AG Ferguson files lawsuit to block Albertsons from paying $4 billion to shareholders before merger can be reviewed

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SEATTLE — Attorney General Bob Ferguson filed a lawsuit today (https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/Complaint_FINAL.pdf) to block Albertson Companies Inc. from enriching its shareholders with a $4 billion payout before a proposed merger with The Kroger Co. can be reviewed by state and federal antitrust enforcers. The "special dividend" payment, Ferguson argues, risks severely undercutting the grocery giant's ability to compete during the lengthy time period government regulators — including Washington — will be scrutinizing the merger.

According to Securities & Exchange Commission filings, this $4 billion dividend exceeds Albertsons' cash on hand. Albertsons revealed in a recent filing that it will pay for the dividend with $2.5 billion in cash on hand and borrow the rest. Albertsons plans to pay out the dividends on Nov. 7.

Ferguson filed the lawsuit in King County Superior Court. He will be imminently filing a temporary restraining order today or tomorrow morning. If granted, the restraining order will block Albertsons from making the dividend payment while Ferguson's lawsuit is ongoing. The Attorney General's Office expects a hearing on the temporary restraining order motion this week, and is requesting an oral argument.

The two grocery giants own other companies with stores in Washington. Albertsons owns Safeway and Haggen, while Kroger owns QFC and Fred Meyer. Albertsons and Kroger account for the vast majority of grocery stores in Washington, with 216 Safeway and Albertsons stores in the state and 114 Kroger-owned Fred Meyer and QFC stores.

"Paying out $4 billion before regulators can do their job and review the proposed merger will weaken Albertsons' ability to continue business operations and compete," Ferguson said. "Free enterprise is built on companies competing, and that competition benefits consumers. Corporations proposing a merger cannot sabotage their ability to compete while that merger is under review."

After the merger announcement, *The Seattle Times*, citing numbers from Nielsen, reported that more than half of households in the Seattle metro area alone most frequently shop at a store owned by one of the companies (https://www.seattletimes.com/seattle-news/data/grocery-chain-merger-would-affect-majority-of-seattle-area-households/).

Nationwide, Kroger and Albertsons have nearly 800,000 employees in nearly 5,000 stores across 48 states and the District of Columbia.

On Oct. 26, Ferguson partnered with a bipartisan group of six attorneys general from around the country to urge Albertsons to delay paying the special dividends (https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/Letter%20to%20Albertsons%20Kroger%2010-26-22%20FINAL.pdf) until the states complete their review of the proposed merger. In the letter, the attorney generals cite that the $4 billion payout represents about a third of Albertsons' total stock value. In its response, Albertsons declined to delay paying the special dividend. The lawsuit accuses Kroger and Albertsons of violating state antitrust laws and the Consumer Protection Act. Due to severely reducing its cash on hand, the payout could diminish Albertsons' ability to keep up on inventory orders, forcing customers to go to other grocery stores when shelves are not stocked with the products they seek. Less inventory to stock could also impact employee hours.

Ferguson's lawsuit seeks to block the payout to Albertsons' shareholders.

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