

MAIN STREET COMPETES ACT

SEPTEMBER 26, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WILLIAMS of Texas, from the Committee on Small Business, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 5424]

The Committee on Small Business, to whom was referred the bill (H.R. 5424) to amend the Small Business Economic Policy Act of 1980 to examine how the competitiveness of small businesses is affected by the enforcement of Federal antitrust laws, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND BILL SUMMARY

On September 13, 2023, Rep. Scholten, along with Representatives Luetkemeyer, Velázquez, and Tenney, introduced H.R. 5424. The purpose of H.R. 5424, the Main Street Competes Act, is to require the Small Business Administration (SBA) to study and report on the extent that existing antitrust enforcement laws and regulations protect small businesses' ability to compete.

Specifically, the Department of Justice (DOJ) and the Federal Trade Commission (FTC) must issue a report to the SBA's Office of Advocacy (Advocacy) on how antitrust laws are being enforced to deter and remedy anticompetitive conduct that hurts small businesses. Advocacy must then evaluate these reports and submit a subsequent report to Congress.

II. NEED FOR LEGISLATION

Currently, the SBA does not study the impact of anticompetitive behavior on small businesses. Consolidation in industries ranging from technology to agriculture has caused the market to be increasingly dominated by big companies. Small businesses deserve an advocate to ensure that they can remain economically competitive.

III. HEARINGS

In the 118th Congress, the Committee held one hearing examining the issues covered in H.R. 5424. On September 13, 2023, the Subcommittee on Economic Growth, Tax, and Capital Access held a hearing titled "Enabling Success: Examining the Competitive Landscape for Small Businesses." During the hearing, witnesses testified to the challenges small businesses are facing in today's regulatory and legal landscape. Further, the hearing discussed how the current landscape poses a challenge for small businesses to remain competitive against their larger competitors.

IV. COMMITTEE CONSIDERATION

The Committee on Small Business met in open session, with a quorum being present, on September 14, 2023, and ordered H.R. 5424 reported favorably to the House of Representatives. During the markup no amendments were offered.

V. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. The Committee voted to favorably report H.R. 5424 to the House of Representatives at 11:38 AM.

118th Congress House Committee on Small Business Vote Record

Date: 9.14.23 Bill: H.R. 5424

Vote Time: 11:38

| Republicans | Aye | Nay | Present |
|--------------------------------|-----|-----|---------|
| Mr. Luetkemeyer (MO-03) | ✓ | | |
| Mr. Stauber (MN-08) | ✓ | | |
| Mr. Meuser (PA-09) | ✓ | | |
| Ms. Van Duyne (TX-24) | ✓ | | |
| Ms. Salazar (FL-27) | ✓ | | |
| Mr. Mann (KS-01) | ✓ | | |
| Mr. Ellzey (TX-06) | | | |
| Mr. Molinaro (NY-19) | ✓ | | |
| Mr. Alford (MO-04) | ✓ | | |
| Mr. Crane (AZ-02) | ✓ | | |
| Mr. Bean (FL-04) | ✓ | | |
| Mr. Hunt (TX-38) | | | |
| Mr. (La-Low-ta) Lalota (NY-01) | | | |
| Chairman Williams (TX-25) | ✓ | | |
| TOTALS: | 11 | | |

Mr. Chairman _____ Votes _____

Mr. Chairman _____ Off _____, Votes _____

Mr. Chairman on that vote 22 Ayes 0 Nays and 0 Present

118th Congress House Committee on Small Business Vote Record

Date: 9.14.23 Bill: H.R. 5424

Vote Time:

| Democrats | Aye | Nay | Present |
|--|-----|-----|---------|
| Mr. Golden (ME-02) | ✓ | | |
| Mr. M-fume (MD-07) | | | |
| Mr. Phillips (MN-03) | ✓ | | |
| Mr. Landsman (OH-01) | ✓ | | |
| Mr. Mc-Gar-vey (KY-03) | ✓ | | |
| Ms. Glue-sen-kamp Perez (WA-03) | ✓ | | |
| Ms. (Skull- ton) Scholten (MI-03) | ✓ | | |
| Mr. (Tan-a-dar) Thanedar (MI-13) | ✓ | | |
| Ms. (Chew) Chu (CA-28) | ✓ | | |
| Ms. Davids (KS-03) | ✓ | | |
| Mr. Pappas (NH-01) | ✓ | | |
| Ranking Member Nydia Velazquez (NY-07) | ✓ | | |
| TOTALS: | | | |

VI. SECTION-BY-SECTION OF H.R. 5424

Section 1. Short title

This section cites the bill as the Main Street Competes Act.

Section 2. Congressional Declaration of Small Business Economic Policy

This section amends the Congressional Declaration of Small Business Economic Policy at 15 U.S.C. § 631a to include promoting competitive markets, consumer choice, and business ownership through enforcement of Federal antitrust laws when small businesses are harmed.

Section 3. State of small business

This section requires the DOJ and FTC to report to Advocacy on how antitrust laws are being enforced to deter and remedy anti-competitive conduct that hurts small businesses. It further requires the Chief Counsel for Advocacy to submit a summary of these reports to Congress.

VII. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(d)(1) of House rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974. The Committee has requested but not received from the Director of the Congressional Budget Office a cost estimate for the Committee's provisions. Once available, the cost estimate will be published in the Congressional Record.

VIII. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a)(I) of the Congressional Budget Act of 1974, the Committee provides the following opinion and estimate with respect to new budget authority, entitlement authority, and tax expenditures. While the Committee has not received an estimate of new budget authority contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to Sec. 402 of the Congressional Budget Act of 1974, the Committee does not believe that there will be any additional costs attributable to this legislation. H.R. 5424 does not direct new spending, but instead reallocates funding independently authorized and appropriated.

IX. OVERSIGHT FINDINGS & RECOMMENDATIONS

In accordance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in H.R. 5424 are incorporated into the descriptive portions of this report.

X. PERFORMANCE GOALS AND OBJECTIVES

With respect to the requirements of clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of H.R. 5424 are to require annual reports from the DOJ and FTC on how antitrust laws are being enforced to deter and remedy anticompetitive behavior that hurts small businesses. Advocacy must then issue a report summarizing and evaluating how effective agencies were in enforcing antitrust measures during the previous fiscal year.

XI. STATEMENT OF DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, no provision of H.R. 5424 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

XII. CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee finds that the bill does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI of the Rules of the House of Representatives.

XIII. FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

XIV. FEDERAL ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

XV. APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

XVI. STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to clause 7 of rule XII of the Rules of the House, the Committee finds that the authority for this legislation in Art. I, § 8, cl.1 of the Constitution of the United States.

XVII. CHANGES IN EXISTING LAW, MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics,

and existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

SMALL BUSINESS ECONOMIC POLICY ACT OF 1980

TITLE III—SMALL BUSINESS ECONOMIC POLICY

* * * * *

DECLARATION OF SMALL BUSINESS ECONOMIC POLICY

SEC. 302. (a) For the purpose of preserving and promoting a competitive free enterprise economic system, Congress hereby declares that it is the continuing policy and responsibility of the Federal Government to use all practical means and to take such actions as are necessary, consistent with its needs and obligations and other essential considerations of national policy, to implement and coordinate all Federal department, agency, and instrumentality policies, programs, and activities in order to: foster the economic interests of small businesses; insure a competitive economic climate conducive to the development, growth and expansion of small businesses; establish incentives to assure that adequate capital and other resources at competitive prices are available to small businesses; reduce the concentration of economic resources and expand competition; **[and provide]** *provide* an opportunity for entrepreneurship, inventiveness, and the creation and growth of small businesses**[.]**; *and promote competitive markets, consumer choice, and business ownership through enforcement of Federal antitrust laws in the case of anticompetitive conduct that harms small businesses and the growth of small businesses.*

(b) Congress further declares that the Federal Government is committed to a policy of utilizing all reasonable means, consistent with the overall economic policy goals of the Nation and the preservation of the competitive free enterprise system of the Nation, to establish private sector incentives that will help assure that adequate capital at competitive prices is available to small businesses. To fulfill this policy, departments, agencies, and instrumentalities of the Federal Government shall use all reasonable means to coordinate, create, and sustain policies and programs which promote investment in small businesses, including those investments which expand employment opportunities and which foster the effective and efficient use of human and natural resources in the economy of the Nation.

【STATE OF SMALL BUSINESS

【SEC. 303. (a) The president shall transmit to the congress not later than January 20 of each year a report on small business and competition which shall—

【(1) examine the current role of small business in the economy on an industry-by-industry basis;

【(2) present current and historical data on production, employment, investment, population, job creation and retention, annual business failures, annual business startups, and other economic variables for small business in the economy as a whole and for small business in each sector of the economy, with, to the extent practicable, specific statistics divided as to urban, suburban, and rural areas;

【(3) identify economic trends which will or may affect the small business sector and the state of competition;

【(4) examine the effects on small business and competition of policies, programs, and activities, including, but not limited to the Internal Revenue Code, the Employee Retirement Income Security Act, the Securities Act of 1933, and the Securities Exchange Act of 1934, and regulations promulgated thereunder; identify problems generated by such policies, programs, and activities; and recommend legislative and administrative solutions to such problems; and

【(5) recommend a program for carrying out the policy declared in section 302 of this Act, together with such recommendations for legislation as he may deem necessary or desirable.

【(b) The President also shall transmit simultaneously as an appendix to such annual report, a report, by agency and department, on the to total dollar value of all Federal contracts exceeding \$10,000 in amount and the dollar amount (including the sub-contracts thereunder in excess of \$10,000) awarded to small, minority-owned, female-owned, and veteran-owned businesses.

【(c) The President may transmit from time to time to the Congress Supplementary reports supplementary to the Report on Small Business and Competition, each of which shall include such supplementary or revised, recommendations as he may deem necessary or desirable to achieve the policy declared in section 302 of this Act.

【(d) The Report on Small Business and Competition and all supplementary reports transmitted under subsections (b) and (c) of this section shall, when transmitted to Congress, be referred to the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives.

【(e) The information and data required to be reported pursuant to subsection (a) shall separately detail those portions of such information and data that are relevant to—

【(1) small business concerns owned and controlled by socially and economically disadvantaged individuals, by gender, as defined pursuant to section 8(d) of the Small Business Act;

【(2) small business concerns owned and controlled by women; and

【(3) qualified HUBZone small business concern (as defined in section 3(p) of the Small Business Act).

【(3) small business concerns owned and controlled by veterans, as defined in section 3(q) of the Small Business Act (15 U.S.C. 632(q)), and small business concerns owned and controlled by service-disabled veterans, as defined in such section 3(q).】

SEC. 303. REPORT ON THE STATE OF SMALL BUSINESS CONCERNS.

(a) *SPECIFIED ENTITY REPORT.*—Not later than 180 days after the end of fiscal year 2023 and each fiscal year thereafter, the head of each specified entity shall submit to the Chief Counsel for Advocacy of the Office of Advocacy of the Small Business Administration a report including—

(1) an analysis of how enforcement by the specified entity of Federal antitrust laws promoted competition during the preceding fiscal year by deterring and remedying anticompetitive conduct that harms small businesses and the growth of small businesses;

(2) the number of complaints of alleged antitrust violations filed by small businesses with the specified entity during such fiscal year, disaggregated by category of the alleged antitrust violation, type of offense, and the specific Federal antitrust laws allegedly violated;

(3) the number of inquiries, investigations, and enforcement actions undertaken by the specified entity in response to complaints filed by small businesses with the specified entity during such fiscal year; and

(4) the number of inquiries, investigations, and enforcement actions undertaken by the specified entity during such fiscal year pursuant to an alleged antitrust violation, opened for a reason other than described in paragraph (3), to deter and remedy anticompetitive conduct that harms small businesses and the growth of small businesses.

(b) *OFFICE OF ADVOCACY REPORT.*—Not later than 180 days after receipt of the report required by subsection (a), the Chief Counsel for Advocacy shall submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of Senate a report that includes—

(1) a summary of the report submitted under subsection (a);

(2) an analysis of the data in such report, disaggregated by industry category;

(3) an evaluation of the issues identified in such report relating to—

(A) anticompetitive conduct that harmed small businesses and the growth of small businesses; and

(B) administrative actions that promoted competition and growth of small businesses;

(4) as appropriate, recommendations for administrative actions that could—

(A) promote competition;

(B) deter anticompetitive conduct that harmed small business and the growth of small businesses; and

(C) remedy such anticompetitive conduct; and

(5) as appropriate, recommendations for legislative actions that could—

(A) promote competition;

- (B) *deter anticompetitive conduct that harmed small business and the growth of small businesses; and*
- (C) *remedy such anticompetitive conduct.*

SEC. 304. DEFINITIONS.

In this title:

(1) *ANTITRUST VIOLATION.*—*The term “antitrust violation” means any violation of Federal antitrust laws.*

(2) *FEDERAL ANTITRUST LAWS.*—*The term “Federal antitrust laws” has the meaning given the term “antitrust laws” in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term shall also include section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section 5 applies to unfair methods of competition.*

(3) *SMALL BUSINESS.*—*The term “small business” has the meaning given “small business concern” under section 3 of the Small Business Act (15 U.S.C. 632).*

(4) *SPECIFIED ENTITY.*—*The term “specified entity” means—*
(A) the Department of Justice; and
(B) the Federal Trade Commission.

* * * * *

XVIII. MINORITY VIEWS

The minority supports H.R. 5424, the Main Street Competes Act of 2023. A competitive business environment is the lifeblood of a thriving free enterprise economy, spurring innovation, driving productivity, and fostering consumer choice at fair prices. America's main street businesses are a critical component of our economy, and their success hinges on a competitive marketplace. Unfortunately, this competitive landscape has been eroded for decades, as large companies have broadly consolidated much of the economy. Federal antitrust laws are critical tools protecting the competitive environment, but their limited use in recent decades has contributed to the ongoing concentration of industries.

The SBA's Office of Advocacy has a broad mandate to advocate for small businesses within the federal government. Its primary functions include the requirement to "recommend specific measures for creating an environment in which all businesses will have the opportunity to compete effectively and expand to their full potential." Given its mandate, it is uniquely positioned to work with antitrust enforcement bodies like the Federal Trade Commission (FTC) and the Department of Justice (DOJ). While these agencies have the power to enforce these laws, they may have the direct input from small businesses necessary to make important decisions on enforcement action. By fostering collaboration between these enforcement agencies and the Office of Advocacy, Congress can ensure the input of small businesses are considered and reaffirm the Office of Advocacy's commitment to being the voice for small businesses within the federal government.

The Committee has heard testimony on numerous occasions about the importance of antitrust enforcement when it comes to supporting main street. For instance, in March 2022, the Committee held a hearing called, "Competition and the Small Business Landscape: Fair Competition and a Level Playing Field," in which members heard from experts about the value of antitrust for small businesses.

Sincerely,

NYDIA M. VELÁZQUEZ,
Ranking Member.

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