

## **Memorandum In Support of the Twenty-First Century Antitrust Act (S933A Gianaris/A1812A Dinowitz)**

### **American Economic Liberties Project and Fight Corporate Monopolies Support the Twenty-First Century Antitrust Act**

**Nov. 1, 2021**

**The American Economic Liberties Project is a progressive think tank dedicated to  
reducing the power corporations wield over our economy and democracy.**

Dear Members of the New York State Legislature,

Approving the Twenty-First Century Antitrust Act (S933A Gianaris/A1812 Dinowitz) will place New York at the forefront of the national effort to challenge the power of dominant corporations by providing everyday New Yorkers and state enforcers with groundbreaking new powers. Most importantly, the legislation puts workers back at the heart of antitrust law – where they belong.

Since 1979, the Supreme Court has accepted that the goal of the antitrust law is to promote efficiency, known as the “consumer welfare” standard, rather than its traditional role of protecting workers and businesses from abusive or anti-competitive tactics by powerful firms. This has caused a dramatic erosion of antimonopoly rules. Case law for New York’s antitrust law, the Donnelly Act, closely follows federal interpretations of antitrust law, making it difficult for enforcers, workers, or small and mid-sized businesses to hold dominant corporations accountable for predatory and unfair tactics. As the dismissal of New York’s case against Facebook shows, current law and precedent are inadequate to the challenges presented by today’s dominant corporations. Rising concentration in local labor markets and the inability of honest small and medium businesses to survive due to dominant corporations that subject them to unfair gatekeeping practices should add even more urgency to passage of this bill.

Specifically, the Twenty-First Century Antitrust Act:

- Updates NY law to address anti-competitive acts by a single firm;
- Creates an “abuse of dominance standard” which lowers the high threshold under current law for showing a firm has monopoly power and, once dominance is demonstrated, subjects dominant corporations to greater scrutiny, ensuring they don’t abuse their power to stifle competition;
- Expressly includes language addressing the impact of labor market dominance on workers by barring dominant employers from using their outsized influence to the detriment of workers, including by imposing restrictive contracts such as non-competes;

- Requires corporations to notify the Attorney General in advance of potentially harmful mergers, and allows the AG to scrutinize deals, including merger impact on labor markets;
- Prohibits abusive practices by dominant firms such as refusals to deal with competing businesses;
- Empowers New Yorkers to join class action suits to enforce their rights;
- Enhances criminal penalties for antitrust violations.

Corporate interests will undoubtedly claim that this bill will harm small businesses and workers. But that isn't true. Only a small proportion of firms will have any changes to their legal obligations, as most firms do not have market power. This bill would level the playing field for smaller 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.

Reinvigorating antitrust law is also 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 counteract those corporate forces, to ensure that New York democracy remains by and for the people, and 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, New York has an opportunity and obligation to lead the way. Passing this transformative legislation would be a major step forward in the fight for a fair economy for all New Yorkers, and we urge you to do so swiftly.

Sincerely,

The American Economic Liberties Project  
Fight Corporate Monopolies