

PANDEMIC PROFITEERS: LEGISLATION TO STOP CORPORATE PRICE GOUGING

HYBRID HEARING

BEFORE THE

SUBCOMMITTEE ON CONSUMER PROTECTION AND COMMERCE

OF THE

COMMITTEE ON ENERGY AND COMMERCE

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PANDEMIC PROFITEERS: LEGISLATION TO STOP CORPORATE PRICE GOUGING

WEDNESDAY, FEBRUARY 2, 2022

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CONSUMER PROTECTION AND
COMMERCE,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:30 a.m., in the John. D. Dingell Room 2123, of the Rayburn House Office Building, and remotely via Cisco Webex online video conferencing, Hon. Jan Schakowsky, (chairwoman of the subcommittee) presiding.

Members present: Representatives Schakowsky, Rush, Castor, McNerney, Cardenas, Dingell, Kelly, Soto, Fletcher, Pallone (ex officio); Bilirakis (subcommittee ranking member), Upton, Latta, Guthrie, Bucshon, Dunn, Lesko, Pence, and Rodgers (ex officio).

Also present: Representative Carter.

Staff Present: Katherine Durkin, Policy Coordinator; Lisa Goldman, Senior Counsel; Waverly Gordon, Deputy Staff Director and General Counsel; Jessica Grandberry, Staff Assistant; Tiffany Guarascio, Staff Director; Perry Hamilton, Clerk; Ed Kaczmariski, Policy Analyst; Zach Kahan, Deputy Director Outreach and Member Service; Mackenzie Kuhl, Press Assistant; David Miller, Counsel; Elysa Montfort, Press Secretary; Kaitlyn Peel, Digital Director; Caroline Rinker, Press Assistant; Chloe Rodriguez, Clerk; Andrew Souvall, Director of Communications, Outreach and Member Services; C.J. Young, Deputy Communications Director; Sarah Burke, Minority Deputy Staff Director; Michael Cameron, Minority Policy Analyst, Consumer Protection and Commerce, Energy, Environment; Nate Hodson, Minority Staff Director; Peter Kielty, Minority General Counsel; Emily King, Minority Member Services Director; Tim Kurth, Minority Chief Counsel, Consumer Protection and Commerce; Brannon Rains, Minority Professional Staff Member, Consumer Protection and Commerce.

Ms. SCHAKOWSKY. The Subcommittee on Consumer Protection and Commerce will now come to order.

Today we will be holding a legislative hearing entitled, "Pandemic Profiteering: Legislation to Stop Corporate Price Gouging."

So due to COVID-19 public—the public health emergency, members can participate in today's hearing either in person or remotely, via online video conferencing. Members who are participating in person must wear masks, except when you are speaking. Staff and press who are present in the room must wear masks.

For members participating remotely, your microphones will be set on mute for the purpose of eliminating inadvertent background noise. Members participating remotely will need to unmute your microphones each time that you wish to speak. Please note that, once you are unmuted, your microphones are—will catch everything you say, so you want to make sure that you go on mute when you aren't speaking.

Since members are participating from different locations at today's hearing, all recognition of members shall be for —let's see, I am sorry, you know my reading thing—for questions will be in the order of subcommittee seniority.

Documents for the record can be sent to Ed Kaczmariski. He—at the end—at the—what is this? At the email address that we have provided to staff. All documents will be entered into the record at the conclusion of the hearing.

The Chair now recognizes herself for an opening statement of 5 minutes.

OPENING STATEMENT OF HON. JAN SCHAKOWSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

So today we will consider legislation to protect consumers from corporate greed and price gouging related to the pandemic. The COVID-19 Price Gouging Prevention Act will empower the Federal Trade Commission and state attorneys general with the enforcement tools that are needed to effectively go after price gougers.

Throughout the pandemic health emergency, we have seen skyrocketing billionaire wealth and corporate greed take advantage of people's fears and uncertainty and needs. We have seen, actually, unconscionable price hikes in everyday consumer goods like toilet paper, face masks, and hand sanitizers, as well as critical medical supplies like respirators and personal protective equipment. In the last month alone, we have seen Big Pharma increase the price of 559—554 drugs, with an average price hike of 6.3 percent.

Pfizer has raised prices on 125 drugs, more than any other company. This came after Pfizer reported record profits in 2021 from the—from their taxpayer-funded COVID-19 vaccines, and after boosting their CEO pay 17 percent, to \$21 million.

Johnson and Johnson executives are no different. They raised prices according—across all consumer health products, despite a 13.6 percent increase in the—in revenues last year, and projected 3 to \$5 billion in revenue in 2022 from their COVID-19 vaccine alone.

Instead of giving Americans a break from skyrocketing prices, companies are pocketing these extra—this extra cash. Last week it was reported that UnitedHealth Group spent \$5 billion buying back its own stock, and paying shareholders \$5 billion in dividends in 2021. This came after it reported \$24 billion in profits, the largest ever in its industry—in its industry's history.

And there—and those—these trends aren't limited to health-related goods and services. S&P 500 companies' 2001 (sic) earnings were up nearly 50 percent for the year, and corporate profits—profit margins reached a 70 percent year high.

Procter & Gamble has repeatedly raised prices on its U.S. products during the pandemic, while raking in \$21 billion in profits in 2021, up 6 percent from the previous year.

Grocery giant Kroger posted record earnings during the pandemic, including \$132 billion in 2020, all while raising prices, decreasing wages paid to—by—to workers by 8.1 percent, authorizing billions in stock buybacks, and its CEO taking a \$6.4 million raise—that is just the raise. And enough is enough.

We are at war with this pandemic, war with this virus. And during World War II, war profiteers were held accountable. The same should be applied here today. We are absolutely at war, and we have to take action. We will not tolerate corporate—corporations taking advantage of American consumers by gouging, by price gouging, especially not during a pandemic.

So the critical—this critical legislation needs to be heard and ultimately passed.

[The prepared statement of Ms. Schakowsky follows:]

PREPARED STATEMENT OF HON. JAN SCHAKOWSKY

Committee on Energy and Commerce

Opening Statement as Prepared for Delivery
of

Subcommittee on Consumer Protection and Commerce Chair Janice D. Schakowsky

Hearing on “Pandemic Profiteers: Legislation to Stop Corporate Price Gouging”

February 2, 2022

Today we will consider legislation to protect consumers from corporate greed and price gouging related to the pandemic. The “**COVID-19 Price Gouging Prevention Act**” will empower the Federal Trade Commission and state attorneys general with the enforcement tools needed to effectively go after price gougers.

Throughout this public health emergency, we have seen skyrocketing billionaire wealth and corporate greed take advantage of people’s fear and uncertainty. We have seen unconscionable price hikes in everyday consumer goods like toilet paper, face masks, and hand sanitizer as well as in critical medical supplies like respirators and personal protective equipment.

In the last month alone, we have seen Big Pharma increase the prices of **554 drugs** with an **average price hike of 6.3 percent**. Pfizer has raised prices on 125 drugs, more than any other company! This came **after** Pfizer reported record profits in 2021 from their taxpayer funded COVID-19 vaccine; and **after** boosting their CEO’s pay **17 percent to \$21 million dollars**.

Johnson & Johnson executives are no different. They raised prices across all consumer health products despite a **13.6 percent increase in revenue** last year and projecting **\$3-5 billion in revenue in 2022 from their COVID-19 vaccine alone**. Instead of giving Americans a break from skyrocketing prices, companies are pocketing the extra cash.

Last week it was reported that UnitedHealth Group spent **\$5 billion dollars** buying back its own stock and paying shareholders **\$5 billion in dividends** in 2021. This came **after** it reported **\$24 billion in profits** – the largest **ever** in its industry’s history.

And these trends aren’t limited to health-related goods and services. S&P 500 companies 2021 earnings were **up nearly 50 percent** for the year and corporate profit margins reached a **70-year high**.

Procter & Gamble has repeatedly raised prices on its U.S. products during the pandemic while raking in **\$21 billion in profits in 2021** – up 6 percent from the previous year. Grocery giant Kroger posted record earnings during the pandemic, **including \$132 billion in 2020**. All while raising prices, decreasing worker pay by 8.1 percent, authorizing billions in stock buybacks, and its CEO taking a **\$6.4 million dollar raise**. Enough is enough.

February 2, 2022
Page 2

We are at war with this virus. During World War II, war profiteers were held accountable. The same rule should apply here. We will not tolerate corporations taking advantage of American consumers by price gouging, especially not during a pandemic.

The critical legislation we consider today will help put an end to these unacceptable price hikes.

Thank you to the witnesses for joining us.

Ms. SCHAKOWSKY. And I want to thank our witnesses for being here, and I now recognize Mr. Bilirakis for his 5 minutes of opening statement.

OPENING STATEMENT OF HON. GUS BILIRAKIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. BILIRAKIS. Thank you, Madam Chair, and I thank the witnesses, as well.

Our constituents are facing a serious problem with inflation. And as we have seen from recent mishaps by the Biden Administration, we need to be smarter about our policy choices so the—OK.

First, I would be remiss if I didn't express some disappointment that we are not joining in the theme of our friends in the Transportation and Infrastructure Committee, Madam Chair, who are discussing a path forward on autonomous vehicles, which will provide a true opportunity to transform our economy and save thousands of lives.

That said, I certainly don't want to dismiss the importance of our discussion here today about how our constituents are paying higher and higher prices.

I greatly respect the work we tasked the FTC with executing. And as our comprehensive privacy and data security draft bill demonstrates, I also believe in working closely with the state attorneys general to help enforce a preemptive law.

But we must have an honest discussion about the real challenges our country and constituents are facing, rather than a bait-and-switch about where to push blame.

I know my colleagues on the other side of the aisle are aware of inflation problems and the crunch on our supply chain, and the President was questioned about this in his most recent press conference. However, somehow we are supposed to be convinced that there is widespread price gouging occurring.

Even the majority's memo for today's hearing disputes its own thesis by footnoting an article from The Washington Post called "The Inflation-Causing Financial Strain for Nearly Half of U.S. Households." That article doesn't reference price gouging once. Instead, it attributes increased prices to surging inflation, booming consumer demand, and crippling—crippled supply chains. Not that price gouging is not occurring, but we have to address the real problems. The article even goes on to say—and I quote—"The picture is further complicated by widespread labor shortage and the revolving door of the pandemic."

The legislation brought forth by the Chair today, which would give, again, more new authorities—broad new authorities, in my opinion—to the FTC to go after price gouging during the public health emergency, does not define what excessive price gouging is, and does not adequately account for any of the causes for increased prices.

The legislation is missing a full account for the supply and consumer demand of certain goods: the bottlenecking of a—our ports and distribution centers, current labor shortages, or even the organized crime ripping goods right off freight rail, like we are seeing in cities like Los Angeles.

This committee should seek to avoid unintended consequences on businesses when protecting consumers, and thus I can't support this legislation in front of us today, and we shouldn't let it divert our attention from President Biden's big government spending programs and over-regulation that are crushing our economy and keeping it from fully recovering.

The fact is, I am not sure the American public buys into the narrative, either. They know that honest local mom-and-pop stores are doing their best with whatever products they can get their hands on. Add to that a recent article from the New York Post reporting the results of a study that found 69 percent of respondents disapprove of how President Biden is responding to the inflation crisis, with only 29 percent approving.

This committee has a duty to protect consumers and promote commerce. We have supported providing FTC with the tools they need to be successful, like when we gave them first-time civil penalty authority to go after COVID-19 scams. But giving consumers a false protection here, without properly identifying actual harms, we will give the FTC chair more unchecked powers at a time when her actions should be—should receive more sunshine. Where is the sunshine in this case?

I am hopeful this committee can get back to the business of how to grow our economy with innovation springing from clear regulatory frameworks, like for AVs and artificial intelligence, and protect consumers with clearly defined authorities for FTC, like we do in our privacy and data security draft.

I know we can do better.

[The prepared statement of Mr. Bilirakis follows:]

PREPARED STATEMENT OF HON. GUS BILIRAKIS

**Opening Statement for Republican Leader Bilirakis
Subcommittee on Consumer Protection and Commerce
Legislative Hearing on “Pandemic Profiteers: Legislation to Stop
Corporate Price Gouging”
February 2nd, 2022**

As Prepared for Delivery

Good morning, everyone. And welcome to the first Consumer Protection and Commerce Subcommittee hearing of 2022. First, I would be remiss if I didn't express some disappointment that we're not joining in the theme our friends in the Transportation and Infrastructure Committee discussing a path forward on Autonomous Vehicles, which provides a true opportunity to transform our economy and save thousands of lives. That said, I certainly don't want to dismiss the importance of our discussion here today about how our constituents are paying higher and higher prices.

I certainly respect the work of the Federal Trade Commission we task them with executing, and as our comprehensive privacy and data security draft bill demonstrates, I also believe in working closely with the State Attorneys General to help enforce a preemptive law.

But we must have an honest discussion about the real challenges our country and constituents are facing, rather than a bait and switch about where to push blame. I know my colleagues on the other side of the aisle are aware of inflation problems and the crunch on our supply chain, and the President was questioned as much in his most recent press conference.

However, somehow, we're supposed to be convinced that there is widespread price gouging occurring. Even the Majority's memo for today's hearing disputes its own thesis by footnoting an article from The Washington Post called *Inflation Causing Financial Strain for Nearly Half of U.S. Households*.

That article doesn't reference price gouging once... Instead, it attributes increased prices to surging inflation, booming consumer demand and crippled supply chains. The article even goes on to say "the picture is further complicated by a widespread labor shortage and the revolving door of the pandemic..." The legislation brought forth by the Chair today, which would give broad new authorities to the FTC to go after price gouging during the public health emergency, does not define what excessive pricing is and does not adequately account for any of the causes for increased prices.

The legislation is missing a full account for the supply and consumer demand of certain goods, the bottlenecking of our ports and distribution centers, current labor shortages, or even the organized crime ripping goods right off rail freight like we're seeing in cities like Los Angeles. This Committee should seek to avoid unintended consequences on businesses when protecting consumers, and thus I can't support the legislation in front of us. And we shouldn't let it divert from President Biden accounting for big government spending programs and overregulation that are crushing our economy and keeping it from recovering.

The fact is I'm not sure the American public buys into the narrative either, as they know our local mom-and-pop stores are doing their best with what products they can get their hands on. Add to that a recent article from the New York Post reporting the results of a study that found 69% of respondents disapprove of how President Biden is responding to the inflation crisis, with only 29% approving. This committee has a duty to protect consumers and promote commerce.

We have supported providing FTC with tools they need to be successful, like when we gave them first-time civil penalty authority to go after COVID-19 scams. But giving consumers a false protection here without properly identifying actual harms will give the FTC chair more unchecked powers at a time when her actions should be receiving more sunshine.

I'm hopeful this committee can get back to the business of how to grow our economy with innovation springing from clear regulatory frameworks, like for AVs and artificial intelligence, and protect consumers with clearly defined authorities for the FTC, like in our privacy and data security draft. I know we can do it. With that, thank you madam Chair, and thank you to our witnesses. I look forward to your testimony.

I yield back.

Mr. BILIRAKIS. With that, Madam Chair, thank you for giving me the opportunity, and I thank the witnesses for being here again, and I look forward to your testimony. Thank you so much, and I yield back.

Ms. SCHAKOWSKY. I thank the gentleman, and just want to point out I think that we are making some real progress on the AV issue, and I certainly agree that we need to be working on that promptly. So, yes, it is good news.

And at this point I want to welcome the Chair of the full committee, Mr. Pallone, for his 5 minutes of opening statement.

OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Madam Chair. I mean, I—look, I—certainly, we can work on AVs, but, I mean, I got to be honest with you. I think AVs are not the answer to inflation, and price gouging, and our economic problems. It is certainly something we can do, but it is not something that is very—that is going to solve that problem or any of those problems.

My concern right now—and I don't want to go into it—I just get the impression more and more—and I hope it doesn't continue to the end of this session—that, you know, the answer to everything that we talk about is no.

You know, we talk about the COMPETES Act. We were at Rules yesterday. I have been hearing for the last year or so from the Republicans about China, and the competition from China. But yes, when we were at the Rules Committee yesterday, “No, no, we can't do this bill, this bill is no good, this isn't going to solve the problem.”

Now we talk about price gouging. “Well, I can't support this bill because this bill isn't going to solve the price gouging problem.”

I mean, I just hope I am wrong, and that we just don't get, between now and the election, nothing but “We can't do this, we can't do that.” It is just sad, because I want to work in a bipartisan basis on everything, even AVs. But we are just—you know, we are really not getting much cooperation from the other side, in all honesty.

Now let me just say that we are—we still face major challenges with our economy, clearly, but we are seeing major signs of economic recovery.

Last year, overall gross domestic product grew 5.7 percent, the highest annual rate in nearly 4 decades. The economy added 6.4 million jobs, the largest annual increase in American history. That historic job creation reduced unemployment for 15 percent at the beginning of last year to just 3.9 percent today. Wages are increasing. We did have the American Rescue Plan and the bipartisan infrastructure bill—I say bipartisan, but I think there were only 12 House Republicans that supported it—and we do now lead the world on our economic pandemic recovery.

But our economy, while it is recovering, it is true that American families are still struggling to make ends meet. Rising prices for food and other household necessities. But a lot of these price increases are a result of the ongoing pandemic. That is why we are taking action later this week to pass the America COMPETES Act.

I hope we do get some Republican support. That deals with the supply chain issue and shortages of critical goods, and tries to have more goods made here and today, made here in the USA. And yes, reduce —you know, make us more competitive with China and other countries.

But the fact of the matter is there are price—there is a lot of price gouging taking place. Some businesses are simply price gouging consumers. And these actions have been constant throughout the pandemic, evolving with each phase, and disproportionately harming the most vulnerable when they can least afford it. And opportunist price gouging initially focused on the sudden need for items like personal protective equipment and hand sanitizer, but more recently we have heard reports of overpriced COVID test kits and face masks, and now pandemic profiteering has expanded to virtually all types of consumer goods.

And I do think that corporate greed is motivating large companies to use the pandemic and supply chain issues as an excuse to raise prices, simply because they can. And a lot of executives brazenly boast to investors about raising prices on consumers without consequences. And these executives are saying they are going to continue to do so.

The legislation under discussion today is basically designed to bring this outrageous price gouging to an end. The Act is a straightforward solution to the immediate problem. It is introduced by Chair Schakowsky and—along with myself, Representatives Cicilline, and Nadler. It would give the FTC the authority to seek civil penalties from those price gouging during the COVID-19 pandemic. States attorneys general would be able to enforce the legislation without losing any of their existing authority under state law.

And the fact of the matter is there is no Federal price gouging law today. While most states do have some kind of authority, those laws are inconsistent, and many fail to address the unique circumstances of the COVID-19 pandemic. So Congress has to give the FTC and states the authority enforcement tools they need to go after companies that are gouging consumers. It is mostly large companies.

So I look forward to the discussion today, and I hope we can find bipartisan agreement to act on this important legislation that puts consumers first.

[The prepared statement of Mr. Pallone follows:]

PREPARED STATEMENT OF HON. FRANK PALLONE, JR.

**Statement of Chairman Frank Pallone, Jr.
Committee on Energy and Commerce
Subcommittee on Consumer Protection and Commerce
Hearing on “Changing Times: Revisiting Spring Forward,
Fall Back”**

March 9, 2022

This weekend, we will once again spring forward – changing our clocks forward one hour. It’s a weekend a lot of us dread. The loss of that one hour of sleep seems to impact us for days afterwards – making it more difficult to get out of bed in the morning. It also can cause havoc on the sleeping patterns of our kids and our pets. This is all an inconvenience, but unfortunately the changing of our clocks can have serious impacts on our health and our economy.

Which begs the question – why do we still spring forward and fall back in the first place? It’s a question that many of us

ask every time we have to do it. And it's getting harder and harder to justify considering that in a 2019 poll, 71 percent of Americans said they prefer to no longer switch their clocks twice a year.

Today, we will examine the impacts of this time change, and whether it still makes sense or is obsolete.

Historians have long debated who first came up with the idea of Daylight Saving Time, but it was first adopted nationwide in Germany during World War I in an effort to save energy. During World War II, the United States adopted year-round Daylight Saving Time, known as "War Time," in an effort to save energy and increase productivity.

Over the years numerous justifications were made for changing our clocks twice a year, most commonly and notably energy conservation. It was believed that extending light into the evening hours would help consumers pay less for electricity because they would not have to turn on the lights until later in the evening. However, modern luxuries, such as heating, air conditioning, and other appliances have changed that calculation. Furthermore, advancements in LED lighting and other energy efficient appliances are not only saving consumers money but they are virtually making the energy conservation justification moot and outdated.

And it becomes harder to justify when you consider the health and economic impacts associated with changing our clocks.

Studies have shown an increase in the rate of heart attacks and strokes in the two days immediately following the time change. Disturbingly, these stroke rates are even higher for some of our most vulnerable populations – cancer patients stroke rates increase by 25 percent, and people over the age of 65 are 20 percent more likely to have a stroke in the days following the time change.

Our children also suffer. Study after study shows the importance of a consistent full night sleep for our kids. In the days following the time change, SAT scores fell by an average of 16 or 17 points. Just imagine the impact that the loss of sleep is having on their other activities.

The time change also impacts our economy. Employers report an almost six percent increase in workplace injuries in the days following the time change, and those injuries resulted in 67 percent more workdays lost.

Studies have also shown that people simply are not as productive at work in the days following the time change – spending more time on their computer on nonwork related activities. All of these side effects hurt our economy.

I've highlighted a couple of studies, but the Committee would like to know more. That's why Ranking Member Rodgers and I intend to request an evaluation and analysis from the Department of Transportation (DOT) about the effects of Daylight Saving Time. This review, as well as this hearing, will help our Committee as we examine this important issue.

While I have yet to decide whether I support a permanent switch to Standard or Daylight Saving Time, it's time we stop changing our clocks. I believe that any justifications for springing forward and falling back are either outdated or are outweighed by the serious health and economic impacts we now know are associated with the time changes.

I thank the witnesses for being with us today, and I look forward to hearing your perspectives on this issue.

Mr. PALLONE. And with that, Madam Chair, I yield back.

Ms. SCHAKOWSKY. The gentleman yields back, and the Chair now recognizes the ranking member of the full committee, Mrs. Rodgers, for 5 minutes.

**OPENING STATEMENT OF HON. CATHY McMORRIS RODGERS,
A REPRESENTATIVE IN CONGRESS FROM THE STATE OF
WASHINGTON**

Mrs. RODGERS. Thank you, Madam Chair. Good morning, and welcome to our witnesses.

American families are feeling the pain of one-party rule. President Biden's inflation has hit a 40-year high. Prices have risen across the board, from the pump to the grocery store and everything in between. I just heard a mom in my district who is struggling to find baby formula. She said, "The supply chain crisis is really hurting my family in being able to find food."

I appreciate the comments of the chairman, but I think the frustration on this side of the aisle for many Republicans is that we continue to see a go-it-alone approach: bills that are being put together in the Speaker's office without input from the Republicans. And it is—the fact of the matter is the Democrats have the votes. They are running the show. And we see record spending, we see top-down mandates, COVID-19 restrictions, surging energy costs that are making rising prices and empty shelves worse. It is all connected.

To be transparent with Americans about rising prices, today's topic should be focused on how to reverse the damage that is resulting in supply chain and inflation crises. Unfortunately, what we see is a diversion. It is a deliberate diversion on the root issues, on the price of—on the issue of price gouging.

Standing up against those who have profiteered during the pandemic is a bipartisan issue. Last Congress I joined with Chairman Pallone and Subcommittee Chair Schakowsky, along with then-Ranking Member Walden, in sending a letter to the FTC. The letter requested biweekly updates from the FTC on their tracking of illegal behavior during the pandemic, like price gouging and scams. And I will be entering that letter into the record.

So a question is, if the majority believes this is a top concern, why don't you restart the FTC updates this Congress, and why don't you consider our suggestions from two years ago on how to make this legislation better?

Again, we see a go-it-alone approach. They seem to be more comfortable in the partisan solution.

As I said, today's hearing is a deliberate diversion from the inflation crisis.

The COVID-19 Price Gouging Prevention Act still contains the flaws it did two years ago. For instance, it fails to define what constitutes an excessive price increase, despite many states having established their own laws specifying an allowable percentage, while taking into account supply chain factors.

This proposal is supposed to be targeting the goods and services during the public health emergency that are the most vulnerable to gouging, but it fails to address the real issues for spiking prices. It doesn't take into account when schools are forced to shut down.

Many parents leave the workforce, unable to participate in the economy. It doesn't address workers being forced out of their job for refusing to submit to vaccine mandates. It doesn't take into account that we are in a very different stage of this pandemic than we were two years ago. It doesn't take into account hundreds of billions of dollars that Democrats continue to pump into the economy, causing consumer demand to spike, even as fewer products are available due to supply chain strains and workforce shortages.

The record spending by the Federal Government only exacerbates the inflationary death spiral. Last Congress we were able to enact bipartisan, bicameral legislation for the first offense penalty authority to tackle COVID-19 scams. It is disappointing that that legislation failed to be included today.

Let's work together. Let's work in—together. We all agree, we want America to compete, America to lead.

My colleague brought up the issue of autonomous vehicles. Today Transportation and Infrastructure Committee is having a hearing on autonomous vehicles. One month from now, the National Institute of Standards and Technology within the House Science Committee has—which has jurisdiction over—is holding a workshop on autonomous vehicles. We are talking about price gouging.

I was pleased to hear the subcommittee chair say that she is open to autonomous vehicle legislation. Four years ago we passed bipartisan—Republicans and Democrats came together and passed—legislation to lay out a national standard for—a framework for autonomous vehicles. We need that in order to win the future. We hear a lot about electric vehicles, but we need the autonomous vehicle language, the framework. That is our future, and America should be leading in developing this technology, rather than allowing China to continue to dominate, and test, and move forward.

My colleagues and I are ready to work on real solutions, whether it is supply chains, inflation, innovation. Let's win the future. Let's work together. I yield back.

[The prepared statement of Mrs. Rodgers follows:]

PREPARED STATEMENT OF HON. CATHY McMORRIS RODGERS

**Statement of
Republican Leader Cathy McMorris Rodgers
CPAC Subcommittee Legislative Hearing on
“Pandemic Profiteers: Legislation to Stop Corporate
Price Gouging”
February 2, 2022**

As prepared for delivery

Good morning and welcome to our witnesses today. Americans are feeling the pain of a year of one-party-rule. President Biden's inflation has hit a 40-year high. Prices have risen across the board from the pump to the grocery store, and everything in between.

I just heard from a mom in my district who is struggling to find baby formula. She said, “this supply chain crisis has really hurt my family in being able to find food.” Democrats’ radical, out of control spending, top-down mandates, COVID-19 restrictions, and surging energy costs have made rising prices and empty shelves worse.

It's all connected. If we want to be transparent with the American people about rising prices, today's topic should be focused on how to reverse the damage of President Joe Biden's supply chain and inflation crisis. Unfortunately, today is a deliberate diversion.

On the issue of price gouging, standing up against those who have profited during the pandemic is bipartisan issue. Last Congress I joined Chairman Pallone and subcommittee Chair Schakowsky, along with then Ranking Member Walden, in sending a letter to the FTC.

The letter requested biweekly updates from the FTC on their tracking of illegal behavior during the pandemic, like price gouging and scams. I'll be entering that letter into the record.

So I wonder, if the majority believes this is a top concern, why didn't they ask to restart the FTC updates this Congress? And why did they not consider our suggestions from two years ago on how to make the

legislation better? Because they were more comfortable making it solely partisan.

As I said, today's hearing is a deliberate diversion from Biden's inflation crisis. The COVID-19 Price Gouging Prevention Act still contains the flaws it did two years ago. For instance, it fails to define what constitutes an "excessive" price increase, despite many states having established their own laws specifying an allowable percentage while taking into account supply chain factors.

This proposal is supposed be targeted towards goods and services during the Public Health Emergency that are most vulnerable to gouging. But it fails to address the real reason for spiking prices.

It doesn't take into account that when schools are forced to shut down many parents leave the workforce, unable to participate in the economy. It doesn't address workers being forced out of a job for refusing to submit to vaccine mandates. It doesn't take into account that we are in a very different stage of this pandemic than we were two years ago. It doesn't take into account the billions of dollars that the Democrats continue to pump into the economy, causing consumer demand to spike even as fewer products are available due to supply chain strains and workforce shortages.

This out-of-control spending only exacerbates the Biden inflationary death spiral. Last Congress, we were able to enact a bipartisan, bicameral deal for first offense penalty authority to tackle COVID-19 scams. It is unfortunate that the legislation today fails to embody that bipartisan spirit.

We should be working together on the Energy and Commerce Committee to usher in a new era of American leadership in innovation. At this very moment, the Transportation & Infrastructure Committee is having a hearing on autonomous vehicles. One month from now, the National Institute of Standards and Technology, which the House Science Committee has jurisdiction over, is holding a workshop on AVs.

But here we are – discussing a partisan price gouging bill that does nothing to solve what is most concerning to the America people—empty store shelves and rising costs on basic things families need.

Strengthening American competitiveness in AVs, AI, machine learning, and other emerging technologies, would help secure our supply chains and leadership in industries of the future. Instead, we're here in an attempt to find an excuse and new scapegoat for President Biden's mishandling of the economy. My colleagues and I stand ready to work on real solutions to resolve supply chain issues, reduce inflation, unleash innovation, and win the future.

Thank you, I yield back.

Ms. SCHAKOWSKY. The gentle lady yields back, and the Chair would like to remind all members that, pursuant to committee rules, they are—that any written opening statements shall be made part of the record.

And now it is my pleasure to introduce our witnesses for today's hearing.

We have Alex Harman, Competition Policy Advocate at Public Citizen, and who is here remotely.

We have Sarah Frasch, who is Chief Deputy Attorney General and Director for the Bureau of Consumer Protection at the Pennsylvania the Office of the Attorney General.

We have Dr. Glenn Richey, Jr., Harbert Eminent Scholar and Chair for the Department of Supply Chain Management at Auburn University.

And Dr. Rakeen—let's see—Mabud, who is Managing Director of the—of Policy and Research, and Chief Economist at Groundwork Collaborative.

At this time the Chair will recognize each of the witnesses for 5 minutes to provide their opening statement.

Before we begin I would just like to explain the light system for those who don't know it. And for those who are watching, who are participating remotely, as well. The—at first, the—in front of you will be—and you will see on the screen a series of lights. The light will initially be green. The light will turn yellow when you have one minute remaining, and please begin to wrap up your testimony. And at that point the light will turn red when those 5 minutes have expired.

For the witnesses testifying remotely, there is a timer on your screen that will count down your remaining time.

So, Mr. Harman, you are recognized now for 5 minutes.

STATEMENT OF ALEX HARMAN, COMPETITION POLICY ADVOCATE, PUBLIC CITIZEN; RAKEEN MABUD, PH.D., MANAGING DIRECTOR OF POLICY AND RESEARCH AND CHIEF ECONOMIST, GROUNDWORK COLLABORATIVE; SARAH FRASCH, CHIEF DEPUTY ATTORNEY GENERAL AND DIRECTOR, BUREAU OF CONSUMER PROTECTION, PENNSYLVANIA OFFICE OF THE ATTORNEY GENERAL; AND GLENN RICHEY, PH.D., HARBERT EMINENT SCHOLAR AND CHAIR, DEPARTMENT OF SUPPLY CHAIN MANAGEMENT, AUBURN UNIVERSITY HARBERT COLLEGE OF BUSINESS

STATEMENT OF ALEX HARMAN

Mr. HARMAN. Thank you, Chairwoman Schakowsky, Ranking Member Bilirakis, and other members of the subcommittee, for the opportunity to testify before you in person on corporate price gouging and profiteering during the coronavirus pandemic. I am Alex Harman, Competition Policy Advocate for Public Citizen's Congress Watch Division.

We are a national nonprofit organization with more than 500,000 members and supporters. For the past 50 years we have represented the public interest on a broad range of issues, including consumer protection and consolidation of corporate power.

I think it is important to first explain what price gouging is. For those of us who remember our basic economics classes, we learn that supply and demand are supposed to result in a market-based price that reflects what consumers are willing to pay. When that price rises too high, a competitor will respond with a lower price, or consumers will find an alternative. Price gouging is where that supply and demand process is distorted by an emergency situation that puts the seller in the position of dictating a price above market because consumers have no other choice but to pay.

At its best, it is exploitive of consumers across the board. But at its worst, it specifically targets people in their most vulnerable, making conditions even worse for them. Unfortunately, even before the country faced lockdowns, closures, and shortages of essential goods due to the coronavirus pandemic, price gouging was already underway.

In fact, by the time the first U.S. death of—from COVID-19 had been reported, price gouging on sales of protective masks on Amazon had already resulted in warnings to third-party sellers against engaging in the practice. Then brick and mortar retail stores such as Target, Costco, and Kroger began to impose quantity limits on products such as toilet paper, hand sanitizer, and disinfectants. But where physical stores had empty shelves, online sellers charge excessive prices.

As the pandemic worsened, so too did price gouging. Over nearly two years, price gouging has shifted to a broad array of products and, unfortunately, normalized. Consumers and policymakers cannot be blamed for wondering if price increases on essential products are at least in part due to price gouging.

Many Americans experience the pandemic facing unemployment, financial hardship, or in dangerous conditions on the front lines of the health care and service industries. However, for the biggest companies, the pandemic proved to be a goldmine of increased profits and significant growth. Amazon, Walmart, Kroger, and many others experienced significant price increases or profit increases in 2020. But in the second year of the pandemic, sales and profits continue to rise to record levels for retailers. This reality of massive corporate profits has been true for consumer packaged goods and food manufacturers, as well.

In addition to record sales and profits, these companies have no shame about their plans to raise prices. In fact, they have been bragging to investors about how they are able to raise prices without driving down sales. Procter & Gamble's Chief Financial Officer told investors that the company has not seen any material reaction to price increases from consumers, and Kroger's CFO told the their investors, "We have been very comfortable with our ability to pass on the increases that we have seen to this point."

These companies are only making more profit as they raise prices in the face of higher costs. Is it any wonder, then, that the companies are so eager to raise prices?

In a recent piece by former U.S. Labor Secretary Robert Reich, he argues that these companies are exploiting higher costs as an excuse to make even bigger profits. It is hard to disagree.

Corporate price gouging is unacceptable, and should be stopped. Unfortunately, there is no Federal price gouging law. So H.R. 675,

the COVID Price Gouging Prevention Act, the subject of this hearing, was introduced by Chairwoman Schakowsky to establish a Federal price gouging law in response to the initial reports of pandemic profiteering and price gouging.

As Members of Congress consider efforts to stop price gouging, it is worth examining state laws and where a Federal statute would be useful to protect consumers. Unfortunately, where state laws prohibiting price gouging exist, there is a wide variance between definitions and applicability. The lack of a Federal law, the inconsistency or absence of laws in the states, combined with online shopping that transcends state borders has created gaps in protection from price gouging, and has led to a potential for state laws to be ineffective at addressing the practice online.

Price gouging is an exploitive business practice that manipulates markets and takes advantage of people at their most vulnerable and desperate. A Federal statute that augments state laws is needed to address this problem. It should be in place as soon as possible to help stop price gouging now, and so that the next emergency, big or small, does not result in the exploitation we have seen in the last two years.

During emergencies people are scared, desperate, and in need. Price gouging is an insidious exploitation of the most vulnerable. There is no excuse for the most profitable countries—companies preying on consumers.

Thank you again for this opportunity to testify on this important topic.

[The prepared statement of Mr. Harman follows:]

Written Testimony of

Alex Harman
Competition Policy Advocate, Public Citizen

before the

Subcommittee on Consumer Protection and Commerce
U.S. House Committee on Energy and Commerce

on

“Pandemic Profiteers: Legislation to Stop Corporate Price Gouging”

February 2, 2022



Thank you, Chairwoman Schakowsky, Ranking Member Bilirakis, and other members of the Subcommittee for the opportunity to testify before you on corporate price gouging and profiteering during the Coronavirus pandemic.

I am Alex Harman, Competition Policy Advocate for Public Citizen's Congress Watch division. Public Citizen is a national nonprofit organization with more than 500,000 members and supporters across the country. For the past 50 years, we have successfully represented the public interest through litigation, research, public education, and legislative, administrative, and grassroots advocacy on a broad range of issues, including consumer protection and consolidation of corporate power.

I think it is important to first explain what price gouging is. For those of us who remember our basic economics classes we learned that supply and demand are supposed to result in a market-based price that reflects what consumers are willing to pay, and when a price rises too high above that, a competitor will respond with a lower price or consumers will find an alternative. Price gouging is where that supply and demand process is distorted by an emergency situation that puts the seller in the position of dictating a price above market because consumers have no other choice but to pay. At its best, it is exploitive of consumers across the board—but at its worse, it specifically targets people at their most vulnerable, making conditions even worse for them.

Price Gouging During the Pandemic

Unfortunately, even before the country faced the lockdowns, closures, and shortages of essential goods that were to come due to a result of the Coronavirus pandemic, price gouging was already underway. In fact, by the time the first U.S. death from COVID-19 had been reported on February 29, 2020,¹ reports of price gouging on sales of protective masks on Amazon had already resulted in a warning from Amazon to third-party sellers against engaging in price gouging.² Then, brick and mortar retail stores such as Target, Costco, and Kroger began to impose quantity limits on products such as toilet paper, hand sanitizer, and disinfectants.³ But where physical stores had empty shelves, online sellers instead charged excessive prices⁴. As the pandemic worsened, so too did the price gouging.

¹ Nicole Acevedo and Minyvonne Burke, *Washington State Man Becomes First U.S. Death From Coronavirus*, NBC NEWS (Feb. 29, 2020), <https://www.nbcnews.com/news/us-news/1st-coronavirus-death-u-s-officials-say-n1145931>. Note, it was later reported that the first U.S. death from COVID-19 was actually February 6, 2020: Dennis Romero, *1st U.S. Coronavirus Death Was Weeks Earlier Than Initially Believed*, NBC NEWS (Apr. 21, 2020), <https://www.nbcnews.com/news/us-news/first-u-s-coronavirus-death-happened-weeks-earlier-originally-believed-n1189286>.

² Louise Matsakis, *As Covid-19 Spreads, Amazon Tries to Curb Mask Price Gouging*, WIRED (Feb. 25, 2020), <https://www.wired.com/story/covid-19-amazon-curb-face-mask-price-gouging/>.

³ Bailey Miller and Steve Nielsen, *Panic Buying Continues Amidst Coronavirus Outbreak as Stores Impose Purchase Limits*, FOX 10 Phoenix (Mar. 9, 2020), <https://www.fox10phoenix.com/news/panic-buying-continues-amidst-coronavirus-outbreak-as-stores-impose-purchase-limits>.

⁴ Jessica Guynn, Mike Snider, and Kelly Tyko, *Coronavirus Fears Spark 'Panic Buying' of Toilet Paper, Water, Hand Sanitizer. Here's Why We All Need to Calm Down*, USA TODAY (Mar. 2, 2020),

As prices spiked on Amazon, leading to continued accusations of price gouging on its online marketplace, the company responded by blaming the skyrocketing prices on “bad actors” that sell on its website.⁵ Amazon claimed that it took several steps to curb price gouging including calling for price gouging legislation.⁶

However, six months into the pandemic Public Citizen issued a report in which we uncovered an ongoing pattern of significant price increases on essential products sold directly by Amazon, as well as price gouging by third-party sellers.⁷

As the pandemic has continued, price gouging has shifted to a broad array of products and unfortunately normalized. Most recently, as the Omicron variant took hold, there were reports of price gouging on COVID tests.⁸ Consumers and policymakers cannot be blamed for wondering if price increases on essential products are at least in part due to price gouging.

Soaring Corporate Profits

Many Americans experienced the pandemic facing unemployment, financial hardship, or in dangerous conditions on the front lines of the health and service industries.⁹ However, for the biggest companies the pandemic proved to be goldmine of increased profits and significant growth. Amazon, Walmart, Kroger, and many others experienced significant profit increases in 2020.¹⁰ In the second year of the pandemic sales profits continued to rise to record levels for

<https://www.usatoday.com/story/money/2020/03/02/coronavirus-toilet-paper-shortage-stores-selling-out/4930420002/>.

⁵ Jeff Bezos, *2019 Letter to Shareholders*, Amazon (Apr. 16, 2020),

<https://www.aboutamazon.com/news/company-news/2019-letter-to-shareholders>.

⁶ Brian Huseman, *It's Time for Congress to Establish a Federal Price Gouging Law*, AMAZON (May 13, 2020), <https://www.aboutamazon.com/news/policy-news-views/its-time-for-congress-to-establish-a-federal-price-gouging-law>.

⁷ Alex Harman, *Prime Gouging*, PUBLIC CITIZEN (Sept. 9, 2020), <https://www.citizen.org/article/prime-gouging/>.

⁸ Kate Gibson, *Reports of price gouging amid shortages of COVID-19 tests*, CBS NEWS (Jan. 7, 2022), <https://www.cbsnews.com/news/at-home-test-covid-price-gouging/>; Lauren Feiner, *Consumers accuse small retailers of price gouging on Covid tests*, CNBC (Jan. 25, 2022), <https://www.cnbc.com/2022/01/25/consumers-accuse-small-retailers-of-price-gouging-on-covid-tests.html>.

⁹ Kim Parker, Rachel Minkin, and Jesse Bennett, *Economic Fallout From COVID-19 Continues To Hit Lower-Income Americans the Hardest*, PEW RESEARCH CENTER (Sept. 24, 2020), <https://www.pewresearch.org/social-trends/2020/09/24/economic-fallout-from-covid-19-continues-to-hit-lower-income-americans-the-hardest/>; David Andone and Paul P. Murphy, *What it's like for health care workers on the front lines of the coronavirus pandemic*, CNN (Mar. 29, 2020), <https://www.cnn.com/2020/03/27/us/inside-hospitals-coronavirus-vignettes/index.html>.

¹⁰ Alicia Adamczyk, *Profits are 'soaring' for large retailers—but frontline workers are barely earning more*, CNBC (Nov. 27, 2020), <https://www.cnbc.com/2020/11/27/large-retailers-are-making-record-profits-but-not-paying-workers-more.html>.

retailers.¹¹ This reality of massive corporate profits has been true for consumer packaged goods and food manufacturers as well. The latest earnings report from Procter and Gamble is just another example of manufacturers and retailers announcing significant sales increases during the pandemic.¹²

In addition to record sales and profits, these companies have no shame about their plans to raise prices. In fact, they are bragging to investors about how they are able to raise prices without driving down sales.¹³ The Procter and Gamble Chief Financial Officer told investors that the company “ha[s] not seen any material reaction [to price increases] from consumers,” and Kroger’s CFO told their investors “we’ve been very comfortable with our ability to pass on the increases that we’ve seen at this point.”¹⁴ These companies are only making more profit in the face of higher costs and increased prices. Is it any wonder then that, in the face of record sales and profits, companies are so eager to raise prices? In a recent piece by former U.S. Labor Secretary, Robert Reich he argues that these companies are exploiting higher costs as an excuse to make even bigger profits.¹⁵ It is hard to disagree.

The pandemic has put Americans under economic and emotional stress that has left us vulnerable. Corporate price gouging is unacceptable and should be stopped.

State Responses to Pandemic Price Gouging

Between February 29, and March 18, 2020, every U.S. state and territory declared an emergency due to the pandemic. Many of these orders were renewed, but today less than half of the states are still under emergency declarations.¹⁶

In some states, such as New Jersey and Illinois, the governors’ emergency declarations expressly prohibited price gouging, typically defined as unreasonable or excessive price increases on certain essential products during an emergency. While in other states, the disaster declaration triggered an existing statute prohibiting price gouging.¹⁷

¹¹ Bridget Goldschmidt, *Independent Grocers Attain Record Sales, Profits Amid Pandemic*, PROGRESSIVE GROCER (Oct. 28, 2021), <https://progressivegrocer.com/independent-grocers-attain-record-sales-profits-amid-pandemic>.

¹² Coral Murphy Marcos, *Procter & Gamble’s sales jump as consumers brush off rising prices*, NEW YORK TIMES (Jan. 19, 2022), <https://www.nytimes.com/2022/01/19/business/procter-gamble-2q-2021-earnings.html>.

¹³ Dominick Reuter, *America’s biggest companies can’t stop bragging to investors about how they’re charging you more*, BUSINESS INSIDER (Nov. 2, 2021), <https://www.businessinsider.com/big-companies-keep-bragging-to-investors-about-price-hikes-2021-11>.

¹⁴ *Id.*

¹⁵ Robert Reich, *We need to talk about the real reason behind US inflation*, THE GUARDIAN (Nov. 11, 2021), <https://www.theguardian.com/commentisfree/2021/nov/11/us-inflation-market-power-america-antitrust-robert-reich>.

¹⁶ *States’ COVID-19 Public Health Emergency Declarations and Mask Requirements*, NATIONAL ACADEMY FOR STATE HEALTH POLICY (Updated Jan. 11, 2022), <https://www.nashp.org/governors-prioritize-health-for-all/>.

¹⁷ Office of the Governor, *Executive Order No. 103, STATE OF NEW JERSEY* (Mar. 9, 2020), <https://nj.gov/infobank/eo/056murphy/pdf/EO-103.pdf>; Office of the Governor, *Gubernatorial Disaster*

Most states have a law against price gouging during a declared emergency, but laws vary widely. New Jersey considers price gouging to be selling goods and services at a price that is at least 10% higher than it was immediately preceding the declared emergency. In New York, selling “goods and services vital and necessary for the health, safety, and welfare of consumers” at an “unconscionably excessive price” during a declared emergency is considered price gouging. Illinois only covers petroleum products, though the emergency declaration set to expire in a few days covers other goods and services.¹⁸

In states where there is no explicit prohibition on price gouging there is typically a consumer protection law which prohibits unfair or deceptive trade practices and likely covers price gouging. There are also a handful of states with no prohibition on price gouging.

Defining Federal Price Gouging

There is not a federal price gouging law, or a prohibition found in existing federal consumer protection laws. The Federal Trade Commission (FTC) has not previously taken enforcement action against price gouging.¹⁹ Because the FTC has not taken action, on March 17, 2020, Chairman Pallone (D-N.J.) and Rep. Schakowsky (D-Ill.) of the House Energy and Commerce Committee, and Chairmen Nadler (D-N.Y.) and Rep. Cicilline (D-R.I.) of the House Judiciary Committee sent a letter to the Chair of the FTC urging him to “take immediate action to protect consumers from price gouging during this declared public health emergency.”²⁰

H.R. 675, the “COVID-19 Price Gouging Prevention Act,” the subject of this hearing, was introduced by Chairwoman Schakowsky in response to the initial reports of pandemic profiteering and price gouging.

As members of Congress consider efforts to stop price gouging, it is worth examining what constitutes price gouging in state laws, and where a federal statute would be useful to protect consumers.

Unfortunately, price gouging is not well defined. As noted previously, there is a wide variance between definitions where state laws prohibiting price gouging exist, however they do share the requirement that there must be a declared emergency, that the price increase must be on specific products that are deemed necessary, and the price increase must be substantial. Typically,

Proclamation on COVID-19, STATE OF ILLINOIS (March 9, 2020),

<https://www2.illinois.gov/sites/gov/Documents/CoronavirusDisasterProc-3-12-2020.pdf>.

¹⁸ Heather Morton, *Price Gouging State Statutes*, NATIONAL CONFERENCE OF STATE LEGISLATURES (May 17, 2021), <https://www.ncsl.org/research/financial-services-and-commerce/price-gouging-state-statutes.aspx>.

¹⁹ Alexei Alexis, *Senators scrutinize FTC powers to curb COVID-19 price gouging*, ROLL CALL (Apr. 15, 2020), <https://rollcall.com/2020/04/15/senators-scrutinize-ftc-powers-to-curb-covid-19-price-gouging/>.

²⁰ *Letter to FTC on Price Gouging from Members of Congress* (Mar. 17, 2020), https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/FTC.2020.3.17.%20Joint%20Letter%20re%20Price-Gouging.CPC__0.pdf.

passing along increased costs or a price increase imposed by a supplier is not considered price gouging.

The absence of a federal law, the inconsistency or absence of laws in the states, combined with online shopping that transcends state borders, has created gaps in protection from price gouging, and has led to the potential for state price gouging laws to be ineffective at addressing online price gouging.

A federal price gouging statute should seek to supplement state statutes in several ways. First, it could set a floor for the amount of a price increase that would trigger a violation. Second, it could provide coverage in states where there is an inadequate, or no, price gouging statute. Third, it could address national, regional, or sustained emergencies that state emergency declarations are not typically designed to address. Finally, a federal statute should ensure that online and national retailers are not able to evade state statutes.

Recommendations for a Federal Price Gouging Statute

We recommend a uniform, federal protection against price gouging that would serve as a floor, while allowing states to have greater protections. Specifically, a federal price gouging law should:

- Provide a clear and unambiguous definition of price gouging such as a 10% increase in prices during an emergency. It should not incorporate ambiguous or subjective language from state statutes. However, in egregious cases where broad price increases are implemented and are not justified by increased costs, even smaller increases should potentially be violations;
- Include a very broad list of products, goods, and services that would be covered, and give federal authorities the power to identify additional products that may be implicated in a future emergency;
- Establish significant civil penalties enforceable by the Federal Trade Commission and state attorneys general;
- Apply wherever price gouging occurs in the supply chain, not simply at the end retailer;
- Be applicable during the current COVID-19 pandemic as well as any disaster or health emergency now and in the future; and
- Require large online retailers to provide price transparency and history that gives consumers an opportunity to quickly determine if a given product has had a price increase. This could include suggested retail price, average price, and a link to price history next to every item listed on such retail sites. Consumers would benefit from the ability to see if the listed price is comparable to the manufacturer's suggested retail price. An average price would show the consumer whether the current price is more or less than

the typical price paid. The average price could be especially useful for products with significant price volatility.

Conclusion

Price gouging is an exploitive business practice that manipulates markets and takes advantage of people at their most vulnerable and desperate. A federal price gouging statute that augments state laws is needed to address this problem. It should be in place as soon as possible to help stop price gouging now, and so that the next emergency, big or small, does not result price gouging as this one has.

During emergencies, people are scared, desperate, and in need. Price gouging is an insidious exploitation of the most vulnerable. There is no excuse for the most profitable corporations preying on vulnerable consumers by price gouging.

Thank you again for the opportunity to testify on this important topic.

Ms. SCHAKOWSKY. Thank you very much.
And now, Ms. Frasch, you are recognized for 5 minutes.

STATEMENT OF SARAH FRASCH

Ms. FRASCH. Good morning, Chair Schakowsky, Ranking Member Bilirakis, members of the committee. Thank you for inviting me to testify today. My name is Sarah Frasch, and I serve as the director of the Bureau of Consumer Protection for the Pennsylvania Office of Attorney General.

Our section is charged with civil enforcement of Pennsylvania's consumer protection laws, including Pennsylvania's Price Gouging Act. In general, we work directly with consumers and businesses to both mediate disputes and to bring legal actions, when necessary, to stop unfair and deceptive business practices. We obtain restitution and other relief for consumers, and appropriate civil penalties.

So turning specifically to price gouging, we have our own Price Gouging Act in Pennsylvania, which was passed in 2006. It has given our office an important tool in our toolbox to help protect consumers when disasters strike.

Ms. SCHAKOWSKY. Ms. Frasch, could you speak up just a little bit more?

Ms. FRASCH. Sure.

This Act protects consumers from unconscionably excessive price hikes, beginning when the governor declares a state of disaster emergency, and then continuing through 30 days after the termination of the state of emergency. Generally, unconscionably excessive prices in violation of the Act include price increases of 20 percent or more during the applicable time period, when compared to the price 7 days prior to the state of emergency declaration.

Our Act in Pennsylvania gives our office the responsibility to enforce the law with civil penalties of up to \$10,000 per violation. While this law is limited in scope, it does help us both combat and deter price gouging during disaster situations, including during the pandemic.

In March of 2020, immediately following our governor's declaration of the state of emergency due to the pandemic, we set up a task force within our bureau to accept, investigate, and act on the tips and complaints of price gouging made by the public. Most of those tips covered different consumer products, but we found most prevalent were PPE equipment, hand sanitizer, bottled water, things like that—face masks.

One example of a tip we received was from the husband of a nurse in Bucks County, Pennsylvania. He was concerned that his wife and her coworkers didn't have the appropriate access to PPE, such as N95 masks, during the first weeks of the pandemic. And so one of his employees was in a local pharmacy filling a prescription, saw that the store had N95 masks available, and she purchased them. She was able to get 5 masks and was charged \$20 per mask.

For context, before the declaration was issued, N95 masks could be obtained for less than \$1. And even factoring in the increase of the cost and the supply incurred by the pharmacy, that price to the consumer was significantly increased, in clear violation of our stat-

ute. And we were able to contact that store and, as a result, that buyer received a refund of the full amount that she was overcharged, and the store was able to bring back the prices to reasonable levels, preventing other consumers from being harmed.

So this—the declaration remained in effect from March 2020 through June 2021. And at that time we received between—or around 6,200 consumer complaints of price gouging from all over Pennsylvania.

You know, some of these were actually mistakes by businesses. They didn't understand the law, perhaps, and they corrected their action after we approached them. Others fell outside the scope of our statute because maybe they were business-to-business transactions that didn't cover household use goods. Many of these cases also involved increased costs to the local stores that they themselves passed on to the consumers, which is actually legal under our statute.

But we did not hesitate to use our enforcement under the Act, and we were able to issue 523 cease and desist letters to individuals and entities. We issued 241 subpoenas to gather more information. We filed two lawsuits for violations of the Act. We also entered into 29 settlement agreements, separate from any litigation, and we resolved those, and ultimately we were able to return \$73,272 in consumer restitution to make those consumers whole.

We also focused on a multi-state effort to engage with major e-commerce platforms such as eBay, Amazon, and Facebook, and others in order to enhance [inaudible]. As a result of those efforts, we were able to identify additional price gouging, took appropriate action, and obtained refunds for consumers, and also had those platforms take down violations of the Act. And we were able to present presentations to trade groups, consumer advocates, and other retailers to help educate and inform what violations may be.

So as I mentioned, we have some limitations to our Act. Right now it is not currently—

Ms. SCHAKOWSKY. Your time has expired, so wrap up right now.

Ms. FRASCH. Sure, thank you. We have no protection currently for price gouging in place in Pennsylvania.

[The prepared statement of Ms. Frasch follows:]



Testimony Submitted to the U.S. House Committee on Energy & Commerce, Subcommittee on
Consumer Protection and Commerce

For the hearing entitled:

“Pandemic Profiteers: Legislation to Stop Corporate Price Gouging”

February 2, 2022

Presented by Sarah Frasch
Chief Deputy Attorney General and Director of the Bureau of Consumer Protection
Pennsylvania Office of Attorney General

Introduction

Chair Schakowsky, Ranking Member Bilirakis, Members of the Committee, thank you for inviting me to testify today. My name is Sarah Frasci, and I serve as Director of the Bureau of Consumer Protection for the Pennsylvania Office of Attorney General.

The Office of Attorney General's Bureau of Consumer Protection (BCP) is charged with civil enforcement of Pennsylvania's consumer protection laws, including the Commonwealth's Price Gouging Act. Our 82 attorneys, agents and support staff work directly with consumers and businesses to both mediate disputes and to bring legal actions when necessary to stop abusive practices and obtain restitution for those who are harmed. During the 2020-21 fiscal year, BCP fielded 25,286 consumer complaints – a nearly 20% increase from before Attorney General Josh Shapiro took office. In addition, during the same time period, our office filed 108 legal actions, resulting in more than \$28.2 million for consumers. Additionally, our mediation efforts helped save another \$6.2 million for consumers—bringing our total dollars for consumers to \$34.3 million in our last fiscal year.

Pennsylvania's Statute and Efforts to Combat Price Gouging Related to COVID-19

Pennsylvania's Price Gouging Act, which was passed in 2006, has given our office an important tool in our toolbox to help protect consumers when disasters strike. This act protects consumers from unconscionably excessive price hikes beginning when the Governor declares a state of disaster emergency and continuing through thirty days after the termination of the state of emergency. Generally, unconscionably excessive prices, in violation of the act, include price increases of 20 percent or more during the applicable time period when compared to the price seven days prior to the declaration of the state of emergency. The Pennsylvania Price Gouging Act gives the Office of Attorney General's Bureau of Consumer Protection the responsibility to enforce the law with civil penalties of up to \$10,000 per violation. While this law is limited in its scope, it helps us both combat and deter price gouging during disaster situations, including the COVID-19 pandemic.

In March 2020, immediately following Governor Tom Wolf's declaration of a state of emergency due to the pandemic, our office set up a task force within the Bureau of Consumer Protection to accept, investigate and act on tips and complaints of price gouging made by the public. We set up a designated email address to accept complaints and shifted personnel from other cases to handle the inflow of price gouging tips. At its peak, our task force included 12 attorneys, 6 agents and 2 support personnel working full-time to investigate and respond to these complaints and tips. Tips covered a host of consumer products, but we found gouging to be most prevalent in sales of personal protective equipment (PPE), hand sanitizer and bottled water.

One example of the type of complaints we received was from the husband of a nurse in Bucks County, Pennsylvania. The man was concerned that his wife and her co-workers did not have access to appropriate PPE, including N95 masks, during the first weeks of the pandemic. Hospitals and medical facilities in Southeastern Pennsylvania—and many places across the country—were experiencing severe shortages of PPE. One of his employees went to a local pharmacy to fill a prescription and saw that the store had N95 masks available, so she purchased

them. Unfortunately, she was only able to purchase five and was charged \$20 per mask. For context, before the Governor issued his disaster declaration, N95 masks could be obtained for less than \$1, and even after factoring in the increased cost in supply incurred by the pharmacy, the price to the consumer was significantly increased, in clear violation of our statute. Our office contacted the store, and as a result, the buyer received a refund of the full amount she was overcharged. The store also brought their prices back to reasonable levels, preventing other consumers from being fleeced as well.

The Governor's disaster declaration remained in effect from March 2020 through June of 2021. During that time, our Price Gouging Task Force received more than 6,200 complaints of price gouging from every corner of our Commonwealth of Pennsylvania. Some of these complaints were honest mistakes by businesses that were fixed after engagement with our office. Others fell outside the scope of the statute, because they were referencing business-to-business transactions, not for household use. Many of the cases involved local stores that experienced increased costs themselves and had passed those costs onto the consumers, which is legal under the act. And there were other cases where consumers didn't like the prices they were seeing and thought that they must be being gouged but in reality were not.

However, we did not hesitate to use our enforcement authority under the act. Throughout this period, BCP issued 523 cease and desist letters to individuals and entities allegedly involved in price gouging. We issued 241 subpoenas, filed two legal actions to enforce subpoenas and filed two lawsuits alleging violations of Pennsylvania's Price Gouging Act. We also entered into 29 Assurances of Voluntary Compliance (AVCs) to resolve allegations of violations of the Price Gouging Act and obtained a total of \$73,272 in consumer restitution to make the consumers whole in instances where they spent more than they should have under the law.

In addition to our legal efforts, prevention was a core part of our strategy. Our Price Gouging Task Force led a multistate effort to engage with major e-commerce platforms, including eBay, Amazon and Facebook Marketplace among others to enhance protections for consumers and avoid price gouging through their websites. As a result of those efforts, we were able to identify additional price gouging, take appropriate action, obtain refunds for consumers, and take down any ads identified as violations of the act. We also gave several presentations to trade groups, consumer advocates and retailers to educate them on the Price Gouging Act, and to help them stay in compliance. And our office's Communications team worked hard to get the message out about our legal work to deter others who might consider engaging in price gouging from doing so.

Limitations of Pennsylvania's Price Gouging Act

As I noted previously, Pennsylvania's price gouging statute is limited in a number of ways. First, it only applies to consumer goods and services that are primarily for personal, family or household purposes. That meant that even though we were made aware of instances of potential price gouging in the business sector, we lacked the tools to intervene. For instance, early in the pandemic, essential workers from every sector needed increased PPE. Unfortunately, because Pennsylvania's price gouging statute does not cover products used primarily in a

business or professional setting, employers had to pay significantly higher prices because of massive increases in demand.

A second limitation of our statute is that the lookback period on pricing is only seven days prior to the declaration of the state of emergency. While this lookback period is adequate for certain disasters, in the case of COVID-19, prices had already started to rise before a disaster was declared. That meant that when we tried to enforce the statute, oftentimes we were comparing prices that were already elevated in anticipation of the impact the pandemic would have. A longer lookback period would better protect consumers against pre-disaster price hikes in the COVID-19 context.

The COVID-19 Price Gouging Prevention Act

The bill being considered by the Committee, the COVID-19 Price Gouging Prevention Act, would close these gaps and give state and federal regulators additional tools in our toolbox to help protect consumers from predatory pricing.

First, this legislation specifically includes those products and services that were in highest demand as a result of the pandemic: PPE, medical equipment and prescription drugs; disinfectants, sanitizers and other cleaning supplies; food, beverages, chemicals and personal hygiene products; and health care, cleaning and delivery services. Many of these items are purchased on a business-to-business basis which means they fall outside the scope of Pennsylvania's Price Gouging Act. This legislation would effectively broaden protections for Pennsylvanians by expanding the scope of our office's power to stop price gouging in a way that is tailored to the current crisis.

Second, the bill includes a 90-day lookback period, ensuring that when we receive complaints, we are comparing against prices that are less impacted by the pandemic, and thus likely lower for purchasers.

Third, the COVID-19 Price Gouging Prevention Act would give authority to both the Federal Trade Commission and state attorney generals to police excessive pricing in these key markets. This will help us guard against gouging by suppliers that operate in different jurisdictions and sell across many state lines.

Fourth, this legislation would reinstate price gouging protections for Pennsylvania consumers. Pennsylvania's state of emergency is no longer in effect, meaning that our authority to protect against price gouging is also no longer in effect. But we know that the economic ramifications, including both demand surges and supply chain limitations continue. Having this law in place would ensure that our office is able to continue its price gouging enforcement efforts throughout this period of economic uncertainty to help ensure normal market conditions remain in place across Pennsylvania's economy.

Conclusion

Price gouging does real harm to both people and businesses. It takes money out of the pockets of working people when they need it most. It undermines the public's faith in our economy during times of crisis. It contributes to supply chain disruptions. And in certain cases, like the nurses and other front line workers who have served their fellow citizens so ably throughout this crisis, it makes it more difficult to get them the gear they need to keep them safe on the job.

Those who price gouge are engaging in predatory behavior. Consumers need regulators with the right tools at their disposal to protect them during these trying times. Pennsylvania's Price Gouging Act is an important tool, and I'm proud of the work we've done using it to combat unconscionably excessive price hikes in the Commonwealth. The COVID-19 Price Gouging Prevention Act would expand these tools and allow us to do even more to protect Pennsylvanians from the excessive pricing that has occurred all too often as a result of this pandemic.

Ms. SCHAKOWSKY. OK, thank you so much. I really appreciate your testimony.

And now let me welcome Dr. Richey for 5 minutes for his opening statement.

STATEMENT OF GLENN RICHEY, Ph.D.

Dr. RICHEY. To be part of this process. My name is Glenn Richey. As mentioned, I am the Harbert Eminent Scholar and Chair of the Department of Supply Chain Management at Auburn University, where we host the—or hold the number seven undergraduate program in supply chain management in North America, and also have a top ten research program globally in supply chain management logistics.

I am also currently the Editor in Chief, or Co-Editor in Chief, of the Journal of Business Logistics, which is largely considered the top journal in supply chain management and logistics worldwide.

My other hat that I wear is in the Research Director position of the Center for Supply Chain Innovation. And so I can talk to issues with technology, if you like.

I have about a decade of experience in practice in wholesaling and manufacturing, and have done now, for about 20 years, research in international business, supply chain management, and logistics and marketing.

I should also add that I have experienced a lot of different disasters over the course of my life, living in a lot of states around this country, and that includes tornadoes in Ohio and Oklahoma, floods in Tennessee, hurricanes in Alabama, the heat waves in Maine, and storms in Texas, ice storms in Texas. So you probably don't want to live next to me, but I have experienced a lot of the post-crisis behavior which seems to be what we are talking about in this resolution.

The H.R. 675 resolution is interesting. I will say that I got confused about it quickly, because price gouging typically occurs at the retail level during these crises, and it tends to be relatively small players. Corporate strategy level price gouging does not happen to the degree that has been suggested in the document, and that is because it is quite obvious to see, it is obvious to see to government and to business.

I dug a bit deeper, as well, to look into the America COMPETES Act. And in reading that Act I was concerned that Congress may not understand the complexities of supply chains and the things that we have to deal with. So I have added a couple of comments in my written testimony to kind of flesh those things out. And later on, if the committee would like more documentation or things that, like, explain what we do, I would be happy to get into that and follow up with those materials.

There are several specific issues that concern me about the current legislation, the current discussion, and that has to do with a couple of different things, one being the local level concern. And we are talking about corporate level. The other being that I took some time last night to look at the supply chain management publications that are out there, and found almost no discussion of price gouging over the years of 2020 and 2021.

So I am here to address some of the big concerns on the list, and I will list those for you. There are eight.

One is specificity in the document. I don't know what "unconscionable," "excessive," or "increased prices," "unreasonably," or "grossly exceeds" is. There is no kind of barrier on what those things are.

There is no emphasis in facing what contribution margin is, which really defines what companies make. It is the difference between what their costs and what their prices are.

I am worried about the passage of time. February of 2022 is dramatically different than the economic concerns of January of 2020, and so that seems a bit strange to me.

I am concerned that the similar products and substitute products in the legislation will be compared based on their pricing, and not on their cost or their quality or their value.

I am worried that the term "corporate" could be extended directly down to small businesses, local mom-and-pop grocery stores that are struggling mightily in this time period, and would even put them in a difficult—more difficult position than they are now.

I am concerned that the government at the Federal level will not be able to handle monitoring the supply chain because of the level of complexity, and I am happy to talk about that.

I also think that there are a number of things in this legislation that would be unenforceable. When we talk about companies that have raised prices during the pandemic, just about everyone should be able to show additional cost, loss of control, negative impacts on profit, lost sales, and additional risks that have been incurred that will drive prices up naturally in the market economy.

And the other thing is first responders are the ones that typically deal with these problems. It is the people that are within the states and within the communities, and I am not certain how D.C. handles that problem.

Finally, I would like to say that, you know, we have a number of movements in price that happen in the supply chain and across the economy. Companies may raise prices to cover fixed costs or to add a replacement supplier, incorporate rising transportation costs—sustainability program that was stopped during the pandemic, to respond to energy crisis, and maybe just to adjust to existing or new government replacements.

So in summary, there is a lot of issues to worry about here, to be concerned about here. But I thank you for having me, and I am happy to help the committee if I can.

[The prepared statement of Dr. Richey follows:]

Statement of Robert Glenn Richey, Jr., Ph.D.

**Harbert Eminent Scholar and Department Chair in Supply Chain Management
at Auburn University's Raymond J. Harbert College of Business**

Editor-in-Chief: *Journal of Business Logistics**

Before the
Subcommittee on Consumer Protection and Commerce hybrid hearing
United State House of Representatives

on
"Pandemic Profiteers: Legislation to Stop Corporate Price Gouging"
Wednesday, February 2, 2022, at 10:30 a.m. (EST)

* EIC of JBL with Beth Davis-Sramek, Ph.D., Gayle Parks Forehand Professor, Auburn University

INTRODUCTION AND BACKGROUND

Chair Schakowsky, Ranking Member Bilirakis, and members of this Subcommittee, my name is Glenn Richey. I am the Harbert Eminent Scholar in Supply Chain Management at Auburn University and Editor-in-Chief of the *Journal of Business Logistics*.^{*} I am happy to be here today, testifying before this Committee protecting American citizens from potentially harmful predatory pricing practices commonly called price gouging. I have been involved in disaster and humanitarian supply chain research for fifteen years. I've also lived across the USA experiencing hurricanes, tornados, floods, fires, nor'easters, heatwaves, and this enduring pandemic. My personal experience with disasters makes me someone you don't want to own a home near, but it does combine well with my academic and business background in supply chain management, marketing strategy, and international business – giving me deep insights into crisis event business activity.

In reading H.R.675, I quickly became confused by the legislation. Price gouging typically occurs at the local retail level. Corporate (strategy) level price gouging does not occur often, because it is very transparent to business and law enforcement at the macro-level. My reading of H.R. 4521 (America Competes Act of 2022) enhanced my concern that Congress may not understand the levels and complexity of supply chains.

SUPPLY CHAINS FROM THE SHADOWS

Tariff legislation and the pandemic that followed finally revealed the importance of supply chains to the USA. For years, supply chains have been loosely aligned networks of “shadow organizations” relatively unknown to consumers. Moving into the spotlight has been both refreshing and frustrating for the stakeholders in our field of supply chain management and logistics (SCML). For this reason, I feel like there are a few things I should point out about our field before we move forward.

1. There is no “The” supply chain. This may seem like a minor issue, but your local restaurant has multiple supply chains. Your local grocery store may have a hundred. Any product you see on the shelf at a store might have its own supply chain. I am guilty of simplifying the complexity of supply chains by saying “The” supply chain quite often, but I worry that such a simplification could convince people that the government can develop policy that manages supply chains. That is fundamentally impossible, especially for international supply chain networks.
2. Adding additional parties to the supply chain is termed intermediation. The phrase “cutting out the middleman” is the opposite of intermediation (disintermediation). Disintermediation is

expected to cut *time* and *cost* from supply chain processes. Adding the government to supply chains is highly likely to add touches, processes, *time*, and *cost*.

3. Supply chains are typically multi-member, meaning not only could a single product or part have a raw material extractor, manufacturer, wholesaler, distributor, transporter, and retailer, but a web of multiple parties at each level. Without addressing the level of the supply chain, legislation will not appropriately assign responsibility to specific companies.
4. Congress seems to be pushing for supply chain resilience. Resilience means you get knocked down and find a way to stand back up. That is what is happening now to supply chains - given different levels of resilience. Recent legislation seems to motivate robust and responsive supply chains. It is really a question of adaptability (structural adjustment), flexibility (policy adjustment), agility (process adjustment) and improvisation (spur of the moment one-time adjustment) that allows for supply chains to be responsive. It is an equation of these strategic decisions that allows a supply chain to respond to and recover from crisis situations. These decisions and related tradeoffs typically impact pricing strategy.

ISSUES WITH THE CURRENT LEGISLATION

The legislation in H.R.675 presents several issues of concern. The first obvious concern is a lack of specificity. Terms like “unconscionably excessive”, “increasing prices unreasonably”, and “grossly exceeds” do not provide adequate understanding of price gouging expectations for businesses or consumers. Is this a percentage? Is it a gross amount of income? Is it contribution margin? And are these expectations the same or different across industries? February of 2022 is a very different time from January of 2020. We have seen significant labor, energy, and transportation cost increases, parts and inventory scarcity, and a softening value of the dollar. Companies require the ability to increase prices to remain viable in turbulent environments. Congress must be careful to not damage ethical businesses that raise prices to survive in a time that has already stressed operations and performance for small, medium, and large businesses.

The following statement allows similar products (potentially substitute products) to be compared to products targeted by the FTC for price gouging. “Whether such price grossly exceeds the average price at which the same or a similar good or service was sold or offered for sale by such person— during the 90-day period immediately preceding January 31, 2020.” This could potentially create a situation where products with different cost profiles are compared. In a situation where a US made product is more expensive to make than an imported product (i.e., foreign labor cost savings), the US company could

potentially be incorrectly targeted as acting opportunistically and price gouging. Additionally, there are quality and use concerns. A Mercedes and a Kia are similar products. A Kia and a motor scooter are substitute products that have a similar use. The legislation needs to address these issues or the financial basis for comparing prices will be fundamentally flawed.

It is also important to note that most price gouging happens at the local level. Local companies and individuals make financial gains at the expense of the citizen customer due to product/service scarcity - especially in a time of crisis. The term “corporate” in this legislation could apply to all levels of the supply chain including a local mom and pop grocery store. Following disaster events, we remind local grocery stores, gas stations, tree removal services, and similar businesses to not price gouge. Be a corporate citizen! State and local governments monitor activities with law enforcement on the ground. The size of the country and the scope of US industry will make top-down enforcement expensive and responsiveness slow. This may intensify current supply chain disruption and negatively impact the consumer. Furthermore, the supply chain level (i.e., location within a chain) of the price gouging is important as manufacturer level price gouging is uncommon. In fact, I commonly think of market failure (i.e., individual incentives for rational behavior do not lead to rational pricing outcomes) caused by pharmaceutical patents as a best example of top-down price gouging (supported by the government), but certainly powerful companies can impact prices at all levels.

It is impossible to monitor all these supply chains. This is especially true when international partners are involved, and when some members continue to play the spot market for materials resulting in constant supplier switching. Additionally, if supply chains want to grow market options – they may continually add partners. Mapping a supply chain today based on a history of relationships would be outdated before the mapping is completed. Tracking supply chain price changes will be nearly impossible at the Federal level due to this complexity.

The following phrase concerns me that the legislation may be unenforceable in even extreme cases: “Whether such price reasonably reflects additional costs, not within the control of such person, that were paid, incurred, or reasonably anticipated by such person, or reasonably reflects the profitability of forgone sales or additional risks taken by such person, to produce, distribute, obtain, or sell such good or service under the circumstances.” My concern is that coming out of the pandemic – nearly every company in the country will be able to show additional costs, loss of control, negative impacts on profit, lost sales, and/or additional risks incurred across supply chain processes including acquisition, production, distribution, and sales. Currently, companies are allowed under US trade law to offer different prices to

different customers based on these issues as they all have potential impact on costs. I expect even bad actors would be able to justify their price adjustments based on these variables.

Finally, I fully understand and respect the desire to protect consumers from harm in critical industries. But coverage of “food, beverages, water, ice, a chemical, a personal hygiene product ... cleaning supplies, disinfectants, sanitizers; or any healthcare service, cleaning service, or delivery service” covers a massive portion of the US economy. Many products within these categories may not be critical items. Additionally, within each of these categories are low cost, average cost, and premium cost offerings that could be “similar” product offerings at very different prices. How will the government account for those value-based differences?

It is important to remember that prices move with the market and across supply chain transactions. A chemical company that cannot get inputs from a current supplier might need to raise prices:

- to cover fixed costs in the near term,
- to engage with a new replacement supplier,
- to include enhanced distribution costs,
- to fund a re-emerging sustainability program, and/or
- to respond to increasing energy costs,
- to respond to existing/new government requirements.

The same can be said for a meat processor that can’t get animals, a delivery company that is short on truck drivers, or a healthcare service that has lost workers. They must raise prices to cover for expenses when supply and revenues are in flux. When considered beyond a snapshot of the economy based in January of 2020, we expect that price gougers will be replaced by competition and/or innovation if the market is allowed to function over time.

In closing, I want to thank the representatives for allowing me to address the committee. My life’s work is centered on advancing supply chain strategy through research, educating college students and executives in hopes of improving the way we do business domestically and abroad, and providing related service and advice to the community. This opportunity hits on all three of those areas. I enthusiastically look forward to assisting the committee in examining how we can address the marketing, international business, and supply chain issues facing consumers and businesses.

Ms. SCHAKOWSKY. Thank you.

And now I invite Dr. Mabud to give his statement for 5 minutes.

STATEMENT OF RAKEEN MABUD

Dr. MABUD. Chairwoman Schakowsky, Ranking Member Bilirakis, Chairman Pallone, Ranking Member McMorris Rodgers, and members of the subcommittee, thank you for inviting me to testify today. My name is Rakeen Mabud, and I am the chief economist and managing director of policy and research at the Groundwork Collaborative.

Groundwork is an economic policy think tank based in Washington, DC., dedicated to advancing a coherent economic world view that produces broadly shared prosperity and abundance for all.

I am grateful to the subcommittee for holding this hearing about the critical issues of pandemic profiteering and price gouging. My testimony will focus on three key points.

First, pandemic profiteering is widespread, and is taking a massive toll on consumers, workers, and small businesses, all while corporate executives and shareholders are enjoying record profits.

Second, today's profiteering is the direct result of decades of policy choices, resulting in an imbalanced and brittle economy that allows mega-corporations to profit from crises.

Third, wage increases for workers are not a driver of current price spikes.

Big corporations have taken advantage of shifting demand to raise prices on essentials like COVID tests and masks. Just last month, after the CDC updated its guidance for the public to "wear the most protective masks you can," producers of critical PPE immediately cashed in.

In early October a 50-pack of Kimberly-Clark N95 masks cost \$23.19. By mid-January, the same box costs \$57.15. In Kimberly-Clark's earnings call last week, the CEO noted that "While our overall financial results were disappointing, we took decisive action to offset the impact of higher costs with significant pricing actions." On the same call, he said that Kimberly Clark would allocate more cash to shareholders through dividends and buybacks. In other words, even though the company was experiencing a disappointing quarter, Kimberly-Clark CEO was confidently telling shareholders that he would be able to deliver their payouts, all on the backs of consumers paying higher prices for essential items.

Unfortunately, profiteering is not limited to pandemic-specific goods. Take Procter and Gamble, a Fortune 500 company with a chokehold on diaper production and more than a quarter of the global market on laundry products. In the company's January 19th earnings call, their CFO announced price increases in all ten of their product categories in 2021, with more to come in 2022. He stated, "Building on the strength of our brands, we are thoughtfully executing tailored price increases. We see a lower reaction from the consumer in terms of price elasticity than what we would have seen in the past." In other words, the consumer is—the company is taking advantage of consumers' basic needs because demand is relatively unresponsive to price hikes for goods like diapers.

The ability for—to raise prices without seeing consumer demand drop, combined with significant market share, gives companies like Procter and Gamble free rein over price increases and ever-increasing profit margins, especially when they can blame inflation for the rising prices.

Corporations have this kind of power because of Wall Street's ruthless pursuit of efficiency and short-term profits that ushered in a deeply concentrated economy that leaves consumers vulnerable to profiteering and price gouging. The unending quest for maximizing short-term returns has resulted in deregulation of everything from shipping to rail. As corporate executives prioritize a lean, just-in-time supply system that eliminated resiliency and increasingly relied on precarious labor, our economy was left more vulnerable to price gouging and pandemic profiteering.

Corporations have been able to keep costs low and reap profits without any risk of being undercut by competition, all at the expense of stability and reliability for consumers and small businesses. While concentrated market power isn't the only reason for our current plight, it plays a critical role in propping up an imbalanced economy that prioritizes profits over a functioning system.

Finally, I would like to address a common misperception about the role of worker wages on the price hikes. Recent research demonstrates that there has been no correlation between price increases and wage increases just since December 2020. In short, there is absolutely no evidence to suggest wage increases for workers are to blame for the price increases we are seeing today.

There is a clear path forward for Congress.

First, Congress should take up H.R. 675, the COVID-19 Price Gouging Prevention Act. This legislation would provide—would create a clear framework to identify and prohibit profiteering, and provide the Federal Trade Commission, as well as state attorneys general, the power to protect consumers from corporate price gouging.

Second, the committee can continue to ensure that the FTC investigates anti-competitive, deceptive, and unfair business practices to protect consumers and encourage competition.

The best path towards an inclusive, resilient economy is to support policies that foster competitive markets, where consumers, working people, and smaller competitors all have meaningful bargaining power. Smart investments, coupled with regulatory safeguards will reduce costs and prices in the long-run to ensure that no one is left behind during the recovery period and beyond.

Thank you, and I look forward to your questions.

[The prepared statement of Dr. Mabud follows:]



Congressional Testimony

"Pandemic Profiteers: Legislation to Stop Corporate Price Gouging"

**HOUSE COMMITTEE ON ENERGY AND COMMERCE SUBCOMMITTEE ON
CONSUMER PROTECTION AND COMMERCE**

*Washington, DC
February 2, 2022
10:30am ET*

Rakeen Mabud, Ph.D.

*Chief Economist and Managing Director of Policy and Research
Groundwork Collaborative*

I. Introduction

Chairwoman Schakowsky, Ranking Member Bilirakis, thank you for inviting me to testify today. My name is Rakeen Mabud, and I am the Chief Economist and Managing Director of Policy and Research at the Groundwork Collaborative.

Groundwork is an economic policy think tank based in Washington, D.C. dedicated to advancing a coherent, economic worldview that produces broadly shared prosperity and abundance for all. Groundwork has no government contracts and accepts no government funds.

I am grateful to the Subcommittee for holding this hearing about the critical issues of pandemic profiteering and price gouging, which are harming consumers around the country in the midst of a national health crisis.

My testimony today will focus on three key points:

- First, pandemic profiteering is widespread, and is taking a massive toll on consumers, workers, and small businesses around the country, all while corporate executives and shareholders are getting richer.
- Second, the profiteering we are seeing now is the direct result of decades of policy choices that have resulted in an imbalanced and brittle economy that allows mega-corporations to profit from crises.
- Third, wage increases for workers are not a driver of current price spikes. In fact, efforts to tamp down wage increases will only further harm those who are already feeling the pressure of rising prices at the checkout line.

I will conclude by recommending that Congress take on pandemic profiteering and price gouging head-on to protect consumers by enacting H.R. 675. In addition, the Committee should work to reinvigorate competition in key product markets by curtailing mergers that further concentrate industry. Finally, the committee should work across Congress to tax excess profits to encourage productive investment and to make additional long-overdue investments in our physical and human infrastructure that will keep prices down and foster an economy rooted in shared prosperity and abundance.

II. Pandemic profiteering and price gouging are harming consumers and small businesses while corporate executives and shareholders enjoy record profits.

Big corporations have taken advantage of shifting demand to raise prices on essentials like Covid tests, masks, and hand sanitizer, all to generate record profits.

In a poignant example, consumers have found themselves priced out of the very masks recommended by public health agencies. In January of this year, the CDC updated its guidance for the public to "wear the most protective masks you can" in the face of this winter's Covid wave.¹ Producers of critical PPE, immediately cashed in. In early October, a 50-pack of Kimberly-Clark N95 masks cost \$23.19. By mid-January, the same box of masks cost consumers \$57.15.²

Michael Hsu, Kimberly-Clark's CEO, was not shy about sharing why the company had jacked up prices. In an earnings call just last week, he noted that, "While our overall financial results were disappointing, we took decisive action to offset the impact of higher costs with significant pricing actions." On the same call, Hsu suggested that these pricing actions would allow Kimberly Clark to allocate more cash to shareholders through dividends and buybacks.³

In other words, even though the company was experiencing a disappointing quarter, Kimberly-Clark's CEO was confidently telling shareholders that he would be able to deliver their payouts – all on the backs of consumers paying higher prices for essential items.

Even Johnson & Johnson, which reported Q4 2021 profits that dwarfed their quarterly profits in 2020,⁴ raised prices on their consumer health products and 29 of their prescription drugs last year.⁵ This is all after a 10% revenue increase, thanks to the company's Covid vaccine that should provide billions more in sales in 2022.⁶

Just last week, J&J CEO Joaquin Duato told investors that the "strong underlying demand for medical care," and all there is to do to "address suffering and death" caused by different diseases, is part of their company's "optimism" and "opportunity" for its future performance.

Gleefully reporting on how the pain of so many millions of people across the country is making shareholders richer is not just off putting, it also demonstrates the extent to which ending the pandemic is a liability for these companies.

¹ "Types of Masks and Respirators," *Centers for Disease Control and Prevention*, updated January 21, 2022, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/types-of-masks.html>.

² Claire Ballentine and Misyrena Egkolfopoulou, "N95 Mask Prices Hit 'Ridiculous' Highs on Speculation Over CDC Guidance," *Bloomberg*, January 12, 2022, <https://www.bloomberg.com/news/articles/2022-01-12/n95-kn95-or-cloth-masks-prices-surge-as-cdc-weighs-new-recommendations?sref=azsh6QkL>.

³ "Kimberly-Clark Full Year 2021 Results and 2022 Outlook Prepared Remarks," January 26, 2022, <https://investor.kimberly-clark.com/static-files/1297975a-1de1-4095-8d91-d7dc9413a88e>.

⁴ "Johnson & Johnson (JNJ) Q4 2021 Earnings Call Transcript," *Motley Fool*, January 25, 2022, <https://www.fool.com/earnings/call-transcripts/2022/01/25/johnson-johnson-jnj-q4-2021-earnings-call-transcript/?source=iedfoldf0000001>.

⁵ Tori Marsh, "Live Updates: January 2022 Drug Price Increases," *GoodRx Health*, updated January 6, 2022, <https://www.goodrx.com/healthcare-access/drug-cost-and-savings/january-drug-price-hikes-2022>.

⁶ Spencer Kimball, "J&J expects more than \$3 billion in Covid vaccine sales this year in mixed quarterly report," *CNBC*, January 25, 2022, <https://www.cnbc.com/2022/01/25/covid-and-jnj-earnings-q4-2021.html>.

Last year, Covid-19 at-home test kits were being sold for \$14 a box as the result of a deal between the Biden administration and major retailers Walmart, Krogers, and Amazon. When the deal expired in December, prices immediately shot up – in fact, prices nearly doubled.⁷ And these giant companies reaped the rewards: their latest quarterly earnings report shows Walmart's share repurchases surged nearly 400% year-over-year;⁸ In the same quarter, Kroger saw operating profits of \$868 million, while it bought back nearly \$300 million worth of its own stock (bringing its year-to-date total of share repurchasing to about \$1 billion, with another \$1 billion authorized for repurchase in December).⁹

In the midst of a global pandemic, ensuring access to affordable testing and PPE is vital to keeping our economy going. For essential workers putting their health at risk every day, or for parents who have children in school, affordable masks and at-home tests are an important backstop to prevent the spread of the virus. In short, these mega-retailers are using inflation as cover to raise prices and turn record profits. All in the midst of an unprecedented health crisis.

Unfortunately, profiteering is not limited to pandemic-related goods.

From food to diapers, consumers are being hit by price hikes from all sides. And corporate executives are remarkably open about how they are using the cover of inflation and the pandemic-induced supply chain issues to boost their returns while consumers pay more.

Take Procter and Gamble, one of the most dominant companies in the world with a chokehold on diaper production and more than a quarter the global market on laundry products.¹⁰ The company produces a range of household products, from feminine care items to cleaning supplies.

In the company's quarterly earnings call on January 19, P&G CFO Andre Schulten announced price increases in all 10 of their product categories in 2021 with more to come in 2022 and stated, "Building on the strength of our brands, we are thoughtfully executing tailored price increases...We see a lower reaction from the consumer in terms of price elasticity than what we

⁷ Sharon Terlep, "Walmart, Kroger Raise Prices of Covid-19 Test Kits," *Wall Street Journal*, January 5, 2022, <https://www.wsj.com/articles/walmart-kroger-raise-prices-of-covid-19-test-kits-11641320476?mod=flipboard>.

⁸ "Walmart Releases Q3 FY22 Earnings," *Walmart*, November 16, 2021, <https://corporate.walmart.com/newsroom/2021/11/16/walmart-releases-q3-fy22-earnings>.

⁹ "Kroger Reports Third Quarter 2021 Results and Raises Full-Year Guidance," *Kroger*, December 2, 2021, <https://ir.kroger.com/CorporateProfile/press-releases/press-release/2021/Kroger-Reports-Third-Quarter-2021-Results-and-Raises-Full-Year-Guidance/>.

¹⁰ "Can Procter & Gamble's Revenue Cross \$72 Billion By 2021?," *Forbes*, October 2019, <https://www.forbes.com/sites/greatspeculations/2019/10/31/can-procter-gambles-revenue-cross-72-billion-by-2021/?sh=11bb795eae9>.

would have seen in the past.”¹¹ Procter & Gamble reported that price increases helped drive their net sales up six percent higher than the previous year, bringing their total net earnings for the quarter up 9% to \$4.2 billion.¹²

In other words, Schulten knows the company can take advantage of consumers' basic needs because demand is relatively unresponsive to price hikes for goods like diapers or household cleaning supplies. The ability to raise prices without seeing consumer demand drop, combined with significant market share, essentially gives companies like Procter and Gamble free rein over price increases and padding profits – especially when they can blame inflation for the rising prices, rather than their insatiable desire to boost short-term profits.

Linda Montag, senior vice president at Moody's, agrees. She told Marketplace's Justin Ho that companies like P&G sell essential household items people need to clean their homes and take care of their families, which means they can hike prices with little pushback in response.¹³

Unfortunately, these aggressive pricing actions are commonplace and span the entire economy. In sector after sector, company after company, we see consumers paying more and mega-corporations getting ever richer.

Consumers experience these price hikes directly – when buying lunch for instance. During their earnings call just last week, McDonald's reported benefitting from "strategic menu price increases," even as the company reported a 7.5% increase in Q4 sales for 2021 – largely driven by menu price increases.¹⁴

But consumers and small businesses are also affected by price hikes further up the supply chain.

Last week the CFO of Steel Dynamics, the third largest US steel producer, congratulated her team on pushing their prices up to *more* than offset their input costs, despite also reporting the company was “not impacted dramatically” by inflation. The company confirmed where these profits would go: even more stock buybacks.¹⁵

¹¹ “The Procter & Gamble Company (PG) Q2 2022 Earnings Call Transcript,” *Alpha Street*, January 29, 2022, <https://news.alphastreet.com/the-procter-gamble-company-pg-q2-2022-earnings-call-transcript/>.

¹² Coral Murphy Marcos, “Procter & Gamble's sales jump as consumers brush off rising prices,” *New York Times*, January 19, 2022, <https://www.nytimes.com/2022/01/19/business/procter-gamble-2q-2021-earnings.html>.

¹³ Janet Nguyen, “Why are company profits rising despite inflation?,” *Marketplace*, January 2022, <https://www.marketplace.org/2022/01/20/why-are-company-profits-rising-despite-inflation/>.

¹⁴ Heather Haddon, “McDonald's Says Its Costs to Rise Further in 2022,” *Wall Street Journal*, January 27, 2022, <https://www.wsj.com/articles/mcdonalds-sales-lifted-by-higher-prices-sandwich-campaigns-11643284802#:~:text=McDonald%27s%20reported%20quarterly%20per%2Dshare,were%20in%20line%20with%20expectations>.

¹⁵ “Steel Dynamics, Inc. (STLD) CEO Mark Millett on Q4 2021 Results - Earnings Call Transcript,” *Seeking Alpha*, January 25, 2022,

The result is that even if a consumer's local bike shop is not engaging in price gouging, the consumer will pay the price for bad behavior further up the supply chain. And that local bike shop's margins are also getting crushed by unnecessarily higher input costs.

The devastating effect on small businesses is not just hypothetical. The owner of Country Fresh Farm Markets, a local grocery store in Cincinnati, confirmed that he is being forced to sacrifice his own margins entirely because of the prices that big companies like Procter and Gamble are setting.¹⁶

Amid rampant supply chain shortages, the biggest players are first in line for inputs and inventory. Giants like Walmart and Amazon can absorb higher shipping costs and have the buying power to negotiate more favorable contracts with suppliers in the first place. One smaller retail competitor to Walmart and Amazon told *the Washington Post* that his contracts for inventory "were not worth the paper they were written on."¹⁷

The price hikes we are seeing now are rooted in corporate greed, plain and simple. Even the Chair of the Federal Reserve, Jerome Powell, has weighed in on this issue. When asked by Senator Elizabeth Warren if corporations with outsized market power are raising their prices to "fatten their profit margins," he did not mince words: "They're raising prices because they can," he explained.

III. The root cause of current price hikes is decades of deliberate policy choices that have permitted powerful corporations to create an imbalanced and brittle system.

But the question remains: *why* do corporations have so much power to exploit crises for their own gain? The answer starts decades before the pandemic: we spent a half-century allowing business executives and financiers to take control of our supply chains. They hailed the so-called "efficiencies" – ignoring the fact that this knife-edge system was supremely ill-equipped to handle the inevitable supply bottlenecks.

Corporate America's ruthless pursuit of efficiency ushered in a wave of mergers and acquisitions that has contributed to today's high prices in two important ways:

<https://seekingalpha.com/article/4481513-steel-dynamics-inc-stld-ceo-mark-millett-on-q4-2021-results-earnings-call-transcript>.

¹⁶ Courtney Francisco, "Shoppers unhappy with second P&G price hike in three months," *WCPO Cincinnati*, January 21, 2022,

<https://www.wcpo.com/money/local-business-news/shoppers-unhappy-with-second-p-g-price-hike-in-three-months>.

¹⁷ Groundwork Collaborative and American Economic Liberties Project, "Concentrated Corporate Power is Raising Prices, Harming Main Street, and Empowering Pandemic Profiteers," October 2021, <https://groundworkcollaborative.org/wp-content/uploads/2021/10/GWC2140-EconLiberties.pdf>.

- First, it hollowed out and nearly-eliminated diversity in our supply chain, leaving us without enough geographic diversification or productive capacity to withstand significant shifts in demand or COVID-induced closures without supply shortages.
- Second, it has left us vulnerable to price-gouging and pandemic profiteering. Without competition to undercut companies who are charging excess prices or laws and regulation prohibiting this behavior, companies will continue unabated.

Extreme concentration has created a brittle system unable to withstand shocks.

We have an economy characterized by extreme concentration. This concentration has thinned out our supply chains and left the remaining mega-companies perfectly positioned to capitalize on the frenzy around inflation to post record profits while extracting from consumers. The presence of Wall Street backing these corporate behemoths has driven this trend in corporate consolidation as investors profit.

And Wall Street's unending quest for maximizing short-term returns has resulted in deregulation of everything from shipping to our rail network. As corporate executives bowed down at the altar of a lean, just-in-time supply chain system that eliminated resiliency and increasingly relied on precarious labor, our economy was left more vulnerable to price-gouging, collusion, and pandemic profiteering. In other words, corporations have been able to keep costs low and reap profits, without any risk of being undercut by competition, all at the expense of stability and reliability for consumers.

Corporate concentration has hollowed out and nearly eliminated redundancy in our supply chain, leaving us without enough productive capacity to withstand significant increases or shifts in demand, or pandemic-induced disruptions in production without supply shortages. The majority of the goods Americans rely on are delivered by as few as three ocean shipping alliances,¹⁸ packed by four meatpackers¹⁹ and equipped by a single chip maker.²⁰ If something goes wrong with any of these companies, consumers are left without goods on the shelves – driving up prices due to scarcity.

This extreme consolidation has also left us with a bare-bones workforce that relies on vulnerable, precarious workers who are often misclassified and exploited. Take truckers, for instance, a vital puzzle piece in getting goods to grocery store shelves. While big shipping

¹⁸ "Shipping Alliances: 2M, Ocean Alliance & THE Alliance [2021 Overview]," *Container Xchange*, July 2019, <https://www.container-xchange.com/blog/shipping-alliances/>

¹⁹ "Explainer: How four big companies control the U.S. beef industry," *Reuters*, June 2021, <https://www.reuters.com/business/how-four-big-companies-control-us-beef-industry-2021-06-17/>

²⁰ Yang Jie *et al.*, "The World Relies on One Chip Maker in Taiwan, Leaving Everyone Vulnerable," *Wall Street Journal*, June 2021, <https://www.wsj.com/articles/the-world-relies-on-one-chip-maker-in-taiwan-leaving-everyone-vulnerable-1624075400>

companies such as XPO deny trucker shortages, the truth is that as many as 80% of port truckers are misclassified as independent contractors.²¹

As Harold Meyerson writes in a piece about the trucking industry, "As independent contractors, they receive no benefits and aren't covered by minimum-wage statutes. They must pay for their gas, maintenance, rig insurance, and repairs themselves; and, ever since the pandemic clogged the ports with more goods than ever before, they've had to wait in lines for as long as four to six uncompensated hours before they can access a container and get it on the road. If they get in the wrong line at the port, they literally can't get out, surrounded by other trucks and doomed to waste more time. Many ports don't even provide bathrooms for waiting truckers, because they aren't port employees."²²

And the reason that so many truckers are facing rock-bottom working conditions and pay comes down to deregulation. Until the 1980s, truckers, especially those taking on long-haul journeys, "were generally employed by regulated companies whose routes and rates had to pass muster with the Interstate Commerce Commission." Drivers were unionized and could expect a comfortable life with benefits and good pay. The Motor Carrier Act of 1980 precipitated a race to the bottom, deregulating the industry and driving down trucker wages, working conditions, and unionization rates. We're not facing a trucker shortage, we're facing a shortage of good trucking jobs, spurred on by deregulation of the industry. And the upshot is that all of us suffer as a result.²³

Concentration leaves the economy vulnerable to profiteering and price gouging.

The meat packing industry provides a stark example of how mega-corporations have consolidated the market to reap massive profits while consumers and workers are left to foot the bill. According to a recent analysis from the White House National Economic Council, the four biggest meatpackers have seen their net profit margins go up more than 300%²⁴ since the start of the pandemic, while consumers continue to face sky-rocketing prices.

The consolidation in the meat-packing industry can be traced back to the Reagan administration, which ushered in a period of deregulation and institutionalized Robert Bork's approach to antitrust that adopted the consumer welfare standard. Bork argued that as long as consumer prices were unchanged, or even dropping, monopolistic control over an industry was

²¹ Harold Meyerson, "Why Trucking Can't Deliver the Goods," *American Prospect*, February 2022.

²² Ibid.

²³ Ibid.

²⁴ Brian Deese *et al.*, "Recent Data Show Dominant Meat Processing Companies Are Taking Advantage of Market Power to Raise Prices and Grow Profit Margins," *The White House*, December 2021, <https://www.whitehouse.gov/briefing-room/blog/2021/12/10/recent-data-show-dominant-meat-processing-companies-are-taking-advantage-of-market-power-to-raise-prices-and-grow-profit-margins/>

not a problem.²⁵ Across all industries, including the meat-packing industry, the Reagan administration stopped enforcing antitrust provisions and allowed big companies to acquire competitors and consolidate their power.

Today, four companies in the meat-packing industry, Tyson, Cargill, JBS, and National Beef Packing, control 85% of the beef industry.²⁶ These corporations promised that through consolidation, consumers would face lower costs.²⁷ And yet, these companies have ended up with higher profit margins while consumers faced a 30% jump in beef prices from 2020 to October of 2021.²⁸

It is clear that corporate consolidation has helped facilitate the pandemic profiteering we are seeing today. With control and dominance over the market, these massive corporations can raise prices and pass along expenses to consumers who have nowhere else to turn. Furthermore, pandemic profiteering further highlights the wildly imbalanced power dynamics that continue to decimate the economic security of low-income people of color – communities who have faced a broken economy for decades.²⁹

IV. The factors facilitating price hikes and profiteering are decades old. Short-term wage increases are not driving price increases.

In a system characterized by the kind of baked-in inequality and power-imbalances I've just described, many will look to blame wages or recent federal investments for the rise in prices. Not only would focusing on these factors be misguided, but trying to correct for higher wages or derailing critical, long-overdue investments would only double down on the harm that workers and families are feeling at the checkout line.

A recent analysis by the Economic Policy Institute looks at the relationship between price increases and wage increases over time. While historically there has been a link between price inflation and wage growth – leading to a "wage-price spiral," there has been no correlation

²⁵ "Who Do You Want Controlling Your Food?," *The New York Times*, January 2022, <https://www.nytimes.com/2022/01/28/podcasts/the-daily/beef-prices-cattle-ranchers.html?action=click&module=audio-series-bar®ion=header&pgtype=Article>

²⁶ Nicole Goodkind, "Meet the 4 meat empires Biden says are unreasonably jacking up prices for Americans," *Fortune*, January 2022, <https://fortune.com/2022/01/06/meat-prices-biden-inflation-tyson-cargill-jbs/#:~:text=The%20four%20major%20meat%20companies,%2C%20cattle%2C%20and%20chicken%20markets>.

²⁷ "Who Do You Want Controlling Your Food?," *The New York Times*, January 2022, <https://www.nytimes.com/2022/01/28/podcasts/the-daily/beef-prices-cattle-ranchers.html?action=click&module=audio-series-bar®ion=header&pgtype=Article>

²⁸ David Lawder, "Analysis: High U.S. meat prices: packer profiteering or capacity crunch?," *Reuters*, January 2022, <https://www.reuters.com/business/retail-consumer/high-us-meat-prices-packer-profiteering-or-capacity-crunch-2022-01-19/>

²⁹ From businesses to workers, inflation is taking its toll on Black communities," *The Grio*, January 2022, <https://thegrio.com/2022/01/30/inflation-businesses-workers-black-communities/>.

between these two factors since December 2020.³⁰ In other words, there is absolutely no evidence to suggest wage increases for workers are to blame for the price increases we are seeing today.

V. Tackling pandemic profiteering, beefing up antitrust enforcement, and making critical investments in infrastructure revitalization will all help bring prices down and create an economy that works for all.

So what can Congress and this Committee do to stop pandemic profiteering and price gouging, protect consumers, and ensure that markets are competitive? First, they can take up H.R. 675, the "Price Gouging Prevention Act," which would create a clear framework to identify and prohibit profiteering, and provide the Federal Trade Commission, as well as State Attorneys General, the power to protect consumers from corporate price gouging. It will also bring down prices on critical goods, from masks to Covid tests, and presents an important opportunity to center the needs of consumers while putting corporations on notice.

In addition to enacting H.R. 675, Congress and the Federal Trade Commission (FTC) must do their part to address corporate concentration and the power that these mega corporations exert on prices, wages, and working conditions.

- This committee can continue to urge the FTC to use their existing authority to crack down on extractive and exploitative business practices, including price gouging.
- Congress can pass legislation aimed at breaking up and re-regulating the large ocean shipping monopolies that are stoking inflation and gumming up critical points in our supply chain.
- Congress can also tax excess profits, as Congress did after World War I and World War II to encourage productive investment and deter price gouging.

Taken together, these actions will begin the important work of protecting consumers and reorienting our economy towards the people who keep it going: consumers, workers, and small businesses.

VI. Conclusion

Workers, families, and small businesses around the country are feeling the pressure of higher prices for basic goods and services. Everything from groceries to medical care to the supplies small business owners need to sustain their livelihoods is more expensive. The more sway large

³⁰ Josh Bivens, "U.S. workers have already been disempowered in the name of fighting inflation," *Economic Policy Institute*, January 2022, <https://www.epi.org/blog/u-s-workers-have-already-been-disempowered-in-the-name-of-fighting-inflation-policymakers-should-not-make-it-even-worse-by-raising-interest-rates-too-aggressively/>

corporations have over our economy, the more power they have to gouge customers and squeeze Main Street.

Addressing this crisis means focusing on the real reasons that prices are soaring and small businesses are struggling to stay afloat: powerful and wealthy corporate executives have rigged our economy in their favor for decades, creating a brittle system that has allowed them to take advantage of consumers and small businesses over the course of this crisis. These mega-corporations are using Inflation as a cover for rampant profiteering that must be stopped.

Our economy works best when it works for all of us, but deeply entrenched concentrated corporate power has systematically stripped down supply chains and undermined consumers' bargaining power. The path towards an inclusive, resilient economy must include policies that foster competitive markets where consumers, working people, and smaller competitors all have meaningful bargaining power.

The best way to bring down prices and get our supply chains back up and running is to make smart investments now — and make sure dominant corporations don't get to siphon them off or use them to accumulate even more market power. These investments, coupled with pro-competition safeguards, will shift power to working people, consumers, and communities, reduce costs and prices in the long run, and ensure that no one is left behind during the recovery and beyond.

Thank you.

Ms. SCHAKOWSKY. Thank you very much. We have now concluded with the witnesses' opening statements. At this time we will move to member questions.

Each member will have 5 minutes to question our witnesses, and I will start by recognizing myself for 5 minutes.

The effect of COVID-19 pandemic, of course, has hurt and—felt especially hard on those people who are low-income and working people. Corporate price increases are no exception.

Thankfully, we are seeing long-overdue wage growth in our country, and increased worker bargaining power. But these gains are threatened by rising prices.

Some of my colleagues on the other side of the aisle have argued that increased wages could produce a “wave—wage price spiral,” where high prices cause higher wages, while then—which then leads to even higher prices from—for—from more—you know, for—continues the cycle. But others, like the Federal Trade Chair—Federal Reserve Chair Powell, disagrees.

So Dr. Mabud, in your research, have you found that rising wages to—are a—to—are troubling?

Do you believe that they are responsible at all for the price increases that we are seeing today?

Dr. MABUD. Thank you, Chair Schakowsky. It is crystal clear that wages are not the main driver of rising prices right now.

Since the start of the pandemic there has been absolutely no relationship between rising wages and rising prices. While there has been a link historically, that is not the case today. In fact, the sectors of the economy that saw the highest price increases are not correlated with where we've been seeing significant wage growth.

But the other important thing is that too many workers have been facing rock-bottom wages for decades. The secular decline in unionization has really harmed many workers' access to economic mobility and security, and the fact that we are seeing an increase in wages for especially the lowest income in our economy in the midst of a crisis is, frankly, a real testament to the importance of the Federal investments that Congress made throughout the pandemic.

Ms. SCHAKOWSKY. Thank you. So do you think, then, there are any risks to working families from trying to combat rising prices by limiting wage growth?

Dr. MABUD. Absolutely. Tamping down on wage growth and demand is the last thing that working families need in the midst of an unprecedented health and economic crisis.

Increased demand is actually a really strong signal that families are weathering the storm, and it suggests that we are going to come out of this crisis with a stronger foundation for our economy, one that is broad-based and inclusive.

Raising interest rates or other actions that will stifle demand or wage growth would harm exactly the people who are currently bearing the brunt of rising prices: families and small businesses around the country.

Ms. SCHAKOWSKY. So let me ask you, finally, Dr. Mabud, in your research what evidence have you found of corporate price gouging?

Dr. MABUD. So my team and I have combed through hundreds of earnings calls across a broad range of sectors, which has really

given us a window into what CEOs across the economy are thinking. And what we are seeing is that, in sector after sector, in company after company, corporations are jacking up prices on consumers and using concerns about inflation as cover to do so.

We see that in Kimberly-Clark taking advantage of the pandemic to raise prices on masks. We see Procter and Gamble using the fact that they sell essential goods that families depend on, like diapers, to raise prices in this moment of crisis. And we even see companies like McDonald's raising prices on consumers, even as they enjoy massive increases in sales.

So in short, this is a really broad-based problem. It is, unfortunately, not limited to a specific sector of the economy.

Ms. SCHAKOWSKY. Thank you.

Mr. Harman, why is legislation to empower the FTC and states—state attorneys general critical to stop price gouging?

Mr. HARMAN. Thank you. Well, there is no Federal law, so the FTC has no authority to take any action. It is not considered illegal. They can collect information, but they can't take action.

And in—there are states that have no protections, as well. And so there is a lack of overall protection.

And then there is this larger question of where there is price gouging online, and on national marketplaces, the—whether the state laws can even cover those issues.

Ms. SCHAKOWSKY. Thank you. We saw Amazon raise prices at the beginning of the pandemic and, you know, really hurting consumers.

So my 5 minutes have expired. And now I welcome the ranking member for his questions for 5 minutes.

Mr. BILIRAKIS. Thank you very much, I appreciate it, Madam Chair. Thank you, and I want to thank the witnesses, as well.

Our constituents are facing a serious problem with inflation. And as we have seen in recent mishaps by the Biden Administration, we need to be smarter, folks, about our policy choices, so the situation does not worsen.

One of the contributing factors to higher prices and fewer goods is the bottleneck at our ports and distribution centers that are causing a delay in goods from reaching our constituents. That is why I was very glad to see our governor, Governor DeSantis, offer up the ports of Florida to alleviate the bottlenecking in California, where cargo ships wait in the water, they are waiting to unload their cargo.

I just want to reiterate his words, and say Florida is here to help. So I want everyone to know Florida is here to help with this issue.

Sadly, it appears that President Biden is no closer to solving this problem. The Transportation Intermediaries Association recently quoted to Homeland Security Secretary Mayorkas regarding their dire concern about the vaccine mandates, which recently were ruled, as you know, unconstitutional. But they will still take their toll, since DHS is applying the mandate to international truckers—hopefully, not for long—even after U.S. truckers were deemed exempt because of the nature of their work.

So my question is to Dr. Richey.

Dr. Richey, if the Administration is going to limit the truck drivers available for transport, and we already have a truck driver

shortage here in the United States, shouldn't the White House set up some sort of framework, such as autonomous systems—that I understand are available—that will keep these products moving?

In addition to the effect on consumers, this could also greatly impact suppliers, and cause them to go bankrupt. Can you explain how new technologies on the market may help alleviate these issues?

Again, the question is for Dr. Richey.

[Pause.]

Mr. BILIRAKIS. I am not sure if he is able to communicate with us, Madam Chair.

Dr. Richey?

Dr. RICHEY. I am here. Yes, sorry.

Mr. BILIRAKIS. Oh, there he is. OK. Very good.

Dr. RICHEY. Yes, thank you. Thank you very much.

Mr. BILIRAKIS. Thank you.

Dr. RICHEY. It is a very interesting question. We have the RFID lab here at Auburn University that does a number of different research activities around high-level technologies in the supply chain, and business overall.

Certainly, we have some advancements that we are working on in over-the-road trucking. There is still work to do in that arena to get those vehicles to where they do what we want them to do.

And as you know, every intersection in this country is different, and so the vehicles have to be able to handle those contiguous [inaudible] and differences.

There are also other things that we can potentially do. Automated material handling equipment is heavily used in international ports, and it is not used to the same degree in the United States. That would certainly be something that we could work for and get into place in the Ports of Los Angeles [inaudible] that currently are bringing in about 40 percent of all the international inventory and supplies that we [inaudible], and are potentially impacting every citizen in the United States.

Outside of that, there are things that we can do with drones related to nearby delivery. But currently those situations are restricted by both state and Federal law. So freeing up some of the legislation that has made it difficult to implement these things would help.

And then we can also think about information technology. We have been doing tests with RFID to track—we have been doing tests with blockchain technology that allows us to track transactions [inaudible], and motivating those things to move forward may help some with the crisis.

But, certainly for us, the labor crisis is still the issue. We need people to go back to work.

Mr. BILIRAKIS. Thank you, Doctor.

Now I would like to read a quote from Jason Furman, and—the former chair of the Council of Economic Advisers under President Obama. He states, and I quote, “The current inflation has many causes, including a post-pandemic reallocation of labor, a spending shift from services to goods, lingering supply chain disruptions, and rising global oil and gas prices.”

Dr. Richey, according to Furman, there are many factors to the increased costs consumers are currently facing. But one reason he doesn't include, in this particular case, is price gouging. So can you elaborate on what is really going on here?

How do we fix the problem?

And I appreciate your testimony today in answering the first question. Thank you.

Dr. RICHEY. Yes, the—you know, there are a number of issues that all contribute to the increase in prices in this country, and they have a lot to do with what we call transaction costs. It is economic [inaudible]—

Ms. SCHAKOWSKY. You are way—

Dr. RICHEY [continue]. Understanding and theory developed by Oliver Williamson.

Ms. SCHAKOWSKY. You are way over.

Mr. BILIRAKIS. I am over? Yes.

Dr. RICHEY. Sorry. So—

Mr. BILIRAKIS. Yes—

Dr. RICHEY [continue]. There are a number of different inputs, right, that have to come into the process that drive up costs.

So when we see scarcity in the supply chain, organizations, obviously, increase costs to cover fixed costs to make sure they can stay viable in the market. So that is why I earlier recommended that we take a look specifically at contribution margin, and what the profit is [inaudible] item, because it is very difficult to—

Mr. BILIRAKIS. Dr. Richey?

Dr. RICHEY. Yes?

Mr. BILIRAKIS. I apologize.

Dr. RICHEY. Oh, yes.

Mr. BILIRAKIS. I am way over my 5 minutes, and I must yield back.

Dr. RICHEY. OK.

Mr. BILIRAKIS. But I appreciate it very much.

Dr. RICHEY. No worries.

Ms. SCHAKOWSKY. Yes, OK.

Mr. CÁRDENAS. Madam Chair, can somebody check the microphones in the committee room or something? Once in a while there is background noise coming in. It doesn't look like it is coming from the mics on the screen. Sorry, I just—can we get that fixed? It is hard to hear people.

Ms. SCHAKOWSKY. I am sorry, what did he—

[Pause.]

Ms. SCHAKOWSKY. Yes, please stay muted if you are not being—speaking, if you are not speaking. You know, we don't want that inadvertent background noise.

And now let me call on the chairman of the full committee for his 5 minutes of questioning.

Mr. Pallone?

Mr. PALLONE. Yes, I just have to say, before I ask a question, you know, I respect Mr. Bilirakis, but I just don't understand.

I mean, the problem, the biggest problem we have right now, is COVID, right? The reason people are afraid to go back to work is because they are afraid they are going to be in contact with people

that don't have vaccines, or people that don't have masks, and the COVID continues to spread.

I mean, talking about, you know—the answer is to try to get as many people vaccinated as possible, to try to get COVID ended, so that people aren't afraid to go back to work.

But I mean, you know, I see some—I am not saying it is true for you, Gus, but I see so many of my Republican colleagues, you know, not—suggesting that people should even be vaccinated, or not talking about it at all.

I mean, look, I am not going to argue over the mandate. But the bottom line is we have to convince people to get vaccinated. Otherwise, we are never going to get over this COVID problem.

And then, when you talk about autonomous trucks, I mean, I don't want—I mean, part of the problem is—with autonomous vehicles, or particularly trucks, is that—what does that mean? It displaces people. Of course we have to move towards autonomous vehicles, or even autonomous trucks. We have to be very careful that we don't do this in a way that displaces truck drivers and they don't have a job. And, you know, I don't think we are ready to literally say we are going to have some major autonomous trucks right now.

I mean, that is something that has to be looked into, and we can certainly work on it on a bipartisan basis. But, you know, I am very afraid of the fact that, you know, people who are driving trucks are going to be displaced. I don't want that to happen today.

The problems here have to do with COVID, and we have got to get that under control. But the best way to do that is through vaccines.

And I just wanted to say to the ranking member, when we talked about price gouging, remember, this bill is—a legislative hearing is just a start today. You mentioned several things that you would like to see in the legislation. We are certainly—would like to sit down with you over the next few days or next few weeks and figure out what those things are, so we can have a bill on a bipartisan basis.

The same is true for the AVS. We can do these things on a bipartisan basis. But—and I don't want to suggest that we can't.

Now, let me just ask a couple of questions. I wanted to ask Dr. Mabud.

In your testimony you suggest that some companies are using the cover of rising costs in pandemic-related supply chain issues to boost profits, while consumers pay more. Can you just expand on that, and ask—and answer whether there are particular industries where profiteering is most prevalent, if you would?

Dr. MABUD. Sure, thank you, Chair Pallone.

Unfortunately, for consumers this is a really deeply pervasive problem. You know, the earnings call data that we dug into suggests that this kind of profiteering is happening up and down supply chains and across a range of goods. Pandemic profiteering is not limited to a small corner of the economy.

And some of the most flagrant examples of profiteering are big companies like Kroger and Procter and Gamble, that sell products that people can't do without. And that is why H.R. 675 is so crit-

ical, you know, it really takes on what has become rampant pricing gouging of consumers across the country.

Mr. PALLONE. All right. And then I wanted to ask that Dr. Mabud again.

Do you agree that corporate price gouging is self-reinforcing?

In other words, how does it help keep prices high, even when the broader underlying price forces, like supply chain disruptions and the pandemic, appear to be heading in the right direction? The issue is self-reinforcing, if you will.

Dr. MABUD. Yes. I mean, this is essentially the story of financialization, when one company is able to get away with padding their profits with price gouging shareholders from across the board want in. And that is exactly what we've seen. Companies with aggressive pricing strategies—rewarded, and those who are not taking the strategy on have seen massive sell-offs.

In other words, investors come to expect these higher prices, and these prices are translating into higher returns for them.

The other point to make here is that this is, with the exception of volatile commodities, fairly sticky [inaudible] just going to go down, just when supply chain pressures ease. Consumers will be stuck with higher prices over the long haul.

Mr. PALLONE. All right. Let me just ask either you or Dr. Harman, are there particular incentives for these companies that Congress should be considering when working to stop price gouging?

Or are they—do you believe Federal price gouging legislation is necessary to stop pandemic profiteering?

Dr. Mabud?

Dr. MABUD. Sure, I am happy to jump in. Absolutely.

I mean, having a Federal standard that is clear and widely applicable is absolutely critical to ensuring that price gougers are not able to get away with that behavior.

Mr. PALLONE. So you think the legislation is necessary?

Dr. MABUD. Correct.

Mr. PALLONE. All right, thanks a lot.

Thank you, Madam Chair.

Ms. SCHAKOWSKY. The gentleman yields back, and now I recognize the ranking member of the full committee, Mrs. Rodgers, for 5 minutes of questions.

Mrs. RODGERS. Thank you, Madam Chair. Let me start with autonomous vehicles.

We hear a lot about electric vehicles in this hearing, or in this hearing room, in this committee. The majority, the President, the Administration is all in on electric vehicles, believing that that is our future. Not as concerned about displaced workers. I guess our question is why can't we move forward on autonomous vehicles?

I just read that the death rates have gone up pretty dramatically in the last year. On average it is 37,000 on the roads. But I think we have already reached 31, we are getting close to that number already. So I believe that autonomous vehicles have the opportunity to save lives. It is our future. We should move forward.

When it comes to drafting—you know, to addressing solutions, whether it is solutions around rising costs on Americans, or any legislation—

Ms. SCHAKOWSKY. If I could just comment on that, you know, in the infrastructure—

Mrs. RODGERS. OK, OK.

Ms. SCHAKOWSKY. Do you mind?

Mrs. RODGERS. Well—

Ms. SCHAKOWSKY. OK, go ahead. Go ahead.

Mrs. RODGERS. Well—

Ms. SCHAKOWSKY. I can give you—

Mrs. RODGERS. OK, I would love to hear what the update is on autonomous vehicles, because there was a bill that we passed bipartisan four years ago, and—

Ms. SCHAKOWSKY. Unanimously.

Mrs. RODGERS. Unanimously, OK.

And then, on just jobs that are being displaced, right now jobs are being shut down in the energy sector all across this country. Day one it was the Keystone Pipeline. Now we are—you know, we talk about wanting to manufacturing in the United States. We are shutting down mining. An Arizona mine—was it a cobalt mine? Minnesota, another mine being shut down.

I think, when it comes to solutions—and I appreciate the chairman talking about wanting to work together—I would welcome working together, but working together is not having the majority tell us, “Oh, here is a bill, will you support it?” And that is how—you know, this American COMPETES Act, our input has not been offered. It is, “This is what we put together. We have changed”—you know, some of the bipartisan bills that we did work on were changed when they were included in the draft. We are ready to come to the table. We need to be included earlier on in the process, not just told, “This is our solution, will you join us?”

OK, so on to the issue of rising costs in the United States of America. Dr. Richey, I shared a story about the mom that is struggling to find formula for a newborn. Can any—can you—so I would like to start with Dr. Richey, and if anyone on the panel can tell me yes or no, does this legislation in front of us address her struggles?

And I just would like to ask a quick yes-or-no of the panel, starting with Dr. Richey—the panelists.

[Pause.]

Mrs. RODGERS. Dr. Richey, would this legislation help the mom that is trying to find formula?

Dr. RICHEY. Yes, so I would say that it doesn’t. Unfortunately, it does not address the supply chain crises and disruptions. Those disruptions create scarcity in the marketplace, and scarcity is what allows for price gouging and it creates opportunities for increases in prices.

Mrs. RODGERS. OK, OK. Mr. Harman?

Mr. HARMAN. I mean, I don’t know the situation, but I would say it is not a supply chain legislation.

Mrs. RODGERS. Mr.—Doctor, I am sorry, Dr. Mabud?

Dr. MABUD. Yes. Part of what we are seeing here is really a need to address supply chain issues, which allow corporations to engage in profiteering and price gouging. And so this is—this piece of legislation is one piece of the puzzle in making sure that mother is able to provide formula for her child.

Mrs. RODGERS. So—OK. And Mr. Frasch? Ms. Frasch, I am sorry.

Ms. FRASCH. Right. You know, we have seen some supply chain issues in our local stores. And part of the reason why the local stores were charging more money was because [inaudible] in order to get the items. So if the supply chain issue [inaudible] be corrected, then you [inaudible] have the price increases, which potentially could be caused by price gouging, starting from the—

Mrs. RODGERS. OK, right. So I appreciate that. I appreciate you highlighting that, when supplies are not available, prices go up. And right now, in the energy—you know, we see our gas prices going up, nearly doubling the price of gas. And you know, it is—and then the oil and gas companies are accused of gouging consumers.

And you know, this isn't something new. One hundred years ago—I would like to submit for the record a tweet from the former White House official, Bob McNally. He shows a newspaper reporting that—one of the earliest FTC investigations of illegal market manipulation in the gasoline market dating back to 1920. They found no evidence of anti-competitive behavior then. And guess what? I don't believe they are going to find it now. It is an issue of supply and demand.

Putting aside the fact that the President wrote to the FTC, which is supposed to be an independent agency, and not to be influenced by the White House, Dr. Richey, what do you think of—the Administration should be focused on, in terms of securing our energy supply and keeping prices down?

Oh, and I am over. OK. Dr. Richey, I would appreciate you answering that question at a later time.

Madam Chair, I am sorry. I yield back. I appreciate your indulgence.

Ms. SCHAKOWSKY. Thank you very much. I will refrain from trying to respond. We can talk later, and let me now call on Mr. Rush, Bobby Rush, my colleague from Illinois, for 5 minutes for his questions.

Mr. RUSH. I want to thank you, Madam Chair and the Ranking Member for this hearing. And on the onset, Madam Chair, I wanted to let you know that I am writing a letter to you requesting a hearing to address the allegations of racism that have been leveled against the National Football League by Brian Flores.

That said, Madam Chair—Mr. Harman, in your testimony you mentioned how price gouging “specifically targets people at their most vulnerable—and their most vulnerable.” Have you seen any evidence to suggest that racial minorities or low-income people are more likely to be subject to price gouging?

If so, what specific actions can we take today to stem this abuse?

Mr. HARMAN. So the short answer on the front end is no, not specific empirical evidence of racial discrimination in price gouging.

However, price gouging is primarily on items that are essential items, staples, things that people need now. And the people who tend to be faced with price gouging are people in emergencies—with the economic crisis, with economic hardship—and people who are able, with means, to accommodate increased costs in their monthly budget are less affected by those increases.

And people who are on fixed incomes and limited budgets, or are suffering unemployment or economic hardship due to the emergency are going to be affected more directly and, therefore, disproportionately impacted. And so that tends to be people at the lower end of the economic scale, and people in poverty, and that disproportionately, unfortunately, affects people of color.

Mr. RUSH. Thank you.

Ms. Frasch, in your testimony you discuss how Pennsylvania's price gouging statute only applies to "personal, family, or household purposes," and therefore excludes the business sector. I am deeply concerned about the real-world impact of this type of limitation, including reports of price gouging by health care staffing agencies.

For example, Safety Net Hospital in Chicago reports budgeting 130 to—\$1.30 to \$1.50 an hour for agency nurses, where one hospital in my district—paid \$2 million per month. These agencies are pocketing a significant portion of what they charge for profits. Under—unless things change, many hospitals serving underserved communities will have to reduce their services, limiting access severely to needed health care. This is just one example of how price gouging in the business sector has a direct impact on consumers.

With that in mind, do you believe that the Federal price gouging legislation should address the business sector?

Ms. FRASCH. Yes, I share your concern deeply on the issue that you just raised. And yes, we did see issues where the government, where schools, hospitals, you know, fire stations were trying to protect themselves by getting PPE, and even cleaning services to try to mitigate any spread of the virus. And because our statute did not apply to those types of goods or services, we were unable to, you know, make sure that they didn't pay, you know, for things that they shouldn't have paid, or paid extra money for things they shouldn't have. But this—yes, this bill would address that shortfall.

Mr. RUSH. Thank you very much.

Madam Chair, I yield back.

Ms. SCHAKOWSKY. The gentleman yields back. Before I call on the next member, let me just say I am going to have to excuse myself for a few minutes. And in the meantime, the vice chair of the subcommittee, Mr. Cárdenas, who is—will chair the subcommittee virtually, and I will be back as soon as I can.

But now let me call on Mr. Upton for his 5 minutes of questions.

Mr. UPTON. Well, thank you, Madam Chair, and I sort of wish that we had a witness from the Administration here to answer some of our questions, because I have got to say—and I think many of us, certainly on this side of the aisle, would agree that our economy is in a world of hurt, and it has not been overnight. And I would also say that inflation is at the very top of the list.

For more than a year—actually, a couple of years—as I travel around my district, but I am sure as everybody does on both sides of the aisle, there is not an employer out there that isn't looking for more people to work.

I met with my home builders last week in Michigan. They have got a lot of folks in, "We want to build a new house, we want additions." They don't have the workers to help that.

You know, your restaurants, your hotels—your hotels don’t—they are not offering daily cleaning if you are going to stay there for the weekend. They will clean it before the next guest comes if you are there for a couple of days, but they don’t have the staff.

Talk to the auto industry. They are looking for parts. You know, I have got a company in my district, they are looking for 200 auto workers just to make axles for autos.

You look at chips. You know, they had a great announcement. I talked to my colleague, Mr. Latta next to me here, and just did a huge chip thing in Ohio last week with most of the delegation. You have got people on both sides of the aisle, from as far left as Joyce Beatty to as far right as Jim Jordan. I mean, there is nobody on the outside of that flank, I don’t think. The Senate passed a bill last year in June with nearly 70 votes, and we can’t get a chips bill on its own that we can all vote for here.

Talk about the autonomous vehicle legislation. We passed that in this committee under Greg Walden, Chairman Walden. Every member voted for it here. Maybe one, maybe Justin Amash voted against it in the Senate, but he was—you know, it passed with over 400 votes. And four years later we are letting China run forward, as we haven’t come back with a bill. And we had—despite our vote, we couldn’t get it done in the Senate.

Even the IRS is looking for thousands of people to process these returns, and people can start sending in this —last week.

I could remember in my district the little town of Coloma. I think it has got two traffic lights. And across the street from the McDonald’s, for the entire summer, there is a yard sign there: “Truck washers wanted, \$18.00 an hour.” I mean, basically, you need a good pressure hose and maybe a couple of brushes to do something like that.

So inflation is a big issue. And you can’t drive on the highway if you pass a truck or if a truck passes you without a sign on the back of it that says, “We need you.” We know about those truck-driving shortages. We—you know, I think just yesterday I saw FedEx was going to limit their priority deliveries because they don’t have drivers.

And this morning I got an email from a guy that I don’t know, but he said we have just learned that the FMCSA—that is the Federal Motor Service—has a new regulation going into effect on Friday, this Friday, that is going to limit the ways in which employees can earn a commercial driver’s license. The new rules require all drivers to attend a three-week or seven-weekend course. And it is going to increase the cost of earning a CDL from the current levels of \$1,000 a driver to \$15,000 a driver, including training costs and wages. It is going to be prohibitive for small businesses and individuals. It is going to exacerbate a serious shortage of the already severely limited supply of commercial drivers. “Businesses like mine simply can’t afford it without a sharp and immediate price increase that the market won’t bear. And soon to come, deeper labor shortage will limit our capacity to conduct crucial infrastructure work.”

Those are the stories that we need to be addressing here. You can’t—and we know about energy costs. Good grief, the price of the pump is going to be four bucks by spring. We have this winter that

is upon us now. It is hitting the rest of the country. As we see these storms, it is the leading story on the news.

Gas prices, the natural gas prices are up 30, 40 percent from where they were before. So our farmers need that, but so do our workers and families struggling to make ends meet. So you know, the idea that we are going to shut off the pipelines, that we are going to—we are going to limit our efforts to identify and produce North American energy here, instead of coming from overseas, all of those things tip the dominoes the wrong way, as it relates to inflation and trying to get our economy back on track.

So I am sorry I didn't get any questions here. I would like to have all of you comment, but I can see that my time has expired. So with that I will wave the white flag for this hearing, and I just wish we had someone from the Administration that could help answer some of these questions, instead of—

Mr. CÁRDENAS. [Presiding] Thank—

Mr. UPTON. —got today. And with that—

Mr. CÁRDENAS. Thank you.

Mr. UPTON [continue]. Madam Chair, I yield back.

Mr. CÁRDENAS. The gentleman yields back. Next we recognize Representative Castor for 5 minutes.

Ms. CASTOR. Thank you, Mr. Chairman, and thank you to all of the witnesses who have appeared today. This is a very important hearing on how we can address price gouging.

Price gouging is so maddening for everyone, and I hear it from my neighbors back home in the Tampa Bay Area and in the State of Florida. You know, from the beginning of the pandemic in 2020 we saw these unconscionable price spikes for masks and other PPE for medical supplies, toiletries, rapid tests, and drugs, as well. In fact, a local TV station, WFTS, had a recent report of a local business selling at-home COVID tests for \$50. That is double the going rate. And fortunately, the Administration has addressed that with some of their free COVID testing that consumers can order.

It is—you know, even the Federal Reserve chair said —was asked recently why are companies raising prices, and he said, “Because they can.” And this practice is harmful and wrong. So I am all in on giving our consumer protection agencies the tools they need to help stop it.

You know, it is not an—it is not a new phenomenon, however. Coming from the State of Florida, we see this time and time again when a tropical storm or hurricane is approaching, where scam artists pop up and they charge consumers exorbitant prices for basic goods. And the same thing is happening now during this pandemic. But it is some—it seems like even those scam artists just aren't as brazen as some of the stuff that is going on right now.

And Dr. Mabud, you have detailed a lot of this in your testimony, occurrences of executives trying to explain away price increases. Tell me, are these price increases you discuss related to underlying cost increases?

Can legitimate reasons beyond corporate greed explain all of the price hikes we are seeing?

And why do these companies believe they can raise prices without facing any consequences from customers or the law?

Dr. MABUD. Thank you for that question. I will take your sort of last point first.

You know, many—some of the most flagrant profiteering we are seeing is by companies who really sell essentials, right? These are goods that families need every single day: diapers, cleaning supplies. And frankly, they can raise prices because people need these goods, regardless of what the price is and because these companies are—hold a lot of market share. So if Procter and Gamble has, say, 15 different brands of detergent, you know, they can jack up prices on all of those different brands of detergent, and consumers have nowhere to go.

But I think the question around input costs is also really important. You know, input costs are subject to the same brittle supply chain that is weakening our overall economic resiliency. We have a system that—where corporate executives have really prioritized a just-in-time system, where there is no resiliency and redundancy built into our supply chain to help our economy weather shocks.

And so we really need to invest in a system that allows companies to get input costs—inputs to their goods appropriately. We also need to stem pandemic profiteering where it is happening, which is predominantly with large companies today and in other crises that you mentioned.

Ms. CASTOR. Yes, thank you very much.

Ms. Frasch, how has the pandemic caused you all to look at different approaches to stem the price gouging that is going on right now?

Ms. FRASCH. Thank you for that question. So I think, in terms of what we were seeing, you know, typically, this—the statue that we have in Pennsylvania is something that is very local and very geographic to a specific area. Here we saw it across the entire commonwealth, we saw it occurring outside the commonwealth. And so we had to put a whole bunch of people on a task force, where we typically maybe have, you know, one or two agents and a couple of attorneys working on it because it is a specific area with limited, you know, consumers who are being harmed, to the entire state of Pennsylvania having, you know, these issues. And you know, we had to dedicate a lot of time and resources to investigate, learn, and enforce our law.

Ms. CASTOR. Thank you very much.

Well, I want to urge my GOP colleagues to join us in taking actions to lower costs for consumers, whether that is the cost of prescription drugs, healthcare in Build Back Better and the American Rescue Plan, or it is building up our domestic manufacturing base through America COMPETES that is on the floor of the House this week. We are taking action. I really want to invite our GOP colleagues to join us in doing that, as well.

And I yield back my time. Thanks so much.

Mr. CÁRDENAS. Thank you. The gentlewoman yields back.

Also, members, if you have your microphone on, whether you are on Zoom or in committee, can you please double check? We have got some tremendous background noise going on right now. It sounds like somebody is moving some stuff, or coughing, or what have you. So somebody's mike is on.

So with that, we recognize Congressman Latta for 5 minutes.

Mr. LATTA. Well, thank you very much, and thanks for our witnesses for being with us today.

First, I want to thank the ranking member of the subcommittee, and also the ranking member of our full committee, for bringing up AV, autonomous vehicles. Just real briefly again, this is legislation I sponsored back in the 115th Congress. We had over 300 meetings in this committee alone with our staff. We talked to people across the spectrum. We brought out a very good bill. We worked across the aisle, and it got unanimous support as it left this committee. Not only did it get unanimous support when it left this committee, but it was also voice-voted on the floor.

And as we have seen since that time—bringing back this legislation since it went over to the Senate and, unfortunately, we couldn't get it over—get it done there, that foreign entities across the world are out there, being able to get ahead of us in this, and we want to make sure the United States is the one bringing this forth, this technology.

It was also brought up about what is happening on our highways. You know, the latest statistic, that horrible statistic that just came out, 31,720 people were killed through the third quarter of this past year. And this number is not going down, it is going up.

But with that, I think we need to be addressing it and getting it going again as soon as possible.

Dr. Richey, if I could start my questioning with you, according to a December small business Optum survey, almost a quarter of small businesses said that inflation is the greatest problem in operating their business. Small businesses, in particular, are not able to absorb supply chain disruptions, as well as causing them to charge higher prices to their consumers and customers.

And you know, in your testimony, which I found interesting when I was reading it, you brought up a couple of points here. You say, "My concern is that, coming out of the pandemic, nearly every company in the country will be able to show additional costs, loss of control, negative impacts on profit, lost sales, and/or other types of risk incurred through the supply chain, including acquisition, production, distribution, and sales."

You go on to say, "It is important to remember that prices move with the market and across supply chain transactions," and I realize that because I have got over 80,000—according to the national manufacturers—over 80,000 manufacturing jobs in my district, and over the last week-and-a-half, when I was back in Ohio, going in and out of businesses everywhere, I heard the same thing: can't find employees, energy costs going up, transportation costs going up, material costs going up.

The American Truckers Association put out their survey saying that they need 80,000 truck drivers right now because of the shortage.

So with that, Dr. Richey, you know, what—in your research, what is the impact of the current supply chain crisis on small businesses?

Dr. RICHEY. Yes, it is all of those different things, which are quite dramatic and quite difficult on small business, starting with the scarcity that has been created by supply chain issues, and trying to get the product into the country.

But we have also had an issue with labor, certain [inaudible] inputs, getting people to the job, and actually paying them to drive the vehicles. [Inaudible] difficult thing to deal with, as well.

All of these inputs drive inflation up in this country, right? And so price gouging could be a component. But if you think about labor costs, when you think about [inaudible] parts being scarce, prices going up, when you think about business partners having to raise prices to some degree to cover fixed costs that they have invested in already, it is, unfortunately, kind of natural to see these prices increase.

Now, obviously, it has the hardest impact on small business. And so, you know, the legislation will have to be quite careful uncovering, you know, what is really a price gouging situation and what is just a natural need to increase prices to make sure that a small business can remain viable.

Mr. LATTA. Well, and with my last 58 seconds, let me follow up with something else you have in your testimony, which I found rather interesting, and I think the—my colleague, Mr. Upton from Michigan, was bringing some of this up.

You mentioned on page three of your testimony adding the government to supply chains is highly likely to add touches, processes, time, and costs. What is the who, what, where, when, and how on that?

Dr. RICHEY. Yes. So that type of discussion goes back to the von Mises work of the 1950s that shows that government intervention raises prices when they get involved in business relationships. You know, maybe the relationship between bringing your in-laws to come live at your home shows the complexity that is created when that happens, and the same type thing happens in the supply chain.

It also can drive trust out of relationships and cause relationships to dissolve. So that is kind of what I am getting out there, and hopefully I cleared that up a little.

Mr. LATTA. Well, thank you very much.

And Mr. Chairman, my time has expired and I yield back.

Mr. CÁRDENAS. I just want to clarify for the record I don't think the Federal Government has ever forced anybody to have their in-laws [inaudible]. I just want to—hope people didn't misunderstand that comment.

A little levity, people, amongst all the noise. Not the noise of the comment, but this background noise is driving me nuts.

VOICE. Yes, what is that?

Mr. CÁRDENAS. Anyway, next—the gentleman yields back. Next we recognize Congressman McNerney for 5 minutes.

Mr. MCNERNEY. Well, I thank the chair, thank the witnesses. Great hearing this morning.

Mr. Harman, currently 39 states, including my state of California, have authority to enforce against price gouging during emergencies or disasters. You state that most states have a law against price gouging during the declared emergency, but laws vary very widely. How do different—the differences and limitations in state authority hinder our recovery from the pandemic?

Mr. HARMAN. So I think the inability of the FTC to investigate nationwide price gouging, so when you have a manufacturer rais-

ing prices across the country, it is much easier to look at that and figure out where there is cost increase, where there is—versus where there is price gouging. And for a state that is much harder to see.

The state price gouging laws, as has been mentioned, were really focused on localized emergencies and localized price gouging. And what we have seen in the pandemic is widespread national price gouging. And while there are investigations, and while there is enforcement, as the other witnesses have detailed, you really can't get at the core problem that is now, as I mentioned, normalizing. And we are seeing it in so many more sectors and categories than just, you know, the pandemic-related PPE-type things we saw initially.

Mr. MCNERNEY. Well, do you think that online price sellers, online sellers, may take what they have learned from the pandemic price gouging on the consumers in the future, after the pandemic ends?

Mr. HARMAN. Oh, 100 percent. And it is a business practice that works, and we are now seeing the, you know, the other retailers and—traditional retailers and manufacturers mirror it in their pricing.

Mr. MCNERNEY. Well, you know, it could be argued that corporations are just doing their job to maximize profits by price gouging. You could make that argument, right? So what does that tell you about the current corporate structure, about the current corporate model we have in this country?

Mr. HARMAN. We are suffering a crisis of corporate concentration in every sector across the economy.

Dr. Mabud mentioned Procter and Gamble having 15 different detergents, and in every sector you find that there are—even when there are multiple brands and names, it is really just a few—a handful of companies controlling what we buy, and that affects consumers, obviously. It also affects the small businesses who are attempting to compete with them, but also serving as their vendors.

Mr. MCNERNEY. But what is the solution?

Mr. HARMAN. There is a lot of solutions. I think price gouging legislation is one of them.

Mr. MCNERNEY. Right.

Mr. HARMAN. So we can investigate where this particular harm is.

But, you know, we really need to focus on where there is consolidation that shouldn't be happening, and that is also work the FTC needs to do.

Mr. MCNERNEY. Well, how do state laws fail to provide authority to police pandemic price gouging by online platforms?

Mr. HARMAN. They are trying, right? And this is a new type of price gouging, in the sense that we have a national emergency, and that is fairly novel.

Early on in the pandemic, Kentucky brought a case against online sellers, and they ultimately prevailed. But the challenge against—what really challenged the core of state law was can a state price gouging law dictate the prices, nationally? And that is how online sales work, right? Even if you are in the state setting the price, it is a national price. And again, they ultimately pre-

vailed, but that really cast doubt on how state laws, in the absence of a Federal law, can address this problem.

Mr. MCNERNEY. Well, thank you.

Dr. Mabud, each week I hear from small businesses in my district that continue to face an uncertain future, how corporate executives and shareholders enjoy record profits. How would a Federal price gouging law benefit small business owners who are still fighting to overcome losses incurred?

Dr. MABUD. Yes, I mean, it is absolutely critical to take on bad actors in the market to support small businesses. You know, small businesses are often—some of the entities in the market that are most effected price gouging, particularly upstream.

Consider U.S. Steel, the third largest steel producers—excuse me, the third largest steel producer in the U.S., recently reported that they are raising prices that go beyond their input costs, right? Imagine the impact of that on your local bike shop, someone—a small business owner who is, you know, facing higher input costs, who has seen their profit margins decrease, and all—you know, in good conscious, even though they are not behaving badly, having to pass those hikes onto the consumer.

And so really, businesses are getting crushed by corporate price gouging the same way that consumers are.

Mr. MCNERNEY. Thank you. I yield back.

Ms. SCHAKOWSKY. [presiding] The gentleman yields back.

Thank you, Mr. Cárdenas, for chairing.

And now, Mr. Guthrie, you are—it is yours for 5 minutes.

Mr. GUTHRIE. Thank you, Madam Chair, and thank you for holding this hearing.

And you know, Kentucky did have price gouging laws, and successful. And you have seen a lot of it where people are hoarding products and selling on the internet.

And, you know, looking at the corporate side, I know Kroger has been brought up, and the profits from Kroger. But if you tell people they can't go out to eat, the grocery stores are going to have more volume and make more money. So the question is, are they price gouging or are they just—I know their profits have gone up—or is it price gouging?

And one good example I remember, I have a lot of—there are fewer now—but dairies in my district, and dairies were pouring out milk while you couldn't get milk at the grocery store. And of course, as they are bringing it to my attention, I wanted to get to the bottom of it, and started asking around and finding out around, and the problem was most—a good portion of milk, I forget the percentages, but I talked to people in the milk industry—went to institutions, so they went to schools. We shut schools down. They went to universities, we shut universities down. And there weren't enough gallon jugs. That was the problem, the kind of things that you sell at a grocery store.

So on the face of it, you would see on the news people dumping milk because it didn't—you can't store it long enough. And it was a supply chain issue, it wasn't somebody purposely trying to gouge or move forward—and so those are the things that we have to be careful of.

When people go out and buy all the hand sanitizer they can buy, and try to corner the market on the hand sanitizer, and then sell it to you online, that is one thing. But I would just like to see the example—since Kroger has been brought up with them price gouging. I have three in my town, and I will certainly do whatever I can to point out where they are price gouging, where that is, not just that they are—and the opposite side, I can show you a lot of restaurant owners who are—were not profitable in the last couple of years. And so it moves forward.

I want to talk to Dr. Richey.

And one thing, you know—and I said I heard that Kroger decreased wages, I think that was—I think Kroger is—in my area it is represented by a bargaining unit, and I will tell you they have signs up everywhere for work. So I am—I would like to see the data on that, if that is possible.

But Dr. Richey, you were talking about just trying to find workers. I know the Kroger that I go to in our area, Meijer's— Peter Meijer is in Congress—we have a Meijer, I go there as well, and Walmarts—I will just hit them all—and they are all looking for workers.

And so the question is, Dr. Richey, there has been several—I think some panelists here that talk about expanding and increasing unemployment benefits. How has that affected the supply chain, the increased unemployment benefits, and what would happen if—you think—if we expanded the unemployment benefits with the bonus—Federal bonuses of which—I think I voted for it in the original because of the—I did, because of—the whole economy was shut down. And—but now that we are looking for workers, how would that affect it?

Dr. RICHEY. Yes. Well, first let me point out that we are definitely looking for workers, and it is a big problem. And, you know, across the country people are saying, "Where did the workers go?" And so we are hopeful to see those folks come back.

We had an interesting situation going on around the holidays this year, right, where we had a number of vehicles that were trapped off the coast. We had poor flow of product across the United States. We had truck drivers that weren't able to come to work and move that product, and we had already had a problem with that level of capacity [inaudible].

At the same time we had a lot of money dumped into the system, right, to try to help people that were unable to make money. And we also have opportunities to encourage them to buy or purchase early, or panic-buy based on their concerns or on worrying that they weren't going to get their holiday gifts. That combination of economic stimulus, while the supply chain was stopped, that created a dramatic disruption, and we are still shaking that out today.

So we need to really ask questions about whether or not doing something like that would exacerbate the situation and make it even worse.

Mr. GUTHRIE. Do you think that it would? I mean [inaudible] ask the question, do you think that it would?

Dr. RICHEY. I would say until there is, you know, a break in some of these different points where, you know, ports or the trucks, I think that adding—increasing demand would make it worse.

Mr. GUTHRIE. OK. Just on a—related, but just a little separate, I know you talked to AEI on the blockchain technology, so it is—I know our committee is interested in that.

So blockchain technology has many applications, including increasing privacy and data security. Would you highlight your conversations with AEI on how blockchains can assist supply chain management?

And I have about 30 seconds. Can you elaborate on how this technology can be beneficial for supply chain management?

Dr. RICHEY. Yes—

Mr. GUTHRIE. In 30 seconds.

Dr. RICHEY [continue]. It lets you, you know, diversify and move all of your information to a digital platform that makes it available to all of the members of the supply chain.

It also allows those transactions to be governed by the members of the supply chain. So if something nefarious happens, like price gouging, you would be able to see it across the blockchain.

So we are still in the early stages of implementing that. Some companies are testing it out, but it is a great opportunity. We will see if we can get it moving as rapidly as we need it.

Mr. GUTHRIE. Thank you. My time has expired, and I yield back. I appreciate your answer.

Ms. SCHAKOWSKY. OK, Mr. Cárdenas, the next 5 minutes are yours.

Mr. CÁRDENAS. Thank you very much, Madam Chairwoman, thank you so much for having this hearing, and also to the Ranking Member Bilirakis. I want to thank both of you. This is a very important hearing, and very informative for all of us.

Time and time again, throughout this pandemic we have seen the most vulnerable communities among us suffer the most, while the wealthy find a way to make it through without the devastating fallout that others receive. COVID-19 has highlighted glaring inequalities in our society. And when the wealthy exploit that for profit, we in Congress cannot turn a blind eye.

I want to thank you, Madam Chairwoman, again for introducing this legislation. No legislation is perfect, but we shouldn't wait for the perfect to make sure that we protect the American people from exploitation.

Dr. Mabud, in your testimony you described the willingness of some corporations to take advantage of the steady demand for basic household items like diapers and household cleaning supplies, even in the face of price hikes. These items are not luxuries, they are necessities. As an economist, can you speak to the impact that targeting basic products like these is having on Americans in low-income communities?

Dr. MABUD. Yes, thank you for that really important question. Low-income communities, especially communities of color, are disproportionately affected by price gouging. Higher prices, particularly on essentials, just simply eat up a bigger proportion of already strapped household budgets. We know that low-income communities are more likely to be communities of color and, therefore, are feeling the effects of price gouging more acutely.

The other thing to remember is that these workers, by definition, are low income, right? They are having a hard time accessing good

jobs in the labor market. They might be facing discrimination, or occupational segregation, and other barriers to labor market entry. So low-income folks, particularly low-income folks of color, are really hit from all sides. They have rising prices at the checkout line and they have a higher, harder time accessing good, well-paid jobs.

Mr. CÁRDENAS. Well, thank you. So right now, during a pandemic, we have some folks who are working two and three jobs, maybe a single parent, and needing to buy diapers. You mentioned that being one of the products that seem to have gone up in price, while it appears that some of the companies that actually provide those essential products are actually making larger profit margins. How do we reconcile that?

Is it really a supply chain issue, or is it, as you mentioned, “tailored price increases,” which is what one of the C-suite executives was explaining—was it during some kind of meeting of their shareholders or something?

Dr. MABUD. I mean, simply put, this is corporate greed, right? These companies have enormous market power. They have the dominance to set prices on goods across the market because they are so big. And the companies like, you know, the ones that sell diapers, you know, are selling products that people need, and they know that, right?

The point about price elasticity essentially refers to a consumer’s responsiveness to prices. And when you have essential goods, consumers are not responsive to price increases because they are essential. And so what we are seeing now is simply these big corporations taking advantage of the most vulnerable at a point where they are at their most vulnerable, and padding their profits.

I mean, that is the other point here. Like, you know, these CEOs, these executives, these shareholders are just raking it in, all while consumers are paying more for essential goods at the checkout line.

Mr. CÁRDENAS. Thank you. In your testimony you also touch on the pain being felt by small business owners who must compete with giant companies like Walmart and Amazon for inventory. You reference a quote by one small business owner who said that his contracts for inventory were “not worth the paper they were written on.” Can you describe how these large firms are using their size to crowd out small businesses when it comes to getting their products to their shelves?

Dr. MABUD. Yes. Big businesses are able to negotiate prices better than small businesses, right? That is simply because of their market power.

So one example from the latest issue of the American Prospect is Walmart in town is able to negotiate \$1 boxes of Duncan Hines cake mix, which is the most popular cake mix in the area. The local grocery store, on the other hand, can only manage to squeeze out a seasonal discount that brings the price of these cake mixes down to 1.32. So in that case, when that small business can’t, you know, push around using its power, the prices that it can sell its products for in the store, you know, how can you expect that small business to compete?

So it is really important to—you know, in order to have a thriving small business community we have to tackle the power that these mega-corporations have over prices.

Mr. CÁRDENAS. Thank—Dr. Mabud, I only have 20 seconds.

So I have a question. Does—has history borne out that, when larger companies squeeze out smaller competitors, that, once the smaller competitors are off the playing field, that the larger companies tend to increase their prices, regardless of what the market can bear?

Dr. MABUD. Absolutely, and my colleague on the panel can speak to Amazon, which does this frequently.

Mr. CÁRDENAS. Thank you very much.

My time has expired. I yield back, Madam Chair, thank you so much.

Ms. SCHAKOWSKY. Thank you.

And now, Mr. Bucshon, you are recognized for 5 minutes.

Mr. BUCSHON. Thanks, Madam Chair. I don't support price gouging. However, I am finding it hard not to point out the hypocrisy in front of us today. The Hoosiers I represent aren't paying more at the pump or more in their everyday groceries because of price gouging. They are paying more because of inflation.

This legislation won't restock the bare grocery store shelves or car lots scattered throughout my district and the country. These problems originate from larger market factors, and COVID, of course. And the Biden Administration's failure to address these problems is only adding fuel to the fire.

Indiana is currently bracing for a heavy snowstorm today, with temperatures dropping rapidly, and most Hoosiers are going to be left wondering how they will pay for their heating bill. But instead of looking at solutions that will help lower energy costs, Democrats in Washington are attempting to add even more taxation in their massive Build Back Better bill that would increase each household's heating bill by \$242 a year, not to mention the fact the Biden Administration continues to block the creation of pipelines that would help lower energy prices, and terminating oil and gas leases on public lands in the U.S., ironically, while asking OPEC to send more oil and then improperly tapping our Strategic Oil Reserve because the American people are noticing the price is going up. You really can't make this stuff up.

My point being I wish we could get serious and look at the real problems, so that we could come up with real solutions. Running to the FTC to investigate gas prices every time they go up isn't a serious exercise, and it only ignores the real problem. Advancing policies that promote energy independence and production at home is a real solution. Supporting policies that incentivize people to get back to work is a real solution.

I hope this committee doesn't get too distracted by today's hearing that it forgets to pay attention to the real issue of why our constituents are paying more for everyday items, and that is inflation. It is a good try by the majority to try to change the narrative. Unfortunately, the American people, I think, know the facts.

Dr. Richey, a question for you. I didn't—I do not believe that the legislation before us today adequately factors in the effects that overly burdensome government regulations and policies have on price increases. This is something the FTC and state AGs must adequately consider when determining if price gouging has oc-

curred. Because again, what we are seeing today is in response to inflation, not price gouging.

Dr. Richey, do you believe it is important to consider key factors such as labor shortages, government interference, and other market factors when determining if price gouging is occurring or not?

Dr. RICHEY. Yes, that is absolutely true, and it is absolutely something that should be considered. Certainly, I would like to look at research on labor costs that show that they are not having an impact on price. I can tell you the anecdotal evidence, in talking to truck driving companies, manufacturers, [inaudible], and distribution businesses, their prices are being increased because of the dollar figures that they are placing on labor.

Now, in some places you may see that reduced, because they can't get the people to come to work and pay [inaudible]. And in that instance, the product is not going to flow through the system.

There are a number of different things that impact inflation, and you touched on some of those things [inaudible] money into the economy [inaudible], which doesn't. Restriction on distribution causes scarcity, which doesn't. The labor costs cause that issue, as well. And even though it is nice to receive a higher pay rate, we should expect to see prices increase as those pay scales go up.

Mr. BUCSHON. Thank you. Were the factors I laid out and we—and you just talked about referenced anywhere in this legislation?

Dr. RICHEY. I don't believe they are, sir. No, sir.

Mr. BUCSHON. Do you think that leaving language vague for what qualifies as grossly [inaudible] would further enable the FTC to be used as a political tool that targets the Administration's chosen enemy of the day?

Dr. RICHEY. Well——

Mr. BUCSHON [continue]. America?

Dr. RICHEY. Yes, yes. That is tough to answer, but I would say that there is a lot going on. There are a lot of dynamics here, and I am not certain this is the key issue.

I try to get executives and students to focus on core issues, root causes of these things, and I feel like this is not a root cause. It is an effect of the other things that we see out there in the marketplace.

Mr. BUCSHON. Thank you very much. I recently was at the Port of LA and saw some of the problems there. In fairness, there is a labor shortage there for a variety of reasons. And COVID is still a factor, no doubt. But it is a difficult problem, but we certainly need to be offering real solutions, and not having hearings trying to cast blame at our free market economy.

Thank you, I yield back.

Ms. SCHAKOWSKY. The gentleman yields back, and I invite Congresswoman Dingell for 5 minutes.

Mrs. DINGELL. Thank you, Madam Chair, for holding this important hearing, all the witnesses for testifying today.

I do think that this is an important hearing because we all remember how, early in the pandemic, toilet paper, hand sanitizer, PPE, and other essentials saw skyrocketing prices amid consumers' immediate panic in preventing the spread of COVID-19. In 2020 the Michigan Attorney General's Office received 4,522 price

gouging complaints, and this was the first time price gouging made the top 10 of the most frequent consumer complaints in the state.

As we continue to grapple with the impacts of the pandemic, consumers and their families are still struggling. I agree that inflation is real, with my colleague, but they are struggling with rising prices for common household goods amidst a robust economic recovery. And you—corporations are posting record profits.

It is the responsibility of Congress to ensure that corporations are not taking advantage of consumers during this emergency to increase their profit margins through price gouging. So I want to talk about the downstream supply chain impacts.

One of my concerns is the impact of price gouging within the supply chain, and its impact on downstream prices, much of what falls ultimately on the consumer. Dr. Mabud, in your testimony you highlight how price gouging further up in the supply chain can force small businesses to pass on price increases to the consumer due to higher production or other input costs. Can you go into the additional details on how this practice disproportionately hurts smaller businesses?

Dr. MABUD. Yes, absolutely. I mean, given the extreme consolidation in product markets, bigger companies simply have power to set prices in a way that smaller businesses don't. And that power is, in many ways, magnified when those big businesses are sitting higher up on the supply chain and passing those prices, those input costs, down to smaller businesses.

You know, the owner of Country Fresh Farm Markets, a local grocery store in Cincinnati, you know, confirmed that he was being able to—forced to sacrifice his own margins entirely because of the prices that big businesses like Procter and Gamble are setting.

And as mentioned before, you know, when we see the input costs of things—goods like, you know—as input costs of things like steel go up, that has deep implications for small businesses across the country that rely on those inputs to for their own goods and their own well-being.

Mrs. DINGELL. So Dr. Mabud, again, would addressing supply chain bottlenecks such as critical funding for semiconductors, and increasing domestic manufacturing capacity help to prevent price increases further up in the supply chain from translating into higher costs for small businesses and consumers?

Dr. MABUD. The short answer is yes. We are living in a world where we have turned our supply chains over to big corporations. You know, they have really maximized short-term returns. They—these companies have essentially carved away at our supply chains until what we are left with right now is this brittle knife-edge system. And so small businesses are completely at the mercy of a system that can be thrown out of whack by something as simple as a storm halfway across the world, or a COVID outbreak in a factory.

So investing in our supply chain, ensuring that we have redundancy and domestic capacity for certain—for key pieces of our supply chain will help ease bottlenecks and create a more predictable and reliable system for small businesses, which sets them up for success.

Mrs. DINGELL. So I am down to about a minute, so I am going to ask Dr. Mabud, Mr. Harman, Mr. Frasch, would—and ask you to be short, yes or no—would addressing supply chain vulnerabilities through the America COMPETES Act alleviate some of these issues, yes or no?

Start with Dr. Mabud.

Dr. MABUD. Yes, it would alleviate some of these pressures.

Mrs. DINGELL. Mr. Harman?

Mr. HARMAN. It likely would, yes.

Mrs. DINGELL. Ms. Frasch?

Ms. FRASCH. Yes, it likely would.

Mrs. DINGELL. So I want to thank you again for all of the witnesses being here today, and to Chairwoman Schakowsky for holding this important hearing. Congress has to take immediate action to address gaps in our supply chain that are having a crippling effect on our economy and leave consumers vulnerable to predatory [inaudible]. In the face of the COVID-19 pandemic and future emergencies, this have life consequences.

And with that, Madam Chair, I yield back the balance of my 19 seconds. Thank you.

Ms. SCHAKOWSKY. Thank you very much.

And now, Mr. Dunn, it is your opportunity to ask questions for 5 minutes.

Mr. DUNN. Thank you very much, Madam Chair. I appreciate the opportunity to discuss the important issue of rising prices across America today.

You know, my constituents constantly express how out of control inflation across all goods and all services is affecting their daily lives. It is clear that all of our members hear the same thing from their districts, as well. As Members of Congress we have a responsibility to address and reverse the economic trend which is caused, frankly, by this Administration's failed policies.

We all know price gouging can be a serious issue, especially during states of emergency. However, when we study the issues facing today's economy, we must consider all of the factors that are contributing to the price increases in our nation over the last 12 to 18 months. We have the worst inflation in nearly 40 years. It is destroying the purchasing power of everyday Americans. We can't allow uninformed policy to make this problem even worse.

So, Dr. Richey, you described our supply chain as struggling to meet demand. Yet the Biden Administration continues to push more Federal spending, which leads to increased demand.

And I want to focus on the other contributing factor here: the pressure on the supply chains and labor shortages. President Biden's ineffective vaccine mandates have exacerbated the labor shortages, putting upward pressure on inflation. Our Federal Government is hurting our nation's suppliers, just as they try to get back on track.

So Dr. Richey, can you briefly describe how a workforce which has been incentivized to not work, and even highly-skilled workers are being driven out of work, how does that contribute to rising prices?

Dr. RICHEY. Yes, certainly that is a major issue. Getting labor back to work has been a problem, of course, over the entire pandemic.

I can tell you in our scenario, even with undergraduate students, our students are back from their internship in the summertime before their senior year, and 75 percent of them already have a job. Those options are out there, and they are everywhere. Without people in those positions, you can't move product, you can't get enough supply to meet demand in those different marketplaces, and that is going to have a significant impact on price, because those companies have to cover costs.

Mr. DUNN. You are right, so I agree with you. I asked the question because so many other companies are, in fact, mandating their employees to get vaccinated in order to return to work. Or worse, they are terminating them if they aren't vaccinated. So labor shortages do affect supply chains and cause prices to rise.

Let me just, on a side note, say I have a fondness for Auburn in my heart there, Dr. Richey. I have a son who is a physicist, graduated from there, and so War Eagle, right?

Dr. RICHEY. Yes.

Mr. DUNN. Another question for you, though. We know short supply, combined with the increased demand, contributes to inflation. But we are missing an opportunity this week to do something about that. China has this 2025 plan to grow industry, but we are pushing policies that restrict production in energy, transportation, and labor sectors, while simultaneously pushing enormous Federal spending and easy monetary policies.

Do you believe reducing the Federal spending and providing appropriate regulatory relief would help alleviate the ongoing strain on supply chains?

Dr. RICHEY. Yes, I definitely think that regulatory relief will help. That is one of the things that makes it difficult for product to move and [inaudible].

Certainly what we see going on in the Port of LA and Port of Los Angeles is an example of those restrictions that are making things difficult to move. And if we can find some way to reduce those regulations, which to some degree those ports have, it will help things move in that direction.

We also see regulations around truck driving. Certainly in California it is quite difficult to get into that market if you are an independent contractor. Independent contractors choose to be their own bosses. They don't want to be part of major corporations. They are choosing not to go into California for that reason, because of the laws that exist there. That takes about 20 percent of the truck drivers out of the picture to move product out of California.

And so—

Mr. DUNN. So to your point, I think we all know that the Producer Price Index—I want to focus on that just for the last few seconds—the Producer Price Index, which is the wholesale version, if you will, of the CPI, Consumer Price Index, it is up almost ten percent year on year. You know, this spells a structural inflation for our country that I think has nothing to do with price gouging, and nor is it a transitory problem with inflation.

I appreciate the time to get—look into this today, Madam Chair, and thank you, members of the hearing, witnesses, to—for joining us.

Ms. SCHAKOWSKY. The gentleman yields back, and now I recognize Congressman Kelly for 5 minutes.

Ms. KELLY. Thank you, Chair Schakowsky, for holding this hearing, and to the witnesses for appearing today.

It is [inaudible] at the beginning of the pandemic, when toilet paper and hand sanitizer were precious commodities. Shelves were cleared out, and purchases were limited. Unfortunately, disasters often magnify social inequality, and disproportionately fall on minority communities, as the Department of Consumer and Worker Protections in New York City found last year in their report on price gouging.

Dr. Mabud, what are some underlying economic conditions that make some communities more vulnerable to price gouging?

Dr. MABUD. I mean, simply put, price gouging affects lower-income communities disproportionately, because it eats up a larger proportion of their budgets. You know, families, whether you are rich or poor, you need a diaper. But that diaper is a bigger part of your budget if, you know, you have a child. And so that is one of the key factors that is really harming communities, low-income communities, right now.

Ms. KELLY. And thank you for that. Price gouging after emergencies is often a local problem where local enforcement agencies are best suited to address it. That is why it is critical that Federal price gouging legislation serves as a baseline of protection for people, while allowing states to keep their existing authority to go after profiteers.

Ms. FRASCH, as someone who has brought price gouging cases during the COVID-19 pandemic and witnessed consumer harm up close, do you agree that additional enforcement tools from Federal gouging legislation would help your office protect the people of your state?

Ms. FRASCH. Yes. Currently, our price gouging act doesn't even have protection over Pennsylvania, and so any Federal legislation to give us authority to enforce would certainly bring more protection to Pennsylvania, and then also having the FTC as a partner would be helpful, as well.

Ms. KELLY. And how would this ensure that existing state authorities are complemented, but not weakened in any way?

Ms. FRASCH. I believe the way the bill is proposed allows for both the state enforcement tool to continue, while having this additional tool for those states who don't have enforcement authority, or at least to have a floor that would be across the board for all the states and the FTC.

Ms. KELLY. Also, your testimony highlighted some limitations of Pennsylvania's existing price gouging law. Can you cite some specific examples of cases or types of cases your office could not bring or could not consider bringing because of these limitations?

Ms. FRASCH. Correct. So like I mentioned earlier, you know, any time that we receive tips from a fire company, or from a hospital, or from a school, or a government agency who is trying to get PPE for their staff, or to supply for, you know, for their well-being, we

were unable to apply our state price gouging law to that particular transaction.

Ms. KELLY. And then having the authority of this law, that would have changed your assessment of these matters?

Ms. FRASCH. That is correct.

Ms. KELLY. And lastly, your testimony talks about how important it is to prevent price gouging before it occurs. In your experience, do you believe an authority—in the authority to seek civil penalties in price gouging cases is an effective deterrent?

Ms. FRASCH. Yes. In most cases we did not seek significant penalties. We believe that, you know, when we sent out cease and desist letters and the threat of a penalty to continue price gouging, it deterred that continued conduct. So having a penalty at our—in our toolbox certainly is helpful, but it doesn't mean that it necessarily will apply. And I do believe that it did deter quite a lot of price gouging in Pennsylvania.

Ms. KELLY. Thank you so much.

And Madam Chair, I yield back.

Ms. SCHAKOWSKY. The gentlewoman yields back, and now Mrs. Lesko.

I recognize you for 5 minutes.

Mrs. LESKO. Thank you, Madam Chairman. This mask that I was just wearing was made in China. This is the mask that was provided to us from the U.S. House of Representatives. And then the test kits, the COVID home test kits that taxpayers paid for, and are given—shipped out to Americans, is also made in China.

And so, Dr. Richey, since you are an expert on supply chain issues, I was hoping you could tell me if you have any ideas of how America can be less reliant on China.

Dr. RICHEY. Oh, sure, absolutely, I can. And thanks for that question.

You know, over the years we have seen a transition to a more efficient system. It is based on low cost. And that system definitely moved a healthy amount of manufacturing to China. I can tell you, over the last year or so, we have been spending a significant amount of time with [inaudible] and other groups, trying to put together educational systems that will help managers understand risk of sourcing from a single location.

So what I mean by that is that the tools that we have developed teach them to think about an international source of supply that can keep costs down, think about a near sourcing option, perhaps Latin America and that region, that could make the product cheaper and be competitive, and then also think about a domestic source of supply, setting up a three-set system, so that you have suppliers competing against each other and a fallback on much different players.

The reality is companies like Toyota, that instigated the just-in-time management system have now stepped away from those things, and the supply chain is naturally moving as a unit to more responsive approaches. So that is what we should expect to see over the next few years, and it is already in play across a number of industries.

Mrs. LESKO. Thank you.

And Dr. Richey, I have another question for you. Can you give me any examples—you have mentioned some already—of how the Biden Administration's policies are actually, you know, making it worse, the supply chain issues, inflation, price increases. Can you name any?

I am thinking one is maybe their energy policy, and how they are so adversary to oil and gas, and how that is increasing prices here in America.

Dr. RICHEY. Yes, certainly the energy policy has increased prices significantly.

Remember, manufacturing has to pay for energy. Then the truck drivers have to pay for increased energy prices. The customer has to pay for increased energy prices. And if you think about companies like in automotive, you think about the tires, that product includes petroleum in the product itself, and then it includes petroleum in the manufacturing, and the energy related to the manufacturing, and in the transportation. So as many—as the price of oil and gas go up, it is a multilevel hit on these businesses. That is one of the key components [inaudible] inflation in the marketplace today, and it was one of the first steps that the Biden Administration made.

I have asked and been a proponent of saying we should get all in on energy. We should be doing a lot of exploring with the fossil fuels, be trying to use that fossil fuel exploration to pay for these additional types of energy that [inaudible] to move away from fossil fuels.

Mrs. LESKO. Thank you very much. And I am just going to conclude with, I guess, a statement.

I know that one of our witnesses is Dr. Mabud, and I read an article in the New York Times that quoted her, and it said something about why the—and that is exactly why this fearmongering around inflation is proving so effective, as if people are using—fearmongering inflation. And maybe I interpreted it wrong, but it doesn't seem to me that our constituents are fearmongering inflation. It is real. This is real. Prices are going up.

I don't know about my colleagues, but here in Washington, D.C., when I went to the Whole Foods in the Navy Yard, the shelves were empty, some of the shelves were empty. There was no milk. And when I went back home to Arizona, certain items, they are very mysterious, like pasta. Pasta was out of stock. I mean, this is some real problems. Prices are going up, and it is not fearmongering, it is real.

And with that I yield back.

Ms. SCHAKOWSKY. And next is Mr. Soto, who has been here for the whole time of the subcommittee, which I appreciate.

And it is 5 minutes for you. Thank you.

Mr. SOTO. Thank you, Madam Chair.

Earlier this term, we passed the American Rescue Plan to put shots in arms, money in pockets, and it stopped another great recession. In Florida alone, unemployment is under four percent now, and foreclosures just came in lower this year. Our community was decimated by foreclosures because Congress went too small with the—during the great recession with the American Reinvestment

Act. We went big, and we stopped devastation from happening in our community.

And then we passed the bipartisan infrastructure framework, which, according to Republican Senator Rob Portman, is counter-inflationary. And we are already seeing money coming down to our communities. I want to thank the members on this committee who voted for it. A few of you did. A lot of you didn't. And you know, I guess you will have to explain that to your constituents.

And now I agree we have a bipartisan agreement that we need to boost domestic manufacturing, microchips, technology like telecommunications, and others. We are going have this great bill called the COMPETES Act up. The AFL-CIO and the U.S. Chamber of Commerce support it. I hope you do, too. We had nearly 20 Republicans supporting it in the Senate. So maybe we will get everybody coming together to increase our domestic production, or maybe we won't. I guess we will find out this week.

Today we are here to discuss COVID-caused inflation due to price gouging. Inflation is happening across the world. Factories, transportation, raw materials—workers are getting sick. They go home, and everything becomes slower, less efficient, because of this pandemic. Some price increases are related to this. Still, others—other companies didn't have major increases, and they used the pandemic as an opportunity to raise prices. You don't have to take my word for it. CEOs across the nation have literally said this to shareholders.

And so we have to look at grocery stores, oil companies, PPE manufacturers, which—I appreciate our colleagues bringing that up—as three examples of price gouging that we know is happening.

So the COVID-19 Price Gouging Prevention Act is before us today. We are acting on inflation in this committee when it is unconscionably excessive, price gouging, and using public health emergencies to increase prices unreasonably.

You know, President Biden had mentioned—think about this. What are Republicans for? What are they for? Name me one thing they are for.

We are hearing a lot of complaining about inflation in this committee. Join us to help solve it. Today we have legislation. Today we have an opportunity to reduce inflation, and we are asking you to join us and actually do something about it, rather than hem and haw and nitpick. And so that is why we are here today.

And it would be great to hear from you, Mr. Harman. You know, we have heard the FTC is cracking down on oil and gas companies for illegally increasing their prices. President Biden took the important step of announcing the release of 50 million barrels of oil, increasing production. Would the COVID-19 Price Gouging Prevention Act help us reduce price gouging at the pump, Mr. Harman?

Mr. HARMAN. Yes. The investigation that they are conducting gives—or the President asked them to conduct—gives us the information about whether or not there is price gouging. But they don't have any authority to do anything, and this legislation is necessary to give them that authority.

Mr. SOTO. And what about at the grocery stores?

Mr. HARMAN. It is the same. It covers the FTC, gives them that power, and it also gives states that power, where they either have a limited price gouging statute or have no price gouging statute.

Mr. SOTO. So they are gathering the information, but the COVID-19 Price Gouging Prevention Act is the sword to actually do something about it, to actually cut inflation. Isn't that correct?

Mr. HARMAN. That is correct.

Mr. SOTO. Thank you so much, and I yield back.

Ms. SCHAKOWSKY. Thank you. The gentleman yields back.

And Mr. Pence, thank you for waiting, and it is now your turn.

Mr. PENCE. Thank you—

Ms. SCHAKOWSKY. Five minutes.

Mr. PENCE [continue]. Chair Schakowsky and Ranking Member Bilirakis, for holding this hearing today, and the witnesses for being here.

Wow. We are attacking inflation by fixing prices of all these American companies.

You know, I spent over 30 years in the retail and wholesale distribution industry, and my state of Indiana has had price gouging legislature. And as Dr. Richey stated in his opening remarks, price gouging happens at the local level. And all my life, it has been my observation that it always happened at the retail, in small communities, done by small players.

You know, H.R. 675 defies the economics of supply and demand. I have spent a lot of time in education, taking economics courses. There are some PhDs here that seem to be disregarding what I learned at school.

I believe this bill is an attempt by the Democrats to deflect their responsibility for aggravating the inflation that we have been dealing with during the pandemic. And what we are talking about today with 675 is an attempt to start fixing prices at retail and wholesale across this country from Washington, D.C., because we know better here in Washington, D.C.

Since all of my economic classes discuss the principles of price elasticity, I am disappointed how this bill is seen as a solution. Price elasticity is ultimately a result of supply and demand, and a number of you witnesses know that very well. Having said that, can each of you answer a question for me?

If the prices have been going up by the control of the companies, and not inflation, why have these companies that have been accused of price gouging not raised prices before the pandemic?

Why didn't they raise them before, if they can just do it right now?

Dr. Mabud, you first, quickly.

Dr. MABUD. Yes, companies have power to hike prices in a crisis precisely because they have so much control over the system, and they are able to exploit the situation where there is a crisis, and people are vulnerable to take advantage of that and [inaudible] consumers.

Mr. PENCE. So the grocery store or the gas station across the street or across town can't kind of lower it if their competitor is just being opportunistic.

Mr. Harman, what do you think?

Mr. HARMAN. Well, we saw it with online sellers, Amazon in particular. Prices were—went up with price gouging because they could, because people were buying online and not going to the local store.

Mr. PENCE. So there was more demand, and they could increase the price.

Of course, as you well know, on Amazon there was a lot of wait time because they actually didn't have the supply.

Mr. HARMAN. Yes, that was part of it, but they—

Mr. PENCE. Part of it? No, we are talking about—

Mr. HARMAN. No, no, no—

Mr. PENCE [continue]. That it is price gouging—

Mr. HARMAN. Right.

Mr. PENCE [continue]. That has increased—you are suggesting here today with H.R. 675 that it is price gouging alone that has caused inflation.

Mr. HARMAN. Amazon itself banned 6,000 users in March of 2020 for price gouging. I mean, they themselves identified it as the problem on their platform.

Mr. PENCE. OK, so actually, companies regulate and manage that because it is not very competitive when that happens, right?

Mr. HARMAN. Well—

Mr. PENCE. Supply and demand will regulate itself, so they have more supply.

Dr. Richey, how would you answer this?

Dr. RICHEY. I think the way I would answer it is a little bit differently.

I think, when we look at the different companies that have been discussed today in this hearing, and we talk about them as price gougers, whether they are mega-corporations or multinationals, we are neglecting to look at the fact that these are the businesses that stayed open during the pandemic, unlike small businesses, the competitors—

Mr. PENCE. Good point.

Dr. RICHEY [continue]. That were required to shut down, and that they were also able to leverage e-commerce better than the small business and mid-sized businesses in the country. So you would expect that the [inaudible] profitability would have improved, and that is what we are seeing, not price gouging.

Mr. PENCE. Right. And let me just close with this. So, back home, my manufacturers and retailers are saying they no longer have the ability—since the PPI, which was mentioned earlier, is outstripping the CPI, they no longer have the ability to pass on prices, and their profits are going down rapidly in the last two months. We saw retail went down in December, and we saw in Europe today that inflation is roaring. It is not price gouging, folks. It is just inflation.

Thank you, Madam Chair, I yield back.

Ms. SCHAKOWSKY. The gentleman yields back. And last, but certainly not least, for 5 minutes I call on Representative Fletcher for 5 minutes of questions.

Mrs. FLETCHER. Thank you so much, Chairwoman Schakowsky, and thanks to you and Ranking Member Bilirakis for organizing today's hearing. Thank you to all of our witnesses for offering your expertise, and spending your time with us today. This hearing has

been very illuminating, as well as your written testimony, and I want to follow up on a couple of things.

I think it is important to note at the end of this hearing that this Congress and the last Congress have taken a number of steps to mitigate the damages of the COVID-19 pandemic, including the health and economic impacts. And today's focus on the impacts on consumers is another really important effort in addressing the challenges that people are facing across the country. And we have come a long way since March of 2020, but we also know we are not finished with COVID-19 yet. And the economic impacts are still being felt, from shipping delays, to increased costs of food, and fuel, and health care products, many of the things we have been discussing throughout this hearing.

Some of the COVID essentials, like tests and masks, are prohibitively expensive for people nationwide, and we are making great strides, right, with the recent efforts to make them available, sending test kits out, delivering masks across the country. These efforts from the Administration are hugely important. But one of the things that I have been focused on since the pandemic began is access to and the cost of testing, and the importance of testing.

And Dr. Mabud, in your written testimony you mentioned that the BinaxNOW COVID-19 at-home rapid tests at some providers nearly doubled in price after a deal between those retailers and the Biden Administration expired in December of last year.

We have also seen providers charging a wide range of prices for COVID tests, and I know this is something my constituents are focused on, concerned about.

We also know that the highly contagious Omicron variant has spread across the U.S., and that the demand for testing is getting, you know, higher and higher, as we see these record case numbers.

So in this Congress and in the last Congress I introduced the Stop COVID-19 Surprise Medical Bills Act to better understand the widely varying costs of COVID-19 tests by different providers by requiring HHS to survey and report on the prices of testing services in order to help identify outliers. And Dr. Mabud, I was hoping you could explain why free or low-price COVID tests are necessary for a strong economic recovery, and how understanding the challenges that we see and the disparity in pricing and testing may relate to that. If you could share your thoughts with that—thoughts on that with us, that would be very helpful.

Dr. MABUD. Sure. I mean, in the midst of a global, unprecedented pandemic, ensuring access to affordable or free testing and PPE is absolutely vital to keep our economy going, because our economy is fundamentally at its best when we are at our best, right? And that means addressing health concerns, and that means addressing, you know, all the barriers that workers and families are facing in contributing to our economy, whether that is child care or testing.

And so, for essential workers putting their health at risk every day, or for parents who have children in school and are worried about transmission, masks and at-home tests are an important backstop to prevent the spread of the virus. And in doing so they are an important backstop to a healthy economy that really supports all of us.

Mrs. FLETCHER. Thanks for that, and I have got about a minute-and-a-half left, so I want to direct my next question to you, and then open it up to anyone else. And if I run out of time, I would love to get any additional responses in the record.

But I think it is a good way to close this hearing in saying, you know, how would empowering Federal and state agencies to enforce against pandemic price gouging ensure that those crucial COVID-related supplies, like masks and tests that you were just talking about that are so necessary to our economic recovery, how would empowering them ensure that those supplies are available to all Americans?

Dr. MABUD. A clear, Federal standard that ensures that consumers across the country, no matter where they live, no matter what state they live in, are able to be protected from price gouging, especially for essentials in a global pandemic, is a really clear and straightforward way of ensuring that we do have a healthy economy, and that people are able to access the goods that they need.

Mrs. FLETCHER. Thank you, Doctor. Thank you, Dr. Mabud.

Would anyone else like to weigh in on that question in the 30 seconds I have left?

Dr. RICHEY. Yes, I—

Mr. HARMAN. I would be happy to jump in.

Mrs. FLETCHER. Dr. Richey?

Mr. HARMAN. I think the—one of the things you see—you saw it very publicly, but would also be happening in a less public way now, is when there is an increase in demand there is a hoarding by suppliers so that they can price gouge. And I think we saw this with testing a few months ago, where suddenly people were trying to sell tests for hundreds or even \$1,000 because they knew there was increased demand. And this would stop that.

Mrs. FLETCHER. Well, thank you so much, Mr. Harman, for that. And anyone else who wants to comment, I will be glad to see your responses in the record. But I have exceeded my time.

And so, Madam Chairman, thank you so much, and I yield back.

Ms. SCHAKOWSKY. Thank you. And we have a waive-on on the committee.

And I want to welcome Mr. Carter, and recognize you now for 5 minutes.

Mr. CARTER. Thank you, Madam Chair. I appreciate the opportunity to be with you. Madam Chair, before I begin, I understand that earlier this week Mr. Soto, Representative Soto, had mentioned support for the America COMPETES Act earlier, as I say, on the floor this week. And I would like entered into the record—and I ask for unanimous consent to be entered into the record—a letter to Congress from the U.S. Chamber of Commerce opposing the America COMPETES Act.

Ms. SCHAKOWSKY. Oh, yes, without objection.

[The information appears at the conclusion of the hearing.]

Mr. CARTER. OK, thank you.

Ms. SCHAKOWSKY. Without objection.

Mr. CARTER. Madam Chair, let me begin by saying that I applaud what you are doing here today, calling for a hearing to protect Americans from steep price increases. This is important, and I commend you for doing that.

But I fear that what is happening here is that we are doing everything to avoid the reality and the simplest answer as to why we are seeing all these price increases, and that is Democratic policies. Policies have consequences. And that is what we need to understand. President Biden, Speaker Pelosi, and Leader Schumer forced through some of the largest spending packages our country has ever seen, with policies that discourage work, that ended energy projects, and bottlenecked our ports and distribution centers.

Yet we act as we—as if we are surprised that this has resulted in record inflation, the highest in nearly 40 years. Instead, we find the Administration picking winners and losers by targeting industries that it disagrees with, and attempting to weaponize the FTC, and doing so in a way that is not within the jurisdiction of this subcommittee.

In light of these actions, I would like to ask unanimous consent to submit into record testimony from the North American Meat Institute.

Ms. SCHAKOWSKY. Without objection.

[The information appears at the conclusion of the hearing.]

Mr. CARTER. Thank you. This letter that I am—that was just allowed—and thank you again, Madam Chair—it describes how the meat industry has been affected by COVID-19. It addresses claims of consolidation within the industry, and it explains the market forces behind increased prices.

Regardless, I think it would be eye-opening for my colleagues to hear a quote from Larry Summers, the former Secretary of the Treasury under President Obama, who said, “If they are using inflation to get a mechanism to go after genuine monopoly problems, as I said, a crisis is a terrible thing to waste, and that is all sort of fine. If they think this is a strategy for actually reducing inflation, they are badly wrong.”

You know, if you add in the new regulations, or the proposed regulations that will add more costs to the industry, you see why we are in the situation we are in right now.

Look, I am not an economist. However, I did run a small business for 32 years, and I know that when the cost of inputs goes up, so does the cost of goods and services. It is just simple, basic economy.

I wanted to ask Dr. Richey, supply chain issues at ports—I have the honor and privilege of representing two major seaports, the Port of Brunswick and the Port of Savannah, and we have seen the supply chain issues firsthand. But I am pleased to share with you that everyone on the committee—and everyone on the committee that, unlike many ports across the country, the Port of Savannah no longer has a backlog. At one time we had 31 ships offshore, but now we have zero. Now we are accommodating all of those ships. And this comes at a time as—when this port moved a record 5.6 million containers in 2021, more than a million than the year before, making it the third busiest port in the nation.

And I believe that—and I know that they are doing it with (sic) a backlog. And that is the only major port, the only major port in the country is in Savannah that is doing this without a backlog. And I want to credit the common sense and innovative approaches that the State of Georgia and the Ports Authority have taken to en-

sure that this happened. They have been very innovative. In fact, an example, last year the Georgia Ports Authority was allowed to reallocate \$8 million of their funding to convert inland facilities into pop-up container ports. And this is important.

My question for you, Dr. Richey, what are some similar actions or innovations that states and industries can take to overcome the supply chain challenges we see in other areas like distribution centers?

Dr. RICHEY. Yes, that is a great question, thank you very much for the question.

I will say that the Port of Savannah has been a shining star in [inaudible] over the pandemic, and so there is a lot that we can learn at other ports from what has happened there.

When you think about distribution [inaudible], which are an area that is also kind of [inaudible], there are lots of opportunities to use different types of automation to move things along and assist with that movement. And I would encourage Members of Congress to take [inaudible] this at the MODEX Conference, which takes place once a year in Atlanta and once a year in Chicago, to look at the options that are out there.

The other thing I want to say quickly is that, you know, we don't see these innovations moving jobs for people. What we see is assistance and [inaudible] them to work jobs that are easier to deal with. We don't expect to see automotive or truck AVs end up being something that drives people out of business in terms of truck driving. By the year 2035 we will still need another half million people to drive trucks in the U.S.

Mr. CARTER. Great. And again, thank you, Madam Chair, for allowing me to waive on, and thank you for your indulgence, and I will yield back.

Ms. SCHAKOWSKY. The gentleman yields back. And now I want to thank our—here we go—I really want to thank all of our witnesses that are here today for their participation and for being here, remotely or in person.

[The information appears at the conclusion of the hearing.]

I remind members that, pursuant to the committee rules, that they have ten business days to submit additional questions for the record to be answered by the witnesses who have appeared. We certainly encourage each witness to respond promptly to any questions that are sent your way. We would appreciate it very much.

Before we are adjourning, I request unanimous consent to enter into—the following into the record. We find these documents: a letter from Consumer Reports; a letter from the American Hospital Association; a letter from the National Association of Convenience Stores; a tweet from Bob McNally; a fact sheet from the Food Industry Association; an article from The Washington Post; a letter from the Transportation—what is that?

VOICE. Intermediaries.

Ms. SCHAKOWSKY. Intermediate?

VOICE. Intermediaries.

Ms. SCHAKOWSKY. Intermediary (sic) Association; a letter from the National Retail Federation; a letter to the FTC.

And with that, with no objections—any objections?

So ordered.

At this time, the subcommittee, with my gratitude again to the witnesses, is adjourned.

[Whereupon, at 1:20 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]



February 1, 2022

Rep. Jan Schakowsky, Chair
 Rep. Gus M. Bilirakis, Ranking Member
 Consumer Protection and Commerce Subcommittee
 House Energy and Commerce Committee
 US House of Representatives
 Washington, DC 20515

February 2, 2022 Hearing on "Pandemic Profiteers: Legislation To Stop Corporate Price Gouging"

Dear Chair Schakowsky and Ranking Member Bilirakis,

Consumer Reports is pleased the Subcommittee is holding this hearing to examine problems related to price gouging for consumer products and medical supplies during the COVID-19 pandemic.

Price gouging refers to when suppliers, distributors and retailers and others take advantage of spikes in demand by charging exorbitant prices for necessities. In a health emergency, consumers need to have reliable and affordable access to personal protective equipment, medical supplies, groceries, and other products and services that are essential for meeting household needs. They should not be compelled to pay excessive prices because of opportunistic seller behavior. Exploiting an emergency situation by implementing large price increases to boost profits has all the hallmarks of an unfair trade practice, which should be discouraged and regulated by states and the federal government, so that all consumers can have fair access – at fair prices – to products to meet essential needs.

According to the National Conference of State Legislatures, 39 states, Guam, Puerto Rico, the U.S. Virgin Islands and the District of Columbia have statutes or regulations that prohibit price gouging during a time of disaster or emergency. In most states, price gouging is prohibited as a violation of unfair or deceptive trade practices law. Most of these laws provide for civil penalties, as enforced by the state attorney general, while some state laws also enforce criminal penalties for price gouging violations.¹

Federal law does not currently specifically prohibit price gouging. Section 5 of the Federal Trade Commission Act (FTCA) prohibits "unfair methods of competition" and "unfair or deceptive acts or practices," but this statute has not been applied to price gouging. However, the Defense Production Act (DPA) authorizes the president to order that "designated" materials that are necessary to promote the national defense cannot be accumulated beyond reasonable business or personal needs. Using that authority, in March 2020, President Trump issued Executive Order 13910, which delegated the president's authority to designate particular items as protected under the Defense Production Act to the Secretary of Health and Human Services (HHS).² On March 25, 2020, HHS Secretary Azar designated

¹ National Conference of State Legislatures, Price Gouging State Statutes, 5/17/21, available at: <https://www.ncsl.org/research/financial-services-and-commerce/price-gouging-state-statutes.aspx>

² President Donald J. Trump, Executive Office of the President, *Preventing Hoarding of Health and Medical Resources to Respond to the Spread of COVID-19*, 3/23/20, Federal Register, available at:

numerous items to be protected against accumulation under the DPA, including respirator masks, respirators, ventilators, certain types of sanitizing devices and products,, and personal protective equipment (gowns, masks, gloves, etc.).³

The US Department of Justice has taken the lead on price gouging at the federal level by monitoring for and investigating allegations of unlawful price gouging and by bringing criminal prosecutions against the alleged price gougers. The FTC remains less likely to take action regarding price gouging without new legislation, because the issue is not clearly enough within its legal mandate.⁴

Early in the COVID-19 pandemic, many businesses hiked prices for personal protective equipment and household necessities, and state regulators received literally thousands of complaints. For example, a New Jersey company admitted to marking up the price of 100,000 KN95 respirator masks from \$1.09 to \$5.25 apiece for sales through a grocery chain.⁵ Two Long Island, NY brothers admitted hoarding millions of surgical masks and reselling them to the state of Oklahoma at a 900% markup, and were later ordered to pay \$1 million in restitution to the state.⁶ A Troy, NY man purchased 100,000 KN95 face masks and 25,000 surgical face masks at \$1.50 each and offered them for sale at his pizza restaurant for up to 10 times his acquisition cost; he was later sentenced to 3 years of probation.⁷ Pennsylvania Attorney General Josh Shapiro cited a Philadelphia company in August 2020 for marking up the price of bottles of hand sanitizer to \$75, to make “exorbitant profits” from consumers.⁸

In March 2020, more than 30 state attorneys general sent letters to Facebook, Amazon, Craigslist, eBay and Walmart urging them to crack down on price gouging in online sales. Amazon stated that it had removed more than half a million listings for price gouging and suspended 3,900 sellers.⁹

<https://www.federalregister.gov/documents/2020/03/26/2020-06478/preventing-hoarding-of-health-and-medical-resources-to-respond-to-the-spread-of-covid-19>

³ Secretary of Health and Human Services Alex Azar, *Notice of Designation of Scarce Materials or Threatened Materials Subject to COVID-19 Hoarding Prevention Measures Under Executive Order 13910 and Section 102 of the Defense Production Act of 1950*, 3/25/20, available at:

<https://www.hhs.gov/sites/default/files/hhs-dfa-notice-of-scarce-materials-for-hoarding-prevention.pdf>

⁴ Hayes, Natalie. *Price Gouging Enforcement During the Covid-19 Pandemic*, Anti-Trust Health Care Chronicle, Vol. 34, Issue 1, December 2020, available at: <https://www.weil.com/-/media/files/pdfs/2020/aba-antitrust-health-care-chronicle-december-2020-vol.pdf>

⁵ Goldman, Jeff. *NJ Company Admits Price-Gouging On 100K Masks at Start of COVID-19 Pandemic*, Newark Star-Ledger 12/9/21, available at: <https://www.nj.com/coronavirus/2021/12/nj-company-admits-price-gouging-on-100k-masks-at-start-of-covid-pandemic.html>

⁶ US Department of Justice, US Attorney’s Office, Eastern District of New York. *Long Island Businessmen Plead Guilty to Hoarding and Price-Gouging of Scarce Personal Protective Equipment*, 9/8/21, available at: <https://www.justice.gov/usao-edny/pr/long-island-businessmen-plead-guilty-hoarding-and-price-gouging-scarce-personal>

⁷ Cook, Steven, *Feds: Troy Man Sentenced for Hoarding Masks at Pandemic’s Start, Then Gouged on Resale*, The Daily Gazette, 9/3/21, available at: <https://dailygazette.com/2021/09/02/feds-troy-man-sentenced-for-hoarding-masks-at-pandemics-start-then-gouged-on-resale/>

⁸ Hetrick, Christian, *Philly Company Charged \$75 for Hand Sanitizer Bottles in Illegal Price Gouging*, AG Shapiro Says, Philadelphia Inquirer, 8/20/20, available at: <https://www.inquirer.com/business/price-gouging-hand-sanitizer-amazon-lawsuit-pandemic-20200820.html>

⁹ Levenson, Michael. *Price Gouging Complaints Surge Amid Coronavirus Pandemic*, The New York Times, 3/27/20, available at: <https://www.nytimes.com/2020/03/27/us/coronavirus-price-gouging-hand-sanitizer-masks-wipes.html>

By July 2020, over 49,000 complaints were received by state regulators regarding incidents of price gouging in 22 states, according to Accountable.US.¹⁰ The problem has continued throughout the United States over the last year and a half, with state attorneys general and local consumer protection agencies receiving many additional thousands of complaints about incidents of price spikes for essential products. In November 2021, New York City reported that it had received more than 12,000 price-gouging complaints and had issued more than 15,000 violations for price gouging since the inception of the pandemic. The City also reported that incidents of price gouging were more prevalent in low-income and Black and Hispanic neighborhoods, where residents were hardest hit by COVID-19 infections, a pattern that is likely playing out in other parts of the country.¹¹ The high cost of PPE and COVID-19 test kits is especially burdensome for low- and moderate-income consumers, essential workers, parents of school-age children who may need to test more frequently to attend work or school, and people on fixed incomes.¹²

As 2022 began, despite the efforts of state and federal authorities, consumers and medical providers have continued to struggle to obtain adequate supplies of masks and COVID test kits at affordable prices.¹³ In mid-January, Bloomberg News reported that prices for KN95 masks had spiked as demand increased during the Omicron surge, with one pack of 40 masks being sold for \$79.99 from third-party sellers on Amazon, up from just \$16.99 in late November.¹⁴ Washington Attorney General Bob Ferguson reported that he has received 1,300 complaints from consumers who saw at-home COVID-19 test kits being sold online for nearly triple the retail prices charged in local pharmacies.¹⁵

During an unprecedented and enduring crisis like COVID-19, it is crucial to protect consumers from being subjected to unfair and excessive prices for medical supplies and essential consumer goods, and to ensure that federal and state law enforcement officials have the full arsenal of effective enforcement tools they need to stop violations. For these reasons, we urge the committee to carefully consider the extremely negative impacts on consumers that have been caused by exploitative pricing practices by

¹⁰ Accountable.US, *Report: Lack of Price Gouging Enforcement by Department of Justice Has Led to Abuse of Taxpayer Dollars*, 7/6/2020, available at: <https://www.accountable.us/news/report-lack-of-price-gouging-enforcement-from-doj-has-led-to-abuse-of-taxpayer-dollars/>

¹¹ *Federal Court Dismissed Challenge to NYC's Price Gouging Rule: Enforcement During COVID-19 Pandemic Not Unconstitutional*, New York City Department of Consumer and Worker Protection, 11/21/21, available at: <https://www1.nyc.gov/site/dca/media/pr112321-Federal-Court-Dismisses-Challenge-Price-Gouging.page#:~:text=Federal%20Court%20Dismissed%20Challenge%20to%20NYC's%20Price%20Gouging%20Rule&text=Hatch%20announced%20that%20the%20United,during%20the%20pandemic%20was%20unconstitutional.>

¹² *Cost of masks and tests deepens a pandemic wedge between the haves and the have-nots*, NBC News, 1/17/22, available at: <https://www.nbcnews.com/health/health-news/costs-masks-rapid-tests-further-pandemic-response-haves-nots-rcna12300>

¹³ Office of Inspector General Christi A. Grimm, U.S. Department of Health and Human Services, *Hospitals Reported That the COVID-19 Pandemic Has Significantly Strained Health Care Delivery*, 3/23/21, available at: <https://oig.hhs.gov/oei/reports/OEI-09-21-00140.asp> See also Consumer Reports, *How Much Should It Cost To Get Tested for COVID-19?* 1/6/22, available at: <https://www.consumerreports.org/covid-19/how-much-should-it-cost-to-get-tested-for-covid-19-a1011758904/>

¹⁴ Claire Ballentine, C. and Egkolopoulou, M., *N95 Mask Prices Hit 'Ridiculous' Highs on Speculation Over CDC Guidance*, Bloomberg Wealth, 1/12/22, available at: <https://www.bloomberg.com/news/articles/2022-01-12/n95-kn95-or-cloth-masks-prices-surge-as-cdc-weighs-new-recommendations?sref=rrlvS2th>

¹⁵ Brown, Sydney, *State AG: Price-Gouging on At-Home COVID-19 Draws Scrutiny of State Attorney General*, The Spokesman-Review, 1/18/2022, available at: <https://www.spokesman.com/stories/2022/jan/18/price-gouging-on-at-home-covid-19-tests-has-become/>

retailers, distributors and online sellers, and to develop stronger federal policies to deter and prevent this harmful and unethical conduct.

HR 675, the COVID-19 Price Gouging Prevention Act, would make price gouging during the COVID-19 pandemic an unfair and deceptive practice under the Federal Trade Commission Act, and empower the FTC and state attorneys general to investigate and hold companies that engage in excessive, unconscionable pricing accountable under federal law. The term "good or service," is defined in the bill to mean a good or service offered in commerce, and includes, but is not limited to, food, water, personal protective equipment, respirators, medical supplies, cleaning supplies, sanitizers, healthcare services, delivery services or cleaning services.

The bill provides the following factors for consideration in determining whether price gouging has occurred:

- Whether the price grossly exceeds the average price that the same good or service was sold for the 90-days before January 31, 2020, or during the same 90-day period of the previous year;
- Whether the price grossly exceeds the average price of the same good or service sold by other similarly situated sellers during the same period; and
- Whether the price reasonably reflects additional costs to the seller or the profitability of forgone sales.

The proposed language in the bill creates a sound and reasonable definition for unconscionable pricing practices that will improve federal and state oversight of the marketplace, encourage more affordable pricing for essential medical supplies and consumer products, and create a stronger national deterrent against predatory pricing practices.

We look forward to working with the Subcommittee and Congress to enact strong and effective federal prohibitions against price gouging.

Sincerely,



Chuck Bell
Programs Director
Consumer Reports



George P. Slover
Senior Policy Counsel
Consumer Reports

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**Statement
 of the
 American Hospital Association
 for the
 Subcommittee on Consumer Protection and Commerce
 of the
 Energy and Commerce Committee
 of the
 U.S. House of Representatives**

“Pandemic Profiteers: Legislation to Stop Corporate Price Gouging”

February 2, 2022

On behalf of our nearly 5,000 member hospitals, health systems and other health care organizations, our clinician partners – including more than 270,000 affiliated physicians, 2 million nurses and other caregivers – and the 43,000 health care leaders who belong to our professional membership groups, the American Hospital Association (AHA) appreciates the opportunity to submit for the record our comments regarding concerns about anticompetitive conduct on the part of health care staffing agencies, some of which have been exploiting the severe shortage of health care providers during the COVID-19 pandemic. Our concerns range from potential collusion to increased prices way beyond competitive levels and/or egregious price gouging and the impact these behaviors could have on efforts to care for patients and communities.

As we enter the third year of the COVID-19 pandemic, the nation is currently experiencing one of the worst surges of the virus due to the omicron variant. As of January 2022, there have been over [70 million COVID-19 cases](#) and nearly [900,000 deaths](#) in the U.S., with over 20 million cases and approximately 100,000 deaths in just the last two months.

Our nation’s health care workers have been on the front lines of this crisis since the outset, caring for millions of patients, including over [4 million inpatients with COVID-19](#). During this time, hospitals and health systems have continued to face a range of financial and operational pressures, with workforce-related challenges among the most critical. The AHA is concerned that staffing agencies are exploiting this shortage and driving up workforce costs even more for providers. This is occurring at a time when many hospitals and health systems are still facing other immense financial constraints and personnel shortages. For many health care providers



around the country, this has led to an unsustainable situation that threatens their ability to care for the patients and communities they serve.

HOSPITALS AND HEALTH SYSTEMS ARE FACING A CRITICAL SHORTAGE OF WORKERS TO MEET INCREASED DEMAND

As demand for health care remains high, many hospitals and health systems are reporting critical staffing shortages. Nearly [1,400 hospitals or 28% of hospitals](#) that reported data on staffing to the federal government indicated that they were anticipating a critical staffing shortage within the week of Jan. 27. At the same time, patient acuity has increased and hospital stays have accordingly increased in length. According to [data from Kaufman Hall](#), adjusted patient days (accounting for both inpatient and outpatient hospital days) have increased 2.7% from pre-pandemic levels in 2019, while average patient length of stay has increased 8.8% compared to pre-pandemic levels and 9.5% between October 2021 and November 2021, alone.

Nurses, who are critical members of the patient care team, are one of the many health care professions that are currently in shortage. A [recent study](#) found that the nurse turnover rate was 18.7%, illustrating the magnitude of the issue facing hospitals and their ability to maintain nursing staff. The same [study](#) also found that 35.8% of hospitals reported a nurse vacancy rate of greater than 10%, which is up from 23.7% of hospitals prior to the pandemic. In fact, two-thirds of hospitals currently have a nurse vacancy rate of 7.5% or more. Hospital employment has continued to decline compared to pre-pandemic levels. According to [data from the Bureau of Labor Statistics](#), hospital employment is down 95,600 employees from February 2020.

STAFFING AGENCIES ARE EXPLOITING WORKFORCE SHORTAGES

To help maintain appropriate levels of care for patients, nearly every hospital in the country has been forced to hire temporary staff at some point during the pandemic, including contract nurses, according to a [survey](#) by AMN Healthcare. Unfortunately, some staffing agencies seem to be exploiting these shortages by inflating prices beyond reasonably competitive levels – two or three or more times pre-pandemic rates – and reportedly retaining high profit margins for themselves.

According to Proluent Health, there has been a 67% increase in the advertised pay rate for travel nurses from January 2020 to January 2022, and hospitals are billed an additional 28%-32% over those pay rates by staffing firms. Although our most recent information is that rates throughout the nation are in the range of \$200 per hour, there are some reports of staffing agency charges as high as [\\$240 per hour or more](#). These increased rates are unsustainable and have contributed to the dramatic increase in hospitals' labor costs since the beginning of the pandemic. Through November 2021, labor expenses increased [12%](#) compared to pre-pandemic levels and [19.5%](#) on a per patient basis.

The conduct of some of these staffing agencies bears all the hallmarks of widespread collusion and perhaps other abuses. The AHA [sent a letter](#) to the Federal Trade Commission (FTC) nearly one year ago urging the commission to investigate these reports of anticompetitive

pricing by staffing agencies. Even now in the midst of another crushing wave of the pandemic and sustained high prices throughout, the FTC still has not responded to the AHA letter.

Congressional lawmakers also have called for an investigation into price gouging by staffing agencies. On Jan. 25, nearly 200 bipartisan members of Congress [sent a letter](#) highlighting their concern that “certain nurse-staffing agencies are taking advantage of these difficult circumstances to increase their profits at the expense of patients and the hospitals that treat them.” The letter calls on the White House to enlist one or more federal agencies with competition and consumer protection authority to investigate the exorbitant price increases by these agencies.

This followed a bipartisan, bicameral [letter](#) in November 2021 that asked federal agencies to investigate this conduct to determine: if the price hikes are the product of anticompetitive activity, if there is evidence of price collusion or other anticompetitive practices, if the activity violates consumer protection laws, if increased rates translate to higher pay for contract nurses, the impact these price hikes have had on rural and underserved areas, and if nurse staffing agencies increased their own percentage of profit during the COVID-19 pandemic.

The AHA continues to urge the FTC to investigate these reports of anticompetitive conduct from staffing agencies that are exacerbating workforce shortages and straining the health care system. We also ask that Congress look into this pressing matter and coordinate with the FTC and other agencies where appropriate.

CONCLUSION

The ongoing COVID-19 pandemic has brought unprecedented demands on the nation’s health care system. Preventing staffing agencies from exploiting hospital and health systems’ need for providers would help mitigate some of the financial and operational pressures currently facing hospitals and allow them to continue focusing on critical care for patients. We thank you for your attention to this issue and consideration of our comments on behalf of hospitals and health systems. We look forward to working with Congress to address this important issue.



Advancing Convenience & Fuel Retailing | convenience.org

February 2, 2022

The Honorable Jan Schakowsky
Chair
Consumer Protection & Commerce
Subcommittee of the
House Energy & Commerce Committee
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Gus Bilirakis
Ranking Member
Consumer Protection & Commerce
Subcommittee of the
House Energy & Commerce Committee
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Dear Chair Schakowsky and Ranking Member Bilirakis:

Thank you for holding a hearing on “Pandemic Profiteers: Legislation to Stop Corporate Price Gouging.” The National Association of Convenience Stores (NACS) and its members appreciate the opportunity to address some of these issues with you.

NACS is an international trade association representing the convenience industry with more than 1,500 retail and another 1,500 supplier companies as members, the majority of whom are based in the United States. The industry employed about 2.34 million workers and generated more than \$548.2 billion in total sales in 2020, representing nearly 3 percent of U.S. gross domestic product. The industry processes more than 160 million transactions every single day. That means about half of the U.S. population visits our members on a daily basis. In fact, ninety-three percent of Americans live within 10 minutes of one of our locations. The average time a customer spends in one of our stores is about three and one-half minutes and the industry is focused on ensuring that the customer’s needs are met as efficiently as possible – saving them time and money.

More than 60 percent of the 148,000 convenience stores in the United States are single store operators. These are very small businesses, but they compete with a range of businesses in other retail channels for sales including grocery stores, restaurants, drug stores, big box stores and more. The success of these small, entrepreneurial businesses is a central pillar of the success of the American economy.

Background on Price Gouging

Price gouging can and does occur in emergency situations. When it happens, the law should be enforced to curtail it and help prevent it from recurring in the future. NACS strongly supports proper enforcement of laws against price gouging.

According to the National Conference of State Legislatures, thirty-nine states as well as the District of Columbia, the U.S. Virgin Islands, Guam, and Puerto Rico have laws on price gouging.¹ Generally, these laws create legal penalties for businesses that take advantage of a public emergency to overcharge individual consumers for goods and services subject to the law. A central element of many of these schemes is that the

¹ <https://www.ncsl.org/research/financial-services-and-commerce/price-gouging-state-statutes.aspx>.
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price of the good or service is raised in a way that takes advantage of a dramatic increase in demand or decrease in supply relating to the emergency.

That relationship between any allegation of gouging and the emergency at hand is a key element of these legal claims. We readily accept price fluctuations that are subject to normal, competitive market forces. For example, the price of an airline ticket can vary substantially depending on factors include how long prior to the date of travel a ticket is purchased. Unless an emergency situation actually disrupts the normal ability of consumers to shop-around based on price or decline to make a purchase that is too expensive, we accept that businesses will need to be responsive to those consumer choices.

Emergencies, however, can be different. In those cases, there may be goods or services that are essential to people but may be much more difficult to get or much more important than normal to procure which can upset the normal functioning of the marketplace.

The COVID-19 Pandemic

The question for this Committee, of course, is whether the COVID-19 pandemic presents a situation that merits a new federal law rather than our typical reliance on the various state laws to govern pricing in emergency situations. In the spring of 2020, we saw disruptions to normal market forces with respect to certain goods. Hand sanitizer and personal protective equipment such as masks saw dramatic increases in demand and huge deficits in supply that were directly related to the emergency. And, indeed, there were reports of questionable behavior relating to these products.²

The market emergencies that impacted consumer behavior in those early days of the pandemic, however, have largely dissipated at this point. There are still impacts of the pandemic on the market. These include numerous supply chain problems as well as a labor shortage that impacts businesses across much of the economy. But, overall, the impacts on the market at this time are not of a magnitude that is associated with other emergencies that trigger price gouging laws. These impacts are part of the normal give-and-take of competitive markets across the nation even though they can be frustrating and may lead to higher prices.

Whether we have yet to see additional disruptions relating to the pandemic that go beyond normal market fluctuations remains to be seen. It would not be a stretch to imagine that an emergency demand for certain goods or services (Covid tests, for example) could, based on the pandemic situation at the time, create the conditions in which price gouging could occur. The Committee's view of that possibility should be a central element in its consideration of the need for price gouging legislation relating to this pandemic.

H.R. 675 "COVID-19 Price Gouging Prevention Act"

NACS does not have a position on H.R. 675 at this time. We do, however, have some thoughts for the Committee as it considers the legislation.

² See "Tennessee brothers who hoarded hand sanitizer settle to avoid price-gouging fine," by Neil Vigdor, *New York Times* (April 22, 2020)(available at <https://www.nytimes.com/2020/04/22/us/hand-sanitizer-matt-colyin-noah-coronavirus.html>); "Philly company charged \$75 for hand sanitizer bottles in illegal price gouging, AG Shapiro says" by Christian Hetrick, *Philadelphia Inquirer* (Aug. 20, 2020)(available at <https://www.inquirer.com/business/price-gouging-hand-sanitizer-amazon-lawsuit-pandemic-20200820.html>).

We appreciate that the legislation makes clear that for any allegation of price gouging to be proven it would have to be shown that the seller took advantage of the specific emergency at issue to unconscionably raise prices. That relationship between the emergency and the price increase is central to any price gouging law functioning appropriately. The fact that there must be an unconscionable price increase is also important. During this pandemic, we have seen examples of an overzealous state attorney general taking action under a price gouging law against companies that actually *reduced* their prices. That is not consistent with the way price gouging laws should operate. While we might all want lower prices, cuts in those prices should not be considered gouging.

We have several recommendations to improve the legislation. The first area that should be addressed is how the bill deals with actual or anticipated cost increases. Often during emergencies, retailers of goods must pay far more than they normally would to obtain those products. That can include higher costs for the products themselves as well as higher transportation costs. To stay in business given their small margins, they need to have the ability to pass along such increases to their customers without fear of prosecution. If they don't, there is a risk of businesses having to close their doors when Americans need them most rather than going to the effort of finding needed goods and risking prosecution. While the legislation allows these costs to be considered, that is not enough. We have seen from experience that prosecutors and courts simply "considering" these factors does not mean they will give them sufficient weight. There ought to be an affirmative defense clearly in the law so that no one faces liability simply for enduring and passing along cost increases.

It is relevant to the consideration of cost increases that the retail industry in the United States is very competitive on price. That is true to such an extent that the wholesale costs retailers pay to obtain their goods (as measured by the producer price index) often rise faster than the prices that retailers charge for those goods (as measured by the consumer price index). In fact, that has been true during the pandemic. During 2021, the producer price index rose by 9.7 percent while the consumer price index rose by 7 percent.³ These figures indicate the need to take seriously cost increases before making allegations of price gouging and demonstrate that, overall, consumers have been shielded from cost increases during the past year of the pandemic.

An affirmative defense based on cost increases also needs to extend to anticipated costs. The legislation properly recognizes this in the "consideration." But that too needs to be part of an affirmative defense. For many businesses, especially small businesses, they need the cash flow from selling the goods in their inventory to allow them to buy their next delivery of those goods. That is why they need to be able to take into account the prices they will have to pay for goods to replace their inventory.

In addition to an affirmative defense, the time periods used as reference points in the legislation should be changed in light of the passage of time and changes in the market since the bill was first introduced. The time period prior to the pandemic – approximately two years ago – is no longer relevant to a price gouging analysis for most goods and services across the economy. We can't ignore that there has been significant inflation during the past two years and that those cost increases have hit much harder than average in certain sectors. Sellers of goods and services that have been impacted by inflation should not carry additional risk of price gouging allegations simply because the market has changed during the past two years. While most price gouging laws use pricing just before an emergency as a point of comparison, the pandemic has dragged on for quite some time and the economy has returned to operation in a way that distinguishes

³ The U.S. Bureau of Labor Statistics' release on the producer price index can be found here: [Producer Price Index News Release summary - 2021 M12 Results \(bls.gov\)](https://www.bls.gov/news.release/ppi20210127.htm) and the 2021 increase in the consumer price index can be found here: [CPI Home : U.S. Bureau of Labor Statistics \(bls.gov\)](https://www.bls.gov/news.release/cpi20210127.htm).
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this emergency from relatively short-lived disasters such as hurricanes or snowstorms. Early 2020 prices are no longer relevant to an evaluation of potential gouging.

The scope of products covered by the bill also ought to be refined. The sale of most products is no longer related to the pandemic. It would make sense to limit the products covered by the bill to those that relate directly to the pandemic (e.g., health, protective, and cleaning products).

And, the Committee should consider the interplay between state enforcement of any federal price gouging law and enforcement of state laws. Allowing state attorneys general to enforce both laws simultaneously may create difficult confusion regarding the standards to which businesses must adhere – as well as creating a risk of duplicative penalties. That could mean that preemption, changing who can enforce the bill, and protections against penalizing the same conduct may be appropriate.

We would welcome the opportunity to engage with the Committee directly on these and other questions raised by the legislation under consideration.

The Role of Swipe Fees in Higher Prices

We would be remiss if we did not point out that one major driver of increasing prices is credit card swipe fees that merchants must pay to accept those card payments. These fees amounted to more than \$100 billion in 2020. While we do not yet have final figures for 2021, indications are that the fees went up far, far more than the rate of inflation. This makes sense because most of the amount of swipe fees are a percentage of the total amount of the transaction. That means the credit card industry profits from every dollar of inflation when a card is used. And, because of that, swipe fees act as an inflation multiplier. With fees averaging more than 2 percent every time a credit card is used, that multiplier has a real impact on the prices that consumers pay every day.

If swipe fees were the result of a competitive market, we would not raise this topic with you. Unfortunately, they are the result of centrally fixed pricing. The dominant card networks, Visa and Mastercard, each set schedules of fees that all of their thousands of banks across the country agree to charge. Those banks, which compete with one another on every other aspect of their businesses, do not compete to lower their swipe fees. They agree to charge the same thing. That is not the American market system. In fact, how this works is a violation of the antitrust laws but one that happens every minute of every day across the country.

The credit card industry benefits more than any other industry from price increases. It wields a largely unseen hand that dramatically reduces Americans' buying power. It profits from higher prices when it does absolutely nothing new or different. By fixing prices and collecting a percentage, its numbers simply go up. If the Committee is concerned about price increases on consumers, swipe fees should be at the top of the list of issues that need to be addressed.

* * *

We appreciate the Committee's attention to these issues and look forward to working with you on them.

Sincerely,

A handwritten signature in black ink, appearing to read 'Doug Kantor', with a long, sweeping horizontal line extending to the right.

Doug Kantor
NACS General Counsel

← Tweet



Bob McNally
@Bob_McNally

...

Throwback Thursday: One of the earliest FTC investigations of illegal market manipulation in the gasoline market, from the dawn of the ICE age, 1920. They all turned out the same since - supply & demand at work, no evidence of anti-competitive behavior.



12:22 PM · Nov 18, 2021 · Twitter Web App



Supply Chain In Focus: Challenges Facing The Grocery Supply Chain

Since the onset of the pandemic, supply chain disruptions have challenged food retailers' ability to keep shelves stocked and prices as low as possible.



The pandemic transformed almost every aspect of the food retail industry – from the way consumers shop for groceries and consume their meals to how food is grown, produced and transported to supermarket shelves, to our ability to staff our stores and serve our communities.

Food retailers continue to shift and adapt to meet our shoppers' needs.



In the early weeks of the pandemic, when many were uncertain of how long lockdowns would last, consumers turned to their neighborhood grocery stores to stock up on essentials.

At the start of the pandemic, consumer demand for groceries jumped **50%** almost overnight to unprecedented levels as consumers embraced the idea of cooking their own meals at home.

This surge of demand strained the supply chain and caused shortages of household staples throughout the country.

This demand has not abated, and consumers continue to eat more meals at home – breakfast, lunch, dinner and snacks – than at restaurants.



Average household weekly spending has held steady at **\$144**, which is down from the **\$161** we witnessed at the height of the pandemic last year.

For context, in 2019, average weekly spending at the grocery store was \$113.50. This was also a time when inflation was relatively low, and other supply chains – like restaurants – were competing for that share of the food dollar.

To meet this demand and serve their communities amid the pandemic, grocers invested **\$24 billion** to keep their doors open and employees and customers safe.

Still, almost one-half of shoppers (**46%**) reported that they noticed some products were not available in their grocery stores.

Their perceptions weren't wrong. The initial shock of the pandemic affected every stage of the supply chain – from producers to distributors to retailers.

These challenges continue to reverberate today, and shoppers may see disruptions. These issues can be difficult for grocery stores to predict, as they're often regional and inconsistent. Thank you for your patience as we adapt.

For more information, visit [FMI.org](https://fmi.org)



Although almost one-half of shoppers have some concerns about rising food prices and out-of-stock items, their level of concern has not increased since the summer.

Slightly more than half (58%) of shoppers have expressed concern about food shortages for the holiday season.

Food retailers support shoppers by suggesting how to plan meals, stretch their budgets further, or recommend different meals, recipes, and ingredients that they might be able to substitute for traditional holiday options.



A combination of several supply chain challenges – from labor and transportation shortages to extreme weather – are likely to persist and result in some price increases at grocery stores as our supply chain reaches equilibrium.

While the global supply chain is affected by a confluence of factors – materials and ingredients; labor; equipment; transportation logistics capacity; inventory control; cost pressures; and weather-related events – we empathize that the ramifications are much more pronounced for grocery shoppers given their relationship with food and consumer products.

The good news is that there is a healthy supply of food in the system, but labor shortages at every stage of the supply chain are challenging some grocers' ability to bring some products to the shelves.



Like almost every industry in the U.S. economy, food retailers are reporting worker shortages driven by a host of factors, including childcare responsibilities, health concerns, and difficulty recruiting and retaining workers.

According to FMI's annual **Food Retailing Industry SPEAKS** survey, 80% of responding retailers said their inability to attract and retain quality employees is having a negative impact on their businesses.

To address and attempt to offset the labor challenges of the past 18 months, retailers have offered a combination of higher wages, bonuses, improved benefits, flextime, and training and skills development opportunities.

These challenges are by no means exclusive to the food retail industry, as we have seen the impacts of a disrupted supply chain and labor shortages touch every sector of the economy.



For more information, visit [FMI.org](https://www.fmi.org)



In-demand products are often sitting idly in warehouses because there aren't enough truck drivers to distribute food throughout the country, resulting in empty store shelves – even though no actual product shortage exists.

According to data from the Bureau of Labor Statistics, in the depths of the pandemic, the truck transportation industry lost 6% of its 1.52 million workers.

As of July 2021, the industry was still more than 33,000 jobs short of pre-pandemic employment levels. This is on top of the nation already facing a shortage of more than 60,000 drivers as of 2018, according to the American Trucking Associations.

The cost of raw materials used to produce some popular products are also increasing due to labor shortages and have been exacerbated by extreme weather events, higher fuel costs, and backups at ports.



Inflation continues to weigh on economic growth, but global analysts and economists suggest that we could see relief in 2022.

Ingredient suppliers are experiencing longer lead times due to lack of staffing, lack of truck drivers, and pandemic-related backups at ports.

According to some industry experts, these conditions have delayed lead times anywhere from eight to 12 weeks, stalling food manufacturers' ability to fulfill product orders.

Producers and retailers are also still experiencing lingering effects of severe ice storms that hit Texas this past winter, which caused major losses of cattle, chicken flocks, oranges, and corn and grain crops, and have led to increases in wholesale prices for those commodities.

Increasing fuel costs are also a leading factor affecting the overall price of food at grocery stores.

According to EIA's [Gasoline and Diesel Fuel Update](#), U.S. gas prices continued to increase throughout 2020 and 2021 due to higher crude oil prices and higher wholesale gasoline margins.

Food retailers understand that any cost increases or product shortages can be challenging for families, and grocers are doing everything they can to manage the supply challenges and keep prices low.



Although consumers will experience some price increases and product shortages in the coming months, grocers are committed to keeping prices as low as possible while keeping shelves stocked, doors open, and everyone safe.



Retailers recommend smart budgeting and meal planning so that consumers can save at the checkout counter.

Plan as many meals as possible as far in advance as you can. Scheduling meals cuts down on food waste, makes it easier to set a weekly or monthly grocery budget, and saves money by helping you only purchase what you need and allowing you to buy in bulk for staples to cook at home.

Sign up for your grocery store loyalty program and download your grocers' app to receive alerts on sales, deals and coupons when they are available. Knowing the prices of items before you go to the store will help with meal planning, budgeting and making a grocery list that fits your budget.

Consider buying grocery store brands, which often taste just as good and offer more product at a lower price compared to brand name items.

The vast majority of shoppers continue to be very satisfied with their primary grocery store's response to the COVID-19 pandemic.



Most shoppers continue to say their primary grocery store is on their side in helping them stay healthy.



For more information, visit [FMI.org](https://www.fmi.org)

The Washington Post *Democracy Dies in Darkness*

Inflation causing financial strain for nearly half of U.S. households, poll finds

Among low-income households, more than 7 in 10 say the rising cost of food, gas and other necessities is creating hardship



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By Taylor Telford

December 2, 2021 at 10:53 a.m. EST



As prices creep higher for food, gasoline and other necessities, nearly half of U.S. households say they are feeling the financial strain, according to a Gallup survey released Thursday.

Roughly 45 percent of households are being hurt by price increases, according to a survey of nearly 1,600 people conducted Nov. 3 to Nov. 16. About 1 in 10 said that hardship was severe enough to affect their standard of living, while 35 percent described the hardship as “moderate.”

The effects were most acute in lower-income households, with 71 percent of those making less than \$40,000 a year saying they experienced hardship, compared with 47 percent for middle-income households and 29 percent of those considered upper-income.

“Most low-income households are already hurting,” said Mohamed Younis, editor in chief of Gallup. “You can only imagine what that’s going to look like in the next few months if this continues to get worse.”

Surging inflation is challenging families and policymakers alike, as booming consumer demand collides with snarled supply chains, driving up prices throughout the global economy. The picture is further complicated by a widespread labor shortage and the revolving door of pandemic threats, including the uncertainty surrounding the highly mutated omicron coronavirus variant.

The inflation pain seems to cut across partisan lines, with 53 percent of Republicans saying they’re feeling the effects of price increases compared with 37 percent of Democrats, according to Gallup. But the number of households experiencing severe financial hardship was fairly even across the political spectrum.

Prices jumped more than 6 percent in October, according to the Bureau of Labor Statistics (BLS), the largest annual increase in about 30 years. As a result, Americans are spending more on necessities, from groceries to fuel to housing.

The nation’s median rent swelled 17.8 percent from January to November, according to the Apartment List’s National Rent Report. The median sales price of a single-family home hit \$353,900 in October, according to the National Association of Realtors, up more than 13 percent year over year. Beef prices are up 20 percent in the same period, according to the BLS, and the cost of a carton of eggs has risen nearly 30 percent. On Thursday, the national average for a gallon of gas was \$2.27, according to AAA, compared with \$2.15 a year ago.

for a gallon of gas was \$3.37, according to AAA, compared with \$2.49 a year ago.

On Wednesday, President Biden called surging prices “a worldwide challenge” and a “natural byproduct” of a global economy that’s rebounding from the pandemic. But he stressed that the average American family is financially better off now than it was before the pandemic, despite the strain from inflation.

“Prices are still out of sync as the world comes back,” Biden said Wednesday in remarks about the supply chain. “But as we continue to overcome these obstacles, the more price pressures will ease.”

The rising prices are hitting families just as the holiday shopping season gets into full swing. Americans are still planning to spend big, even though their dollars won’t go as far: The average consumer plans to spend \$785 this year, according to NPD Group’s Holiday Retail Outlook. That is more than 13 percent higher than last year and 6 percent more than 2019.

PNC’s Christmas Price Index — which has tracked the cost of the items from the “12 Days of Christmas” for 38 years — shows a 5.7 percent increase compared with 2019, for a total of \$41,205.58. While admittedly the cost of partridges and golden rings is not indicative of most family’s holiday purchases, the “lighthearted take on the BLS Consumer Price Index” nonetheless shows that inflation has become tough to avoid.

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January 26, 2022

The Honorable Alejandro N. Mayorkas
U.S. Secretary of Homeland Security
U.S. Department of Homeland Security
2707 Martin Luther King Jr Ave SE
Washington, DC 20528-0525

Dear Secretary Mayorkas:

On behalf of the Transportation Intermediaries Association (TIA), our almost 2,000-member companies, and the \$214 billion third-party logistics industry, I am writing in response to your policy of barring unvaccinated Commercial Motor Vehicle (CMV) drivers from entering the country and the disastrous ripple effect that will have on the American economy.

As you know, truck transportation is the most popular mode of transportation for bringing freight into our country. Government data from 2019 shows nearly \$800 million in freight flowed through our three North American countries. It is the most direct and effective method to fill shelves, keep produce fresh, and ensure essential goods are available to help us combat the COVID-19 pandemic. These efforts will be further hindered by the Department of Homeland Security (DHS) vaccine mandate for international drivers entering the U.S. Prior to the Supreme Court rendering this Administration's vaccine mandate unconstitutional, U.S. truck drivers were deemed exempt because of the solitary and outdoor nature of their work. That reasoning should hold true with those drivers entering the U.S.

Mr. Secretary, the role our members play in the supply chain is a unique one. Placed between the shipping community and the carrier community, our members have a pulse on the supply chain. Our membership is keenly aware of the supply chain trends and the current disruptions. This order is a disastrous scenario for every stakeholder involved. Our customers, members of the business community who need the product moved are seeing stalled freight, backed-up orders, and the rising cost of doing business, during a time of an unstable economy and record inflation. Our carrier friends are equally as devastated by this order, which as previously noted has been ruled unconstitutional in the United States.

We respectfully ask you to reverse this ill-advised and poorly timed order immediately. TIA's members' sole job is to facilitate the safe and efficient movement of their customers' freight. The Federal government is making our member's role extremely difficult with this mandate, by harshly limiting capacity. Americans face bare shelves and ever-costlier items that do make it to the shelves. We hope you will consider these issues when rolling out future policies, in addition to retracting your order on unvaccinated international drivers entering the country.

If you have any questions about our position on this or any other issues, please do not hesitate to contact me or my Vice-President of Government Affairs, Chris Burroughs. Thank you for your consideration of the matter.

Sincerely,

A handwritten signature in black ink that reads "Anne C. Reinke".

Anne Reinke
President & CEO

The Voice of the Third-Party Logistics Industry

1625 Prince Street, Suite 200 | Alexandria, VA 22314-2883
Phone: 703.299.5700 | Fax 703.836.0123 | www.tianet.org





February 1, 2022

The Honorable Frank Pallone
Chairman, Committee on Energy
and Commerce
U.S. House of Representatives

The Honorable Cathy McMorris Rodgers
Ranking Member, Committee on Energy
and Commerce
U.S. House of Representatives

The Honorable Jan Schakowsky
Chair, Subcommittee on Consumer
Protection & Commerce
U.S. House of Representatives

The Honorable Gus Bilirakis
Ranking Mem., Subcommittee on Consumer
Protection & Commerce
U.S. House of Representatives

Dear Chairman Pallone, Ranking Member McMorris Rodgers, Chair Schakowsky, and Ranking Member Bilirakis:

The National Retail Federation appreciates your holding a subcommittee hearing tomorrow on the important issue of price gouging. To protect American consumers, NRF supports efforts to rid the marketplace of bad actors who deceive consumers through unfair or deceptive acts or practices, including illegal price-gouging activity that violates existing price-gouging laws in nearly 40 states. We are concerned, however, with the prospect of new federal legislation to address problems that have complex origins as the result of the pandemic and may not be the product of illicit price-gouging behavior. Moreover, we are concerned that the authority to be granted to the Federal Trade Commission (FTC) may not be narrowly tailored to target price-gouging activity on essential goods and services at risk of such fraud during the COVID-19 health emergency; and, that equipped with broad discretionary authority, the FTC could have a broader impact on pricing of all goods in the economy with unintended and counter-productive results that causes greater price increases for consumers.

NRF, the world's largest retail trade association, passionately advocates for the people, brands, policies and ideas that help retail thrive. From its headquarters in Washington, D.C., NRF empowers the industry that powers the economy. Retail is the nation's largest private-sector employer, contributing \$3.9 trillion to annual GDP and supporting one in four U.S. jobs — 52 million working Americans. For over a century, NRF has been a voice for every retailer and every retail job, educating, inspiring and communicating the powerful impact retail has on local communities and global economies.

Supply Chain and Inflationary Pressures on Cost of Goods

The current supply chain crisis has been affecting companies both large and small who are being impacted by disruptions at every stage of the supply chain. In general, the demand for goods and materials continues to far outpace the availability of supply to make and move those products through the global supply chain, resulting in significant congestion and increased costs and fees, which are leading to increased inflation.

NATIONAL RETAIL FEDERATION
1101 New York Avenue, NW, Suite 1200
Washington, DC 20005
www.nrf.com

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We continue to see disruptions originating overseas, with growing uncertainty about the COVID-19 omicron variant that threatens to again shut down foreign factories and foreign ports. There continue to be shortages in available materials and workforce to produce goods both here and abroad, a shortage of empty containers to transport the goods, a lack of available capacity aboard maritime vessels, continuing port congestion affecting U.S. ports and challenges with chassis availability and empty container returns.

These disruptions have all added more time and costs to NRF members' supply chains. Retailers have been working to mitigate these challenges throughout the pandemic, especially in advance of the all-important holiday season. They have taken many steps to try to mitigate the disruptions, which included bringing in products earlier, looking for alternate sourcing, using alternate ports and using air freight instead of ocean freight. Again, all of these options have added time and costs to their supply chains.

Even having taken these steps, retailers continued to face ongoing disruption and challenges with getting their cargo in a timely manner. In a September 2021 survey of NRF members, all respondents noted that their supply chain costs had increased at every step along the way. They identified their top three challenges as port congestion, container availability and carrier capacity. Many expected those issues to continue well into 2022.

In general, the unprecedented consumer demand over the past couple of years has certainly had a major part to play in supply chain disruption as retailers try to keep up. There has been a \$1 trillion shift in consumer spending from services (travel, entertainment, etc.) to goods, which has put upward pressure on goods' prices. Many expect inflation to peak in the next couple of months, though this is dependent on a number of factors including easing of pressure on the supply chain and softening consumer demand.

Retailers continue to take extraordinary steps to ensure products are available to consumers. These include bringing in cargo earlier than normal, using alternate ports beyond the Ports of Los Angeles and Long Beach, chartering vessels, shifting to air freight over maritime and looking at alternate sourcing.

In addition, retailers worked closely with their transportation providers, especially their carriers and truckers to clear cargo as quickly as they could. Many retailers also worked closely with the port authorities to identify critical cargoes that needed to move and worked directly with White House Port Envoy John Porcari and the Supply Chain Task Force to identify additional opportunities.

Even with these steps, many constraints remain in the ability to quickly move cargo from the ports, especially as more vessels continue to wait to berth and unload. Some of the key constraints continue to be specific to port operations and empty return policies and the availability of chassis. Retailers want to pick up their cargo, but have difficulty when truckers are not able to make appointments, return empty containers or have a chassis available. \

In an updated benchmarking survey, many NRF members believe that the supply chain disruptions will continue well into 2022. The majority of respondents believe that the challenges

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will continue between 10-12 months. Respondents continue to say that U.S. port congestion, ocean carrier capacity and workforce shortages are the top areas where they are seeing supply chain disruptions.

A softening of consumer demand will certainly help to alleviate the pressures on the supply chain. NRF's Global Port Tracker is forecasting imports to continue to increase through 2022, but at a single digit rate as opposed to the double-digit rate we witnessed in 2021.

There are specific ways that Congress and the Administration can help alleviate some of the supply chain disruptions, but we caution that some aggressive policy interventions to address the broader inflation could aggravate, rather than alleviate, inflationary trends.

The Administration needs to take a leadership role in addressing the ongoing congestion issues. Many are systemic issues that need to be addressed to avoid future supply chain disruptions. We would recommend the following actions for the administration:

- Convene all affected stakeholders to discuss the current supply chain issues and identify short, medium and long-term solutions;
- Pass the Ocean Shipping Reform Act of 2021;
- Codify the Federal Maritime Commission's Interpretive Rule on Demurrage and Detention;
- Develop a national freight portal;
- Ensure we have a sufficiently trained workforce;
- Evaluate whether or not our ports are operating in a manner that truly meet the needs of a 21st century global supply chain; and
- Provide tariff relief.

Federal Price Gouging Legislation

We appreciate Chair Schakowsky's work on H.R. 675 and we look forward to working with you and all members of the committee to develop bipartisan federal price gouging legislation that is narrowly tailored to address the unfair or deceptive acts or practices that nearly 80% of the states have targeted with their own enacted state laws. Key elements of state price gouging laws include government authority that is provided during an emergency that is principally focused on excessive prices for essential goods and services that are not accounted for by other cost factors in the marketplace. As demonstrated by the discussion of supply chain and inflationary pressures above, the retail industry has seen a very marked increase in well-documented economic and trade factors that have raised the prices of all goods impacted by those factors.

The price increases generally across the retail industry are therefore not the result of specific companies' intentional acts of fraud or deception, from which state price gouging laws are designed to protect consumers. It is therefore imperative that any federal price gouging legislation be modeled on the language in state laws that provides exceptions to the governmental authority in cases where price increases are due to market costs outside the control of the individual business. Unfortunately, in many of the federal price gouging bills we have

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seen since 2020, including H.R. 675, there is insufficient language in the bill to protect against the potential unintended consequences that retailers whose prices rose due to cost increases in the supply chain and/or inflation may face potential allegations from the FTC or state attorneys general that they engaged in price gouging.

For example, H.R. 675 includes look-back periods to compare prices of goods alleged to be the product of price gouging to the average cost of the same good sold during the 2019 Thanksgiving-to-Christmas holiday season. We think comparing prices over more than two years is likely to lead to determinations in many cases that today's prices are higher, but that does not mean the FTC should conclude, by matter of interpreting a statute's definition, that the sellers of these goods are engaged in unlawful price-gouging behavior when the price increases can be explained by factors causing the cost of those goods to rise over the two-year period.

We are also concerned with extending the enforcement authority of state attorneys general to a proposed federal law that would not preempt any of the existing price gouging laws in over 40 state and federal territorial jurisdictions, including the District of Columbia.¹ In addition to enforcing their own laws in these jurisdictions, having 50 more interpretations of the statutory text (in addition to the FTC's interpretation) will only exponentially increase the likelihood of inconsistent application and enforcement of a federal law that may serve as merely one of a great number of disparate laws regulating the price of goods across the country. If the federal law does not preempt state laws, the relatively few states who lack a price gouging law would be free to pass their own new price gouging law as a companion to any non-preemptive federal law if the people of that state support such efforts.

With tomorrow's hearing representing the committee's first review of this issue this session, we look forward to being a resource to you and other members as you consider the range of economic factors impacting the price of goods so that any proposed price gouging legislation designed to protect consumers from bad actors can be properly tailored to avoid inadvertently covering well-intentioned businesses setting prices in good faith to serve their customers.

Sincerely,



David French
Senior Vice President
Government Relations

cc: Members of the Committee on
Energy & Commerce

¹ National Conference of State Legislatures, *Price Gouging State Statutes*, May 17, 2021, accessible at: <https://www.ncsl.org/research/financial-services-and-commerce/price-gouging-state-statutes.aspx>

FRANK PALLONE, JR., NEW JERSEY
CHAIRMAN

GREG WALDEN, OREGON
RANKING MEMBER

ONE HUNDRED SIXTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

April 3, 2020

The Honorable Joseph J. Simons
Chairman
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Dear Chairman Simons:

As the United States faces the novel coronavirus (COVID-19) pandemic, reports of scams and frauds are rampant. Hoax text message campaigns and scam robocalls are offering free home testing kits, promoting bogus cures, and selling health insurance.¹ Price gouging is happening all over the country,² and some scammers are selling in-demand products that they do not have to sell.³ We applaud the ongoing efforts by the Federal Trade Commission (FTC) to notify consumers of such scams during this unprecedented time.⁴

Last week, Congress passed, and the President signed, the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The CARES Act provides essential assistance to health care workers, hospitals, small businesses, and struggling Americans. Notably, the CARES Act provides for direct payments to individuals and families.

¹ Federal Communications Commission, *COVID-19 Consumer Warnings and Safety Tips* (Mar. 27, 2020) (www.fcc.gov/covid-scams).

² *Price Gouging Complaints Surge Amid Coronavirus Pandemic*, New York Times (Mar. 27, 2020) (www.nytimes.com/2020/03/27/us/coronavirus-price-gouging-hand-sanitizer-masks-wipes.html).

³ Federal Trade Commission, *Coronavirus Scams: What the FTC is Doing* (www.consumer.ftc.gov/features/coronavirus-scams-what-ftc-doing) (accessed Mar. 29, 2020).

⁴ *Id.*

The Honorable Joseph J. Simons
April 3, 2020
Page 2

As you know, recovery packages spur fraud and scams targeting consumers.⁵ The CARES Act is no different. Even before checks have been issued to eligible Americans, reports of attempts to steal that money are piling up.⁶ Government imposters are calling Americans supposedly to verify the personal information necessary to qualify for COVID-19 funds.⁷ Other scammers suggest people can get more money or get it faster by sharing their personal information and paying a processing fee.⁸

While government agencies at the federal, state, and local levels are circulating and distributing consumer warnings about these scams, the FTC, as the nation's foremost consumer protection agency, must maintain its law enforcement mission during this crisis.

Right now, Americans are fearful of both the spread of the deadly virus and the financial instability that has come with the pandemic. We passed the CARES Act to help Americans in these hard times. We urge you to ensure that the FTC uses all its tools, including its law enforcement tools and coordination with State attorneys general, to take action against scammers and fraudsters that are trying to steal from vulnerable Americans. For the next six months, we request that you provide us a summary of your enforcement activities on a biweekly basis so that we can see the actions that you are taking in response to these illegal actions.

⁵ Federal Trade Commission, *FTC Warns Consumers About Economic Stimulus Scams* (Mar. 4, 2009) (press release).

⁶ *Beware Stimulus Check Scams*, CNN Politics (Mar. 28, 2020) (www.cnn.com/2020/03/28/politics/stimulus-check-scams/index.html).

⁷ *Beware of Stimulus Check Scams and Related Hoaxes*, Forbes (Mar. 28, 2020) (www.forbes.com/sites/kellyphillipsrb/2020/03/28/beware-of-stimulus-check-scams-and-related-hoaxes/#8bc70fb4730c).

⁸ *Id.*

The Honorable Joseph J. Simons
April 3, 2020
Page 3

Thank you for your prompt attention to this matter.

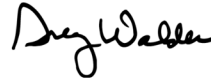
Sincerely,



Frank Pallone, Jr.
Chairman



Jan Schakowsky
Chair
Subcommittee on Consumer
Protection and Commerce



Greg Walden
Ranking Member



Cathy McMorris Rodgers
Ranking Member
Subcommittee on Consumer
Protection and Commerce



U.S. Chamber of Commerce

1615 H Street, NW
Washington, DC 20062-2000
uschamber.com

February 2, 2022

To The Members of the U.S. House of Representatives:

As the U.S. Chamber of Commerce [stated last week](#), we strongly support the effort in Congress to advance policies to strengthen the ability of American workers and companies to compete globally, including with China. We had hoped to be able to support House legislation on this important issue – H.R. 4521, the America COMPETES Act – just as we had supported the Senate counterpart – S. 1260, the United States Innovation and Competition Act (USICA). Regrettably, as COMPETES continues to include numerous policies that would undermine U.S. competitiveness, and Members are being denied the opportunity to vote on amendments to address these issues, the Chamber must oppose H.R. 4521. Should the House pass this legislation as reported from the Rules Committee, we will continue working in conference to improve it.

There is a better path forward. The Senate considered USICA through an open bipartisan process; the House should do the same. While USICA is not perfect, it would enhance U.S. competitiveness and innovation through new investments in basic research, would fund the CHIPS for America Act to bolster U.S. semiconductor capacity, and would make other important investments.

Although COMPETES includes some worthy components – including funding for the CHIPS for America Act to bolster U.S. semiconductor capacity and new tools for supply chain resiliency – the legislation also includes the following harmful provisions not included in the Senate bill:

- ***New Regulation of Outbound Investment.*** Known as the National Critical Capabilities Defense Act, this provision would establish an ill-defined new bureaucracy to review certain outbound investments, which would complicate efforts by U.S. businesses to compete, grow, and expand in global markets. It would create a Committee on National Critical Capabilities chaired by the United States Trade Representative and empower it with new responsibilities for which USTR is ill-equipped. USTR's mission is to develop and coordinate international trade policy and negotiations with other countries; it lacks the resources and experience to scrutinize U.S. investments abroad for potential national security risks. Congress should play a more constructive role by pressing the Administration to prioritize implementation of the Foreign Investment Risk Review Modernization Act and the Export Control Reform Act.
- ***Eliminating Global Market Distortions to Protect American Jobs Act.*** This component of H.R. 4521 would make sweeping changes to U.S. antidumping and countervailing duty (AD/CVD) laws in ways that have not received the scrutiny and deliberation required for such a complex, far-reaching proposal. This major overhaul of U.S. trade law could add to inflationary pressures by raising costs for a wide variety of imports, including many products sourced from U.S. allies. It would fast-track AD/CVD investigations based on the findings of earlier, unrelated cases in a manner that could injure U.S. businesses that had nothing to do with the past cases in question. The bill would change methodologies in ways that would increase tariffs and extend the reach of duties to goods from all producers in a given country in the event a single firm was found to engage in dumping or to receive countervailable subsidies. The bill also glosses over the extremely substantial challenges of determining third-country subsidization contemplated in the bill. In sum, the bill has the potential to favor a handful of businesses at the expense of a much

wider swath of industries employing many more American workers, thereby undermining the global competitiveness, productivity, and growth prospects of many more U.S. firms in high-growth sectors.

- **Import Security and Fairness Act.** This provision would add to the challenges of supply chain bottlenecks and backups at U.S. ports of entry. By diverting a share of the over 500 million shipments that enter the United States under the existing *de minimis* process, it would add substantially to the workload of CBP personnel who are already stretched thin. Further, it would increase costs with a particularly large impact on U.S. small businesses. Above all, any legislation on this matter should be delayed pending the conclusion of the pilot programs on Section 321 and Type 86 data pilot programs, which have already shown promise by allowing CBP to segment risk and target shipments more accurately even though the pilot programs and associated findings and conclusions are not complete. Congress should not prematurely legislate in this area.
- **Miscellaneous Tariff Bill (MTB) and Generalized System of Preferences (GSP).** COMPETES would upend the MTB existing process established in the American Manufacturing Competitiveness Act of 2016 that allows for a fulsome and transparent vetting process overseen by the U.S. International Trade Commission. Members of Congress and industry have ample opportunity to object to the temporary duty suspensions afforded under this process. Blocking the inclusion of finished goods in future MTBs would close the door to the possibility of relief from tariffs on goods generally not available from domestic sources and to which no one has objected. On GSP, the bill includes a reauthorization period that is two years shorter than the Senate proposal, which would add uncertainty and undermine the capacity of the program to accomplish its objective of fostering economic development in developing countries. On the program's eligibility criteria, the bill would go well beyond provisions of USICA in ways that analysts warn could lead foreign governments to conclude that GSP's compliance burdens outweigh its economic benefits.
- **Lack of Section 301 Tariff Exclusion Process.** The Chamber strongly supports amending the bill to include a Section 301 tariff exclusion process that is fair, consistent, and transparent. The Congressional Budget Office has estimated that U.S. tariffs imposed in 2018-2019 — the overwhelming majority of which are Section 301 tariffs on goods from China — cost the average American household more than \$1,200 in 2020 alone. Multiple studies show that nearly the entire burden of these duties has fallen on U.S. families and companies. USICA Section 73001 would reinstate previously granted tariff exclusions that expired last year through the end of 2022. USICA would also require USTR to implement a new product exclusion process beyond the extremely limited one now underway, which at most would reinstate one percent of previously granted exclusions, and it outlines specific criteria for USTR to consider in determining whether to grant an exclusion. Such a measure would help ensure American workers and businesses do not suffer disproportionate harm because of the tariffs.
- **Prohibitions or Conditions on Certain Transmittal of Funds.** The Chamber strongly supports laws to prevent money laundering but is concerned that provisions of 4521 would expand the Financial Crimes Enforcement Network's special measures authority in ways that would capture an overwhelming number of American businesses and investors engaged in lawful and productive digital assets activity. The Chamber stands ready to work with Congress on better avenues to target and eliminate fraudulent and criminal transactions.

In addition, the Chamber strongly opposes a provision of the Senate USICA bill that is thankfully not included in COMPETES related to **Country of Origin Labeling**. This ill-conceived provision would add significant complexity, costs and burdens to the existing programs authorized by trade laws and enforced by U.S. Customs and Border Protection. Such a new, conflicting regulatory regime would create a new liability for retailers and sellers to not only post the required information but certify the accuracy of the information provided by product vendors, and does not include a corresponding obligation for manufacturers, rights owners, distributors, and other sellers. Labeling provisions were added to USICA legislation without sufficient opportunity for stakeholders to discuss their concerns. Many unanswered questions remain about the practicality and administrability of such a provision.

The Chamber believes the best course for enacting critical and durable legislation to improve American competitiveness is to allow for meaningful bipartisan input and to reject the misguided and problematic provisions detailed above. We stand ready to work with you to achieve this shared goal.

Sincerely,



Neil L. Bradley
Executive Vice President, Chief Policy Officer,
and Head of Strategic Advocacy
U.S. Chamber of Commerce



Testimony Submitted for the Record

**Julie Anna Potts, President and Chief Executive Officer,
North American Meat Institute**

**Hearing before the
House Committee on Energy and Commerce
Subcommittee on Consumer Protection and Commerce**

“Pandemic Profiteers: Legislation to Stop Corporate Price Gouging”

February 2, 2022

On behalf of the North American Meat Institute (NAMI or the Meat Institute) based in Washington, DC, and its members, thank you for the opportunity to submit this testimony.

The Meat Institute is the United States’ oldest and largest trade association representing packers and processors of beef, pork, lamb, veal, turkey, and processed meat products. NAMI members include over 350 meat packing and processing companies, the majority of which have fewer than 100 employees, and account for over 95 percent of the United States’ output of meat and 70 percent of turkey production.

COVID-19 Affected the Cattle and Beef Markets.

The COVID-19 pandemic was a shock to the meat supply chain, as it was for every industry in America, and the shock continues to reverberate today, as evidenced by the lack of available labor, high consumer demand, and disruptions throughout the supply chain.

During 2020, pandemic-related plant interruptions temporarily idled about 40 percent of slaughter capacity for cattle and hogs at the peak of its impact. This disruption happened in tandem with unprecedented retail demand for beef due to panic buying and freezer stocking as shelter-in-place orders were effectuated. The situation was worsened by the significant operational changes needed to rebalance production, processing, and distribution away from foodservice toward retail. The

cuts, product sizes, processing equipment, packaging, and distribution vary considerably between retail and foodservice and are not easily transitioned, but the industry was resilient and adapted.

The shift from foodservice to retail had a dramatic impact. In 2020, retail beef sales increased by 606 million pounds by volume, or more than 11 percent. All fresh meat and poultry sales increased 19 percent by value, an increase of \$9.6 billion. Beef sales increased by \$5.9 billion in value, accounting for 61 percent of that overall growth in protein demand. Ground beef sales alone grew by \$2.02 billion, accounting for 21 percent of the total increased aggregate demand for meat and poultry.¹

Beef and pork demand remained high in 2021: the total volume of retail beef sales through December was up 4.1 percent over the pre-pandemic levels of 2019. Pork sales volumes were up 2.2 percent, and certain product categories grew even more; for example, retail bacon sales were up 6.2 percent.² The increased demand in 2021 happened while the packing sector's ability to process livestock was experiencing operational constraints because a lack of available labor reduced the packing industry's ability to operate at full capacity.

Claims about Increasing Consolidation and Concentration are Misplaced.

Let me state at the outset, the members of the Meat Institute – and their livestock suppliers – benefit from, and depend on, a fair, transparent, and competitive market.

Much of the rhetoric about concentration in the beef packing sector wrongly implies that consolidation is on-going and that packers' market power is becoming more and more concentrated. That is not the case. The four-firm packer concentration ratio for fed cattle slaughter has not changed appreciably in more than 25 years. According to the U.S. Department of Agriculture (USDA), the four firm concentration ratio was 82 percent in 1994; today it is 85 percent.

The meat packing industry has been, and continues to be, one of the most highly scrutinized industries when it comes to antitrust review. The USDA Agricultural Marketing Service's (AMS) Packers and Stockyards Division (P&S) is uniquely charged, by statute, to provide on-going oversight for fair business practices and to ensure competitive markets in the livestock, meat, and poultry industries. Additionally, any potential merger or acquisition regulators believe threatens "too

¹ Beef Checkoff, [Hindsight 2020: Retail and Foodservice Trends Through the Pandemic](#), accessed November 2021.

² Source: IRI, Integrated Fresh, fixed and random weight, Multi Outlet stores, 52 weeks ending 12/26/2021 versus year ago and versus two years ago

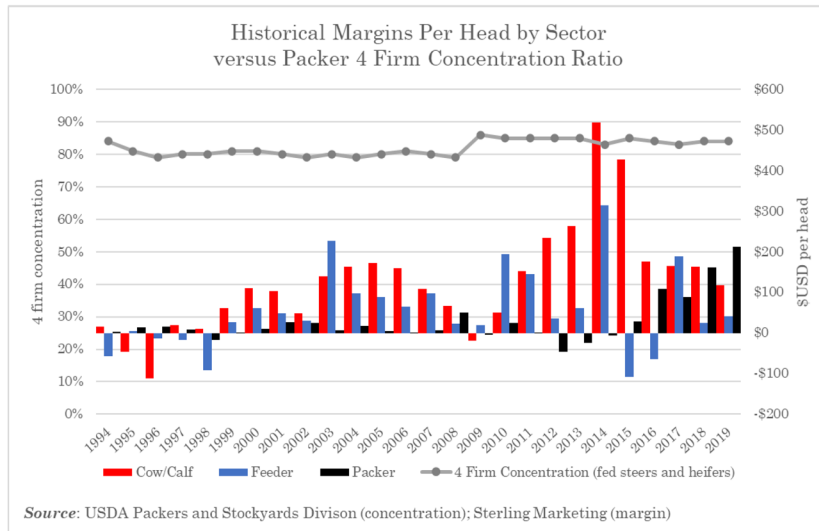
much market power” is subject to review by the Justice Department or the Federal Trade Commission. The last proposed merger of two of the “big four” fed cattle slaughterers occurred in 2008 – and it was blocked by the Department of Justice.

Another clarification is needed. It is frequently claimed that the big four packers control 85 percent of beef production in the U.S. Again, that is not the case and a misleading exaggeration. Fed cattle make up 79 percent of the total cattle slaughter. Cows and other non-fed cattle, make up the balance, and are primarily slaughtered to be made into hamburger. The lean meat from these animals is a necessary ingredient to be made into America’s supply of hamburger produced combined with the less demanded muscle cuts from the fed cattle. This distinction is important because up to 50 percent of all beef in the U.S. is consumed as hamburger. Even factoring in the non-fed cattle slaughter plants they own; the four largest beef packers represent about 70 percent of total U.S. beef production.

Critics of the industry frequently mistake individual packing plant size with overall industry concentration. The size and location of plants, however, reflect basic economic factors like the cattle supply and the economics of plant operations. Indeed, the cattle supply itself is concentrated. The farms and ranches that produce about half of all beef cattle in the U.S. are in just seven states. Further, more than 70 percent of all fed cattle are in just five states. Economies of scale drive the capacity and production of a packing plant. That is especially true in areas with large numbers of fed cattle.

Finally, given that the structure of the beef packing industry is driven by supply and demand factors, the false premise regarding concentration providing undue market power for beef packers must be corrected. The bottom-line is the current level of four-firm concentration has existed for more than 25 years and it has not ensured packer profitability at the expense of producers.

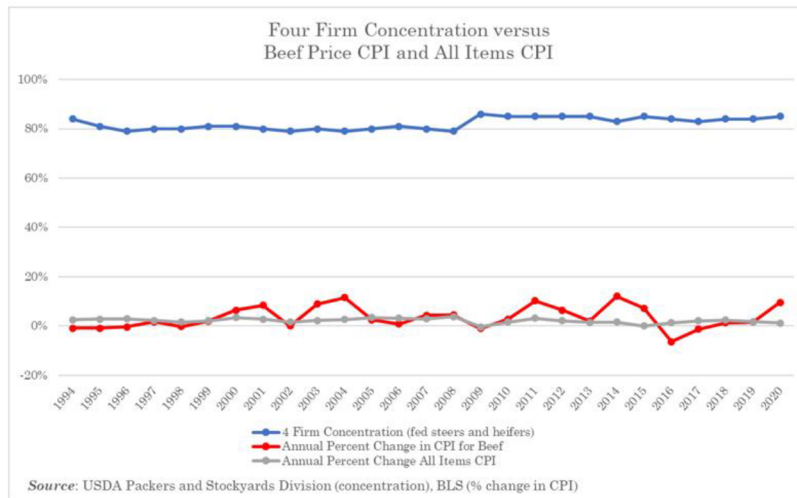
No sector – cow-calf, feedlot, nor packer – has realized positive margins every year. For example, the four-firm ratio in 2014, when cow-calf and feedlot margins were at record highs, was the same as in 2017 when all three sectors showed positive margins. However, over this 25-year timeline, the cow-calf sector incurred negative margins the fewest number of years of the three as the chart below shows.



Rebutting Administration Claims.

Looking for a scapegoat for economy-wide inflation, the Biden administration has alleged that meat and poultry industry concentration is to blame for rising consumer prices. The truth is not so convenient.

Using USDA's meat industry concentration data, the chart below demonstrates that, while the four-firm concentration in fed cattle beef packing has remained relatively constant since 1994, the Consumer Price Index (CPI) for beef has been variable over that same period; sometimes above and sometimes below the overall consumer price index.

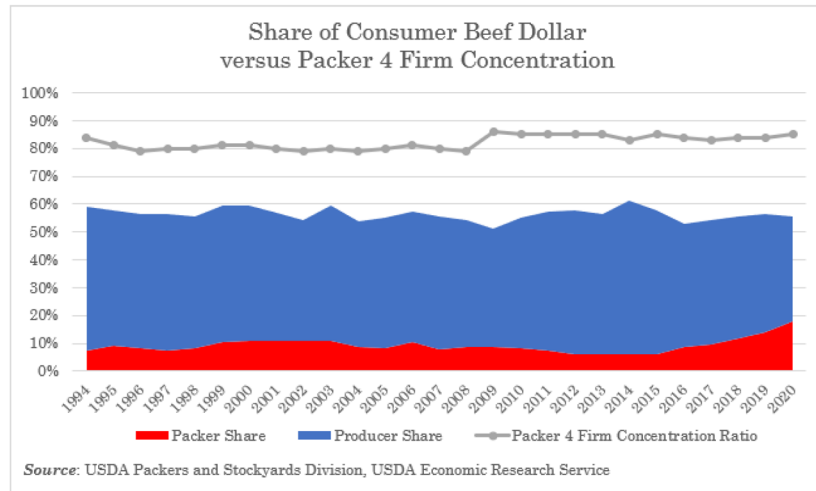


If concentration is causing the recent rise in consumer prices for meat and poultry products, why did concentration not cause inflation five or ten years ago? Moreover, the December CPI showed prices for meat dropped slightly, yet concentration remained the same.

The administration and some cattle producers have also blamed concentration for producers getting a smaller share of the consumer dollar for beef than they did decades ago. On January 3, 2022, a [White House Fact Sheet](#) noted:

Fifty years ago, ranchers got over 60 cents of every dollar a consumer spent on beef, compared to about 39 cents today. Similarly, hog farmers got 40 to 60 cents on each dollar spent 50 years ago, down to about 19 cents today.

Unfortunately for the White House, the same [USDA database](#) referenced by the White House Fact Sheet, updated with December 2021 data released by USDA, shows in 2021 beef packers' share of the consumer dollar was 22.2 percent – lower than the producer share. For pork, the packers' average share of the consumer dollar was 18.9 percent in 2021, also lower than the producers' share, which was 25.8 percent in 2021.



On January 10, the [Washington Post's editorial board](#) pointed out the absurdity of the administration's claims:

President Biden is facing mounting criticism for inflation's rise to its highest level since 1982. Unfortunately, the White House's latest response is to [blame greedy businesses](#).

Economists across the political spectrum are rightly [calling out the White House](#) for this foolishness. Even some within the White House are questioning this approach, The Post [reports](#).

Inflation, which was relatively low for years, did not suddenly rise in recent months because businesses decided now was the ideal time to squeeze their customers. What actually happened is that demand soared for many products as the economy recovered. Often, there were not enough products to meet it, thanks to supply chain hiccups and labor shortages, so prices went up. In a surprise to many, consumers kept buying goods such as cars and washing machines even at higher prices. (Emphasis added)

So what's going on?

The administration will be surprised to learn that economic fundamentals have led to inflation: labor shortages; transportation and supply chain challenges; regulatory policies. And those input challenges were coupled with record meat demand.

Collectively, these factors drove up prices for wholesale and retail beef.

Free Market Supply and Demand Fundamentals Are at Work. Let them keep working.

Meat packers and processors control neither the supply of livestock nor the demand for meat. In July, [testifying for Rabobank before the House Agriculture Committee's Subcommittee on Livestock and Foreign Agriculture, Dr. Dustin Aherin](#) succinctly summarized the fundamentals of supply and demand impacting the cattle and beef markets:

The imbalance of excess market-ready cattle supplies in the face of reduced operational packing capacity has put downward pressure on cattle prices. Meanwhile, consumer demand for beef and all animal proteins has reached record levels, fueled by pandemic stockpiling, increased and reallocated consumer income, and more recently, restaurant re-openings, not to mention export demand. These dynamics, combined with elevated processing costs, have increased the spread between beef price and cattle price, just as economic principles, past research, and historical market relationships would suggest.

Production in meat packing and processing plants is labor-intensive, and therefore tied to the number of employees working the line. Throughout 2021, even as the comprehensive COVID-19 protections instituted by the meat industry since the spring of 2020 successfully lowered transmission among meatpacking workers and held case rates lower than case rates in the general U.S. population, worker shortages have persisted. The Meat Institute regularly hears from member companies challenged with 20 percent absenteeism on any day. Without a steady, reliable workforce, plants do not run efficiently and production declines. Labor is capacity.

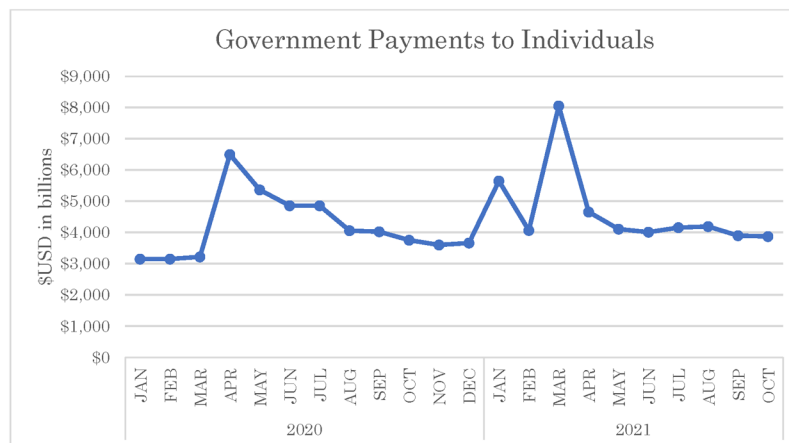
To be clear, labor challenges were not caused by the pandemic; COVID-19 only exacerbated the issue. The meat industry has been facing a labor shortage for some time and it continues today. Recent media reports underscore the industry's recruitment efforts, including wage increases, signing bonuses, relocation bonuses, retention bonuses, generous benefits, and at least one company initiating a childcare program. Several meat companies have publicly announced starting

salaries at or above \$20 per hour, which means raising all other salaries up the chain. The labor shortage not only affects processing lines but also warehouse workers, skilled maintenance positions, and other jobs critical to keeping plants running and maintaining the supply chain.

When American consumers head to the grocery store, they expect to see the meat counter filled with animal protein options. America's farmers, ranchers, and processors produce the highest-quality animal protein in the world. However, bringing nutritious and affordable animal protein to consumers requires a strong, efficient supply chain – and that supply chain is hindered by the lack of access to a skilled, reliable workforce for meat and poultry operations across the country.

Nonetheless, in the face of the many challenges, the beef packing sector has proven resilient. Total beef production in 2020 was slightly larger than 2019, based on heavier slaughter and carcass weights, and USDA data at the end of 2021 shows beef production up 2.6 percent over 2020, making 2021 a record year for beef production.

Turning to the demand side of the equation, in 2021, COVID-19 relief payments and job recovery added an additional \$14.27 trillion in personal income for Americans in January through October 2021, compared to January through October 2020.



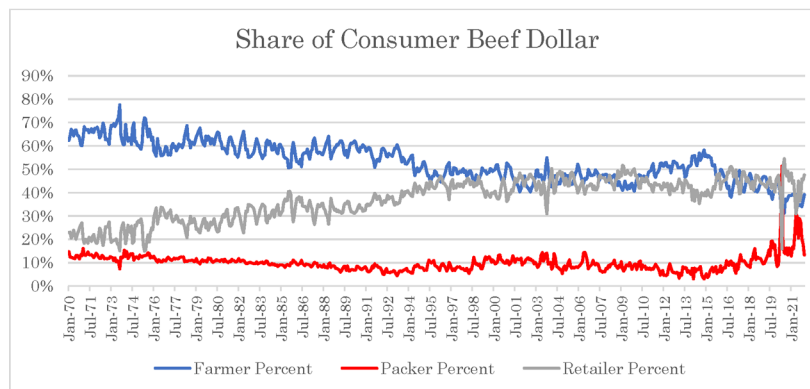
Source: Bureau of Economic Analysis

According to the Bureau of Economic Analysis (BEA), personal expenditures increased in June, July, August and September 2021, as personal income (from all sources -- wages and salaries, and government social benefits including pandemic-

related payments) grew – even compared to 2020. Much of that increased income was spent on food, and of that, much was spent on beef. Also, during that time restaurants continued to re-open, increasing demand for wholesale beef. According to BEA, spending on food service (restaurant demand) increased through 2021.

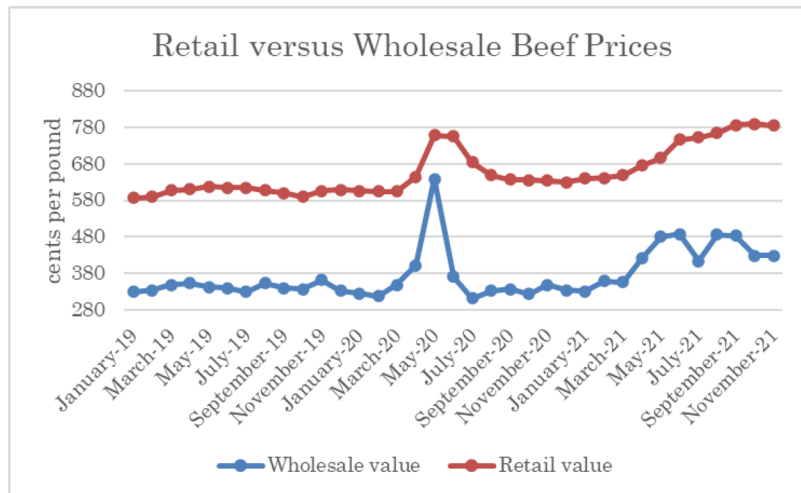
The bottom line is beef didn't drive the record inflation in November. In the calculation of the Consumer Price Index (CPI), beef accounts for 0.471 percent, so even at a 12-month increase of beef prices from November 2020 to November 2021 of 20 percent, beef added only 0.09 percent inflation to the economy.

In the 264 months since January 1970 through December 2021, packers received the smallest share of the consumer beef dollar in all except May 2020, at the peak of the COVID-19 related shutdowns at some slaughter facilities, which reduced beef supplies.



Source: USDA Economic Research Service

Packers do not set retail prices; instead, they receive wholesale prices. Retailers are affected by all the supply chain issues facing the broader economy, from trucking and warehousing to energy to labor that affect their segment of the value chain. All of these factors affect retail prices.



Source: USDA Meat Price Spreads

As expected, wholesale beef prices peaked in 2021 during the heavy demand period for meat from Memorial Day to Labor Day. The higher 2021 prices were the results of limited supply in the face of strong demand. Slaughter was not at a volume to meet the demand – and with supply and demand out of balance, wholesale beef prices rose – until late in the year when slaughter increased as constraints were overcome.

Regulatory Proposals will Adversely Affect Producers and Packers.

In response to market conditions during the pandemic, there have been several proposals to end the free market and give the government significant control over the cattle market.

In June 2021, USDA announced it planned to propose rules to “strengthen enforcement” of the Packers and Stockyards Act.³ The expected proposed regulations would be problematic for several reasons, including their impact on livestock producers’ options to market their cattle, as described.

The concepts expressed in USDA’s announcement are not new and were considered, and rejected, in the past. When proposed, they will conflict with legal precedent in no less than eight federal appellate circuits, and will hurt livestock producers, packers, and consumers.

³ <https://www.usda.gov/media/press-releases/2021/06/11/usda-begin-work-strengthen-enforcement-packers-and-stockyards-act>

For example, USDA plans on re-proposing a rule to clarify that a plaintiff need not demonstrate harm to competition to bring and prevail in Packers and Stockyards Act litigation. Additionally, USDA indicates that it intends to “propose a new rule that will provide greater clarity to strengthen enforcement of unfair and deceptive practices, undue preferences, and unjust prejudices.”⁴ It is beyond dispute that eliminating the need for a plaintiff to show harm to competition, or likely harm to competition, will encourage litigation, most of it likely specious litigation. That threat will significantly limit the industry’s use of AMAs, reducing innovation, risk management, and efficiency.

Conclusion

The discussion above demonstrates that free market fundamentals drive the cattle and beef markets and that the market behavior during the course of the pandemic was to be expected given the economic fundamentals of the situation. The North American Meat Institute is prepared to discuss these issues and work with the Committee on the issues facing the industry. Thank you for the opportunity to provide this testimony.

⁴ Ibid