



Prepared Testimony and Statement for the Record of
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On Behalf of the National Grocers Association

Hearing on "How COVID-19 Impacted Small Businesses Across the Food System"

Before the
House Small Business Committee

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Opening Remarks & Background on Wright's Market

Good morning Chairwoman Velazquez, Ranking Member Chabot, and members of the House Small Business Committee. Thank you for allowing me the opportunity to serve as a witness today and share my experience as an independent grocer serving at the frontlines of the COVID-19 pandemic. I am the owner and president of Wright's Market in Opelika, Alabama. It is an honor to be in front of you today albeit virtually.

I am testifying on behalf of the National Grocers Association, the national trade association representing retailers and wholesalers that comprise the independent sector of the supermarket industry. Roughly half of NGA's retail members, including Wright's Market, fall under the Small Business Administration's threshold for small businesses. The independent supermarket industry is accountable for close to one percent of the nation's overall economy and responsible for generating \$131 billion in sales, 944,000 jobs, \$30 billion in wages, and \$27 billion in taxes. Defined as privately-held, family-owned or employee-owned businesses, independent supermarket operators run businesses of all formats and sizes, serving a wide range of customers in their local communities. Having often been in business for generations, independent grocers are dedicated to their customers, associates and communities.

Wright's Market is a family-owned business. My store originally opened as a small 2100 sq. ft. convenience store in 1973. I worked there as a student in high school and purchased the store from my previous employer in 1997. My store has expanded over the years to its current size of 22,000 sq. ft. We are a full-service supermarket and uniquely positioned to serve the community of Opelika, and I am grateful to have the opportunity to give back in many ways to my hometown.

During my testimony I will share my experience as an independent grocer serving my community throughout the COVID-19 pandemic. From panic buying, supply chain disruptions, to major operational challenges, the food retail industry has been faced with many obstacles since March. Unfortunately, the competitive playing field has also been tilted against smaller, independent grocers during the pandemic as antitrust policies and federal nutrition programs currently favor the most dominant players in food retail marketplace. In my testimony, I will outline how Wright's Market has worked hard to overcome these challenges, and I will also share some ideas on how Congress can help the independent supermarket industry so that small grocers, like myself, can best serve our communities.

Independent Grocery During the COVID-19 Pandemic

Without a doubt, 2020 has been the most challenging year that Wright's Market has been in operation. Since the President declared a national emergency and the Administration designated grocers as critical infrastructure businesses, independent grocers have experienced sustained and unprecedented levels of demand for grocery and household products. The emergency triggered two of the 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. According to a recent NGA and FMS Solutions financial benchmark study, the average shopper stocked up on 2-3 weeks of food. The hardest hit categories were household products, shelf-stable center aisle goods like canned soups and vegetables, rice, beans, and pasta. Nationally, meat sales nearly doubled in mid-March and produce sales were up 35 percent over last year's peak. Food retail experienced shortages across several product categories during the early part of the pandemic, but the American food supply system showed

resilience and caught up with demand in most grocery product categories. However, the independent supermarket industry continues to experience shortages and limited allocations of key high-demand products, which I will explain further later in my testimony.

Although sales volumes and revenue remain high for food retailers, independents experienced major operational changes to accommodate demand and to implement safety protocols to protect customers and employees from exposure to the virus. The beginning of the crisis was especially difficult because the government and public health experts did not have a firm handle on how to protect against transmission. We took extreme precautions to ensure the safety of the food retail environment, installing plexiglass shields at checkout, requiring the wearing of face coverings, instituting senior hours, and cleaning and disinfecting the store thoroughly each night. According to the NGA and FMS Solutions study, two-thirds of independents adjusted their store hours to restock product, sanitize the stores, and to open the stores to seniors and first responders before allowing access to the general public. Over 80 percent of stores installed plexiglass shields at the checkout counters to protect customers and store clerks. About 85 percent increased overtime pay and paid employees above their normal rate of pay for working during this challenging time. Wright's Market provided an extra week of pay to employees during the first two months of the pandemic, and subsequently provided bonuses as the pandemic wore on.

Early in the crisis, grocers faced difficulties procuring personal protective equipment (PPE) for their employees. Nationwide PPE shortages and conflicting messages from the government posed challenges for food supply workers. We struggled to find suppliers for hand sanitizers, face coverings, gloves, and face shields. A number of grocers had large PPE order cancellations because we competed with the federal and state government procurement efforts. Eventually the federal government helped to supply grocery stores with much-needed equipment. The Department of Agriculture (USDA) and the Federal Emergency Management Agency (FEMA) worked with NGA to distribute free cloth face coverings to grocers across the United States.

Frontline Workers Should Be Recognized for Their Service

The industry's ability to meet our customers' needs would not be possible without the dedicated and talented frontline workers who show up to work every day to move product and keep store shelves stocked. These workers are serving as they face serious challenges, including childcare, transportation interruptions, and health concerns. They are on the frontlines of the war against coronavirus at great personal cost. Seven months of working during the pandemic has taken a toll on our workers who are mentally and physically exhausted. While grocers have stepped up to do their part to recognize these supermarket superheroes by providing overtime pay, bonuses, and increased wages, we believe Congress must step up and show their support as well. NGA appreciates efforts by the House of Representatives in passing the HEROES Act, which would increase the compensation of frontline workers. As talks continue about another economic relief package, NGA urges Congress to work towards a bipartisan solution that would provide compensation for these workers. NGA supports the approach taken by Small Business Committee Member, Rep. Dwight Evans (PA-03), in bipartisan legislation he introduced with Rep. G.T. Thompson, H.R. 6841, the *AG CHAIN Act*. This bill would enact temporary payroll and income tax relief to frontline food industry workers. From a small business perspective, we would be able to implement this legislation immediately through simple changes in the payroll

department. It would have an immediate impact on employee take-home pay and show these workers the federal government's appreciation for their service to our country during this challenging time.

Staffing Challenges Persist in the Independent Supermarket Industry

Throughout the pandemic, grocers have faced workforce challenges in keeping up with the operational demands of running a food retail business during a pandemic. Historic demand – in addition to enhanced sanitization practices and enforcement of social distancing guidelines – has required grocers to scale up their workforce significantly. Despite high unemployment rates, we face challenges in recruiting and retaining workers. After the *CARES Act* passed Congress, the additional \$600 per week in unemployment compensation made it more difficult for grocers to attract workers. We understand the tremendous strain on unemployment agencies and agree there's a strong imperative for the federal government to provide for workers who lost their jobs through no fault of their own. However, Congress and state governments must find a way to equip the unemployment agencies with needed technology and capacity upgrades to improve the way unemployment compensation is delivered. NGA recommends a programmatic overhaul by capping compensation to a percentage of previous wages to eliminate any disincentives to work. Without access to a robust workforce, independent grocers will be hard pressed to deliver critical food and household supplies to the American public.

Liability Exposure is Number One Concern for Independent Grocers in Pandemic

Throughout the crisis, grocers have taken the lead in adopting procedures to protect customers and employees from exposure to the virus. Even though we continue to work around-the-clock to meet the demands of hungry American consumers, independents are growing more concerned about plaintiff's attorneys mobilizing against grocers to sue them simply for staying open.

According to the law firm Hunton, Andrews, Kurth, more than 5,000 COVID-19 related claims have been filed against defendants already and that number is rising quickly¹. Fighting a claim will be costly and time-consuming and might even put me out of business. If I implement health and safety precautions, I should not have to defend against difficult-to-disprove claims and divert precious resources that my store and employees need.

Congress can help solve this problem by creating targeted liability protections for companies that follow federal and state public health guidelines during the coronavirus pandemic. We are encouraged by several bipartisan efforts in the House to enact limited commonsense liability protections. NGA supports H.R. 7528, the *Get America Back to Work Act*, a bipartisan bill introduced by Reps. Cuellar (D-TX) and Graves (R-LA), that would protect businesses that make good faith efforts to comply with federal, state and local guidance or appropriate industry standards and guidance. We are also encouraged by the framework proposal introduced by the Problem Solvers Caucus to provide liability protections in exchange for increased workplace protections. However, the devil is always in the details. It's a necessity for liability protections to be retroactive to the very beginning of the crisis since we've remained open to serve the American public.

Critics of liability protections have portrayed it as a give-away to large businesses, but the opposite is true. Small businesses stand to lose the most if Congress does not act. Unlike our large competitors, we lack sophisticated legal departments and cash necessary to defend ourselves against a wave of lawsuits.

¹ <https://www.huntonak.com/en/covid-19-tracker.html>

Perversely, this puts a target on the backs of smaller businesses who are easier to take down than larger competitors. NGA requests that the Committee stand up for small businesses in demanding sensible liability protections as Congress continues to debate another round of economic relief.

Product Shortages and Food Supply Chain Disruptions

The COVID-19 pandemic has made the grocery supply chain literally a kitchen table issue for the American people. The crisis has tested the resilience of the food and consumer product supply chain like never before. Even after the first wave of panic buying, the grocery supply chain continues to struggle to keep up with consumer demand, a trend disproportionately impacting independent grocers and their customers.

Protein Sector Disruptions

At the early stages of the pandemic, we saw acute disruptions in the protein sector. At first, egg prices soared to historic levels. Prices increased by nearly \$2.00 per dozen between March and April despite little evidence of lower output capacity from egg producers. Meat prices also dramatically increased during the early part of the pandemic, despite falling cattle prices. As meatpackers faced disruptions due to outbreaks of COVID-19 leading to capacity reductions, the wholesale price of meat skyrocketed at the same time that consumers engaged in a wave of panic buying.

As prices rose, independent grocers and wholesalers mistakenly fell victim to price gouging complaints by consumers and State attorneys general. To remain competitive and keep food prices as low as possible, independent grocers operate under an average net profit margin of 1 to 2 percent. As supplier prices increase, grocers continue to follow their established pricing structure and policies, while also working to mitigate such increases and keep prices low. Despite these efforts, higher supplier prices impact cost of goods, which in turn lead to high prices for consumers. The result is that retail grocers make a Sophie's choice: squeeze already razor-thin margins to keep retail prices low and customers happy, or pass along the increased costs into higher retail prices and risk angry customers along with accusations of price gouging.

Independent grocers were wrongly targeted by a wave of price gouging inquiries from law enforcement that required us to expend valuable time and resources producing records and documentation to fight back against these unfounded accusations. We are unaware of a single NGA member who was found to violate price gouging laws, but we suffered reputational harm from our customers.

NGA believes that dramatic price spikes in the protein sector are indicative of a disturbing trend of concentration in the food supply chain. Both farmers and consumers have been squeezed by a handful of firms that dominate the supply of protein products to the food retail sector. Rather than targeting grocers for unfounded price gouging investigations, what is needed now are antitrust inquiries into protein supply chain practices and potential enforcement actions. Continued wholesale pricing increases hitting grocers and their customers are not sustainable as the country continues to navigate the ongoing pandemic.

The Pandemic is Exacerbating Economic Discrimination Against Small Businesses

Inconsistent distribution and apparent shortages of consumer good staples has made it difficult for consumers to obtain high-demand products like paper products, cleaning supplies, and popular

packaged food brands, as well as other commodities. However, this is not just a symptom of the current crisis – it is the direct result of economic discrimination in the grocery marketplace allowed by a lack of antitrust enforcement. Dominant players in the grocery marketplace and e-commerce giants are actively using their “buyer power” to impose discriminatory conditions on manufacturers and suppliers that disadvantage smaller, independent grocers like Wright’s Market and impede our ability to compete.

For decades, independent grocers have not had equal access to pricing, promotions and packaging deals that are provided to large firms. For example, dominant retailers have imposed arbitrary “channels of trade” classifications on manufacturers to justify discrimination against independent grocers and wholesalers on price and product availability, arguing, contrary to real world behavior, that grocery stores do not compete with grocery sections of big box stores or e-commerce sites. Anticompetitive buyer power has also impacted the private label supply chain, reducing independent grocers’ access to products. Just like branded product manufacturers, private label manufacturers are forced to cater to the demands of dominant retail players over independents. As a result, budget-conscious consumers lose access to affordable alternatives at their convenient local grocer. And discrimination in product packaging or packaging sizing can confuse consumers, who may mistakenly believe that independent grocers are charging more than big box stores for the same products.

The current crisis has exacerbated economic discrimination in the grocery sector. Since March, the large firm “power buyers” have leveraged their market power to demand prioritization for distribution of high-demand products while extracting concessions on wholesale pricing². Independent grocers have lost access to both popular products and promotional pricing, which have made us less attractive to consumers seeking one-stop-shopping in the pandemic. Like many independents across the country, we lost access to key product offerings. My wholesaler reported receiving extremely limited allocations of high-demand products, as I watched my big box chain competitors continue to sell product that wasn’t available to me. In fact, one of the few times my wholesaler could access paper products in the early pandemic was through the so-called diverter wire, an industry service that allows buyers to access an oversupply of product from another buyer. Independent grocery wholesalers across the country reported similar experiences of finding products on diverter wires otherwise unavailable to them from suppliers. Another distributor I do business with reported that suppliers are pausing their service altogether so they can first accommodate the orders of large-volume retailers. My wholesaler also reported that promotional trade spending was down considerably by 20 percent, a tool that independent retailers use to compete on price and put products on sale, known as “Temporary Price Reductions.” Some suppliers have cut trade spending and promotions to independents altogether. These behaviors indicate a major competitive imbalance in the supermarket industry that favors large-volume retailers and e-commerce giants. Not only are the largest firms commanding the lion’s share of high-demand products, but they are able to access grocery products at far lower prices than independent grocers.

Consumers that live in rural areas are serviced by independents are disproportionately impacted and must travel longer distances to find products they need at more crowded large chain retailers. Like many American small businesses, independent grocers are at a more severe economic disadvantage to their

² https://progressivegrocer.com/walmart-pressures-suppliers-delivery-times?utm_source=omeda&utm_medium=email&utm_campaign=NL_PG+Daily+5&utm_keyword=&oly_enc_id=6799J132046712K

larger rivals during the pandemic, a period when big box retailers and e-commerce giants are generating record profits³.

In 2005, NGA warned about this growing problem to the Antitrust Modernization Commission, concluding that the lack of enforcement against economic discrimination through laws like the Robinson-Patman Act was “help[ing] accelerate the rush to “bigness” and “scale” in a business environment in which sheer size influences buyer/seller decisions.”⁴ Unfortunately, regulators did not take seriously this growing threat and as a result the supermarket industry has experienced a rapid acceleration in concentration of economic power. These practices will only continue after the pandemic is over unless Congress or the antitrust regulators act. Consequently, consumers will face reductions in diversity in the marketplace, and choices will be limited to what the few remaining mega-retailers find most profitable.

For decades, NGA has argued strong and effective enforcement of U.S. antitrust laws is essential to preserving a vibrant marketplace and ensuring small and mid-size businesses are able to compete and flourish to the benefit of all Americans. More robust competition in the food retail space will also benefit food insecure areas, as independents will be more inclined to invest in food desert locations if they have an opportunity to compete on price and product availability.

SNAP Online Purchasing & E-Commerce

The pandemic has accelerated a rapid migration to e-commerce for grocery shoppers. In March 2020, e-commerce sales exploded quickly with demand far exceeding slot availability in many cases. For the overall industry, e-commerce sales were between 80 to 100 percent higher year-over-year between mid-March and mid-May, but slowed when lockdowns began to ease and food service establishments re-opened. Fortunately, prior to the pandemic, the independent supermarket industry saw this change coming. NGA’s survey data suggests that 64 percent of independents offered some form of e-commerce in 2019 with about half of respondents without e-commerce capabilities indicating they planned to make the investment in e-commerce in 2020. If you were a grocer and not online before the pandemic, then you probably are now. Wright’s Market made the move online in 2016 and has been delivering groceries to customers’ homes in the Opelika and Auburn areas of East Alabama via a shuttle service called “Wright 2 U.”

Wright’s Market is also one of the original retailers, and the only single-store operator, that was selected to participate in, and successfully launched, USDA’s Supplemental Nutrition Assistance Program (SNAP) Online Purchasing Pilot. This program was created in the 2014 farm bill and allows customers to use their benefits online at participating retailers’ websites. Wright’s Market launched SNAP online purchasing in March 2020, just days before the declaration of the national public health emergency. Since then, I have been able to better serve customers according to their needs, which is critical during the pandemic since many members of the communities surrounding my store have shifted their shopping preferences to online to avoid physically coming into retail stores.

³ <https://www.nytimes.com/2020/08/19/business/coronavirus-walmart-target-home-depot.html?smid=em-share>

⁴ Statement of J.H. Campbell, Jr., on Behalf of the National Grocers Association, Before the Antitrust Modernization Commission on the Robinson-Patman Act (July 28, 2005).

SNAP is an invaluable program to the members of the community that I serve. In fact, over 40 percent of the retail sales at Wright's Market are to SNAP customers. I am excited to use SNAP online purchasing to help address the issue of food deserts across East Alabama. There are many areas in Alabama that are considered food deserts, with a few hundred to a thousand residents lacking access to healthy foods. In these rural areas, small towns do not have the population density to support a profitable full-service brick and mortar grocery store. In many of these communities, the only food sources are found at convenience stores and dollar stores, many of which often lack fresh produce and meat due to supply chain issues. Being able to offer online purchasing and delivery to SNAP customers in the surrounding communities allows me to provide these families with my store's entire inventory of over 12,000 items, including a full variety of fresh meat and produce.

However, for SNAP customers to purchase groceries online the community must be educated about the program. I have found that although I have successfully launched SNAP online purchasing, many customers are not aware of the program or simply do not know how to order their groceries online. I was fully prepared to conduct extensive outreach in my community, but the pilot was delayed so many times in Alabama that it became difficult to do the outreach as planned. I would like to do a presentation with local churches and community centers to walk through the SNAP online purchasing process from the customers' perspective from start to finish. As SNAP online purchasing continues to expand into communities nationwide, I anticipate that a lack of education will be a challenge, especially for small retailers that lack the capacity to conduct large outreach and advertising campaigns.

While many grocers have responded to the shift of consumers shopping from home by providing the opportunity for customers to purchase items via e-commerce or curbside pickup, small retailers face very high costs of entry to accept SNAP benefits online, and they also must work through an extensive application and testing process with USDA's Food and Nutrition Service (FNS), an e-commerce company of choice and a third-party processor. The technical barriers and expensive costs make it a difficult endeavor for many small retailers to pursue. Even though FNS reopened the application process for retailers interested in participating in SNAP online purchasing and 47 states have been approved, my store is still the only single store operator that has launched.

Meanwhile, larger competitors, including Amazon and Walmart, have launched almost nationwide. However, the only grocers serving many rural communities across the country are independents, and until they can participate in SNAP online purchasing many members of these communities will be left behind. This comes at a time when SNAP participation is increasing, and food price inflation is occurring. According to a report released by USDA in June 2020⁵, there was a 5 percent increase in the cost of the Thrifty Food Plan from last year, an increase that is more than double the 20-year annual average increase of around 2 percent.

Congress needs to act on legislation that will help make it more feasible for independent grocers to participate in SNAP online purchasing. I encourage the members of the Small Business Committee to cosponsor H.R. 7535, the *Expanding SNAP Options Act*, bipartisan legislation introduced by Rep. Robin Kelly (D-IL) that would provide financial and technical assistance for small retailers participating in SNAP online purchasing. The bill would help assuage some of the greatest challenges independent grocers face in getting set up for SNAP online purchasing, such as the expensive start-up and ongoing operating costs. It would also create a technical assistance center, which would be incredibly instrumental in

⁵ <https://www.fns.usda.gov/news-item/fns-001020>

providing support to small retailers that lack the resources and capacity to jumpstart the program by themselves. Another option that I recommend is for Congress to provide a tax credit for small retailers to cover the expensive start-up costs of implementing the program. A tax credit of up to \$10,000 annually for grocers falling into the Small Business Association's definition would go a long way in helping to get more independents up and running for this important program. NGA is currently working with several champions in Congress to advance the tax credit idea to help level the playing-field for independents.

Conclusion

As the Small Business Committee continues to work to advocate for the needs of small business, I strongly encourage all Committee Members to consider NGA's policy recommendations to help boost family-owned, privately-held grocers across the country. Independent grocers like Wright's Market share much of the same challenges and risks faced by the entire food industry in the pandemic, including liability exposure, employment and workforce issues, rising consumer goods costs, and operational difficulties. However, the pandemic has tilted the playing field sharply in favor of our largest competitors, as grocery power buyers have leveraged their market power to demand prioritization for distribution of high-demand products and SNAP online purchasing is only available through Amazon and Walmart for most SNAP shoppers. These are key competitive issues that will impair our ability to succeed in the grocery marketplace unless the federal government acts to stand up for Main Street grocers like Wright's Market. I am grateful for the privilege to testify in front of the committee today, and I appreciate your service to our nation. I look forward to addressing your questions. Thank you.

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