



Prepared Testimony and Statement for the Record of
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On Behalf of the National Grocers Association, Washington, D.C.

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Before the
House Agriculture Committee

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Introduction

Good morning Chairman Scott, Ranking Member Thompson, and Members of the House Agriculture Committee. It is an honor to have the opportunity to testify before you today to provide the perspective of the independent grocer on America's current food supply chain challenges. My name is Greg Ferrara, President & CEO of the National Grocers Association (NGA). NGA is the voice in Washington for America's 21,000 independent community grocers and the wholesalers that service them.

Independent community grocers account for 33 percent of all grocery sales, exceeding \$250 billion and more than 1 million American jobs. We are inherently tied to the strength and vitality of the markets we serve – at the heart of local communities and the U.S. economy. Independents provide jobs and boost local tax revenues while bringing choice, convenience and value to hard-working Americans.

From the customers they see each day to the local producers who fill their shelves, the country's independent community grocers offer insight into America's communities that is truly unique. Their aggregate influence is more than matched by their cornerstone role in every Congressional district, nourishing their neighbors not only with food and goods, but through leadership and service.

COVID-19's Enduring Impact on the Grocery Supply Chain

Without a doubt, the last 18 months has been the most challenging time in grocery retailing that anyone in our industry can remember. Since the declaration of the national emergency and the industry's designation as an essential infrastructure, independent grocers have experienced sustained and unprecedented levels of consumer demand. In the early days of the pandemic, we were confronted by the two biggest weeks in grocery retailing in documented history as we experienced the effects of panic buying and the closure of food service establishments. Customers came in large volumes and stocked up on groceries and household products taking fewer trips with much larger basket sizes than normal.

We experienced shortages across a variety of products from household cleaners, paper products, and shelf-stable goods like canned soup, vegetables, rice, beans, and pasta. When Americans visited their neighborhood grocery store, they were confronted with empty shelves and extremely long checkout lines. Many Americans wondered whether there would be enough food to go around to feed their families. But despite the initial onslaught and disruptions to our daily lives, America's food supply chain demonstrated its flexibility and resilience and caught up with demand in most grocery categories. The food supply chain recovered from the initial shocks and consumer confidence in food retailers steadily recovered. America's farmers, ranchers, and workers throughout the food distribution chain responded heroically and rose to the occasion to keep our food supply stable. In short order,

retailers and consumers alike no longer worried about the prospect of empty grocery shelves and coming home empty handed after a grocery run.

From the American farmer to the independent supermarket operator, our food supply chain is strong and endured the greatest test in generations. We are fortunate to live in a country that sources the vast majority of its food domestically. Although import and export delays are crippling for many industries who rely on foreign trade, bottle necks at the ports have spared most grocery list items because our food is largely produced right here on American soil. As other nations' food systems face a major test in the current supply chain crunch, it serves as a sober reminder never to take the abundance of Americas food supply for granted. Our stable agriculture and food system not only guarantees our economic security, but also our national security. A population's access to sufficient, safe, and nutritious food has been a core state interest since the beginning of civilization itself.

It is important to frame our current supply chain challenges by remembering that America is blessed to enjoy the most robust and safest food system in the world. We as food industry representatives and elected officials must continue to reassure the public and educate our constituents about the reliability of our food supply chain to avoid the panic buying that marred the industry during the early days of the pandemic. It is the panic buying mindset that poses the greatest risk to the availability of food, not the challenges that we are here to discuss today. I do not mean to downplay our current challenges – we are likely stuck with inconsistencies in select product availability and moderate food price inflation for the near future. But we can avoid the worst scenarios by being responsible spokespeople for America's food and agriculture sector. Alarmism can easily spiral into news sensationalism or viral social media cycles that influence the buying patterns that we seek to avoid. It happened once and it can happen again.

With that being said, the global pandemic has changed the economy and the food supply chain is adjusting to deal with the new challenges presented by the new economic order. From the independent grocery sector's perspective, there are three central factors that are contributing most significantly to the current supply chain crunch:

- 1) **Labor Availability** - The common theme from all industries represented on this witness panel is that we all suffer from a lack of labor availability. People have left the workforce, perhaps for good. Others left temporarily and still have not come back. More Americans are working from home leading to a culture shift in how consumers shop and what they purchase. The food industry continues to adapt to a shifting marketplace, but the bottom line is that we must have access to a stable workforce in order to adequately meet the demands of American consumers.
- 2) **Freight Capacity Constraints** - Shortcomings in America's transportation infrastructure capacity is a driving factor behind supply bottlenecks and delays.

Specifically, the trucking industry faces an acute shortage of truckdrivers, a critical cog in the supply chain required to move product along to each step in the food production cycle. America is still short by more than 100,000 truck drivers and the problem is only getting worse.

- 3) **Buyer Power and Supply Chain Concentration** – The pandemic has exposed a growing problem in the food and agriculture sector: market concentration is exacerbating product shortages by depriving the market of much needed redundancies and driving unfair distributions of products in short supply. The supply chain crunch has illustrated that capacity cannot easily increase in concentrated markets, so when one firm experiences a shock, everyone suffers. Retail concentration enables dominant retailers to use their immense economic power to pressure suppliers into prioritizing their shipments over other retail customers thus harming independent retailers and their largely rural and urban customer base.

I will explore each of these concepts in greater detail later in my testimony and offer solutions for how Congress and the federal government can address the mounting supply chain challenges that the food sector faces today. I have great confidence that the food industry will rise to the occasion and meet these challenges like we always do. Our food system is the envy of the world because the industries that comprise our sector – from farmers to retail stores - always find a way to persevere.

Workforce Challenges in Grocery

Throughout the pandemic, grocers have faced workforce challenges in keeping up with immense operational demands. Responding to historic demand from consumers – in addition to implementing of comprehensive safety and sanitation measures – has required grocers to scale up the workforce significantly. The industry's ability to meet our customers' needs would not have been possible without the dedicated and talented frontline workers who showed up to work every day to keep store shelves stocked. These Supermarket Superheroes, as we call them, served as they faced serious challenges, including childcare, transportation, interruptions, and health concerns.

Grocers have done everything in their power to protect their workforce throughout the pandemic. As essential frontline workers, NGA worked hard to secure personal protective equipment during the onset of the pandemic when PPE was in short supply to protect the grocery workforce. When vaccines became available, grocers made every effort to vaccinate their workforce. Many grocers allowed their workers to take paid time off to get vaccinated and to recover if they experienced side effects.

18 months of working on the frontlines of the fight against COVID-19 has come at great personal cost. To put it bluntly, our workers are mentally and physically exhausted. Grocers

have stepped up to recognize these supermarket superheroes by increasing pay and other benefits to their workers. According to NGA survey data, more than 93% of independent grocers reported additional pay and bonuses to their workers in recognition of their service during the pandemic. NGA was disappointed that Congress did not also step up and recognize frontline workers for their service to the country in any of the economic rescue packages passed in 2020 and early 2021. We continue to believe that these individuals are deserving of recognition from their leaders for going above and beyond to serve the country in a difficult time. We have publicly supported policies such as a payroll and income tax holiday for frontline food supply chain workers, such as the legislation that Ranking Member Thompson proposed last year, the AG CHAIN Act.

The pandemic's strain on the food industry workforce is driving the most significant constraints the food industry faces. Inadequate labor availability has become the single greatest challenge to the entire food supply chain. As the pandemic has worn on, grocers and wholesalers have increasingly struggled to fill open positions throughout grocery operations, including warehouse workers, truck drivers, stockers, clerks, and the higher-skilled positions around the store perimeter, like butchers, chefs, bakers, and deli managers. The labor shortage makes it a greater challenge to serve our customers, sometimes leading to longer wait times at check-outs and delays in restocking shelves.

Grocers are fighting tooth and nail to retain and recruit workers by taking extraordinary steps to keep staffing at a manageable level. NGA survey data finds that 85% of independents are increasing wages and making overtime hours available to its workforce. Many are instituting one-time signing and referral bonuses for new workers that come on staff. Despite these efforts, we still face the most difficult staffing environments in memory and the shortfall has a compounding effect. The continuous and sustained high levels of consumer demand add pressure to the existing workforce. And with most operations being short-staffed, existing workers have to work even harder to deal with the labor shortfall. Over-extending current staffing is not the answer because it leads to burnout, exhaustion, and greater rates of attrition. A common theme is that we're seeing an increasing number of grocery storefronts adjust for shorter store hours.

The bottom line is that our workforce is exhausted and our industry needs help. As we work to adjust to the new normal in food retailing, we need the government's help in attracting talent into the grocery workforce. We can offer stable, reliable, good-paying jobs to millions of Americans, especially those seeking the enter or re-enter the workforce. We have jobs for just about every skill level from clerking, to chefs, to IT, to marketing and even top management.

As Congress and state and local governments consider recalibrating workforce development and training programs to match unemployed workers into good jobs, NGA is urging policymakers to develop and implement vocational training and hiring programs that offer a

pathway into the grocery industry. These jobs are available in nearly every community across the country and can offer new career opportunities. If individuals are interested in becoming a chef or mastering the culinary arts, grocery stores are often the perfect fit as independents differentiate themselves in offering quality pre-made and prepared foods. If workers unemployed during the pandemic were inspired by the popular Netflix show, The Great British Bake Off, we offer meaningful opportunities to talented bakers as well.

The key to restaffing the grocery and food sectors is that we need to think outside of the box in terms of how we educate and prepare workers entering the workforce. We are in a new reality and programs must reflect the needs of both workers and employers. NGA applauds ongoing bipartisan efforts to tackle the issue of updating workforce training programs to offer solutions to help Americans looking to start or change careers. We stand prepared to offer our ideas on how to craft solutions that will work for the grocery sector, one of the largest employers in the country.

While we strongly support the use of vaccines to stop the spread of Covid-19, we are concerned about the potential unintended consequences of the business vaccine mandate that the Occupational Safety and Health Administration is expected to release any day now in the form of an Emergency Temporary Standard (ETS). If the rule is too onerous, particularly for small businesses, it could exacerbate the labor and workforce challenges we're experiencing today. The industry is already so strained that it cannot sustain another hit to employment. We encourage Congress and the Administration to consider providing the food sector with flexibility in vaccinating our workforce. We hope that any ETS will mitigate any potential disruptions to the food supply that would occur should it place a significant burden on employers. The last thing we need is a worsening workforce crisis as the existing labor force works in overdrive to feed the American people.

Trucking Constraints in Food Retail

America's grocery distribution system relies heavily on motor carrier freight transportation capacity and efficiency. Grocery wholesalers and self-distributing independent retail grocers employ a significant number of truck drivers and require large fleets of tractor trailers to ship product from warehouses to grocery store shelves.

Our industry has been heavily impacted by the ongoing truck driver shortage, which has only worsened during the COVID-19 pandemic and the current supply chain crunch as trucking capacity is being redirected towards alleviating log-jams at the ports. As a result, freight costs have increased dramatically since March 2020 with some NGA members reporting increases in costs up to five times higher than pre-pandemic levels. Higher freight costs translate directly to higher food prices in the grocery store checkout as grocers are forced to pass down increased costs onto consumers. Increasing freight costs are one of the drivers of the current inflationary pressures that we see on retail food prices.

In addition to higher freight costs, NGA members are also experiencing much lower in bound service levels of goods than pre-pandemic norms. Some of our members are reporting aggregate service levels as low as 60 percent compared to the high 90s before March of 2020. A number of retailers and wholesalers are also reporting late deliveries that miss critical stocking windows, leaving some shelf-space empty for longer periods than anticipated.

To increase transportation efficiency and capacity, NGA recommends adoption of policies that would mitigate the ongoing truck driver shortage, such as removing the commercial driver's license (CDL) restriction on drivers aged 18-20 from transporting across state lines. Such a move would expand the labor pool for potential truck drivers and provide young adults with well-paying jobs that are currently average in the six figures. Currently 49 states allow 18-year-olds to obtain a CDL, but federal law prohibits them from interstate delivery. NGA supports the Bipartisan Infrastructure Framework's inclusion of the DRIVE SAFE Act in the legislation. This measure would ensure that roads would continue to remain safe by requiring younger truck drivers to complete an apprenticeship program so they have plenty of experience behind the wheel before being authorized to drive interstate and long-haul distances.

As we continue to experience sustained high levels of consumer demand at the grocery checkout counter, non-scheduled and emergency delivery of products to grocery loading docks are required to keep shelves full. Flexibilities provided by the Federal Motor Carrier Safety Administration (FMCSA) such as relief from Hours-of-Service requirements has played a critical role over the last 18 months to allowing our distributors to keep up with demand. The industry has proved that we can maintain a high degree of trucking safety while keeping shelves stocked with nutrition and affordable foods. NGA is asking the FMCSA to maintain these flexibilities as we see no letup in consumer demand.

The Effects of Consolidation and Buyer Power on the Food Supply Chain

The COVID-19 pandemic has made the grocery supply chain literally a kitchen table issue for the American people. While shortages and limited availability of critical inputs and supplies affects everyone, the impact of these shortages are felt disproportionately by independent grocers and smaller players in the market. Inconsistent distribution and apparent shortages of consumer goods has made it more difficult for customers of independent grocery stores to obtain high-demand products because we compete against dominant players with immense economic power that can wield tremendous influence over their suppliers.

Today 65 percent of grocery shelf-space in America is controlled by five grocery retailers. These dominant firms that we call "power buyers" have taken advantage of supply chain crunches to entrench their economic power at the expense of smaller competitors and producers. Many independent grocers have struggled throughout the pandemic to stock

must-have products – such as essentials like paper towels and toilet paper, cleaning suppliers, and critical packaged foods like canned soup – while large national chains have exercised their buyer power to demand on-time, complete orders, and in some cases to secure excess supply¹. In addition to supply inequities, independent grocers are experiencing unprecedented levels of price discrimination. Our largest competitors use their influence to maintain favorable wholesale pricing as independents experience a retreat of promotional trade spending, a critical marketing tool that allows independent grocers to compete on price.

According to the USDA Economic Research Service, areas with a higher share of low-income households, as well as rural areas, tend to have more independent food retailers and fewer chain stores.² The same study found that stores with a higher share of Supplement Nutrition Assistance Program (SNAP) redemptions are more likely to be independently owned, particularly in rural areas.³ These consumers are represented most directly by the House Agriculture Committee whose Members overwhelmingly represent rural and low-income districts. Therefore, it is your constituents who are the greatest victims of the current supply chain crunch and mounting food price inflation.

Rural and low-income consumers must travel longer distances to find the products they need at a more crowded large national retailer. In rural areas, customers often drive 30 to 50 miles to secure necessary household and food products at the larger chains. We also believe that these consumers are bearing the greater burden of food price inflation. Historically, dominant chains have been able to resist inflationary cost increases thanks to their uneven bargaining leverage over suppliers. As a result, suppliers are forced to impose higher costs onto their smaller customers who have less clout in the market

A consolidated food marketplace is a system that benefits a select few at the expense of everyone else, including consumers, workers, and independent retailers and suppliers. The COVID-19 pandemic and supply chain crunch has only exposed these underlying weaknesses as consumers experience in real time the unequal effects of buyer power and consolidation. However, this problem is not new, so it is important to examine the history and nature of competition issues in the food and grocery sector to help inform our understanding of the supply chain issues we are experiencing today.

According to the US Census Bureau, in the last 25 years, grocery storefronts have shrunk by a third. Fifteen of the top 20 grocers in the 1980s either merged or were acquired by the 2000s. During this time independent grocers lost ground in many rural and urban areas where food deserts now exist due in large part to competitive disadvantages in the

¹ <https://www.freightwaves.com/news/walmart-tightens-on-time-in-full-requirements>

² <https://www.ers.usda.gov/webdocs/publications/85783/err-240.pdf>

³ Id.

marketplace that favor big box retailers and dollar stores. These retail store formats use their size and national reach to influence terms of trade in their favor at the expense of independent retail competitors. Demands from power buyers impose disadvantageous terms, conditions, and prices on independent grocers. This economic discrimination reduces the smaller rivals' competitiveness through higher costs or reduced product supply or quality, and directly harms competition consumers, and the economy. The largest national chains have buyer power because of their significant bargaining leverage over suppliers. This leverage exists because the national chains are critical "gatekeepers" between grocery suppliers and consumers, controlling a majority of grocery shelf-space in the country. Critically, the dependency is asymmetric; the dominant grocery retailers are not nearly as dependent on a particular supplier as the supplier is on the retailer. This is because a particular grocery supplier's products generally represent only a small fraction of a grocery retailer's sales, which may encompass tens of thousands of products. A dominant retailer often enjoys several branded suppliers for a particular product in addition to selling its own, private label version. As a result, a dominant retailer has a substantial advantage over its suppliers in a negotiation because the risk for the retailer, if the supplier refuses its demands an no deal results, is substantially smaller than it is for the supplier.

The paradigmatic example for this one-sided bargaining dynamic is Walmart. Its ability to unilaterally demand concessions from suppliers is legendary. For example, in 2017, Walmart announced a new requirement that suppliers for Walmart stores and Walmart's e-commerce business must provide on time and in full deliveries 75 percent of the time. Since then, Walmart has repeatedly tightened this requirement, raising the bar for on time, in full deliveries from 75 percent to 85 percent and then to 87 percent in 2019. In September 2020, while manufacturers and suppliers throughout supply chains were struggling to safely meet demand during the COVID-19 pandemic, Walmart raised the bar again, demanding 98 percent on time, in full deliveries. Walmart penalizes suppliers that fail to meet its demands by charging a penalty of 3 percent of the cost of goods sold—a devastating penalty in an industry already operating with razor-thin margins.

Another example that hits close to home if you represent rural and low-income areas is how the problem of economic discrimination enables the proliferation of dollar stores. We call this brand of economic discrimination packaging discrimination (i.e. refusing to provide certain package sizes or promotional packaging to certain grocers, while providing them to competing retailers). The dollar stores use their buyer power to demand "cheater size" products, which include smaller amounts in a package that can be sold at a lower price. These "cheater packs" create a false impression among consumers that they are paying a lower price for the same product they see at independent grocers. This provides dollar stores an unfair edge over traditional grocery stores who offer a greater assortment of healthy and nutritious foods. In fact, it is often the case that dollar stores perform the bare minimum depth-of-stock and perishability requirements necessary to be authorized for a SNAP license.

Proliferation of dollar stores throughout rural and urban America has not only pushed countless independent grocery stores out of business, but they are directly contributing to food desert and healthy food access challenges that many Members of this Committee are committed to addressing through legislation.

For decades, these patterns of retail consolidation and increasing buyer power has been the driving force for further consolidation upstream in the food supply chain. In order for food suppliers to compete, they must achieve scale for two reasons: to accommodate the vast distribution networks of the largest retailers and to attempt to regain bargaining leverage. Food suppliers have responded by consolidating at an unprecedented rate. Just in 2019, over 300 food industry mergers and acquisitions were recorded⁴.

The spiral of consolidation throughout the food supply chain has advanced to the point where just a handful of firms compete to buy agriculture products. A lack of competition at the farmgate results in unreasonable producer demands and it drives down prices paid to farmers and ranchers to anticompetitive lows. But consumers often do not see the advantages of those low acquisition costs because the large suppliers capture that revenue and price discrimination amongst retailers reduces price competition in the retail market.

Supplier consolidation is directly responsible for a number of the supply chain shocks we experienced during the pandemic. Early in the pandemic, COVID-19 outbreaks in various meat plants took nearly 40 percent of meatpacking capacity offline at one point. This resulted in skyrocketing meat prices, limited product availability, and farmers and ranchers being forced to euthanize livestock due to a lack of buyers in the marketplace. This is just one example where supply chain shocks could have been avoided if more redundancies were built into the supply chain through more robust competition. We also saw huge spikes in price and diminished output in other concentrated protein markets such as eggs.

While much of the stocks have been replenished on high-demand consumer products like cleaning supplies and many shelf stable good categories, the industry continues to see diminished service levels on key products. The problem is especially troubling heading into the busy holiday season where retailers and wholesalers have already received out-of-stock notices on key products, such as canned gravy, frozen pies, pastry shells, stuffing, amongst other holiday staples. Other key categories impacted by shortages and out-of-stocks include, processed meats, deli meats, paper and bath tissue, cookies and crackers, dairy and plant-based creamers, yogurt, baby food, and cereal. Some out-of-stock product availability is due to the lack of shortages in product packaging in plastics and aluminum. Although NGA understands that shortages and access to key product inputs is impacting everyone throughout the food supply chain, and suppliers are doing their utmost to meet increased consumer demand, we continue to see evidence that the independent grocery segment is

⁴ <https://www.foodandpower.net/ownership-control>

being impacted disproportionately relative to our chain competition. NGA members too often find full shelves and display cases of products that we cannot source when we visit our large national chain competitors. Our wholesalers routinely see products not available to them by their primary suppliers available in large quantities on the “diverter wire,” a secondary market for excess products.

Much of the current supply chain challenges and market inequities wrought by excess consolidation and buyer power can be addressed through more robust competition. The current outcome was not inevitable. The antitrust laws were designed to protect against anticompetitive economic discrimination. Congress recognized the benefits of independent business and the threats posed by economic discrimination when it enacted the Robinson-Patman Act in 1936, a law designed to foster robust competition and protect against coercion by dominant firms. The Robinson-Patman Act reflects Congress’ determination that discriminatory treatment among competitors is pernicious and should be prohibited. But current antitrust enforcement efforts have failed to address these anticompetitive harms, and judges have inappropriately limited the scope of the law despite clear statutory language. Despite Congress’ broad goals in 1936, the Federal Trade Commission has not brought a case under the Robinson-Patman Act in more than 20 years. Nor has the FTC brought an enforcement action against economic discrimination using other antitrust.

That is why NGA is a founding member of a coalition that launched last week known as the Main Street Competition Coalition. The coalition is comprised of Main Street business groups and agriculture producers that are committed to promoting competition and reviving and reforming the Robinson-Patman Act. We advocate for antitrust policies that ensure a level playing field to benefit both businesses and consumers. The coalition is not only concerned about anticompetitive economic discrimination in the food sector, but in other industries as well, including alcohol, convenience stores, pharmacies, restaurants, and in the shipping industry.

Our goal is to harness the renewed interest in the antitrust reform in the Big Tech sector to drive reforms that impact every day Main Street businesses. We are urging Congress to consider the views of our coalition as part of the conversation around competition challenges throughout the economy. We believe strongly that many of the problems confronting our economy, including shortages, inflation, and disruptions, can be ameliorated by curbing anticompetitive economic discrimination and promoting free markets through rigorous enforcement of the antitrust laws

Conclusion

Americans are blessed to live in a country that features the safest, most abundant, affordable food supply in the world. The supply chain challenges the food sector currently faces is not insurmountable. Although we expect some inconveniences and distribution inconsistencies

to be present in the near future, I have no doubt that American ingenuity and the dedication of the patriotic individuals that comprise our food sector will prevail over the obstacles and headwinds that we face in the marketplace. It will take time to adjust to the new economic reality, but targeted interventions from our federal policymakers will help us get back on the right track even quicker. To this end, we recommend that Congress consider measures to help industry attract workers seeking to enter or re-enter the workforce. We need legislative solutions to add much-needed capacity to our nation's freight and trucking sector. Finally, we need to rededicate our antitrust policies to the benefits that flow from free enterprise and fair competition, rather than giving dominant players free reign to set terms of trade for everyone else in the marketplace.

With that, I am happy to take your questions.

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