



Testimony in Support of LD 1815 — An Act to Protect Maine's Consumers by Establishing an Abuse of Dominance Right of Action and Requiring Notification of Mergers

By Stacy Mitchell, Institute for Local Self-Reliance

**Public Hearing in Innovation, Development, Economic Advancement and Business Committee, 131st Maine Legislature
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Dear Members of the Joint Standing Committee on Innovation, Development, Economic Advancement and Business:

Thank you for the opportunity to testify today. My name is Stacy Mitchell. I am Co-Executive Director of the Institute for Local Self-Reliance, a 50-year-old research and advocacy organization focused on advancing policies to build thriving local communities. We have offices here in Portland, as well as in Minneapolis and Washington D.C. We're a founding member of Small Business Rising, a coalition of more than 40 organizations, representing about 300,000 small businesses nationally, which came together to advocate for policies to restore open, competitive markets and level the playing field.¹ I'm sorry that I was not able to make the trip to Augusta today to voice my support in person for this legislation, which I think is critical to promoting innovation, entrepreneurship, and the growth of Maine businesses.

For much of the 20th century, small independent businesses — those with fewer than 100 employees — accounted for about half of the US economy's output.² But over the last few decades, small businesses have been in steep decline across most industries. A central focus of my research has been on the question of why this is. It's often assumed that small businesses simply aren't able to compete in the modern economy, that they are inherently inefficient and outdated.

But, in fact, the evidence shows that, in many sectors, small businesses actually outperform big companies by a wide range of measures. They provide better services, higher-quality products,

¹ For more information, visit Small Business Rising at <https://www.smallbusinessrising.net/>.

² Katherine Kobe and Richard Schwinn, "Small Business GDP, 1998-2014," U.S. Small Business Administration Office of Advocacy, December 2018 (finding that the share of small business GDP was around 48% in 1998).

more innovation, and even lower prices.³ The real reason so many independent businesses have disappeared is not because they failed to compete, but because, beginning in the 1970s and 1980s, policymakers, including both Democrats and Republicans, decided to weaken our federal and state antitrust laws. This opened the way for larger corporations to amass market power not by competing on the merits — not by competing head-to-head on price and service — but rather by using anti-competitive tactics to crush their smaller rivals.

Take the case of independent pharmacies. According to Consumer Reports and others, locally owned pharmacies offer significantly lower drug prices, make fewer mistakes, spend more time with patients, and provide better health care services and screenings than chains like CVS, Walgreens, and Walmart.⁴ Yet local pharmacies have disappeared across much of Maine and the rest of the country. How can it be that they are both superior and losing ground? The answer has to do with a handful of obscure companies called pharmacy benefit managers (PBMs), which reimburse pharmacies on behalf of insurers. Just three PBMs control more than 70 percent of prescription reimbursements. All three own their own retail and mail order pharmacies. The largest is CVS Health. CVS and the others have been slashing reimbursement rates to independent pharmacies, driving them out of business and steering patients to their own pharmacies instead.⁵

They are “really squeezing us,” Ben Okafor, who owns Family Pharmacy in Machias and Eastport, told me when I was investigating this problem across Maine.⁶ As a result of these anti-competitive tactics, we have lost a lot of pharmacies. There are many communities across Maine that have become pharmacy deserts, where residents either have to drive long distances to fill a prescription or rely on mail-order, which is an inferior and unreliable option.

There are similar problems in a host of industries. Farmers, including dairy farmers, are being squeezed by a handful of processing companies that face too little competition and thereby have the power to dictate terms. The large national retail chains that dominate the grocery sector have been using their power as major buyers to demand that food suppliers give them special deals while raising the prices they charge independent grocers.⁷ This is forcing many local grocers out of business and contributing to the spread of food deserts, especially in rural

³ Stacy Mitchell, “The View from the Shop—Antitrust and the Decline of America’s Independent Businesses”(2016) 61(4) *The Antitrust Bulletin* 498. See also, eg, David Dayen, “Bring Back Antitrust,” *The American Prospect*, Fall 2015.

⁴ Lisa Gil. “Consumers Still Prefer Independent Pharmacies, CR’s Ratings Show,” *Consumer Reports*. December 2018. <https://www.consumerreports.org/pharmacies/consumers-still-prefer-independent-pharmacies-consumer-reports-ratings-show/>.

⁵ Stacy Mitchell and Zach Freed. “How the FTC Protected the Market Power of Pharmacy Benefit Managers,” *ProMarket*. February 2021. <https://www.promarket.org/2021/02/19/ftc-market-power-pharmacy-benefit-managers/>

⁶ Stacy Mitchell and Charlie Thaxton, “A Rebirth of Indie Pharmacies Could Cure Rural Ills,” *The American Conservative*, Nov. 5, 2019.

⁷ Stacy Mitchell and Ron Knox, “Boxed Out: How Big Retailers are Flexing Their Supply Chain Power to Kill Off Small Businesses,” Institute for Local Self-Reliance, Sept. 2022. <https://ilsr.org/boxed-out/>

areas.⁸ Local beer brewers have revolutionized the beer industry, yet many have been unable to grow beyond a “micro” scale, because Anheuser-Busch InBev and Molson Coors have used their control over distribution in some states to keep independent craft beers from getting shelf space at supermarkets.⁹

Furthermore, as our economy moves online, small companies and startups of all kinds have been left to face a handful of dominant gatekeepers — Amazon, Apple, Google, and Meta — that can block their access to markets, impose exorbitant fees on them, and even steal and copy their best ideas.¹⁰

In a national survey in 2022, small businesses reported that anti-competitive tactics are among the top challenges impeding their ability to succeed and survive.¹¹

The implications of this are far reaching for the people of Maine and across the country. The unchecked concentration of market power has been linked to a steep decline in the number of startups, which in turn has hurt innovation.¹² Many of our communities, especially in central and northern Maine now lack basic services, from grocery stores, to pharmacies, to hospitals. Today’s extreme levels of industry consolidation is also fueling income inequality, economists have found.¹³ If you deny people the opportunity to build their own businesses and compete on a fair playing field, you’re cutting off a crucial pathway to the middle class.

We’re also paying for this in steeply inflated prices. Dominant grocery manufacturers and retailers have sent grocery prices soaring over the last few years, posting record profits while families struggle to get by.¹⁴ Lack of competition in air travel has left people flying out of small cities like Portland and Bangor paying sky-high prices with no choices. Or look at what’s happened to healthcare costs and drug prices, where the ability of few providers to control the market has left us paying even more. The list goes on.

⁸ Stacy Mitchell, Kennedy Smith, and Susan Holmberg, “The Dollar Store Invasion,” Institute for Local Self-Reliance, March 2023, <https://ilsr.org/report-dollar-store-invasion/>

⁹ Diane Bartz, “Exclusive: U.S. Probes Allegations AB InBev Seeking to Curb Craft Beer Distribution,” Reuters, October 12, 2015; Tripp Mickle, “Craft Brewers Take Issue with AB InBev Distribution Plan,” *Wall Street Journal*, Dec. 7, 2015.

¹⁰ *Investigation of Competition in Digital Markets: Majority Staff Report and Recommendations*, Subcommittee on Antitrust, Commercial, and Administrative Law of the House Judiciary Committee, 2020

¹¹ Institute for Local Self-Reliance, “2022 Independent Business Survey: Top Challenges and Policy Priorities,” September 2022. <https://ilsr.org/2022-survey-businesses/>.

¹² “What’s Driving the Decline in Firm Formation Rate: A Partial Explanation,” Ian Hathaway & Robert Litan, Brookings Institute, November 2014; “Dynamism in Retreat: Consequences for Regions, Markets, and Workers,” Economic Innovation Group, February 2017.

¹³ Jose Azar, Ioana Marinescu and Marshall Steinbaum, “Labor Market Concentration,” *Journal of Human Resources*, May 2020; Bonnie Kavoussi, “How market power has increased U.S. inequality,” *Equitable Growth*, May 2019

¹⁴ Stacy Mitchell, “The Real Reason Your Groceries Are Getting So Expensive,” *New York Times*, May 2023. <https://ilsr.org/in-the-new-york-times-the-real-reason-your-groceries-are-getting-so-expensive/>; Isabella M Weber and Evan Wasner, “Sellers’ Inflation, Profits and Conflict: Why Can Large Firms Hike Prices in an Emergency?” (2023) University of Massachusetts Economics Department Working Paper.

Throughout much of the nation's history, we had strong antitrust laws that prevented the kinds of abuses that I've been describing. These laws were originally pioneered by the states in the early decades of the republic. Then, beginning in the 1870s, the federal government began to follow the states, adopting its own antitrust laws. For the next century, policymakers at both the federal and state levels periodically updated these laws, passing new legislation to address competition problems as markets modernized. This helped lead to decades of middle class growth, booming startups, and innovation that led the world.

As I noted earlier, it's now been some 50 years since policymakers updated our antitrust laws. Instead, these laws, both state and federal, have been allowed to atrophy and have been weakened by a series of misguided court decisions.

Today, there is a growing and remarkably bipartisan effort in several states and at the national level to strengthen and modernize our antitrust laws.

This bill is part of that effort and is a crucially important step to get us back on track. It would make crucially needed updates to the state's antitrust law, helping to ensure that Maine businesses and the state's economy can compete and thrive. It applies only to corporations that control dominant market shares in their industries. It would deter anti-competitive conduct, and it would give the state's attorney general new tools to safeguard competition.

Thank you for the opportunity to share our views.

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