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(WEBSITE) [www.TLAIB.HOUSE.GOV](http://www.TLAIB.HOUSE.GOV)  
(EMAIL) [RASHIDA@MAIL.HOUSE.GOV](mailto:RASHIDA@MAIL.HOUSE.GOV)

**Congress of the United States**  
**House of Representatives**  
Washington, DC 20515

**RASHIDA TLAIB**  
12TH DISTRICT, MICHIGAN

**CAPITOL OFFICE**  
2438 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515  
(PHONE) (202) 225-5126  
(FAX) (202) 225-9985

**DETROIT**  
**NEIGHBORHOOD SERVICE CENTER**  
7800 WEST OUTER DR., SUITE 203  
DETROIT, MI 48235  
(PHONE) (313) 463-6220

October 11, 2024

Mr. Rodney McMullen  
Chairman and CEO  
The Kroger Co.  
1014 Vine Street  
Cincinnati, OH 45202

Dear Mr. McMullen:

Families across the country are struggling to keep up with rising prices, and there's growing concern about how technology like facial recognition and behavioral tracking are driving our unaffordability crisis. I am writing to raise concerns about Kroger's decision to adopt the use of Electronic Shelving Labels (ESL) in their grocery stores.<sup>1</sup> Kroger has 120 grocery stores across 82 cities in Michigan, including several in the Detroit Metro area.<sup>2</sup>

ESLs or digital price tags may result in Kroger deploying dynamic pricing for goods, increasing the price of essential goods on shelves based on real time conditions and inventory and creating both confusion and hardship for my residents. Additionally, through a partnership with Microsoft, I understand that Kroger is intending to place cameras at its digital displays, using facial recognition technology to determine gender and age of customers captured on camera to present targeted advertisements to display on ESLs. Studies have shown that facial recognition technology is flawed and can lead to discrimination in predominantly Black and brown communities. The racial biases of facial recognition technology are well-documented<sup>3</sup> and should not be extended into our grocery stores.

ESLs will allow Kroger to use customer data to build personalized profiles of each customer to determine the maximum price of goods customers are willing to pay.<sup>4</sup> Kroger's use of facial recognition technology and surge pricing is concerning when we are hearing growing complaints about the rising cost of groceries at big retailers. High grocery prices are one of the leading concerns among Americans who are concerned about inflation.<sup>5</sup> We've found big retailers with little regional competition can extract large profits simply by adjusting prices of essential goods like food items.

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<sup>1</sup> Grocery Dive, "Why more grocers are putting electronic shelf labels in their stores," Catherine Douglas Moran and Sam Silverstein, February 8, 2023, <https://www.grocerydive.com/news/why-more-grocers-are-putting-electronicshelf-labels-in-their-stores/642002/>.

<sup>2</sup> Kroger, "Kroger Stores in Michigan," October 8, 2024, <https://www.kroger.com/stores/grocery/mi>.

<sup>3</sup> Scientific American, "Police Facial Recognition Technology Can't Tell Black People Apart," May 18, 2023, <https://www.scientificamerican.com/article/police-facial-recognition-technology-cant-tell-black-people-apart/>.

<sup>4</sup> Fast Company, "Microsoft and Kroger want to show you Minority Report-style ads," Mark Sullivan, January 7, 2019, <https://www.fastcompany.com/90289099/microsoft-and-kroger-want-to-show-you-minority-report-style-ads>.

<sup>5</sup> Data for Progress, "Voters Who Are Concerned About Inflation Are Mostly Concerned About Grocery Prices —

My concern is that these tools will be abused in the pursuit of profit, surging prices on essential goods in areas with fewer and fewer grocery stores. Our residents are already worried about rising household costs and these changes would overly burden many working families.

In addition to the threat of price gouging from ESLs, the use of facial recognition tools has the potential to invade a customer's privacy and employ biased price discrimination. Despite these discrimination concerns, grocery store chains are rapidly expanding the use of facial recognition in conjunction with ESLs. Kroger initially began using this technology in dozens of stores in 2018, expanding to 500 in 2023.<sup>6</sup> Other grocery corporations are rapidly deploying the technology as well as leveraging artificial intelligence tools in their stores to personalize shopping experiences and potentially raise prices.<sup>7</sup> Kroger is the largest supermarket chain in the United States, boasting over 400,000 employees and nearly 3,000 stores. Kroger might grow more if the proposed \$24.6 billion acquisition with Albertsons is approved.

Kroger remains a major grocer in Michigan. Given my concerns, I ask that you answer the following by November 1, 2024:

1. Will Kroger use data captured by ESL facial recognition to display targeted advertisements and price adjustments for goods? Can a customer opt out of being surveilled and discriminated against?
2. What safeguards for privacy will be in place? How are you intending to protect private data for consumers captured by the facial recognition tools within your stores? Where will you store this private information?
3. How will your dynamic pricing work? Will you publicly publish information about the algorithms used to price gouge customers? What transparency measures will you take to convince the public you are not taking advantage of them?
4. Are there plans to sell data collected in the store?
5. Are you planning to deploy ESL technology at all stores? Will customers who wish to shop at Kroger but who do not wish to be subjected to facial recognition and ESL have options to shop at nearby Kroger stores that are not utilizing this technology?
6. Are you planning to deploy ESL technology for all goods in your stores? Will Kroger exclude certain necessities – like fresh produce, milk, and eggs – from ESL dynamic pricing?

Sincerely,



Rashida Tlaib  
Member of Congress

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and Overwhelmingly Support Taking Action Against 'Shrinkflation,'" Rob Todaro, February 12, 2024, <https://www.dataforprogress.org/blog/2024/2/12/voters-concerned-about-inflation-are-mostly-concerned-about-grocery-prices-overwhelmingly-support-action-against-shrinkflation>.

<sup>6</sup> EIN Presswire, "Cooler Screens Announces Expansion with Kroger to Bring Digital Smart Screens into Stores," Crenshaw Communications, May 24, 2023, <https://www.einpresswire.com/article/635446062/cooler-screensannounces-expansion-with-kroger-to-bring-digital-smart-screens-into-store>.

<sup>7</sup> Grocery Dive, "Why more grocers are putting electronic shelf labels in their stores," Catherine Douglas Moran and Sam Silverstein, February 8, 2023, <https://www.grocerydive.com/news/why-more-grocers-are-putting-electronicshelf-labels-in-their-stores/642002/>.