



**MEMORANDUM**

**January 31, 2022**

**To: Subcommittee on Consumer Protection and Commerce Members and Staff**

**Fr: Committee on Energy and Commerce Staff**

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

**On Wednesday, February 2, 2022, at 10:30 a.m. (EST), in the John D. Dingell Room, 2123 of the Rayburn House Office Building, and via Cisco Webex online video conferencing**, the Subcommittee on Consumer Protection and Commerce will hold a legislative hearing entitled, “Pandemic Profiteers: Legislation to Stop Corporate Price Gouging.”

**I. BACKGROUND**

Throughout the coronavirus disease of 2019 (COVID-19) pandemic, unscrupulous sellers have capitalized on consumer panic and vulnerability to increase prices on a variety of goods and services. Early in the pandemic, scammers sold cleaning products, personal protective equipment, and necessities at exorbitant prices.<sup>1</sup> One 2020 analysis found that during the pandemic, Amazon set prices on essential products at levels high enough to violate price gouging laws in many states.<sup>2</sup>

A recent survey found that nearly half of all U.S. families and over 70 percent of lower-income families feel financial hardship as a result of rising prices for food and other household items.<sup>3</sup> Twenty-eight percent of lower-income families describe such hardship as severe enough

---

<sup>1</sup> See, e.g., *Hand Sanitizer Prices Have Jumped by a Massive 53% in the US During the Pandemic, as Accusations of Pricing Gouging Continue to Roll In*, Business Insider (Nov. 17, 2020) ([www.businessinsider.com/hand-sanitizer-prices-price-gouging-bleach-toilet-paper-face-masks-2020-11](http://www.businessinsider.com/hand-sanitizer-prices-price-gouging-bleach-toilet-paper-face-masks-2020-11)); U.S. PIRG, *Coronavirus Worry Triggers Most Surgical Mask, Sanitizer Prices to Spike at Least 50% on Amazon* (Mar. 11, 2020) ([uspig.org/news/usp/coronavirus-worry-triggers-most-surgical-mask-sanitizer-prices-spike-least-50-amazon](http://uspig.org/news/usp/coronavirus-worry-triggers-most-surgical-mask-sanitizer-prices-spike-least-50-amazon)).

<sup>2</sup> Public Citizen, *Prime Gouging: How Amazon Raised Prices to Profit from the Pandemic* (Sept. 9, 2020) ([www.citizen.org/article/prime-gouging/](http://www.citizen.org/article/prime-gouging/)).

<sup>3</sup> *Inflation Causing Financial Strain for Nearly Half of U.S. Households, Poll Finds*, Washington Post (Dec. 2, 2021) ([www.washingtonpost.com/business/2021/12/02/inflation-gallup-financial-hardship/](http://www.washingtonpost.com/business/2021/12/02/inflation-gallup-financial-hardship/)).

to jeopardize their current standard of living.<sup>4</sup> At the same time, S&P 500 companies posted record profit margins in 2021<sup>5</sup> and bought back increasingly large amounts of their own stock and paid out billions in dividends.<sup>6</sup>

## II. FEDERAL AND STATE ENFORCEMENT AGAINST PRICE GOUGING

No federal law expressly prohibits price gouging. The Federal Trade Commission (FTC) is responsible for protecting Americans from unfair and deceptive acts or practices.<sup>7</sup> However, in most cases involving unfair and deceptive practices, the FTC lacks authority to obtain civil penalties for initial violations.<sup>8</sup>

Thirty-nine states, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands have statutory or regulatory authority to enforce against price gouging during emergencies or disasters.<sup>9</sup> These state authorities vary in the definition of price gouging, the types of goods and services covered, how they may be enforced, penalties for violations, and the circumstances under which the price gouging law applies.<sup>10</sup>

## III. SUMMARY OF H.R. 675, THE COVID-19 PRICE GOUGING PREVENTION ACT

H.R. 675, the “COVID-19 Price Gouging Prevention Act,” introduced by Reps. Schakowsky (D-IL), Pallone (D-NJ), Cicilline (D-RI), and Nadler (D-NY), prohibits the sale of consumer goods and services during the COVID-19 pandemic public health emergency at prices that (i) are unconsciously excessive and (ii) indicate that the seller is using the public health emergency to increase prices unreasonably. Under the legislation, the FTC is directed to consider certain factors in determining whether price gouging has occurred, including whether the price reasonably reflects additional costs to the seller or the profitability of forgone sales. The legislation authorizes the FTC to seek civil penalties for a first offense and provides

---

<sup>4</sup> *Id.*

<sup>5</sup> *The Stock Market is Punishing Walmart and Target for Keeping Costs Low While the Rest of the Corporate Sector Prioritizes Profits and Makes Inflation Worse*, Business Insider (Nov. 17, 2021) ([www.businessinsider.com/walmart-target-keep-prices-low-corporations-prioritize-profits-inflation-worse-2021-11](http://www.businessinsider.com/walmart-target-keep-prices-low-corporations-prioritize-profits-inflation-worse-2021-11)).

<sup>6</sup> *Stock Buybacks Beat Capital Spending for Many Big Companies*, Wall Street Journal (Sept. 14, 2021) ([www.wsj.com/articles/stock-buybacks-beat-capital-spending-for-many-big-companies-11631611802](http://www.wsj.com/articles/stock-buybacks-beat-capital-spending-for-many-big-companies-11631611802)).

<sup>7</sup> 15 U.S.C. § 45.

<sup>8</sup> Government Accountability Office, *Internet Privacy: Additional Federal Authority Could Enhance Consumer Protection and Provide Flexibility*, at 10 (Jan. 2019) (GAO-19-52).

<sup>9</sup> National Conference of State Legislatures, *Price Gouging State Statutes*, (May 17, 2021) ([www.ncsl.org/research/financial-services-and-commerce/price-gouging-state-statutes.aspx](http://www.ncsl.org/research/financial-services-and-commerce/price-gouging-state-statutes.aspx)).

<sup>10</sup> *Id.*

authority to state attorneys general to enforce the requirements of the bill.

#### **IV. WITNESSES**

The following witnesses have been invited to testify:

**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

**Glenn Richey, Ph.D.**

Harbert Eminent Scholar and Chair, Department of Supply Chain Management  
Auburn University Harbert College of Business