



Congressional Testimony

"Pandemic Profiteers: Legislation to Stop Corporate Price Gouging"

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

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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 Misyrlena 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=iedfolrf0000001>.

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-11624075400>

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.