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Wisconsin Institute for Law & Liberty: WILL and Americans for tax reform in Wall Street Journal calling for repeal of Wisconsin's outdated unfair Sales Act

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On Friday, WILL Executive Vice President CJ Szafir and Americans for Tax Reform's Director of State Affairs Patrick Gleason had an opinion piece appear in The Wall Street Journal. The op-ed, "These Prices Are a Steal—and in Some States, That's Illegal," explains the history of the law and how it's mandatory 9.18% price markup on products like gasoline, tobacco, and alcohol harms Wisconsin's consumers.

The law, a vestige of the Great Depression, also prohibits below-cost sales of all goods sold in Wisconsin, ostensibly to prevent large retailers from monopolizing the market. However, both federal and state antitrust laws prohibit predatory pricing separate of Wisconsin's minimum markup law. The antiquated law does not allow Wisconsin consumers to benefit from popular sales like Black Friday in the way that consumers from Illinois, Michigan, or Iowa may.

In May of last year, the Wisconsin Institute for Law & Liberty released a report from Dr. Will Flanders, WILL Research Director, and Dr. Ike Brannon, a visiting fellow at Washington, DC's Cato Institute that clearly showed there was no causal relationship between Wisconsin's law and the number of gasoline retailers in the state. The report debunked that claim which is often asserted by supporters of the law like the special interest groups Wisconsin's Petroleum Marketers and Convenience Stores Association and the Wisconsin Grocers Association.

That report coincides with a lawsuit by Krist Oil that is challenging the constitutionality of Wisconsin's Unfair Sales Act. You can learn more about that lawsuit here.

The entire Szafir/Gleason op-ed is available here and a shortened version is below.

These Prices Are a Steal—and in Some States, That's Illegal

When Meijer opened two stores in Wisconsin, the state demanded it charge more for dog food.

Are low prices putting your family at risk? Believe it or not, some regulators seem to think so. Twenty-six U.S. states still have a "minimum markup" law, a relic of Depression-era economics that prevents businesses from charging less.

In Wisconsin, the price police have gone after Meijer, a superstore that sells everything from groceries to electronics to pharmaceuticals. In 2015, when it opened its first two stores in the Badger State, the greeting Meijer received was far from "Wisconsin nice." Rivals filed complaints accusing it of pricing 37 items—including bananas, dog food, ice cream and Cheerios—below cost. Meijer, which runs 200 stores in five states, says this was the first time it had ever been accused of hurting consumers by charging too little. Nonetheless, Wisconsin's Department of Agriculture, Trade and Consumer Protection sent the superstore a letter explaining the requirements of the state's Unfair Sales Act.

The story is similar for Krist Oil, a family-owned gasoline company with more than 70 locations, mostly in Michigan's Upper Peninsula and Northern Wisconsin. Krist has the freedom to determine the most competitive price for its gasoline at its stations in Michigan, but it is legally barred from doing so in Wisconsin. Although it wants to lower prices, Krist is forced by the state to charge a markup of no less than 9.18%. The biggest losers are workers in rural Northern Wisconsin, who could benefit from lower gas prices.

In the 1930s, many states tried to ward off economic collapse by barring businesses from selling goods below cost. The idea was that minimum markups would soften price competition and keep companies afloat. But almost 90 years after the stock crash of Black Tuesday, these laws are just propping up Overpriced Wednesdays.

Some consumer advocates argue that minimum markups are still necessary to prevent big chains from using their economies of scale to drive small retailers out of business. This claim was debunked last year in a study by Will Flanders, research director at the Wisconsin Institute for Law and Liberty, and Ike Brannon, a fellow at the Cato Institute. After examining data from all 50 states, they concluded that there is no causal relationship between minimum-markup laws and the number of small businesses. So-called mom-and-pop retailers are doing just fine in states that do not have these laws on the books.

With wages flat in many parts of the country, Americans could use the savings to be had from allowing businesses to compete more effectively. If lawmakers in the 26 states with minimum markups are looking for an issue to run on in 2018, one that can appeal to free-market conservatives, urban Democrats, Trump populists and soccer moms, this would be a great place to start.