Testimony of
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Senate Judiciary Subcommittee on Crime and Counterterrorism
Hearing on "Your Data, Their Profit: The Cost of AI Surveillance Pricing"
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Good afternoon, Chairman Hawley, Ranking Member Durbin, and members of the Subcommittee. Thank you for the opportunity to testify today.

The United Food and Commercial Workers International Union (UFCW) is the largest private sector union in the United States, representing 1.2 million hard-working members and their families. UFCW members work in grocery stores, meatpacking, food processing, non-food retail, cannabis, health care, chemical, distillery and more. We represent workers all along the food supply chain, including more than 800,000 grocery workers.

My testimony today will focus on surveillance pricing and electronic shelf labels (ESLs) in the grocery industry. Our members see the impact of these technologies in the stores first-hand, both as workers and as consumers who shop for their own families on a budget.

Surveillance Pricing in the Grocery Industry

Affordability of everyday expenses like food is a top concern for working families. Nearly half of Americans (48.6%) list cost of living as the single greatest challenge the United States faces today.[1] According to the Bureau of Labor Statistics, food prices have gone up more than 30 percent since 2020.[2] Although year-over-year food inflation has cooled, cumulative price increases remain a persistent financial stressor for most households.

While several factors can contribute to higher prices, some are controlled and can be manipulated by the retailers themselves. Emerging technologies enable companies to set prices based on customer data collected through loyalty programs, online tracking, and data brokers. Market segmentation, the ability to divide customers into groups based on shared characteristics, is not new. What's new is the sheer volume of data, the ability to analyze it using artificial intelligence (AI) to determine the exact price people are willing to pay, and the ability to set different prices for different groups of consumers—or even individual shoppers—to extract maximum profits.

Surveillance pricing is the practice of charging customers different prices for the same product based on data about their personal characteristics and behavior. Surveillance pricing is already widespread online and in grocery delivery apps. An investigation by Groundwork Collaborative, Consumer Reports, and More Perfect Union found that the online grocery delivery app InstaCart was showing different shoppers different prices for the same items, resulting in prices as high as 23 percent more for certain products, costing families more than $1,200 a year.[3] The Federal Trade Commission (FTC) initiated a study into surveillance pricing in 2024. The initial findings released in January 2025 detailed the practice across a variety of industries, including grocery stores.[4]

Electronic Shelf Labels

ESLs are the technology that allows surveillance pricing, dynamic pricing,[5] surge pricing,[6] and a range of predatory pricing practices to migrate from apps and online into brick-and-mortar stores. ESLs are digital price tags that can be changed remotely and in real time. Grocery retail chains initially began using ESLs in stores in the United States in 2018, and they are quickly expanding their use of ESLs.[7] By March 2026, Walmart had implemented ESLs in 2,300 stores and announced it will bring ESLs to all stores nationwide by the end of the year.[8]

As Walmart and other grocers rush to roll out ESLs in stores nationwide, the companies claim the devices won't be used for surveillance or surge pricing and will only be used for discounts. But a corporation wouldn't invest in outfitting its stores with expensive ESL equipment—in some cases, $400,000 per store, or upwards of a billion dollars in expense for a large chain—if it doesn't increase its profit margin. In fact, the stores plan to use ESLs for the explicit purpose of raising prices and cutting jobs. This is not conjecture; it is how ESL manufacturers are pitching their technologies to stores:[9]

> *"…electronic shelf labels that can drive price down in order to maximize sales or, if need be, **drive price up in order to maximize margin**. All of this can happen **dynamically** on the shelf."* -Andrew Lutinsky, Pricer
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> *"You think about this technology, and it is a **conduit for data**, and an execution of data."* -Roy Horgan, SES-Imagotag by Vusion
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> *"The popularity of the ESLs are now moving to North America and South America. The reason for that is that retailers are looking for ways to improve their **profitability**. And so you can have prices that you can **dynamically change** anytime you want."* -Ted Clark, Toshiba Global Commerce Solutions
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> *"What is the biggest advantage of switching from paper price tags to electronic ones? It is **labor cost reduction**."* -SOLUM Group

Discounts and Loyalty Programs

Even discounts and loyalty programs are not as innocuous as they seem. Stores use their loyalty programs to harvest valuable personal data about their customers, including their shopping habits and preferences. One large chain's precision marketing division, which sells customer data to other companies for marketing and advertising purposes, now represents more than 35 percent of the company's net income.[10] Loyalty programs offer "personalized discounts," which are just another name for surveillance pricing.

Shoppers want real discounts that are transparent and fair. They do not want small, incremental discounts that constantly change and are used to treat customers like guinea pigs, testing exactly how much they are willing to pay for an item so the store can charge them the highest price possible. Shoppers also want predictability so they can budget and plan.

A Warning From Norway
Norway's recent experience should be a warning. Norway has been a leader in the adoption of ESLs, starting in the 2010s. Customers are accustomed to seeing prices change in front of their eyes—sometimes as many as 100 times a day.[11] Shoppers pay whatever price is on the shelf when they check out, even if it changed while they were shopping. According to one store executive, ESLs were originally adopted as a way to more easily cut prices to beat the competition. But that's not what happened.

According to the Norwegian Competition Authority (NCA), illegal cooperation between the country's three dominant grocery chains—which together control 95 percent of the market—began in 2011.[12] Coop, Norgesgruppen, and Rema 1000 entered into an agreement that allowed them to visit each other's stores to collect prices in order to document claims made in price comparisons. Over the years, the companies expanded their use of "price hunters" to visit each other's stores and collect large quantities of price information using hand scanners.

Rather than leading to better deals for shoppers, this practice reduced the chains' incentive to lower prices. When they found a higher price at a competitor's store, the chains knew they could safely raise their own prices. ESLs were the critical piece of the puzzle that allowed the chains to raise their prices instantly. The companies' cooperation ended up driving prices up instead of down.

In August 2024, the NCA found the chains had illegally colluded to raise prices and imposed record-high fines totaling nearly half a billion dollars (NOK 4.9 billion, or €415 million). The Norwegian Competition Appeals Tribunal upheld the fines in August 2025.[13]

Consumer protection laws in the United States are weaker and harder to enforce than in Europe. We can't count on the FTC to go after the big companies here like the regulators did in Norway. State legislatures and Congress must take action to ban ESLs and protect consumers before it's too late.

Connected Stores
On their own, ESLs are merely a piece of hardware to display prices. The problem is that they are not used on their own. They are connected to stores' inventory systems, point of sale (POS) systems, and pricing systems, which use consumer data and AI to set prices in a way that maximizes profits. They can even be connected to cameras and sensors that track you as you move through the store, capturing how long you look at an item and showing you personalized ads.

Walmart recently secured two patents that provide a preview of the dangerous direction the grocery industry is heading. The first patent is for a technology to "dynamically and automatically" update prices for items sold online, using data on how much people are willing to pay. The second patent is for a similar technology to "recommend" prices, which could also be used in brick-and-mortar stores. Both patents describe how they will use vase amounts of personal data, such as customers' search histories, online shopping carts, in-store purchases, and even GPS locations. Whether AI sets the prices automatically, or whether a human at corporate executes the price changes, the outcome is the same: exploiting consumers to maximize profit.

Traditionally, grocery prices change weekly, but ESLs raise the likelihood of prices changing daily or even multiple times a day. Hanging paper price tags on store shelves for thousands of items takes time and effectively functions as a speed bump. ESLs remove that speed bump. Families expect predictable pricing, but with ESLs, they will have to look out for daily or even hourly price changes that make it difficult to shop on a budget.

Worker Perspectives
UFCW members see the impact of this new technology first-hand:

> *"A month ago, I was shopping a customer's online order. It included baby formula. If we didn't have that particular formula in stock at the dependable price listed that the family budgeted for, the family may not have been able to get the product to be able to feed their baby. I imagined the new parents driving from store to store to be able to find the correct formula that fits their budget. Then, as a mom-to-be, I pictured myself doing the same thing… If you allow prices to shift and surge based on who we are or where we shop, you are taking away families' ability to plan, budget, and make ends meet."* -Hayley, e-commerce worker at a grocery store in Minnesota

> *"[H]igh prices are already taking a toll… [b]ut at least our customers know that the price of milk on Monday won't change on Tuesday—that allows them to budget and plan… But with electronic shelf labels, controlled from some AI command center in another state, [they] don't know what it's like in the aisles. That's a recipe for chaos on the store floor, creating confusion for workers and customers alike as prices change by the second."* -Jenny, pricing coordinator at a grocery store in Minnesota (a job directly threatened by the deployment of AI-powered pricing)

> *"The digital tags are a big frustration right now. Customers keep knocking them off the shelves, and employees have not been shown how to put them back on… there has not been enough training on the digital tag system, including things like marking items that are out of stock, so a lot of people are frustrated."* -Eric, grocery store worker in Georgia

The ESL manufacturers and the retail industry say that with the time saved hanging paper price tags, employees can spend more time doing higher-value, customer-facing tasks, but that's not what we've seen in the stores:

> *"Three employees from the scan team [workers who change price tags] were moved to the overnight shift. They are unhappy because they were hired for the scan team and are now expected to work full-time overnight."* -Alishia, grocery store worker in Georgia

> *"Surveillance pricing threatens our hours, and if companies automate pricing, they cut people who do that work. And then they cut hours in other departments. We need steady hours to be able to support our families."* -Hayley, e-commerce worker at a grocery store in Minnesota

Consumers Support ESL Regulation

Regulating ESLs is not about limiting innovation. It's about creating price predictability for consumers because that is what people want. According to a national poll, 67 percent of Americans are in favor of banning ESLs and surveillance pricing in grocery stores, with support cutting across party lines.[14] Consumers support bold action to put people first.

That same poll found that 66 percent of American voters worry about the cost of groceries for their household. Sixty-five percent think ESLs will cause grocery prices to increase, and 68 percent think surveillance pricing will cause grocery prices to increase. Concerns are exacerbated by a lack of trust in retailers, with 72 percent of respondents saying they do not have faith in grocery stores using the technology responsibly.

One angry shopper documented on TikTok that the price for a pair of shoes changed while she was in a Walmart store.[15] The employees at the register were just as confused as she was. Customers shouldn't have to take photos of every price tag just to be sure the prices haven't changed by the time they get to the register. Paper price tags and weekly price changes provide the kind of predictability customers expect.

Groceries are a necessity, not a luxury. Companies should not be able to use your online history, past purchases, or location information to charge you a higher price for the food your family needs to live.

Legislative Action

During the 2025-2026 legislative session, 19 states introduced 30 bills addressing the potential dangers of ESLs to consumers. New Jersey's legislation is the strongest effort to date. New Jersey passed the Fair Price Protection Act (A4085/S3612), which was recently signed into law.[16] The law is a first-of-its-kind ban on surveillance pricing and moratorium on ESLs in grocery stores. The signing of the bill recognizes that stopping ESLs is a key component in the fight against price gouging and indicates that New Jersey leaders see ESLs for what they are: a tool to hike prices.

At the federal level, UFCW applauds Senators Ben Ray Luján (D-NM) and Jeff Merkley (D-OR) and Representatives Rashida Tlaib (D-MI) and Val Hoyle (D-OR) for introducing the Stop Price Gouging in Grocery Stores Act (S. 3892/H.R. 4966).[17] The federal bill would prohibit price gouging by retail food stores; prohibit surveillance pricing in retail food stores, with narrow exceptions for things like senior or student discounts; require food stores to disclose the use of facial recognition technology; ban ESLs in large stores; and establish strong enforcement by the FTC.

Conclusion
Automation is not new to UFCW and our members in grocery, meat processing, and retail. UFCW members have been experiencing automation and its newest iteration, AI, for years in the form of self-checkout, ESLs, cashless stores, electronic surveillance, and plant automation. UFCW believes that policies that put limits on surveillance pricing and ESLs will ensure that the new technology supports workers *and* consumers.

If companies can treat groceries like an Uber ride, then legislators must regulate the tools that would allow them to price gouge our food. Unless action is taken, ESLs and surveillance pricing will only continue to contribute to the rising cost of groceries and the affordability crisis we are talking about today.

Thank you, and I welcome your questions.

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[2] https://fred.stlouisfed.org/series/CUSR0000SAF11
[3] https://groundworkcollaborative.org/work/instacart/
[4] https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-surveillance-pricing-study-indicates-wide-range-personal-data-used-set-individualized-consumer
[5] Adjusting prices in response to market conditions, such as demand, inventory levels, or competitor prices. Consumers are familiar with this practice in the airline ticket industry, where prices go up as seats sell out and the date of the flight gets closer.
[6] Raising prices when demand is high, such as during peak hours, bad weather, or major events. Consumers are familiar with this practice in the rideshare industry.
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