AFPI

AMERICA FIRST POLICY INSTITUTE

One-Pager: Legal Explainer

WHAT IS HAPPENING

On July 27, 2026, New York City, under Mayor Zohran Mamdani, Deputy Mayor Julie Su, and the New York City Economic Development Corporation announced “N.Y.C. Groceries: A Recipe for Affordability.” The plan would open five publicly funded, privately operated grocery stores—one in each borough—that will sell a “core basket” of everyday groceries including produce, meat, seafood and essentials sold on average 30% below prevailing retail prices. Officials describe the five stores as “a model for future programs.” The City covers rent and property taxes, puts $70 million of capital into the five sites, and provides ongoing taxpayer-funded “Affordability Payments” to cover operating losses created by the mandatory discount. Locations have already been announced at La Marqueta in East Harlem and The Peninsula in Hunts Point, Bronx. An RFP for private operators is open now, with **responses due October 16, 2026.**

WHO IS BRINGING THE CASE

R&E Supermarket: A longstanding independent grocery in the Bronx, located a short walk from the announced Hunts Point site. R&E opened its doors in 1984, around the corner from the 41 Precinct, then known as “Fort Apache.”

City Fresh Supermarket: A longstanding independent grocery in Harlem, located less than a five minute walk from the proposed La Marqueta N.Y.C. Grocery site.

National Supermarket Association: A nationwide trade association representing independent grocers across New York City, many of them first- or second-generation immigrant business owners, including stores located both inside and outside the service areas of the proposed City stores.

THE LEGAL THEORY, WITHOUT THE JARGON

Plaintiffs are asking: Can the City unfairly compete against private businesses using their own tax dollars to support a 30% discount on core items? Or is the City, like R&E, City Fresh, and the rest of the NSA’s members, obliged to follow the law and not use unfair advantages to drive competitors out of business?

THE LEGAL THEORY, EXPLAINED

Count I — Attempted monopolization. Plaintiffs argue the mandatory 30% discount, financed by free occupancy costs plus open-ended taxpayer-funded “Affordability Payments,” is predatory pricing. A private grocery store has to recover its rent, taxes, labor costs, inventory costs, and other expenses through the prices it charges customers; City-backed stores do not operate under the same constraint. If a private grocer lowers its prices to compete, the City can use those lower prices as a new benchmark and continue pricing its own core goods 30% lower.

Count II — Conspiracy to monopolize. The RFP is an open invitation for a private operator to join that structure. If the City accepts a bid and signs operating agreements, plaintiffs argue the combination is consummated at that moment. That is why the timing of the RFP matters.

THE TRAP THE RFP CREATES

The City is currently asking private grocery operators to bid to operate the N.Y.C. Groceries locations. Independent grocers face a concrete dilemma before October 16:

If they bid

And are selected, risk becoming part of the combination being challenged as a conspiracy to monopolize under Section 2 of the Sherman Act.

If they sit out

And the court later holds the program lawful, they have lost the chance to partner with an entity that cannot go bankrupt.

That is the injury the preliminary injunction is designed to freeze. Plaintiffs ask only that the RFP deadline be extended to 30 days after the court rules on Counts I and II. They do not ask the court to kill the program at this stage.

WHAT THEY WANT THE COURT TO DO NOW

Issue a preliminary injunction directing Defendants to move the October 16, 2026, RFP deadline to a date 30 days after a ruling on the merits of Counts I and II; waive the usual injunction bond; and preserve the status quo so nobody has to bid into a possible felony conspiracy in order to keep a seat at the table.

What this case is not. It is not a referendum on whether food is too expensive. It is not a claim that cities may never own property or subsidize food access. It is not a request that the court design a better grocery program. It is a claim that a permanent, tax-financed 30% discount pegged to competitors' prices is the kind of "ruinous competition" the Sherman Act has condemned for more than a century—whether the war chest is a tobacco trust's $4 million reserve or a city's tax base.