

United States Senate

WASHINGTON, DC 20510

December 6, 2022

Mr. Rodney McMullen
Chief Executive Officer
The Kroger Company
1014 Vine Street
Cincinnati, OH 45202

Mr. Vivek Sankaran
Chief Executive Officer
Albertsons Companies, Inc.
250 Parkcenter Boulevard
Boise, ID 83706

Dear Mr. McMullen and Mr. Sankaran,

I write to you regarding the Kroger Company's (Kroger) proposed \$24.6 billion acquisition of Albertsons Companies, Inc. (Albertsons), and your respective commitments to addressing racial and economic disparities. Across the United States, your stores combined account for more than 5,000 grocery establishments, providing food access across 48 states and generating revenue of \$209 billion.¹ While I remain deeply concerned about the proposed Kroger-Albertsons merger and its impact on food security, grocery worker jobs, food prices, and market competition, I also understand this moment serves as a critical inflection point for racial justice for your companies, the communities you serve, and for our country. As you continue to work towards this proposed merger, I write to request information about how your companies are prioritizing diversity and inclusion throughout this process and to urge you to take steps to strengthen these commitments.

The racial wealth gap remains one of the most pernicious vestiges of slavery and Jim Crow laws, and it is emblematic of the need to attack these problems in a multi-dimensional way. The lack of economic opportunity for Black and Brown businesses, alongside intentional, government-sponsored efforts such as red-lining, have thwarted wealth creation among communities of color. Entrepreneurship and business opportunities have been an important tool for wealth creation, allowing Black and Brown people to cut through historic and systemic inequities. A Federal Reserve study showed that families in which the head of the household owned their own business had a median net worth five times that of households in which the head worked for someone else.² Additionally, entrepreneurship shows the potential for closing the gap between Black and white wealth by boosting the opportunities for Black entrepreneurs to build wealth.³ Studies have also shown that Black entrepreneurs have higher wealth levels and higher levels of wealth mobility than Black workers, and while Black entrepreneurs have levels of wealth

¹ Lauren Hirsch, *Attorneys General Sue to Stop Dividend Tied to Kroger-Albertsons Deal*, N.Y. TIMES (Nov. 2, 2022), <https://www.nytimes.com/2022/11/02/business/kroger-albertsons-dividend-lawsuit.html>.

² U.S. Federal Reserve, *Changes in U.S. Family Finances from 2016 to 2019: Evidence from the Survey of Consumer Finances* 106 (2020), <https://www.federalreserve.gov/publications/2020-bulletin-changes-in-us-family-finances-from-2016-to-2019.htm>.

³ Brian Thompson, *The Key To Closing The Racial Wealth Gap: Black Entrepreneurship*, FORBES (Jun 17, 2021, 11:06am EDT), <https://www.forbes.com/sites/brianthompson1/2021/06/17/the-key-to-closing-the-racial-wealth-gap-black-entrepreneurship/?sh=1d8eb3715bec>.

mobility equal to those of white entrepreneurs, white workers have greater wealth mobility than Black workers.⁴

Large public and private enterprises have a crucial role to play in fostering opportunities for a diverse workforce, executive leadership, and for diverse-owned businesses, both large and small, through utilizing their services as part of spending on vendors. Kroger and Albertsons have both acknowledged this, and have explicitly outlined commitments targeting racial and economic disparities. On October 26, 2020, Kroger published its “Framework for Action: Diversity, Equity & Inclusion Plan,” which detailed how the supermarket chain would advance equity across stores through plans to “improve diverse talent recruiting by partnering with Historically Black Colleges & Universities, Hispanic Association Colleges & Universities, and community colleges; increase spending with diverse suppliers from \$3.4 billion to \$10 billion by 2030; and build sustainable partnerships that create more equitable, inclusive and stronger communities through an investment of \$5 million.”⁵ Similarly, Albertsons’ “Recipe for Change” initiative promises to “increase diverse representation within management to reflect the rich diversity of the communities served; foster an inclusive culture that embraces differences and drives innovation to accelerate growth; and ensure all associates have equal access to opportunities and resources.”⁶ I acknowledge and appreciate your efforts on the goods and services level to increase the share of contracts going to diverse suppliers and the work to recruit a more diverse workforce. Further, since the announcement of the merger, Kroger has highlighted how this acquisition will build a more equitable and sustainable food system by expanding into new geographies and serving more communities.⁷ These positive steps forward are imperative to creating a more equitable business and a stronger workforce.

However, recent evidence from McKinsey and Boston Consulting Group suggests that focusing supplier diversity efforts solely on low-margin industries significantly limits the potential positive impact and wealth creation that would result from encouraging corporations and anchor institutions to work with diverse-owned businesses and minority business leaders in all parts of the economy.⁸ According to the analysis of the Chicago economy, the construction industry has the lowest average net margin of 15 industries assessed in the study, and among the lowest overall contributions to gross domestic product (GDP).⁹ In contrast, financial services and

⁴ William D. Bradford, *The “Myth” That Black Entrepreneurship Can Reduce the Gap in Wealth Between Black and White Families* (May 24, 2014), <https://journals.sagepub.com/doi/abs/10.1177/0891242414535468>

⁵ Press Release, Kroger, Kroger Announces Framework for Action: Diversity, Equity & Inclusion Plan to Uplift Associates, Customers and Communities (Oct. 26, 2020), <https://ir.kroger.com/CorporateProfile/press-releases/press-release/2020/Kroger-Announces-Framework-for-Action-Diversity-Equity--Inclusion-Plan-to-Uplift-Associates-Customers-and-Communities/default.aspx>.

⁶ Albertsons Company, Impact Statement on Diversity, Equity, and Inclusion (2022), <https://www.albertsonscorporation.com/our-impact/people/diversity-equity-inclusion/default.aspx>.

⁷ Errol Schweizer, *Why A Kroger/Albertsons Merger Is A Bad Idea*, FORBES (Oct. 13, 2022, 3:50pm EDT), <https://www.forbes.com/sites/errolschweizer/2022/10/13/why-a-krogeralbertsons-merger-is-a-bad-idea/?sh=673db9b853af>

⁸ Milan Prilepok, Shelley Stewart III, Ken Yearwood, Ammanuel Zegeye, *Expand diversity among your suppliers—and add value to your organization*, MCKINSEY & COMPANY (May 17, 2022), <https://www.mckinsey.com/capabilities/operations/our-insights/expand-diversity-among-your-suppliers-and-add-value-to-your-organization>

⁹ Presentation, “Business Diversity”, Senior BDI Leadership Meeting of the Commercial Club of Chicago, Boston Consulting Group (January 27, 2021). See chart “Prioritized sectors have high GDP and higher margins: Illinois GDP and Jobs by Sector, pre-COVID”: construction (1-10%) and transportation and warehousing (3-7%), finance and insurance (20-45%), professional services (10-30%).

professional services have the highest average net margins and among the highest overall contributions to GDP.

In law firms, the findings are similarly grim. A report from the National Association for Law Placement released in 2020 found that the percentage of Black partners at major U.S. law firms is just over 2 percent and Black and Latina women each represent less than 1 percent of all partners. For associates, the percentage of Black or African American associates is just over 5 percent.¹⁰ We cannot ignore the extreme and persistent inequality that deprives some individuals from attaining these opportunities. The proposed merger and acquisition could be a pivotal moment for Black and Brown professionals and it should be a process that represents a diverse brain trust.

As the reach of your companies has a vast, and potentially growing, impact on our national economy, I want to encourage you to take steps to increase the utilization of diverse-owned professional services businesses and to start by tracking what you spend with these types of companies, if you do not already do so. Please share the following information in a response to my office:

1. What is the status of the preexisting commitments to diversity and inclusion by Kroger and Albertsons, and how would those commitments be impacted by the proposed merger?
 - a. Do you collect data on workforce diversity? If so, please provide that information.
 - b. Do you collect data on board and management diversity? If so, please provide that information.
2. Do you currently track the amount your respective company spends with diverse-owned vendors? If so, please provide that information.
 - a. Do you currently disaggregate this information by industry (e.g., legal, communications, marketing/media services, financial services, human resources, technology, engineering, auditing/accounting, consulting)? If so, please provide that information.
 - b. Do you currently disaggregate this information by racial and ethnic categories, beyond simply the term “minority”? If so, please provide that information.
3. Do you have board-level discussions about developing strategies to increase your company’s utilization of diverse-owned professional services companies? If so, please provide summaries of those plans.
4. I understand that Goldman Sachs & Co. LLC and Credit Suisse Group AG, and Citigroup Inc. and Wells Fargo Securities LLC, advised Albertsons and Kroger, respectively.¹¹ Of the investment teams considered to facilitate this process—
 - a. How many were minority- or women-led or owned?
 - b. Of the investment banks considered, were any minority- or women-led or owned teams hired?


¹⁰ Press Release, Nat’l Assoc. for Law Placement, *Slow, Incremental Progress Continues as People of Color and Women Remain Underrepresented at Law Firms* (Feb. 2, 2021), https://www.nalp.org/uploads/PressReleases/Feb2021NALPDiversityReport_PressRel.pdf.

¹¹ Nick Albicocco, Darakhshan Nazir, *Kroger’s Albertsons acquisition was October’s only \$10B+ global M&A deal*, S&P Global Market Intelligence (Nov. 8, 2022), <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/kroger-s-albertsons-acquisition-was-october-s-only-10b-global-m-a-deal-72796564>

5. I understand that six firms are providing legal counsel: Weil, Gotshal & Manges LLP and Arnold & Porter Kaye Scholer, and Jenner & Block LLP, White & Case LLP, and Debevoise & Plimpton LLP, to Kroger and Albertsons respectively.¹² Of the legal teams considered –
 - a. How many were minority- or women-led or owned?
 - b. Of those considered, were any minority- or women-led or owned firms hired?

In order to meet the challenges our country is facing related to racial equity and inclusion, all stakeholders must consider multi-dimensional approaches to creating more opportunity. While legislation and federal, state, and local policies are important elements, the private sector can and should take steps to accelerate this change. As you look to the future, I urge you to remain national leaders by setting new standards for diversity and inclusion in the professional services industry during a merger and acquisition. This is an opportunity to bring together diverse and excellent talent, in line with your companies' commitments and help set standards for not only your industry, but for industries across the country.

Sincerely,



Cory A. Booker
United States Senator

¹² Press Release, Kroger, Kroger and Albertsons Companies Announce Definitive Merger Agreement (Oct. 14, 2022), <https://ir.kroger.com/CorporateProfile/press-releases/press-release/2022/Kroger-and-Albertsons-Companies-Announce-Definitive-Merger-Agreement/default.aspx>