

May 2, 2024

The Honorable Ambassador David Huebner
Chair
The California Law Revision Commission
925 L Street, Suite 275
C/O Legislative Counsel Bureau
Sacramento, CA 95814

Re: Single Firm Conduct & Concentration in California

Dear Chairperson Huebner and Commissioners,

On behalf of Liberation in a Generation (LibGen), I appreciate the opportunity to provide public comment on Concentration in California and Single Firm Conduct, as featured in two of the seven expert reports the Commission is examining today. I also welcome the chance to address additional anti-monopoly and corporate power issues on topics related to technology platforms, mergers and acquisitions, and the consumer welfare standard, which the Commission will be examining further over the next several months as it finalizes Study B-750 to offer recommendations for updating California's antitrust law, The Cartwright Act.

LibGen is a national movement organization working to build the power of people of color across the country to transform the economy—who controls it, how it works, and most importantly, for whom it works for. At the heart of our mission is the vision of creating a *Liberation Economy*, where all Black, Indigenous, Latine, Arab, Middle Eastern, Asian, and Pacific Islander people can thrive within one generation. We pursue this goal by advocating for transformative policy solutions and convening a diverse group of stakeholders, including advocates, community organizers, economists, and other proven and emerging thought and movement leaders of color from across the country. Together, these efforts aim to dismantle what we call the *Oppression Economy*, where racism is profitable, enabling elite institutions to use theft, exploitation, and exclusion to grow their wealth and power, all while suppressing the economic and political power of communities of color.

Anchored by our commitment to racial justice and our economic worldview, we recognize that rigorous antitrust enforcement is an important tool for protecting the economic lives and political power of communities of color. However, our approaches to antitrust—centered around the ideals of perfectly "competitive markets"¹ and "race-neutral" policies—have failed to address the profound effects unchecked corporate concentration has had on people of color as consumers, workers, entrepreneurs, and residents. Today, the confluence of racism and rising

¹ Callaci, Brian. 2021. "Competition Is Not the Cure." Boston Review.
<https://www.bostonreview.net/articles/competition-is-not-the-cure/>

corporate power demands that our anti-monopoly approaches be rooted in racial justice. At the same time, because our current anti-monopoly approaches, narrowly focused on prices and competition, have caused us to overlook other downstream effects, we firmly believe that future efforts to rein in corporate power must be guided by a new public governance model that shares power with communities and movements to specifically addressing the needs of marginalized groups, particularly people of color. Ultimately, we believe that such paradigm shifts are necessary for empowering our government to take the following decisive actions to more effectively curb corporate power and dismantle the Oppression Economy:

- **Abolish Monopoly Power** by strengthening the enforcement of anti-monopoly laws, creating new regulatory authorities if needed, and breaking up corporations that violate anti-monopoly regulations.
- **Abolish Shareholder Capitalism** by mandating corporations prioritize broader stakeholder interests, including workers and communities, over shareholder profits to end the dominance of shareholder capitalism.
- **Abolish extractive financial markets** by establishing countervailing powers to rein in hedge funds, private equity, and other forms of extractive finance.
- **Abolish corporate capture of public goods and democracy** by providing meaningful public resources and public provisions of essential goods and services to challenge private concentration.
- **Build worker and community power** by giving workers and community members a greater role in corporate governance.

As the Commission considers public input on the seven expert reports and prepares its final report to the Legislature and Governor, we urge for the inclusion of proposals that protect the interests of Black and Brown workers, consumers, small businesses, and communities from corporate exploitation. Specifically, we call for incorporating race-impact analyses in California's antitrust strategies to enable policymakers and regulators to better identify and address the broader harms caused by corporate practices beyond just unfair pricing and competition issues.

This testimony highlights the disproportionate impacts of corporate concentration on communities of color and offers suggestions for incorporating race-conscious approaches into the state's antitrust policies and efforts.

I. Disproportionate Impacts Of Corporate Concentration On Communities Of Color

a. Impacts on Labor

To fully grasp how corporate concentration harms communities of color, we must first recognize that our current “colorblind” framework for understanding and addressing corporate power issues—the “consumer welfare standard”²—inherently disadvantages people of color who suffer most from antitrust and anti-competitive practices.³ This is because this framework forces assessments of anti-competitive harm to be viewed solely through the lens of short-term price effects,⁴ leading many other detrimental downstream effects of corporate concentration and power to be overlooked and unaddressed.

For example, one of the most visible and harmful ways that communities of color are disproportionately impacted by corporate power is through the outsized control corporations exert over the labor market, which can lead to lower wages, fewer employment options, and less stability.⁵ In particular, it is through this monopsony power in the labor market—where employers have some unilateral power to set wages, instead of wages being “set” or “given” by market forces⁶—that we see unchecked anti-competitive labor market practices undercutting workers’ bargaining power, suppressing wages, and diminishing job quality and working conditions. To this point, a recent study by the U.S. Treasury (“The State of Labor Market Competition”), found that corporations have used their wage-setting power to keep wages approximately 20 percent lower than they would be in an otherwise fully competitive labor market.⁷

Such detrimental effects of corporate power disproportionately harms workers of color, women, and those at their intersection, who, due to historic and ongoing racism and sexism, not only face higher unemployment rates, racial and gender wage gaps, lower rates of

² Steinbaum, Marshall. 2017. “The Consumer Welfare Standard Is an Outdated Holdover from a Discredited Economic Theory.” The Roosevelt Institute.
<https://rooseveltinstitute.org/2017/12/11/the-consumer-welfare-standard-is-an-outdated-holdover-from-a-discredited-economic-theory/>

³ Capers, I. Bennett and Gregory Day. 2023. “Race-Ing Antitrust.” Michigan Law Review, Vol. 121, No. 4.
<https://ssrn.com/abstract=4147868>.

⁴ Steinbaum, Marshall. 2017. “The Consumer Welfare Standard Is an Outdated Holdover from a Discredited Economic Theory.” The Roosevelt Institute.
<https://rooseveltinstitute.org/2017/12/11/the-consumer-welfare-standard-is-an-outdated-holdover-from-a-discredited-economic-theory/>

⁵ Jones, Janelle, and Ben Zipperer. 2018. “Unfulfilled Promises.” Economic Policy Institute.
<https://www.epi.org/publication/unfulfilled-promisesamazon-warehouses-do-not-generate-broad-based-employment-growth/>

⁶ Card, David. 2022. “Who Set Your Wage?.” American Economic Review, Vol 112, No. 4.
<https://www.aeaweb.org/articles?id=10.1257/aer.112.4.1075>

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

educational attainment, and substantially less access to generational wealth,⁸ but are also overrepresented in lower-paid occupations⁹ vulnerable to corporate concentration abuses. For example, in 2021, a quarter of Black women were employed in service sector jobs, compared to 18.6 percent of white women, an indication of ongoing occupational segregation.¹⁰ Additionally, many firms also increasingly contract out much of their work, resulting in a “fissured” labor market and widespread misclassification, which is a form of single-firm conduct that leaves workers – particularly workers of color – more vulnerable to wage theft and corporate abuses.¹¹

Ultimately, when people of color are crowded out of higher-paying roles for which they are qualified, are forced to take on low-wage jobs, or are misclassified as contract workers, this increases the labor supply within those low-wage sectors and diminishes workers’ bargaining power.¹² As a result, corporate power exerted in the labor market not only enables racially discriminatory practices but also restricts employment options for workers of color, often clustering them in low-wage, grueling jobs dominated by companies wielding significant power. This situation perpetuates labor market inequities, encourages discriminatory practices by firms, and highlights the failure of rigorous antitrust enforcement at both federal and state levels, which has left countless communities of color with little redress.

b. Impacts On Life-Sustaining and Essential Goods

Corporate concentration has also enabled corporations to fix and inflate prices on numerous essential and life-sustaining goods. This, in turn, has forced low-income families—a disproportionate share of whom are people of color—to spend a growing share of their household budgets on these critical goods and services. For example, a report by the Action Center on Race and the Economy (“Poi\$on”),¹³ found that Eli Lilly exploited government patents and federal subsidies over the course of two decades to raise the price of insulin from \$21 per vial to a whopping \$300 per vial. Leveraging similar tactics, AbbVie also was able to raise the price of Humira, used to treat arthritis, by over 470% over the past two

⁸ Glass, Aurelia, et. al. 2021. “Unions Help Increase Wealth for All and Close Racial Wealth Gaps.” Center for American Progress.

<https://www.americanprogress.org/article/unions-help%20increase-wealth-close-racial-wealth-gaps/>

⁹ Ibid.

¹⁰ “Labor Force Statistics from the Current Population Survey.” <https://www.bls.gov/cps/cpsaat10.htm>. U.S. Bureau of Labor Statistics.

¹¹ Ibid.

¹² Bahn, Kate, and Carmen Sanchez Cumming. 2020. “Factsheet: U.S. Occupational Segregation by Race, Ethnicity, and Gender.” Washington Center for Equitable Growth.

<https://equitablegrowth.org/factsheet-u-s-occupational-segregation-by-race-ethnicity-and-gender/>

¹³ 2020. “Poi\$in: How Big Pharma’s Racist Price Gouging Kills Black and Brown Folks.” The Action Center on Race and the Economy. https://acrecampaigns.org/research_post/poison/

decades,¹⁴ leading the drug to recently reach a staggering cost of \$80,000 per year.¹⁵ Unfortunately, people of color are especially vulnerable to such corporate concentration practices and outcomes, as they are more likely to have chronic illnesses due to environmental racism, inequitable access to safe water, food, and housing, and other disabling social conditions.

In the housing sector, corporate landlords like Invitation Homes often employ their market power to enact predatory practices to exploit tenants, such as aggressive rent hikes and frequent eviction filings, which tend to be higher in communities of color.¹⁶ Unsurprisingly, corporate landlords, whose properties tend to be concentrated in minority neighborhoods,¹⁷ readily lean into these and other extractive practices. For example, during an investor call in early 2022, the CEO of Starwood Property Trust, an affiliate of Invitation Homes, confidently noted their ability to raise rents, describing inflation as "an extraordinary gift that keeps on giving." This celebration came after the company's income increased by half a billion dollars the previous year.¹⁸

Access to essential goods like life-saving medication and stable housing should be fundamental human rights, yet the dominant power of pharmaceutical companies, private developers, landlords, Wall Street, and other large market participants has made these goods largely inaccessible for many, which has come at a great cost to Black and Brown communities.¹⁹

c. Impacts On Innovation And Entrepreneurship

Outsized corporate power and monopolies also stifle innovation and entrepreneurship among people of color,²⁰ limiting their ability to build wealth and serve their communities. For example, decades of diminished anti-monopoly action, particularly at the federal level, has led to increased market concentration and a sharp decline in Black and Brown businesses. Those that

¹⁴ 2021. "Drug Pricing Investigation: AbbVie—Humira and Imbruvica." U.S. House of Representatives, Committee on Oversight and Reform.

<https://oversightdemocrats.house.gov/sites/evo-subsites/democrats-oversight.house.gov/files/Committee%20on%20Oversight%20and%20Reform%20-%20AbbVie%20Staff%20Report.pdf>

¹⁵ Robbins, Rebecca. 2023. "How a Drug Company Made \$114 Billion by Gaming the U.S. Patent System." New York Times. <https://www.nytimes.com/2023/01/28/business/humira-abbvie-monopoly.html>

¹⁶ 2022. "Where Have All the Houses Gone? Private Equity, Single Family Rentals, and America's Neighborhoods" Hearing Memo. U.S. House of Representatives, Committee on Financial Services, Subcommittee on Oversight & Investigations.

<https://www.congress.gov/117/meeting/house/114969/documents/HHRG-117-BA09-20220628-SD002.pdf>

¹⁷ Ibid.

¹⁸ Ivanova, Irina. 2022. "Corporate landlords' profits have surged despite eviction ban fears," CBS MoneyWatch. <https://www.cbsnews.com/news/rent-apartment-housing-price-landlords-profits-eviction/>.

¹⁹ Vogell, Heather. 2022. "When Private Equity Becomes Your Landlord." ProPublica. <https://www.propublica.org/article/when-private-equity-becomes-your-landlord>.

²⁰ Bozarth, Kendra, and Jeremie Greer. 2021. "Equalizing Entrepreneurial Power: How Guaranteed Income Can Spur Black Innovation." Blavity. <https://blavity.com/equalizing-entrepreneurial-power-how-guaranteed-income-can-spur-black-innovation>

remain must operate in these heavily concentrated industries and fight to compete with bigger, dominant firms.

Additionally, Black and Latine business owners face significant barriers in accessing capital,²¹ which are exacerbated further by corporate concentration. For example, a study in 2018 found that Black entrepreneurs are more likely to be denied a loan the more concentrated a market is.²² More recently, the Brookings Institute also found that Black entrepreneurs are denied or given smaller loans at more than twice the rate of their white peers.²³

The scale of mergers and acquisitions also significantly impacts communities of color, affecting not only job security and wages in industries dominated by a few large corporations but also the operational conditions for entrepreneurs. For example, though once characterized by a diffuse network of small farmers and supply chain companies, recent mergers in agriculture have created a system comprising a small number of corporations that are crowding out smaller, family-run companies. This has led corporations to ruthlessly wield their power to drive down wages and benefits to workers, skirt government safety regulations, buy out smaller competitors, and even coerce compliance from smaller farmers. Koch Foods, the fifth-largest poultry processor in the U.S., exemplifies this by imposing harsh terms on Black farmers to whom they supply flocks and feed, such as penalizing them for sick or underfed birds and demanding costly, arbitrary farm upgrades.²⁴

Ultimately, when outsized corporations use their power to crowd out small and minority-owned businesses, they are not only crushing the institutions that play key roles in creating and cultivating people of color's political and economic power,²⁵ but also are destabilizing the broader economy.

d. Impacts On Data Privacy and Surveillance

Corporations increasingly harness their massive market power over data collection, analysis, and sharing to drive consequential decisions and predict outcomes, often prioritizing profit over public good. This focus can perpetuate biases and stereotypes, which are especially

²¹ Ballantyne, Amanda. 2020. "Breaking Barriers to Credit and Capital Access for Black, Latinx, and Women Owned Businesses." Rockefeller Foundation.

<https://www.rockefellerfoundation.org/insights/perspective/breaking-barriers-to-credit-and-capital-access-for-black-latinx-and-women-owned-businesses/>

²² Weitz, Jared. 2018. "Why Minorities Have So Much Trouble Accessing Small Business Loans." Forbes.

<https://www.forbes.com/sites/forbesfinancecouncil/2018/01/22/why-minorities-have-so-much-trouble-accessing-small-business-loans/?sh=35ae400455c4>

²³ Perry, Andre, and Romer, Carl. 2020. "To Expand the Economy, Invest in Black Businesses." Brookings.

<https://www.brookings.edu/articles/to-expand-the-economy-invest-in-black-businesses/>

²⁴ Arnsdorf, Isaac. 2019. "How a Top Chicken Company Cut Off Black Farmers, One by One." ProPublica.

<https://www.propublica.org/article/how-a-top-chicken-company-cut-off-black-farmers-one-by-one>

²⁵ Feldman, Brian S. 2017. "The Decline of Black Business." Washington Monthly.

<https://washingtonmonthly.com/2017/03/19/the-decline-of-black-business/>

harmful to people of color. For example, the use of corporate predictive policing and algorithm-driven sentencing software throughout the criminal justice system often relies on proprietary data that lacks transparency, which not only limits accountability efforts but also can have serious life and death-outcomes, particularly for people of color.

Additionally, the use of electronic monitoring devices for individuals under legal supervision, like parolees, has surged despite little proof of effectiveness in reducing recidivism. Propelled forward by a few companies, including CoreCivic and GEO Group, these devices impose significant surveillance and restriction of movement on defendants, which predominantly are Black and Brown people. Additionally, the burden imposed by these devices often comes with vast economic costs, as defendants are required to pay for the device and daily usage fees—costs that are set by the company or agency, and costs that, too often, cost far beyond what supervisees can pay—leading to consequences that can make it difficult for defendants to respond to family emergencies, and prevent them from getting a job that requires travel outside of the allowable range, which exacerbates economic and societal inequities.²⁶ More commonly, the growing partnerships between law enforcement and Amazon’s Ring Service, which, as of January 2020, has partnered with at least 770 police departments in the US,²⁷ to directly provide video footage to these departments and train officers in how to access it from residents, represents another example of these technology and corporate power concerns.

Ultimately, in accumulating and using vast amounts of personal information, corporations have used their vast market power to stifle competition, influence public opinion, and manipulate electoral outcomes, all of which not only raise significant concerns about privacy and the abuse of corporate power but often leads to Black and Brown people to be particularly harmed.

II. Recommendations

To better address corporate harms, we agree that California should be seeking to meaningfully fill in gaps and expand its current approaches to addressing corporate harm. However, to effectively address corporate power abuses and their impacts on all residents within the state, especially those born most heavily by communities of color, a complete overhaul of anti-monopoly policy is needed that moves us beyond simply nudging corporations and markets towards the ideal of perfectly competitive markets.²⁸ To that end, the following sections will outline several recommendations for improving upon the proposals offered in the Single Firm Conduct and Consumer Welfare Standard expert reports, and will also offer additional recommendations to redress other corporate harms and better account for current market realities, particularly for communities of color.

²⁶ 2023. “Electronic Monitoring.” Electronic Frontier Foundation. <https://www.eff.org/pages/electronic-monitoring>.

²⁷ Haskins, Caroline. 2019. “Amazon’s Home Security Company Is Turning Everyone Into Cops.” Vice. <https://www.vice.com/en/article/qvyyzd/amazons-home-security-company-is-turning-everyone-into-cops>

²⁸ Callaci, Brian. 2021. "Competition Is Not the Cure." Boston Review. <https://www.bostonreview.net/articles/competition-is-not-the-cure/>

a. Single-Firm Conduct

Joining our colleagues at Economic Security California and several others in a response letter to the Commission on the Single Firm Conduct report, we agree that the lack of prohibition on certain types of single-firm conduct in California is an area that should be addressed in the Commission's final report. Ultimately, through its own unique policy prescription, the legislature should move to comprehensively fill in this blindspot in the state's corporate harm approaches (rather than importing the federal single-firm conduct standard that has been significantly narrowed over time to do so).

In particular, we agree with our partners that creating a state standard akin to Section 5 of the Federal Trade Commission Act would allow the state to more holistically address harmful conduct rooted in an "abuse of dominance" or "unfairness" standard. We also agree and urge the state to provide the Office of the Attorney General with rulemaking authority to better and more timely identify, define, and address corporate power abuses that violate these standards, while also providing another accessible avenue for the public to provide their views, insights, and suggestions.

Additionally, rather than adopting the dismissive stance towards the New York 21st Century Antitrust Act outlined in the Working Group Report on Single-Firm Conduct, the Commission should revisit this important legislation as a model for modernizing and more holistically addressing corporate power issues in California. Broadly supported by nearly 75 national and state anti-monopoly, business, union leaders, and racial, economic, and social justice groups, the legislation features critical provisions to cover anticompetitive acts by a single firm harming competition, expands the threshold for when corporate conduct may be harmful to competition, provides additional oversight of mergers and acquisitions to the Attorney General, and offers significant protections for workers harmed by overly concentrated labor markets.²⁹

b. Consumer Welfare Standard

To enhance the effectiveness of antitrust assessments and redress, the lens through which we currently evaluate corporate harms must extend beyond the current consumer welfare standard's focus on short-term price effects. Indeed, rather than continuing to narrow the focus to injuries of competition and to the competitive process among rivals, potential rivals, or trading partners (customers or suppliers), as the Working Group Report on The Consumer Welfare Standard suggests, the Commission's report should build on the Working Group's research findings that The Cartwright Act "recognizes a broader range of antitrust injuries compared to federal law." As we briefly detailed earlier, providing welfare-enhancing benefits to consumers and other trading partners can often come at great costs to people of color—as

²⁹ "Memorandum In Support - New York's "Twenty-First Century Antitrust Act"." ALIGN. <https://alignny.org/resource/memorandum-in-support-new-yorks-twenty-first-century-antitrust-act/>

workers, consumers, entrepreneurs, and residents—that is often overlooked by our current consumer welfare standards.

Broadly, we would urge the adoption of a standard that allows regulators and the courts to not only consider the impact of corporate activities on prices and product quality for consumers but also how corporate activities have or may harm workers' compensation and working conditions, the communities in which corporations operate, historically oppressed people of color, and the environment. By taking a broader approach to promoting and assessing consumer welfare, the state can better take into account and address the many ways in which people of color and marginalized communities suffer from antitrust and anticompetitive practices.

c. Mergers and Acquisitions

To more holistically address the destabilizing and adverse consequences for the economy as a whole that stem from increased corporate concentration and anticompetitive mergers, we urge the Commission to center people of color and other historically marginalized communities in any revision to California's approach to assessing the benefits and impacts of mergers to workers, consumers, entrepreneurs, and the economy more broadly. In so doing, this would better position the state to take actions that broadly redress economic inequality, spur innovation, and promote growth.

Specifically, we urge for the inclusion of a race equity impact analysis in California's assessment of mergers and acquisitions, with the goal of determining whether a merger or acquisition poses adverse, disproportionate, or particular harms or risks to communities of color, including workers, small business owners, and consumers of color. In forming and incorporating this analysis into the state's approaches to consumer harm, South Africa provides a useful model for how to integrate such impact analyses in merger enforcement successfully. The Competition Amendment Act as amended empowers the South African Competition Commission (SACC) to assess and prohibit mergers on public interest grounds, with an explicit goal of "promotion of a greater spread of ownership, in particular, to increase the levels of ownership by historically disadvantaged persons and workers in firms in the market."³⁰ In 2019, the SACC prohibited a Burger King acquisition purely on such public interest grounds after the involved parties failed to meet additional stipulations to address the potential harms that the regulatory agency identified.³¹

The Office of the Attorney General and other appropriate state regulators can draw from this

³⁰ van der Merwe, Charl. 2021. "Precedent-Setting Decision: Burger King Acquisition Prohibited Purely on Public Interest Grounds." Competition Policy International. <https://www.pymnts.com/cpi-posts/precedent-setting-decision-burger-king-acquisition-prohibited-purely-on-public-interest-grounds/>

³¹ Ibid.

example in requiring race impact analyses that evaluate whether mergers or acquisitions would have a disparate impact on communities of color. As shown above, doing so will be broadly beneficial, for the effects of racial discrimination and stratification are far-reaching and serve to accelerate the very systems that enable such harmful exertions of corporate power. If disparate impacts are identified, appropriate state officials and agencies can then place additional stipulations on those mergers to ensure any potential harms are meaningfully addressed. Such analyses will also fill an important gap in our understanding of the economic consequences of corporate consolidation on people of color specifically, allowing state antitrust enforcement to better address the full breadth of the harms of monopoly power.

d. Technology Platforms

While we agree with the idea outlined in the Working Group Report on Technology Platforms of the legislature enacting Big Tech-specific antitrust legislation to better identify and rein in the monopoly power of these corporations, we firmly believe these policies will do little to protect the lives of Black and Brown workers, consumers, small businesses, and communities if the state does not center racial equity in its regulatory efforts. Thus, as another way to address the inherently harmful color-blind nature of our anti-monopoly approaches, we urge to proactively prioritize racial equity in all technology policy and regulatory efforts.

Elevating the work of Julia Rhodes Davis,³² a leader and expert at the intersection of technology, democracy, and social justice, we urge the commission to include recommendations and calls for including those most impacted by Big Tech's growing power, as well as racial equity experts, in all tech regulation-related committees, task forces, working groups, and advisory bodies.³³ Additionally, the Commission should also include in its report to the Governor and Legislature recommendations for incorporating civil rights and racial equity audits within existing and future technology policy and regulatory efforts.³⁴

e. Other Recommendations

Revamp The State's Corporate Chartering Process

To significantly curb corporate power and ensure corporations in California serve the broader public interest, California should revamp its corporate chartering process. Specifically, we advocate for a new type of corporate charter for large corporations that includes a duty to advance the public interest. This would not only require large corporations to demonstrate that their business activities advance the public interest but that they also are considerate of the

³² David, Julia Rhodes, et. al. 2023. "Advancing Racial Equity Through Technology Policy. AI Now Institute. <https://ainowinstitute.org/publication/advancing-racial-equity-through-technology-policy>

³³ Ibid.

³⁴ Ibid.

impacts their activities have on historically oppressed stakeholders and their communities—as workers, consumers, and community members—as well as on our planet. As part of this new system, major corporations must also recognize and safeguard workers' rights to organize a union or worker organization, proactively assess the potential consequences of their decisions on these groups, and take steps to prevent harm.

In implementing such a system, these new corporate charters for major corporations should be reevaluated and renewed every five years by the Office of the Attorney General and/or other appropriate state agencies, ensuring compliance with state labor, consumer protection, and environmental laws. This review should also seek to assess and address corporate harm practices, such as below-cost pricing, exclusive dealing, and tying, and assess if corporations have engaged in such practices.

If a corporation is found violating its charter, failing to advance the public interest, or causing harm, particularly to communities of color, including and beyond unfair price-setting and competition practices, the Office of the Attorney General and/or other appropriate state agencies should mandate corrective actions. Willful and persistent non-compliance or violations of labor, consumer, environmental, or antitrust laws should lead to charter revocation for major corporations covered under this new governance system.

Tax Corporations For Paying Workers Poverty Wages

To ensure workers are valued and appropriately compensated, California should seek to impose a Working Poor Tax on corporations paying poverty wages. Specifically, these corporations should be imposed a tax at a specific rate per hour, per worker, for all workers paid less than a living wage.³⁵ To implement this tax, the California Department of Finance should develop a methodology that calculates the share of a corporation's income resulting from paying its workers below a state-defined livable wage.³⁶ Once determined, an annual tax of 95 percent should be applied to this share of corporate income, with the revenue directed toward a worker support fund.

Create “Public Options” To Break Up Monopoly Power Over Public Goods

Building on California's recent efforts to make its own affordable insulin, state lawmakers and agencies should continue to seek avenues to establish and enhance public options as a

³⁵ As defined by the Massachusetts Institute of Technology (MIT), a “living wage” is the local wage rate that a full-time worker needs to cover the costs of their family's basic needs where they live. See <https://livingwage.mit.edu> for more details.

³⁶ In line with MIT's methodology for what a living wage is, a livable wage should be defined and annually updated by the California Labor & Workforce Development Agency and should reflect a wage workers need to cover the cost of basic needs in the sub/urban, metropolitan, or rural communities where they live.

high-quality public alternative to privately delivered goods and services. Specifically, future efforts by the state to address aspects of corporate concentration and harm should include an analysis that assesses the need for public alternatives and triggers state action to enter a market to correct imbalances by ultimately providing public options for goods and services. In doing so, this would not only ensure equitable access to critical public goods and services for all, particularly for people of color, it would also help to drive down prices, curb potential monopoly power, and expand the avenues for building greater power and wealth within many of our most marginalized communities.

Conclusion

History has shown us that price-focused, race-neutral anti-monopoly policymaking and implementation only serve to exacerbate economic, social, and racial inequities. By meaningfully centering those most at risk of the harms of corporate concentration and power, California can transform its antitrust policies into holistic economic and antiracist actions.³⁷ This would not only allow the state to better protect all residents from corporate power abuses, but it would help to strengthen our economy and our democracy.

Thank you for the opportunity to provide some of our insights and recommendations to strengthen California's approaches to addressing corporate harm, concentration, and power.

Solana Rice,
Co-Founder and Co-Executive Director
Liberation in a Generation

³⁷ Capers, I. Bennett and Gregory Day. 2023. "Race-Ing Antitrust." Michigan Law Review, Vol. 121, No. 4. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4147868.