

House Commerce Committee
75 Rev Dr Martin Luther King Jr Boulevard
St Paul, MN 55155



Dear Chair Stephenson, Vice Chair Kotyza-Witthuhn, and Members of the Committee,

Thank you for the opportunity to testify. My name is Pat Garofalo – no relation to your colleague – and I am director of state and local policy at the American Economic Liberties Project, an organization dedicated to reducing the power dominant corporations have over public life. I’m here to express our support for HF 4144. It’s a necessary bill that would reinvigorate antitrust law, restoring it to its historical aims and enabling enforcers to tackle the challenges posed by today’s dominant corporations and their ability to use their market power to harm Minnesota workers and local Minnesota businesses.

Over the last two decades, 75 percent of U.S. industries have experienced an increase in concentration.¹ This is clear in industries such as social networking, hospitals, and agriculture, but it’s happening everywhere, in industries as varied as syringes, prison phone services, eyeglasses, and road salt. This 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 driving local businesses out of their communities.² The latest piece of evidence comes from a recent report from the federal Treasury Department, which found that corporate power is responsible for workers’ wages being 15-25 percent lower than they would be in a more competitive economy.³

¹ 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>

² “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>

³ “The State of Labor Market Competition,” U.S. Department of the Treasury, March 7, 2022 <https://home.treasury.gov/system/files/136/State-of-Labor-Market-Competition-2022.pdf>

Antitrust law is supposed to be one of the main remedies for this corporate abuse. But for the last several decades, U.S. courts have hollowed it out by accepting that the goal of antitrust law is only to promote efficiency, which is known as the “consumer welfare” standard, and was created by the courts in the 1970s. Under this standard, market power, fair dealing, and corporate concentration are mostly irrelevant. The consumer welfare standard contrasts with traditional antitrust law, which focused not only on prices but on protecting workers, suppliers, rivals and small businesses from abusive or anti-competitive tactics by powerful firms.

Under current state and federal antitrust law, then, victims – both businesses and workers – harmed by corporate power have little recourse. The bar for proving a firm is an illegal monopoly is too high, cases take too long and are bogged down by complex and unwieldy definitional fights over markets, and workers harmed by monopsony power – which is buyer power over labor markets – are left almost entirely out of enforcement regimes.

By reforming their laws, states can begin to empower antitrust enforcers and those harmed by dominant corporations to assert their rights once again. And a good place to start is HF 4144.

The bill creates a framework so that dominant firms with market power, whether on the selling, distribution, or buying side, are held accountable for abusing their power. Its “abuse of dominance” standard is a more realistic standard of antitrust scrutiny. It would allow enforcers to challenge many of the practices that have led to today’s concentrated economy and that current antitrust law and precedent allow to go unchecked.

Particularly important are its protections for workers. Research has shown that most labor markets in the U.S. are highly concentrated⁴, and that dominant employers can exert power at much lower levels of concentration than current antitrust law addresses, which makes sense,

⁴ José Azar, Ioana Marinescu, Marshall Steinbaum, and Bledi Taska, “Concentration in US labor markets: Evidence from online vacancy data,” *Labour Economics*, Volume 66, October 2020, <https://www.sciencedirect.com/science/article/abs/pii/S0927537120300907>

since the job market is sticky: Changing a job, or moving to a new labor market in order to find a better one, is a big decision, and many workers are prevented from doing so due to other factors, such as family responsibilities. This gives corporations power to lower wages and degrade working conditions. In fact, markets with higher levels of concentration see more wage cuts and labor law violations.⁵ HF 4144 begins to build a framework for addressing those harms.

To be clear, though, this bill does not make it illegal to be big. It merely asserts that dominant firms should be held to a special standard of scrutiny, to ensure that they are not abusing their dominance to unfairly harm competitors or workers.

And most firms simply do not have enough market power to be drawn under the bill's purview. To the contrary, we believe that reformed antitrust law would level the playing field for local businesses, so that they can compete on the merits of their ideas and products, rather than be subject to the whims of dominant gatekeepers. Most businesspeople will find that gatekeeping distributors, buyers, and sellers will find it harder to mistreat them, and that pricing for their inputs will become more transparent.

Finally, reinvigorating antitrust law is key for democracy. Dominant corporations, instead of competing in the marketplace, spend in the political arena in order to purchase rules that rig markets in their favor and allow them to extract resources from local communities. New powers for regulators and workers are needed to ensure that residents of local communities can make collective and well-informed decisions about the economic forces impacting their lives.

As national momentum gathers around the cause of reforming and updating antitrust law, Minnesota has an opportunity to lead the way and we hope you take it, with this bill and all of

⁵ Ioana Elena Marinescu, Yue Qiu, Aaron Sojourner, "Wage Inequality and Labor Rights Violations," https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3673495

the other important legislation you heard today. Thanks for your time and happy to answer any questions.

Sincerely,

Pat Garofalo
Director of state and local policy
American Economic Liberties Project