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

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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.

But minimum markups do hurt consumers, since they act as a hidden tax that disproportionately harms poor and middle-income households. Wisconsin's markup law increases the price of back-to-school supplies, such as books, markers and crayons, by 12% to 146% compared with neighboring states, according to a study last year by the MacIver Institute, a conservative think tank.

In a free market, which thrives on price competition, there is nothing wrong with selling goods below cost. Businesses do this all the time in other states on Black Friday or during "back to school" sales. The goal might be to move inventory, minimize losses or encourage repeat customers.

It should be easy for lawmakers to repeal regressive regulations like this, but special interests in petroleum, agriculture and alcohol are invested in the anticompetitive status quo. Even in Wisconsin, a state controlled by conservative Republicans for the past seven years, bills to repeal minimum markups have gone nowhere.

So is this archaic regulation destined to stay? Perhaps not. Krist Oil, with the help of attorneys at the Wisconsin Institute for Law and Liberty, has filed a lawsuit currently pending in state court that argues minimum markups arbitrarily and irrationally violate the economic liberty guaranteed by the Wisconsin Constitution. A victory here could be a blueprint for change in other states.

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.