll, major companies posted record profits in 2023. In fiscal year 2023, U.S. Foods reported a 19 percent growth in adjusted earnings while case volume growth only increased by 7.3 percent for independent businesses.

Similarly, food giant Sysco raked in 33 percent more in the fourth quarter of 2023 while only increasing the food service volume by 2.3 percent.

The cost of doing business under these circumstances is excruciating in cities that are struggling, especially like New York City, where we have already been dealing with other cost considerations like third-party delivery fees, utility costs, waste removal fees increasing, credit card processing fees constantly going up, congestion pricing, which is starting next month, and more. These factors make it nearly impossible for us to try to compete as a small business.

As a pillar in our community, we attempt to offset price increases by offering various benefits to our customers through awards programs, student discounts. We waive delivery fees for the elderly in our community.

These types of transactions are not profitable, necessarily, for our business, but it is the right thing to do. We fear that if things continue as they are without intervention from leaders like you, small businesses like us will be unable to continue to serve the customers we care about the most, our neighbors.

While we bear responsibility for the factors in our immediate control, we need support from lawmakers to navigate highly consolidated markets and promote competition for the smallest businesses. Congress must act alongside Federal enforcement agencies to ensure that the major players in our economy are held accountable for their actions that result in rising prices that put a squeeze on small businesses and our customers.

Congress can do this in multiple ways, but I would highlight three starting points. First, pass the Shrinkflation Prevention Act of 2024 to direct the FTC to create and enact regulations to establish shrinkflation as an unfair and deceptive action.

Second, provide necessary funding to the FTC to enforce the Robinson-Patman Act of 1938, which protects small businesses from being driven out of the marketplace via discriminatory pricing practices.

Last, continue to work with local businesses like us and organizations like the small business majority to shed light on the discriminatory practices that prevent small businesses from being able to provide competitive, affordable prices for the families and businesses that we serve.

Thank you again for the opportunity to speak today, and I look forward to answering any questions you may have.

Chair WARREN. Thank you very much, Mr. Vora. I appreciate your testimony. I appreciate the testimony from all of you today.

So I am going to start the questions. Look, there are a lot of things that can affect the price of groceries, weather, war, energy costs. But let's start with the argument that is right here in front of us.

We have two witnesses who are saying it's just plain old inflation. And the reason the grocery prices are up is because inflation is up across the board.

Dr. Owens, is that what the data tell you?

Ms. OWENS. Yes. There are absolutely a lot of different causes of the inflation we see right now. But one of them is absolutely industry consolidation. Look, when grocers gobble up the competition, the remaining larger giants can raise prices more aggressively. They just can because they don't have to worry about being undercut by the competition.

And the research really shows this over and over again. Grocery inflation in rural areas where shoppers have fewer choices is running 2 percent ahead of grocery inflation elsewhere. Lower income neighborhoods where grocery stores are more reluctant to locate, you see higher prices there too.

And you also see that grocery mergers in less competitive areas result in higher price increases than grocery mergers in more competitive areas. So over and over again, consolidation really is at the root of the food price inflation we are seeing today.

Chair WARREN. OK. So what you are really saying is you actually contest this. You can disaggregate the data, and you can look where there is more competition. And when there is more competition, what did you find out? What happened to prices?

Ms. OWENS. Lower prices.

Chair WARREN. Lower prices. And when there is less competition, that is when there is more concentration, I take it what you are getting is higher prices—

Ms. OWENS. Absolutely.

Chair WARREN. —at that point. So let's keep talking about the pieces here. Concentration didn't just happen in 1 day, and yet what we see is—we really do see—I think it was Dr. Antoni who said, you know, you see prices kind of going along, and you see them flatten out for a little bit, and then you see a real spike. How does concentration fit in with that?

Ms. OWENS. Yeah, I mean, I think there is kind of this old saw developing like companies didn't just greedy overnight. And look, nobody thinks that corporations weren't out to make a buck in

2020. Of course, they were. And they're out to make a buck in 2021, 2022, 2023, and in 2024.

Corporations have been getting bigger, too. Consolidation is not new. But you really need means, motive, and opportunity to commit the perfect crime, right? The profit motive is constant. The means are that market power, that pricing power that you get from consolidation. But what changed is the opportunity. The opportunity to use inflation as cover to go bigger on price hikes. And that's really what we are seeing in this period.

Chair WARREN. So, you know, it's interesting you would raise that because one of the things I have pulled out here is how the CEOs of some of these giant grocery companies are making exactly this point. They don't make it in their commercials, of course, but they make it when they do earnings call so that, for example, General Mills owns over 100 brands of grocery store staples, Cheerios, Betty Crocker cake mixes, Progresso canned soups.

When a General Mills executive got on the phone with his investors, he bragged about their price increases, and he makes the point that their profits went up not because they simply passed along costs because of inflation or because demand was up. Nope. He said it out loud. Profits are up because General Mills was getting smart about how they look at pricing, how they figured out to boost their price, and in their case, their profit margin, up to 16½ percent. Something they hadn't seen before.

Executives at Hershey's made the same kind of point on an earnings call. In effect, inflation has been very, very good to these CEOs because it has provided them a form of protective coloration here, and they can go ahead and raise prices during this time.

Now some commentators have said, no, no, we should welcome concentration because concentration will permit these grocery chains, for example, to exert downward pressure on prices because they can negotiate for better deals. Is that what the data shows us, Dr. Owens?

Ms. OWENS. Yeah, I mean, I think the argument that apologists for monopolies will make is that if you get an economy of scale, you can really drive down the cost per unit. But the problem we are trying to address today isn't that the cost per unit is down. It's that the cost they are charging consumers is up, right? And that is function of a market with no competition, that can't check the excessive markups that we are seeing in the food sector.

Chair WARREN. OK. And let's just take this over to Big Ag, if we can for a minute, Mr. Maxwell. What about Big Ag? You talked about the concentration and the numbers you cited were truly breathtaking. But what has happened to pricing with Big Ag?

Mr. MAXWELL. Well, the same thing that has just been testified about is happening in Big Ag. Big Ag, not long ago, as we know the Big 6 input suppliers became the Big 3. I mean, we don't even talk about a concentration ratio of four. There is three.

With that kind of market power and that kind of tacit collusion, if there is only three of you, you can figure out pricing structure. And then what happens is they put in place structures and take opportunity whenever there is supply increases or there is a supply disruption. They quickly seize that moment with opportunistic behavior to run up prices.

The mainstream press says, oh, there is a supply hiccup somewhere. Everybody starts talking about it. The next thing you know we farmers, we are going to pay a lot more money when we go get our supplies.

So they do the same thing. They are very opportunistic. There is too few of them to have true competition. The market dynamics no longer work. They don't work because one of the dynamics is competition. When there is no competition, you don't have the—as USDA said in the egg case, the market didn't respond as we expected. No, it is not going to respond as you expected unless you consider the corporate concentration level within that market and the power that brings to gouge farmers or consumers.

Chair WARREN. So really powerful point, Mr. Maxwell. You know, what we are really talking about is embracing markets, wanting to see the power of markets. But to get those markets to function, you have got to actually have competition. And when you have enormous concentration, you don't have that competition.

And I think what you are telling us is what we are seeing in food pricing right now is not just at the grocery store level, it is all the way up and down the chain, that it starts with seed and fertilizer, makes it all the way through the process and that is what is pushing up prices in this very concentrated industry.

Thank you.

Senator Kennedy.

Senator KENNEDY. Thank you, Madam Chair. Interesting questions.

Mr. Maxwell, you are a farmer, is that right?

Mr. MAXWELL. Yes, Senator.

Senator KENNEDY. You used to be a farmer, or you still are?

Mr. MAXWELL. Senator, I grew up on a farm. I am a fourth generation Missouri farmer. My brother does most of the farming. I do this activity more. I do have degrees in ag economics and a law degree. But I still actively farm. I've got over 100 ewes on the farm. We have a hogs production. We are kind of the diversified traditional family farm type operation. We lease out some of the land to the neighbor boy.

Senator KENNEDY. Well, America was born on a farm. So thank you for that.

Mr. MAXWELL. Thank you, Senator.

Senator KENNEDY. Dr. Owens, you talked about in order to commit a crime, you have to have means, motive, and opportunity. Is that right?

Ms. OWENS. Yes, sir.

Senator KENNEDY. And you have suggested that it is not an optimal situation to have—well, strike that. Let me just get after it here. What crime are you accusing the four major food companies of?

Ms. OWENS. Price gouging, sir.

Senator KENNEDY. OK. Do you think they are price fixing?

Ms. OWENS. In some cases, absolutely.

Senator KENNEDY. OK. Name the four companies that you are accusing of price fixing.

Ms. OWENS. In the grocery sector or more broadly?

Senator KENNEDY. The four you have been talking about.

Ms. OWENS. I mean, so I think——

Senator KENNEDY. Name me every company that you think is price fixing in violation of the antitrust laws.

Ms. OWENS. I mean, so the most recent example that I think is worth considering is Agri Stats.

Senator KENNEDY. But if you don't mind, we will come back and do the examples. Name me the companies that you are accusing of price fixing.

Ms. OWENS. The first one is Agri Stats, which the Department of Justice has sued for price fixing.

Senator KENNEDY. Who else?

Ms. OWENS. In the grocery sector, you know, we have got Walmart. We have got Kroger.

Senator KENNEDY. Walmart is price fixing?

Ms. OWENS. No, I haven't accused them of price fixing.

What I——

Senator KENNEDY. You just did.

Ms. OWENS. No, what I said is that they are able to expand——

Senator KENNEDY. No, you just did.

Ms. OWENS. ——their markups.

Senator KENNEDY. Let me start over here. I want you—price fixing is a serious crime, Doc. You can go to jail for that. And I want to be sure I understand your testimony. Who are you accusing of price fixing?

Ms. OWENS. Yeah, look, what my testimony clearly states is that——

Senator KENNEDY. No. Tell me which companies you are accusing of price fixing. You said some were price fixing. And I want to know which ones.

Ms. OWENS. Yeah, I mean, look——

Senator KENNEDY. I may report them myself.

Ms. OWENS. I mean, the company that is absolutely under investigation by the DOJ is Agri Stats.

Senator KENNEDY. Which ones are price fixing?

Ms. OWENS. I think the Federal Trade Commission and the Department of Justice should take a close at the four major grocers. They should take a close look at the four major meat packers.

Senator KENNEDY. But tell me——

Ms. OWENS. There are currently——

Senator KENNEDY. ——just answer my question.

Ms. OWENS. ——there is pending litigation——

Senator KENNEDY. ——which companies are price fixing?

Ms. OWENS. Tyson is a great example.

Senator KENNEDY. Who?

Ms. OWENS. Tyson, the large meat packer.

Senator KENNEDY. OK. Who else?

Ms. OWENS. The big four meat packers are all currently up there.

Senator KENNEDY. That's one. Who else?

Ms. OWENS. Like I said, looking at the four major grocers makes sense in this setting.

Senator KENNEDY. Which four are price fixing?

Ms. OWENS. Walmart, Albertson's——

Senator KENNEDY. Walmart is price fixing?



Ms. OWENS. —Kroger. I didn't say they were. I said take a look.

Senator KENNEDY. You just said they were. You can't come here and say—and imply they are price fixing and then say they are price fixing. That is a serious allegation. You can be sued for defamation.

Ms. OWENS. I said we should take a close look at the—

Senator KENNEDY. Let me go back. I want to make sure I understand your testimony. Are you telling me, right here today, that you are accusing Walmart of price fixing?

Ms. OWENS. I am not personally accusing Walmart of price fixing. I am suggesting that—

Senator KENNEDY. Who are you accusing of price fixing? That's a serious charge.

Ms. OWENS. Neither my written testimony nor my oral testimony makes explicit legal claims.

Senator KENNEDY. So you are not accusing anybody of price fixing?

Ms. OWENS. No, I have pointed out the Department of Justice is currently looking at price fixing by Agri Stats.

Senator KENNEDY. Who are you accusing of price fixing? Why won't you answer my question? Who are you accusing of price fixing?

Ms. OWENS. I am pretty sure I have answered your question.

Senator KENNEDY. No, you haven't. Just tell me the names of the companies, one by one. What is the first company that you are accusing of price fixing?

Ms. OWENS. I have mentioned Agri Stats is currently—

Senator KENNEDY. Agri what?

Ms. OWENS. Agri Stats.

Senator KENNEDY. All right. Who is number two?

Ms. OWENS. I said Tyson is currently under investigation for price fixing.

Senator KENNEDY. Who is number three?

Ms. OWENS. I have also said I think the Department of Justice and the FTC should take a close look at the—

Senator KENNEDY. Who is number three?

Ms. OWENS. —major grocery retailers.

Senator KENNEDY. Who is number three? Is Walmart price fixing?

Ms. OWENS. I think that they should take a look at the situation.

Senator KENNEDY. Is Walmart price fixing?

Ms. OWENS. They should take a look at it.

Senator KENNEDY. Is Walmart price fixing?

Ms. OWENS. I can't currently answer that question. I said that the Department of Justice—

Senator KENNEDY. You won't answer that question.

Ms. OWENS. No, I said—

Senator KENNEDY. How about Albertsons? Is Albertsons price fixing?

Ms. OWENS. The Department of Justice and the Federal Trade Commission—

Senator KENNEDY. Is Albertsons price fixing?

Ms. OWENS. —should take a close look at that.

Senator KENNEDY. Is Albertsons price fixing?

Ms. OWENS. Again, I think the Department of Justice should take a close look——

Senator KENNEDY. You don't want to say?

Ms. OWENS. I mean, look. I am not at the FTC. I am not at the DOJ.

Senator KENNEDY. Yes, ma'am. But you've accused these companies——

Ms. OWENS. It's not my job to——

Senator KENNEDY. ——of breaking the law. And I think you ought to have the courage to say in front of God and country what you believe. Now you either do or you don't?

Ms. OWENS. Look, I believe that when companies get larger and larger——

Senator KENNEDY. I understand what you believe. But I——

Ms. OWENS. ——it gets easier and easier——

Senator KENNEDY. ——understand you are waffling. You are waffling——

Ms. OWENS. ——to——

Senator KENNEDY. ——like a catfish. OK?

Ms. OWENS. It's easy to coordinate price hikes when they are large——

Senator KENNEDY. Dr. Antoni? Dr. Antoni? I think it has been well-established that if we discovered life on Mars tomorrow, Joe Biden would send it money. To what extent has his deficit spending contributed to inflation? And do you know of any of these companies——would you care to accuse someone of a crime here today?

And if anybody else would, just let me know. If somebody is price fixing, I want to know. I will report them myself. And I am going to want to see your evidence. Otherwise, you subject yourself to defamation. But let me go back to my original question. What was it? Mars? Was it Mars or Jupiter? I forgot. Has the amount of money that President Biden has insisted on spending contributed to inflation? Duh. What is your answer to that?

Mr. ANTONI. Well, Senator, regarding the price fixing, I have no evidence because there is no evidence so I can't provide that to you.

But to answer the hypothetical on Mars, absolutely that would add to inflation. And yes, the deficit spending under this President, but really under any President, it doesn't matter that it is Joe Biden in particular in the White House doing it, any person who did—if any person did what he did, it would have the exact same effect, which is this massive run up in prices because again, it is not that things are more valuable. It is that the dollar is worth less. So it takes more dollars to buy exactly what you used to.

And if you look at—again, the Biden administration's own data, these aren't my figures. These are figures from the Biden administration. They show that prices paid by businesses and prices paid by consumers have gone up almost exactly the same, about 19 percent during his tenure.

And so this idea that somehow the prices that consumers, that you, I, that all of the people that you represent are paying are somehow the cause of anything other than costs simply being passed on to them, the data simply don't support that.

Senator KENNEDY. OK. How about you, Doc?

Mr. MICHEL. No evidence. No, I am not accusing anyone of price fixing.

Senator KENNEDY. Are you a lawyer by chance?

Mr. MICHEL. I'm sorry?

Senator KENNEDY. Are you a lawyer by chance?

Mr. MICHEL. No, I am not. I am just an economist.

Senator KENNEDY. OK. What happens if you accuse somebody of price fixing, and they didn't do it?

Mr. MICHEL. I probably don't want to be that person.

Senator KENNEDY. You got good insurance?

Mr. MICHEL. No, I am not. I am not doing that.

Senator KENNEDY. OK. Go ahead.

Mr. MICHEL. As far as the fiscal stimulus stuff, you know, that is a standard economic model. And you can go back and look. Multiple people, Olivier Blanchard is one. Some of the upper bound estimates on how big the shortfall in demand was after COVID and the shutdowns, one of the largest upper bound estimates that I have seen is about \$680 billion. Just the COVID package of \$1.9 trillion, that is already almost three times the size of that.

Senator KENNEDY. I have gone way over time. Thank you, Madam Chair.

Chair WARREN. That is all right. Do you want to go now?

Senator WARNOCK. Sure.

Chair WARREN. All right.

Senator WARNOCK. Let the record reflect that the senator from Louisiana is far more loquacious than a Baptist preacher.

Chair WARREN. And that is a high standard. Senator Warnock.

Senator WARNOCK. Thank you so much, Madam Chair. A USDA study found that grocery store consolidation has increased significantly over the last three decades. When grocers consolidate, farmers have fewer options to sell their goods. And as a result of this, they have less negotiating power when it comes to securing contracts. So their hands are tied.

I have had many conversations with farmers all across Georgia. It is a tough business. The margins are very narrow. These kinds of things make a big difference.

And so in order to cut down on their bottom line, grocers often require farmers to fulfill larger and larger contracts at lower and lower and lower prices. And so it becomes a volume business. Small and mid-size farmers get squeezed from both sides because they can't produce the quantity required at the prices demanded by these big retailers. In short, farmers are forced to either get big or get out.

Mr. Maxwell, you are a farmer. What pressures are you and your fellow farmers feeling right now because of this reality?

Mr. MAXWELL. Senator, you described the reality of market opportunity. We would suggest that in most instances, the market is dead, but the farmers become price takers. They no longer have the ability to recover their production of cost and far too often because of concentration, they are relying upon Government subsidies in order to make a profit at the end of the year.

When Government increases those subsidies like reference pricing, then those companies like I testified earlier to simply set a higher price to the farmer because they know the farmer is going

to receive more funds. They just go after it because there is no competition. So that is the reality that we are living in. Squeezed from both ends and trying to wiggle in the middle just so there can be the next generation on our farm.

Senator WARNOCK. And we are seeing it in even large producers. I am a lover of Vidalia onions, down in Vidalia, Georgia. But large producers of well-known products like Vidalia onions are feeling the pressure. And this certainly starts with market consolidation as part of the issue, right?

Mr. MAXWELL. Yes, Senator. We visited with some of your Vidalia onion farmers in Georgia. And they are feeling the pressure. As they have to expand because there is not a market opportunity to move the onions into a market at the volume that they are currently producing. And so their choice, as you described earlier, is either to get bigger or get out, leaving many of those farmers, multigeneration farmers, burdened with the cost of the production they have had in the past and no market to move their onions to.

Senator WARNOCK. Will decreased competition impact all the way down the food chain in a different sense of the word all the way down to the consumer?

Mr. MAXWELL. The concentration impacts the prices, the input prices to farmers who are consumers and then ultimately those prices move on into the stream, forcing the retail consumer, grocery retail consumer, to see higher prices in the grocery store.

The odd thing is we look in the middle, the folks making the most money are those concentrated processors, meat processors, the JBSs, the Tysons, the Cargills, the processors that the Chair mentioned earlier this afternoon and ultimately the consumer pays the price at the grocery store retail shelf.

Senator WARNOCK. So analysis of the change—I will go to a different subject or a related subject, analysis from the reinvestment fund finds nearly 1 million Georgians live in a community with limited access to a grocery store, 15 percent increase over the prior decade. And USDA has found this greater consolidation in rural—it is greater in rural counties than in larger markets. While rural communities are responsible for producing the food that feeds our country, rural residents are often some of the most food insecure, ironically, among us. And we know that people of color in rural areas are more likely to face hunger because of a lack of food access. In 2021, Black Americans in rural communities were 2.2 times more likely to face hunger than White Americans.

Dr. Owens, because of a consolidated grocery industry, many rural Americans must travel farther to get to the grocery store, often with fewer nutritious and healthy options. How would more competition in the grocery sector benefit rural communities?

Ms. OWENS. Yeah, absolutely. Grocery inflation in rural areas is running above grocery inflation in other areas. So more competition and more access to more and different grocers in rural areas would absolutely help families get better deals at the grocery store.

Senator WARNOCK. Thank you so much. I am sure we could say a lot more on the subject. But in the final analysis, corporate consolidation in the grocery sector is driving up prices and leaving Americans, particularly those in rural communities with fewer op-

tions than before. Ensuring healthy options exist for all Georgians regardless of where they live needs to be a priority of Congress, and it is something that I continue to work on. Thank you so much.

Chair WARREN. Thank you, Senator. Thank you. These are really powerful points, especially the part about keep those Vidalia onions coming. We are counting on you. We are counting on you on this.

So I just got a couple of questions. I want to follow up on where we started out. Dr. Antoni, if I understand you, I think you are saying that the reason we are seeing high grocery prices is all Joe Biden's fault because he led Congress in the direction, or at least led the Democrats in the direction of doing things like investing in infrastructure and child care and helping us get over the pandemic.

Is that kind of a rough statement? You said the model tells you. More money must be the reason the grocery prices are up. Is that right?

Mr. ANTONI. Partly, Senator, absolutely. Although I wouldn't put all the blame—

Chair WARREN. Everybody concedes that we have got a lot of different points going on.

Mr. ANTONI. Mm-hmm.

Chair WARREN. But I think I heard you say that that is the reason grocery prices are up so high. Am I wrong? Did I misunderstand you?

Mr. ANTONI. It is not just the spending that the President insisted upon. It is the spending that this Congress passed.

Chair WARREN. Oh, I am willing to put Congress in there. So it is what we have done—for example, like building roads and bridges and childcare and so on. So I just want to be clear about this. Does that mean that the CEO of Hershey's, when the Hershey's executive goes on the earnings call that he was lying when he said that actually they were able to, I think, more than offset inflation and higher manufacturing and overhead costs. In other words, it is what I call price gouging. They didn't just pass along costs. They loaded a whole lot more on top of that and that's why Hershey's was producing great for its investors. Was he lying? Should he have just said, look, I am just passing along what that Democratic Congress and that Democratic President did?

Mr. ANTONI. Senator, the comments you are referring to are not simply passing along current cost increases, but also passing along previous cost increases.

Chair WARREN. No, that is not what he says. He says that our pricing more than offset inflation and higher manufacturing and overhead costs. And I am asking you, was he lying?

Mr. ANTONI. Again, Senator, this is not just price increases that are happening today but that happened yesterday as well. This is why, if you look at figure 14 in my written testimony, you can clearly see that the prices paid by businesses, like Hershey's, spiked before the prices by consumers.

Chair WARREN. He clearly states he is not passing along costs. He didn't say costs just from today or costs from last week or costs from last month. He said I want you investors to understand Hershey's is a place to invest. And why? Because we have figured out how to increase our prices and our profits above the rate of inflation. That is what he is saying.

So I am just saying, you have told me that the reason that prices are high when I go to buy those candy bars is because of Joe Biden and a Democratic Congress. So is the guy lying?

Mr. ANTONI. Again, Senator, the Biden administration's own data is very clear here.

Chair WARREN. I am not asking you about the Biden administration. I am asking you, is that guy lying?

Mr. ANTONI. Senator, frankly, you are completely mischaracterizing his statement.

Chair WARREN. You know you have a legal obligation—I am mischaracterizing the Hershey executive statement?

Mr. ANTONI. Yes.

Chair WARREN. Are you telling me I am reading this wrong when he says, more than offset inflation and higher manufacturing costs and overhead costs? I think the words speak for themselves.

The same thing for General Mills. The same thing for CEO after CEO. So let me ask you one other. You said you have no evidence of price fixing. Does that mean you are sure none there is none occurring?

Mr. ANTONI. No, Senator. That is not what I said.

Chair WARREN. No. That is why I am asking. You said you have no evidence of there being price fixing. Do you believe there is no price fixing going on?

Mr. ANTONI. I have no reason to believe there is because I see no evidence for it.

Chair WARREN. You have seen nothing in any of these data that suggests that maybe those companies are colluding just a tiny little bit?

Mr. ANTONI. If there was any evidence for it——

Chair WARREN. You would be shocked.

Mr. ANTONI. ——I would love to see it presented to the public.

Chair WARREN. Good. Let's talk about some evidence presented to the public. Mr. Maxwell, do you know about a recent price fixing case in Big Ag, which is part of our food chain here?

Mr. MAXWELL. Yes, Senator, there have been multiple cases of price fixing in Big Ag.

Chair WARREN. And have they been successful?

Mr. MAXWELL. They have been successful. There is one pending that we really are thankful that DOJ brought, and that is the one that has already been referenced, and that is Agri Stats. It is an organization that was created in an effort to allow the major dominant firms in pork, poultry, and turkey to actually tacitly collude in order to set maximum price for maximum profit based upon their words. And DOJ is taking that on.

Chair WARREN. OK. And as I understand it, we have had successful prosecutions in Big Ag of price fixing, right? And, Dr. Owens, I think you were trying to talk about price fixing. Do you want to just say a big more about that?

Ms. OWENS. Sure. I think there are a number of things going on here. First, there is price fixing, which is absolutely illegal. And we do have cases at the Department of Justice.

There is also price gouging. And in many cases that is perfectly legal, right, which is why we need your legislation, the Price Gouging Prevention Act of 2024. And there is also just plain old

skimming, you know, juicing margins a little bit, charging a little more than you need to, passing on your rising costs and then gilding the lily a bit.

There are a lot of different features we see here. But the point is all of them are easier in concentrated markets. All of them are easier if you don't have to look over your shoulder and worry you are going to get undercut by the competition.

Chair WARREN. OK. And that's the heart of this. It's all about concentration and competition. Thank you. Senator Reed.

Senator REED. Thank you, Madam Chairman. Mr. Maxwell, you discussed in your testimony the egg market in 2022. Can you further explain what happened in the egg market in 2022? If producers were only raising prices to cover costs and with some cost inflation, why did companies like Cal-Maine, for example, report tenfold increase in gross profits?

Mr. MAXWELL. Thank you, Senator. And we also thank you for your leadership at that time with getting letters out and calling for investigations as consumers were facing what we believe is clearly evidence of price gouging and price fixing as backed up by the United States Department of Agriculture when they said the market is not responding as anticipated.

What happened was we have presented evidence in our written statement that clearly shows that because they had the opportunity to use cost increases and the avian flu, they seized the moment to increase prices far above what the increased inflationary cost of production was and the loss of production on laying hens. There was 7 percent loss of production on laying hens so 7 percent. A little less because hens, for whatever reason in 2022, laid more eggs per hen than normal so a little less than seven.

Costs went up according to Cal-Maine, 19 percent. But they busted through with their margins up to 680 percent tenfold margins in their gross margins. Consumers faced a 300 percent increase in the price of eggs in the year 2022. It was higher by the time it all unwound.

What we saw was that these dominant firms clearly were working together, giving a nod to each other. They didn't have to worry about the other one coming in to compete like a Rose Acres against Cal-Maine because everybody was making more money than they ever had before. They had the opportunity, and they were all together going to take all they could in that opportunity. And that is what happened with the price spiking on eggs.

Senator REED. Well, it might not be antitrust, but in the words of Phil Areeda, who was a professor, I think both of us in antitrust, it is conscious parallelism that they were looking and, hmm, they were bumping it up. I will bump it up, and we will all be happy, so. That is something that I think we have to be aware of and prepared to respond to.

Dr. Owens, one of the good news stories here is the fact that the House passed by an overwhelming majority tax legislation that includes the child tax credit. It is hung up in the Senate, but we hope we can move it. And how would expanding the child tax credit help families with the higher grocery prices?

Ms. OWENS. Yeah, absolutely. I mean, I think we need a two tier and two track approach here. The first is we have absolutely got

to get prices down. And the second is while we are working to get prices down, we have got to give families some breathing room.

And I think there are a few different ways to do that. One of them is expanding nutrition assistance, which the Biden administration does and has done. But the other is absolutely the child tax credit. That is a great option for getting more cash in families' pockets, giving them a little bit more space to absorb the rising costs of necessities like groceries.

And, you know, we saw with the expanded child tax credit a couple of years back that not only did sort of poverty decline but, you know, food insecurity did as well substantially.

Senator REED. Thank you very much. And, Mr. Vora, you are an independent grocer, and you are vulnerable to supplier markups. Your negotiating power is not as formidable as the big chains. And how have the prices that you pay for food products changed since 2019?

Mr. VORA. Well, Senator, the prices obviously since the pandemic have increased for various reasons. But we are seeing this happen not just in 2019 and 2020, we are seeing it all the way up until today.

And for smaller operators like us, every time there is a price increase, it is not very logical from us from a consumer behavior standpoint to constantly raise our prices because our costs have gone up.

So we very rarely raise prices even though our prices are raised way more frequently. And especially you would think it is in some segments of the supermarket, but it's actually all throughout. It is with dairy, produce, meats, shelf staple items. It is all across the board that we see price changes.

Senator REED. And is that a reflection of the situation that there are not competitors out there that are—you said are trapped into one or two sellers. And they are consistently hot pricing their products higher?

Mr. VORA. I think it is a function of us being—you know, the product from manufacturing all the way to retail, touching multiple people until it gets to us. We don't have a direct relationship with the General Mills of the world. If we are buying Pepsi or Coca-Cola, we are dealing with other small businesses who are not owners. They have their own margins.

So oftentimes, even within our circle of businesses and our network, whether you are a pizzeria, whether you are a small grocer, whether you are a deli, you can buy the exact same product on the same block. You may be subject to three different prices. That is just the pricing schemes that a lot of these manufacturers or distributors have. And that also puts a tremendous amount of pressure on us to be conscious of the prices that we are buying things at.

And that's just an additional responsibility to an already difficult segment for us. And as often people always say that small business is the backbone of this country, even though it is appreciated, we do need more resources to help us kind of support what we are trying to accomplish in each community.

Senator REED. Thank you very much. Thank you, Madam Chairman.



Chair WARREN. Thank you, Senator Reed. So I want to take a few minutes to focus on different ways that big food corporations use their size to take advantage of consumers. One is price gouging, which we have been talking about. Another is price fixing. Another is shrinkflation. Food companies quietly making the products just a little smaller but keeping the prices the same.

Gatorade bottles went from 32 ounces to 28 ounces. A bag of Doritos went from 9.75 ounces to 9.25 ounces. Consumers' purchases get smaller while corporate profits get bigger.

The problem has gotten so bad that France will soon require stores to put shrinkflation warning labels on products made smaller if they don't have a corresponding price cut.

Now Mr. Vora, you own and operate a neighborhood grocery store, how has shrinkflation affected your business?

Mr. VORA. It has taken a—I think it hurts the credibility of small businesses as the front line of what consumers see and who they interact with. We hear from them directly. And it is a surprise for them every time they come in to shop. You know, usually you would think that going to a place full of food and beverages is a pleasant and enjoyable experience. But now people have to have their head on a swivel. Not just consumers, but also small business because there is oftentimes, we are not aware of it. The package size has changed without our notice. There is no bulletin board or email or general place for us to be able to receive this information. And that creates even more of a frustrating experience for consumers.

Chair WARREN. All right. And so that is part of the problem. You see the shrinkflation. How about whether or not manufacturers, people who are supplying the Dorito chips and everything else, do they treat smaller stores like yours differently from how they treat the big stores?

Mr. VORA. Yes, Senator, I believe they do strictly based on the pricing structure. If you look at some of the larger big box retailers and what they sell their products for, whether it is a Costco or a Sam's Club or whatever, they are paying—you know, consumers that shop there are paying almost the same, if not sometimes less, than the prices that we pay to get that exact same item at the wholesale level.

There is certainly something that could be done to have a better streamlined communication with small businesses allowing us to have direct access to the products at a more affordable rate. It is really eliminating that retail grocer, and I don't think that is a place that we need to be. It is going to impact a lot of communities.

Chair WARREN. So concentration in the food industry is creating more concentration in the food industry. That is this handful of manufacturers that deliver—when they price discriminate, they make it harder to create more competition in the food chain.

That kind of price discrimination obviously hurts small businesses. It also hurts consumers, who then end up traveling further to get their groceries because the manufacturers and distributors won't give a fair price to the local grocery stores. And who benefits? Once again, it is the biggest grocery stores and food companies because this lets them smother competition from stores like you.

This is the reason—I particularly wanted to focus on this because it is why I am glad that the FTC is investigating potential violations of the Robinson-Patman Act which prohibits unjustified price discrimination in these circumstances.

So it looks like we have got a whole bunch of things that are helping drive up the cost of food. We have got shrinkflation, price discrimination, price fixing. And these just scratch the surface of bad corporate behavior here. We haven't even talked about the junk fees that companies like DoorDash and UberEats add onto deliveries, sometimes doubling or even tripling order prices without explanation.

We haven't talked about surge pricing tools that fast food chains like Wendy's threaten to use as a new way to squeeze every last dollar out of American's wallets.

Big corporations are looking for every chance to take advantage of consumers, motive, means, and opportunity that they have at this moment in time. And all of those efforts add up to higher prices for consumers.

Now the Biden administration has been pushing back. We have heard from Mr. Maxwell talking about how suits brought against Big Ag is at least giving some hope that you may break up some of this behavior and give farmers like you an opportunity and consumers an opportunity to do better here.

The FTC is working hard to block mergers, so we don't see increased competition. The Biden administration has gone after junk fees. So we are getting a lot of action out of the Administration.

I would argue it is also time for Congress to step up. I have introduced the Price Gouging Prevention Act, which would ban grossly excessive price increases. I have partnered with Senator Casey on the Shrinkflation Prevention Act, which would give the FTC and the States the tools to stop shrinkflation.

So let me ask you, Dr. Owens, would passing Senator Casey's and my bills make a big difference in lowering prices for families?

Ms. OWENS. Yes, I think these are both great options. Senator Casey's bill, to make sure that shrinkflation is classified as the deceptive practice it surely is. I think it would give consumers a lot of relief.

Look, you know, you shouldn't sort of have to haul your recycling with you to the grocery store to make sure you are getting the same sized product that you got last week.

But I think your price gouging legislation is important because it is more broad-based. And so not only can it take on excessive price hikes in the grocery sector, it can also reach further up the food chain, things like energy prices, that are filtering through to food prices. And so I think, you know, broad-based price gouging legislation, really tackling excessive prices throughout the food chain in addition to the grocery sector is a critical next step.

Chair WARREN. All right. Thank you very much. I appreciate all of you being here today. I think it is clear that we have some major corporations in America that are pretty openly taking advantage of American consumers. And, in fact, they are pretty much saying so openly on their earnings calls when they talk to their investors.

I appreciate that the Biden administration is using all of the tools available to it to be able to push back and bring down grocery

prices. And I think it is time for Congress to step up and do our part.

With that, I thank you all for being here, and this hearing is adjourned.

[Whereupon, at 3:54 p.m., the hearing was adjourned.]

[Prepared statements and responses to written questions supplied for the record follow:]

**PREPARED STATEMENT OF LINDSAY OWENS**  
EXECUTIVE DIRECTOR, GROUNDWORK COLLABORATIVE

MAY 22, 2024

**Causes of Grocery Price Increases**

Chair Warren, Ranking Member Kennedy, Members of the Committee, thank you for inviting me to testify today. My name is Lindsay Owens, and I'm the Executive Director of the Groundwork Collaborative, an economic policy think tank based in Washington, DC. I am grateful to the Committee for holding this hearing about how price gouging and consolidation are raising food prices.

By a large margin, when Americans are asked which factors they look at to decide how the national economy is doing, the price of groceries rises to the top.<sup>1</sup> The widespread concern about grocery prices reflects two basic facts. First, nearly every household—from the lowest income to the highest—regularly buys groceries. Second, grocery prices have risen faster than the rate of inflation since the onset of the COVID-19 pandemic. While prices overall have risen by 19 percent in the last 3 years, families are now paying 25 percent more for groceries than they were before the pandemic.<sup>2</sup>

There are a number of factors that have contributed to high food and grocery prices in recent years. Climate change, international conflicts, and disease in plants and animals, have all led to product shortages that have translated to higher food costs.<sup>3</sup> Rising energy costs have also filtered through to higher food prices. But another factor that is driving up the price Americans are paying for groceries is industry consolidation and resultant profiteering.<sup>4</sup> This profiteering is being facilitated by a confluence of three factors.

First, the food and grocery sectors have become more concentrated.<sup>5</sup> Over the last 25 years, grocery industry consolidation has resulted in a 30 percent decline in the number of grocery stores in the United States.<sup>6</sup> Four grocery retailers account for over a third of national grocery sales and Walmart, America's largest grocer, now single handedly captures nearly a quarter of all grocery dollars.<sup>7</sup> Further, just four food companies control more than 60 percent of sales in most grocery categories.<sup>8</sup>

Consolidation grants the remaining corporate giants the freedom to hike prices without fear of being undercut by the competition and evidence from data analytics firms, academic research, and the Federal Trade Commission shows concentration in the grocery sector has inflated prices considerably. In rural areas where fewer grocery stores mean less competition, grocery inflation is running 2 percent ahead of grocery inflation in large cities. Lower-income neighborhoods, where grocers are more reluctant to locate, also see higher grocery price inflation. Prices also increase more after grocery mergers in less competitive markets than in more competitive ones.

Second, grocers and producers are using new technologies to facilitate price hikes. Pricing used to be a process where companies made some rudimentary queries about their competitors and balanced what made them a profit against what could attract customers. Then they stuck that price on a sticker and let it be. Today it's a highly engineered science. Technological innovations such as cloud computing, artificial intelligence, and surveillance targeting have enabled companies to collect reams of data on their competitors and their customers. They can use this data to facilitate collusion and price fixing or simply to accelerate their ability to hike prices and maximize profits.

Companies like Agri Stats collect troves of proprietary data from the highly concentrated meatpacking sector and use it to help the Big Four meatpackers drive down wages for their workers and the price they pay ranchers, while driving up meatpacking profits by advising packers on when to raise prices and by how much. The result is higher meat and poultry prices for consumers.<sup>9</sup> Additionally, a cottage industry of pricing data service providers like Datasembly, Revionics, and DemandTec are using big data collection, predictive technologies, and artificial intel-

<sup>1</sup> <https://groundworkcollaborative.org/work/whats-driving-the-rise-in-grocery-prices-and-what-the-government-can-do-about-it/>

<sup>2</sup> <https://fred.stlouisfed.org/graph/?g=1eTFq>

<sup>3</sup> <https://www.gao.gov/products/gao-23-105846>

<sup>4</sup> <https://www.ftc.gov/system/files/ftc-gov/pdf/p162318supplychainreport2024.pdf>

<sup>5</sup> <https://papers.ssrn.com/sol3/papers.cfm?abstract-id=2612047>

<sup>6</sup> <https://newrepublic.com/article/179220/ftc-ruinous-albertsons-kroger-merger#>

<sup>7</sup> <https://chainstoreage.com/walmart-led-grocery-dollar-share-2023-followed#.text>

<sup>8</sup> <https://www.theguardian.com/environment/ng-interactive/2021/jul/14/food-monopoly-meals-profits-data-investigation>

<sup>9</sup> <https://www.foodandpower.net/latest/doj-agristats-suit-oct-23>

ligence to track prices on products down to the individual store level to help their food producer and retail clients get “faster, lasting implementation of price increases,” ferret out when they are inadvertently keeping prices “too low for too long,” “more quickly react” to competitors’ pricing, and ensure their price hikes “stick.”<sup>10</sup>

And finally, market power and technological advances have come together in the shadow of the pandemic, when inflation gave companies the cover they needed to start rolling out mercenary pricing strategies they’d previously only dreamed of implementing. Any concerns CEOs may have had over damaging reputations and losing market share by executing their most egregious pricing tactics evaporated.

A recent report by the Federal Trade Commission illustrates this point, finding that “some firms seem to have used rising costs as an opportunity to further hike prices to increase their profits, and profits remain elevated even as supply chain pressures have eased.”<sup>11</sup> They also found that “larger retailers and wholesalers with considerable leverage over their suppliers were able to take more aggressive action to protect themselves than were their smaller rivals.” As a result, a recent study from the Council of Economic Advisers found that grocery profit margins since the pandemic have reached their highest level in two decades.<sup>12</sup>

My own organization’s research, which looks at the statements corporate executives make on earnings calls with their investors, has similarly found companies hiding behind the cover of inflation to overcharge customers. Andy Callahan, the President and CEO of snackfood company Hostess Brands boasted about the company’s “proven pricing power” and “best-in-class margin structure” before conceding that “customers haven’t fully recognized they were absorb[ing] pricing” and that “when all prices go up, it helps.”<sup>13</sup>

### Examples of Pricing Tactics

Because of these changes, what used to be a fairly uneventful weekly trip to the grocery is now rife with tricks, traps, and outright landmines. Consider a few recent examples:

- *Rigged scales.* Walmart, America’s largest grocer, recently settled a class action lawsuit alleging they have rigged their produce scales, inflating product weights for pork, seafood, and citrus, to “deceivingly, misleadingly, and unjustly pilfer, to Walmart’s financial benefits, its customers’ hard-earned grocery dollars.”<sup>14</sup> Millions of Americans are potentially impacted by profiteering at Walmart, which captures more than 50 percent of grocery dollars in hundreds of markets and more than 70 percent in dozens of those.<sup>15</sup>
- *Shrinkflation.* Shrinkflation, or paying more for less, is another common trap customers run into at the grocery store. Unless you closely monitor changes in the price per ounce of many goods (or bring your recycling with you to the grocery store), you may increasingly find yourself bringing home items from chips, to orange juice, to toilet paper that are smaller than the ones you picked up on your last trip. Just last month, corporate executives from the international snack food conglomerate, Mondelez, announced on their quarterly investor call that they’d be shrinking multipacks of their popular Cliff bars from 6 to 5 and 12 to 10 bars, in addition to implementing further price hikes on other snack staples.<sup>16</sup> According to a recent report from my organization, shrinkflation accounts for up to 10 percent of inflation in key product categories.<sup>17</sup>
- *Skimpflation.* Skimpflation, shrinkflation’s more deceptive cousin, is another common grocery trap where companies swap out higher quality ingredients for lower quality, cheaper ones. Food giant Conagra has been caught swapping out oil for water in their popular Wish-bone Italian salad dressing as well as in their Smart Balance margarines. Blue Bunny ice cream was recently found to

<sup>10</sup> <https://datasembly.com/wp-content/uploads/2022/04/Taking-Price-CPGRetailerInfographic.pdf>; <https://datasembly.com/case-studies/real-time-competitive-data-for-the-win/>; <https://datasembly.com/wp-content/uploads/2022/04/Datasembly-Infographic-Aug2021.pdf>

<sup>11</sup> <https://www.ftc.gov/system/files/ftc-gov/pdf/p162318supplychainreport2024.pdf>

<sup>12</sup> <https://www.nytimes.com/2024/02/01/us/politics/biden-food-prices.html>

<sup>13</sup> <https://endcorporateprofiteering.org/latest-research/ehttps://www.fool.com/earnings/call-transcripts/2022/03/02/hostess-brands-inc-twnk-q4-2021-earnings-call-trans/?source=iedfbrf0000001>

<sup>14</sup> <https://www.washingtonpost.com/business/2024/04/08/walmart-settlement-meat-seafood-do-you-qualify/>

<sup>15</sup> <https://ilsr.org/articles/walmarts-monopolization-of-local-grocery-markets/>

<sup>16</sup> <https://seekingalpha.com/article/4687816-mondelez-international-inc-mdlz-q1-2024-earnings-call-transcript>

<sup>17</sup> <https://groundworkcollaborative.org/work/big-profits-in-small-packages/>

have substituted whey and coconut oil for milk and cream.<sup>18</sup> Alan Cole, a former senior economist for Senator Mike Lee on the Joint Economic Committee has argued Government inflation statistics may be masking total inflation because skimpflation is so pervasive and difficult to observe or measure.<sup>19</sup>

Instead of coping to cost-cutting, companies pass off these decisions as health conscious or even environmentally friendly. Shake 'N Bake stopped providing plastic bags for shaking and claimed to be reducing plastic consumption while General Mills shrunk their family size cereal boxes and said they were doing it to fit more cereal boxes on each truck to reduce greenhouse gas emissions.<sup>20</sup>

- *Dynamic pricing, artificial intelligence, and surveillance technologies.* Supermarkets and other retailers are increasingly turning to data analytics, the “art and science behind pricing decisions,” allowing merchants to rapidly change prices daily. More and more companies like grocery giant Albertsons are using artificial intelligence to target “price optimization” to maximize profits and hike prices sooner, higher, and for longer.<sup>21</sup> Consulting firms like the Boston Consulting Group have reported on the use of “advanced geoanalytics” to help retailers determine what they can get away with charging at each store location; artificial intelligence to help retailers maximize what they can charge for store-brands while still peeling customers away from name brands; and, surveillance technologies to help stores track the prices of key competitors.<sup>22</sup> The ability to collect large amounts of data from competitors across a sector is also facilitating price fixing, as the Agri Stats case reveals.

Digital price tags are becoming commonplace on shelves at stores like Kroger, allowing grocers to raise prices more frequently. These changes pave the way for surge pricing models like those used by ride sharing companies. While surge pricing may be a nuisance when you are trying to leave a crowded sporting event, it's another matter entirely when shopping for necessities.

- *Personalized pricing.* Since the pandemic, more Americans are shopping for groceries online where companies use dark patterns and vast troves of data, including your personal browsing and purchasing history, to determine the maximum price you are willing to pay for an item. Some grocers are now making a sizable share of their profits from selling grocery shoppers' data rather than selling groceries. According to a forthcoming investigation in *The American Prospect*, Kroger and Albertsons both have in-house retail media agencies that work with advertisers to sell your purchase history to the highest bidder. These rich databases are very lucrative for the grocers, and the companies purchasing this data aren't just interested in selling you groceries, but have an interest in what you will purchase from your home, on your phone, and online. Some analysts speculate that the combined data offerings of Kroger and Albertsons are the primary business case for their pending merger. Walmart just acquired smart TV maker Vizio (which news outlet Axios referred to as a “media company masquerading as a manufacturer”) to sell ads for groceries to viewers using their streaming service.
- *Collusion.* Last month, the Federal Trade Commission found that Scott Sheffield, the former President and CEO of the large fracking company Pioneer Natural Resources, was colluding with foreign Governments in OPEC to drive up the costs of crude oil.<sup>23</sup> According to the complaint, “Mr. Sheffield’s communications were designed to pad Pioneer’s bottom line—as well as those of oil companies in OPEC and OPEC+ member States—at the expense of U.S. households and businesses.” The complaint also identified that “increases in crude oil prices are passed on to Americans through higher gasoline, diesel, heating oil, and jet fuel prices.”

Fuel costs are unsurprisingly a significant factor in the price of food. Oil is one of the primary inputs for tractors and farm equipment and higher oil costs means more expensive transportation costs for food to markets, which typically travel by land. All of these factors can raise the price of food for producers and

<sup>18</sup> <https://www.npr.org/sections/money/2021/10/26/1048892388/meet-skimpflation-a-real-inflation-is-worse-than-the-government-says-it-is>

<sup>19</sup> <https://www.mouseprint.org/2023/08/21/conagra-skimps-again-wish-bone-salad-dressing-watered-down/>

<sup>20</sup> <https://www.mouseprint.org>

<sup>21</sup> <https://dlabs.ai/blog/how-ai-helps-retailers-with-price-optimization/#:text=>

<sup>22</sup> <https://www.bcg.com/publications/2024/overcoming-retail-complexity-with-ai-powered-pricing>

<sup>23</sup> <https://www.ftc.gov/news-events/news/press-releases/2024/05/ftc-order-bans-former-pioneer-ceo-exxon-board-seat-exxon-pioneer-deal>

consumers. Furthermore, natural gas is a major component in the production of fertilizer and the manufacturing of pesticides is highly energy intensive and sometimes uses petroleum as an ingredient. Therefore, when energy costs are up, food costs are too. While it would be too far to single out Pioneer for the entirety of rising energy costs, this case shows how collusion throughout the fuel economy beyond geopolitical shocks can raise prices for consumers.

### Common Misconceptions

When faced with evidence that profiteering is exacerbating inflation, some academics and onlookers rush to the defense of corporate boardrooms. Media coverage of a recent report from the Federal Reserve Bank of San Francisco overstated the study's claims to suggest that price gouging wasn't a factor for consumers.<sup>24</sup> Instead, the study simply shows that increases in markups in some industries are balanced by decreases in others. A recent study from the Council of Economic Advisers, which used a nearly identical methodology, found that grocery profit margins since the pandemic were at their highest level in two decades.<sup>25</sup> If you need to buy groceries for your family, it is cold comfort to know that researchers think the price hikes you are forced to eat in the grocery sector are being balanced out, on average, by better deals on goods you don't purchase at all.<sup>26</sup>

Critics also try to dismiss attention to corporate profiteering by noting that it cannot explain all of the burst of inflation since the COVID-19 pandemic began. But experts have not argued that corporate profiteering explains all of the food price increases. Pandemic-related supply chain disruptions, weather conditions, and disease have played a substantial role in food price increases in recent years. But so too has grocery consolidation and companies profiting off of economywide confusion to raise their prices beyond what was necessary from market fundamentals, pocketing the extra margin. Techniques like skimp- and shrinkflation, as well as new algorithmic and personalized pricing, make it even harder for consumers to gauge when they're being overcharged. Now, supply chains are effectively restored, but prices have stayed locked at levels that were only justifiable under conditions of a global health crisis. Companies that were quick to pass along their rising costs to consumers have been slower to pass along their savings.

Some defenders of monopolies claim that larger firms enjoy unparalleled economies of scale to reduce their cost-per-unit. But the problem is not that it is too costly for firms to produce what they sell, it is that firms are raising prices dramatically beyond what it does cost to produce units and take home a sensible margin. This is only possible in uncompetitive and underregulated markets where there is no meaningful check on a dominant firm. More competition, not less, would reintroduce that check.

### Policy Recommendations

The Biden-Harris administration has taken a number of steps to bring down food prices and curb profiteering in the food and grocery sector including challenging the Kroger Albertsons merger, suing Agri Stats, launching a Strike Force to combat unfair and illegal pricing, and shoring up supply chains.<sup>27</sup> The Administration has also helped families afford rising food costs by expanding nutrition assistance (SNAP) to keep up with and even outpace rising food costs and provided funds to State governments to support local producers.<sup>28</sup>

Still, there is more this Administration can do to help ensure the grocery and food sectors are competitive including cracking down on exclusionary pay-for-play contracts like slotting fees that prevent new brands from accessing shelf space; enforcing the Robinson-Patman Act to ensure large firms aren't getting special deals; and, continuing to partner with USDA and DOJ to ensure that agricultural and grocery markets are competitive.<sup>29</sup>

But Congress has a role to play as well. Congress should take up new legislation from Senator Casey, the Shrinkflation Prevention Act, to prohibit shrinkflation by

<sup>24</sup> <https://www.cnn.com/2024/05/15/business/inflation-biden-rate-fed/index.html#:text=>

<sup>25</sup> <https://www.nytimes.com/2024/02/01/us/politics/biden-food-prices.html>

<sup>26</sup> <https://www.frbsf.org/research-and-insights/publications/economic-letter/2024/05/are-markups-driving-ups-and-downs-of-inflation/>

<sup>27</sup> <https://time.com/6977026/democrats-biden-executive-authority-grocery-prices/> & <https://www.justice.gov/opa/pr/four-states-join-justice-departments-suit-against-agri-stats-organizing-and-managing> & <https://www.whitehouse.gov/briefing-room/statements-releases/2024/03/05/fact-sheet-president-biden-announces-new-actions-to-lower-costs-for-americans-by-fighting-corporate-rip-offs/#:text=>

<sup>28</sup> <https://groundworkcollaborative.org/work/whats-driving-the-rise-in-grocery-prices-and-what-the-government-can-do-about-it/>

<sup>29</sup> <https://prospect.org/economy/big-business-games-the-supply-chain/>

ensuring it is considered a deceptive practice under the FTC Act. Congress should also take up Senator Klobuchar's legislation, the Preventing Algorithmic Collusion Act, which would codify that price fixing via algorithm is illegal, as the Federal Trade Commission has already stipulated, and would be a welcome step in preventing abuses by firms like Agri Stats.

Finally, Congress should take up broad based anti-price gouging legislation, like Senator Warren's Price Gouging Prevention Act of 2024, to ensure that firms are not profiting off of crises with excessive price hikes. This legislation would not only combat price gouging in the grocery sector but also address price gouging upstream that raises food prices, as we've seen in the energy sector.

High food costs are taking a toll on Americans, particularly low-income ones. Food is a necessity, not a luxury, and when grocery profiteering and price gouging are spiking food prices, Congress must act. American families can't afford to wait and see if the Chair of the Federal Reserve manages to bring down prices: Dinner needs to be on the table tonight.



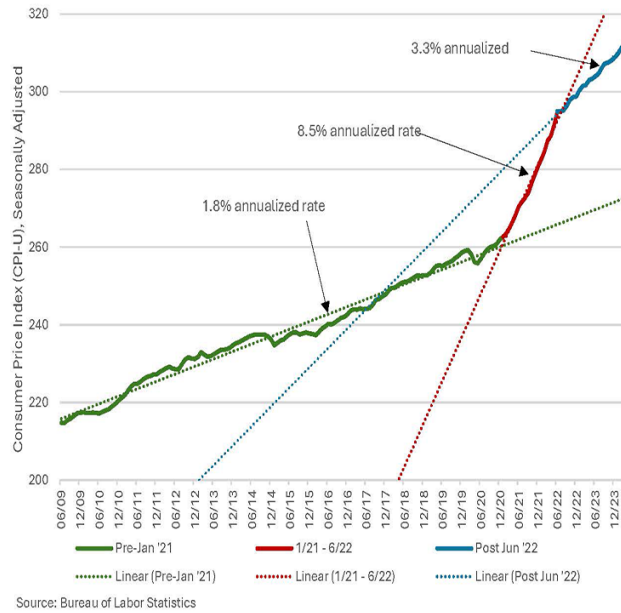
**PREPARED STATEMENT OF E.J. ANTONI**  
**PUBLIC FINANCE ECONOMIST, THE HERITAGE FOUNDATION**  
**MAY 22, 2024**

Chair Warren, Ranking Member Kennedy, members of the subcommittee: thank you for the invitation to discuss with you today food price inflation and the impact of public policy on American consumers, along with allegations surrounding corporate price gouging and consolidation. I am a public finance economist and the Richard F. Aster fellow at the Heritage Foundation, where I research fiscal and monetary policy with a particular focus on the Federal Reserve. I am also a senior fellow at the Committee to Unleash Prosperity.

**Inflation and Food Prices Faced by the American Consumer**

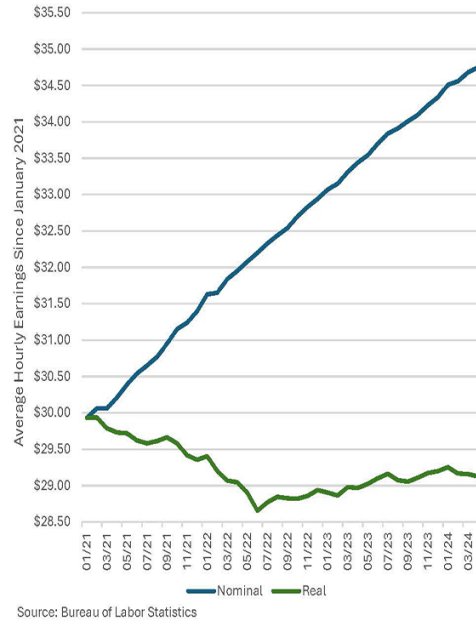
Since January 2021, American families have faced sharp increases in prices, especially for necessities like food. The consumer price index (CPI) published by the Bureau of Labor Statistics (BLS) has risen a cumulative 19.3 percent through April 2024 on a seasonally adjusted basis. That is an annualized rate of 5.6 percent, at which pace prices will double in less than 13 years. This is in stark contrast to the rate of increase in the CPI before January 2021. From the start of the previous economic expansion through December 2020, the CPI rose at an annualized rate of 1.8 percent, below the Federal Reserve's 2.0 percent target (figure 1). After January 2021, however, the CPI began increasing significantly faster and from that time through June 2022 rose at an annualized rate of 8.5 percent, more than 4.7 times the previous rate of increase. Since June 2022, the index has risen an annualized 3.3 percent, almost twice the rate before January 2021.

Figure 1



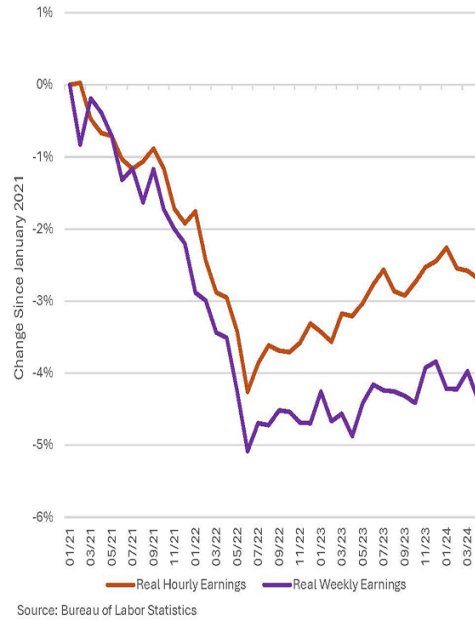
Over this same period, the average American worker's wage gains have increased less than consumer prices. Hourly earnings from January 2021 through April 2024 increased \$4.82 on average, or 16.1 percent (figure 2). In real (inflation-adjusted) terms, average hourly earnings have declined \$0.80, or 2.7 percent. That is a difference of \$5.52 between the change in nominal and real average wages. Since prices have risen significantly faster than wages, the average worker's hourly compensation can buy less today than in January 2021.

Figure 2



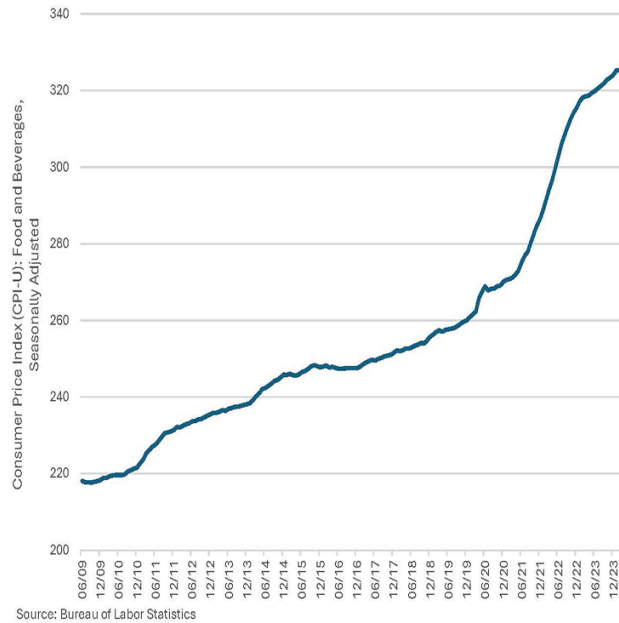
The decline in average real earnings has been worse than the decline in hourly wages, however, as businesses reduce hours and as the economy has lost full-time jobs, replacing them with part-time work. Consequently, the average workweek has fallen, and real average weekly earnings are down more than real average hourly earnings. The average American's weekly paycheck in April 2024 was \$147.37 higher than in January 2021, a 14.1 percent increase. In real terms, however, that same paycheck is \$45.53 smaller, a decline of 4.4 percent (figure 3). For the typical American family with two parents working, that is a decrease of \$4,588.28 in annual purchasing power.

Figure 3



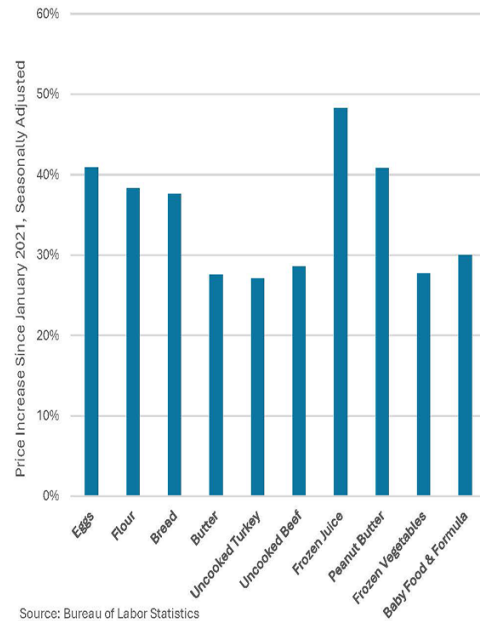
Food prices have risen even faster than the overall CPI since January 2021. From that month through April 2024, the average price of food and beverages has increased 20.4 percent (figure X). This is an average, however, and it should be noted that many consumer staples have increased in price significantly faster than 20.4 percent (figure 4). This is partly due to a substitution effect that is observed during periods of high inflation, such as American consumers have experienced since January 2021. In response to prices rising faster than wages, consumers change their buying habits, opting for relatively less expensive options. That represents a shift in demand towards those items which were disproportionately purchased by lower-income families previously. The increase in demand creates further upward pressure on prices, beyond the increase from inflation.

Figure 4



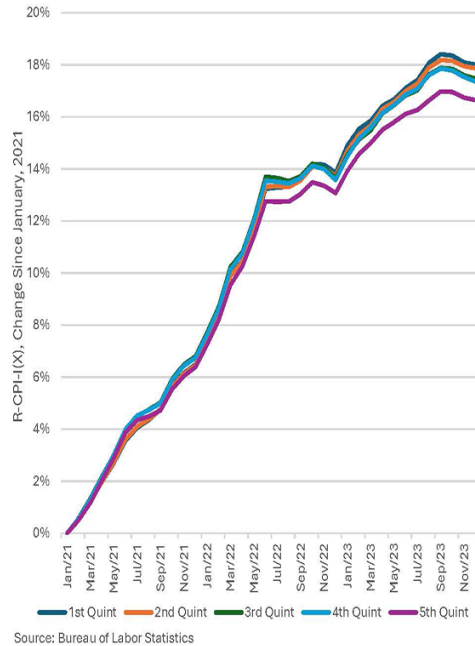
An example of this phenomenon is when consumers shift their buying habits from choice cuts of beef to eggs. Imagine a middle-class or a high-income family which previously purchased filet mignon occasionally. As food price inflation outpaces earnings growth, those families reduce the frequency at which they purchase this cut of beef and increase the frequency at which they purchase relatively less expensive meat, like ground beef. As this shift in demand puts additional upward pressure on the price of ground beef, consumers again shift to less expensive sources of protein, like eggs. Once again, an increase in demand causes prices to rise. The impact of these higher prices is felt most acutely by lower-income families for two reasons. First, a disproportionately large share of their budgets went to purchasing eggs. Second, they tend to have the least savings, and therefore margin, in their budgets with which to increase consumption spending. This substitution effect, in addition to the income effect of inflation, helps explain why prices of foods like eggs and peanut butter, traditionally inexpensive sources of protein, have risen over 40 percent since January 2021 (Figure 5). That is about twice the overall rate of food price inflation during that time.

Figure 5



In addition to the CPI, the BLS provides price indexes representative of the baskets of goods and services purchased by people according to income quintile. From January 2021 through the end of 2023, the price index for the lowest income quintile has risen 18.0 percent (figure 6). As income quintile increases, the rate of inflation slows. The highest income quintile's price index is up 16.6 percent over that same time. The substitution effect described above has contributed to this disparity in the rate of price increases and demonstrates how inflation tends to fall most heavily on those least able to pay for it.

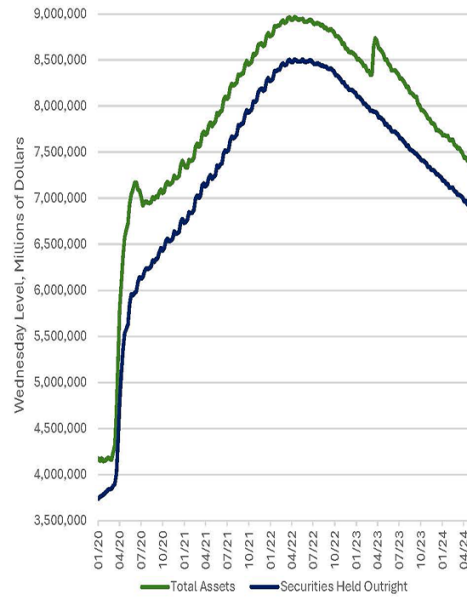
Figure 6



#### Causes of Food Price Inflation

Over the last four years, the federal government has run unprecedented budget deficits, resulting in equally unprecedented Treasury net debt issuances and an increase in the federal debt of \$6.9 trillion since the end of 2020, and even more since the end of 2019. These debt issuances have largely been financed by the Federal Reserve's purchase of almost \$5 trillion of Treasury securities since the start of 2020, along with manipulations of interest rates and capital markets to steer liquidity away from the private sector and towards the public sector (figure 7). Since purchases by the Federal Reserve are made from the right to issue fiat currency, they inherently increase the supply of money. Since the real economy has grown much slower than the money supply over the last several years, the value of the federal reserve note relative to goods and services has declined. This phenomenon is often referred to as "too much money chasing too few goods" and it is observed as an increase in the general level of prices.

Figure 7

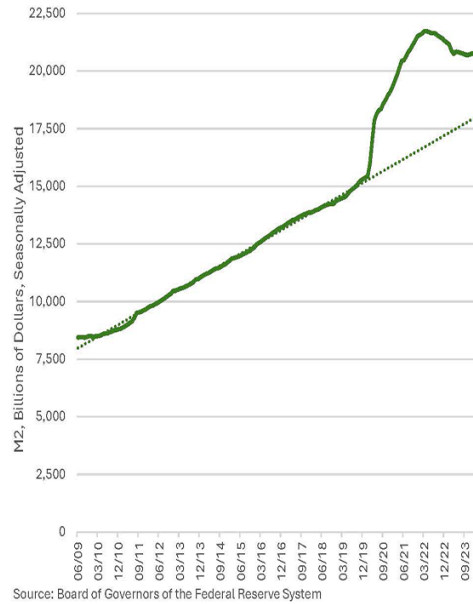


Source: Board of Governors of the Federal Reserve System

The quantity of money referred to as M2 grew over \$6 trillion from early 2020 to the middle of 2022 (figure 8). After about a year of declines, M2 then remained relatively steady and has now begun growing again. It remains about \$3 trillion above its pre-pandemic trend and is only down 3.9 percent from its peak as of March 2024, the latest data available at the time of this writing.

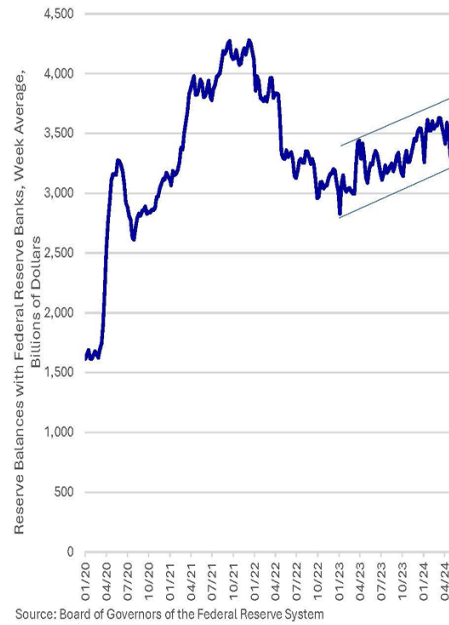


Figure 8



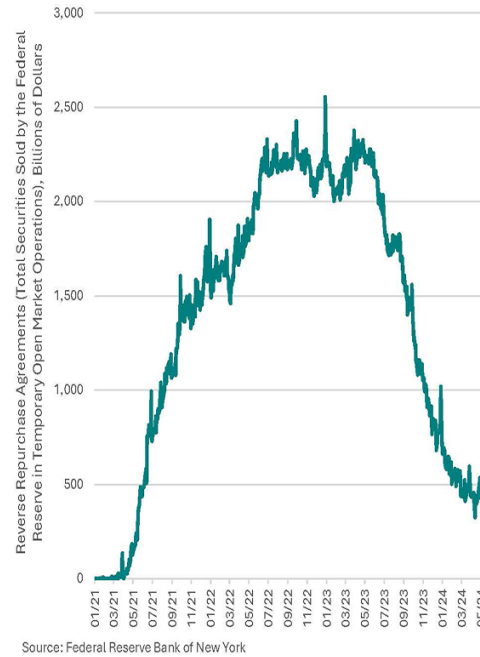
Similarly, bank reserves reached a trough at the beginning of 2023 and have trended up since then, rising 19.1 percent as of May 15, 2024 (figure 9). As this portion of the monetary base increases, loans to individuals, businesses, and the Treasury can increase, and each loan expands the total money supply. Thus, despite the Federal Reserve's reduction in its balance sheet, as seen in figure 7, the increase in bank reserves has continued to expand the money supply and maintain an inflationary impulse in the economy.

Figure 9



This is largely the result of continued net debt issuance by the Treasury which is expected to increase to nearly \$900 billion in the third quarter of this year. As financial institutions cease lending to the Federal Reserve's reverse repurchase agreement (RRP) facility and instead lend to the Treasury, money is moving out of sterilization and is working its way through the banking system. Whereas the money in the RRP facility cannot be used as the basis for loans and therefore can enlarge the money supply, any money lent to the Treasury is spent and therefore can enlarge the money supply upon reentry into the banking system. Beginning in 2021, the RRP facility absorbed excess liquidity that had been created by the Federal Reserve from its purchase of Treasury securities (figure 10). That reduced the initial inflationary impact from government deficit spending in 2021 and 2022 but only by delaying that inflation. As the RRP facility drains, the economy is finally feeling the effects of the government deficit spending that began in 2021.

Figure 10

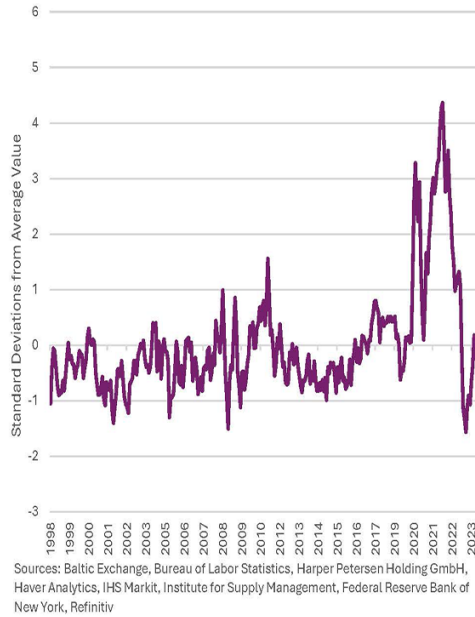


The monetary phenomenon of inflation has not been the only source of price increases for food over the last several years. Government regulation, which has increased the price of food industry inputs, shares some responsibility as well. Regulations in the energy sector have been particularly harmful because of the wide variety of inputs which are created from natural gas, including synthetic fertilizers.

#### Incorrect Attributions for Food Price Inflation

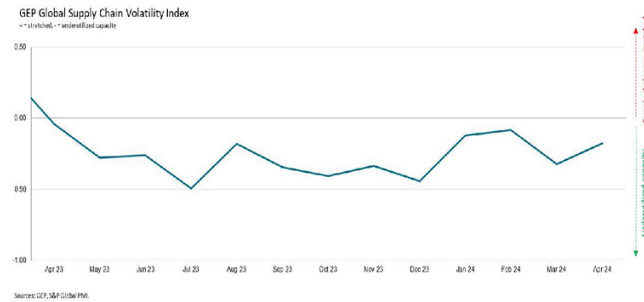
Global and domestic supply chains experienced severe disruptions in 2020 due to government responses to the Covid-19 pandemic. That in turn caused certain prices to rise temporarily. As supply chain problems were resolved, however, those upward pressures on prices were removed. The global supply chain pressure index (GSCPI) shows a significant increase in 2020 followed by a return to average conditions by October 2020 (figure 11). The GSCPI then rose for most of 2021 but by February 2023 had fallen to below average levels. With the exception of November 2023, the index has been negative from February 2023 through April 2024. This indicates pressures on the supply chain remain less than the historic average.

Figure 11



Similarly, the Global Supply Chain Volatility Index, published by S&P Global, shows that supply chains have had underutilized capacity for the last 12 months (figure 12). This underutilization reduces supply chain volatility as well as consumer prices.

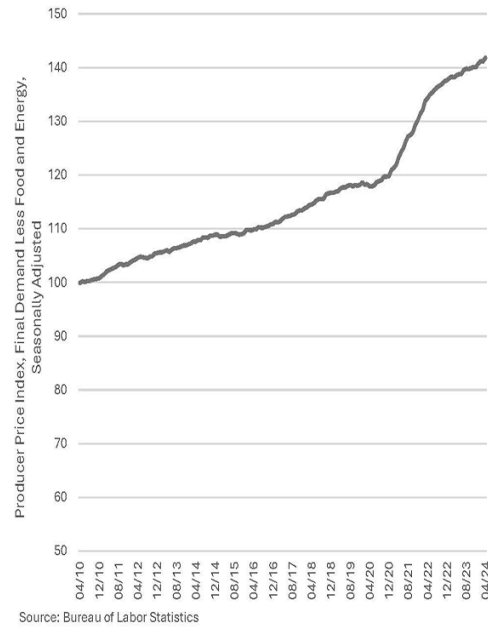
Figure 12



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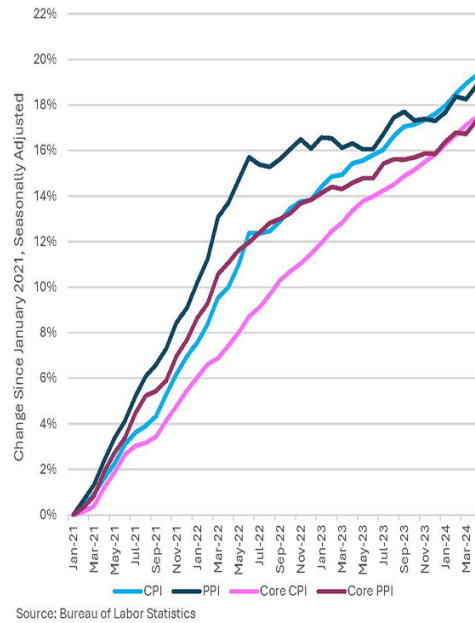
If supply chains had been the driving factor behind food price inflation, then their stabilization and normalization should have not merely reduced inflation, but reduced prices as well, first at the wholesale level and then to consumers. This has not happened. Instead, wholesale inflation data, as measured by the producer price index published by the BLS, show prices paid by businesses continue to rise, even excluding the volatile food and energy categories (figure 13).

Figure 13



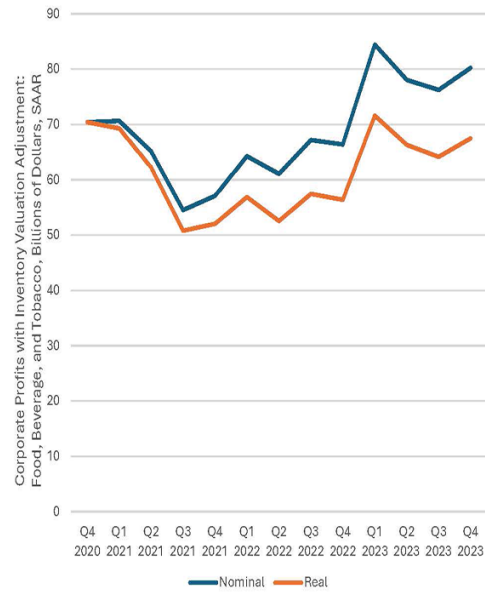
The comparison of consumer and wholesale price data raises another important point surrounding supposed causes of inflation. Since January 2021, both prices paid by consumers and prices paid by businesses have risen about 19 percent (figure 14). For nearly all that period, cumulative wholesale inflation was larger than cumulative consumer inflation. That means businesses were effectively shielding consumers from cost increases. It has only been within the last few months that the price increases paid by consumers have caught up to the price increases paid by businesses. The inflation, including the food price inflation, faced by American families is simply wholesale inflation being passed on to the consumer. In real terms, the lag between businesses paying higher prices and consumers paying higher prices has amounted to businesses shouldering 12 percent more of the burden of inflation since January 2021. Thus, the myth of “price gouging” is exposed as a mathematical impossibility.

Figure 14



Furthermore, the argument that corporate profits are driving inflation is equally fallacious. Corporate profits have increased compared to three and four years ago, but only in nominal terms. Adjusted for inflation, corporate profits have declined, not only broadly but in the food industry specifically. In the three years from the fourth quarter of 2020 through the fourth quarter of 2023, the most recent data available at the time of this writing, corporate profits within the industry rose 13.9 percent on average (figure 15). However, because inflation outpaced these nominal gains, those corporate profits declined in real terms over those three years by 4.2 percent. Once again, the empirical evidence fails to confirm the assertion that food price inflation is being driven by growth in corporate profit. Furthermore, the evidence clearly refutes this theory.

Figure 15



Sources: Bureau of Labor Statistics, Census Bureau

Corporate profits have increased in the same sense that the average American worker's weekly paycheck has increased: it has done so only in nominal terms. In reality, the hidden tax of inflation has transferred purchasing power from consumers and businesses alike to the government. Lastly, since the empirical data clearly show businesses are not the source of food price inflation, questions about consolidation within the industry become a moot point. The government is the only source of inflation because only the government controls the money supply. Similarly, it is the government which imposes regulation that further increases costs of production and consumption, including for food.



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**PREPARED STATEMENT OF NORBERT J. MICHEL**  
 VICE PRESIDENT AND DIRECTOR, CENTER FOR MONETARY AND FINANCIAL  
 ALTERNATIVES, CATO INSTITUTE  
 MAY 22, 2024



Testimony

Before the United States Senate Committee on Banking, Housing, and Urban Affairs,  
 Subcommittee on Economic Policy, Hearing on "Protecting Consumers' Pocketbooks: Lowering  
 Food Prices and Combatting Corporate Price Gouging and Consolidation."

Norbert J. Michel  
 Vice President and Director  
 Center for Monetary and Financial Alternatives, Cato Institute

May 22, 2024

**Introduction**

Chairman Warren, Ranking Member Kennedy, and Members of the Committee, thank you for the opportunity to testify at today's hearing. My name is Norbert Michel, and I am Vice President and Director for the Center for Monetary and Financial Alternatives at the Cato Institute. The views I express in this testimony are my own and should not be construed as representing any official position of the Cato Institute.

In the wake of the COVID-19 pandemic and the government shutdowns, the United States experienced the largest increase in inflation it had seen since the 1970s. Nearly all Americans, including both consumers and workers, have been harmed to some degree by this increase. The primary causes of this inflation spike were profligate fiscal and monetary policy, enacted before the economy had recovered from widespread supply disruptions from the pandemic and the government shutdowns. These policies left many American households with unusually high disposable income. For instance, per capita disposable personal income increased 13 percent from January 2021 through March 2021, far greater than the average first-quarter increase (0.43 percent) during the last decade.<sup>1</sup>

Given that this increase was largely due to deficit-financed federal spending, many people (correctly) feared higher inflation would soon result because of the classic "too many

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<sup>1</sup> This increase does not reflect an anomalous "snap back" from a massive income decline during COVID. The largest quarterly decrease in 2020 was 2.77 percent, and 2021 first quarter personal disposable per capita income (\$58,989) is 18.39 percent higher than 2020 first quarter personal disposable per capita income (\$49,825). Separately, reasonable estimates of how far from potential output the economy was during 2021 suggest that (at most) government spending of \$680 billion—far less than the \$1.9 trillion Congress enacted—would have been sufficient to boost aggregate demand back to its potential. Olivier Blanchard, "In Defense of Concerns Over The \$1.9 Trillion Relief Plan," Peterson Institute for International Economics, February 18, 2021, <https://www.piie.com/blogs/realtime-economics/defense-concerns-over-19-trillion-relief-plan>.

dollars chasing too few goods” phenomenon.<sup>2</sup> Unfortunately, that prediction came true. Yet, when inflation took off, many policymakers appeared surprised, and they blamed the increased price level on more sinister factors, such as corporate greed, price gouging, and industry consolidation.<sup>3</sup>

#### A Summary of U.S. Inflation Data

To help decipher between the possible explanations for the recent increase in inflation, the next section of this testimony provides a summary of what happened to inflation and food prices. It uses the Consumer Price Index (CPI) and its components, as reported by the Bureau of Labor Statistics (BLS).<sup>4</sup>

- As seen in Figure 1, using the CPI measures reported by the BLS, the overall rate of inflation and the rate of growth in food prices are highly correlated through time. They exhibit a correlation coefficient of 0.99 from 1947 to 2024 (the full post World War II era/the full BLS data series).
  - Yet, food prices are a component of the overall CPI, a common measure of inflation—they are not, themselves, synonymous with inflation.
- For the CPI, the average *monthly* change between 1947 and 2024 is 0.2901 percent, with a standard deviation of 0.34. For food prices, the average monthly change between 1947 and 2024 is 0.2897, with a standard deviation of 0.56.
  - Thus, food prices tend to be more volatile than the overall price level.
- Figure 1 also shows that the long-term trend for each series increased in 1973, and the trend was relatively smooth until 2020, when it increased above its previous trend.
  - The average monthly change for the sub-period 1973 to 2019 is slightly higher than for the full series. Between 1973 and 2019, the average monthly change for the CPI is 0.3213 percent, with a standard deviation of 0.34. For food prices, the average monthly change between 1973 and 2019 is 0.3201 percent, with a standard deviation of 0.46.
  - The average monthly change for the sub-period 1983 to 2019, a period which begins after the 1970s inflation spike, is slightly *lower* and *less* volatile than for

<sup>2</sup> Norbert Michel, “Inflation: A Brief Look Back, and A Path Forward,” Cato at Liberty, November 19, 2021, <https://www.cato.org/blog/inflation-brief-look-back-path-forward>. Also see Norbert Michel, “Many Consumer Prices Are Higher: Time to Eliminate Government Imposed Economic Roadblocks,” Heritage Foundation Backgrounder No. 3650, August 20, 2021, <https://www.heritage.org/sites/default/files/2021-08/BG3650.pdf>.

<sup>3</sup> Brian Albrecht, “Greed and Corporate Concentration Have Not Caused Inflation,” in *The War on Prices: How Popular Misconceptions About Inflation, Prices, and Value Create Bad Policy*, Edited by Ryan Bourne, Cato Institute, Washington, DC, 2024, pp. 41-51; and, David Beckworth, “Our Recent Inflation Wasn’t Wholly Driven by the COVID-19 Pandemic and the War in Ukraine,” in *The War on Prices: How Popular Misconceptions About Inflation, Prices, and Value Create Bad Policy*, Edited by Ryan Bourne, Cato Institute, Washington, DC, 2024, pp. 53-62.

<sup>4</sup> The CPI is used because it is the most reported measure, but the same conclusions in this testimony would be drawn had the analysis relied on other common measures of the price level, such as the Personal Consumption Expenditure (PCE) index, the core (the overall price level exclusive of food and energy prices) CPI, or the core PCE.

the full series. Between 1983 and 2019, the average monthly change for the CPI is 0.2198 percent, with a standard deviation of 0.25. For food prices, the average monthly change between 1983 and 2019 is 0.2203 percent, with a standard deviation of 0.24.

- Following the COVID-19 pandemic and the government shutdowns, the United States experienced an unusually large spike in inflation (following a three month decline in the price level), its first since the 1970s. As has been well-chronicled, this increase caused a great deal of economic pain for many Americans. This increase in inflation dates from June 2020 through June 2022.
  - Prior to the increase in the CPI, the index *declined* for several months—in March, April, and May of 2020, the monthly CPI declined.<sup>5</sup>
- From June 2020 through June 2022, the monthly change for the CPI is 0.57 percent, with a standard deviation of 0.29. For food prices, the average monthly change is 0.52 percent, with a standard deviation of 0.39.
- These month-to-month changes were above average, and they resulted in *annual* (year over year) inflation rates higher than anything seen in the United States since the 1970s. (See Figure 2.)
- These rates, while not the best gauge for the *current direction* of the price level (at any given point in time), reflect how difficult inflation has made the lives of many Americans.
  - Though it is often ignored, mechanically, the initial inflation spike during 2020 would have resulted in above-average annual inflation rates for an extended period *even if* the monthly rate of inflation had declined for many subsequent months.
    - For example, even if the price level had remained flat for almost one full year after the initial spike, the corresponding monthly changes would have remained above average because the initial spike was so high. If, for instance, the month-to-month rate remained 0.1 percent through August 2023, the year-to-year inflation rate would not have dropped below three percent until May 2023.<sup>6</sup>
- Between 1973 and 2019, the average *annual* inflation rate (12-month periods, calculated each month) for the CPI is 3.97 percent, with a standard deviation of 3.03. For

<sup>5</sup> Norbert Michel, "Inflation: A Brief Look Back, and A Path Forward," Cato at Liberty, November 19, 2021, <https://www.cato.org/blog/inflation-brief-look-back-path-forward>. Also see Norbert Michel, "Many Consumer Prices Are Higher: Time to Eliminate Government Imposed Economic Roadblocks," Heritage Foundation Backgrounder No. 3650, August 20, 2021, <https://www.heritage.org/sites/default/files/2021-08/BG3650.pdf>.

<sup>6</sup> Norbert Michel, "The Most Recent Inflation Trend Matters The Most," Forbes, September 26, 2022, <https://www.forbes.com/sites/norbertmichel/2022/09/26/the-most-recent-inflation-trend-matters-the-most/?sh=2a94a6f360d6>. Also see Jai Kedia, "Inflation Is Still Trending in the Right Direction," Cato at Liberty, March 15, 2024, <https://www.cato.org/blog/inflation-still-trending-right-direction>.

food prices, the average annual change between 1973 and 2019 is 3.989 percent, with a standard deviation of 3.45.<sup>7</sup>

- From June 2020 through May 2023, the average *annual* inflation rate for the CPI is 5.18 percent, with a standard deviation of 2.73. For food prices, the average annual change is 6.59 percent, with a standard deviation of 3.08.
  - From June 2023 to May 2024, however, the annual rates have declined—to 3.32 percent for the overall CPI, and to 3.34 percent for food prices. These annual rates are, in fact, below average for both the full post World War II period and the 1973 to 2019 period.
- Still, the month-to-month changes in the CPI portray a more accurate picture of how long inflation has been within a normal range.
  - Between July 2022 and April 2024, the average month-to-month change for the overall CPI is 0.27 percent, *below* the average for the full series (0.29 percent) and the 1973 to 2019 period (0.32 percent). The month-to-month change in food prices (0.34 percent) remains slightly above the average for the full series (0.29 percent) and is essentially the same as the average for the 1973 to 2019 period (0.32 percent).
  - When considering the typical variation in the month-to-month change in food prices, for either the full post World War II period or the post 1973 period, the month-to-month change in food prices between July 2022 and April 2024 is well within the range of food price increases Americans normally face.
- Thus, while Americans are still (rightly) upset about higher prices, they have, since the middle of 2022, been experiencing rates of inflation (and changes in food prices) that are no different than the changes they typically experienced between 1973 and 2019.
- Regardless, the worst of the initial spike occurred in the first quarter of 2021, and the spike subsided beginning in July 2022.
  - The BLS's most recent CPI release shows a change in food prices of zero for April 2024. For the preceding 6 months (March to October, in reverse chronological order), the rate of increase in food prices was 0.1, 0.0, 0.4, 0.2, 0.2, and 0.3, respectively.<sup>8</sup> Only the increase of 0.4 percent (in January) could be considered above normal. However, when considering the typical variation in the month-to-month change in food prices, even the January increase is within the typical range of food price increases that Americans have experienced during the post World War II era.<sup>9</sup>

### The Recent Controversy

<sup>7</sup> These calculations use the annual rates of changes reported each month. Using, instead, annual rates of inflation published at an annual frequency, the averages and standard deviations are essentially the same.

<sup>8</sup> U.S. Bureau of Labor Statistics, Consumer Price Index News Release, May 15, 2024, <https://www.bls.gov/news.release/cpi.htm>.

<sup>9</sup> The same observation holds even using the milder 1983 to 2019 subperiod.

Despite most of the inflation metrics being well within the normal range of monthly increases during the last several months, because the monthly changes were a bit higher than many economists expected, there has been a great deal of debate over whether inflation is truly heading in the right direction or is, at least, low enough. It remains true, though, that the recent changes in the overall CPI have been mainly driven by increases in one or two categories of goods, like the CPI changes throughout much of the post COVID-19 period. In fact, those categories of goods often varied within their normal ranges, and other statistical factors (such as lagged recognition of values) suggest that even those “higher than expected” increases were not problematic.<sup>10</sup> Nonetheless, the debate continues.

Increased industry concentration (a higher fraction of overall output being produced by a smaller number of firms) and corporate market power (firms’ ability to persistently charge prices above their marginal costs) are generally poor explanations for inflation. The inflation spike in the United States from June 2020 through June 2022 is no exception. First, it does not follow that any firm (or group of firms) will have increased market power when industry concentration increases. Moreover, industries tend to become more concentrated when an innovative firm captures a larger market share because it is more productive and able to charge lower prices.<sup>11</sup> Aside from whether such firms charge lower prices, this type of concentration is generally not a cause for concern because when such companies succeed, they spur other companies to enter the market, thus reducing future concentration and earning some of the profits available in the industry.<sup>12</sup>

Evidence also shows that industry concentration and market power have not been increasing in all markets and seem to have decreased at the local level in many markets. In general, national concentration levels appear to have been driven by large firms expanding into new local markets. Broadly, this phenomenon appears to have caused local concentration levels to fall as consumers in local markets gained more options.<sup>13</sup> Moreover, while concentration

<sup>10</sup> With lagged recognition, price increases in, for example, owners’ equivalent rent, show up in the CPI as much as five quarters after the actual increase occurred. Jai Kedia, “Inflation Is Still Trending in the Right Direction,” Cato at Liberty, March 15, 2024, <https://www.cato.org/blog/inflation-still-trending-right-direction>. Also see Norbert Michel, “September Inflation Figures Are No Cause For Alarm,” Forbes, October 17, 2022, <https://www.forbes.com/sites/norbertmichel/2022/10/17/september-inflation-figures-are-no-cause-for-alarm/?sh=75d453c96774>.

<sup>11</sup> Evidence and experience support these broad trends. Jeffrey Miron and Pedro Aldighieri, “The Biden Executive Order and Market Power,” Cato Briefing Paper No. 126, August 24, 2021, <https://www.cato.org/briefing-paper/biden-executive-order-market-power>.

<sup>12</sup> Naturally, companies cannot charge arbitrarily high prices. They are constrained by what consumers are willing and able to pay. Holding all other factors constant, consumers will purchase fewer goods at higher prices, a dynamic that dictates what price firms can charge to cover their costs and earn profits.

<sup>13</sup> Ryan Bourne, “Monopoly and Monopsony in the U.S. Economy – Is Big Business Too Powerful? (Part 2),” Cato at Liberty, April 12, 2022, <https://www.cato.org/blog/monopoly-monopsony-us-economy-big-business-too-powerful-part-2>.

levels tend to be correlated with productivity and output growth, they tend to be uncorrelated with price changes and wage payouts.<sup>14</sup>

As my colleague Ryan Bourne has described, even under the best of circumstances, national concentration measures do a poor job of explaining market power.<sup>15</sup> Regardless, the price increases of individual (or small groups of) companies reveal little about inflation, the economy's overall price level. Similarly, pointing to increased corporate *markups* reveals next to nothing about inflation.<sup>16</sup> Firms respond to market conditions, including higher input costs, and try to maximize their profits by charging prices that will not reduce their market share.

The idea that corporations decided to charge high prices to earn abnormally high profits (price gouging), thus causing the post-COVID-19 spike in global inflation (the so-called "greedflation" theory), appears to have been fueled by a recent International Monetary Fund (IMF) report.<sup>17</sup> Even though the authors of the report were explicit that their analysis represented an "accounting identity [which] does not allow for causal interpretation," multiple media outlets used the IMF report to bolster the greedflation theory.<sup>18</sup>

Attributing the inflation increase to corporate greed in this manner is both wrong and counterproductive. As the IMF authors explain, their accounting identity is not an explanation for inflation, it is merely an accounting exercise to break down inflation into its constituent components. In other words, attributing inflation to greed in this manner is wrong because the accounting identity cannot explain why these components are above or below their normal thresholds; it can only explain which components are above or below their normal thresholds.

The faulty attribution is also exposed by examining the 1970s inflation spike, the one that the IMF report attributes mostly to labor cost.<sup>19</sup> That is, if corporate greed caused the post-COVID inflation spike, then worker greed (receiving higher wages) must have caused the 1970s inflation spike. These explanations are equally wrong.

Many factors drive supply and demand for products, thus leading to relative price changes. Moreover, many exogenous factors (including supply shocks from wars) cause

<sup>14</sup> Miron and Pedro Aldighieri, "The Biden Executive Order and Market Power."

<sup>15</sup> Ryan Bourne, "Monopoly and Monopsony in the U.S. Economy – Is Big Business Too Powerful? (Part 1)," Cato at Liberty, April 11, 2022, <https://www.cato.org/blog/monopoly-monopsony-us-economy-big-business-too-powerful-part-1>; and, Bourne, "Monopoly and Monopsony in the U.S. Economy – Is Big Business Too Powerful? (Part 2)."

<sup>16</sup> In July 2021, a "fact sheet" for a Biden administration executive order tried to tie increased markups (and higher prices) to increased concentration, but a study cited in the fact sheet acknowledged that the median markup in the U.S. had not changed since the 1950s. Gabriella Beaumont-Smith, Elizabeth Hanke, Diane Katz, and Norbert J. Michel, "White House 'Fact Sheet' on Competition in the U.S.: Long on Claims, Short on Facts," Heritage Foundation Backgrounder No. 3652, September 16, 2021, <https://www.heritage.org/trade/report/white-house-fact-sheet-competition-the-us-long-claims-short-facts>.

<sup>17</sup> Jai Kedia, "'Greedflation' Is an Accounting Identity Not an Economic Explanation," Cato at Liberty, June 29, 2023, <https://www.cato.org/blog/greedflation-accounting-identity-not-economic-explanation>.

<sup>18</sup> Kedia, "'Greedflation' Is an Accounting Identity Not an Economic Explanation."

<sup>19</sup> Kedia, "'Greedflation' Is an Accounting Identity Not an Economic Explanation."



macroeconomic price level changes. Still, the kinds of accounting identities in the IMF report tell us nothing about the causal factors behind either relative price changes or price level changes. Additionally, attributing inflation to greed in this manner is counterproductive because it risks enacting policies that fail to address the underlying causes of inflation, possibly worsening inflation and further reducing Americans' welfare.

Another problem with the greedflation story is that it ignores the long term trend in the price level and the decline in the price level that occurred before the post-COVID inflation spike. That is, if corporate greed explains the spike in inflation that occurred in June 2022, then it begs the question: Why were corporations less greedy from 1983 to 2019, when inflation averaged only 2.67 percent, and altruistic from March 2020 to May 2020, when the CPI *declined*?

Finally, federal policymakers must also address why the U.S. fiscal and monetary systems are designed to prevent deflation and produce, instead, a positive inflation rate of 2 percent. If members of Congress believe that inflation is caused by corporate greed, surely, they would prefer a system designed to produce a negative rate of inflation. Or, perhaps, members believe that 4 or 5 percent inflation reflects too much greed, but 2 percent inflation reflects just enough greed. Either way, members should explain their position.

#### Conclusion

For the entire post World War II era, federal policymakers have insisted that government spending would stimulate the macroeconomy by raising aggregate demand (total spending), putting upward pressure on prices and profits, thus causing businesses to supply more goods and services to meet the increased demand. In other words, it would boost the economy. Members of Congress who refuse to attribute the June 2020 to June 2022 spike in inflation to the increased government spending that followed the COVID shutdowns are implicitly arguing that the boost in aggregate demand that followed had nothing to do with higher prices and profits. Of course, if companies were to suppress prices and profits, the basic economic theory that calls for stimulative policies in the face of economic slowdowns no longer holds. If, however, the accepted view of fiscal policy does hold, the current projected path of government spending suggests that inflationary pressures will not dissipate with fiscal reforms.<sup>20</sup>

Thank you for the opportunity to provide this information, and I welcome any questions that you may have.

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<sup>20</sup> Romina Boccia, "Bankruptcy—Gradually, Then Suddenly?," Cato Policy Report, July/August 2023, <https://www.cato.org/policy-report/july/august-2023/bankruptcy-gradually-then-suddenly>.



Figure 1

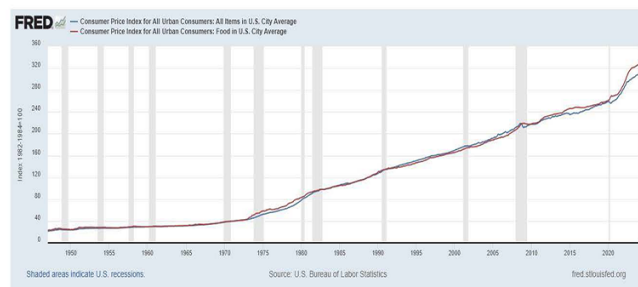
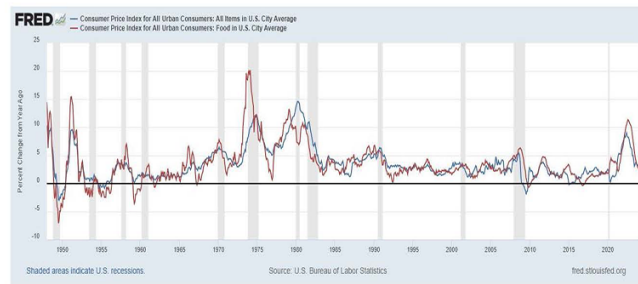


Figure 2



**PREPARED STATEMENT OF JOE MAXWELL**  
**COFOUNDER AND CHIEF STRATEGY OFFICER, FARM ACTION**  
 MAY 22, 2024



**Statement of Joe Maxwell**  
**Chief Strategy Officer for Farm Action**

**Before the U.S. Senate Banking Subcommittee on Economic Policy**

**May 22, 2024**

Chair Warren, Ranking Member Kennedy, and Members of the Subcommittee, thank you for this opportunity to testify regarding Lowering Food Prices and Combatting Corporate Price Gouging and Consolidation. I will be highlighting the on-the-ground implications of heavily concentrated food and agriculture markets for farmers and grocery shoppers.

I am Co-Founder and Chief Strategy Officer for Farm Action, an organization that works to hold the government accountable to principles of fair and competitive markets and to correct imbalances of power in the food and agriculture sector. We look at the broader impact of market concentration within the food and agriculture system and develop policy recommendations to bring about economic vitality in rural America. We believe competition in the marketplace is a cornerstone of economic opportunity and liberty.

Farm Action's lens for research and policy development begins with the premise that our capitalist economic system should work for the American people and our society. To do so, it must be operating within an economic environment where competitive markets exist, and where no one seller or buyer has the power to direct choices, prices, or participation in the market. Further, we understand the capitalist economic system will not work without the government providing safeguards to ensure competition.

I have spent the majority of my career working to build a just, inclusive U.S. economy. I have degrees in agriculture economics and law, and over 30 years of experience in policy development and advocacy. My brother and I are farmers from Missouri — he does most of the farming while I focus my time on issues like those I will be presenting today. I have experience developing food supply chains within the differentiated protein markets. As a farmer, I have firsthand knowledge of the increasing concentration in the food and agriculture sectors and its consequences. When I first began farming, I was one of 512,292 hog farmers in the U.S.<sup>1</sup> Today I

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<sup>1</sup> United States Department of Agriculture, National Agricultural Statistics Service, (1978). 1978 Census of Agriculture. Retrieved from [https://agcensus.library.cornell.edu/wp-content/uploads/1978-United\\_States-CHAPTER\\_1\\_State\\_Data-181-Table-21.pdf](https://agcensus.library.cornell.edu/wp-content/uploads/1978-United_States-CHAPTER_1_State_Data-181-Table-21.pdf)

am one of the remaining 61,000 hog farmers.<sup>2</sup> This decline is the direct result of the concentration and vertical integration in the pork industry. Today, four firms control 67 percent of the hog market.

### Concentration in Food and Agriculture

On a national and global scale, the food system is embroiled in a period of unprecedented consolidation and concentration. Today, a handful of monopolistic corporations have so much power and control over the food system that they dictate who farms, what they farm, and who gets to eat.<sup>3</sup>

Economists suggest that market abuses are likely to occur when the concentration ratio of the top four firms (CR4) exceeds 40 percent.<sup>4</sup> In the U.S., CR4 ratios surge far beyond this percentage in such diverse sectors as the processing of soybeans, corn, meat, and poultry, as well as cold cereal, soft drinks, beer, salty snacks, bread, ice cream, fresh-cut salad, wine, retail grocery, and convenience stores. For example, today, beef processing concentration is at 85 percent, pork processing is at 67 percent, and chicken is at 54 percent.<sup>5</sup> Just two seed companies accounted for 72 percent of corn acreage planted and 66 percent of soybean acreage planted between 2018 and 2020.<sup>6</sup> In other words, the entire food system is controlled by just a handful of corporations.

### Farmers and Consumers Are Losing

Due to today's heavily concentrated and vertically integrated food and agriculture supply chains, dominant firms no longer need to compete with each other in order to be profitable. Their market power leaves farmers and consumers vulnerable to market abuses: These companies use opportunistic market behavior to set the price they pay farmers and the price they charge consumers with little regard for market dynamics.

Below are three case studies conducted by Farm Action highlighting how dominant firms have used their market power to extract excessive profits through price gouging during periods of claimed supply disruption and production cost increases. In all three cases, the evidence clearly

<sup>2</sup> United States Department of Agriculture, National Agricultural Statistics Service. (2022). 2022 Census of Agriculture. Retrieved from

[https://www.nass.usda.gov/Publications/AgCensus/2022/Full\\_Report/Volume\\_1\\_Chapter\\_1\\_US/st99\\_1\\_017\\_019.pdf](https://www.nass.usda.gov/Publications/AgCensus/2022/Full_Report/Volume_1_Chapter_1_US/st99_1_017_019.pdf)

<sup>3</sup> Mary Hendrickson, Phillip Howard, Emily Miller, and Douglas Constance. (2020). The Food System: Concentration and Its Impacts. *Special Report to Family Farm Action Alliance*. Retrieved from <https://farmaction.us/concentrationreport/>

<sup>4</sup> David Chessler. (1996). Determining When Competition is "Workable." A Handbook for State Commissions Making Assessments Required by the Telecommunications Act of 1996. Retrieved from <https://ipu.msu.edu/wp-content/uploads/2016/12/Chessler-Workable-Competition-96-19-July-96-1.pdf>

<sup>5</sup> Mary Hendrickson, Phillip Howard, Emily Miller, and Douglas Constance. (2020). The Food System: Concentration and Its Impacts. *Special Report to Family Farm Action Alliance*. Retrieved from <https://farmaction.us/concentrationreport/>

<sup>6</sup> United States Department of Agriculture, Economic Research Service. 2023. Concentration and Competition in U.S. Agribusiness. Retrieved from [https://www.ers.usda.gov/webdocs/publications/106795/eib-256\\_summary.pdf?v=6656.2](https://www.ers.usda.gov/webdocs/publications/106795/eib-256_summary.pdf?v=6656.2)

demonstrates the firms exercised opportunistic market behavior that resulted in the markets not responding as would be expected.

#### *Egg Industry*

One of the best examples of opportunistic market behavior that defied expected market responses resulting in consumer price gouging was the skyrocketing egg prices beginning in 2021 and ending last year. In 2022, egg prices more than doubled for consumers — going from \$1.32 to \$3.95 for a dozen large Grade A eggs.<sup>7</sup>

Contrary to industry narratives, this 300 percent increase in the price of a carton of eggs wasn't simply attributable to "supply disruption, 'act of God' type stuff,"<sup>8</sup> like the avian flu or inflationary pressures. As Farm Action's letter to the FTC explained in more detail in January 2023,<sup>9</sup> dominant egg producers appear to have calibrated their pricing and production (supply) decisions during this period to achieve and sustain a dramatic, three-fold increase in the wholesale price of eggs to increase their profits excessively.

The first case of avian flu in a commercial table-egg layer facility was detected on February 8, 2022, in Delaware.<sup>10</sup> By May 11, avian flu outbreaks would be reported in 20 states.<sup>11</sup> After the end of May, however, avian flu discoveries would slow down dramatically.<sup>12</sup> Notably, no hen losses were reported after the beginning of June except due to sporadic outbreaks in September,

<sup>7</sup> United States Department of Agriculture, Economic Research Service. (2022). Livestock, Dairy, and Poultry Outlook: December 2022. *December 15, 2022 Situation and Outlook Report*. Retrieved from <https://www.ers.usda.gov/webdocs/outlooks/105496/ldp-m-342.pdf?v=1270.7>

<sup>8</sup> Pan, Jing. (2023). 'Act of God': The price of eggs is soaring due to an 'unprecedented' crisis, warns a trade strategist — here are 2 surging food stocks to help buck the slumping market. *Yahoo Finance*. Retrieved from <https://finance.yahoo.com/news/act-god-type-stuff-trade-163000136.html>

<sup>9</sup> Musharbash, Basel. (January 19, 2023). [Farm Action's letter to FTC Chair Lina Khan re: Price Gouging and Collusion in Shell Eggs Sector]. Retrieved from <https://farmaction.us/wp-content/uploads/2023/01/Farm-Action-Letter-to-FTC-Chair-Lina-Khan.pdf>

<sup>10</sup> United States Department of Agriculture, Economic Research Service. (2022). Recent avian flu outbreak reduces U.S. egg-laying flock. Retrieved from <https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=103873>

<sup>11</sup> United States Department of Agriculture, Economic Research Service. (2022). Livestock, Dairy, and Poultry Outlook: May 2022. *Situation and Outlook Report May 18, 2022*. Retrieved from <https://www.ers.usda.gov/webdocs/outlooks/103952/ldp-m-335.pdf?v=7293.7>

<sup>12</sup> United States Department of Agriculture, Economic Research Service. (2022). Livestock, Dairy, and Poultry Outlook: June 2022. *Situation and Outlook Report June 16, 2022*. Retrieved from <https://www.ers.usda.gov/webdocs/outlooks/104124/ldp-m-336.pdf?v=1306.9>; United States Department of Agriculture, Economic Research Service. (2022). Livestock, Dairy, and Poultry Outlook: July 2022. *Situation and Outlook Report July 18, 2022*. Retrieved from <https://www.ers.usda.gov/webdocs/outlooks/104319/ldp-m-337.pdf?v=9050.6>

October, and November.<sup>13</sup> All in all, the total number of egg-laying hens lost to avian flu in 2022 was around 43 million birds.<sup>14</sup>

Although these figures seem to support the industry narrative that the 2022 avian flu outbreak was significant, its actual impact on the egg supply was minimal. After accounting for chicks hatched during the year, the average size of the egg-laying flock in any given month of 2022 was never more than seven to eight percent lower than it was a year prior — and in all but two months was never more than six percent lower.<sup>15</sup> Moreover, the effect of the loss of egg-laying hens on production was itself blunted by “record-high” lay rates observed among remaining hens throughout the year.<sup>16</sup> With total flock size only marginally impacted by the avian flu and lay rates between one and four percent higher than the average rate observed between 2017 and 2021, the industry’s quarterly egg production experienced no substantial decline in 2022 compared to 2021.<sup>17</sup>

As USDA ERS noted as early as May 2022 — when egg prices were still below 300 cents per dozen — “the price increase” observed in the egg sector was “much larger than the decreases in production” caused by the avian flu.”<sup>18</sup>

To justify the price increase, the egg industry also deployed the reliable “inflation” excuse from its toolbox. Feed and fuel costs did increase. Yet documents from the largest egg producer, Cal-Maine Foods, indicate that increased production costs did not justify their excessive increase in

<sup>13</sup> Department of Agriculture, Economic Research Service. (2022). Livestock, Dairy, and Poultry Outlook: December 2022. *Situation and Outlook Report December 15, 2022*. Retrieved from <https://www.ers.usda.gov/webdocs/outlooks/105496/ldp-m-342.pdf?v=1270.7>; USDA ERS 2022. Department of Agriculture, Economic Research Service. (2022). Livestock, Dairy, and Poultry Outlook: November 2022. *Situation and Outlook Report November 16, 2022*. Retrieved from <https://www.ers.usda.gov/webdocs/outlooks/105249/ldp-m-341.pdf?v=6446.5>; Department of Agriculture Economic Research Service. (2022). Livestock, Dairy, and Poultry Outlook: October 2022. *Situation and Outlook Report October 18, 2022*. Retrieved from <https://www.ers.usda.gov/webdocs/outlooks/105007/ldp-m-340.pdf?v=6471.3>

<sup>14</sup> Department of Agriculture, Economic Research Service. (2022). Avian influenza outbreaks reduced egg production, driving prices to record highs in 2022. Retrieved from <https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=105576>

<sup>15</sup> Department of Agriculture, Economic Research Service. (2022). Livestock, Dairy, and Poultry Outlook: December 2022. *Situation and Outlook Report December 15, 2022*. Retrieved from <https://www.ers.usda.gov/webdocs/outlooks/105496/ldp-m-342.pdf?v=1270.7>

<sup>16</sup> United States Department of Agriculture, Economic Research Service. (2022). Livestock, Dairy, and Poultry Outlook: June 2022. *Situation and Outlook Report June 16, 2022*. Retrieved from <https://www.ers.usda.gov/webdocs/outlooks/104124/ldp-m-336.pdf?v=1306.9>; Department of Agriculture, Economic Research Service. (2022). Livestock, Dairy, and Poultry Outlook: December 2022. *Situation and Outlook Report December 15, 2022*. Retrieved from <https://www.ers.usda.gov/webdocs/outlooks/105496/ldp-m-342.pdf?v=1270.7>

<sup>17</sup> Department of Agriculture, Economic Research Service. (2022). Livestock, Dairy, and Poultry Outlook: December 2022. *Situation and Outlook Report December 15, 2022*. Retrieved from <https://www.ers.usda.gov/webdocs/outlooks/105496/ldp-m-342.pdf?v=1270.7> (showing that, compared to 2021, quarterly egg production in 2022 was approximately 0.4% lower in the first quarter, 3.8% lower in the second quarter, 3% lower in the third quarter, and an estimated 4.4% lower in the fourth quarter of 2022).

<sup>18</sup> United States Department of Agriculture, Economic Research Service. (2022). Livestock, Dairy, and Poultry Outlook: May 2022. *Situation and Outlook Report May 18, 2022*. Retrieved from <https://www.ers.usda.gov/webdocs/outlooks/103952/ldp-m-335.pdf?v=7293.7>

the price of eggs. In its financial filings, Cal-Maine Foods noted that total farm production and feed costs in 2022 were only 19 percent higher than they were in 2021.<sup>19</sup> It is worth noting that during Cal-Maine Foods' second quarter of 2023, they had not lost any hens to avian flu.<sup>20</sup>

So if the egg industry's explanations of lower production due to avian flu and inflationary costs do not explain the skyrocketing prices consumers faced, what does? The answer is that the dominant firms used opportunistic, abusive market behavior to garner excessive corporate pricing.

For the 26-week period ending on November 26, 2022, Cal-Maine Foods reported a ten-fold year-over-year increase in gross profits — from \$50.392 million to \$535.339 million — and a five-fold increase in its gross margins.<sup>21</sup> Notably, their gross profits increased in lockstep with rising egg prices through every quarter of the year — going from nearly \$92 million in the quarter ending on February 26, 2022, to approximately \$195 million in the quarter ending on May 28, 2022, to more than \$217 million in the quarter ending on August 27, 2022, to just under \$318 million in the quarter ending on November 26, 2022.<sup>22</sup> The company's gross margins likewise increased steadily, from a little over 19 percent in the first quarter of 2022 (a 45 percent year-over-year increase) to nearly 40 percent in the last quarter of 2022 (a 345 percent year-over-year increase).<sup>23</sup>

In a competitive market where market dynamics are allowed to function, one would have expected rival dominant egg producers to respond to a near-tripling of average prices with efforts to undercut Cal-Maine Foods' skyrocketing profit margin and capture market share. But that is not what happened. Farm Action found no evidence of aggressive price competition for business among the largest egg producers. More to the point, although the USDA found that favorable conditions for layer flock expansion existed as early as August 2022, the industry kept production pared back through the end of the year. "[D]espite the record-high wholesale prices," the USDA observed in December 2022, producers were "taking a cautious approach to expanding production in the near-term."<sup>24</sup>

<sup>19</sup> Cal-Maine Foods, Inc. (2022). Form 10-Q United States Securities and Exchange Commission. Retrieved from <https://calmainefoods.gcs-web.com/static-files/b0cebe03-d49f-4d51-8aff-8eace74816d2>

<sup>20</sup> Cal-Maine Foods, Inc. (2022, December 28). *Cal-Maine Foods Reports Record Results for Second Quarter Fiscal 2023* [Press release]. Retrieved from <https://www.businesswire.com/news/home/20221228005357/en/Cal-Maine-Foods-Reports-Record-Results-for-Second-Quarter-Fiscal-2023>

<sup>21</sup> Cal-Maine Foods, Inc. (2022). Form 10-Q United States Securities and Exchange Commission. Retrieved from <https://calmainefoods.gcs-web.com/static-files/b0cebe03-d49f-4d51-8aff-8eace74816d2>

<sup>22</sup> Cal-Maine Foods, Inc. (2022). Form 10-Q United States Securities and Exchange Commission. Retrieved at <https://calmainefoods.gcs-web.com/static-files/907903b7-b982-48dd-86a1-167713695e15>; Cal-Maine Foods, Inc. (2022). Form 10-Q United States Securities and Exchange Commission. Retrieved from <https://calmainefoods.gcs-web.com/static-files/907903b7-b982-48dd-86a1-167713695e15>; Cal-Maine Foods, Inc. (2022). Annual Report. Form 10-K United States Securities and Exchange Commission. Retrieved from <https://calmainefoods.gcs-web.com/static-files/4fcc68f8-a380-476b-ba77-c45818ca897f>

<sup>23</sup> Ibid.

<sup>24</sup> United States Department of Agriculture, Economic Research Service. (2022). Livestock, Dairy, and Poultry Outlook: December 2022. *Situation and Outlook Report December 15, 2022*. Retrieved from <https://www.ers.usda.gov/webdocs/outlooks/105496/ldp-m-342.pdf?v=1270.7>

Contrary to industry narratives, the increase in the price of eggs was not an “Act of God” or inflationary conditions—it was simple: The dominant firms were able to take advantage of a supply disruption and increase costs to tacitly hold production stable, not compete with each other, and earn excessive profits by gouging the consumer at the grocery store.

#### *Cattle/Beef Industry*

An unfortunate example of an industry's dominant firms using a single supply disruption to exercise opportunistic behavior in the market, harming both farmers and consumers, is the 2019 fire at the Tyson beef processing plant in Holcomb, Kansas.

On Friday night, August 9, 2019, a fire shuttered a Tyson plant that handled five to six percent of beef processed in the U.S. On Monday morning, all the dominant beef packers were literally screaming fire, causing retail grocers to aggressively purchase wholesale beef in an effort to secure the expected Labor Day beef sales. At the same time, beef packers cut the price they were paying cattle producers, using the excuse of lost processing capacity.

By August 24, the result was a 67 percent spread in what the beef packers paid the cattle producer and how much they charged the retail grocery. To put this in perspective, this spread reflected a 143 percent increase over the average from 2016 to 2018.

What is most telling about the market power of the dominant beef packers and their use of a supply disruption to make excessive profits is that in the three weeks that followed the fire, the beef industry slaughtered 5,000 more cattle than the three weeks before the fire.<sup>25</sup> The reality was the packers had the processing capacity to replace that which was lost at Holcomb. Seldom does anyone profit from a fire, but when you have dominant market power, you can do whatever you want.

Farmers are being squeezed at both ends — buying and selling — and losing their fair share of the consumer food dollar. In 2022, farmers and ranchers only received 14.9 cents of every dollar that consumers spent on food.<sup>26</sup> This figure has been consistently falling since 2014 and will likely continue to do so without aggressive antitrust reforms. It does not take a supply disruption for them to be in a losing market position. As an example, in the cattle market, the top four meatpackers' share of the beef market has jumped from 21 percent to 85 percent since 1970 — those top four meatpackers are JBS, Tyson, Cargill, and Marfrig's National Beef. Meanwhile, the producers' share of the consumer beef dollar has plummeted from around 70 percent to 37 percent. In this transition, cattle producers have lost an estimated \$1,500 per head of their share of the consumer beef dollar to

<sup>25</sup> United States Department of Agriculture, Agricultural Marketing Services. (2020). Boxed Beef & Fed Cattle Price Spread Investigation Report. Retrieved from <https://www.ams.usda.gov/reports/boxed-beef-and-fed-cattle-price-spread-investigation-report>

<sup>26</sup> United States Department of Agriculture, Economic Research Service. (2022). Food Dollar Series. Retrieved from <https://www.ers.usda.gov/data-products/food-dollar-series/>

the meatpacker.<sup>27</sup> Consider the hypocrisy of a fair market where the producer is paid low prices while the consumer pays higher prices.

#### *Fertilizer Industry*

Much like grocery consumers, farmers are at the mercy of dominant firms when they purchase their agricultural inputs. Four or fewer dominant firms control every aspect of the inputs farmers need to grow and raise their crops, livestock, and poultry to feed America. The fertilizer price hikes between 2021 and 2022 are a prime example of these dominant firms using their market power to reap excessive profits under the guise of supply chain disruptions, just as we saw with eggs and beef processing.

The fertilizer industry has experienced some of the highest rates of consolidation over the past 25 years. Between 1980 and the mid-2000s, we saw the number of fertilizer firms decline from 46 to 13. As the price of natural gas (from which nitrogen-based fertilizers are derived) dropped and demand increased, this pattern of consolidation continued. This resulted in fewer firms owning and operating an increasing number of production facilities.<sup>28</sup> Today, just two companies supply the entirety of North America with potash, a potassium-based fertilizer: Nutrien Limited and the Mosaic Company.<sup>29</sup> In 2019, four corporations represented 75 percent of the production and sale of nitrogen-based fertilizer in the US: CF industries, Nutrien, Koch, and Yara-USA.<sup>30</sup>

In 2021, and particularly in the last quarter of the calendar year, the price of all major nutrients used in crop production — Nitrogen, Phosphorus, and Potassium (NPK) — skyrocketed at record-breaking rates and levels. Compared to September 2020 prices, the main nitrogen-based fertilizers, anhydrous ammonia, urea, or liquid nitrogen, increased 210 percent, 155 percent, and 159 percent respectively. Phosphorus-based fertilizers, Diammonium phosphate (DAP) and Monoammonium phosphate (MAP), have increased 100 percent and 125 percent, respectively. Potash, the main source of potassium, rose over 134 percent.<sup>31</sup> In October of 2021 alone, the price of anhydrous fertilizer jumped 26 percent from the previous month to levels not seen since 2008.

<sup>27</sup> Callicrate, Mike. (2021). Story of the Steer and a Theft of Epic Proportions. *No-Bull Food News*, November 16, 2021. Retrieved from <https://nobullmikecallicrate.com/2021/11/16/story-of-the-steer-and-a-theft-of-epic-proportions/>

<sup>28</sup> Bekkerman, A., G.W. Brester, and D. Ripplinger. (2020). The History, Consolidation, and Future of the U.S. Nitrogen Fertilizer Production Industry. *Choices*. Quarter 2. Retrieved from <https://www.choicesmagazine.org/choices-magazine/submitted-articles/the-history-consolidation-and-future-of-the-us-nitrogen-fertilizer-production-industry>

<sup>29</sup> ETC Group. (2019). Plate Tech-Tonics: Mapping Corporate Power in Big Food. Retrieved from <https://www.etcgroup.org/content/plate-tech-tonics>

<sup>30</sup> Bekkerman, A., G.W. Brester, and D. Ripplinger. (2020). The History, Consolidation, and Future of the U.S. Nitrogen Fertilizer Production Industry. *Choices*. Quarter 2. Retrieved from <https://www.choicesmagazine.org/choices-magazine/submitted-articles/the-history-consolidation-and-future-of-the-us-nitrogen-fertilizer-production-industry>

<sup>31</sup> Myers, Shelby and Veronica Nigh. (2021). Too Many to Count: Factors Driving Fertilizer Prices Higher and Higher. *American Farm Bureau Federation*. Retrieved from <https://www.fb.org/market-intel/too-many-to-count-factors-driving-fertilizer-prices-higher-and-higher>



Urea increased 21 percent from previous months, and the price of potash was 13 percent higher.<sup>32</sup> The evidence demonstrates that in the fall of 2021, using their market power, the dominant fertilizer companies took advantage of supply chain disruptions and increased commodity prices paid to farmers to spike fertilizer prices to unprecedented levels.<sup>33</sup>

Just like the other dominant firms across the food system, fertilizer companies leaned on the narrative of shortages, supply chain disruptions, and increased cost of production to justify these price hikes.

It is a fact that the cost of production had increased. For example, Nutrien's 2021 third quarter report noted a 51 percent increase in the cost of goods for nitrogen production over the three-month period preceding September 30th — however, their gross manufacturing margin went up 680 percent over this same period.<sup>34</sup> While it is true that natural gas prices were high, Yara's 2021 third quarter report explicitly stated that this had "[l]imited impact on finished fertilizer production to date."<sup>35</sup> At CF Industries, they saw their gross margin increase 530 percent, while the cost of sales only accounted for 120 percent of that increase during that same period.<sup>36</sup> While their cost to manufacture synthetic fertilizer had gone up, those costs did not justify the excessive pricing levels these fertilizer corporations pushed onto farmers.

Fertilizer companies attributed these rising prices to global shortages, yet the companies' own documents refute any shortage claims by revealing that they had additional capacity that they did not utilize. Nutrien's 2020 annual report states that "due to historically low global ammonia prices we curtailed production...while maintaining flexibility to respond to improvements in the market condition."<sup>37</sup> Their potash capacity also exceeded current production levels and in 2020, the cash cost to produce potash was \$59 per tonne, the lowest level on record for Nutrien.<sup>38</sup> Their very own reports tell us there was not a capacity shortage to produce fertilizer and that some of their production costs were even at record lows, yet farmers across the country were grappling with fertilizer price increases that knocked their feet out from under them. According to fertilizer companies' own financial statements, their cost of goods sold had increased; still, their gross margins went up substantially more.

<sup>32</sup> Micik Dehlinger, Katie. (2021). DTN Retail Fertilizer Trends: Nitrogen Fertilizer Prices Close in on All-Time Highs as UAN32 Breaks Record. *DTN/Progressive Farmer*. Retrieved from <https://www.dtnpf.com/agriculture/web/ag/crops/article/2021/11/03/nitrogen-fertilizer-prices-close>

<sup>33</sup> Nutrien. (2021). Nutrien Delivers Record Third Quarter Results and Raises Full-Year Guidance. Retrieved from <https://www.nutrien.com/investors/news-releases/2021-nutrien-delivers-record-third-quarter-results-and-raises-full-year>

<sup>34</sup> Ibid.

<sup>35</sup> Yara International ASA. (2021). Yara International ASA 2021 Third quarter results. Retrieved from <https://www.yara.com/investor-relations/latest-quarterly-report/>

<sup>36</sup> CF Industries Holdings, Inc. (2021). United States Security and Exchange Commission Form 10-Q. Retrieved from <https://cfindustries.q4ir.com/sec-filings/documents/sec-filings-details/default.aspx?FilingId=15332569>

<sup>37</sup> Nutrien. (2020). Leading Solutions for Sustainable Agriculture: Nutrien Annual Report 2020. Retrieved from <https://www.nutrien.com/investors/financial-reporting>

<sup>38</sup> Nutrien. (2020). Leading Solutions for Sustainable Agriculture: Nutrien Annual Report 2020. Retrieved from <https://www.nutrien.com/investors/financial-reporting>

What appears much likelier than supply disruptions and inflationary increases in production costs is that the price hikes were aligned with the rising prices farmers were getting for their grain harvests. In fact, in 2018, Yara stated that “[v]ariations in grain prices (corn or wheat) explain approximately 50 [percent] of the variations in the urea price, making grain prices one of the most important factors driving fertilizer prices.”<sup>39</sup> During this period, on average, corn prices were up more than 20 percent from the start of the year.<sup>40</sup> In effect, these corporations were stealing the farmers’ profits. Farmers get paid more; fertilizer companies take more. In that these corporations are tying the price of their products to the farmer’s ability to pay — rather than to supply and demand — and that they are controlling the supply by decreasing production, they are using opportunistic behavior to generate excessive profits. Such abuses allow concentrated corporations to extract maximum profit out of the supply chain, leaving the farmer with no hope of profitability.

The three case studies — the egg sector, cattle/beef sector, and fertilizer sector — all share the same market scenario: (1) The market concentration within the sector is so extreme that the market dynamic of competition among dominant firms has been eroded, (2) production capacity existed to offset the supply chain disruption and was not either utilized to meet the demand or was used but did not pressure a price decrease, and (3) dominant firms used supply chain disruptions and inflationary production costs to provide cover for achieving excessive profits through price gouging and short paying the farmers. The facts demonstrate that within these heavily concentrated sectors, the market no longer responds as economic modeling would expect, allowing the dominant firms to take all they can without fear of the consequences of a competitive market.

### Who’s Winning?

Unfortunately, the case studies set out above are not anecdotal or isolated cases. The Nasdaq April 2021 headline summed up who’s winning in the food system: *“Who’s Hungry? Food Companies Are Gobbling Up Profits.”*<sup>41</sup>

A 2022 Guardian article, “Revealed: Top US Corporations Raise Prices on Americans Even As Profits Surge,” stated that “[t]he analysis of Securities and Exchange Commission filings for 100 US corporations found net profits up by a median of 49 [percent], and in one case by as much as

<sup>39</sup> Yara International. (2018). Yara Fertilizer Industry Handbook. Retrieved from <https://www.yara.com/siteassets/investors/057-reports-and-presentations/other/2018/fertilizer-industry-handbook-2018-with-notes.pdf/>

<sup>40</sup> Macrotrends. Corn Prices - 59 Year Historical Chart. Retrieved from <https://www.macrotrends.net/2532/corn-prices-historical-chart-data>

<sup>41</sup> Hyatt, John. (2021). Who’s Hungry? Food Companies Are Gobbling Up Profits. Retrieved from <https://www.nasdaq.com/articles/whos-hungry-food-companies-are-gobbling-up-profits-2021-04-30>

111,000 [percent]. Those increases came as companies saddled customers with higher prices and all but ten executed massive stock buyback programs or bumped dividends to enrich investors.”<sup>42</sup>

Recent antitrust actions — such as fining companies for price fixing — have not deterred dominant meatpackers from continuing to take an opportunistic approach to the market. Here are a few examples from the fiscal year 2022 ending on June 30 (FY 2022):

- (1) Brazilian meatpacking behemoth JBS reported a \$4.382 billion net income for FY 2022 — a 56 percent increase year-over-year.<sup>43</sup> Meanwhile, the corporation agreed to pay \$72.5 million between two price-fixing settlements since the beginning of FY 2022. To put this into perspective, this is like someone who is making \$43,820 a year off of a crooked market deal and only paying \$725 back as a penalty for their actions. It’s only 1.65% of their gain — no more than a spit in the ocean.<sup>44</sup>
- (2) The American-owned Tyson Foods’ reported net income for FY 2022 was \$4.055 billion — a whopping 72.85% increase year-over-year.<sup>45</sup> Tyson agreed to pay \$135 million between four price-fixing settlements since the beginning of FY 2022, costing them less than 3.33% of their annual gains generated from potentially conducting illegal practices.<sup>46</sup>
- (3) Smithfield Foods no longer publicly discloses its profits after Chinese-owned WH Group purchased the company; however, WH Group’s reported net income was \$1.427 billion for the year ending in June 2022 — an 18.86% increase year-over-year. The corporation agreed to pay \$200 million between three price-fixing settlements since the beginning of FY 2022, costing them only 14 percent of their profit for the year.<sup>47</sup> Let’s just call these settlements what they are: the cost of doing business.

<sup>42</sup> Perkins, Tom. (2022). Revealed: top US corporations raising prices on Americans even as profits surge. *The Guardian*. Retrieved from <https://www.theguardian.com/business/2022/apr/27/inflation-corporate-america-increased-prices-profits>

<sup>43</sup> JBS. (2023). Results 4Q23 & 2023. Retrieved from <https://api.mziq.com/mzfilemanager/v2/d/043a77e1-0127-4502-bc5b-21427b991b22/069c7410-73c0-2c39-5b01-b5a25c8cdd15?origin=1>

<sup>44</sup> Cusworth, Jessica, Dee Laninga, Cathy Cowan Becker, Angela Huffman, and Joe Maxwell. (2022). Meatpackers Make Record Profits, Settle Price-Fixing Cases for Peanuts. *Farm Action*. Retrieved from <https://farmaction.us/2022/11/17/meatpackers-make-record-profits-settle-price-fixing-cases-for-peanuts/>

<sup>45</sup> Tyson. (2023). United States Securities and Exchange Commission Form 10-K. Retrieved from [https://ir.tyson.com/files/doc\\_financials/annual/2023/tsn-2023-10k-final.pdf](https://ir.tyson.com/files/doc_financials/annual/2023/tsn-2023-10k-final.pdf)

<sup>46</sup> Cusworth, Jessica, Dee Laninga, Cathy Cowan Becker, Angela Huffman, and Joe Maxwell. (2022). Meatpackers Make Record Profits, Settle Price-Fixing Cases for Peanuts. *Farm Action*. Retrieved from <https://farmaction.us/2022/11/17/meatpackers-make-record-profits-settle-price-fixing-cases-for-peanuts/>

<sup>47</sup> Cusworth, Jessica, Dee Laninga, Cathy Cowan Becker, Angela Huffman, and Joe Maxwell. (2022). Meatpackers Make Record Profits, Settle Price-Fixing Cases for Peanuts. *Farm Action*. Retrieved from <https://farmaction.us/2022/11/17/meatpackers-make-record-profits-settle-price-fixing-cases-for-peanuts/>

There has been much discussion about the cause of the rapid growth in inflation, with many focusing on wage increases and government investment in the economy. Farm Action would propose that this misses the mark — concentration’s contribution to inflation must not be ignored.

#### **Actions Being Taken**

Government policy has contributed significantly to the concentration in our food system and the continued corporate control over food and agriculture market sectors. The good news is that with targeted policy changes, it can also contribute to a system that is more fair, decentralized, and resilient. We call on the government to free itself from the undue influence of corporate special interests and to own its role in safeguarding market accountability and competitiveness in the food and agricultural marketplace.

President Biden began this Administration’s effort with the July 2021 Executive Order on Promoting Competition in the American Economy (EO),<sup>48</sup> directing federal agencies to revive antitrust enforcement and promote competition throughout the U.S. economy. Since then, the Department of Justice (DOJ) and the Federal Trade Commission (FTC) have taken bold actions to curb market abuses within the heavily concentrated food and agriculture markets. Taking the EO’s whole of government approach, FTC and DOJ ended the 40 years of failed economic policy of the “consumer welfare standard” for reviewing mergers and acquisitions, restoring a lens of competition within the guidelines. DOJ and USDA also instituted a web portal for farmers and ranchers to anonymously report market abuses.

Individually, DOJ made history not once but twice when they instituted legal action based on the Packers and Stockyards Act (P&S Act) bringing about a court consent decree that ended the use of the tournament payment scheme for the 15 percent of the poultry market controlled by Wayne Foods and Sanderson Farms. Since then, it has also filed antitrust legal actions against AgriStats for operating an information exchange for the sole purpose of promoting total industry profits at the expense of competition in the pork, poultry, and turkey markets.<sup>49</sup>

USDA has issued two of the P&S Act rules the EO called for, and established a seed liaison position to assist emerging seed companies in maneuvering the technical aspects of the patent and trademark process.

USDA has also made investments in supply chains and local procurement that will bolster competition and support more resilient local and regional food systems: USDA invested \$1 billion

<sup>48</sup> The White House. (2021). Executive Order on Promoting Competition in the American Economy. July 09, 2021. Retrieved from <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>

<sup>49</sup> United States of America, Department of Justice v. AgriStats, Inc. Case 0:23-cv-03009, Doc. 1, Filed 09/28/23. Retrieved from <https://www.justice.gov/d9/2023-10/416782.pdf>

to expand domestic meat and poultry processing capacity;<sup>50</sup> the Resilient Food Systems Infrastructure (RFSI) Program committed \$420 million to increasing processing and distribution capacity in the middle of supply chains;<sup>51</sup> USDA increased credit access for supply chain projects through the Food Supply Chain Guaranteed Loan Program;<sup>52</sup> and through the Local Food Purchase Assistance Cooperative Agreement Program (LFPA)<sup>53</sup> and Local Foods for Schools (LFS)<sup>54</sup>, USDA committed \$1.1 billion to increase local producers' market access points. These investments are an important step towards building a more fair and resilient food system.

#### **Additional Actions Needed**

Investments in more regionalized and diversified food systems will only succeed if space is created for them in consolidated markets through antitrust enforcement and anchoring them to procurement policy. As previously noted, industries across food and agriculture are highly consolidated — even with these targeted investments to help smaller operations expand, there is no longer a fair playing field on which to compete. The federal government can support these investments by creating alternative pathways to markets for them through procurement policy. Strong antitrust enforcement will also protect these operations from anticompetitive behaviors from the dominant firms.

Without proper safeguards, government investments to boost competition will inevitably end up in the hands of the dominant corporations they are trying to challenge. For example, Koch Industries, a dominant fertilizer corporation, has announced its planned 3.6 billion-dollar acquisition of OCI Global's Iowa Fertilizer Company (IFCO), a major nitrogen fertilizer plant.<sup>55</sup> IFCO was built with substantial local, state, and federal investments, with its proponents citing the opportunity to challenge Koch Industries' dominance in fertilizer markets.<sup>56</sup> The FTC and DOJ should investigate this proposed acquisition and, if evidence warrants, take action to block this merger.

<sup>50</sup> United States Department of Agriculture. Meat and Poultry Supply Chain. Accessed on May 20, 2024. Retrieved from <https://www.usda.gov/meat>

<sup>51</sup> United States Department of Agriculture, Agricultural Marketing Service. Resilient Food Systems Infrastructure Program. Accessed on May 20, 2024. Retrieved from <https://www.ams.usda.gov/services/grants/rfsi>

<sup>52</sup> United States Department of Agriculture, Rural Development. Food Supply Chain Guaranteed Loan Program. Accessed on May 20, 2024. Retrieved from <https://www.rd.usda.gov/food-supply-chain-guaranteed-loans>

<sup>53</sup> United States Department of Agriculture, Agricultural Marketing Service. Local Food Purchase Assistance Cooperative Agreement Program. Accessed on May 20, 2024. Retrieved from <https://www.ams.usda.gov/selling-food-to-usda/lfpacap>

<sup>54</sup> United States Department of Agriculture, Agricultural Marketing Service. Local Food for Schools Cooperative Agreement Program. Accessed on May 20, 2024. Retrieved from <https://www.ams.usda.gov/selling-food-to-usda/lfs>

<sup>55</sup> Koch Industries. (2023, December 18). Koch Ag & Energy Solutions Reaches Agreement to Acquire Wever Fertilizer Plant from OCI Global [Press release]. Retrieved from [https://kochfertilizer.com/newsroom/Koch-Ag-Energy-Solutions-Reaches-Agreement-to-Acquire-Wever-Fertilizer-Plant-from-OCI-Global\\_2683.aspx](https://kochfertilizer.com/newsroom/Koch-Ag-Energy-Solutions-Reaches-Agreement-to-Acquire-Wever-Fertilizer-Plant-from-OCI-Global_2683.aspx)

<sup>56</sup> Syroka, Scott. (2023, December 28). A bad deal gets worse: Koch trying to buy Iowa fertilizer plant. Bleeding Heartland. Retrieved from <https://www.bleedingheartland.com/2023/12/28/a-bad-deal-gets-worse-koch-trying-to-buy-iowa-fertilizer-plant/>

Reviving the Robinson-Patman Act would also help tame abuses of buyer power by dominant manufacturers and retailers, particularly in the grocery sector. FTC must act on its Robinson-Patman investigations and issue guidance and advisory opinions to better articulate ambiguous aspects of the Act, thus clarifying enforcement.

Critically, farmers must have the right to bring legal action against meatpackers under the P&S Act without proving harm to competition, and USDA must follow DOJ's lead by banning the poultry tournament system. Further, USDA and Congress should restore the Grain Inspection, Packers and Stockyards Administration (GIPSA), armed with a budget to keep it sufficiently staffed and empowered to enforce the P&S Act.

Congress should grant FTC and DOJ the authority to review past acquisitions and mergers and their impact on competition, with the authority to reverse them. One legislative package that focuses on the meatpacking industry is Senator Hawley's S. 2818, Strengthening Antitrust Enforcement for Meatpacking Act of 2023. The Chair is a co-sponsor of this legislation.<sup>57</sup>

Today the FTC has limited authority to take action against corporations that engage in excessive profit-taking — or price gouging — and should be provided with the authority to protect America's farmers and consumers. The Chair, along with others, has introduced S.3803, the Price Gouging Prevention Act,<sup>58</sup> which would provide FTC with the tools it needs to address this issue.

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<sup>57</sup> Strengthening Antitrust Enforcement for Meatpacking Act of 2023, S.2818, 118th Cong. (2023). Retrieved from <https://www.congress.gov/bill/118th-congress/senate-bill/2818/text>

<sup>58</sup> Price Gouging Prevention Act of 2024, S.3803, 118th Cong. (2024). Retrieved from <https://www.congress.gov/bill/118th-congress/senate-bill/3803>

**PREPARED STATEMENT OF ALAP VORA**OWNER, CONCORD MARKET, NEW YORK CITY, SMALL BUSINESS MAJORITY NETWORK  
MEMBER

MAY 22, 2024

Dear Chair Warren, Ranking Member Kennedy, and Members of the Subcommittee on Economic Policy of the Senate Committee on Banking, Housing, and Urban Affairs: Thank you for the opportunity to speak about the impact of consolidation, price discrimination, and anti-competitive behavior impacting America's food prices. My name is Alap Vora, and I am the owner of Concord Market located in Brooklyn, New York City.<sup>1</sup> For the last 50 years, my family has been opening and running different types of small businesses across New York City. Some people have a clear idea about what their business will be, but my family always preferred to look at the specific needs of the community and fill gaps in the market where we saw them. Concord Market is a family owned neighborhood grocer that opened in 2009 and has been open every day since. We pride ourselves on being job creators and an integral part of the community.

Our personal approach to running and operating a business has created the foundation of our success. Our community-driven approach to serving our neighborhood has always served as a backbone to our sustainability—something that the bigger box stores simply cannot offer.

*The Impact of Consolidation and Overwhelming Market Power on Small Businesses*

For small grocery stores like Concord Market our ability to operate a reliable and consistent business is at stake as we face fluctuating, opaque pricing structures from distributors. The pressure to serve our community members as a small grocer while remaining profitable is at an all-time high, especially as the desire to shop locally remains high in our city. Today, I will discuss how unexpected price hikes, deceptive and unclear fees from large distributing companies, and shrinkflation continue to place disproportionate impacts on the small shop owner like me. While our economy is certainly improving from where it was amid the COVID-19 pandemic, prices are still on the rise. Post-COVID, all eyes are on small businesses, and while this attention is certainly helpful, policymakers must match the celebration of Main Street with policy efforts that support our growth—especially when it comes to providing oversight to consolidated industries impacting America's food prices across the board. While we cannot control the impacts of shrinkflation or price gouging on our business, we have come to shoulder the blame for the prices that our customers see each time they shop with us.

My goal for Concord Market is longevity, and over time we have taken pride in the business' ability to remain consistent and reliable. In its 15 years of business, Concord Market has never missed a day of service—it has stayed open through holidays, snowstorms, blackouts, hurricanes, and now pandemics. Unfortunately, for us and many other business owners in my shoes, it is growing more and more difficult to compete with big grocery stores that offer regular sales, bulk discounts, food delivery services and lower prices for the same items on my shelves, in turn driving customers away. Some of our customers would rather rent a car for a day to go to larger competitors like Costco, Trader Joe's, and others because of the pressures that impact our pricing structure and ultimately our bottom line.

As a small business, we constantly must assess the profits we're able to make on certain goods or services. Given my limited bandwidth as a business owner managing multiple aspects of the store at any given moment, there is little ability for us to cross-check each vendor to understand why the cost of a specific good increased since the last time we purchased.

*Examples of Monopolistic Behavior Impacting Concord Market*

Every shop owner hopes to provide the best selection of goods for its customers, but that remains difficult when distributors are charging more from their small business partners than they are charging individual consumers at Costco or other wholesaler clubs. It has become clearer to the business community that the biggest

<sup>1</sup> Concord Market is proudly represented by Small Business Majority. Small Business Majority is a national small business organization that empowers America's diverse entrepreneurs to build a thriving and equitable economy. We engage our network of more than 85,000 small businesses and 1,500 business and community organizations to deliver resources to entrepreneurs and advocate for public policy solutions that promote inclusive small business growth. Our work is bolstered by extensive research and deep connections with the small business community that enable us to educate stakeholders about key issues impacting America's entrepreneurs, with a special focus on the smallest businesses and those facing systemic inequities.

distributors and manufacturers aren't required to be transparent, competitive or cooperative with small vendors. In addition, evidence of shrinkflation by major food companies continue to shock and concern consumers across the Nation. According to a recent report by the Food Institute, 73 percent of U.S. consumers rank shrinkflation (or package downsizing) as a top concern, while 52 percent of consumers suspected they may be a victim of shrinkflation when purchasing snack foods, a key offering of Concord Market.<sup>2</sup> Major food companies are not even attempting to hide this practice—for example, Frito-Lay confirmed that they have recently reduced the weight of Doritos from 9.75 to 9.25 oz. Other brands like Gatorade have admitted to using a more expensive bottle design with no extra product to make up for the extra cost.<sup>3</sup> The end result is less product for the same price and less shoppers in grocery stores large and small.

While we actively engage with local support entities to help us navigate these challenges, our efforts are hindered by the various competing priorities of business ownership. For example, our engagement with the Department of Consumer Affairs across the city has yielded little result. While local agencies (such as the Health Department, Fire Department, and Consumer Affairs) examine small business owner activity under a microscope, there is an apparent lack of oversight into the supply chain processes that feed into our business model.

Despite our best efforts to push back on our distributors and mitigate these challenges before they impact our customers, the reality is that while small businesses struggled to keep their doors open during a pandemic, recession, and volatile economic conditions, distributors were free to profit off so-called “supply chain challenges” by increasing their prices by 5 percent across the board when their actual cost of purchasing or manufacturing remained stable. Concord Market has seen supply prices increase and vary by 20–30 percent for everyday products like 2-liter sodas. Major food corporations have proudly stated an increase in profits and shareholder earnings while everyday Americans and business owners like us pay the price. For example, a recent earnings statement from U.S. Foods boasts a record 19 percent growth in adjusted earnings before interest and tax deductions (EBITDA) representing over \$1.58 billion in growth in FY23 alone while case volume growth increased by 7.3 percent for independent businesses and mere 5.6 percent percent for all other customers.<sup>4</sup> Sysco, another well-known food giant, brought in over 33 percent as reflected in FY23 EBITDA in the fourth quarter alone while only increasing the foodservice volume by 2.3 percent.<sup>5</sup>

The data (both quantitative and anecdotal) are clear, even if there are regulations and laws in place to keep distributor price gouging from happening, they clearly aren't being enforced. In practice, we have learned this to be true through engaging with other business owners in my community to compare what we each pay for the same item—sometimes we find there are price increases as much as 50 percent—100 percent based on who is buying the product. When we started comparing invoices from multiple locations, we saw that each of us paid different prices for the same item over a short period of time.

When it comes to shrinkflation, Concord Market customers and employees have witnessed canned goods and other shelf-stable items fluctuate in size and substance, demonstrating that higher item costs sometimes come with reduced product sizes. Some distributors claim they have had to increase prices because there was a shortage of a certain input, but even when the shortages are resolved, the distributors keep charging the same high price or more.

As a business owner, it feels like our distributors are taking advantage of any slight market changes to upcharge, and that's hurting small grocers like me that may be two or three layers removed from their manufacturer. Today, companies that passed on price increases to grocers like us and consumers like ours have not eased food prices despite supply chain challenges easing.<sup>6</sup> For example, we were forced to raise our deli prices because the costs of the goods and the labor needed

<sup>2</sup>“Report: ‘Shrinkflation’ Top of Mind for Consumers”, The Food Institute. April 24, 2023. <https://foodinstitute.com/focus/report-shrinkflation-top-of-mind-for-consumers/>

<sup>3</sup>“Your Favorite Snacks Are Getting Smaller Thanks to ‘Shrinkflation’”, *Food & Wine*. March 14, 2022. <https://www.foodandwine.com/news/food-shrinkflation-doritos-gatorade>

<sup>4</sup>“U.S. Foods Reports Fourth Quarter and Fiscal Year 2023 Earnings”. U.S. Foods, February 15, 2024. <https://ir.usfoods.com/investors/stock-information-news/press-release-details/2024/US-Foods-Reports-Fourth-Quarter-and-Fiscal-Year-2023-Earnings/default.aspx>

<sup>5</sup>“Sysco Reports Record Fourth Quarter and Full Year 2023 Sales, Operating Income and Cash Flow”. Sysco Investors. August 1, 2023. <https://investors.sysco.com/annual-reports-and-sec-filings/news-releases/2023/08-01-2023-130627627>

<sup>6</sup>“FTC Releases Report on Grocery Supply Chain Disruptions”. Federal Trade Commission. March 21, 2024. <https://www.ftc.gov/news-events/news/press-releases/2024/03/ftc-releases-report-grocery-supply-chain-disruptions>



to serve our location have increased while the size of our orders stayed the same. Due to this, we realized over 30 percent in losses on our catering program and could no longer afford to fill large orders with such small margins.

Outside of price hikes and shrinkflation, small grocers are oftentimes left with no choice but to buy more product than they need. When restocking drink cases in our store, we are forced to purchase upwards of 40–50 units of a product to get a particular good on our shelf, causing our wholesale bill to skyrocket all while leaving us with limited storage space, too many perishables and overstock that we cannot return.

While we bear responsibility for the factors in our immediate control, we need support from leaders like you to navigate highly consolidated markets. Small business owners are the backbone of their communities, and our sole focus is serving those communities. We cannot be expected to track, monitor, and combat anti-competitive behavior on our own—our focus must be and always will be on our business and our customers. Moving forward, small businesses and small grocers like Concord Market call on Congress to help us navigate these pressures to continue to provide jobs and community for our neighbors. While a simple price increase on a grocery item or two may not seem devastating to a household budget for many of you in this room, for the average American this behavior has created great tension between the small grocer community and their valued customers' ability to support the industry.

*Conclusion—Congress Must Act To Lower Prices Across America's Food Supply and Distribution System To Support Small Market Participants*

The cost of doing business in cities like New York has skyrocketed. From new “congestion pricing” for tourism season, astronomical delivery app fees up to 30 percent, utility cost increases, waste removal service increases, and credit card fees.<sup>7</sup> These factors, when compounded with the anti-competitive practices from the biggest, richest distributors, it remains nearly impossible for us to try to be competitive in the grocery industry as a small business. We attempt to offset price increases and inflation by offering various benefits to shopping at our store including regular shopper rewards, student discounts, waived deliver fees and sponsored events to support our elderly neighbors.

As a pillar of our community, doing the right thing for our customers is what we live by. Often, when our staff makes deliveries for elderly neighbors in our free deliver program, they spend time with the customer, and help them out in any way they can such as changing a lightbulb or providing social stimulation during drop-offs. These types of transactions are not profitable for business, but it's the right thing to do for our community. While important to us all, our community benefit programs will only get us so far when pitted up against external factors out of my control like rising food prices, shrinkflation, unfair distributing models and a pressure to keep pace with box stores that offer what we sell at a much lower price—just because they can.

The small business community faces no shortage of challenges standing in our way to success, and unnecessary and preventable shrinkflation, price gouging, and consolidated market power from large distributors should be the least of our problems. In addition to mitigating stark and sudden cost increases, small businesses are dealing with other costs that we are forced to pass onward to our consumers or face directly. Swipe fees, which are illegal to pass on to the consumer in the State of New York, fueling, stocking, labeling, and processing charges on deliveries, are just a few examples of other cost burdens we bear resulting from consolidated industries that make up our supply chain. Though we are nearly four years removed from the COVID-19 pandemic, businesses are still struggling to keep pace.

Congress must act alongside Federal enforcement agencies to ensure that the major players in our economy are held accountable for their actions that result in rising prices and put a squeeze on both small businesses and their customers. Congress can do this in multiple ways, but I will highlight three starting points here:

1. Work with your colleagues to pass the Shrinkflation Prevention Act of 2024. This critical legislation would direct the Federal Trade Commission (FTC) to create and enact regulations to establish shrinkflation as an unfair and deceptive action. The bill would also enable FTC to pursue civil actions against corporations engaged in shrinkflation and encourages and authorizes State Attorneys General to bring civil action against those corporations.
2. To ensure small businesses can compete on a level playing field, we urge Congress to provide funding necessary to the FTC to enforce the Robinson-Patman Act of 1938, also known as the Anti-Price Discrimination Act, which protects small businesses from being driven out of the marketplace via discriminatory

pricing, promotional allowances and advertising afforded to large, franchised companies.

3. Continue to work with businesses like mine, and organizations like Small Business Majority, to shed light on the discriminatory practices that plague our small grocer communities from being able to provide competitive, affordable prices for the families and businesses that they too serve.

Thank you again for the opportunity to speak with you today, and I look forward to answering any questions you may have.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR KENNEDY  
FROM E.J. ANTONI**

**Q.1. *Regulations***—Is it true that food prices respond to energy prices, specifically crude oil prices and its use in agriculture commodity production?

**A.1.** Energy is a significant input in food production. Not only are energy sources used to do work, but they can also be used to produce other inputs, like fertilizer.<sup>1</sup> Consequently, higher energy prices will increase food prices as production costs are passed to consumers. Since about 44 percent of direct energy consumption by the American agricultural sector is diesel fuel, crude oil prices have a significant impact on agricultural production and costs.<sup>2</sup> A reduction in oil prices, therefore, would reduce not only diesel prices but agricultural prices too, leading to lower food costs for Americans, increased profitability for American farmers, and a greater quantity of exports of American farm products.

**Q.2.** If the Biden administration overregulates the energy sector or overregulates the industrial sector, thereby making energy use and industrial processes more expensive, doesn't that ultimately raise the cost of food for American families?

**A.2.** Yes, overregulation of the energy or industrial sectors will impose inefficiencies and added costs, ultimately leading to higher food prices for American families. Unfortunately, it can be difficult to measure these added costs using official Government metrics because they tend to be excluded from price indexes. The additional costs from regulation are assumed to have a corresponding increase in quality and are therefore removed via a hedonic adjustment. The consumer is still paying more, but that does not show up in the consumer price index and similar tools. However, when regulation indirectly causes a price to rise, such as when the regulation increases an input cost that then increases the cost of a finished product, the increased cost to consumers of the finished product is more likely to be captured by official Government metrics on consumer prices. Overregulation by the Biden administration has significantly reduced energy production,<sup>3</sup> which has led to higher food prices that are in addition to the higher prices from the dollar's lost purchasing power via the monetary phenomenon of inflation.

**Q.3. *Consumer Spending***—Given that average weekly paychecks have increased by roughly 14 percent in the last 3 years, why are consumers still feeling financially squeezed at the grocery store?

**A.3.** From the beginning of the economic expansion in 2009 through January 2021, average consumer prices rose steadily at an annualized rate of 1.8 percent. Shortly after January 2021, that average rate of increase accelerated, and the average prices paid by consumers are now over 19 percent higher than they were in January 2021. Typical grocery store prices have increased at even faster rates over this period. Because prices have risen so much faster

<sup>1</sup> <https://www.imf.org/en/Blogs/Articles/2022/12/09/global-food-prices-to-remain-elevated-amid-war-costly-energy-la-nina>

<sup>2</sup> <https://www.ers.usda.gov/data-products/chart-gallery/gallery/chartdetail/?chartId=87964#text=>

<sup>3</sup> <https://committeetounleashprosperity.com/wp-content/uploads/2024/05/War-on-Energy-Layout.pdf>

than wages, the quantity of products and services which people can buy with their paychecks has decreased even as the size of the paychecks has increased. For the typical American family, with two parents working and each with average weekly earnings, the family's weekly income has risen roughly \$150 from January 2021 to April 2024, but that weekly income buys about \$50 less. The total difference between those two changes is the family's loss from inflation, and it exceeds their loss from personal Federal income tax.

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**RESPONSES TO WRITTEN QUESTIONS OF SENATOR KENNEDY  
FROM NORBERT J. MICHEL**

**Q.1. *Business Decisions***—If a company decides to charge a price for a good they believe is above the average market price for that good, do you believe that is a sound financial decision for the company to make?

**A.1.** There are too many subjective variables that would go into such a decision for me, or anyone outside of the company's management, to know whether such a decision would be a sound financial decision. Raising a product's price always runs the risk of losing too many customers and market share to sustain profitability, but that risk is why managers are paid to make such decisions—they have the best information to make such decisions.

**Q.2.** Is it true that food is often more expensive because of issues like supply chain disruptions, inflation, and higher production costs and not because corporations are attempting to expand their profit margins?

**A.2.** I can attest that, during the last few years, many food items have been more expensive than usual because of supply chain disruptions, many of which were related to the COVID-19 pandemic and Government shutdowns, as well as other natural disruptions. I cannot attest to whether companies did or did not raise prices to expand their profit margins—some may have done so. I can, however, attest that if some companies did raise their prices for such reasons, it does not explain inflation—the only way it could do so is if virtually all companies did so at the same time, in a concerted effort, with all the goods they sell.

**Q.3. *Price Gouging***—What are some of the negative implications of falsely associating high prices with corporate greed?

**A.3.** One negative implication is that policymakers will attempt to “solve” inflation with policies that are counterproductive because they do not address the underlying causes of inflation. These policies might, for example, make goods and services more expensive and/or more scarce, thus leaving consumers even worse off than prior to the policy intervention.