

United States Senate

WASHINGTON, DC 20510

May 1, 2026

The Honorable Andrew Ferguson
Chair
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Dear Chair Ferguson:

For decades, large retailers have used anti-competitive restrictive covenants—written into property sale, purchase, and lease agreements—to block competitors’ access to a local market. These restrictive covenants prohibit competitors from purchasing or leasing commercial real estate. As a result, storefronts are left empty, small businesses are boxed out from opening in certain locations, consumers have fewer options, and companies corner regional markets and drive-up prices.

Large retailers’ use of restrictive covenants has been especially prevalent in the grocery industry. Significant square footage and parking requirements limit the number of suitable properties available in a given area for grocers, especially in developed or urban areas, and the anti-competitive effects of restrictive covenants only exacerbate these constraints. The impact of these anti-competitive covenants on consumers is further heightened in the grocery industry because grocery store competition is local. In the FTC’s recent and successful challenge of the Kroger-Albertsons merger, data “showed that on average, more than seventy percent of defendants’ sales are drawn from within five miles of a store,” which the district court found “support[ed] the drawing of small, local geographic markets.” *Fed. Trade Comm’n v. Kroger Co.*, No. 3:24-cv-00347, 2024 WL 5053016, at *23 (D. Or. Dec. 10, 2024).

Across the country, anti-competitive restrictive covenants have shut out grocers from operating in locations where consumers would have otherwise frequented their stores and benefited from their presence in the community. In Woonsocket, Rhode Island, only one supermarket services roughly 45,000 people due to anti-competitive restrictive covenants set by competitors. Among those stores with restrictive covenants was a Walmart store that closed in 2011. For six years, Walmart prevented competitors from moving into the location, while the property sat vacant. When Walmart finally sold the building in 2017, it included a “25-year restrictive covenant prohibiting the property from being used for a grocery store or supermarket.” The restrictive

covenant also prohibits the property from being used for “a wholesale club operation similar to that of Sam’s Club.”¹

On the West Coast, the 2016 closure of an Albertsons grocery store created a food desert in the Birchwood neighborhood of Bellingham, Washington. Yet when Albertsons later sold the property in 2018, it included a deed restriction that would have prevented a grocery store from operating in the space until 2038. Albertsons ultimately removed the deed restriction after the Washington Attorney General opened an investigation into whether Albertsons had violated Washington’s antitrust laws.²

When grocers leave a community, anti-competitive restrictive covenants further cement the harm caused by the initial loss of the store, leaving consumers without ready access to food or more exposed to high food prices with fewer choices to seek better deals. Additionally, when a grocery store closes, communities often lose a neighborhood pharmacy, and anti-competitive restrictive covenants can prolong pharmacy deserts.

Lower income communities are more vulnerable to these closures and the reduction of competition. A recent report from the Federal Reserve Bank of Atlanta found that “[p]oorer, more concentrated markets experience larger and more persistent food price shocks, amplifying the burden on low-income households.”³ That burden may be growing as the latest round of tariffs and the ongoing conflict in Iran threaten further spikes in grocery prices.

Americans are struggling with rising prices, and anti-competitive corporate lawfare should not be a reason costs stay high. Given the ongoing impacts of anti-competitive restrictive covenants on communities across the country, please provide answers to the following questions:

1. Does the FTC consider covenants restricting the use of land by competitors an unfair method of competition?
2. Is the FTC able to regulate anti-competitive restrictive covenants through existing authorities?
3. Has the FTC collected data on the use of anti-competitive restrictive covenants?
 - a. If so:
 - i. Has the FTC collected data on the impact of anti-competitive restrictive covenants on consumer prices, including food prices?

¹ <https://www.providencejournal.com/story/news/politics/2026/02/09/ri-politics-stop-and-shop-walmart-woonsocket-restrictive-covenants-sabina-matos/88406227007/?gnt-cfr=1&gca-cat=p&gca-uir=true&gca-epti=undefined&gca-ft=0&gca-ds=sophi>

² <https://www.atg.wa.gov/news/news-releases/ag-ferguson-albertsons-lifts-illegal-restrictions-created-food-desert-bellingham>

³ <https://www.atlantafed.org/research-and-data/publications/policy-hub-papers/2026/02/02/01-geographic-inequality-in-food-inflation>

- ii. Has the FTC collected data on the impact of anti-competitive restrictive covenants on consumers' access to food and medicine?
- iii. Has the FTC collected data regarding the impact of anti-competitive restrictive covenants by large grocery chains on market share?
- iv. Has the FTC collected data on the impacts of anti-restrictive covenants on small businesses?

I ask that you respond to these questions by no later than May 15, 2026. I look forward to your response.

Sincerely,



Kirsten Gillibrand
United States Senator



Maria Cantwell
United States Senator



Ron Wyden
United States Senator