

December 14, 2021

Randall Jones  
Publix Super Markets, Inc.  
3300 Publix Corporate Pkwy.  
Lakeland, FL, 33811

Dear Mr. Jones,

I am writing regarding my concerns about rising grocery prices for American consumers and the extent to which large grocery retailers are earning massive profits for company officials and investors while making it harder for American families to put food on the table. While many Americans faced the loss of jobs, homes, and loved ones during the COVID-19 pandemic, grocery companies like yours saw immense gains through record sales and profits.<sup>1</sup> In 2020, Kroger, reported \$2.6 billion in profits, up 5.6% from 2019;<sup>2</sup> Albertsons reported \$1.89 billion in net income for 2020, an increase from \$612.1 million in 2019,<sup>3</sup> and Publix reported a 60% growth in profit for the third quarter of 2020.<sup>4</sup>

In 2021, these same companies continued to earn massive profits while pushing grocery cost increases onto consumers. In a call with investors, Kroger CEO Rodney McMullen noted that these rising prices, which hurt so many American families, could be used to Kroger's advantage, saying "a little bit of inflation is always good in our business."<sup>5</sup>

I am writing today to request information on what steps your company has taken to protect consumers, and how you will ensure that your company is not putting its profits over the needs of its customers amidst an unprecedented global crisis.

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<sup>1</sup> The Food Industry Association, "Grocery Store Chains Net Profit," FMI Information Service, <https://www.fmi.org/our-research/supermarket-facts/grocery-store-chains-net-profit>.

<sup>2</sup> Cincinnati Enquirer, "How much is Kroger's profit during the pandemic? Grocer ups average pay to \$15.50 per hour," Alexander Coolidge, March 4, 2021, <https://www.cincinnati.com/story/money/2021/03/04/how-much-kroger-profit-during-pandemic/4507949001/>.

<sup>3</sup> Supermarket News, "Albertsons marks 'transformational year' in fiscal 2020," Russell Redman, April 26, 2021, <https://www.supermarketnews.com/retail-financial/albertsons-marks-transformational-year-fiscal-2020>.

<sup>4</sup> Tampa Bay Times, "Publix reports 60 percent growth in profit for third quarter," Lakeland Ledger, November 5, 2020, <https://www.tampabay.com/news/business/2020/11/05/publix-reports-60-percent-growth-in-profit-for-third-quarter/>; Supermarket News, "Publix says pandemic boosted fiscal 2020 sales by 12.1%," Russell Redman, March 2, 2021, <https://www.supermarketnews.com/retail-financial/publix-says-pandemic-boosted-fiscal-2020-sales-121>.

<sup>5</sup> CNN, "Grocery stores are excited to charge you higher prices," Nathaniel Meyersohn, June 18, 2021, <https://www.cnn.com/2021/06/18/business/grocery-store-inflation-kroger-albertsons/index.html>.

In 2020, the U.S. Department of Agriculture found that due to the shift in consumer behavior, supermarkets pocketed as much as \$162 billion in additional revenue, with a nearly 20 percent increase in profits across the grocery retail sector.<sup>6</sup> According to Publix's public filings with the Securities and Exchange Commission, the higher sales from the COVID-19 pandemic "more than offset the additional costs incurred" from the company's rapid expansion to fill rising demand.<sup>7</sup> Grocery chains supplemented the profits from rising demand with other cost-cutting measures, in some cases depriving frontline workers of hazard pay or failing to adopt necessary workplace safety precautions. In addition, large grocery chains also took advantage of consumers to increase their profits during the COVID-19 pandemic. A lawsuit filed in Texas alleged that 19 grocery stores, including Kroger Co. and Albertsons Companies Inc., participated in price-gouging in the first months of the pandemic, nearly tripling the price of eggs during the state's state of disaster in March 2020.<sup>8</sup> Similarly, a class action lawsuit of Safeway customers alleged that their parent grocery chain Albertsons was responsible for inflating prices in California in violation of a state law preventing increases greater than 10 percent during a state of emergency.<sup>9</sup>

Despite allegations of illegal behavior, these grocery chains continued to thrive during 2020: private equity firm Apollo Global Management invested \$1.75 billion in Albertsons Companies Inc. in May 2020,<sup>10</sup> and grocers including Kroger posted "eye-popping" 90% increases in profits in the first two quarters.<sup>11</sup> But it appears that rather than defraying costs for consumers or providing hazard pay to essential frontline workers, these profits have gone directly into the pockets of executives and shareholders. The incentives Kroger, Albertsons, and Publix used to determine their executives' salaries resulted in skyrocketing bonuses for CEOs and executive officers. At Publix, your non-equity incentive plan compensation went from \$360,000 in 2019 to over \$1.1 million in 2020.<sup>12</sup> Kroger CEO McMullen's non-equity plan compensation went from over \$2 million in 2019 to more than \$4.8 million in 2020,<sup>13</sup> and

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<sup>6</sup> Cincinnati Enquirer, "How much is Kroger's profit during the pandemic? Grocer ups average pay to \$15.50 per hour," Alexander Coolidge, March 4, 2021, <https://www.cincinnati.com/story/money/2021/03/04/how-much-kroger-profit-during-pandemic/4507949001/>; NBC News, "Once categorized as 'essential,' grocery workers say they now feel 'expendable,'" Ben Popken, March 5, 2021, <https://www.nbcnews.com/business/business-news/once-categorized-essential-grocery-workers-say-they-now-feel-expendable-n1259646>.

<sup>7</sup> Securities and Exchange Commission, Form 10-K, Publix Super Markets, Inc., March 1, 2021, p. 9, <https://www.sec.gov/ix?doc=/Archives/edgar/data/81061/000008106121000014/ck0000081061-20201226.htm>.

<sup>8</sup> Austin American-Statesman, "H-E-B, Costco, Walmart, Albertsons among grocery stores accused of price-gouging eggs in federal suit," Heather Osbourne, May 6, 2020, <https://www.statesman.com/story/news/coronavirus/2020/05/06/h-e-b-costco-walmart-albertsons-among-grocery-stores-accused-of-price-gouging-eggs-in-federal-suit/1237229007/>.

<sup>9</sup> The Counter, "Wiped out: Safeway sued for price gouging toilet paper and other supplies," Jessica McKenzie, June 11, 2020, <https://thecounter.org/covid-19-albertsons-safeway-sued-price-gouging-toilet-paper/>.

<sup>10</sup> Reuters, "Apollo Global invests \$1.75 billion in U.S. supermarket operator Albertsons," Joshua Franklin, May 20, 2020, <https://www.reuters.com/article/us-albertsons-apollo-global/apollo-global-invests-1-75-billion-in-u-s-supermarket-operator-albertsons-idUSKBN22W2ST>.

<sup>11</sup> Detroit Free Press, "Kroger, other retailers see 'eye-popping profits' as workers reap little benefit," Sue Selasky, December 4, 2020, <https://www.freep.com/story/news/local/michigan/2020/12/04/kroger-walmart-amazon-profits-covid-19-pandemic/6458910002/>; Brookings Institute, "Windfall profits and deadly risks: How the biggest retail companies are compensating essential workers during the COVID-19 pandemic," Molly Kinder, Laura Stater, and Julia Du, November 2020, <https://www.brookings.edu/essay/windfall-profits-and-deadly-risks/>.

<sup>12</sup> Securities and Exchange Commission, Schedule 14A Proxy Statement, Publix Super Markets, Inc., March 4, 2021, <https://www.sec.gov/Archives/edgar/data/81061/000008106121000016/a2021proxystatement.htm>.

<sup>13</sup> Securities and Exchange Commission, Schedule 14A Proxy Statement, The Kroger Co., May 13, 2021, [https://www.sec.gov/Archives/edgar/data/56873/000114036121017149/nc10022090x1\\_def14a.htm](https://www.sec.gov/Archives/edgar/data/56873/000114036121017149/nc10022090x1_def14a.htm).

Albertsons CEO Vivek Sankaran’s bonus went from approximately \$2.6 million in 2019 to over \$4.3 million in 2020 – almost triple his base salary of \$1.5 million.<sup>14</sup>

Although the producer price index released earlier this week did show a rise in wholesale prices,<sup>15</sup> this is clearly not the whole picture. Behind the scenes, grocery chains have reassured investors that only consumers would be hurt. In June 2021, on a call with investors, Kroger CEO McMullen admitted that “our business operates the best” with some inflation, allowing the company to pass cost increases on to consumers.<sup>16</sup> Kroger Senior Vice President and CFO Gary Millerchip boasted in October 2021 that the company was “very comfortable with our ability to pass on the increases that we’ve seen at this point [...] and we would expect that to continue to be the case.”<sup>17</sup> In a December earnings call, an analyst confirmed that Kroger had “obviously done a very good job of passing on inflation to consumers,” noting that the company’s gross profit dollars were up.<sup>18</sup> Retail and consumer goods consultant Burt Flickinger said that inflation was the “greatest gift the supermarket sector could get,” because they would “mark up the full rate of inflation plus a little bit more.”<sup>19</sup> Former Secretary of Labor Robert Reich similarly argued that corporations, including grocery chains, were “using the excuse of inflation to raise prices and make fatter profits.”<sup>20</sup> Even as American consumers face higher prices and higher levels of food insecurity, companies in the S&P 500 are on track to post record profit margins of 12.9%.<sup>21</sup>

Your company, and the other major grocers who reaped the benefits of a turbulent 2020, appear to be passing costs onto consumers to preserve your pandemic gains, and even taking advantage of inflation to add greater burdens. Your company announced that in the first nine months of 2021, it paid almost \$732.9 million in quarterly dividends, up from \$661.6 million for the first nine months of 2020.<sup>22</sup> In October 2020, Albertsons initiated a \$300 million stock

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<sup>14</sup> Securities and Exchange Commission, Schedule 14A Proxy Statement, Albertsons Companies, Inc., June 24, 2021, [https://www.sec.gov/Archives/edgar/data/1646972/000114036121022208/nc10025568x2\\_def14a.htm#tEC](https://www.sec.gov/Archives/edgar/data/1646972/000114036121022208/nc10025568x2_def14a.htm#tEC).

<sup>15</sup> CNBC, “Wholesale prices measure rose 9.6% in November from a year ago, the fastest pace on record,” Jeff Cox, December 14, 2021, <https://www.cnbc.com/2021/12/14/wholesale-prices-measure-rises-9point6percent-in-november-from-a-year-ago-the-fastest-pace-on-record.html>.

<sup>16</sup> CNN, “Grocery stores are excited to charge you higher prices,” Nathaniel Meyersohn, June 18, 2021, <https://www.cnn.com/2021/06/18/business/grocery-store-inflation-kroger-albertsons/index.html>.

<sup>17</sup> Business Insider, “America’s biggest companies can’t stop bragging to investors about how they’re charging you more,” Dominick Reuter, November 2, 2021, <https://www.businessinsider.com/big-companies-keep-bragging-to-investors-about-price-hikes-2021-11>.

<sup>18</sup> Motley Fool, “Kroger (KR) Q3 2021 Earnings Call Transcript,” Motley Fool Transcribing, December 3, 2021, <https://www.fool.com/amp/earnings/call-transcripts/2021/12/03/kroger-kr-q3-2021-earnings-call-transcript/>.

<sup>19</sup> CNN, “Grocery stores are excited to charge you higher prices,” Nathaniel Meyersohn, June 18, 2021, <https://www.cnn.com/2021/06/18/business/grocery-store-inflation-kroger-albertsons/index.html>.

<sup>20</sup> Business Insider, “Corporations are using inflation as an excuse to raise prices and make fatter profits – and it’s making the problem worse,” Dominick Reuter and Andy Kiersz, November 16, 2021, <https://www.businessinsider.com/corporations-using-inflation-as-excuse-to-reap-fatter-profits-reich-2021-11>.

<sup>21</sup> Business Insider, “You know who’s not hurting from inflation? Big business.,” Andy Kiersz, November 9, 2021, [https://www.businessinsider.com/corporate-profits-are-high-despite-inflation-and-shortages-2021-11; FactSet, “Earnings Insight,” John Butters, November 5, 2021, https://www.factset.com/hubfs/Website/Resources%20Section/Research%20Desk/Earnings%20Insight/EarningsInsight\\_110521.pdf](https://www.businessinsider.com/corporate-profits-are-high-despite-inflation-and-shortages-2021-11; FactSet, “Earnings Insight,” John Butters, November 5, 2021, https://www.factset.com/hubfs/Website/Resources%20Section/Research%20Desk/Earnings%20Insight/EarningsInsight_110521.pdf).

<sup>22</sup> Securities and Exchange Commission, Form 10-Q, Publix Super Markets Inc., November 1, 2021, <https://www.sec.gov/ix?doc=/Archives/edgar/data/81061/000008106121000044/ck0000081061-20210925.htm>.

buyback program.<sup>23</sup> In June 2021, Kroger Co., which months earlier closed stores in cities that required \$4 hazard pay because of its “razor-thin profit margins,”<sup>24</sup> announced a \$1 billion share buyback program.<sup>25</sup> Your companies had a choice: they could have retained lower prices for consumers and properly protected and compensated their workers, or granted massive payouts to top executives and investors. It is disappointing that you chose not to put your customers and workers first.

In order to address my concerns about your company’s decisions during the pandemic, and the impact of these decisions on your customers and workers, I ask that you please provide answers to the following questions by January 7, 2022:

1. To what extent has your company met or exceeded profit goals during the pandemic?
  - a. Did your company meet or exceed profit goals in FY2020? By how much?
  - b. Did your company meet or exceed profit goals in FY2021? By how much?
  - c. Did your company meet or exceed profits goals to date, in the first quarter of FY2022? By how much?
2. For each of the categories below, how much did the average wholesale price per unit paid by your company increase in FY2021?
  - a. Bread and Bakery
  - b. Canned Goods and Soups
  - c. Dairy, Egg, and Cheese
  - d. Frozen Food
  - e. Meat and Seafood
  - f. Grain, Pasta, and Sides
  - g. Beverages
  - h. Breakfast and Cereal
3. For each of the categories below, how much did the average retail price per unit paid by consumers at your store increase in FY2021?
  - a. Bread and Bakery
  - b. Canned Goods and Soups
  - c. Dairy, Egg, and Cheese
  - d. Frozen Food
  - e. Meat and Seafood
  - f. Grain, Pasta, and Sides
  - g. Beverages
  - h. Breakfast and Cereal
4. Has your company increased wages during the pandemic?

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<sup>23</sup> Nasdaq, “Albertsons Starts a Dividend and Buyback Program for Shareholders,” Mark Hake, October 28, 2020, <https://www.nasdaq.com/articles/albertsons-starts-a-dividend-and-buyback-program-for-shareholders-2020-10-28>.

<sup>24</sup> Seattle Times, “QFC to close two Seattle stores, blames city’s new \$4 hazard pay law,” Paul Roberts, February 16, 2021, <https://www.seattletimes.com/business/local-business/qfc-to-close-two-seattle-stores-blames-citys-new-4-hazard-pay-law>.

<sup>25</sup> MarketWatch, “Kroger raises full year guidance, announces \$1 billion share buyback program,” Tonya Garcia, June 17, 2021, <https://www.marketwatch.com/story/kroger-raises-full-year-guidance-announces-1-billion-share-buyback-program-2021-06-17>.

- a. What was the average retail, non-managerial store employee at your stores paid in FY2019?
  - b. What was the average retail, non-managerial store employee at your stores paid in FY2020?
  - c. What was the average retail, non-managerial store employee at your stores paid in FY2021?
  - d. What was the average retail, non-managerial store employee at your stores paid in the first quarter of FY2022?
5. What is your expected compensation, including your base salary and all bonuses or incentive payments, in 2021?
- a. What incentives or bonuses are part of your compensation, and what criteria are the basis for these incentives and bonuses?
  - b. Are you awarding any incentives or bonuses based on retaining low prices for consumers?
  - c. Are you awarding any incentives or bonuses for increasing employee retention or employee pay?
  - d. Are you awarding any incentives for COVID-safety criteria, such as reducing infections among employees?

Sincerely,



Elizabeth Warren  
United States Senator

December 14, 2021

Vivek Sankaran  
Albertsons Companies, Inc.  
250 Parkcenter Boulevard  
Boise, ID 83706

Dear Mr. Sankaran,

I am writing regarding my concerns about rising grocery prices for American consumers and the extent to which large grocery retailers are earning massive profits for company officials and investors while making it harder for American families to put food on the table. While many Americans faced the loss of jobs, homes, and loved ones during the COVID-19 pandemic, grocery companies like yours saw immense gains through record sales and profits.<sup>1</sup> In 2020, Kroger, reported \$2.6 billion in profits, up 5.6% from 2019;<sup>2</sup> Albertsons reported \$1.89 billion in net income for 2020, an increase from \$612.1 million in 2019,<sup>3</sup> and Publix reported a 60% growth in profit for the third quarter of 2020.<sup>4</sup>

In 2021, these same companies continued to earn massive profits while pushing grocery cost increases onto consumers. In a call with investors, Kroger CEO Rodney McMullen noted that these rising prices, which hurt so many American families, could be used to Kroger's advantage, saying "a little bit of inflation is always good in our business."<sup>5</sup>

I am writing today to request information on what steps your company has taken to protect consumers, and how you will ensure that your company is not putting its profits over the needs of its customers amidst an unprecedented global crisis.

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<sup>2</sup> Cincinnati Enquirer, "How much is Kroger's profit during the pandemic? Grocer ups average pay to \$15.50 per hour," Alexander Coolidge, March 4, 2021, <https://www.cincinnati.com/story/money/2021/03/04/how-much-kroger-profit-during-pandemic/4507949001/>.

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<sup>4</sup> Tampa Bay Times, "Publix reports 60 percent growth in profit for third quarter," Lakeland Ledger, November 5, 2020, <https://www.tampabay.com/news/business/2020/11/05/publix-reports-60-percent-growth-in-profit-for-third-quarter/>; Supermarket News, "Publix says pandemic boosted fiscal 2020 sales by 12.1%," Russell Redman, March 2, 2021, <https://www.supermarketnews.com/retail-financial/publix-says-pandemic-boosted-fiscal-2020-sales-121>.

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In 2020, the U.S. Department of Agriculture found that due to the shift in consumer behavior, supermarkets pocketed as much as \$162 billion in additional revenue, with a nearly 20 percent increase in profits across the grocery retail sector.<sup>6</sup> According to Publix's public filings with the Securities and Exchange Commission, the higher sales from the COVID-19 pandemic "more than offset the additional costs incurred" from the company's rapid expansion to fill rising demand.<sup>7</sup> Grocery chains supplemented the profits from rising demand with other cost-cutting measures, in some cases depriving frontline workers of hazard pay or failing to adopt necessary workplace safety precautions. A Brookings Institute study analyzed worker compensation at 13 of the 20 biggest retail companies in the United States including Kroger, Albertsons, and Ahold Delhaize (parent company of Stop & Shop, Giant Food, Hannaford, and other chains), finding that the companies "offered only modest or negligible extra compensation to workers while earning windfall profits."<sup>8</sup> These are essential workers, who have put themselves and their families at risk to keep the rest of us going during this pandemic – we owe them proper protections, rights, and compensation. Representative Ro Khanna and I have called for an Essential Worker Bill of Rights,<sup>9</sup> but these are steps you could be taking on your own, instead of fattening shareholder profits and executive compensation.

Large grocery chains also took advantage of consumers to increase their profits during the COVID-19 pandemic. A lawsuit filed in Texas alleged that 19 grocery stores, including your company Albertsons Companies Inc. and Kroger Co., participated in price-gouging in the first months of the pandemic, nearly tripling the price of eggs during the state's state of disaster in March 2020.<sup>10</sup> Similarly, a class action lawsuit of Safeway customers (a subsidiary of Albertsons Company) alleged that your company was responsible for inflating prices in California in violation of a state law preventing increases greater than 10 percent during a state of emergency.<sup>11</sup>

Despite allegations of illegal behavior, these grocery chains continued to thrive during 2020: private equity firm Apollo Global Management invested \$1.75 billion in Albertsons

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<sup>9</sup> Office of Senator Warren, "Elizabeth Warren and Ro Khanna Unveil Essential Workers Bill of Rights," press release, April 13, 2020, <https://www.warren.senate.gov/newsroom/press-releases/elizabeth-warren-and-ro-khanna-unveil-essential-workers-bill-of-rights>.

<sup>10</sup> Austin American-Statesman, "H-E-B, Costco, Walmart, Albertsons among grocery stores accused of price-gouging eggs in federal suit," Heather Osbourne, May 6, 2020, <https://www.statesman.com/story/news/coronavirus/2020/05/06/h-e-b-costco-walmart-albertsons-among-grocery-stores-accused-of-price-gouging-eggs-in-federal-suit/1237229007/>.

<sup>11</sup> The Counter, "Wiped out: Safeway sued for price gouging toilet paper and other supplies," Jessica McKenzie, June 11, 2020, <https://thecounter.org/covid-19-albertsons-safeway-sued-price-gouging-toilet-paper/>.

Companies Inc. in May 2020,<sup>12</sup> and grocers including Kroger posted “eye-popping” 90% increases in profits in the first two quarters.<sup>13</sup> But it appears that rather than defraying costs for consumers or providing hazard pay to essential frontline workers, these profits have gone directly into the pockets of executives and shareholders. The incentives Kroger, Albertsons, and Publix used to determine their executives’ salaries resulted in skyrocketing bonuses for CEOs and executive officers. At Albertsons, your bonus went from approximately \$2.6 million in 2019 to over \$4.3 million in 2020 – almost triple your base salary of \$1.5 million.<sup>14</sup> At Kroger, CEO Rodney McMullen’s bonus went from \$2 million in 2019 to \$4.8 million in 2020, bring his total salary to over \$20 million.<sup>15</sup> Publix CEO Randall Jones saw an increase in his non-equity incentive plan compensation from about \$360,000 in 2019 to over \$1.1 million in 2020.<sup>16</sup>

Although the producer price index released earlier this week did show a rise in wholesale prices,<sup>17</sup> this is clearly not the whole picture. Behind the scenes, grocery chains have reassured investors that only consumers would be hurt. In June 2021, on a call with investors, Kroger CEO McMullen admitted that “our business operates the best” with some inflation, allowing the company to pass cost increases on to consumers.<sup>18</sup> Kroger Senior Vice President and CFO Gary Millerchip boasted in October 2021 that the company was “very comfortable with our ability to pass on the increases that we’ve seen at this point [...] and we would expect that to continue to be the case.”<sup>19</sup> In a December earnings call, an analyst confirmed that Kroger had “obviously done a very good job of passing on inflation to consumers,” noting that the company’s gross profit dollars were up.<sup>20</sup> Retail and consumer goods consultant Burt Flickinger said that inflation was the “greatest gift the supermarket sector could get,” because they would “mark up the full rate of inflation plus a little bit more.”<sup>21</sup> Former Secretary of Labor Robert Reich similarly argued that corporations, including grocery chains, were “using the excuse of inflation to raise

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<sup>12</sup> Reuters, “Apollo Global invests \$1.75 billion in U.S. supermarket operator Albertsons,” Joshua Franklin, May 20, 2020, <https://www.reuters.com/article/us-albertsons-apollo-global/apollo-global-invests-1-75-billion-in-u-s-supermarket-operator-albertsons-idUSKBN22W2ST>.

<sup>13</sup> Detroit Free Press, “Kroger, other retailers see ‘eye-popping profits’ as workers reap little benefit,” Sue Selasky, December 4, 2020, <https://www.freep.com/story/news/local/michigan/2020/12/04/kroger-walmart-amazon-profits-covid-19-pandemic/6458910002/>; Brookings Institute, “Windfall profits and deadly risks: How the biggest retail companies are compensating essential workers during the COVID-19 pandemic,” Molly Kinder, Laura Stateler, and Julia Du, November 2020, <https://www.brookings.edu/essay/windfall-profits-and-deadly-risks/>.

<sup>14</sup> Securities and Exchange Commission, Schedule 14A Proxy Statement, Albertsons Companies, Inc., June 24, 2021, [https://www.sec.gov/Archives/edgar/data/1646972/000114036121022208/nc10025568x2\\_def14a.htm#EC](https://www.sec.gov/Archives/edgar/data/1646972/000114036121022208/nc10025568x2_def14a.htm#EC).

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<sup>16</sup> Securities and Exchange Commission, Schedule 14A Proxy Statement, Publix Super Markets, Inc., March 4, 2021, <https://www.sec.gov/Archives/edgar/data/81061/000008106121000016/a2021proxystatement.htm>.

<sup>17</sup> CNBC, “Wholesale prices measure rose 9.6% in November from a year ago, the fastest pace on record,” Jeff Cox, December 14, 2021, <https://www.cnbc.com/2021/12/14/wholesale-prices-measure-rises-9point6percent-in-november-from-a-year-ago-the-fastest-pace-on-record.html>.

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<sup>20</sup> Motley Fool, “Kroger (KR) Q3 2021 Earnings Call Transcript,” Motley Fool Transcribing, December 3, 2021, <https://www.fool.com/amp/earnings/call-transcripts/2021/12/03/kroger-kr-q3-2021-earnings-call-transcript/>.

<sup>21</sup> CNN, “Grocery stores are excited to charge you higher prices,” Nathaniel Meyersohn, June 18, 2021, <https://www.cnn.com/2021/06/18/business/grocery-store-inflation-kroger-albertsons/index.html>.

prices and make fatter profits.”<sup>22</sup> Even as American consumers face higher prices and higher levels of food insecurity, companies in the S&P 500 are on track to post record profit margins of 12.9%.<sup>23</sup>

Your company, and the other major grocers who reaped the benefits of a turbulent 2020, appear to be passing costs onto consumers to preserve your pandemic gains, and even taking advantage of inflation to add greater burdens. In October 2020, Albertsons initiated a \$300 million stock buyback program.<sup>24</sup> In June 2021, Kroger Co., which months earlier closed stores in cities that required \$4 hazard pay because of its “razor-thin profit margins,”<sup>25</sup> announced a \$1 billion share buyback program.<sup>26</sup> Publix announced that in the first nine months of 2021, it paid almost \$732.9 million in quarterly dividends, up from \$661.6 million for the first nine months of 2020.<sup>27</sup> Your companies had a choice: they could have retained lower prices for consumers and properly protected and compensated their workers, or granted massive payouts to top executives and investors. It is disappointing that you chose not to put your customers and workers first.

In order to address my concerns about your company’s decisions during the pandemic, and the impact of these decisions on your customers and workers, I ask that you please provide answers to the following questions by January 7, 2022:

1. To what extent has your company met or exceeded profit goals during the pandemic?
  - a. Did your company meet or exceed profit goals in FY2020? By how much?
  - b. Did your company meet or exceed profit goals in FY2021? By how much?
  - c. Did your company meet or exceed profits goals to date, in the first quarter of FY2022? By how much?
2. For each of the categories below, how much did the average wholesale price per unit paid by your company increase in FY2021?
  - a. Bread and Bakery
  - b. Canned Goods and Soups
  - c. Dairy, Egg, and Cheese
  - d. Frozen Food

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<sup>22</sup> Business Insider, “Corporations are using inflation as an excuse to raise prices and make fatter profits – and it’s making the problem worse,” Dominick Reuter and Andy Kiersz, November 16, 2021,

<https://www.businessinsider.com/corporations-using-inflation-as-excuse-to-reap-fatter-profits-reich-2021-11>.

<sup>23</sup> Business Insider, “You know who’s not hurting from inflation? Big business.,” Andy Kiersz, November 9, 2021,

<https://www.businessinsider.com/corporate-profits-are-high-despite-inflation-and-shortages-2021-11>; FactSet, “Earnings Insight,” John Butters, November 5, 2021,

[https://www.factset.com/hubfs/Website/Resources%20Section/Research%20Desk/Earnings%20Insight/EarningsInsight\\_110521.pdf](https://www.factset.com/hubfs/Website/Resources%20Section/Research%20Desk/Earnings%20Insight/EarningsInsight_110521.pdf).

<sup>24</sup> Nasdaq, “Albertsons Starts a Dividend and Buyback Program For Shareholders,” Mark Hake, October 28, 2020, <https://www.nasdaq.com/articles/albertsons-starts-a-dividend-and-buyback-program-for-shareholders-2020-10-28>.

<sup>25</sup> Seattle Times, “QFC to close two Seattle stores, blames city’s new \$4 hazard pay law,” Paul Roberts, February 16, 2021, <https://www.seattletimes.com/business/local-business/qfc-to-close-two-seattle-stores-blames-citys-new-4-hazard-pay-law/>.

<sup>26</sup> MarketWatch, “Kroger raises full year guidance, announces \$1 billion share buyback program,” Tonya Garcia, June 17, 2021, <https://www.marketwatch.com/story/kroger-raises-full-year-guidance-announces-1-billion-share-buyback-program-2021-06-17>.

<sup>27</sup> Securities and Exchange Commission, Form 10-Q, Publix Super Markets, Inc., November 1, 2021, <https://www.sec.gov/ix?doc=/Archives/edgar/data/81061/000008106121000044/ck0000081061-20210925.htm>.

- e. Meat and Seafood
  - f. Grain, Pasta, and Sides
  - g. Beverages
  - h. Breakfast and Cereal
3. For each of the categories below, how much did the average retail price per unit paid by consumers at your store increase in FY2021?
- a. Bread and Bakery
  - b. Canned Goods and Soups
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  - d. Frozen Food
  - e. Meat and Seafood
  - f. Grain, Pasta, and Sides
  - g. Beverages
  - h. Breakfast and Cereal
4. Has your company increased wages during the pandemic?
- a. What was the average retail, non-managerial store employee at your stores paid in FY2019?
  - b. What was the average retail, non-managerial store employee at your stores paid in FY2020?
  - c. What was the average retail, non-managerial store employee at your stores paid in FY2021?
  - d. What was the average retail, non-managerial store employee at your stores paid in the first quarter of FY2022?
5. What is your expected compensation, including your base salary and all bonuses or incentive payments, in 2021?
- a. What incentives or bonuses are part of your compensation, and what criteria are the basis for these incentives and bonuses?
  - b. Are you awarding any incentives or bonuses based on retaining low prices for consumers?
  - c. Are you awarding any incentives or bonuses for increasing employee retention or employee pay?
  - d. Are you awarding any incentives for COVID-safety criteria, such as reducing infections among employees?

Sincerely,



Elizabeth Warren  
United States Senator

December 14, 2021

Rodney McMullen  
The Kroger Co.  
1014 Vine Street  
Cincinnati, Ohio 45202-1100

Dear Mr. McMullen,

I am writing regarding my concerns about rising grocery prices for American consumers and the extent to which large grocery retailers are earning massive profits for company officials and investors while making it harder for American families to put food on the table. While many Americans faced the loss of jobs, homes, and loved ones during the COVID-19 pandemic, grocery companies like yours saw immense gains through record sales and profits.<sup>1</sup> In 2020, Kroger, reported \$2.6 billion in profits, up 5.6% from 2019;<sup>2</sup> Albertsons reported \$1.89 billion in net income for 2020, an increase from \$612.1 million in 2019,<sup>3</sup> and Publix reported a 60% growth in profit for the third quarter of 2020.<sup>4</sup>

In 2021, these same companies continued to earn massive profits while pushing grocery cost increases onto consumers. In a call with investors, you noted that these rising prices, which hurt so many American families, could be used to Kroger's advantage, saying "a little bit of inflation is always good in our business."<sup>5</sup>

I am writing today to request information on what steps your company has taken to protect consumers, and how you will ensure that your company is not putting its profits over the needs of its customers amidst an unprecedented global crisis.

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<sup>1</sup> The Food Industry Association, "Grocery Store Chains Net Profit," FMI Information Service, <https://www.fmi.org/our-research/supermarket-facts/grocery-store-chains-net-profit>.

<sup>2</sup> Cincinnati Enquirer, "How much is Kroger's profit during the pandemic? Grocer ups average pay to \$15.50 per hour," Alexander Coolidge, March 4, 2021, <https://www.cincinnati.com/story/money/2021/03/04/how-much-kroger-profit-during-pandemic/4507949001/>.

<sup>3</sup> Supermarket News, "Albertsons marks 'transformational year' in fiscal 2020," Russell Redman, April 26, 2021, <https://www.supermarketnews.com/retail-financial/albertsons-marks-transformational-year-fiscal-2020>.

<sup>4</sup> Tampa Bay Times, "Publix reports 60 percent growth in profit for third quarter," Lakeland Ledger, November 5, 2020, <https://www.tampabay.com/news/business/2020/11/05/publix-reports-60-percent-growth-in-profit-for-third-quarter/>; Supermarket News, "Publix says pandemic boosted fiscal 2020 sales by 12.1%," Russell Redman, March 2, 2021, <https://www.supermarketnews.com/retail-financial/publix-says-pandemic-boosted-fiscal-2020-sales-121>.

<sup>5</sup> CNN, "Grocery stores are excited to charge you higher prices," Nathaniel Meyersohn, June 18, 2021, <https://www.cnn.com/2021/06/18/business/grocery-store-inflation-kroger-albertsons/index.html>.

In 2020, the U.S. Department of Agriculture found that due to the shift in consumer behavior, supermarkets pocketed as much as \$162 billion in additional revenue, with a nearly 20 percent increase in profits across the grocery retail sector.<sup>6</sup> According to Publix's public filings with the Securities and Exchange Commission, the higher sales from the COVID-19 pandemic "more than offset the additional costs incurred" from the company's rapid expansion to fill rising demand.<sup>7</sup> Grocery chains supplemented the profits from rising demand with other cost-cutting measures, in some cases depriving frontline workers of hazard pay or failing to adopt necessary workplace safety precautions. A Brookings Institute study analyzed worker compensation at 13 of the 20 biggest retail companies in the United States including Kroger, Albertsons, and Ahold Delhaize (parent company of Stop & Shop, Giant Food, Hannaford, and other chains), finding that the companies "offered only modest or negligible extra compensation to workers while earning windfall profits."<sup>8</sup> At Kroger, you personally received a \$6.4 million raise in 2020, bringing your compensation to \$20.6 million while your workers earned as little as \$9 an hour and median worker pay dropped by over \$2,000 in that same period.<sup>9</sup> These are essential workers, who have put themselves and their families at risk to keep the rest of us going during this pandemic – we owe them proper protections, rights, and compensation. Representative Ro Khanna and I have called for an Essential Worker Bill of Rights,<sup>10</sup> but these are steps you could be taking on your own, instead of fattening shareholder profits and executive compensation.

Large grocery chains also took advantage of consumers to increase their profits during the COVID-19 pandemic. A lawsuit filed in Texas alleged that 19 grocery stores, including your company Kroger Co. and Albertsons Companies Inc., participated in price-gouging in the first months of the pandemic, nearly tripling the price of eggs during the state's state of disaster in March 2020.<sup>11</sup> Similarly, a class action lawsuit of Safeway customers alleged that their parent

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<sup>6</sup> Cincinnati Enquirer, "How much is Kroger's profit during the pandemic? Grocer ups average pay to \$15.50 per hour," Alexander Coolidge, March 4, 2021, <https://www.cincinnati.com/story/money/2021/03/04/how-much-kroger-profit-during-pandemic/4507949001/>; NBC News, "Once categorized as 'essential,' grocery workers say they now feel 'expendable,'" Ben Popken, March 5, 2021, <https://www.nbcnews.com/business/business-news/once-categorized-essential-grocery-workers-say-they-now-feel-expendable-n1259646>.

<sup>7</sup> Securities and Exchange Commission, Form 10-K, Publix Super Markets, Inc., March 1, 2021, p. 9, <https://www.sec.gov/ix?doc=/Archives/edgar/data/81061/000008106121000014/ck0000081061-20201226.htm>.

<sup>8</sup> Brookings Institute, "Windfall profits and deadly risks: How the biggest retail companies are compensating essential workers during the COVID-19 pandemic," Molly Kinder, Laura Stateler, and Julia Du, November 2020, <https://www.brookings.edu/essay/windfall-profits-and-deadly-risks/>.

<sup>9</sup> Brookings Institute, "The COVID-19 hazard continues, but the hazard pay does not: Why America's essential workers need a raise," Molly Kinder, Laura Stateler, and Julia Du, October 29, 2020, <https://www.brookings.edu/research/the-covid-19-hazard-continues-but-the-hazard-pay-does-not-why-americas-frontline-workers-need-a-raise/>; Cincinnati Enquirer, "Kroger CEO pay tops \$20M, worker pay drops during COVID-19 pandemic," Alexander Coolidge, May 17, 2021, <https://www.cincinnati.com/story/money/2021/05/17/how-does-kroger-pay-workers-compared-its-ceo/5125727001/>.

<sup>10</sup> Office of Senator Warren, "Elizabeth Warren and Ro Khanna Unveil Essential Workers Bill of Rights," press release, April 13, 2020, <https://www.warren.senate.gov/newsroom/press-releases/elizabeth-warren-and-ro-khanna-unveil-essential-workers-bill-of-rights>.

<sup>11</sup> Austin American-Statesman, "H-E-B, Costco, Walmart, Albertsons among grocery stores accused of price-gouging eggs in federal suit," Heather Osbourne, May 6, 2020, <https://www.statesman.com/story/news/coronavirus/2020/05/06/h-e-b-costco-walmart-albertsons-among-grocery-stores-accused-of-price-gouging-eggs-in-federal-suit/1237229007/>.

grocery chain Albertsons was responsible for inflating prices in California in violation of a state law preventing increases greater than 10 percent during a state of emergency.<sup>12</sup>

Despite allegations of illegal behavior, these grocery chains continued to thrive during 2020: private equity firm Apollo Global Management invested \$1.75 billion in Albertsons Companies Inc. in May 2020,<sup>13</sup> and grocers including Kroger posted “eye-popping” 90% increases in profits in the first two quarters.<sup>14</sup> But it appears that rather than defraying costs for consumers or providing hazard pay to essential frontline workers, these profits have gone directly into the pockets of executives and shareholders. The incentives Kroger, Albertsons, and Publix used to determine their executives’ salaries resulted in skyrocketing bonuses for CEOs and executive officers. At Kroger, your non-equity incentive plan compensation went from over \$2 million in 2019 to more than \$4.8 million in 2020, supplementing your salary increase to make you the highest-paid grocery CEO.<sup>15</sup> Publix CEO Randall Jones saw an increase in his non-equity incentive plan compensation from about \$360,000 in 2019 to over \$1.1 million in 2020,<sup>16</sup> and Albertsons CEO Vivek Sankaran’s bonus went from approximately \$2.6 million in 2019 to over \$4.3 million in 2020 – almost triple his base salary of \$1.5 million.<sup>17</sup>

Although the producer price index released earlier this week did show a rise in wholesale prices,<sup>18</sup> this is clearly not the whole picture. Behind the scenes, grocery chains have reassured investors that only consumers would be hurt. In June 2021, on a call with investors, Kroger CEO McMullen admitted that “our business operates the best” with some inflation, allowing the company to pass cost increases on to consumers.<sup>19</sup> Kroger Senior Vice President and CFO Gary Millerchip boasted in October 2021 that the company was “very comfortable with our ability to pass on the increases that we’ve seen at this point [...] and we would expect that to continue to be the case.”<sup>20</sup> In a December earnings call, an analyst confirmed that Kroger had “obviously done a very good job of passing on inflation to consumers,” noting that the company’s gross

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<sup>12</sup> The Counter, “Wiped out: Safeway sued for price gouging toilet paper and other supplies,” Jessica McKenzie, June 11, 2020, <https://thecounter.org/covid-19-albertsons-safeway-sued-price-gouging-toilet-paper/>.

<sup>13</sup> Reuters, “Apollo Global invests \$1.75 billion in U.S. supermarket operator Albertsons,” Joshua Franklin, May 20, 2020, <https://www.reuters.com/article/us-albertsons-apollo-global/apollo-global-invests-1-75-billion-in-u-s-supermarket-operator-albertsons-idUSKBN22W2ST>.

<sup>14</sup> Detroit Free Press, “Kroger, other retailers see ‘eye-popping profits’ as workers reap little benefit,” Sue Selasky, December 4, 2020, <https://www.freep.com/story/news/local/michigan/2020/12/04/kroger-walmart-amazon-profits-covid-19-pandemic/6458910002/>; Brookings Institute, “Windfall profits and deadly risks: How the biggest retail companies are compensating essential workers during the COVID-19 pandemic,” Molly Kinder, Laura Stateler, and Julia Du, November 2020, <https://www.brookings.edu/essay/windfall-profits-and-deadly-risks/>.

<sup>15</sup> Securities and Exchange Commission, Schedule 14A Proxy Statement, The Kroger Co., May 13, 2021, [https://www.sec.gov/Archives/edgar/data/56873/000114036121017149/nc10022090x1\\_def14a.htm](https://www.sec.gov/Archives/edgar/data/56873/000114036121017149/nc10022090x1_def14a.htm).

<sup>16</sup> Securities and Exchange Commission, Schedule 14A Proxy Statement, Publix Super Markets, Inc., March 4, 2021, <https://www.sec.gov/Archives/edgar/data/81061/000008106121000016/a2021proxystatement.htm>.

<sup>17</sup> Securities and Exchange Commission, Schedule 14A Proxy Statement, Albertsons Companies, Inc., June 24, 2021, [https://www.sec.gov/Archives/edgar/data/1646972/000114036121022208/nc10025568x2\\_def14a.htm#tEC](https://www.sec.gov/Archives/edgar/data/1646972/000114036121022208/nc10025568x2_def14a.htm#tEC).

<sup>18</sup> CNBC, “Wholesale prices measure rose 9.6% in November from a year ago, the fastest pace on record,” Jeff Cox, December 14, 2021, <https://www.cnbc.com/2021/12/14/wholesale-prices-measure-rises-9point6percent-in-november-from-a-year-ago-the-fastest-pace-on-record.html>.

<sup>19</sup> CNN, “Grocery stores are excited to charge you higher prices,” Nathaniel Meyersohn, June 18, 2021, <https://www.cnn.com/2021/06/18/business/grocery-store-inflation-kroger-albertsons/index.html>.

<sup>20</sup> Business Insider, “America’s biggest companies can’t stop bragging to investors about how they’re charging you more,” Dominick Reuter, November 2, 2021, <https://www.businessinsider.com/big-companies-keep-bragging-to-investors-about-price-hikes-2021-11>.

profit dollars were up.<sup>21</sup> Retail and consumer goods consultant Burt Flickinger said that inflation was the “greatest gift the supermarket sector could get,” because they would “mark up the full rate of inflation plus a little bit more.”<sup>22</sup> Former Secretary of Labor Robert Reich similarly argued that corporations, including grocery chains, were “using the excuse of inflation to raise prices and make fatter profits.”<sup>23</sup> Even as American consumers face higher prices and higher levels of food insecurity, companies in the S&P 500 are on track to post record profit margins of 12.9%.<sup>24</sup>

Your company, and the other major grocers who reaped the benefits of a turbulent 2020, appear to be passing costs onto consumers to preserve your pandemic gains, and even taking advantage of inflation to add greater burdens. In October 2020, Albertsons initiated a \$300 million stock buyback program.<sup>25</sup> In June 2021, your company, which months earlier closed stores in cities that required \$4 hazard pay because of its “razor-thin profit margins,”<sup>26</sup> announced a \$1 billion share buyback program.<sup>27</sup> Publix announced that in the first nine months of 2021, it paid almost \$732.9 million in quarterly dividends, up from \$661.6 million for the first nine months of 2020.<sup>28</sup> Your companies had a choice: they could have retained lower prices for consumers and properly protected and compensated their workers, or granted massive payouts to top executives and investors. It is disappointing that you chose not to put your customers and workers first.

In order to address my concerns about your company’s decisions during the pandemic, and the impact of these decisions on your customers and workers, I ask that you please provide answers to the following questions by January 7, 2022:

1. To what extent has your company met or exceeded profit goals during the pandemic?
  - a. Did your company meet or exceed profit goals in FY2020? By how much?

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<sup>21</sup> Motley Fool, “Kroger (KR) Q3 2021 Earnings Call Transcript,” Motley Fool Transcribing, December 3, 2021, <https://www.fool.com/amp/earnings/call-transcripts/2021/12/03/kroger-kr-q3-2021-earnings-call-transcript/>.

<sup>22</sup> CNN, “Grocery stores are excited to charge you higher prices,” Nathaniel Meyersohn, June 18, 2021, <https://www.cnn.com/2021/06/18/business/grocery-store-inflation-kroger-albertsons/index.html>.

<sup>23</sup> Business Insider, “Corporations are using inflation as an excuse to raise prices and make fatter profits – and it’s making the problem worse,” Dominick Reuter and Andy Kiersz, November 16, 2021,

<https://www.businessinsider.com/corporations-using-inflation-as-excuse-to-reap-fatter-profits-reich-2021-11>.

<sup>24</sup> Business Insider, “You know who’s not hurting from inflation? Big business.,” Andy Kiersz, November 9, 2021, <https://www.businessinsider.com/corporate-profits-are-high-despite-inflation-and-shortages-2021-11>; FactSet, “Earnings Insight,” John Butters, November 5, 2021,

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<sup>25</sup> Nasdaq, “Albertsons Starts a Dividend and Buyback Program For Shareholders,” Mark Hake, October 28, 2020, <https://www.nasdaq.com/articles/albertsons-starts-a-dividend-and-buyback-program-for-shareholders-2020-10-28>.

<sup>26</sup> Seattle Times, “QFC to close two Seattle stores, blames city’s new \$4 hazard pay law,” Paul Roberts, February 16, 2021, <https://www.seattletimes.com/business/local-business/qfc-to-close-two-seattle-stores-blames-citys-new-4-hazard-pay-law/>.

<sup>27</sup> MarketWatch, “Kroger raises full year guidance, announces \$1 billion share buyback program,” Tonya Garcia, June 17, 2021, <https://www.marketwatch.com/story/kroger-raises-full-year-guidance-announces-1-billion-share-buyback-program-2021-06-17>.

<sup>28</sup> Securities and Exchange Commission, Form 10-Q, Publix Super Markets, Inc., November 1, 2021, <https://www.sec.gov/ix?doc=/Archives/edgar/data/81061/000008106121000044/ck0000081061-20210925.htm>.

- b. Did your company meet or exceed profit goals in FY2021? By how much?
  - c. Did your company meet or exceed profits goals to date, in the first quarter of FY2022? By how much?
- 2. For each of the categories below, how much did the average wholesale price per unit paid by your company increase in FY2021?
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  - c. Are you awarding any incentives or bonuses for increasing employee retention or employee pay?
  - d. Are you awarding any incentives for COVID-safety criteria, such as reducing infections among employees?

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Warren", written in a cursive style. The signature is positioned above a horizontal line.

Elizabeth Warren  
United States Senator