

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

July 27, 2020

Mr. Kevin Anderson
Senior Deputy Attorney General and Director
Consumer Protection Division
North Carolina Department of Justice
114 W. Edenton Street
Raleigh, NC 27603

Dear Mr. Anderson:

Thank you for appearing before the Subcommittee on Consumer Protection and Commerce of the Committee on Energy and Commerce on Thursday, July 9, 2020, to testify at the hearing entitled, "Consumers Beware: Increased Risks During the COVID-19 Pandemic." We appreciate the time and effort you gave as a witness before the Committee on Energy and Commerce.

Pursuant to Rule 3 of the Committee on Energy and Commerce, members are permitted to submit additional questions to the witnesses for their responses, which will be included in the hearing record. Attached are questions directed to you from a member of the Committee. In preparing your answers to these questions, please address your responses to the member who has submitted the questions using the Word document provided with this letter.

To facilitate the publication of the hearing record, please submit your responses to these questions by no later than the close of business on Monday, August 10, 2020. As previously noted, your responses to the questions in this letter, as well as the responses from the other witnesses appearing at the hearing, will all be included in the hearing record. Your written responses should be transmitted by email in the Word document provided to Chloe Rodriguez, Policy Analyst with the Committee, at Chloe.Rodriguez@mail.house.gov. You do not need to send a paper copy of your responses to the Committee. Using the Word document provided for submitting your responses will also help maintain the proper format for incorporating your answers into the hearing record.

Mr. Kevin Anderson

Page 2

Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Ms. Rodriguez at (202) 225-2927.

Sincerely,

A handwritten signature in blue ink that reads "Frank Pallone, Jr." in a cursive style.

Frank Pallone, Jr.
Chairman

Attachments

cc: The Honorable Greg Walden
Ranking Member
Committee on Energy and Commerce

The Honorable Jan Schakowsky
Chairwoman
Subcommittee on Consumer Protection and Commerce

The Honorable Cathy McMorris Rodgers
Ranking Member
Subcommittee on Consumer Protection and Commerce

Additional Questions for the Record

**Subcommittee on Consumer Protection and Commerce
Hearing on
“Consumers Beware: Increased Risks During the COVID-19 Pandemic”
July 9, 2020**

**Mr. Kevin Anderson, Senior Deputy Attorney General and Director,
Consumer Protection Division, North Carolina Department of Justice**

The Honorable Richard Hudson (R-NC)

1. Mr. Anderson, I can tell you when the State AGs work in a bipartisan manner, it not only is a blessing for our constituents, but it also creates an important synergy with us in Congress on our bipartisan work. We saw it in our mutual efforts to establish strong efforts to fight illegal robocalls and spoofing with RAY BAUM’S Act last Congress and TRACED Act this Congress.

I’m a believer that partisan approaches to addressing price gouging will not work and we can find a path forward like we did on robocalls. First and foremost, we need to figure out how these unprecedented supply chain challenges and pricing pressures for our businesses may necessitate some price flexibility.

- a. I worry if our message to someone like a local grocer is “beware of passing along a price increase if a supplier is now charging more”, the fear of breaking the law may result in essential products not being available to our constituents. Can you touch upon your experience distinguishing the good from the bad in examples like this?
- b. NCDOJ has also recently joined forces with Amazon to crack down on price gougers. Can you expand on your efforts to partner with business to enforce the statute?

Representative Hudson: Thank you for your questions. It is constructive on many levels for state Attorney General (AG) offices to work in a bipartisan manner. Over the years, our office has worked together with other AG offices in a bipartisan manner in a variety of contexts, on a number of different consumer issues. Sometimes these efforts involve joint investigations or lawsuits. Other times, they involve joint efforts on policy or legislative issues in attempts to bring about more consumer-friendly practices. Sometimes, these efforts simply involving sharing information with each other so that states can spot trends and be on the lookout for new and emerging scams and practices. As you point out, one good example of how State AGs have worked in a bipartisan

manner involves the efforts by AGs, with our office in a lead role, to fight illegal robocalls.

In terms of bringing a bipartisan approach to price gouging, it is my experience that most states have price gouging laws and devote attention to price gouging issues in times of emergency. State AG offices work with each other and share information with each other about price gouging related issues they are seeing, matters they are investigating, and enforcement actions they are taking. Enforcement of price gouging laws generally tends to be state-specific because price gouging often seems to involve discrete activity that occurs on a more localized level as opposed to on a national level. Having said that, it would not be out of the question for there to be an opportunity for a joint, bipartisan investigation or lawsuit involving price gouging to take place, under appropriate circumstances. We would welcome the opportunity to work in a bipartisan manner with other AG offices on price gouging issues or matters should appropriate opportunities arise.

With respect to your **question 1(a)** above, and the issue of situations where a business, like a local grocer, may be passing on a price increase if the supplier is charging more, North Carolina's price gouging law, N.C. Gen. Stat. 75-38, has a specific provision that addresses this. North Carolina's price gouging law attempts to strike a balance between prohibiting unreasonably excessive prices during a state of emergency, while also recognizing that there may be some situations where it needs to be taken into consideration whether a business is just passing on some increases that are attributable to additional costs imposed by the business' supplier. N.C. Gen. Stat. 75-38 generally makes it illegal for a business to charge, during a state of emergency, a price that is "unreasonably excessive under the circumstances." At the same time, N.C. Gen. Stat. 75-38(a) says that in determining whether a price is unreasonably excessive, "it shall be considered" as a factor whether the price charged by the seller was attributable to additional costs imposed by the seller's supplier. As our office considers what matters to bring for enforcement, we take into account this aspect of the price gouging law. Ultimately, due to the broad prohibition on charging prices that are unreasonably excessive under the circumstances, these matters are generally very case specific and dependent on the particular facts at hand. In terms of your question about distinguishing good from the bad actors, it ultimately involves, to a large extent, whether the particular facts and the prices being charged by the seller show a level of misconduct that will convince a court that the price being charged was excessive and unreasonable under the circumstances and amounted to illegal price gouging under the law. In the end, our authority is to investigate matters that look questionable under the framework of our price gouging law and to bring cases if we believe the evidence supports an allegation of illegal price gouging; ultimately, the court is the decision maker.

Question 1(b) asks about our efforts to partner with Amazon and other businesses to enforce the price gouging law. As you point out, we have worked with Amazon and obtained information from it that has been useful in our examination of potential price gouging issues. Amazon has, among other things, provided our office with information about sellers using its platform and identified some potentially suspicious activity that we

investigated. In addition, once we investigated and obtained further details on our own about some of this activity, we engaged in additional discussions with Amazon in order to obtain more detailed information about some of the sales that took place during the relevant time period.

In addition, a large manufacturer of public protective equipment (PPE) has worked with us and had discussions with us where we obtained general information regarding, among other things, how the supply chain and distribution channels for PPE operate and some of the market conditions applicable to PPE products. This information has helped provide useful background and context, in a number of respects, for some of our price gouging investigations involving PPE.

We also worked with a legitimate towing company in the Charlotte area in one of our price gouging cases that involves allegations by our office that another towing company imposed improperly excessive charges when it booted and towed trucks that were attempting to deliver needed goods and services during the pandemic. The legitimate towing company provided us with a useful affidavit that we used in court which set forth the normal and customary charges for booting and towing in the area, as compared to the excessive prices being charged by the towing company that we sued.

Moreover, we engaged in several discussions with North Carolina trade groups, such as the retail merchants trade group, so that, among other things, they could contact their members and make sure they knew the Governor had declared a state of emergency and that our price gouging law was in effect. In many ways, it is best, both for consumers and the business community, to try to head off price gouging off at the outset, as much as possible, and have a situation where businesses are aware that the price gouging law is in effect and will be enforced, so that they are abiding by the law and consumers are not being subjected to unreasonably excessive prices during a time of emergency.

These are some examples of the ways in which we have worked with the business community on these matters. We welcome opportunities to work with businesses in order to prevent and combat illegal price gouging.

Thank you again for your questions and your interest in these important issues.