



National Retail Federation

April 15, 2024

The Honorable Chuck Schumer
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
United States Senate
Washington, DC 20510

The Honorable Mike Johnson
U.S. House of Representatives
Washington, DC 20515

The Honorable Hakeem Jeffries
U.S. House of Representatives
Washington, DC 20515

Dear Leaders Schumer and McConnell, Speaker Johnson and Leader Jeffries:

On behalf of thousands of retailers of all sizes throughout the United States and the millions of workers we employ and customers we serve, the National Retail Federation (“NRF”) writes in strong support of the Combating Organized Retail Crime Act of 2023 (“CORCA”) (S.140/H.R.895), and specifically, to allay any concerns that CORCA would result in overcriminalization of minor transgressions, over federalization of state and local offenses, and substantial incarceration of low-level bad actors. In short, CORCA is narrowly tailored legislation that is intended to address a spike in dangerous criminal activity that has put front-line retail employees, customers and entire communities — often communities that can least afford to lose retail establishments — at risk. Its primary focus, though, is creating cooperation and data sharing among local, state and federal law enforcement, along with retailers, in order to better understand and address the problem. Assumptions about CORCA that were made recently by The Leadership Conference on Civil and Human Rights and other organizations are misinformed; the concerns are founded on a basic misunderstanding of the bill and a mischaracterization of the severe and pervasive problem that the bill addresses.

First, “organized retail crime” (“ORC”) is a serious problem that has justifiably garnered the attention of law enforcement and community leaders in areas throughout the United States that have been targeted by criminal enterprises. It is not “shoplifting,” as we understand that term to mean the theft of items for personal use or even small-scale resale. Rather, ORC is driven by traditional criminal organizations — hub-and-spoke or top-down — that direct low-level thieves to steal large amounts of product for resale. In fact, the Department of Homeland Security has characterized Organized Theft Groups as a serious threat to public safety and has developed Operation Boiling Point to begin to combat these transnational groups.¹ Put simply, retailers would not spend millions of dollars on prevention efforts and lock up goods that they need to sell if theft were only a minor shoplifting problem. States such as California, Louisiana, Illinois and Mississippi, sometimes with help from federal law enforcement, have put

¹ See <https://www.ice.gov/features/op-boiling-point> (visited 4/8/2024).

significant resources behind law enforcement partnerships, task forces and data sharing to combat these rings, with some preliminary success.² These efforts have resulted in tens of millions of dollars in recovered goods.³

Second, CORCA is fundamentally and most importantly a coordination and data sharing bill that would enable federal, state and local law enforcement to collaborate with retailers to identify and stop the dangerous, multimillion-dollar criminal enterprises that plague our communities. The bipartisan bill, which currently has 114 co-sponsors in the House and 16 co-sponsors in the Senate, would direct the Secretary of Homeland Security to create within Homeland Security Investigations an “Organized Retail Crime Center” (H.R. 895, Sec. 4(a)). Modeled on similar law enforcement hubs to address such complex problems as intellectual property theft and cybercrime,⁴ the Center would coordinate enforcement activities with state and local law enforcement agencies and “establish relationships with retail companies, sharing information with such companies regarding organized retail crime threats, and provide mechanisms for the receipt of investigative information on such threats.” *Id.* The cornerstone of this effort is the establishment of a secure system for sharing information about organized retail crime threats and providing supporting resources to local and state law enforcement in order to counter cross-jurisdictional criminal enterprises.

Third, contrary to reports that the bill would “further criminalize poverty and potentially cause disproportionate harm on Black and Brown communities,”⁵ the bill makes small, targeted changes to the federal criminal code to match the sophistication of the criminal enterprises that are directing these thefts. *As it currently stands*, it is a federal crime to use modalities of interstate commerce to steal \$5,000 or more worth of goods. *See* 18 U.S.C. §§ 2314 & 2315. CORCA would allow the \$5,000 threshold to be met through a series of thefts over the course of 12 months; otherwise, sophisticated criminal rings can “structure” thefts by keeping each boost under \$5,000. Appropriately, given federalism concerns, this is a significantly higher threshold than most state aggregating laws.⁶ Because of the international, organized nature of these thefts - which include return fraud, cargo theft and the use of stolen vehicles - the bill would also make these large-scale thefts predicate offenses for federal money laundering. This is a modest way to address a public safety problem that is far removed in complexity and scope from run-of-the-mill property crimes more appropriately addressed by state and local officials.

² *See, e.g.*, [Attorney General Bonta, Retailers, Online Marketplaces Sign Collaborative Agreement to Better Combat Organized Retail Crime](#), June 20, 2023; [Attorney General Raoul Announces Charges Over Organized Retail Theft of Tools and Electronics](#), March 17, 2023; [HSI Jackson Holds First State Organized Retail Crime Alliance Meeting](#), November 15, 2023 (describing joint effort between Louisiana, Mississippi, Arkansas and Alabama).

³ *See* Paige Williams, “[The Crime Rings Stealing Everything from Purses to Power Tools](#),” *The New Yorker* (March 18, 2024) (detailing \$38 million recovered by C.H.I.P.S. in California alone).

⁴ *See, e.g.*, [National Intellectual Property Rights Coordination Center](#) and the [HSI Cyber Crimes Center](#).

⁵ *See* Letter from The Leadership Conference on Civil and Human Rights, March.

⁶ *See, e.g.*, Maryland Code § 7-104 (\$1,000, no time period); Oregon ORS § 164.098 (\$5,000 over 6 months); New Mexico Stat. § 30-16-20.1 (\$2,500 over one year); Florida Title XLVI Ch. 812.015 (\$750 in 30-day period); Alabama § 13A-8-226 (\$2,500 over 12 months).

We would like to take this opportunity to address several other baseless criticisms leveled against the bill. Critics characterize ORC as an overblown or even “fake” problem; however, this straw man argument is inevitably based solely on the relative lack of data that quantifies ORC in monetary terms. Virtually all stakeholders affected by ORC readily acknowledge that data is hard to come by. There are many reasons for this, among them: retailers and law enforcement may define ORC differently; retailers usually don’t know whether any given theft is tied into a larger organized group until much later in the investigative process; and it is generally more important for retailers to put resources into quantifying overall inventory loss (“shrink”) than to break out the theft attributable solely to ORC. The large-scale report that NRF prepared with our research partner K2 Integrity last year concluded that “ORC has a parasitic relationship to the economy and society, and its effects extend beyond direct financial costs to the retail industry and the public sector, as ORC presents potential public health and security risks to consumers and communities across the United States.”⁷

An argument has been manufactured around one correction that we made to the above-mentioned 40-page report. The truth is that the report linked an overall shrink number, which NRF had previously reported, to an unrelated statement made by an expert who had estimated annual ORC loss. These mismatched numbers should not have been used together. However, the statistic was not mentioned in the report’s executive summary, which stands to reason; the report highlighted the lack of good data to quantify the ORC problem in financial terms — a problem that CORCA would go a long way toward solving. Even so, we know that ORC is a burgeoning crisis: 88% of retailers report a rise in shoplifting-related violence in the last year, and 78% report an increase in risk and concern about ORC.⁸ Shoplifting is up in cities and towns across the United States, impacting small businesses in local communities and national brands of all retail segments. The Council of Criminal Justice (CCJ), whose data the LCCHR letter cited, concluded that the law enforcement data around this issue “almost certainly undercount total shoplifting.”⁹ Retailers have reported that not all shoplifting incidents are reported to local law enforcement due to lack of police response or resources. Additionally, organized retail crime is not a singular event captured in law enforcement reporting. CCJ’s study limitations call out that crime incident data is not suited to measure organizational retail theft.¹⁰ This is why CORCA focuses on data gathering and reporting. We hope and expect that CORCA will improve our shared understanding of the problem’s scope.

Critics also incorrectly assume that prosecuting large-scale boosters and ringleaders would fuel problems of mass incarceration of minority populations. Given the modest nature of the amendments to Title 18, described above, we don’t believe there is any rational reason to expect this. The clear intent and effect of the bill is to prosecute retail crime rings, not shoplifters. But more important, minority communities are plagued by ORC in multiple ways, and more targeted enforcement, not less, would

⁷ [“Organized Retail Crime: An Assessment of a Persistent and Growing Threat,”](#) Updated November 29, 2023.

⁸ [2023 Retail Security Survey](#) (hereinafter “NRSS”), at 9,4.

⁹ [“Shoplifting Trends: What You Need to Know,”](#) Council on Criminal Justice, November 2023.

¹⁰ Council of Criminal Justice, November 2023.

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redound to the benefit of these communities. Store employees, who are in harm's way during these often-violent encounters, come from the communities that the stores serve. Customers' safety is jeopardized by these encounters every day. Store closures hurt these communities, and force customers to travel further and pay more for food and other necessities. Impoverished, often addicted individuals are recruited to serve as boosters. In fact, in order to increase safety and try to stanch this problem — and contrary to unfounded assertions in the LCCHR letter — retailers *have* invested millions of dollars in increased security, including sophisticated camera technology, more personnel and cages for frequently stolen goods. In fact, 53% of retailers report an increase in spending on loss prevention technology and software, 48% on capital equipment investment, and 45% on more guards.¹¹

We conclude by observing that nothing in CORCA would undermine efforts to improve unbiased community policing, change unjust carceral policies or address the economic and opportunity-based roots of criminal activity. NRF views these solutions as additional, not alternative, policies to address some of the real and serious problems plaguing our communities, and we welcome conversations about these issues. But criminal prevention and enforcement must be among the solutions that are on the table.¹²

We welcome the opportunity to discuss the bill with you and answer any questions that you might have. Please contact David French, frenchd@nrf.com, or Stephanie Martz, martzs@nrf.com.

Sincerely,



David French
Executive Vice President
Government Relations

cc: Members of the United States Senate and House of Representatives

¹¹ NRSS study, *supra* note X, at 17.

¹² Grassroots efforts in communities plagued by criminal activity have given voice to this. The recall of San Francisco District Attorney Chesa Boudin in 2022, as well as the current recall effort of D.C. Councilmembers Charles Allen and Brienne Nadeau are examples. See Arya Hodjat, "[Crime is Up in D.C. Are Recall Efforts the Solution?](#)" *Washingtonian*, March 1, 2024.