



## **Memorandum In Support of the Twenty-First Century Antitrust Act (S6748B/A10323)**

**June 2024**

### **American Economic Liberties Project Supports the Twenty-First Century Antitrust Act**

Dear Members of the New York State Legislature,

The American Economic Liberties Project is an organization dedicated to reducing the power that corporations wield over our economy and our democracy, in pursuit of economic liberty for all. We write to express our strong support for the Twenty-First Century Antitrust Act authored by Senate Deputy Majority Leader Gianaris and Assembly Majority Leader Peoples-Stokes. The passage of this bill would place New York at the forefront of the national effort to challenge the power dominant corporations hold over workers, small businesses, and everyday families by providing vital new authority to New York’s antitrust enforcers.

Over the last two decades, 75 percent of U.S. industries have experienced an increase in concentration.<sup>1</sup> This is clear in industries such as tech, retail, and agriculture, but it’s happening everywhere, in industries as varied as prison phone services, eyeglasses, and road salt. Increased corporate concentration contributes to a range of economic and social ills: raising prices, lowering wages, eroding job quality and quantity, quashing innovation and entrepreneurship, and ultimately driving local businesses out of their communities.<sup>2</sup>

Since the Reagan years, courts have abandoned the traditional understanding of antitrust law and accepted that its goal is to promote “efficiency,” which will ultimately result in lower prices for consumers. But the “consumer welfare standard,” as this view is known, doesn’t take into account the ability of dominant corporations to use anti-competitive tactics to cause a range of harms, most specifically to workers and local businesses. Applying this failed standard has caused a dramatic erosion of antimonopoly enforcement; dominant corporations can use anti-competitive tactics and mergers to cause widespread layoffs and degraded working conditions across an industry without running afoul of state or federal antitrust law.

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<sup>1</sup> Gustavo Grullon, Yelena Larkin, and Roni Michaely, “Are U.S. Industries Becoming More Concentrated?” Swiss Finance Institute Research Paper No. 19-41. <https://ssrn.com/abstract=2612047>

<sup>2</sup> “Confronting America’s Concentration Crisis: A Ledger of Harms and Framework for Advancing Economic Liberty for All,” American Economic Liberties Project, July 2020  
<https://www.economicliberties.us/wp-content/uploads/2020/08/Ledger-of-Harms-R41.pdf>



Case law for New York’s antitrust law, the Donnelly Act, closely follows federal interpretations of antitrust law, making it difficult for enforcers, workers, or small and mid-sized businesses to hold dominant corporations accountable for predatory and unfair tactics. The Donnelly Act also does not allow enforcers to hold single firms accountable for anti-competitive conduct, and is instead limited to policing actions committed by two or more firms.

The Twenty-First Century Antitrust Act addresses these and other critical shortcomings of antitrust law by:

- Modernizing New York law to address anti-competitive acts by a single firm;
- Creating an “abuse of dominance standard,” which lowers the high threshold under current law for showing a firm has monopoly power and, once dominance is demonstrated, subjects dominant corporations to greater scrutiny, ensuring they don’t abuse their power to stifle competition;
- Allowing antitrust enforcers to directly address the impact of labor market dominance on workers by barring dominant employers from using their outsized influence to lower wages or degrade working conditions across an industry;
- Requiring corporations to notify the Attorney General in advance of potentially harmful mergers, and allowing the AG to scrutinize mergers for a range of potential impacts, including on labor markets;
- Empowering New Yorkers to join class action suits to enforce their rights, and;
- Enhancing criminal penalties for antitrust violations.

Critically, this bill protects workers in New York by creating new labor protections that address the evolving challenges faced by workers in modern labor markets that are dominated by large firms. Monopsony power, where a single buyer has substantial control over the labor market, can lead to lower wages, reduced job opportunities, and diminished bargaining power for workers. By prohibiting abusive practices that harm competition in labor markets, this legislation helps safeguard workers from exploitation and ensures that they can negotiate fair wages and working conditions. Additionally, the Act's provisions for private enforcement through class action lawsuits empower workers to seek redress and remedies for violations.

Overall, these measures are crucial for protecting workers' rights, promoting economic fairness, and fostering a more equitable society in New York.

As national momentum gathers around the cause of reforming and updating antitrust law, New York has an opportunity and obligation to set a new standard for the nation. Passing this transformative legislation



would be a major step forward in the fight for a fair economy for all New Yorkers, and we applaud the leadership of the sponsors. We urge you to pass this legislation without delay.

Sincerely,

The American Economic Liberties Project