

# Fact Sheet: Robinson-Patman Act enforcement will lower – not raise – prices for consumers and create a level playing field for businesses of all sizes

In anticipation of a Federal Trade Commission (FTC) lawsuit against [Southern Glazer's Wine and Spirits](#) for price discrimination in violation of the [Robinson Patman Act](#) (RPA), Economic Liberties prepared this fact sheet. This document provides an overview of the RPA and the impacts of lax enforcement, busts industry-backed myths, and highlights how reinvigorating the law will provide a powerful tool to tackle the power of middleman predators like Walmart. For a more detailed discussion of the RPA, read Economic Liberties' brief [here](#).

## **RPA is a nearly century-old law that, if enforced, can lower prices for consumers, increase competition to support small businesses, and increase wages for workers**

- The RPA, passed in 1936, is a [powerful](#) but underutilized lever in the antimonopoly [toolkit](#) that targets [middlemen](#) corporations – including Walmart, Amazon, and pharmacy benefit managers like OptumRx – that shape entire industries up and down the supply chain and demand lower prices from different suppliers for the same product.
- The law [prohibits](#) sellers from engaging in price discrimination for commodities and purchases of “like grade and quality,” and stops buyers from knowingly seeking out or receiving discriminatory prices. If Walmart and a corner store in your district order the same volume of bandaids, the supplier would have to charge the same wholesale price to each store. Walmart could not unfairly demand discounts.
- Antitrust laws – including RPA – have gone [under-enforced](#) since the 1980s. This is because regulators and the courts embraced the [consumer welfare standard](#), which assumes: 1) consolidation is a positive force that creates economic efficiencies; 2) the only goals of antitrust enforcement are to prevent price increases or reductions in output; and 3) the reason dominant businesses are dominant is because they must be more “efficient” than smaller ones. This made-up legal doctrine by the antitrust establishment [undermines](#) multiple antitrust laws passed by Congress.
- The antitrust establishment also asserted – without [evidence](#) – that RPA harmed consumers by raising prices. If anything, the evidence suggests prices will fall.

**Congress enacted RPA to crack down on large firms receiving advantages because they abused their market power.<sup>1</sup> Current lawmakers are once again calling for RPA enforcement**

- Congress enacted the RPA (an amendment to the Clayton Act) because large [chain stores](#) were using their size to exploit parts of the supply chain to receive better prices and contracting terms. They were able to undercut their rivals – charging a price below cost – in one market to [squeeze](#) out competitors. Congress was [concerned](#) about unfair competition by large chains, which could give too much power to a few corporations.

**Underenforcement of RPA has led to Consolidated Markets that Harm Small Businesses, Workers, and Consumers**

- When price discrimination is allowed to run rampant in markets, powerful players stop focusing on quality and innovation, instead channeling their efforts into gaining market power and control over other buyers and sellers, making it difficult for small and independent businesses to compete. Strong enforcement takes price discrimination off the table as a tool to monopolize, undermine rivals, and extract excess profits.
- This underenforcement has resulted in middlemen wielding their buying power to extract discriminatory pricing arrangements from their suppliers, distorting competition and ultimately gouging businesses, consumers, and workers. Over the last four decades, the [retail](#) and the [food](#) industry in the U.S. have consolidated to unprecedented levels. Today, just five supermarket chains account for sixty [percent](#) of sales, with Walmart controlling thirty percent of the market, while Amazon accounts for over fifty and eighty percent of all print and e-book sales respectively.
- More broadly, underenforcement has contributed to increased consolidation and [economic inequality](#), a decline in business [formation](#) and consumer choice, stagnant wages and the [disfranchisement](#) of workers, increased fragility in our [supply chains](#), increased [polarization](#) and threats to our democracy.

**RPA enforcement will lower prices and protect independent businesses by curbing price discrimination**

- Between the 1930s and 1970s, strong RPA enforcement restrained dominant corporations, particularly in the [retail and grocery](#) sector. As a result, in the 1950s, more than half of all grocery stores were independently [owned](#), and they accounted for over [seventy](#) percent of sales.
- In 2022, FTC issued a [Policy Statement](#) to reaffirm the agency's commitment to curbing price discrimination and other anticompetitive behavior by enforcing the RPA and has also taken steps to investigate multiple companies for potential price discrimination violations, including [Coca-Cola and PepsiCo](#).
- In March 2024, FTC released a [report](#) on grocery supply chain disruptions during the COVID-19 pandemic, revealing that these disruptions disproportionately impacted smaller firms, as larger companies protected their market power by pressuring suppliers to favor them over rivals. This included [Kraft-Heinz](#), [Procter & Gamble](#), and Tyson Foods along with Walmart, Amazon, and Kroger.

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<sup>1</sup> Matt Stoller, "Goliath: The 100-Year War Between Monopoly Power and Democracy," pp. 166-167.

### **RPA enforcement has bipartisan support**

- In March 2022, a [bipartisan](#) group of lawmakers sent a letter to the FTC, urging the agency to investigate and bring enforcement actions against “discriminatory conduct that violates the antitrust laws, including the Robinson-Patman Act.” And two years later, a [bicameral](#) group of Democratic lawmakers sent a similar letter, urging the agency to “revive enforcement” of the law.

### **Common Misconceptions about the RPA**

#### **Myth #1: RPA enforcement will increase prices and hurt consumers**

- Critics of RPA claim that enforcement of the law will increase prices for consumers, because it would [allegedly](#) “protect inefficient retailers and producers.”

#### **Fact: There is [zero](#) empirical evidence that enforcing RPA increases consumer prices, and recent research concludes RPA enforcement could lower prices**

- Examining the sources that critics rely upon reveals that “there has been very little empirical work on the [effects](#) of [RPA]” and much of it has been “based largely on [anecdotal](#) evidence.”
- The original claims that RPA increases prices did not come from economists, but instead “[laissez faire legal scholars](#)” who ascribe to the [increasingly questioned](#) made up legal doctrine – the consumer welfare standard – based on policy preference, not Congressional intent or statutory language.
- Walmart, in an attempt to protect its excessive profits, cherry-picked a quote from Tim Wu – President Biden’s former White House competition advisor – out of context, claiming he asserted that the RPA is anti-consumer. Instead, [Wu](#) argued it was important “for economic legislation [to be] designed to promote something other than lower prices for consumers. We are consumers, yes, but also workers, employees, producers. We do more than buy. ... The squeezing of suppliers and the bankrupting of rival retailers extracts costs that may not be measured in terms of lower prices, but instead are reflected by lower wages, depressed regions of the country, and so on.”
- More rigorous modern research has concluded that enforcement of RPA and ultimately prohibiting price discrimination will benefit consumers by [lowering prices](#).

#### **Myth #2: RPA prohibits companies from offering discounts**

- Critics of RPA [claim](#) that the law “inhibit[s], ... larger, more efficient businesses, ... from receiving wholesale discounts” and “[prevent](#)[s] [small competitors] from competing effectively against larger businesses because they cannot receive discounts.”

#### **Fact: RPA does not prohibit discounts**

- The RPA says nothing about prohibiting “discounts” but instead expressly prohibits “discriminating in price.” The law exists to stop businesses from illegally charging higher prices for the same goods, not from offering discounts in good faith.

- Specifically, companies are able to provide [discounts](#) if they are in “good faith to meet a competitor’s price” or if they are “justified by different costs in manufacture, sale, or delivery (e.g., volume discounts).”
- This claim is also based on false [assumptions](#) that 1) larger businesses are inherently more efficient (this is untrue and has been [debunked](#)) and; 2) larger corporations obtain discriminatory pricing because they are more efficient (instead, such discounts typically reflect a corporation’s [market power](#))
- Actual RPA cases by private litigants indicate that the [more likely](#) outcome of RPA enforcement is that suppliers will extend the prices for large players to smaller competitors, rather than revoke any existing discounts.

**Myth #3: RPA is unnecessary because grocery, retail and other markets are already competitive**

- Critics of RPA claim that national competition in these sectors restrains their pricing power, so RPA enforcement is not needed.

**Fact: Grocery and retail markets compete on a regional level, not nationally**

- Regional geographic markets are “[where consumers actually shop](#),” making RPA critics’ pointing to competition statistics on the national level largely irrelevant.
- Researchers at [USDA](#) have found that “market concentration at the county level is much higher than estimates of concentration using national-level data.”
- Aside from that, there has been a “significant rise in food retailing market concentration ... at the national level as well as the State, Metropolitan Statistical Area, and county levels” during the last three decades.

**Myth #4: RPA is unnecessary because other antitrust laws include the same authority**

- Critics claim there are more “effective” antitrust laws for allegations of abusive monopoly power, and thus the government should not enforce the RPA.

**Fact: Congress enacted RPA to “[strengthen existing antitrust laws](#), prevent unfair price discrimination, and preserve competition”**

- There is clear legislative history and Congressional intent that shows RPA was enacted to boost other antitrust laws. Lawmakers did and currently do in fact believe it is necessary to preserve competition.
- Additionally, RPA aims to address price discrimination [before](#) markets are monopolized, a distinct mandate from other antitrust laws.
- As an amendment to the Clayton Act, the law was designed [to](#) “strengthen existing antitrust laws, prevent unfair price discrimination, and preserve competition ... in the [interest](#) of producer[s], consumer[s] and distributor[s].” This applies not only to price discrimination that could lessen competition or tend to create a monopoly, but [that](#) would also “injure, destroy, or prevent competition.”
- The [Supreme Court](#) reaffirmed that RPA was designed by lawmakers to “curb and prohibit all devices by which large buyers gained discriminatory preferences over smaller ones by virtue of their greater purchasing power.”

**Myth #5: The RPA only exists to help small retailers and other competitors, hurting large businesses**

- Critics of the RPA claim that the law is anticompetitive because it only helps small competitors at the expense of larger ones.

**Fact: By protecting fair competition, the RPA ultimately helps consumers, workers, and competitors of all sizes**

- The RPA does not tilt markets to favor competitors of any particular size– instead it creates a level playing field. In passing the law, Congress wanted to protect [all firms](#), [by](#) “keep[ing] open the door of opportunity for the small-business man as well as large.”
- Price discrimination [increases](#) market power – reducing competition – and therefore allows monopolists to increase prices to extract profits, hurting businesses of all sizes.
- When a buyer extracts special terms from suppliers, retailers who are unable to receive discriminatory pricing are then forced to pass costs onto consumers in the form of [higher prices](#).
- Suppliers and retailers and businesses [dependent on power buyers](#) (i.e., large retailers, grocers, and other middlemen in the economy) have been forced to restrain wage growth to break even. Underenforcement of the RPA may account for about [ten percent](#) of wage stagnation over the past four decades.