

“Social justice should be the underlying goal of all humanity.”  
-Alan V. Lowenstein, Institute Founder



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**TESTIMONY OF DAMON KING**  
**NEW JERSEY INSTITUTE FOR SOCIAL JUSTICE**  
**IN SUPPORT OF A4523**  
**NEW JERSEY ASSEMBLY CONSUMER AFFAIRS**  
**THURSDAY, MARCH 19, 2026**

Good morning, Chair Sampson, Vice-Chair Quijano, and members of the Committee on Consumer Affairs:

My name is Damon King and I am a Senior Counsel in the Economic Justice Program at the New Jersey Institute for Social Justice (the “Institute”). The Institute’s cutting-edge racial and social justice advocacy seeks to empower people of color by building reparative systems that create wealth, transform justice and harness democratic power – from the ground up – in New Jersey.

On behalf of the Institute, I would like to thank you for the opportunity to testify today in support of A4523, the Fair Price Protection Act, which would protect New Jersey consumers from surveillance pricing when they shop for groceries with food retailers or third-party grocery delivery platforms.

In an era in which software allows retailers to quickly analyze and adjust the prices that customers see when they shop for groceries and other consumer goods, there is significant danger that retailers may use such technology to charge customers different prices for the same items – even when customers are shopping for those items simultaneously. Further, the now-common practice of collecting consumers’ personal data raises the possibility that retailers could target individual customers for either higher or lower prices based on personal or demographic characteristics – a practice that some have come to refer to as “surveillance pricing.” If left unregulated, these practices could be particularly damaging for consumers with lower incomes, as these consumers will be less able to adjust to price increases. More fundamentally, they violate consumers’ basic sense of fairness: that

**do social justice.**

generally speaking, everyone should have to pay the same price for the same thing.<sup>1</sup> This legislation is a proactive step to stop unpredictable – and potentially exploitive – pricing practices and protect New Jerseyans when they buy food for themselves and their families.

Americans are facing significant challenges affording the costs of daily life, with New Jerseyans facing some of the highest costs of living in the country,<sup>2</sup> including some of the highest housing costs for both homeowners<sup>3</sup> and renters.<sup>4</sup> These high costs do not impact all New Jersey residents equally: New Jerseyans with fewer financial resources are not well-positioned to meet these expenses, and significant racial disparities in both wealth and income mean that Black and Latino/a New Jersey residents tend to be particularly vulnerable.

As the Institute highlighted in its 2025 report, *The Two New Jerseys: A Deepening Divide*, New Jersey suffers from a deep racial wealth gap: the median white household's wealth is more than \$640,000 greater than the median wealth of Black and Latina/o households.<sup>5</sup> This gap means that Black and Latina/o families who are already stretched thin financially tend not to have the same reserves to help them weather setbacks caused by sudden changes in costs or the loss of income. Meanwhile, the median income of white households (\$117,670) substantially exceeds those of Black (\$76,291) and Latina/o (\$75,448) households.<sup>6</sup>

In an environment of high costs, it is crucial that New Jersey residents – particularly those with the fewest resources in reserve and the lowest incomes – be protected from pricing practices that could result in difficult-to-predict price fluctuations or, equally importantly, subject residents to different prices for the same goods. Yet, trends in the retail sector suggest that, without greater regulation, customers shopping for food and other necessities could regularly encounter these practices.

In 2025, Consumer Reports and the Groundwork Collaborative (“CR/GC”) conducted an investigation of Instacart’s pricing practices.<sup>7</sup> Their findings shed light on some of the risks that software-driven pricing poses to consumers and are particularly notable given Instacart's status as a leading third-party grocery platform.<sup>8</sup> Volunteer testers were divided into groups, who used the platform to shop for identical “baskets” of 18 to 20 goods from major grocery retailers.<sup>9</sup> Groups shopping for the same items at the same retailer should have encountered identical prices. Instead, CR/GC found that, for about three-quarters of the items in testers’ baskets, Instacart offered different testers different prices.<sup>10</sup> The price difference per product ranged from seven cents to \$2.56.<sup>11</sup> Consumer Reports projects that, based on what Instacart reports the typical four-person household spends, price differences of this size could add up to a difference of about \$1,200 per year.<sup>12</sup> For a household living on a low income, a fixed income, or paycheck-to-paycheck, a \$1,200 per year difference in grocery costs could severely disrupt economic security. Consumer Reports’ reporting ultimately uncovered that

Instacart was using software to conduct tests on customers, pricing the same items differently for groups of customers in order to determine their sensitivity to various pricing levels.<sup>13</sup>

The CR/GC investigation reveals the dangers of leaving software-based pricing under-regulated. Some families could – at random – face increased food prices that their neighbors may not. Retailers may see this as a routine test of consumer behavior – a way to use automated pricing tools and learning models to extract every last bit of profit from transactions. But for customers, higher prices are very real barriers to meeting household needs and maintaining financial stability.

Concerns about the potential damage of software-based pricing do not end there, however. There is an even graver danger: that retailers could use individual customers’ personal data to deliberately set “personalized” prices that vary by customer.

As Consumer Reports and others have noted, retailers and third-party data brokers already routinely collect and maintain significant amounts of data about individual customers.<sup>14</sup> Information collected ranges from location, demographic and financial data, to purchase histories, to other behavioral data.<sup>15</sup> The number of ways in which retailers and data companies collect data about individual consumers in-and-of-itself raises serious concerns regarding privacy and consumer safety, particularly when that data is used without appropriate safeguards. For example, in 2023, Rite Aid settled a case brought by the FTC after the company and security-related contractors collected images of customers believed to have engaged in shoplifting or other illegal behavior at Rite Aid locations.<sup>16</sup> According to the FTC, when Rite Aid and the contractors deployed artificial-intelligence-supported facial recognition software to identify potential future potential criminal activity, the software produced thousands of “false-positive” matches, leading to customers being harassed by Rite Aid employees based on the mistaken belief that customers were potential criminals.<sup>17</sup> This disproportionately impacted people of color.<sup>18</sup> When retailers combine data collection with algorithms and the already-discussed capability to adjust pricing remotely, it means that retailers can analyze customer data points, make AI-supported predictions about what customers would be willing to pay, and set individualized prices for specific consumers.<sup>19</sup>

Widespread adoption of such “surveillance pricing” would be problematic for a number of reasons. Because there is little transparency regarding either data collection or specific pricing models, customers would have little way of knowing what they would be expected to pay, how much the price they are charged might be different from their neighbors, or whether their “personalized” price is truly a fair one. This asymmetry of information between customers and retailers could make it easier for retailers to extract higher prices from individual customers, who would not be equipped to make informed decisions that might effectively counterbalance retailer pricing decisions.<sup>20</sup>

Worse yet, because data collected by companies often reflects broader societal biases, the use of such data could lead to either deliberate or unintentionally discriminatory pricing based on race.<sup>21</sup> For example, experts note that there is already evidence that consumers who take rideshare services to predominantly non-white neighborhoods are often charged higher prices.<sup>22</sup> Ultimately, surveillance pricing has the potential to lead to unfair and exploitive charges, all while undermining the fairness of pricing systems that offer the same prices to everyone.

A4523 seeks to protect New Jerseyans from these dangers when they shop for food. It prohibits retailers that sell groceries and third-party delivery platforms from charging different prices for the same goods to different customers based on “surveillance-based price setting” that uses “surveillance data collected from consumers.”<sup>23</sup> It broadly defines “surveillance-based price setting” and “surveillance data” to include price setting based on a range of categories of customer data and data collection methods, reflecting what we know about how retailers and data brokers engage in data collection and aggregation.<sup>24</sup> It provides for enforcement, either by the Attorney General or by individual consumers.<sup>25</sup> Finally, for retailers who face cost increases or who wish to offer discounts to certain customers, the bill offers limited exceptions that would allow them to do so in a way that is both evenhanded and transparent.<sup>26</sup>

A4523 represents progress toward ensuring that, even as technology advances, customers shopping for food in New Jersey would encounter pricing that is consistent and fair. In this current moment, when affordability is a major challenge for so many New Jerseyans, and as families across New Jersey have been facing increasing costs for essential needs – particularly economically vulnerable families – this bill is an important step in the right direction.

We thank you for considering this bill today and urge you to vote in favor.

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<sup>1</sup> See, Christopher Beam, *Welcome to Pricing Hell*, THE ATLANTIC, April 16, 2024, <https://www.theatlantic.com/ideas/archive/2024/04/surge-pricing-fees-economy/678078/>

<sup>2</sup> See, e.g., Travis Woods, *Here’s the Cost of Living in Every State in 2026*, YAHOO! FINANCE, March 9, 2026, <https://finance.yahoo.com/news/cost-living-every-state-2026-112006517.html>;

Sarah Chernikoff, *California, Massachusetts or Hawaii? Which state has the highest cost of living?*, USA TODAY August 14, 2024, <https://www.usatoday.com/story/money/2024/08/14/cost-of-living-states/74773801007/>;

Missouri Economic Research and Information Center, *Cost of Living Data Series 2025*, <https://meric.mo.gov/data/cost-living-data-series> (last visited March 17, 2026);

Ivana Pino, *This map compares the cost of living in every state*, YAHOO! FINANCE, February 25, 2026, <https://finance.yahoo.com/personal-finance/banking/article/cost-of-living-by-state->

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<sup>3</sup> KATHARINE NELSON, RUTGERS CENTER FOR LAW, INEQUALITY AND METROPOLITAN EQUITY, ISSUE BRIEF: THE GREAT HOUSING DEFICIT: RISING COSTS OF HOMEOWNERSHIP IN NEW JERSEY, September 2025, 3 (“Roughly 30% of N.J. homeowners are ‘cost burdened’ meaning they spend more than a third of their incomes on their housing. This ranks New Jersey second in the country for most expensive places to own a home”), [https://static1.squarespace.com/static/5b996f553917ee5e584ba742/t/68c2d0f39b868805aa51ffff/1757597939544/KNelson\\_Home\\_ownership+Brief\\_Sept2025.pdf](https://static1.squarespace.com/static/5b996f553917ee5e584ba742/t/68c2d0f39b868805aa51ffff/1757597939544/KNelson_Home_ownership+Brief_Sept2025.pdf)

<sup>4</sup> ESTHER COLON-BERMEDEZ ET. AL., NATIONAL LOW INCOME HOUSING COALITION, OUT OF REACH (2025) 36, (New Jersey has the seventh highest “two-bedroom housing wage” (the hourly wage necessary to afford a two-bedroom home at fair market rent) among states) [https://nlihc.org/sites/default/files/oor/2025\\_OOR\\_FullReport.pdf](https://nlihc.org/sites/default/files/oor/2025_OOR_FullReport.pdf)

<sup>5</sup> LAURA SULLIVAN, ET. AL., N.J. INSTITUTE FOR SOCIAL JUSTICE, THE TWO NEW JERSEYS: A DEEPENING DIVIDE (2025) 2, <https://njisj.org/print/deepeningdivide.pdf>

<sup>6</sup> Table 31903: Median Income in the Past 12 Months (in 2024 Inflation-Adjusted Dollars), 2024, ACS 1-Year Estimates Detailed Tables, New Jersey, U.S. CENSUS BUREAU, <https://data.census.gov/table?q=S1903&g=040XX00US34> (last visited March 18, 2026)

<sup>7</sup> Derek Kravitz, *Instacart’s AI-Enabled Pricing Experiments May Be Inflating Your Grocery Bill, CR and Groundwork Collaborative Investigation Finds*, CONSUMER REPORTS, December 9, 2025 (updated December 22, 2025), <https://www.consumerreports.org/money/questionable-business-practices/instacart-ai-pricing-experiment-inflating-grocery-bills-a1142182490/>

<sup>8</sup> As Consumer Reports notes, the platform fulfilled nearly 250 million orders in the first three quarters of 2025. *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*;

See also, AI NOW INSTITUTE, ET. AL., *Prohibiting Surveillance Prices and Wages*, February 2025, 7-8, <https://towardsjustice.org/wp-content/uploads/2025/02/Real-Surveillance-Prices-and-Wages-Report.pdf>

<sup>15</sup> AI NOW INSTITUTE, ET. AL., *supra*, note 14, 7-8

<sup>16</sup> FEDERAL TRADE COMMISSION, *Rite Aid Banned from Using AI Facial Recognition After FTC Says Retailer Deployed Technology without Reasonable Safeguards*, December 19, 2023, <https://www.ftc.gov/news-events/news/press-releases/2023/12/rite-aid-banned-using-ai-facial-recognition-after-ftc-says-retailer-deployed-technology-without>

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> AI NOW INSTITUTE, ET. AL., *supra*, note 14, 7-8

<sup>20</sup> As Christopher Beam of The Atlantic notes when speaking more generally about how economists often fail to account for power imbalances, “[i]n the real world, corporations and consumers are rarely on equal footing. The more complex and opaque prices get, the more power shifts from buyer to seller.” Christopher Beam, *supra*, note 1.

AI NOW INSTITUTE, ET. AL., *supra*, also notes: “In a fair marketplace, prices are determined by competition between rivals, which typically produces downward pressure on prices. Consumers are empowered by their ability to determine whether a price reflects the actual cost to provide the good or service in question. But personalized pricing untethers price from cost and manipulates individual consumers into paying the highest price possible, eroding the consumers’ ability to determine whether a price is fair.” AI NOW INSTITUTE, ET. AL., *supra*, note 14, 12.

<sup>21</sup> AI NOW INSTITUTE, ET. AL., *supra*, note 14, 10.

<sup>22</sup> *Id.*

<sup>23</sup> A4523, 222<sup>nd</sup> Legislative Session (NJ 2026), Section 3, <https://njleg.state.nj.us/bill-search/2026/A4523>

<sup>24</sup> *Id.* at Section 2.

<sup>25</sup> *Id.* at Sections 5-6.

<sup>26</sup> *Id.* at Section 3.