MEMORANDUM IN OPPOSITION
S.933-A (Gianaris)/ A.1812-A (Dinowitz)

The Empire State Chapter of Associated Builders and Contractors (ABC), which represents hundreds of merit shop contractors and subcontractors, employing hundreds of thousands of workers throughout the state of New York, opposes S.933-A (Gianaris)/ A.1812-A (Dinowitz), which would substantially alter New York State General Business Law's provisions regarding anti-competitive practices.

This legislation cannot pass as written, the ambiguous language in the bill poses significant problems whether applied to small or large corporations. In addition, the central terms in the legislation such as "dominant position" and "abuse" are left undefined and as a result, the legislative language is unreasonably ambiguous. It will leave people uncertain as to what conduct is permissible and which is prohibited under the Act.

Furthermore, the legislation does not take into consideration conduct that benefits consumers. Competition and innovation, both of which can lead to lower prices, often involve actions that may appear anticompetitive. Differentiating between what is predatory from what is merely competition requires careful consideration.

As articulated in Goldwasser v. Ameritech Corp., 222 F.3d 390, 397 (7th Cir. 2000), determining legal business practices from illegal conduct as it pertains to antitrust necessitates "the most subtle of economic judgments about particular business practices." Arrangements that ensure quality and efficiency through exclusive arrangements would be prohibited without consideration of whether the arrangements were better for consumers.

While S.933-A (Gianaris)/ A.1812-A (Dinowitz) justifies the amendments to the Donnelly Act by citing the need to update New York's antitrust laws due to the "accumulation of power in the hands of large corporations," and particularly the conduct of "Big Tech," nothing in this bill limits the scope of its application to large technology companies.

Where the sponsors contend that unilateral conduct must be addressed, section 2 of the Sherman Act does address unilateral conduct and federal law has allowed State enforcement of section 2 of the Sherman Act under their parens patriae (parent of the country) power.

If passed, many common practices of non-tech companies could be illegal. This will stifle innovation and make it harder for tech companies to operate in New York. It will also further deter new tech companies from bringing their business to New York. This outcome will harm consumers by reducing choice and competition - exactly the opposite of what antitrust law is intended to do.

For these reasons, we oppose S.933-A (Gianaris)/ A.1812-A (Dinowitz).

If you have questions, please reach out to our Public Affairs Manager, Tanner Schmidt, at (585) 730-1814 or tschmidt@abcnys.org