From:	Erik Peinert
To:	stopillegalprofiteering
Subject:	American Economic Liberties Project - Comment on Advance Notice of Proposed Rulemaking
Date:	Friday, April 22, 2022 1:56:42 PM
Attachments:	2022-04-22 AELP NYS Price Gouging Comment.pdf

[EXTERNAL]

To the Office of the Attorney General,

Please find attached the comment of the American Economic Liberties Project in response to the March 3, 2020 Advance Notice of Proposed Rulemaking regarding price gouging (GBL § 396-r).

Erik Peinert | Research Manager and Editor
American Economic Liberties Project
(510) 926-9314

AMERICAN ECONOMIC LIBERTIES PROJECT

In response to March 3, 2020 Advance Notice of Proposed Rulemaking
Pursuant to N.Y. Gen. Bus. L. § 396-r(5) (Price Gouging)

Comment of the American Economic Liberties Project
April 22, 2022

We write with respect to your Advance Notice of Proposed Rulemaking (ANPR) to implement New York State's law against price gouging, GBL § 396-r. We applaud the Office of the Attorney General (OAG) for taking this important step to protect New York residents from illegal profiteering in a time of continued disruption due to the COVID-19 pandemic. The American Economic Liberties Project is a non-profit think tank and advocacy organization dedicated to understanding and addressing the problem of concentrated economic power in the United States.

To summarize our main comments, we propose that the OAG:

- Use a different standard for an "unconscionably excessive price" for sellers with and without leverage, based on the statutory text of GBL § 396-r. We outline several sufficient standards for establishing that a seller has leverage, but we encourage the OAG to prioritize a straightforward standard of size based on gross annual revenue.
- For all sellers, we propose that the rules establish that, during an abnormal disruption of the market, any price increases of over 10%—allowing for demonstrable cost increases and the maintenance of the pre-emergency markups—are deemed to be unconscionable.
- For sellers with leverage, whether large or in consolidated industries, we urge the OAG to provide that any price increases at all during an abnormal disruption of the market—beyond allowing for demonstrable cost increases and the maintenance of the pre-emergency markup—constitutes a violation.

We expand on each of these points below.

PURPOSE AND AIMS OF PRICE-GOUGING PROHIBITIONS

The primary aim of prohibitions on price gouging is to ensure that sellers do not unfairly take advantage of abnormal, extraordinary, or emergency circumstances to unjustly profit from other people's necessities. Times of emergency or disruption are when citizens and consumers are most vulnerable, and they present an opportunity for the powerful to abuse their leverage and bargaining position to turn an outsized profit.

New York's law, GBL § 396-r, includes several important provisions that go beyond those of other states. First, it emphasizes the role of leverage in price gouging. Where some market actors are more powerful than others, either in general or in the specific transaction in question, a price increase should be held to a different standard regarding the unconscionability of a price increase. Second, New York's law highlights the role of firms and sellers further up the supply chain, whether wholesale distributors or manufacturers, as potentially partaking in price gouging, taking the focus away from the final retailer as the actor most likely to violate the law.

Price gouging law therefore serves as a form of "antitrust as last resort." The United States, and New York State, has a web of various laws meant to constrain the unfair abuse of power by dominant firms or market actors. These laws prohibit anticompetitive pricing, collusion, mergers that might limit competition, and a range of other practices that unfairly harm consumers and other market competitors.

However, times of emergency can create and enhance market power in ways that would be impossible in normal times. Price gouging rules can serve as an instrument to ensure that these sorts of abuses of power are halted in abnormal moments, when the advantages of market power, leverage, and bargaining advantages can be most greatly abused and further consolidated.

STANDARDS FOR ALL SELLERS

New York's price gouging law provides two different ways to establish a violation during an abnormal disruption of the market, meaning that the pricing in question was unconscionably excessive. Accordingly, we propose that the NY OAG implement this by providing for two different standards: one that would apply to all sellers as a "gross disparity in price" under GBL § 396-r(3)(b), and another that would apply to sellers with "unfair leverage" under GBL § 396-r(3)(a)(ii).

Nearly all existing cases brought under New York's price gouging laws have been brought forth based on a prima facie case established by section (3)(b):

> "the amount charged represents a gross disparity between the price of the goods or services which were the subject of the transaction and their value measured by the price at which such goods or services were sold or offered for sale by the defendant in the usual course of business immediately prior to the onset of the abnormal disruption of the market; or (ii) the amount charged grossly exceeded the price at which the same or similar goods or services were readily obtainable in the trade area."[1]

This standard of a "gross disparity" is not, however, what constitutes either price gouging or an "unconscionably excessive" price. Rather, "it simply establishes a means of providing presumptive evidence that the merchant has engaged in price gouging." [2]

So that this may be an effective rule and deterrent against price-gouging, and in line with this prima facie case, we propose that the OAG specify a level of price increase above which the pricing is presumptively unconscionably excessive, no matter the size, leverage, or bargaining position of

[1] § 396-r(3)(b).
[2] *People v. Two Wheel Corp.*, 71 N.Y.2d 693, 698 (N.Y. 1988).

the seller. In effect, this is to provide a specific number to the statutory language of "cross disparity in price."

Following a number of other states, we advocate a standard whereby any price increases over 10%—beyond demonstrable cost increases and the same average markup as prior to the emergency—constitute a gross disparity in price. This does not mean that the price itself cannot increase by more than 10%, but rather limits price increases to 10% over price increases that the seller can specifically demonstrate.

This follows a similar limit for price gouging in many other states: Arkansas,[3] California,[4] the District of Columbia,[5] Maryland,[6] New Jersey,[7] Oklahoma,[8] and West Virginia[9] all have standards stipulating that price increases of over 10% during a declared state of emergency would constitute price gouging.[10]

LEVERAGE AND PRICE GOUGING BY POWERFUL SELLERS

Outside of this prima facie standard, the law establishes another way to establish that the price increase is unconscionable during an abnormal disruption of the market, and that is "(i) that the amount of the excess in price is unconscionably extreme; or (ii) **that there was an exercise of unfair leverage or unconscionable means**; or (iii) a combination of both factors."[11] Central to this is the question of leverage, where, for example, as outlined in *People v. Two Wheel Corp.*:

> "The situation is ripe for overreaching by the merchant, who enjoys a temporary imbalance in bargaining power by virtue of an abnormal level of demand, in terms of both the number of consumers who desire the item and the sense of urgency that increases that desire."[12]

The court continued: "The use of such leverage is what defines price gouging, not some arbitrarily drawn line of excessiveness."[13] This leverage represented a procedural aspect to the unconscionability of price gouging, "with emphasis on such factors as inequality of bargaining power, the use of deceptive or high-pressure sales techniques, and confusing or hidden language in the written agreement," rather than just the size of the price increase, such that "a price may be unconscionably excessive because, substantively, the amount of the excess is unconscionably extreme, or because, procedurally, the excess was obtained through unconscionable means, or because of a combination of both factors."[14]

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[3] AR Code § 4-88-303.
[4] CA Penal Code § 396(b), determining that 10% price increases are "excessive and unjustified increases."
[5] DC Code § 28–4101.
[6] Chapter 14 of the Laws Maryland 2020.
[7] NJ Rev Stat § 56:8-108, establishing that anything over a 10% increase is an "excessive price increase."
[8] 15 OK Stat § 15-777.4.
[9] WV Code § 46A-6J-3.
[10] Prior to a recent revision to its price gouging laws, Utah likewise defined an "excessive price" as any increase of over 10%. Compare UT Code § 13-41-201 (2019) to UT Code § 13-41-201 (effective May 5, 2021).
[11] § 396-r(3)(a).
[12] *People v. Two Wheel Corp.*, 71 N.Y.2d 693, 697 (N.Y. 1988).
[13] *People v. Two Wheel Corp.*, 71 N.Y.2d at 698.
[14] *People v. Two Wheel Corp.*, 71 N.Y.2d at 699.

Thus, rulemaking now should explicitly look to enforce against circumstances where "all of the price increases were tainted by respondents' use of the superior bargaining position."[15] This implies, as it is a separate way to establish a violation, as well as a separate question of the procedure by which a sale happened, that the rules regarding price gouging in these circumstances should reflect a different, stricter standard.

<u>Establishing Unfair Leverage</u>

We urge the NY OAG to define leverage in terms of a straightforward and easy-to-verify standard to measure the market or bargaining power of a given seller.

For the sake of simple administrability, effective deterrence, and the maintenance of bright-line rules, we encourage the OAG to primarily emphasize a simple determination based on size, measured in terms of the annual gross revenue of the seller. That is, sellers over a certain annual gross revenue would automatically face this stricter standard. In terms of serving the purposes of the law, firm size is a straightforward way to measure the bargaining power of a seller. As an administrable rule, it is easy to verify based on the company's past sales, and it cannot be manipulated after the fact to avoid enforcement. Similarly, as a deterrent, the firms above that size would be put on clear notice that the stricter prohibitions on price increases would apply to them.

However, the NY OAG should not limit its rulemaking to only one specific measure, and instead apply an inclusive standard where any one of multiple different criteria for assessing market power or leverage would suffice to establish that the firm has the leverage to impose unconscionable price increase. For example, we encourage the OAG's rules to incorporate other measures of market power, bargaining power, and leverage as *alternative but independently sufficient* to establish that the seller in questions had leverage. Decades of antitrust enforcement and litigation have provided a range of alternative measures and ways to determine if a firm or seller has market power, bargaining power, or leverage over other firms or its customers. We note several that we would encourage the OAG to include:

- A measure of the market share of the firm (for example, above 20% market share)
- A measure of the concentration level of the industry, either
    - By the Herfindahl-Hirschman Index (HHI) of the market, with, for example, anything over 1,800 presumptively indicating leverage for any seller in that industry, or
    - By or the number of firms that account for 80% of that market, where if less than 6 firms account for 80% or more of the sales, there is presumptively leverage on behalf of sellers, whether the top six or any sellers in that line of commerce.
- Where the firm, or the industry in question, has a recent history of price-fixing, antitrust violations, or price gouging, in New York or elsewhere.

These alternative measures are meant as a further deterrent and meant to capture other forms and instances of unfair leverage that would be otherwise ignored by the blunter tool of establishing leverage by firm size.

[15] *People v. Two Wheel Corp.*, 71 N.Y.2d at 699-700.

What Price Increase is Unconscionable with Unfair Leverage?

Firms with leverage, established by any of the above measures, should face a far stricter standard for the sorts of price increases that are unconscionably excessive. We urge the Attorney General's office to use a standard of 0% price increases above any demonstrable cost increases and inclusive of a fixed markup relative to the pre-emergency period. That is to say that for sellers with leverage, any price increase at all—that is not demonstrably the result of specific cost increases plus the average markup from the pre-emergency period—would constitute an unconscionable price increase via unfair leverage and would thus be a violation.

This may seem extreme, but it is not, and there a several reasons to use such a standard.

First, the language of GBL § 396-r, in addition to how it has been applied by courts, makes clear that in the presence of unfair leverage, even very small price increases can constitute a violation. GBL § 396-r(3)(a)(ii) states "that there was an exercise of unfair leverage or unconscionable means" as one sufficient condition to show that a price increase was a violation. In *People v. Beach Boys Equip. Co., Inc.*, the court found that "even a small increase in price may be unconscionably excessive under General Business Law § 396–r if the excess was obtained through unconscionable means."[16] Longstanding precedent shows that "the use of such leverage is what defines price gouging, not some arbitrarily drawn line of excessiveness."[17] The law in New York, as written, establishes that leverage, not the size of the price increase over cost, is what constitutes a violation.

Second, some other states' price gouging rules include similar standards for **all** sellers, not just consolidated industries with leverage over others. For example, Mississippi's price-gouging law stipulates that during a declared emergency that prices "shall not exceed the prices ordinarily charged for comparable goods or services in the same market area," allowing only for price increases to incorporate "any expenses, the cost of the goods and services which are necessarily incurred in procuring such goods and services during a state of emergency or local emergency."[18] Georgia's price gouging law provides that prices may not be increased on specified goods during an emergency, allowing only for the increased cost of only new stock, plus the average markup of the retailing in the 10 days prior to the emergency.[19] Hawaii goes even further, stipulating that in a state of declared emergency, "There shall be prohibited any increase in the selling price of any commodity, whether at the retail or wholesale level."[20]

Third, this standard would not prohibit large or consolidated sellers from recouping costs or even profiting from price increases, but rather prohibiting them from using a crisis or economic disruption as a pretext to grab a larger share of the total economic pie. While constrained to the same average markup as they had been operating on prior to the emergency, sellers under this standard would still be able to charge that markup on the increased costs that they face, and thus would actually still be able to turn a profit based on their cost increases. They would be prohibited,

[16] *People v. Beach Boys Equip. Co., Inc.*, 273 AD2d 850, 851 (4th Dep't 2000).
[17] *People v. Two Wheel Corp.*, 71 N.Y.2d at 698.
[18] MS Code § 75-24-25.
[19] O.C.G.A. Sections 10-1-393.4 and 10-1-438.
[20] §127A-30. https://www.capitol.hawaii.gov/hrscurrent/Vol03_Ch0121-0200D/HRS0127A/HRS_0127A-0030.htm.

however, from using a crisis or an abnormal market disruption as an excuse or pretense to use their excess leverage and bargaining power to grab an even larger share of profits and income, at the expense of other firms or consumers in a weaker bargaining position and in a time of acute and imminent need.

Fourth, for large firms in highly concentrated industries, the barriers to direct collusion are low, and thus a more liberal standard might actually provide sellers with a mechanism with which to coordinate their price increases. Collusion requires the sharing of some form of information, whether sales volume, pricing plans, costs, plans for capacity increases or restrictions, or direct price increases. For large firms in consolidated industries, those barriers are already low, and by providing an upper limit to those price increases, the OAG would be solving a cartel's coordination problem for it! If the OAG selected 10% as the limit for sellers with leverage, sellers would be able to identically increase their prices by 9%, and credibly claim that their price increases are identical because of the constraints created by the rulemaking, rather than the collusion from which such increases actually stem. The same would go for 8%, 5%, or any other, more lenient standard.

CONCLUSION

We applaud the New York Attorney General's Office for seeking comment. In a time of emergency and economic disruption, it is of the utmost importance that clear rules be published and disseminated to stop powerful market actors for taking advantage of the public for their own profit.

From:	Alexander Boies
To:	stopillegalprofiteering
Subject:	Bayside Chrysler Jeep Dodge
Date:	Thursday, April 21, 2022 3:08:04 PM

[EXTERNAL]

The car dealership Bayside Chrysler Jeep Dodge is currently marking up their cars as much as $30,000, or 40%, above Manufacturer Suggested Retail Price (2022 Jeep Rubicon 392). How is this not an Unfair Business Practice?

From:	Patricia Palmer
To:	stopillegalprofiteering
Subject:	Car Dealers Price Gouging
Date:	Thursday, March 10, 2022 10:22:42 PM

[EXTERNAL]

Recently wanted to buy a new car to replace a 2011 model. At two Toyota dealers, I was told the price would be $5,000-$10,000 OVER the MSRP! When asked them why, they said because inventory is low and everyone is doing it. They said the dealers were doing this- not Toyota. Immoral and price gouging!
We know paying even the MSRP is a ripoff- now they are blatantly charging a premium over that. Crazy and wrong.
Please help us. Thank you.
Sent from my iPad

From: M
To: stopillegalprofiteering
Subject: Charter/Spectrum Price Gouging
Date: Friday, March 4, 2022 2:19:36 PM

[EXTERNAL]

My subscription to Spectrum is for internet, phone and sports package for $12.00 dollars. My landlord provides free cable. My Spectrum bill went from $67.82 in 2020 to $85.64 dollars. Few months later it went to 86.85. Then a few months later my bill was raised to $95.65 dollars. Each time I called I was told that prices went up for everyone. I asked to talk to marketing and was told that my package for the low pricing was over. I then asked him if there were any other packages I could get to lower the price. He told me that prices went up for everyone and there were no packages.

Please do not use my name. They have done this to everyone.

From:	M
To:	stopillegalprofiteering
Subject:	Charter/Spectrum prices increase
Date:	Sunday, March 6, 2022 8:16:35 AM

[EXTERNAL]

I emailed you earlier about Spectrum increasing prices. There never was a change in services they remain the same. Spectrum sends emails saying the are upgrading system. I got this email awhile later after I complained. Nothing changes. Everything remained the same. I am sure they got other complaints. I know at least 3 individuals who complained.
Please help.

From: Diane Lauzon
To: stopillegalprofiteering
Subject: Chinese Restaurants
Date: Friday, March 4, 2022 6:33:18 PM

[EXTERNAL]

I am bringing to your attention the 2 Chinese restaurants I have frequented within Niagara Falls, NY (China Garden Restaurant, 727 Portage Rd., 14301 & Chinatown Kitchen, 1525 Pine Ave., 14301).

It seemed to me that raising the price of a meal by about $2 during the pandemic was a little much. One excuse that I had been given was that the price of meat had risen. I almost always order kung-pao chix, which really does not have that much meat to justify such a price increase.

It also seems to me that Chinese restaurants raise their prices unilaterally, in concert, as if they are a chain, which I think should not allowed to persist.

They all also seem to work in unison utilizing the same menu and prices, as well. It's probably easier to raise the prices for everyone at the same time, from a printing perspective.

Surely this needs to be viewed outside of only 2 restaurants, to see if what I am describing occurs on a grander scale.

Their prices used to be reasonable. I now feel that I am forced to pay that price, if I want to eat Chinese food, whch I enjoy, but now less frequently.

I just thought that this may not be something your office would think of, had no one brought it to your attention.

Thank-you for your interest.

Sincerely,
Diane Lauzon

From: Stacy Mitchell - ILSR
To: stopillegalprofiteering
Subject: Comment - Price gouging rules
Date: Friday, April 22, 2022 9:45:22 PM
Attachments: ILSR Letter OAG NY Price Gouging.pdf

[EXTERNAL]

Hello,

Thank you for the opportunity to submit the attached comment letter.

Sincerely,

Stacy Mitchell

Stacy Mitchell
Co-Director
Institute for Local Self-Reliance

@stacyfmitchell | **ilsr.org** | newsletter

April 22, 2022

Office of the New York Attorney General
The Capitol
Albany, NY 12224-0341

Dear Attorney General Leticia James,

Thank you for the opportunity to submit comments as your office crafts rules to prevent price gouging pursuant to New York law.

I write to draw your attention to Amazon's price-gouging during the pandemic and to encourage your office to closely examine several features of dominant digital platforms that facilitate price-gouging and make it more difficult for consumers and enforcers to detect. With a growing share of transactions for goods and services moving to digital platforms, it's imperative that new price-gouging rules be effective in these contexts.

Amazon dominates online retail. It accounts for about half of online sales in the U.S.[1] Its share of online purchases of household staples, like detergent and toilet paper, is likely much higher. Furthermore, given Amazon's reputation for reliable delivery, its position in consumers' minds as the default, go-to option is almost certainly heightened during an emergency.

Evidence shows steep and widespread price-gouging on Amazon's platform in 2020.[2] In some cases these inflated prices were being offered by third-party sellers, who account for about half of sales on Amazon.com. In other cases, the inflated prices were on products sold directly by Amazon.

At the time, Amazon denounced price-gouging and vowed to work with state officials to combat it.[3] But Amazon put the blame solely on third-party sellers. It failed to acknowledge its own price-gouging or to

[1] https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf
[2] https://www.citizen.org/news/amazons-pandemic-price-gouging-shows-need-for-new-federal-law/
https://www.abcactionnews.com/news/local-news/i-team-investigates/data-shows-amazon-raised-prices-during-pandemic-alongside-sellers-accused-of-price-gouging
https://www.natlawreview.com/article/online-marketplaces-could-expose-third-party-sellers-to-price-gouging-liability
[3] https://www.aboutamazon.com/news/company-news/price-gouging-has-no-place-in-our-stores

acknowledge the substantial windfall it earned from its cut of sales made by third-party price-gougers. Through various fees, Amazon keeps an average of 34 percent of each third-party sale.[4] These fees are Amazon's fastest growing major revenue source. Last year, Amazon took in $121 billion in seller fees. When sellers price-gouge, Amazon profits.

Moreover, several characteristics of Amazon's platform can effectively facilitate and obscure price gouging. Amazon and many of the sellers on its site rely on algorithms to set their prices. These dynamic pricing algorithms adjust prices in real time, minute-by-minute, in response to numerous factors, including price changes made by other sellers. Dynamic pricing can result in lock-step price changes, as one seller's price adjustment triggers another, which triggers another, and so on.

The risk to consumers is heightened by the fact that, to many, Amazon's marketplace looks like a real market. After all, a given product is typically offered by multiple sellers each setting their own price, which presumably means that consumers can count on getting a competitive price. But this appearance of meaningful price competition is an illusion. Not only can pricing algorithms feed coordination, but Amazon exerts a great deal of influence over seller pricing. For one, it controls a major portion of sellers' costs through the fees it charges them. It can also steer seller pricing by adjusting its own price on the same item or adjusting the algorithm that controls which seller wins the buy-box.

As you look to craft rules, we urge you to consider several rules that would address the particular issues raised by platforms. First, make the platform operator liable for price-gouging on its platform. That's the key to stopping the problem. Second, impose penalties that are sufficiently high to be a deterrent. Third, we suggest that you consider how to define "unconscionable" in terms that are suited to regulating algorithms, such as setting a clear cap on how much prices may increase in an emergency.

Sincerely,

Stacy Mitchell
Co-Executive Director
Institute for Local Self-Reliance

Delivered via email to stopillegalprofiteering@ag.ny.gov

[4] https://ilsr.org/amazons-toll-road/

From:	Richard Pianka
To:	stopillegalprofiteering
Subject:	comments on Advance Notice of Proposed Rulemaking
Date:	Friday, April 15, 2022 9:45:57 AM
Attachments:	ATA Comments on NY Price Gouging ANPRM.pdf

[EXTERNAL]

Please see the attached comments from the American Trucking Associations in response to the Office of the Attorney General's March 3, 2022, Advance Notice of Proposed Rulemaking pursuant to N.Y. Gen. Bus. L. § 396-r(5).

Sincerely,

Richard Pianka
General Counsel & Executive Vice President—Legal Affairs, American Trucking Associations
Chief Counsel, ATA Litigation Center
rpianka@trucking.org | (703) 838-1889 | (703) 838-1705 (fax)

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April 15, 2022

New York State Office of the Attorney General
The Capitol
Albany, NY 12224-0341

Re: Advance Notice of Proposed Rulemaking pursuant to N.Y. Gen. Bus. L. § 396-r(5) (Mar. 3, 2022)

Dear General James:

American Trucking Associations, Inc. (ATA) appreciates the opportunity to provide input on the Office of the Attorney General's Advance Notice of Proposed Rulemaking (ANPRM) on potential "rules to prevent price gouging pursuant to New York General Business Law § 396-r." ANPRM at 1. ATA is the national association of the motor carrier industry. Its direct membership includes approximately 1,800 companies, and in conjunction with 50 affiliated state trucking organizations, it represents over 30,000 motor carriers of every size, type, and class of motor carrier operation. The motor carriers represented by ATA haul a significant portion of the freight transported by truck in the United States, and virtually all of them operate in interstate commerce.

ATA recognizes the Office's concerns about the effects of the COVID-19 pandemic and inflationary pressures on New York businesses and consumers. But enforcement actions against motor carriers under New York's price gouging law are not an appropriate response. The ANPRM incorrectly indicates that carriers' responses to the COVID-19 pandemic reflect nothing more than a "motivation to increase profits." ANPRM at 5. To the contrary, carrier pricing reflected extraordinary efforts to maintain high service levels in the face of unprecedented demand and limited capacity to meet it. E-commerce shipments surged as consumers shifted to online shopping, while carriers faced a shortage of truck drivers and other supply chain disruptions. *See* Am. Trucking Ass'ns, Inc., *Driver Shortage Update 2021* (Oct. 25, 2021) (estimating a "historic high" truck driver shortage of 80,000 drivers in 2021).[1]

Despite these challenges, carriers have played a critical role keeping the U.S. economy running during the pandemic. For instance, carriers worked tirelessly to get goods moving and reduce congestion at ports, and they delivered vital medical supplies, personal protective equipment, and COVID-19 vaccines. As President Biden recently recognized, truck drivers spent "these last two years helping carry the nation, literally, on [their] backs." *Remarks by President Biden on the Trucking Action Plan to Strengthen Our Nation's Supply Chains* (Apr. 4, 2022);[2] *see also Fact*

[1] https://www.trucking.org/sites/default/files/2021-10/ATA%20Driver%20Shortage%20Report%202021%20Executive%20Summary.FINAL_.pdf.

[2] https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/04/04/remarks-by-president-biden-on-the-trucking-action-plan-to-strengthen-our-nations-supply-chains.

Sheet: The Biden Administration's Unprecedented Actions to Expand and Improve Trucking Jobs (Apr. 4, 2022) ("Trucking moves 72 percent of goods in America and is a lynchpin in our goods movement supply chain.").[3]

Regardless, ATA disagrees with any suggestion that GBL 396-r could be lawfully applied to motor carriers. Federal law would bar any such effort. In particular, the Federal Aviation Administration Authorization Act of 1994 (FAAAA) expressly preempts any state enforcement action related to a motor carrier's prices or services. Under the FAAAA, "a State . . . may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . , broker, or freight forwarder with respect to the transportation of property." 49 U.S.C. § 14501(c)(1); *see also id.* § 41713(b)(4)(A) (similar provision for combined motor-air carriers). Congress enacted the FAAAA to free motor carriers from the burdensome "patchwork" of state regulation, which had caused "significant inefficiencies" and "inhibition of innovation." H.R. Conf. Rep. No. 103-677, at 87 (1994). It determined that legislation leaving motor carriers' rates and services to be "dictated by the marketplace" would promote "the public interest." *Id.* at 87-88.

In enacting the FAAAA's preemption provision, Congress "borrowed language from the Airline Deregulation Act of 1978" (ADA). *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 368 (2008); *see* 49 U.S.C. § 41713(b)(1) (ADA preemption provision). And it expressly endorsed "the broad preemption interpretation adopted by the United States Supreme Court in *Morales v. Trans World Airlines, Inc.*," which interpreted the ADA. H.R. Conf. Rep. No. 103-677, at 83. Courts thus have given the FAAAA the same broad preemptive scope as the ADA's parallel preemption clause. *See Rowe*, 552 U.S. at 370.

In *Morales*, the Supreme Court construed the ADA's preemption provision to "express a broad pre-emptive purpose." 504 U.S. 374, 383 (1992). The Court explained that the "ordinary meaning" of the statute's "key phrase"—"relating to" airline rates, routes, or services—was "a broad one." *Id.* Under that language, "[s]tate enforcement actions having a connection with or reference to airline 'rates, routes, or services' are pre-empted." *Id.* at 384. Thus, a state law may be preempted "even if the law is not specifically designed to affect" air carrier rates, routes, or services, or even if "the effect is only indirect." *Id.* at 386 (citation omitted).

Under the FAAAA's plain text and governing precedents, it is difficult to imagine a clearer case for preemption than an attempt to apply GBL 396-r to the prices charged by a motor carrier. New York's law prohibits "sell[ing] or offer[ing] to sell" certain goods or services "for an amount which represents an unconscionably excessive *price*." N.Y. Gen. Bus. L. § 396-r(2) (emphasis added). The determination whether a "price is unconscionably excessive" further depends on factors such as whether "the amount of the excess in *price* is unconscionably extreme." *Id.* § 396-r(3)(a)(i) (emphasis added). And proof of a violation requires evidence that "the amount charged" exceeds "the *price* at which such goods or services were sold" before the relevant market disruption or from other sellers. *Id.* § 396-r(3)(b) (emphasis added).

[3] https://www.whitehouse.gov/briefing-room/statements-releases/2022/04/04/fact-sheet-the-biden-administrations-unprecedented-actions-to-expand-and-improve-trucking-jobs.

As applied to a motor carrier, GBL 396-r would not merely "hav[e] a connection with or reference to" carrier rates; it would directly regulate the prices that carriers could charge their customers. *Morales*, 504 U.S. at 384. That is the precise result Congress prohibited in enacting the FAAAA. The FAAAA thus plainly preempts GBL 396-r (and any implementing rules) as applied to motor carriers.

* * *

The FAAAA's broad preemption provision reflects Congress's judgment that carrier rates "reflect[ing] maximum reliance on competitive market forces" would best promote "efficiency," "innovation," and "quality" of transportation services. *Rowe*, 552 U.S. at 371 (internal quotation marks omitted). ATA encourages the Office to respect that judgment when considering and formulating rules to implement GBL 396-r.

Respectfully submitted,

Richard Pianka
General Counsel and Executive Vice President, Legal Affairs

From:	Jim Calvin
To:	stopillegalprofiteering
Subject:	Comments on Notice of Rulemaking
Date:	Friday, April 22, 2022 10:02:34 AM
Attachments:	NYACS Comments to AG on Price Gouging Rulemaking.doc

[EXTERNAL]

Dear Colleagues:

Attached are comments the New York Association of Convenience Stores wishes to make concerning the Department of Law's proposed rulemaking on price gouging. Thank you for keeping our views in mind.

Jim Calvin, President
New York Association of Convenience Stores
130 Washington Avenue
Albany NY 12210
office 518-432-1400
cell 518-441-4918
jim@nyacs.org

New York Association of Convenience Stores
130 Washington Avenue, Suite 300, Albany NY 12210
TELEPHONE: (518) 432-1400 ONLINE: www.nyacs.org

April 22, 2022

The Honorable Letitia James
Office of the Attorney General
State Capitol
Albany NY 12224-0341

REF: Price Gouging Rulemaking

Dear Attorney General James:

The New York Association of Convenience Stores submits the following comments in response to the New York State Attorney General Office's *Notice of Proposed Rulemaking pursuant to New York State General Business Law Section 396-r(5), Price Gouging.* NYACS represents 8,000 neighborhood mini-marts and convenience stores statewide, including nearly 4,500 that sell gasoline. Many of these are independent, family-run businesses.

NYACS members are familiar with the anti-price gouging law, and are committed to adhering to its retail pricing restraints whenever that law is activated by an abnormal market disruption – as long as the industry is given fair and timely notice of such activation and definition of the pricing boundaries.

Retail motor fuel prices are affected by dozens of factors that are constantly shifting, especially in periods of extreme price volatility such as we have experienced thus far in 2022. Costs that have contributed to the spike in retail gasoline prices this year include:

Crude Oil Prices
Crude was around $75/bbl at the start of 2022, reached $120 in mid-March, and is currently at $103

Local Sales Taxes
These are typically a percentage of the total sale, averaging 4 percent

Credit Card Swipe Fees
These are a percentage of the total sale, averaging 2.5%. Around 85% of fuel customers pay by card.

Fuel Delivery - Labor
Distributors have had to offer sharply higher wages and even sign-on bonuses to attract and keep truck drivers in the midst of the labor shortage, passing along these higher costs.

Fuel Delivery – Diesel
As the price of diesel fuel has escalated, distributors have passed along these higher costs to retailers in the form of fuel surcharges

On-Site Labor
Many retailers spread the cost of labor across all segments of the convenience store operation including fuel. Labor costs skyrocketed during the pandemic and remain high due to the continued worker shortage.

Despite these cost dynamics, no other commodity market is as transparent or competitive as retail motor fuel. Tax-included prices are displayed out at the curb as well as on smart-phone apps, enabling consumers to comparison shop 24 hours a day, 7 days a week.

The combination of transparent pricing and consumers' price sensitivity exerts a constant downward pressure on retail fuel prices, benefiting consumers. It also forces retailers to operate efficiently in order to preserve market share.

Convenience store operators are buyers of fuel as much as they are sellers, so they are sensitive to how consumers are impacted by price trends. The difference is that convenience stores buy fuel 5,000 to 8,000 gallons at a time.

New York's Price Gouging Law

On March 8, 2022, as gasoline prices spiraled upward, the Attorney General issued a press release stating that New York law prohibits sellers of fuel and other vital goods from charging unconscionably excessive prices during an abnormal market disruption, and warning the motor fuel industry that gas price gouging would not be tolerated.

While NYACS concurs that price gouging in any industry is unacceptable, New York's anti-price gouging law (General Business Law, Section 396-r (5)), fails to provide businesses with clear and timely notice of a triggering event that activates temporary pricing restraints.

The law states that "during any abnormal disruption of the market for consumer goods and services vital and necessary for the health, safety and welfare of consumers, no party within the chain of distribution of such consumer goods or services shall sell or offer to sell any such goods or services for an amount which represents an unconscionably excessive price."

It goes on to define abnormal market disruption as "any change in the market, whether actual or imminently threatened, resulting from stress of weather, convulsion of nature, failure or shortage of electric power or other source of energy, strike, civil disorder, war, military action, national or local emergency, or other cause of an abnormal disruption of the market which results in the declaration of a state of emergency by the governor."

In practice, however, this law can be, and has been, applied by the Attorney General even when the Governor has not declared an emergency. In fact, no state officer or agency is assigned to ring a bell, blow a whistle, or announce on a web site that an abnormal market disruption has commenced, so that responsible business people can immediately take the necessary steps to stay within the prescribed pricing boundaries. Thus, retailers charging market-driven prices may become unwittingly susceptible to legal action by the Attorney General. This is akin to pulling over drivers for speeding without posting the speed limit.

Many other states – including New Jersey, Connecticut, Maine and Vermont – require that their Governor formally declare an abnormal market disruption or formally issue an emergency order triggering their anti-price gouging law on a specific date. We urge New York's Attorney General to seek to either amend GBL Section 396-r (5) in this manner or address it in the rulemaking.

Similarly, the term "unconscionably excessive price" is hazy and highly subjective. In order for regulated entities to understand the boundaries and stay within them, we urge the Attorney General to set forth a threshold in this rulemaking. Excluding documented product price changes and legitimately related cost factors, what percentage price increase should qualify as "unconscionable?" We would welcome the chance to discuss this question with the Attorney General's Office.

In summary, NYACS members are committed to adhering to the pricing restraints under GBL Section 396-r (5) whenever it is activated by an abnormal market disruption. However, in order to maximize voluntary compliance benefiting businesses and consumers, the rules need to be amended to provide prompt, official, widespread notification that the anti-price gouging law is being activated, and to provide clear, unambiguous definitions of key benchmarks such as "unconscionably excessive."

Thank you for the opportunity to comment.

Respectfully,

James S. Calvin

James S. Calvin
NYACS President

From:	Charlene Jean
To:	stopillegalprofiteering
Subject:	Comments on Price Gouging
Date:	Monday, March 7, 2022 7:42:17 AM

[EXTERNAL]

The inflation and greed via price gouging is making native New Yorkers leave by pricing them out.

It's depriving folks of having a decent job and a decent place to live. We have to live very far from our job for rent — rent is the highest form of price gouging. As well as home deliveries for food. We are immunocompromised and are still at risk at the grocery store. Groceries which used to be 80-90 dollars to feed two people for a week and a half/two weeks are now 150-170 for delivery (including service fees, delivery charges, and an additional tip). The tip is also dependent on us paying the worker- while the workers mentioned they haven't received the same amount of profits as the owners.

Manhattan and gentrified Brooklyn is now a playground for the rich, and native new yorkers are pushed to the outer boroughs in hopes the price gouging doesn't impact us.

Please see Toni Morrison's on the lack of "public space.. increasingly seen as a protected preserve open only to the law-abiding and the employed, or rather to those who appear to be. Homelessness has been recharacterized as streetlessness. Not the poor deprived of homes, but the homed being deprived of their streets. And crime is construed as principally black. Neither one of these constructions is new. But as each affects public space, each affects public discourse."

Much to consider.

CHARLENE JEAN

From:	Danna DeBlasio
To:	stopillegalprofiteering
Cc:	Ramos, Kim; Abend, Monica; nelson.eusebio@nsaglobal.org
Subject:	Comments on Rulemaking Process to Combat Illegal Price Gouging
Date:	Tuesday, March 22, 2022 1:56:55 PM
Attachments:	NSA Price Gouging.pdf

[EXTERNAL]

Hello,

Please see attached for the National Supermarket Association's comments on the Attorney General's rulemaking process to Combat Illegal Price Gouging.

If you have any questions, please don't hesitate to reach out.

Best,
Danna

--
Danna DeBlasio
Managing Director
CMW Strategies
233 Broadway, Suite 2310
New York, NY 10279
(212) 437-7373

NATIONAL SUPERMARKET ASSOCIATION

March 22, 2022

Office of the Attorney General
Attn: Attorney General Letitia James
The Capitol
Albany, NY 12224-0341

Re: The Attorney General's Advance Notice of Proposed Rulemaking in regards to Price Gouging

Dear Attorney General Letitia James:

The National Supermarket Association (NSA) is a trade association that represents the interest of independent supermarket owners in New York and other urban cities throughout the East coast, Mid-Atlantic region and Florida. In the five boroughs alone, we represent over 400 stores that employ over 15,000 New Yorkers. Our members work hard every day to run their businesses, support their families and provide jobs and healthy food options to their communities.

We write to you today with our comments regarding the new rulemaking process to combat price gouging. We wish to highlight a few concerns that we would like you to take into account as you officially formalize the new price gouging rules.

The NSA diligently continues to discourage price gouging and renounces it as a detestable act during a worldwide pandemic. However, rising inflation costs, delays, and issues in supply chain logistics have unfortunately impacted retailers and consumers alike nationally. These impacts on the supply chain affect the prices that retailers are able to purchase products at, which subsequently becomes reflected in the prices advertised to consumers, and thus may come across as price gouging. When supermarkets are charged higher prices for their products, they ultimately must raise prices when selling to consumers as well. At the height of the COVID-19 pandemic, many supermarkets were faced with an inaccurate perception that they were price gouging due to the new, higher prices than previous. Although these prices are higher, supermarkets are not profiting off of these new prices and taking advantage of their customers.

We want to ensure that the Attorney General's office takes supply chain logistic issues and rising costs on the retailers' end into consideration when executing the new price gouging guidelines and accounts for the pricing impacts that retailers are having to face. We also want to caution against accusations versus findings of price gouging. When officials jump to conclusions, it has the unintended consequence of painting the entire industry with a broad brush, which is particularly unfair to our local, neighborhood operators who have continued to serve their neighbors through good times and bad.

Overall, the NSA respectfully requests the Attorney General's office to consider the circumstances of independent supermarket owners as they continue to deal with heightened supply chain issues and rising inflation costs. An issue we had the opportunity to speak with the Attorney General about directly during the height of the pandemic to which the Attorney General was very receptive.

Sincerely,

Nelson Eusebio

Nelson Eusebio
Director of Government Relations
National Supermarket Association

From:	Martin Fernandez
To:	stopillegalprofiteering
Subject:	Concerned Citizen
Date:	Tuesday, March 15, 2022 12:55:49 PM

[EXTERNAL]

Hello. I’ve noticed price increases – with the exception of businesses that have tried to keep prices fair for customers – that are sometimes 30-50% above prior prices. These increases cannot be explained by the annual rate of inflation.

I am hoping that your office can send out special auditors to expose obvious profiteering. The irony is that the profiteers may trigger a recession – if the public tightens its belt and refuses to shop, resulting in closed businesses, lost jobs, etc.

I hope our municipal and federal governments will obtain the enforcement powers to penalize these folks.

Thanks,

MF

Sent from Mail for Windows

From: Aquilina, Joseph
To: stopillegalprofiteering
Subject: Consumer Brands Comment on ANPR, § 396-r(5)
Date: Friday, April 15, 2022 1:18:34 PM
Attachments: April 15 2022 Consumer Brands NY ANPR Comment for submission.pdf

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[EXTERNAL]

Attached please find Consumer Brands Association's comment regarding the Office of the Attorney General's ANPR for § 396-r(5). Consumer Brands appreciates the opportunity to submit a comment and stands ready to partner with your office and provide additional information.

Respectfully submitted,
Joseph Aquilina

Joseph Aquilina
Senior Director & Associate General Counsel
Consumer Brands Association
571-378-6722 (office)
202-262-9096 (mobile)

CONSUMER
BRANDS
ASSOCIATION

April 15, 2022

Sent via electronic mail: to stopillegalprofiteering@ag.ny.gov.

Hon. Letitia James
Attorney General of the State of New York
Office of the Attorney General
State Capitol
Albany, New York 12224

Re.: Advance Notice of Proposed Rulemaking pursuant to N.Y. Gen. Bus. L. § 396-r(5) (Price Gouging)

Background on Consumer Brands

The Consumer Brands Association champions the industry whose products Americans depend on every day, representing more than 1,700 iconic brands. The household, personal care, food and beverage products manufactured by the consumer packaged goods (CPG) industry contribute $2 trillion to the U.S. economy and support more than 20 million American jobs with $1.1 trillion in labor. As a provider of a variety of essential goods to consumers and accounting for one-fifth of all freight shipping in the United States, the CPG industry is a vital stakeholder and expert on the supply chain ecosystem, with members that work to remove barriers in providing American consumers the affordable products they rely on every day.[1]

Consumer Brands appreciates the opportunity to comment on the Advance Notice of Proposed Rulemaking to provide background and context on the CPG industry and pricing dynamics.

CPG manufacturers have and continue to face unprecedented challenges in key areas related to the pandemic including historic demand for products coupled with shortages and cost spikes for raw materials; transportation, distribution and logistical challenges; ongoing labor shortages; new and unexpected workforce expenses related to the pandemic; all of which contribute to rising costs in the industry. While CPG manufacturers strive to keep costs down, increased costs cannot always be absorbed. Throughout the pandemic, however, CPG manufacturers have continuously sought to be transparent with customers about the significant economic disruptions facing the industry and unavoidable costs CPG companies have incurred due to such disruptions.

[1] https://consumerbrandsassociation.org/supply-chain/supply-chain-dashboard/

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Consumer Brands, Costs for Industry and COVID-19 Price Gouging Concerns

Pervasive economic disruptions related to the COVID-19 pandemic and consumer demand have had a significant impact on the CPG industry over the past two years, resulting in industry-wide increases on the cost to make and ship goods stemming from numerous factors. Our industry has worked diligently to meet increased demand for products indispensable to pandemic response like food, beverages, disinfectants, cleansers, hand sanitizer, toilet paper and more. These demand spikes have continued, reflecting changes in consumer behavior, such as new shopping patterns, pantry loading and significant at-home consumption. Additionally, consumers purchased more fresh food, dairy and bakery products, frozen foods, meats and seafood, and alcoholic beverages for their homes. While the industry has demonstrated tremendous resiliency, numerous factors, including those discussed below, have ultimately led to increased costs for CPG companies against this backdrop of unprecedented pandemic-driven shifts in consumer demand.

- **Transportation, distribution and logistical challenges** are a primary cause of the economic disruptions and rising costs CPG manufacturers have experienced during the COVID-19 pandemic. Truck driver shortages, shipping delays, rising diesel fuel costs, and port congestion have created supply and distribution constraints, increasing shipping and logistics costs for many CPG companies.[2] Labor disruptions at warehousing facilities due to COVID-19 outbreaks also generated warehouse staffing shortages, creating backlogs of unloaded goods

[2] *See, e.g.*, Peter S. Goodman et al., *'I've Never Seen Anything Like This': Chaos Strikes Global Shipping*, N.Y. TIMES (Mar. 6, 2021), https://www.nytimes.com/2021/03/06/business/global-shipping.html; Gregory Schmidt, *A record number of cargo ships off the California coast shows a crack in the supply chain*, N.Y. TIMES (Sept. 23, 2021), https://www.nytimes.com/2021/09/23/business/cargo-ships-supply-chain.html; Jonathan Saul, *Supply chain chaos set to extend further, port operator ICTSI says*, REUTERS (Oct. 20, 2021), https://www.reuters.com/business/finance/supply-chain-chaos-set-extend-further-port-operator-ictsi-says-2021-10- 20/; Samantha Raphelson, *Trucking Industry Struggles With Growing Driver Shortage*, NPR (Jan. 9, 2021), https://www.npr.org/2018/01/09/576752327/trucking-industry-struggles-with-growing-driver-shortage%20s; Pamela N. Danzinger, *Unclogging The Ports Will Not Fix The Supply Chain's Even Bigger Trucking Crisis*, FORBES (Oct. 15, 2021), https://www.forbes.com/sites/pamdanziger/2021/10/15/unclogging-the-ports-will-not-fix--the-supplychains-even-bigger-trucking-crisis/?sh=29d26b74124f; Consumer Brands Association , *Statement from Consumer Brands on March Jobs Report, https://consumerbrandsassociation.org/press-releases/statement-from-consumer-brands-on-march-jobs-report/ (April 1, 2022)*

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and equipment from trucks and raising distribution costs for finished products.[3] In the United States, moreover, the pandemic exacerbated longstanding workforce challenges in the trucking industry, including high turnover rates and an aging workforce, leading to an estimated 80,000 driver shortage and increased transportation costs. In addition to the transportation and distribution cost increases that result from these industry-wide transportation challenges, they also caused delays in delivering raw inputs and packaging materials to manufacturing facilities. This impaired CPG manufacturers' ability to produce finished products, forcing them to pay extremely higher rates to prevent production delays and meet consumer demand.

- **Ongoing labor shortages**[4] have impacted every level of the supply chain, as the "Great Resignation" took hold across the COVID-weary workforce last year. In particular, the COVID-19 pandemic has posed serious staffing-related challenges at CPG manufacturing and distribution facilities. CPG manufacturers are facing significant staffing challenges and associated costs, with companies raising wages, introducing new and expanded benefits for workers, and taking other steps to attract and retain workers. CPG manufacturers have also incurred higher labor costs associated with worker absenteeism due to illness, caretaking for sick family members, school closures and concerns about exposure for immunocompromised family members. These challenges are occurring while wages in manufacturing rise. According to March BLS data, wages for manufacturing facility roles rose 6.7% over the last year, outpacing the national average of 5.6%. Wage increases, however, have not been sufficient in filling the labor gap.

- New and **unexpected costs were introduced with the COVID-19 pandemic**. CPG manufacturers implemented safety protocols to combat health-related risks for essential workers, such as the provision of personal protective equipment, increased sanitation measures, testing and vaccines, as well as frontline incentives. These measures have increased operating costs for CPG companies while reducing production capacity. While CPG companies are actively recruiting

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3 *See, e.g.*, Paul Ziobro, *FedEx Earnings Reflect Labor Shortage, Supply-Chain Woes*, WALL ST. J. (Sept. 21, 2021), https://www.wsj.com/articles/fedex-lowers-forecast-as-labor-shortage-supply-chain-woes-sap-results-11632256848.

4 *See, e.g.*, Alyssa Fowers & Andrew Van Dam, *The most unusual job market in modern American history, explained*, WASHINGTON POST (Dec. 29, 2021), https://www.washingtonpost.com/business/2021/12/29/job-market-2021/; Bob Tita & Austen Hufford, *Workers sick with Omicron add to manufacturing woes*, WALL ST. J. (Jan. 10, 2022), https://www.wsj.com/articles/omicron-workers-manufacturing-sick-covid-11641832497.

new employees to keep production lines running, the deficit continues to challenge the industry's ability to meet demand and keep costs down, particularly for products with labor-intensive production processes. Additionally, evolving workforce expectations including the desire for flexible work arrangements, additional and more targeted health and financial benefits, student loan support, and increased paid time off, while not directly linked to wages, nonetheless present additional costs for the CPG industry that ultimately impacts prices.

- Pandemic-related shutdowns, restrictions and other safeguards implemented by authorities worldwide to reduce the spread of COVID-19 have caused businesses and factories around the world to close or significantly reduce capacity.[5] These production challenges have led to **shortages or cost spikes in raw materials**; oats are up 98%, diesel 64%, oils 46%, aluminum 44%. Other materials including corn, coffee, wheat, soybeans, plastics and cardboard, among others, that are used to produce and package consumer goods are at historic highs for manufacturers. As a result, inventories of raw materials are running low, leading to higher costs for CPG manufacturers. As discussed above the significant transit delays, port congestion and disruptions and constraints in every transportation mode — ocean, rail, air, and truck — have also affected raw material supply, contributing to rising costs when CPG manufacturers seek alternative supply sources.

- In addition to pandemic-related factors, the greater frequency of **extreme weather** in recent years — such as tornadoes, hurricanes, floods, and fires — has also disrupted access to raw materials, interrupted production and distribution and raised costs for CPG manufacturers. Severe weather and climate events can damage critical infrastructure, such as roads and electricity, as well as buildings and specialized equipment, further contributing to production disruptions and rising costs.

Several national and international organizations have acknowledged additional factors that have caused price increases:

- The USDA Economic Research Service has provided regular updates and forecasts on costs of numerous CPG products. As recent as March 2022, the agency has cited inflation as the trigger for price increases in 11 food categories,

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[5] *See, e.g.*, Sapna Maheshwari and Patricia Cohen, Retailers' Latest Headache: Shutdowns at Their Vietnamese Suppliers, N.Y. TIMES (Sept. 29, 2021), https://www.nytimes.com/2021/09/29/business/supply-chain-vietnam.html.

as well as 6 aggregate categories. USDA has also cited dynamics that have influenced price including rapid "increases in the consumption" of certain products.[6]

- In addition to pandemic, Russia's invasion of Ukraine presents a humanitarian and geopolitical crisis, exacerbating economic dynamics and magnifying the challenge that CPG companies face in making and distributing essential goods. On April 8, 2022, the United Nations Agriculture Organization recorded its highest levels yet since its 1990 inception, with record highs in prices for cereals, vegetable oils, and meats amid the ongoing Russia-Ukraine conflict.[7] While wheat prices have jumped since Russia broached Ukraine's borders, diesel was already up 58%, wheat up 38% over last year and fats and oils were up 42% over last year, numbers that largely pre-date the invasion.[8]

Current and Anticipated Concerns

Just as variants and consequent surges of COVID-19 cases have been fluid, difficult to anticipate and challenging to pivot from, the CPG industry has had to confront these challenges along with historically high demand for products. Supply chain snarls have been ongoing and the cost to make and ship goods has risen whether from internal costs or added upstream costs, and the consequences are showing up as consumer inflation. The integrated nature of the global supply chain has faced challenges from sourcing, manufacturing, labeling, shipping and delivering, whether the product is being purchased from around the world or around the corner. Over two years into the pandemic, the nation was recently marred by the aggressive omicron variant, which brought record high case numbers, sidelining workers and adding an average of six weeks lead-time into supply chains.

Rising prices are not a desired outcome, though they have proven to be an unavoidable one. CPG companies have absorbed as much cost as possible and operate in a highly competitive environment where price increases cannot be taken lightly due to their almost-daily impact on family budgets. There is a clear difference between price

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[6] *See,* U.S. Department of Agriculture, Economic Research Service *https://www.ers.usda.gov/data-products/food-price-outlook/ (March 25, 2022)*

[7] *See*, Ukraine War Drives International Food Prices to 'new all-time high', https://news.un.org/en/story/2022/04/1115852 (April 8, 2022)

[8] *See* The Ukraine Conflict and Other Factors Contributing to High Commodity Prices and Food Insecurity, U.S. Department of Agriculture, Foreign Agricultural Service, noting that wheat stocks are at historically low levels which in turn has impacted prices. https://www.fas.usda.gov/sites/default/files/2022-04/22%2004%2006%20Food%20Prices%20and%20Food%20Security_0.pdf.

inflation and price gouging. The CPG industry is unequivocally opposed to price gouging and believes it undermines its core mission of providing consumers with the products that support their lives every day.

Consumer Brands has been vocal about how COVID-19, along with other factors, dramatically affected the cost and availability of consumer products during times of national emergency, while exposing bad actors who sought to exploit consumers at their most vulnerable. Our consistent position and that of our membership is that price gouging is illegal and that reporting it before consumers are hurt is the best way to stop it. In the week before March 13, 2020, when the president declared a national emergency concerning COVID-19, Consumer Brands submitted a letter to the U.S. Attorney General urging collaboration of the Justice Department and other federal, state, local, and industry partners to take all possible actions to counteract price gouging of consumer products.[9]

Consumer Brands supports efforts in New York to implement consumer-centric measures to ensure protection while also considering the myriad factors that influence prices whether online or at a cash register. We encourage any amendments to ensure a comprehensive evaluation of factors that affect prices.

Looking Ahead

Any new legal definitions of and investigations related to price gouging should clearly differentiate between price gouging and price increases related to inflation and economic conditions, account for the tremendous variability in the supply chain, and not be overly broad. While the ANPR references the qualifier of “any abnormal disruption of the market for goods and services vital and necessary for the health, safety and welfare of consumers,” any framework that is adopted should provide for the holistic evaluation of all factors that may have impacted prices.

In terms of standards, the ANPR sets forth consideration of “unconscionably excessive” and “exercise of unfair leverage.” Consumer Brands is supportive of standards that are not illusory and do not arbitrarily assign a percentage that triggers “price gouging.” Any standard must be grounded in specific economic analysis to avoid creating a framework in which a company with the highest prices will automatically be a target for investigation or prosecution, without more.

[9] https://consumerbrandsassociation.org/wp-content/uploads/2020/03/Letter-to-AG-Barr.pdf

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Arlington, VA 22209

On behalf of Consumer Brands, thank you for your ongoing efforts to protect New York consumers and ensure they can obtain the products they depend on every day. Consumer Brands stands ready to partner with your office and provide additional background.

Respectfully submitted,

Joseph T. Aquilina

Joseph T. Aquilina
Sr. Director, Associate General Counsel
jaquilina@consumerbrandsassociation.org

Consumer Brands Association
1001 19th Street North, 7th Floor
Arlington, VA 22209

From:	Richard Chapman
To:	stopillegalprofiteering
Subject:	Fw: Failure Notice
Date:	Saturday, March 5, 2022 9:57:27 AM

[EXTERNAL]

----- Forwarded Message -----
From: "mailer-daemon@aol.com" <mailer-daemon@aol.com>
To: "rich.chapman@verizon.net" <rich.chapman@verizon.net>
Sent: Saturday, March 5, 2022, 09:55:36 AM EST
Subject: Failure Notice

Sorry, we were unable to deliver your message to the following address.

<stopillegal-profiteering@ag.ny.gov>:
550: 5.1.1 User Unknown

---------- Forwarded message ----------
Hi,
Thank you for looking into price gouging. I am shopping for a new car and have found most dealers are asking for 5 to 10% over MSRP. Can anything be done? I know the manufacturers don't see this money. I see it as simply dealership greed because of demand. I will not pay over sticker but I need a car.
thank you,
Rich Chapman

From:	Complaints, Investor
To:	stopillegalprofiteering
Subject:	FW: High Gasoline Prices
Date:	Tuesday, March 8, 2022 9:33:48 AM

-----Original Message-----
From: DENISE WASHBURN <dwashburn69@aol.com>
Sent: Monday, March 7, 2022 10:29 PM
To: Complaints, Investor <Investor.Complaints@ag.ny.gov>
Subject: High Gasoline Prices

[EXTERNAL]

Dear Sir;

Why have gasoline (all fuels) prices increased to this amount? It isn't because of the latest war between Russia and Ukraine. Our gasoline prices had been steadily climbing long before this war.

It has gotten to the point where Americans have to choose between staying warm or eating. Crazy as it sounds we need to pay these absorbent prices to earn a living which lately isn't very comfortable.

This Crisis has put an enormous burden on your constituents. Your office needs to help bring these prices down.

Please tell me what you can do. If nothing please tell me who can.

Sincerely, Denise Washburn

Sent from my iPhone

From:	Rebecca Gould
To:	stopillegalprofiteering
Subject:	FW: Price Gauging Regulations
Date:	Monday, April 18, 2022 1:59:48 PM
Attachments:	image002.png

[EXTERNAL]

Please find the requested information for both PPE and travel staff noted below.

Masks - 2020 price @ $22.00/case – Current Price @ $24.70/case
Gloves - 2020 price @ $21.90/case – Current Price @ $69.35/case
Gowns – 2020 price @ $22.25/case – Current Price @ $25.59/case

From: Alyssa Kelly
Sent: Thursday, April 14, 2022 4:27 PM
To: Rebecca Gould; Kimberly M. Nagle; Laura Reed
Subject: RE: Price Gauging Regulations

Hello!

See below for the pre-pandemic rates in green.

RN- Specialty	$65.00/hr-$70.00/hr
RN- Non Specialty	$62.00/hr-$65.00/hr
Licensed Practical Nurse	$45.00/hr-$48.00/hr
Certified Nursing Assistant	$34.00/hr-$40.00/hr

See below for the current rates in red.

RN- Specialty	$135.00/hr-$150.00/hr
RN- Non Specialty	$110.00/hr-$130.00/hr
Licensed Practical Nurse	$65.00/hr-$70.00/hr
Certified Nursing Assistant- (we currently do not have any CNA's, rates are based off of 2021	$44.00/hr-$68.00/hr

Let me know if there is anything else I can assist with.

Alyssa Kelly
Human Resources Specialist
Schuyler Hospital
220 Steuben St.
Montour Falls, NY 14865
P: (607) 535-8639 x52800
F: (607) 535-8625

From: Rebecca Gould
Sent: Thursday, April 14, 2022 12:47 PM
To: Alyssa Kelly; Kimberly M. Nagle; Laura Reed
Subject: FW: Price Gauging Regulations

Hi – Looking for some assistance with information gathering.

Alyssa - Can you provide me with the data below in yellow?

Laura – Can you provide the data below in green?

Thanks!

Becky

From: Darius Kirstein [mailto:dkirstein@leadingageny.org]
Sent: Thursday, April 7, 2022 10:16 AM
To: Karen Lipson
Cc: Darius Kirstein
Subject: Price Gauging Regulations

To: NH/ACF/HCBS CFOs

Good Morning-

The NYS Attorney General has published an Advance Notice of Rulemaking seeking input into the development of regulations to inform enforcement of New York State's price gouging statute. LeadingAge NY would like to offer comments in response to the Notice concerning the fees being charged by staffing agencies, as well as price gouging in sales of personal protective equipment and disinfectants in the early months of the pandemic. The Advance Notice poses many questions about market dynamics and pricing that we are unable to answer. However, we would like raise awareness of the skyrocketing rates charged by staffing agencies and the experience of providers in early 2020 in purchasing PPE and other supplies. We would appreciate it if you could share with us:

- The pre-pandemic (2019) rates charged by staffing agencies for RNs, LPNs, and aides and the current rates for each.
- The pre-pandemic rates charged for masks, gloves, and gowns, the rates charged in early 2020, and current rates.

The AG's advance notice asks, among other questions, "What particular medical goods and services have features that might make price gouging more likely and/or conceal price gouging?" If you have thoughts on this question or other information you would like to share with us in relation to this issue, we would welcome it.

If you're organization is interested in submitting comments, they may be submitted until April 22, 2022 at stopillegalprofiteering@ag.ny.gov.

Thank you very much for any insights you can provide.
-k.

Karen Lipson
Executive Vice President

LeadingAge New York
13 British American Blvd., Suite 2, Latham, NY 12110-1431
Phone: 518.867.8383 ext. 124
Mobile: 518.461.8985

From:	Steven Campiglia
To:	stopillegalprofiteering
Subject:	Fwd: Price gouging
Date:	Saturday, March 5, 2022 7:06:03 AM

[EXTERNAL]

---------- Forwarded message ---------
From: **Steven Campiglia** <nicar1612@gmail.com>
Date: Sat, Mar 5, 2022 at 7:03 AM
Subject: Price gouging
To: <stopillegalprofiteeing@ag.ny.gov>

Last week I paid $4.99 for 1 gallon of 1% milk at Stop and Shop in North Bellmore. That's ridiculous.
Lid Grocery Store in Merrick NY, 3.5 miles away, charged $1.68 for 1 gallon of 1% milk.

This is just one example of price differences from store to store.
I don't know if this is considered price gouging, but I don't know why there is such a tremendous difference in price from store to store.

Thank you.

Steven Campiglia

From:	joanne
To:	stopillegalprofiteering
Subject:	Gas gouging smithtown NY
Date:	Saturday, March 5, 2022 9:11:06 AM

[EXTERNAL]

Hello, why is gas $4.19 cents at speedway gas stations on Jericho Turnpike in Commack and Mobile gas station is $3.68. That's a big difference! Please look into gas stations price gouging. And Thank you Letitia James for all you do to protect us from these companies!

Joanne Blauvelt
58Ridge Road Smithtown Ny 11787

From: Greg Keefer
To: stopillegalprofiteering
Subject: Gas price gouging?
Date: Sunday, March 6, 2022 9:45:47 PM

[EXTERNAL]

Cumberland Farms in Warren and Washington counties is charging $4.39/$4.49 a gallon on 3/7/2022 while all other gas stations are charging $4.19.
What can you do?

From: ANTONIO JOBITY
To: stopillegalprofiteering
Subject: Gas.
Date: Friday, April 22, 2022 7:16:17 PM

[EXTERNAL]

My gas seem to be burning fast. My car is road ready and serviced as scheduled, but my gas keeps going down. My mechanic said it’s because ethanol is being put in the gas at a higher percentage than allowed. This should drop the price since ethanol is cheaper.
Is this being invested and what action is being implemented if this allegation is found to be true.

Sent from my iPhone

From:	Charles Wythe
To:	stopillegalprofiteering
Subject:	Gas
Date:	Saturday, March 5, 2022 6:54:01 AM

[EXTERNAL]

This has been going on for years in all sectors including drugs. For all the past years the ag has turned a blind eye to all of it. I doubt her words and actions will get us any savings. She like the tRump thing is another do nothing politican. Do something

From:	Rakeen Mabud
To:	stopillegalprofiteering
Cc:	Teachout, Zephyr; D"Angelo, Christopher; Lindsay Owens
Subject:	Groundwork Collaborative Comment on Price Gouging Rulemaking
Date:	Friday, April 22, 2022 5:03:58 PM
Attachments:	Rulemaking Comment_Groundwork_042222_final.pdf

[EXTERNAL]

Attached please find Groundwork Collaborative's comment on Attorney General James' rulemaking on price gouging. We commend AG James' efforts to protect consumers in New York State by cracking down on price gouging and pandemic profiteering. In the attached, we offer a summary of our ongoing research, and attach several documents and resources that may be helpful as AG James proceeds with the rulemaking process.

Please do not hesitate to reach out to myself or Lindsay Owens, Executive Director of Groundwork, if you have any questions or if we can be of further assistance.

Best regards,
Rakeen
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Rakeen Mabud (she/her)
Chief Economist & Managing Director of Policy and Research
Groundwork Collaborative
(202) 539-8228
@groundwork | @rakeen_mabud

for press inquiries please email press@groundworkcollaborative.org

April 21, 2022

MEMORANDUM

To: New York State Attorney General James
Fr: Dr. Lindsay Owens, Executive Director, Groundwork Collaborative
Dr. Rakeen Mabud, Chief Economist, Groundwork Collaborative
Cc: Ms. Zephyr Teachout, Special Advisor and Senior Counsel for Economic Justice
Mr. Chris D'Angelo, Chief Deputy Attorney General
Re: Rulemaking on Price Gouging

Groundwork Collaborative is a think tank working to produce broadly shared prosperity and abundance for all. Our team has combed through hundreds of quarterly earnings calls to understand why profit margins are at a record high, despite the rising costs of energy, raw materials, and other inputs. In these calls, executives tell investors about last quarter's performance and discuss what they can expect going forward. Over and over, the message from corporate America is clear: they aren't just asking consumers to pay for their rising costs, they're going for more.

While there are a range of factors driving inflation right now, from increasing and shifting demand to supply chain disruptions and conflict in Eastern Europe, mega-corporations' pricing power is an important driver of the higher prices. Increased prices on essentials like gas and diapers are putting significant strain on family budgets in New York and the rest of the country.

We commend AG James' efforts to protect consumers in New York State by cracking down on price gouging and pandemic profiteering. Below, we offer a summary of our research findings, and attach several documents and resources that may be helpful as AG James proceeds with the rulemaking process.

Key Findings

- **Corporate profiteering and price-gouging are rampant and are accelerating price increases. Widespread inflation and the pandemic are useful covers for extractive pricing.** Our review of hundreds of earnings calls makes it clear that corporate executives are raising prices beyond the increases in their input costs, egged on by shareholders. For example, the CFO of Constellation Brands, the parent company of popular beers Modelo and Corona, stated on their January earnings call: "We want to make sure that we're not leaving any pricing on the table. We want to take as much as we can…." Giant corporations are able to get away with this kind of aggressive and extractive pricing precisely because of the current inflationary environment. As the CEO of Hostess said on a recent earnings call, "When all prices go up, it helps."

- **Mega-corporations that hold significant market share, control over our supply chains and sell goods that are relatively unresponsive to price changes (e.g. essentials like diapers) are some of the biggest culprits.** Over the last 50 years, corporate America's ruthless pursuit of efficiency and short-term profit set the stage for today's high prices by ushering in a wave of corporate consolidation that left us vulnerable to profiteering and price increases in two ways. First, it hollowed out and nearly-eliminated diversity in our supply chain, leaving us without any failsafes to withstand significant shifts in demand without shortages. Second, without competition to undercut companies who are charging excess prices, those companies with market power can continue raising prices unabated.

This is especially true for companies that sell household essentials, like diapers or meat. Take Procter and Gamble, which holds more than a quarter the global market on laundry products. In the company's quarterly earnings call on January 19, the company 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 would have seen in the past." In other words, P&G's CEO knew that the company could 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.

- **Price gouging and profiteering is putting significant pressure on consumers, workers and small businesses – all while corporate executives and shareholders cash in.** Corporate profits of non-financial firms surged 35 percent in 2021, and overall profit margins reached their highest level since 1950. In all four quarters of 2021, the overall profit margin stayed above 13%, a level reached in just one other three-month period during the past 70 years. As profits rise as a result of price hikes, so too does the investor demand for those profits.

  Take the energy sector, for example. On a recent earnings call, the CEO of Texas-based Pioneer Oil was asked whether Pioneer would consider increasing production to make up for any shortfall resulting from Russia's invasion of Ukraine. His answer: "No." When asked to explain, he said: "It's all about the shareholders. Our shareholders own this company. They want a return of cash." But it's not just Pioneer. 59 percent of oil and gas executives recently told the Dallas Fed that *investor pressure to maintain capital discipline* is the primary reason publicly traded oil companies are throttling supply despite high prices. Shareholders across sectors aren't hiding the ball: they expect buybacks and dividends, not investments in production. And their strategy is paying off: In 2021, S&P 500 firms spent nearly $900 billion on stock buybacks and U.S. companies paid out nearly $1.5 trillion in dividends to shareholders, both record highs.

You can find a full documentation of Groundwork's ongoing research on corporate profiteering and price-gouging at our microsite https://endcorporateprofiteering.org/. The evidence is abundant: big corporations are getting away with pushing up prices to fatten their profit margins, and consumers are quite literally paying the price.

For more on how mega-corporations have shaped our supply chain to the detriment of consumers, workers and small businesses, please refer to "The Supply Chain Debacle," a special issue of *The American Prospect* published in partnership with the Groundwork Collaborative. You can find the full issue at: https://prospect.org/supply-chain.

ATTACHMENTS

Attachment A: Written Testimony of Mr. Michael Mitchell, Director of Research and Policy at Groundwork Collaborative, Prepared for the U.S. House Committee on Economic Disparity and Fairness in Growth

Attachment B: "How We Broke the Supply Chain": Framing piece by David Dayen and Rakeen Mabud from the special issue of *TheAmerican Prospect*

Attachment C: "Profits and the pandemic: As shareholder wealth soared, workers were left behind": Brookings Institute report by Molly Kinder, Katie Bach, and Laura Stateler

Attachment D: "Corporate profits have contributed disproportionately to inflation. How should policymakers respond?": Economic Policy Institute blog post by Josh Bivens

Congressional Testimony

(Im)Balance of Power: How Market Concentration Affects Worker Compensation and Consumer Prices

House Select Committee on Economic Disparity & Fairness in Growth

Washington, DC
April 6, 2022
12:00pm ET

Michael Mitchell
Director of Policy and Research
Groundwork Collaborative

I. Introduction

Chairman Himes, Ranking Member Steil, thank you for inviting me to testify today. My name is Michael Mitchell, and I am the 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 this committee for holding this hearing about the critical issues of corporate concentration and consolidation, the imbalance of market bargaining power between workers and companies, and the impacts these power imbalances have on our economy.

My testimony today will focus on three key points:

- First, corporations are seeing record profits despite rising input costs, inflation, and supply chain snarls. In other words, corporate executives and shareholders are cashing in on the current crisis and getting richer – all while consumers, workers, and small businesses pay the price.

- Second, the corrosive concentration of corporate power has facilitated widespread profiteering, which is taking a massive toll on consumers, workers, and small businesses around the country.

- Third, today's price increases are the direct result of the outsized power that megacorporations hold over our supply chains and economy more broadly. Over the last 50 years, megacorporations have set up a "heads I win, tails you lose" system, resulting in a brittle supply chain and less resilient economy.

I will conclude by recommending that Congress take on corporate power, pandemic profiteering, and recent price hikes by directly tackling these imbalanced power dynamics and corrosive concentrations of corporate power in our economy.

First, Congress should ensure rigorous competition in key product markets to keep prices down by curtailing mergers that further concentrate industries. Second, lawmakers should continue to urge the FTC to use their existing authority to crack down on extractive and exploitative business practices. Finally, the committee should work across Congress to tax excess profits and corporations more broadly to encourage productive investment and curb corporate greed. Recent actions in both the House and Senate to pass the Ocean Shipping Reform Act – which will empower the Federal Maritime Commission to investigate and further regulate ocean carriers – are positive steps towards addressing supply chain issues. Government action, regulatory and legislative, has the power to foster an economy rooted in shared prosperity and abundance.

II. Corporations are seeing record profits despite rising input costs, inflation, and supply chain snarls. In other words, corporate executives and shareholders are cashing in on the current crisis and getting richer all while consumers, workers, and small businesses pay the price.

While consumers have struggled to navigate both a deadly pandemic and rising costs that have further strapped family budgets, corporations have exploited consumers to enjoy record profits and profit margins. Newly-released Bureau of Economic Analysis data shows that domestic non-financial corporations saw profits increase by 35% over the year prior. This is the largest annual increase in profits in over a decade.[1] Nearly two-thirds of the biggest publicly traded companies reported higher profits last year than in previous years before the pandemic.[2] Last year, profit margins increased from 10.2% in 2020 to 14.28% in 2021 – the highest levels in the past 70 years.[3] In other words, despite complaints about rising labor and input costs and supply chain snarls, it is clear that corporate revenues increased well above the additional costs businesses have taken on as a result of the pandemic.

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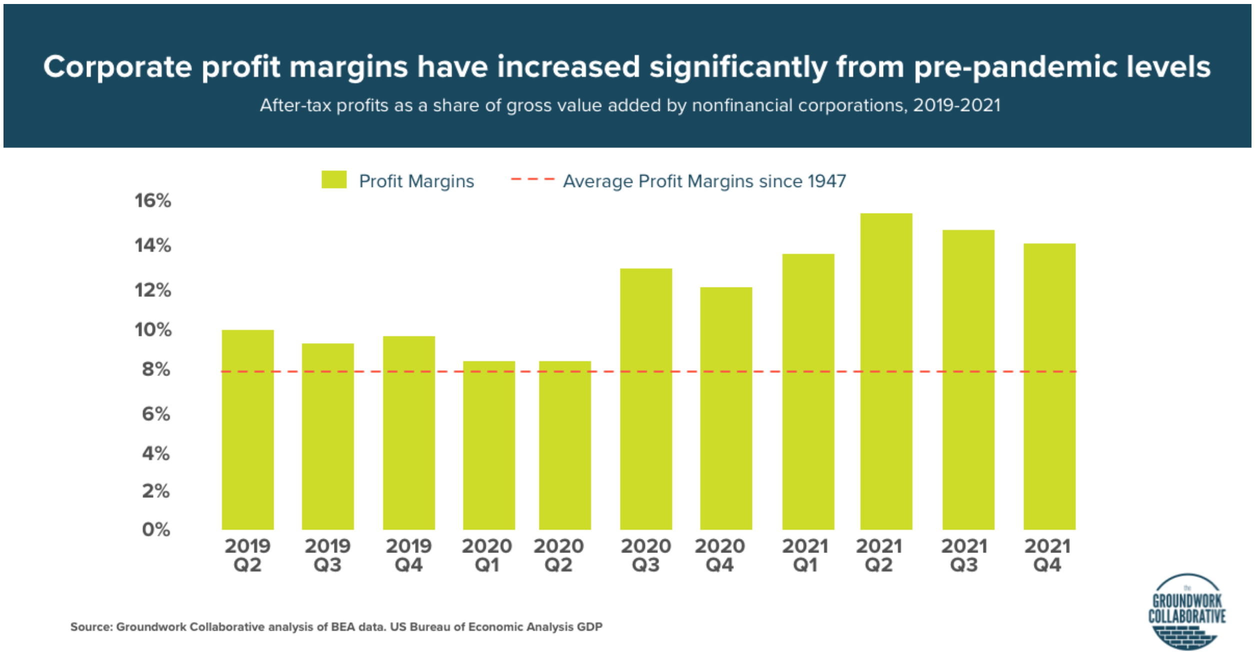
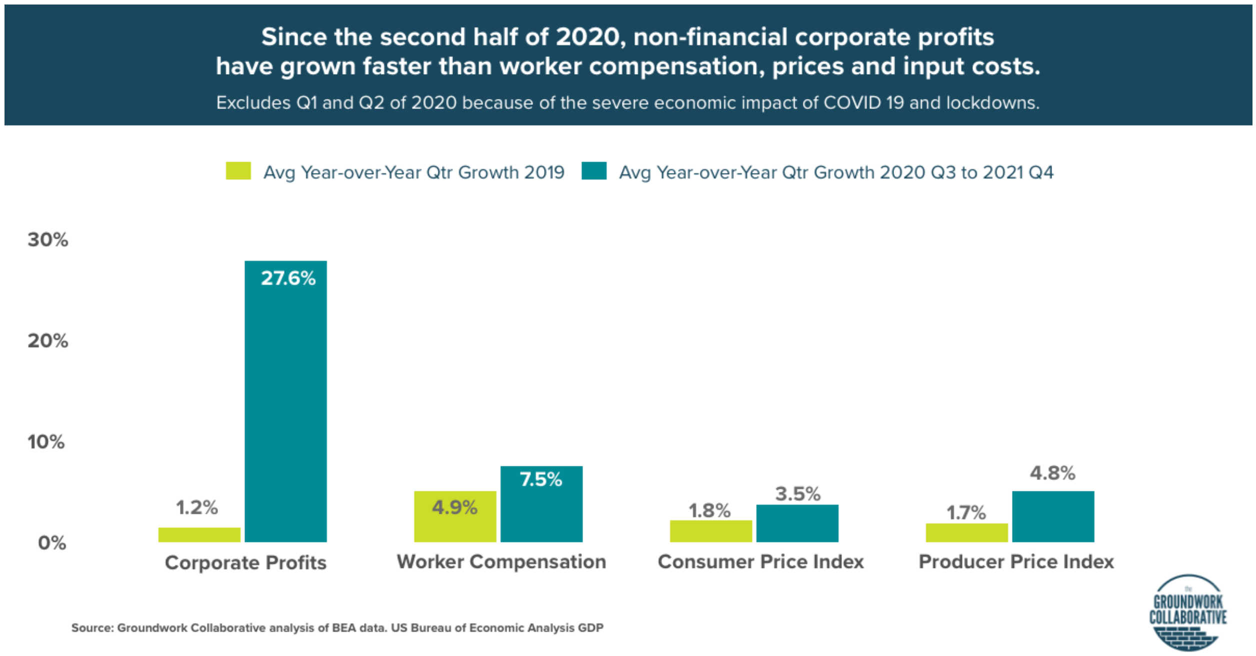
[1]Groundwork Collaborative analysis of US Bureau of Economic Analysis Data, National Income and Product Accounts Table 1.14. "Gross Value Added of Domestic Corporate Business in Current Dollars and Gross Value Added of Nonfinancial Domestic Corporate Business in Current and Chained Dollars."
[2] "What Does Inflation Mean for American Businesses? For Some, Bigger Profits," *Wall Street Journal,* November 2021,
https://www.wsj.com/articles/inflation-yellen-biden-price-increase-cost-shipping-supply-chain-labor-shortage-pandemic-11636934826
[3] Groundwork Collaborative analysis of US Bureau of Economic Analysis Data, National Income and Product Accounts Table 1.14. "Gross Value Added of Domestic Corporate Business in Current Dollars and Gross Value Added of Nonfinancial Domestic Corporate Business in Current and Chained Dollars."



Our analysis of the BEA corporate profits data shows that through the end of 2021 the surge in corporate profits far exceeded any increases in employee compensation and price increases as measured by the consumer price index and producer price index. For example, on an average annual basis, non-financial corporations have seen their profits grow 27.6% since Q3 and Q4 of 2020, while workers saw their compensation grow at only 7.5% over the same time period.[4] In short, corporate profits have far outstripped any increases in inflation, labor costs, and input costs as indicated by the consumer price index and the producer price index.

[4] Important to note is that these CPI and PPI comparisons are only for the Q3 2020-Q4 2021 period in order to better compare to the corporate profits and worker compensation data. These numbers therefore do not incorporate the high inflation that we've seen over the first quarter of 2022.



These record profits have come at the direct expense of consumers.

Take oil and gas companies, for instance. Gasoline prices for consumers increased by roughly 50% over the course of 2021,[5] prior to the conflict in Eastern Europe.[6] Despite the significant hardship that higher gas prices have incurred on families around the country, producers resolutely refused to increase supply to respond to the supply chain issues increasing the price of gas.[7]

As a result, the three biggest U.S. oil companies— ExxonMobil, Chevron, and Marathon Petroleum— saw profits increase by almost $90 billion while shareholder handouts jumped by over $4.5 billion in FY 2021.[8] While recent global shocks[9] like Russia's invasion of Ukraine and the resulting U.S., U.K., and E.U. sanctions against Russia did cause energy and oil prices to

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[5] "Biden has few options to combat surging gas prices as voters grow concerned about inflation," *CNBC,* October 2021, https://www.cnbc.com/2021/10/25/biden-has-few-options-to-combat-surging-gas-prices-amid-inflation-fears.html

[6] These data predate the conflict in Eastern Europe and we anticipate the increasing volatility as a result of war to continue to push the price of oil higher.

[7] "U.S. producers reluctant to drill more oil, despite sky-high gas prices," *CBS News,* March 25, 2022, https://www.cbsnews.com/news/oil-production-prices-us-companies-wont-increase-2022-dallas-fed-survey/

[8] "Top Corporations in Major CPI Categories Rewarded Shareholders With Over $140 Billion After Raising Prices on Consumers," *Accountable US,* March 10, 2022, https://www.accountable.us/news/report-top-corporations-in-major-cpi-categories-rewarded-shareholders-28-2b-after-raising-prices-on-consumers/#:~:text=Gasoline%3A%20As%20gasoline%20prices%20increased,%244.5%20billion%20in%20FY%202021

[9] "Gas prices are hitting new highs. Here's why — and how long the surge could last," *Washington Post,* March 2022, https://www.washingtonpost.com/business/2022/03/09/gas-prices-going-up-russia-ukraine/

climb even higher, subsequent declines in crude oil costs[10] have not translated into relief at the pump. In other words, large oil companies are choosing to keep prices high to pad their bottom line.

Shareholder pressure to maximize returns has played an important role in the decision to constrain production. In a recent Federal Reserve Bank of Dallas survey, nearly 60% of oil executives said that investor pressure to maintain capital discipline is the primary reason they are restraining production.[11] One oil executive said, "Discipline continues to dominate the industry. Shareholders and lenders continue to demand a return on capital, and until it becomes unavoidably obvious that high energy prices will sustain, there will be no exploration spending."[12] Pressure and power from shareholders is ensuring that oil companies can raise prices, rake in profits, and pay these same shareholders at the expense of consumers.

Oil and gas executives are not the only ones to be excitedly celebrating record profit margins while consumers suffer. Take Chipotle, who's CEO has repeatedly boasted that the company can hike prices further and that the company was "fortunate" in its pricing power. In February on CNBC he said, "we're pretty fortunate with the pricing power we have... So we have more room to take the price as we need to."[13] He repeated the sentiment in an earnings call the same month that "we're fortunate that we can pull it. And we see no resistance to date with the levels that we're currently at."[14] In 2021, Chipotle's prices were up 10% by the end of the year compared to the previous year.[15]

Despite the fact that Chipotle's CEO claimed that price hikes were due to inflation and rising wages for their hourly workers, his public statements suggest that the company is simply exercising its enormous pricing power to rake in record profits in a moment when consumers are struggling to get by. In 2021, Chipotle's total revenue increased over 25% from the previous year. More telling, their operating profit margin was 10.4% in 2021, a more than a 100% increase from their 2020 profit margin of 4.8% – signaling that price hikes were well above what was necessary to cover rising costs.[16]

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[10] "Why aren't gas prices dropping if oil is getting cheaper?," *Marketplace,* March 2022, https://www.marketplace.org/2022/03/18/why-arent-gas-prices-dropping-if-oil-is-getting-cheaper/
[11] "Dallas Fed Energy Survey," *Federal Reserve Bank of Dallas,* March 23, 2022, https://www.dallasfed.org/research/surveys/des/2022/2201.aspx#tab-questions
[12] Ibid.
[13] "Our business remains strong despite price hikes, says Chipotle CEO," *CNBC,* February 8 2022, https://www.cnbc.com/video/2022/02/08/our-business-remains-strong-despite-price-hikes-says-chipotle-ceo.html
[14] "Chipotle Mexican Grill CEO Brian Niccol on Q4 2021 Results - Earnings Call Transcript, *Seeking Alpha* February 8 2022, https://seekingalpha.com/article/4485311-chipotle-mexican-grill-inc-cmg-ceo-brian-niccol-on-q4-2021-results-earnings-call-transcript
[15] "Chipotle CEO Says Another Price Increase Likely as Costs Grow," *Wall Street Journal,* February 2022, https://www.wsj.com/articles/chipotle-says-it-is-planning-to-expand-as-sales-grow-11644359291
[16] "Chipotle Announces Fourth Quarter and Full Year 2021 Results," *Chipotle Mexican Grill News Releases,* February 2022, https://ir.chipotle.com/2022-02-08-CHIPOTLE-ANNOUNCES-FOURTH-QUARTER-AND-FULL-YEAR-202

III. The corrosive concentration of corporate power has facilitated widespread profiteering, which is taking a massive toll on consumers, workers, and small businesses around the country.

In company after company, and across sectors, corporate executives are bragging about their ability to engage in aggressive price hikes without the risk of losing customers because they can pin the blame on inflation and geopolitical conditions and because they operate in highly concentrated markets with little to no competition. As Fed Chair Powell put it, corporations are raising prices beyond what elevated input costs would call for *because they can.*[17]

Big corporations are taking advantage of the moment to raise prices and to generate record profits, which is possible due to rising market power[18] in the U.S. and the decline of market competition in the U.S. over the last 20 years.[19]

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

Take Constellation Brands, the largest beer import company in the U.S. that also has the third largest market-share of all beer companies[20] and is the parent company of popular beers Modelo and Corona. On its earnings call in January, Constellation's CFO said, "As you know, we have a consumer set that skews a bit more Hispanic than some of our competitors. And in times of economic downturn… they tend to get hit a little bit harder and they recover a little bit slower. So we want to make sure that we're not leaving any pricing on the table. We want to take as much as we can…"[21] Corporations know they can hike costs and reap profits, while exploiting consumers.

1-RESULTS#:~:text=Full%20year%202021%20highlights%2C%20year,%25%2C%20an%20increase%20from%204.8%25

[17] Sharon Zhang, "Fed Chair Jerome Powell Says Corporations "Are Raising Prices Because They Can"", Truthout, January 11, 2022, https://truthout.org/articles/fed-chair-jerome-powell-says-corporations-are-raising-prices-because-they-can/

[18] Ufuk Akcigit & Sina T. Ates, "What Happened to U.S. Business Dynamism?," *NBER*, May 8 2019, https://conference.nber.org/conf_papers/f129751.pdf

[19] Thomas Phillippon, "The Economics and Politics of Market Concentration," *NBER,* December 2019, https://www.nber.org/reporter/2019number4/economics-and-politics-market-concentration

[20] "Major Supplier Shipments and Share," *Beer Marketer Insights,* 2022, https://www.beerinsights.com/index.php?option=com_k2&view=item&id=19559:major-supplier-shipments-and-share-2015-vs-2014&tmpl=component

[21] "Constellation Brands (STZ) Q3 2022 Earnings Call Transcript," *The Motley Fool,* January 2022, https://www.fool.com/earnings/call-transcripts/2022/01/06/constellation-brands-stz-q3-2022-earnings-call-tra/

Price hikes are also happening for goods that consumers need for everyday life. Procter & Gamble (P&G) is one of the most dominant companies in the world with a chokehold on diaper production and more than a quarter of the global market for laundry products.[22] The company produces a range of household products, from feminine care items to cleaning supplies. Despite inflation and supply chain snarls, P&G beat profit expectations in 2021 and then raised earning expectations for 2022.[23] Subsequently, P&G increased their plans to send more cash to shareholders, planning $17-18 billion in stock buybacks and dividends over the course of their fiscal year, even while they continue to hike prices on consumers.[24]

In the company's quarterly earnings call on January 19, the P&G CFO said that they increased prices in all 10 of their product categories in 2021 and announced more to come in 2022, stating, "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."[25] Procter & Gamble reported that price increases helped drive their net sales up 6% higher than the previous year, bringing their total net earnings for the quarter up 9% to $4.2 billion.[26]

In other words, P&G knows the company can take advantage of consumers' basic needs because they make price inelastic products that families need, like diapers and cleaning supplies. And because P&G has a significant amount of the market share, they're not worried about competition undercutting their high prices and taking customers. The combination of selling necessities and controlling a significant share of the market gives P&G, and other megacorporations like them, free reign, especially when they can blame inflation for rising prices, rather than their insatiable desire to boost short-term profits.

Unfortunately, these aggressive pricing actions are commonplace and span the entire economy. In sector after sector, company after company, we see consumers paying more as megacorporations with large shares of the market get even richer.

The price hikes we are seeing now are rooted in corporate greed and facilitated by megacorporations' market power.

Corporate concentration not only harms consumers but also small businesses.

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[22] "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=11bb795eaee9.
[23] "P&G earnings top estimates as price hikes offset rising costs, company raises 2022 sales forecast," *CNBC,* January 19, 2022, https://www.cnbc.com/2022/01/19/procter-gamble-pg-q2-2022-earnings.html
[24] 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/.
[25] Ibid.
[26] 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.

The devastating effect of corporate concentration on small businesses is not just hypothetical. From navigating supply chains to maintaining inventories, small businesses face unique challenges that result directly from corporate concentration. Specifically:

- Small businesses find their limited resources stretched thin as they struggle to maintain inventory and source products consumers need.
- Megacorporations are using their outsized power and extensive resources to build exclusive supply-chain end-arounds while small businesses are left out on a limb.
- Big businesses strong-arm suppliers into deals that raise prices for small businesses and leave them waiting longer for goods and products.

As demand has increased and supply chains have been unable to keep up, small businesses have struggled to maintain inventory. As a result, these businesses must spend additional time and resources trying to source products. For many small businesses who, by definition, operate with fewer employees and fewer resources, these challenges can mean the difference between staying open or having to shut down. A survey of small businesses released by Goldman Sachs in January found that 69% of small businesses said that supply chain issues were negatively affecting their bottom line[27] and a 2020 Federal reserve study found that 800,000 small businesses closed in the first year of the pandemic, about a third more than in a typical year.[28]

Beyond the additional work of sourcing, small businesses are also disadvantaged as big-box stores have used their expanded resources and greater market share to ramp up logistics operations to keep inventories running more smoothly. Given the breakdown in traditional supply chains, some major companies have taken steps to circumvent problem spots by chartering their own cargo ships[29] or creating "pop-up" freight container yards near major ports.[30] Needless to say, these are not feasible options for most small businesses.

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[27] "Survey: Small Businesses on the Brink - New Survey Data Shows Omicron Hurting Main Street, Leading Small Business Owners to Overwhelmingly Support Congress Passing Additional Aid," *Goldman Sachs,* January 24, 2022, https://www.goldmansachs.com/citizenship/10000-small-businesses/US/infographics/small-businesses-on-the-brink/index.html

[28] Crane, Leland D., Ryan A. Decker, Aaron Flaaen, Adrian Hamins-Puertolas, and Christopher Kurz "Business Exit During the COVID-19 Pandemic: NonTraditional Measures in Historical Context," Finance and Economics Discussion Series 2020-089r1. Washington: Board of Governors of the Federal Reserve System, 2021, https://doi.org/10.17016/FEDS.2020.089r1

[29] Alex Hammer "Will THIS save Christmas? Target and Home Depot are chartering their OWN cargo ships to beat the US supply chain crunch as global crisis rages," Daily Mail, October 6, 2021, https://www.dailymail.co.uk/news/article-10065537/Target-Home-Depot-chartering-ships-holiday-season-amid-supply-chain-crisis.html

[30] Eric Kulisch, "Walmart rents space for pop-up container yards near major ports", FreightWaves, December 1, 2021, https://www.freightwaves.com/news/walmart-rents-space-for-pop-up-container-yards-near-major-ports

Size not only prevents small businesses from navigating supply chain struggles, it also prevents them from acquiring inventory as large corporations throw their weight around in order to jump to the head of the line.

Giants like Walmart and Amazon have the buying power to negotiate more favorable contracts with suppliers in the first place. In The American Prospect, journalist Rose Adams describes how Walmart used its tremendous market share in the grocery industry to bully suppliers. "In late 2020, the company sent a memo to its suppliers announcing that in early 2021, vendors who didn't complete 98 percent [previously 70 percent] of Walmart's orders on time and in full would be fined 3 percent of the order's cost."[31] Suppliers have little bargaining power to push back against such demands and must prioritize orders to megacorporations at the expense of small businesses.

Suppliers also have little ability to raise costs on big-box retailers. As a result, the only option for suppliers is to raise their prices on other customers – namely, smaller retailers. 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."[32]

A survey released in March this year from the Institute for Local Self Reliance supports this claim: 65% of small businesses said that a top challenge was big competitors strong-arming suppliers and receiving special discounts from them, which then delays shipments to small businesses and forces suppliers to charge them more.[33]

Small businesses also lose out when corporate concentration occurs further up the supply chain.

In January, 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.[34]

The result squeezes small businesses downstream. If corporations are charging more for steel, then a local bike shop still has to raise prices on consumers even if they're not engaging in

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[31] Rose Adams, "Big Business Games the Supply Chain," *The American Prospect,* February 9, 2022, https://prospect.org/economy/big-business-games-the-supply-chain/

[32] 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.

[33] "2022 Independent Business Survey: Top Challenges and Policy Priorities," *Institute for Local Self Reliance,* March 30, 2022, https://ilsr.org/2022-survey-businesses/

[34] "Steel Dynamics, Inc. (STLD) CEO Mark Millett on Q4 2021 Results - Earnings Call Transcript," *Seeking Alpha*, January 25, 2022, https://seekingalpha.com/article/4481513-steel-dynamics-inc-stld-ceo-mark-millett-on-q4-2021-results-earnings-call-transcript.

extractive pricing. And that local bike shop's margins also get crushed by unnecessarily higher input costs because corporations with massive market shares can set prices wherever they want.

IV. Today's price increases are the direct result of the outsized power that megacorporations hold over our supply chains and economy more broadly. Over the last 50 years, deregulation and lax antitrust enforcement have allowed megacorporations to set up a "heads I win, tails you lose" system, resulting in a brittle supply chain and a less resilient economy.

The question remains: *why* do corporations have so much power to exploit crises and consumers for their own gain? The answer starts decades before the pandemic: we spent a half-century permitting massive deregulation, unsupervised corporate mergers, and business executives and financiers to take control of our supply chains. They hailed so-called "efficiencies" of consolidation – ignoring the fact that this knife-edge system was supremely ill-equipped to handle the inevitable supply bottlenecks. As a result, they created an environment ripe for corporations to exploit consumers.

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

- 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 regulations 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, which has thinned out our supply chains and left the remaining mega-companies perfectly, and uniquely, positioned to capitalize on the frenzy around inflation. The presence of Wall Street backing these corporate behemoths has further driven this trend in corporate consolidation.

Wall Street's unending quest for maximizing short-term returns, in conjunction with already existing pressures from corporate lobbying, resulted in tremendous pressure to deregulate large swaths of our supply chain – from shipping to our rail network. As corporate executives implemented a lean, just-in-time supply chain system that eliminated resiliency and increasingly relied on precarious labor, our economy was left more vulnerable to a brittle supply chain that would further facilitate price-gouging and pandemic profiteering.

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,[35] packed by four meatpackers,[36] and equipped by a single chip maker.[37] If something goes wrong with any of these companies, prices can be driven up 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 companies such as XPO decry trucker shortages, the truth is that as many as 80% of port truckers are classified as independent contractors.[38]

As Harold Meyerson writes in a piece in The American Prospect 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 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."[39]

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 considered employees by companies whose routes and rates were regulated by 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. Despite contrary claims, we are not facing a trucker shortage – but rather a shortage of good trucking jobs, spurred on by deregulation of the industry. Consumers and workers around the country suffer as a result.[40]

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

[36] "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/

[37] 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

[38] Harold Meyerson, "Why Trucking Can't Deliver the Goods," *American Prospect,* February 2022. https://prospect.org/economy/why-trucking-cant-deliver-the-goods/

[39] Ibid.

[40] Ibid.

Concentration leaves the economy vulnerable to profiteering and price gouging.

The ocean shipping industry provides a stark example of how massive consolidation and concentration has made our economy ripe for price gouging. Over 80% of the ocean shipping industry and 95% of the east-west trade routes is controlled by three alliances: 2M, Ocean Alliance, and THE Alliance.[41] As with other industries, deregulation during the 1980s and 1990s allowed for ocean carriers to build power and consolidate and has ultimately resulted in their ability to price-gouge during the pandemic. For example, spots for freight shipping on ocean liners cost ten times more in September 2021 compared to the beginning of 2020. Prices have largely not come down from their September 2021 highs. At the same time, these carriers have seen their profits skyrocket. The industry saw a massive $190 billion in profits in 2021. For context, that profit is five times higher than the combined profits for the industry between 2010 and 2020. Their profit margins have also jumped. On average, margins have jumped from 3.7% to 56%.[42]

Sadly, it's not just the ocean shipping industry that showcases how megacorporations have consolidated the market to reap massive profits while consumers and workers are left to foot the bill.The meat packing industry also provides a crystal-clear example of how corporations have rigged the economy. 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%[43] since the start of the pandemic, while consumers continue to face skyrocketing 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. The consumer welfare standard argued that as long as consumer prices were unchanged, or even dropping, monopolistic control over an industry was not a problem.[44] 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, Tyson, Cargill, JBS, and National Beef Packing, control 85% of the beef industry.[45]

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[41] David Dayen, "Biden Wants to Take Down the Ocean Shipping Cartel," *The American Prospect,* February 28, 2022, https://prospect.org/economy/biden-wants-to-take-down-the-ocean-shipping-cartel/
[42] Ibid.
[43] 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/
[44] "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&region=header&pgtype=Article
[45] 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.

These corporations promised that through consolidation, consumers would face lower costs.[46] 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.[47]

The auto industry faces similarly high levels of market concentration.[48] In the U.S., five corporations – General Motors, Toyota, Ford, Stellantis, and Honda — control almost 65% of the market share.[49] As a result of the pandemic, manufacturers in the auto industry cut production in response to lockdowns and decreased consumer demand. However, as the economy rebounded, car prices skyrocketed and supply has yet to return to pre-pandemic levels. In the last year, consumers have seen a 12.2% jump in new car prices and an alarming 40.5% jump in prices for used cars. Manufacturers cite supply chain snarls and higher consumer demand as the reason for the rising prices.[50] However, recent reporting finds that even with the easing of supply shortages, automakers are unlikely to increase supply to pre-pandemic levels in an attempt to lock-in the current high prices. In the U.S., both General Motors and Ford have signaled they will continue to throttle production to preserve their higher profit margins.[51] Corporate concentration has ensured that greedy decisions made by a few powerful corporations will have resounding effects on consumers who will be forced to pay higher prices because of the lack of competition.

Corporate consolidation has helped facilitate the 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 that have faced a broken economy for decades.[52]

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[46] "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&region=header&pgtype=Article

[47] 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/

[48] Henry Kallstrom, "What makes the auto industry highly concentrated?," *Yahoo News,* February 2015, https://www.yahoo.com/news/weather/makes-auto-industry-highly-concentrated-140540290.html.

[49] "Big Three Automakers," *Investopedia,* January 2022, https://www.investopedia.com/terms/b/bigthree.asp#:~:text=In%202020%2C%20Toyota%20ranked%20at,%2C%20and%20Nissan%20at%204.2%25.

[50] Ben Casselman, Car prices rose more slowly in January, but new disruptions loom," *The New York Times,* February 2022, https://www.nytimes.com/2022/02/10/business/economy/car-prices-inflation.html.

[51] "Car Discounts Aren't Coming Back After Pandemic, AutoNation Says," *Bloomberg,* February 2022, https://www.bloomberg.com/news/articles/2022-02-17/car-discounts-aren-t-coming-back-after-pandemic-autonation-says?sref=azsh6QkL.

[52] 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/.

V. Congress should curb corporations' power and ability to profiteer by beefing up antitrust enforcement, empowering the FTC to use their existing authority, and taxing excess profits in order to create an economy that works for all.

Tackling pandemic profiteering requires checking the outsized power that megacorporations hold over our economy and encouraging productive investment to build a resilient economy that works for all.

Congress must do its part to address corporate concentration and the power that these megacorporations exert on prices, wages, and working conditions.

- Congress should ensure rigorous competition in key product markets and at critical nodes along the supply chain by curtailing mergers that further concentrate industry or by breaking up monopolies. The passage of the Ocean Shipping Reform Act, for example, is an encouraging development that will help to re-regulate the large ocean shipping monopolies that are stoking inflation and gumming up critical points in our supply chain.

- Lawmakers can continue to urge the FTC to use their existing authority to crack down on extractive and exploitative business practices, including price gouging as well as further empower regulators at both the state and federal level to identify price gouging and protect consumers. Rep. Janice D. Schakowsky's COVID–19 Price Gouging Prevention Act and Senator Elizbeth Warren' Prohibiting Anti Competitive Mergers Act of 2022 are two pending bills that would help address these issues.

- Public investment in critical infrastructure can help prevent private corporations from building supply chains that crumble under stress. Congress should make long-overdue investments in sectors where we are seeing significant shortages, such as housing, and along key nodes of our supply chain. Congress should also invest in sectors that have been eating into family budgets for decades, such as health care and the care sector.

- Corporations and the super wealthy have enjoyed rock-bottom tax rates for decades,[53] lawmakers should look to increase the corporate tax rate and ensure that CEOs and shareholders pay their fair share. Congress should also explore taxing excess profits, as it did after World War I and World War II to encourage productive investment and deter price gouging. Senator Bernie Sanders's Ending Corporate Greed Act is a strong step in the right direction.

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[53] Tax Policy Center, "How do US corporate income tax rates and revenues compare with other countries'?" May 2020, https://www.taxpolicycenter.org/briefing-book/how-do-us-corporate-income-tax-rates-and-revenues-compare-other-countries

- Congress should also ensure that workers have the protections they need in the workplace. Securing workers rights to organize and advocate for stable work, strong wages and a safe working environment is a necessary balance to short-sighted corporate actions that create precarious labor and jeopardize a strong and growing recovery.

Taken together, these actions will begin the important work of 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, while large corporations wield almost unrestricted power and enjoy record profit margins. Large corporations are making everything from groceries, to medical supplies, to the inputs small business owners need to sustain their livelihoods more expensive. The more sway large corporations have over our economy, the more power they have to profit off the pain of consumers and Main Street.

Addressing this crisis means focusing on all of the reasons that prices are soaring and small businesses are struggling, including the unchecked power of giant corporations and their swarm of lawyers and lobbyists who have rigged our economy in their favor for decades. This has created a brittle system that has allowed them to take advantage of consumers and small businesses over the course of this crisis. Egged on by investors, these megacorporations are using inflation as a cover for rampant profiteering – and it must be stopped.

Our economy works best when it works for all of us, and 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. We need pro-competition safeguards that 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.

THE AMERICAN PROSPECT IDEAS, POLITICS & POWER

How We Broke the Supply Chain

Rampant outsourcing, financialization, monopolization, deregulation, and just-in-time logistics are the culprits.

BY DAVID DAYEN, RAKEEN MABUD JANUARY 31, 2022

ILLUSTRATION BY PETER AND MARIA HOEY

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This article appears in The American Prospect *magazine's* ***February 2022 special issue****, "How We Broke the Supply Chain."* ***Subscribe here****.*

Anyone old enough to remember the Cold War is familiar with a scene routinely depicted on U.S. television at the time: the Soviet breadline. Warning Americans about life under communism, these clips showed Russian citizens lingering forlornly outside businesses for hours to obtain basic goods—indelible proof of the inferiority of central planning, and an advertisement for capitalism's abundance.

Breadlines, the Big Book of Capitalism assured us, could not happen in a market economy. Supply would always rise to meet demand, as long as there's money to be made. Only deviating from free-market fundamentalism—giving everyone health care, for example—could lead to shortages. Otherwise, capitalism has your every desire covered.

Yet we have breadlines in America today, or at least just off our coasts. They consist of dozens of ships with billions of dollars of cargo, idling outside the Ports of Los Angeles and Long Beach, the docks through which 40 percent of all U.S. seaborne imports flow. "Ships" barely conveys the scale of these giants, which are more like floating Empire State Buildings, stacked high with multicolored containers filled to the brim with toys and clothes and electronics, produced mostly in Asia.

> Shortages and price hikes were brought to life through bad public policy coupled with decades of corporate greed.

The lines don't end there, with worn-down physical infrastructure and the lack of a well-compensated, stable labor force impeding cargo from getting unloaded at the yards, transferred to trucks or railcars, stored in warehouses, and transported to shops or mailboxes across America. As a direct result, for the first time in most of our lifetimes (provided we didn't live in the former Soviet Union), we're experiencing random shortages.

One day you can't find bicycle parts; the next day it's luxury watches or L.O.L. dolls; then it's cream cheese in New York City. You might walk into a Burger King and see a sign that says "Sorry, no french fries with any order. We have no potatoes." Or the fries will be soggy, because there's not enough cooking oil. Common lab materials like pipette tips or the special plastic bags used to make vaccines may not be sold at the corner store, but shortages in these items arguably have an even greater impact on our lives in the age of COVID.

Even if you missed the shortages, it's unlikely that you've missed the clamor about increased prices. Inflation in the U.S. reached a 39-year high in December, eating into wage gains, straining people's pocketbooks, and causing existential political headaches for the Biden administration. Prices in Europe, the U.K., and elsewhere are also surging, and will surge for the indefinite future, as companies struggle to rescue goods from the maw of what we all know as the supply chain.

You could read hundreds of stories about this phenomenon, about the stress of longshoremen and supply chain managers and government officials, the consequences for consumers and small businesses and retailers, and superficial attempts at explaining why we got here. Many will tell you that the pandemic changed consumption patterns, favoring physical goods over consumption patterns, favoring physical goods over services as barhopping and travel shut down. Some will blame fiscal-relief programs, large deficits, and loose monetary policies for making inflation worse. Nearly all will frame the matter as a momentary kink in the global logistics leviathan, which is bound to work itself out. Anyway, everyone got their Christmas gifts this year, so maybe it was overblown to begin with.

Almost none of these stories will explain how these shortages and price hikes were also brought to life through bad public policy coupled with decades of corporate greed. We spent a half-century allowing business executives and financiers to take control of our supply chains, enabled by leaders in both parties. They all hailed the transformation, cheering the advances of globalization, the efficient network that would free us from want. Motivated by greed and dismissive of the public interest, they didn't mention that their invention was supremely ill-equipped to handle inevitable supply bottlenecks. And the pandemic exposed this hidden risk, like a domino bringing down a system primed to topple.

This special issue of the *Prospect* explains how this failure happened, and what it signifies. No American took a vote to trade resiliency for cheap socks; only a handful made the deliberate decisions that put us at the mercy of the world's largest traffic jam. But we're paying for the consequences of those decisions today, and we'll continue to shoulder the dangers of the next supply shock, the next critical shortage, the next breadline. Unless we decide to take on the corporate interests that got us here and build a system that actually works for all of us.

KEVIN DRUM

An oil tanker docked at the Port of Long Beach, 2021

THE ROOTS OF THE SUPPLY SHOCK lie in a basic bargain made between government and big business, on behalf of the American people but without their consent. In 1970, Milton Friedman argued in *The New York Times* that “the social responsibility of business is to increase its profits.” Manufacturers used that to rationalize a financial imperative to benefit shareholders by seeking the lowest-cost labor possible. As legendary General Electric CEO Jack Welch put it, “Ideally, you’d have every plant you own on a barge,” able to escape any nation’s wage, safety, or environmental laws.

In place of the barge, multinationals found China, and centralized production there. This added new costs for shipping, but deregulating all the industries in the supply chain could more than compensate. Big companies got the law changed to enable ocean carriers to offer secret discounts in exchange for volume guarantees. Trucking and rail deregulation in the Carter administration eliminated federal standards and squeezed workers, who to this day continue to endure low pay, erratic schedules, wage theft, and rampant misclassification. When trucking was regulated and union truckers earned decent pay, there was no shortage of drivers. And a new religion called “just-in-time” logistics was founded, on the theory that companies could produce exactly what customers demanded and create a supply chain so efficient it would virtually eliminate the need to keep reserve inventory at the eliminate the need to keep reserve inventory at the warehouse. This kept down costs of production and distribution.

Feeding on these trends was a wave of consolidation, also based on theories of efficiency. Manufacturers and retailers increased market share and empowered offshore production giants like Foxconn. The component parts of the supply chain concentrated as well. Ocean shippers slotted into three global alliances that carry 80 percent of the cargo; 40 rail companies narrowed to just seven, and they carved up regions of the country, so most freight shipping has at most two choices.

Behind all of these choices was Wall Street, insisting on more profit maximization through deregulation, mergers, offshoring, and hyperefficiency. They demanded that companies skimp on long-term resilience, build moats around their businesses by undermining or buying up rivals, adopt practices that kept inventories lean, break down the social contract between employers and workers that offered economic security, and return outsized profits to shareholders. Financiers built our supply chain to enrich investors over workers, big business over small business, private pockets over the public interest.

These policies caused innumerable harms long before the whole system collapsed during the pandemic. Entire regions of the country were abandoned for cheap foreign labor, and the drive for profit maximization facilitated a race to the bottom when it came to labor standards around the world, including the U.S. The transition to a service economy shuttled people into dead-end, low-wage jobs that are among the most brutal and undignified of any industrialized nation.

Meanwhile, in the supply chain, long-running declines in unionization rates, coupled with a drive toward reliance on precarious labor meant that workers toil for reliance on precarious labor meant that workers toil for less, like truckers who don't get paid while waiting for loads. The bifurcated economy tilted mightily toward the wealthy, with displaced workers easy prey for Trumpism. Locating manufacturing plants based on which countries allowed the most environmental degradation, and shipping goods globally from there, exacerbated the climate crisis.

> Our supply chains were designed for maximum profit rather than reliably getting things to people.

But here was the bargain: In exchange for funneling all this money upward, hollowing out the industrial base, ruining competitive markets, and worsening U.S. jobs, businesses would keep consumer prices low. And low prices have a definite psychological pull. That belief in getting more for less, of perceiving that you've beat the system, was enough to keep people reasonably satisfied. If you are stuck with low wages, you depend on low prices. As long as shelves were stocked, and America's desires were covered with overseas goods, this radical reinvention of the supply chain kept us fulfilled. Until it didn't.

If you paid attention, you could spot how this knife-edge system could be thrown out of balance. Consolidating production and relying on long, complex logistical chains magnified the slightest disruptions. An earthquake in Taiwan in 1999 cut off supplies of the world's semiconductor chips, which were mostly produced in that country. Barry Lynn, then a business reporter, was practically the only person to notice, tracing it back to this revolution in policy that built fragility into the economy. (He offered his warning in fragility into the economy. (He offered his warning in the pages of the *Prospect* in 2007, but unsurprisingly that didn't move elite economists or corporate America.)

Other localized shocks ensued, from a videotape shortage in 2011 to shortages of IVs, essentially salt and water in a bag, in 2017. After Superstorm Sandy, local food distribution systems in New York City veered toward collapse, a risk that lingered for years. Few connected this to a badly designed system, with its disinvestment in national production, reliance on exploited labor, and corporate extraction that has weakened our responsiveness to crises. No engineer would construct a supply chain with this many vulnerabilities, with this little resiliency.

And when the first of many lockdowns due to coronavirus was rolled out in Wuhan, appropriately a manufacturing hub known as "the Detroit of China," we all learned why. COVID, in other words, was the straw that broke the camel's overstretched and under-resourced back.

Just like that, the bargain was broken. Not only did Americans get the bad jobs, the left-behind regions, and the soaring stratification between rich and poor—when the supply chain broke down, they lost the low prices, the only compensation for all these other horrors. Economists like Larry Summers and other defenders of the status quo base their entire worldview on low prices trumping all other harms. Their fatal miscalculation has them seeking other scapegoats, like government spending or Federal Reserve policy. Their policies of deregulation and corporate globalization built this monster. Now they're trying to scratch their name off the dedication plaque. But if we're to put people over corporate profits, we must call out this design failure, and redesign it to prevent future catastrophes.

WILFREDO LEE/AP PHOTO

BECAUSE OUR SUPPLY CHAINS WERE DESIGNED for maximum profit rather than reliably getting things to people, the problems that arose in the pandemic folded in on themselves. Shifting consumption from services to goods accounts for part of the problem, but that began two years ago and the system has been unable to adjust.

In fact, things have grown worse from year to year, because none of the private players involved with the supply chain has any incentive to fix it. Ocean shippers made nearly $80 billion in the first three quarters of 2021, twice as much as in the entire ten-year period from 2010 to 2020. They've increased freight rates up to tenfold and can keep those prices high if ships are idling outside the ports, artificially reducing capacity. Shortages of chassis and containers that transport goods by truck or boat enable firms to increase fees on what loads they can move. Trading futures that track shipping rates have enriched hedge fund managers in the past year.

Retailers, too, have capitalized on supply shocks and the subsequent inflation. From Macy's to Kohl's, retailers are hiking prices on consumers while engaging in massive buybacks to enrich their CEOs and shareholders. The biggest have guaranteed their own supplies at the expense of rivals, further consolidating markets. This has set the stage for another hidden wealth transfer, as inflation masks what any reasonable observer would identify as price-gouging.

Corporate profit margins are at their highest level in 70 years, and CEOs cannot help but tout in earnings calls how they have taken advantage of the media commotion around inflation to boost profits. "A little bit of inflation is always good in our business," the CEO of Kroger said last June. "What we are very good at is pricing," the CEO of Colgate-Palmolive added in October. Inflation is being enhanced by exploitation, with companies seeing a "once-in-a-generation opportunity" to raise prices. And coordinated price movements by the handful of companies offering necessities in concentrated markets offer few options for escape.

Meanwhile, smaller companies experiencing supply chain uncertainty have been double-ordering out of desperation, hoping that something can pull through the gauntlet. This further snarls supply chains and introduces even more risk into the system. The slightest economic downturn would turn shortage into glut, leaving retailers stuck with inventory they cannot sell.

An unstable supply chain breeds vulnerability: for consumers, for workers, for businesses, and for our economy. Supply chains are a microcosm of the wildly imbalanced power dynamics in our economy. In the same way that our dysfunctional supply chains end up crushing the economic security of low-income people of color, our economy has been broken for these historically marginalized groups for decades. Addressing the myriad challenges that destabilized the supply chain —from deeply consolidated industries rife with overextended corporate power to the complete disregard for worker rights and a healthier climate—is an important step toward reorienting our understanding of economic health from one that is flush with cheap goods to one where people are prioritized over profits.

PUBLIC DEBATE HASN'T FOCUSED ENOUGH on how we drifted into this vulnerability. That's what this special issue is designed to illuminate. We take a journey through the supply chain, from offshored production facilities, to mega-container ships, to ports bursting at the seams, to deregulated rail and trucking services, to warehouse way stations, to retail and commodity profiteers. The stories lay out how this breakdown sprung from explicit choices, not a once-in-a-lifetime virus or some other natural disaster. The pandemic was a catalyst, not a cause. Corporate interests structured a supply chain that can't withstand shocks, can't meet increases in demand, and invites profit extraction in moments of crisis.

We cannot resolve these hazards by raising interest rates, cutting spending, and pushing more people into unemployment. We must instead attack the root causes: the prodigious downsides of rampant outsourcing, financialization, monopolization, deregulation, and just-in-time logistics. That means investing in our economic security, building in supply redundancies, fighting concentrated power, and making markets work for workers and consumers rather than Wall Street accounts and corporate treasuries. The Biden administration inherited a half-century of bad policy; they need to summon the fortitude to reverse it, and while they've gotten started, it won't happen overnight.

Economic elites have ripped off the public and put us in danger for too long, and they did it largely undetected. We are in the midst of a unique crisis that has clarified the vulnerabilities of this system like never before, and the untold story of corporate takeover and catastrophe ought to trigger a rethinking about whom an economy should serve. Now's our chance to flip the script and start building toward an economy that truly works for all of us. We the people didn't make these choices, but together, all of us can command change.

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Brookings Metro

Profits and the pandemic: As shareholder wealth soared, workers were left behind

Molly Kinder, Katie Bach, and Laura Stateler

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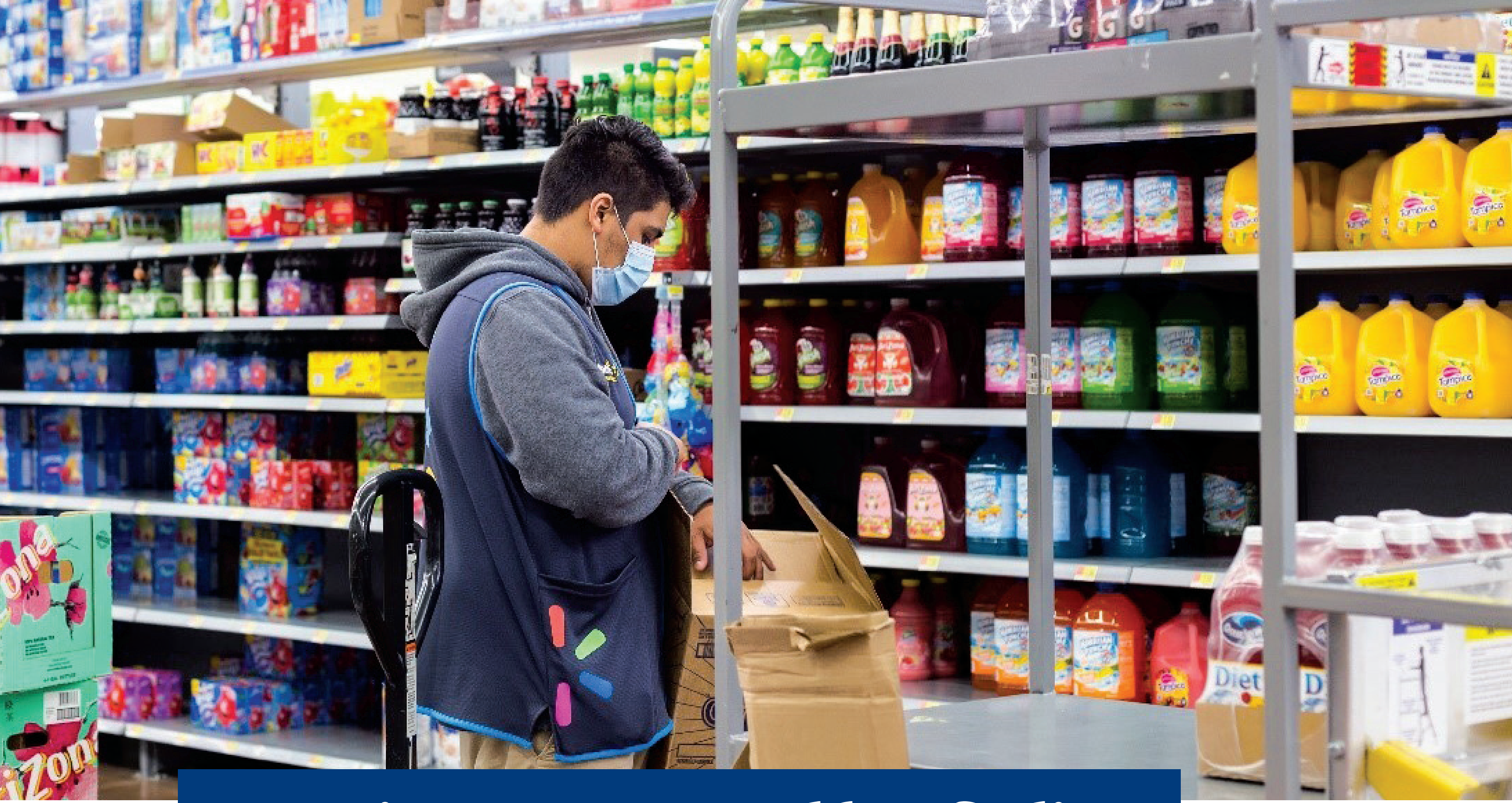


Executive summary and key findings

In August 2019, CEOs of 181 of the largest, most profitable, and most influential companies in America committed to move toward a more inclusive model of capitalism and pay their workers "fairly."[1] The pledge to do business differently was a tacit acknowledgment that the long-dominant model of shareholder primacy was unsustainable.[2] Over the past four decades, the rich have grown exponentially richer, capturing an ever-larger share of the economic pie, while wages for middle-class and low-wage workers barely budged. Nearly half of all American workers earn wages so low they struggle to cover even basic expenses.[3]

Two years ago, the COVID-19 pandemic put these corporate commitments to the test. The lives of millions of low-wage frontline essential workers and their families were suddenly at risk. As the pandemic ripped through the economy, millions of these workers lost their jobs.[4] Lines at food banks stretched for blocks, even as the stock market soared to new heights. The virus exposed and amplified the economy's stark inequality.

It was also a time when real change seemed possible. A powerful confluence of events—including corporate leaders' pledge to embrace "stakeholder capitalism," a deadly pandemic, and widespread labor shortages—had the potential to turn the tide of a four-decade trend of widening inequality amid rising shareholder power and diminishing worker power.[5] As public appreciation for essential workers swelled during the pandemic, so too did public support for increased compensation.[6] Many companies posted record profits and had ample resources to raise pay. And more recently, widespread labor shortages have pushed companies to raise hourly wages.

In this report, we examine the pandemic experience and actions of 22 iconic corporations to evaluate whether the promise of this moment was realized. We look at the nation and the world's best-known and most popular brands in sectors spanning retail, delivery, fast food, hotels, and entertainment. They run the gamut of leading corporations, including Amazon, Disney, McDonald's, FedEx, Home Depot, and Hilton. Together, the 22 companies employ more than 7 million frontline workers, more than half of whom are nonwhite. Each of these businesses is highly influential in their industries; they model business practices that are widely taught and emulated across industries, and also help shape public policy through some of the nation's most muscular lobbying groups. What these companies do and what they say matter, in worker pay and more.

So, we ask: Did these 22 companies pay workers "fairly"? Did they move to a more inclusive model, in which their frontline workers—not just shareholders and executives—share meaningfully in companies' financial gains? Were financial losses borne equitably?

We find that nearly every company in this analysis fell short of their commitment to move to a more inclusive model. Our key findings are:

1. **The vast majority of companies still pay their workers too little to get by**

   The failure of nearly all companies to live up to their pledges to pay their workers "fairly" was not for lack of any investment in workers. In fact, most companies raised wages in the first 22 months of the pandemic, at least nominally. Yet due to a combination of high inflation and, more importantly, a very low starting point, the vast majority of workers still earn too little to get by.

   - At most, only seven of the 22 companies are paying at least half of their workers a living wage—enough to cover just their basic expenses.
   - Only one company, Costco, has a minimum wage today that is close to a living wage.
   - Though we chose to study these 22 companies because they are leaders in their industries and nearly all pledged to pay workers "fairly," the average 2% to 5% wage increases across them over nearly two years do not stand out compared to industry-wide pay bumps.

2. **Company shareholders grew $1.5 trillion richer, while workers got less than 2% of that benefit**

   Far from curbing inequality, the modest gains to workers were dwarfed by the gains to already wealthy shareholders, including executives and billionaires.

   - In the first 22 months of the pandemic, the companies generated $1.5 trillion in wealth gains for shareholders—nearly triple the wealth generated in the previous 22-month period. In comparison, 7 million workers at these companies earned about $27 billion in additional pay (raises, profit sharing, and Covid-specific pay)—or just 2% of shareholders' wealth gains.
   - More than 70% of the wealth generated for U.S. shareholders (over $800 billion) benefitted the richest 5% percent of Americans, or 6 million families. Only 1% ($12 billion) accrued to the bottom half of all American families—the category that likely includes nearly all of these frontline workers.
   - Rising share values increased the wealth of 13 billionaire founders and heirs at seven companies by approximately $160 billion—more than 12 times all the additional pay for more than 3 million workers at those companies.
   - In 2020 alone, the 22 CEOs earned nearly $500 million in realized compensation, or an average of more than $22 million.

3. **Workers experienced the brunt of companies' losses, while corporate executives and shareholders generally avoided losses**

   Workers bore the brunt of financial losses through layoffs, furloughs, and reduced hours. In comparison, shareholders were mostly insulated from losses.

   - More than 380,000 workers at six hard-hit companies were furloughed and more than 40,000 were laid off, with low-wage workers experiencing the brunt of the displacement and economic hardship.
   - Most shareholders at the companies that experienced losses recovered their wealth in months—and became wealthier, as share prices at all but one company surpassed their pre-pandemic level.
   - Nearly half of the hard-hit companies changed their compensation rules in ways that protected tens of millions of dollars in CEO compensation, even while companies underperformed and workers lost income.

4. **The companies made choices during the pandemic that contributed to inequitable outcomes for workers**

   While company executives and boards were not wholly responsible for these outcomes, they made decisions during the pandemic that contributed to inequitable outcomes for workers.

   - ***They spent cash on shareholders instead of their workers.*** The 22 companies spent five times more on dividends and stock buybacks than on all "additional" pay for workers. The 16 companies that repurchased nearly $50 billion in their shares could have raised the annual pay of their median workers by an average of 40% if they had redirected the stock buybacks from the last four quarters to workers.
   - ***They struck an inequitable balance between profit and worker pay.*** At five companies that saw large financial returns during the pandemic, inflation-adjusted profits rose 41%, compared to a 5% increase in real wages for workers—meaning profits rose at eight times the pace of worker wages.
   - ***They were aggressive in suppressing unionization.*** Most companies have no union representation among their workers; only four companies had union density of at least 50%. During the pandemic, two of the companies responded to high-profile union drives with aggressive suppression tactics.

In conclusion, despite commitments by the majority of these companies to voluntarily embrace stakeholder capitalism, the pandemic test reveals that the system changed little. It still overwhelmingly benefits shareholders, including executives. Meaningful change is unlikely to come from corporations themselves, whose executives are deeply incentivized to preserve the current system. Instead, building a more equitable model of capitalism will require a new balance of power between executives, shareholders, and other stakeholders, such as workers, government, and society at large. We propose four ways to create that new balance: labor law reforms, minimum wage laws, representation of workers in corporate governance, and pay transparency.

Introduction

The COVID-19 pandemic has brought American economic inequality into sharp relief. Lines at food banks stretched for miles while shareholder wealth soared and billionaires raced to space. Day after day, frontline workers have risked their health to provide essential services, even as millions earn low wages and have limited access to paid sick leave.[7] Meanwhile, many of the country's highest earners have been able to stay safe working from home.[8] Some of the country's largest companies have posted record profits, even as their workers struggle to get by.

The pandemic did not create this inequality. Rather, it exposed long-term trends that have been left unaddressed. Over the past four decades, the rich have grown exponentially richer, capturing an ever-larger share of the economic pie. Today, the wealthiest 10% of Americans control $99 trillion of wealth—nearly 30 times the wealth of the entire bottom 50% of Americans.[9]

Meanwhile, pay for middle-class and low-wage workers has stagnated, despite rising productivity and growing corporate profits. According to Brookings research examining data from 2012 to 2016, nearly half of all American workers earn so little that they cannot reliably cover even basic expenses like health care and rent.[10]

It wasn't always like this. Workers, at least white men, used to share in company success through higher wages. In the three decades after World War II, the economy divided gains more equitably between workers and shareholders; worker pay and the S&P 500 grew at roughly the same rate.[11] But in the late 1970s, economic productivity and worker pay diverged dramatically.[12] In the subsequent three decades, productivity has risen more than three times as much as compensation. Instead of boosting pay for the average worker, increased productivity drove greater compensation for highly paid corporate employees, higher company profits, and higher shareholder returns.[13]

Public dissatisfaction with rampant inequality and low pay has grown, as young Americans' support for capitalism has steadily waned.[14] In a January 2020 poll, most Americans said there was too much inequality in the economy. The majority of those who held that view said addressing it would require significant changes to the economic system.[15]

Heeding this discontent, corporate America pledged change. Since 1997, the business lobbying group Business Roundtable maintained that corporations' primary purpose was to maximize returns for their shareholders.[16] But in August 2019, the member companies amended that view in a new statement: "It has become clear that this language on corporate purpose does not accurately describe the ways in which we and our fellow CEOs endeavor every day to create value for all our stakeholders, whose long-term interests are inseparable."[17]

Through this commitment to "stakeholder capitalism," 181 CEO members of the Business Roundtable pledged to invest in their employees as well as in diversity and inclusion: "This starts with compensating them fairly and providing important benefits. It also includes supporting them through training and education that help develop new skills for a rapidly changing world. We foster diversity and inclusion, dignity and respect."[18]

It is important to note what was *not* included in the pledge. CEOs did not explicitly pledge to reduce inequality or put workers' interests on par with shareholders', and they did not define "fair" wages. The pledge also was silent on the structural changes that would make equitable outcomes for workers more likely. In fact, many of the signatory companies openly oppose reforms like a higher minimum wage, governance reforms (such as putting workers on company boards), and greater worker power and collective bargaining. Implicit in the Business Roundtable pledge was the message from companies: We can make change ourselves.

Analyzing 22 of the country's largest and most influential employers of frontline workers

The pandemic struck less than six months after the Business Roundtable statement, providing a high-stakes test of corporate commitment to more inclusive practices. In this report, we assess whether companies made meaningful changes for frontline workers during the pandemic. Specifically, we look at how financial gains and losses were distributed between workers and shareholders during the first 22 months of the pandemic. We ask: Are companies paying their workers a living wage? Are workers benefitting from companies' success? Are losses shared equitably?

To answer these questions, we examine the performance and choices of 22 of the most iconic and influential companies in the country. All are in industries that employ large numbers of frontline workers. Eighteen of the companies in this analysis signed the Business Roundtable "stakeholder capitalism" pledge. Together, the companies employ more than 9 million workers worldwide, and more than 7 million American workers. Over half of the companies' U.S. workforce is nonwhite.[19]

We selected companies that met three criteria: 1) size (companies with 100,000 employees or more); 2) low hourly wages (minimum wage of $15 per hour or less at the start of the pandemic); and 3) industry position (companies that rank among the largest in their industries). Due to its franchise model, McDonald's technically fell short of the first criteria, as they directly employ less than 10% of more than 2 million McDonald's workers worldwide. However, we still included the company due to its scale, influence, and industry position.

Each company in the analysis is a household name and leading employer. The 22 companies include the 10 largest retail companies in the country, the two largest fast-food chains, the largest entertainment company, and the two largest hotel chains in the world. Twelve of the 22 companies are among the top 50 companies in the 2021 Fortune 500 ranking of the country's biggest companies; Amazon and Walmart are the top two.[20]

Table 1. Twenty-two of America's top companies that employ frontline workers

Company	Number of U.S. employees	Sector	U.S. rank in sector	2021 Fortune 500 rank	Business Roundtable signatory
Albertsons Companies, Inc.	285,000	Retail	#10	#52	✓
Amazon.com, Inc.	950,000	Retail	#2	#2	✓
Best Buy Co, Inc.	90,000	Retail	#14	#66	✓
Chipotle Mexican Grill, Inc.	95,000	Fast food	#10	#464	✓
Costco Wholesale Corporation	158,000	Retail	#5	#12	
CVS Health Corporation	300,000	Retail	#8	#4	✓
Dollar General Corporation	158,000	Retail	#16	#91	
FedEx Corp.	354,000	Delivery	#2	#45	✓
Gap Inc.	94,000	Retail	#37	#221	✓
Hilton Worldwide Holdings Inc.	62,000	Hotel	#2	#596	
Lowe's Companies, Inc.	288,000	Retail	#9	#31	✓
Macy's, Inc.	90,000	Retail	#24	#164	✓
Marriott International, Inc.	98,000	Hotel	#1	#293	✓
Starbucks Corporation	245,000	Fast food	#2	#125	✓
McDonald's Corporation	36,500	Fast food	#1	#157	✓
Target Corporation	409,000	Retail	#7	#30	✓
The Home Depot, Inc.	451,000	Retail	#4	#18	✓
The Kroger Co.	465,000	Retail	#3	#17	
The Walt Disney Company	109,000	Entertainment	#1	#50	✓
United Parcel Service, Inc.	458,000	Delivery	#1	#35	✓
Walgreens Boots Alliance, Inc.	243,000	Retail	#6	#16	✓
Walmart Inc.	1,600,000	Retail	#1	#1	✓
TOTAL	**7.1 million**				**18 of 22**

Source: *Company SEC filings and ESG reports, National Retail Federation Top 100 Retailers 2021 List, 2021 QSR 50, Transport Topics Top Package/Courier Carriers 2021, Hospitality ON 2021 Worldwide Ranking, Wall Street Journal.*

Note: *Employment figures only include employees at company-operated stores; 95% of McDonald's U.S. restaurants are franchised as of September 2021.*

We chose to analyze the outcomes and choices of these companies for three reasons. First, their size and profits provide them with greater resources to compensate workers equitably than employers that lack their size and scale. Second, they play an outsized role setting norms, employment practices, and wages across their industries; for instance, researchers examining the impact of voluntary minimum wage increases by major retail companies found that a 10% increase in Amazon's advertised hourly wage resulted in a more than 2% increase by other employers in the same commuting area.[21] Third, due to their sheer size and large market capitalization, these companies have an outsized effect on shareholder wealth and contribute disproportionately to rising society-wide inequality. When their share prices rise—as most did during the pandemic—wealthy shareholders across the country get richer. To the extent that the country will be able to address society-wide challenges of inequality, the outcomes of these companies matter.

The companies' financial performance during the pandemic ranges from record-breaking to struggling

We categorized these 22 companies' performance over the first 22 months of the pandemic as "winning," "mixed-performing," or "struggling," using the following metrics:

- Total revenue and profit generated during the first seven quarters of the pandemic
- The change in revenue and profit versus the seven preceding quarters
- The change in stock price
- Whether companies reduced hours or staff through furloughs or layoffs

For our analysis, we used the companies' adjusted net income for their company profit; for Amazon, Costco, and Home Depot, we did not adjust profit as those companies did not provide an adjusted figure.

"Winning" companies: Just over half (12) of the companies in our analysis were clear pandemic winners. Three-quarters of "winning" companies posted their most profitable years on record in 2020. Between January 2020 and November 2021, they saw an average stock price increase of 65%. Over the first seven pandemic quarters, the 12 winning companies earned a total adjusted profit of $180.2 billion—an increase of $56.1 billion, or 45%, compared to the previous seven quarters. Together, they spent nearly $100 billion on dividends and stock buybacks over the first seven pandemic quarters. All 12 companies invested in temporary and/or permanent pay increases.

In general, the winning companies benefitted from multiple tailwinds that buoyed their success. These include changes in consumer behavior, like the shift to more spending on home goods; government stimulus payments and more generous unemployment insurance; favorable monetary policy; their designation as "essential" businesses that were exempt from lockdowns; their size and scale; and their pre-existing digital infrastructure, which allowed them to pivot to digital order fulfillment.

Table 2: Winning companies' performance over the first 22 months of the pandemic

Seven pre-pandemic quarters versus seven pandemic quarters

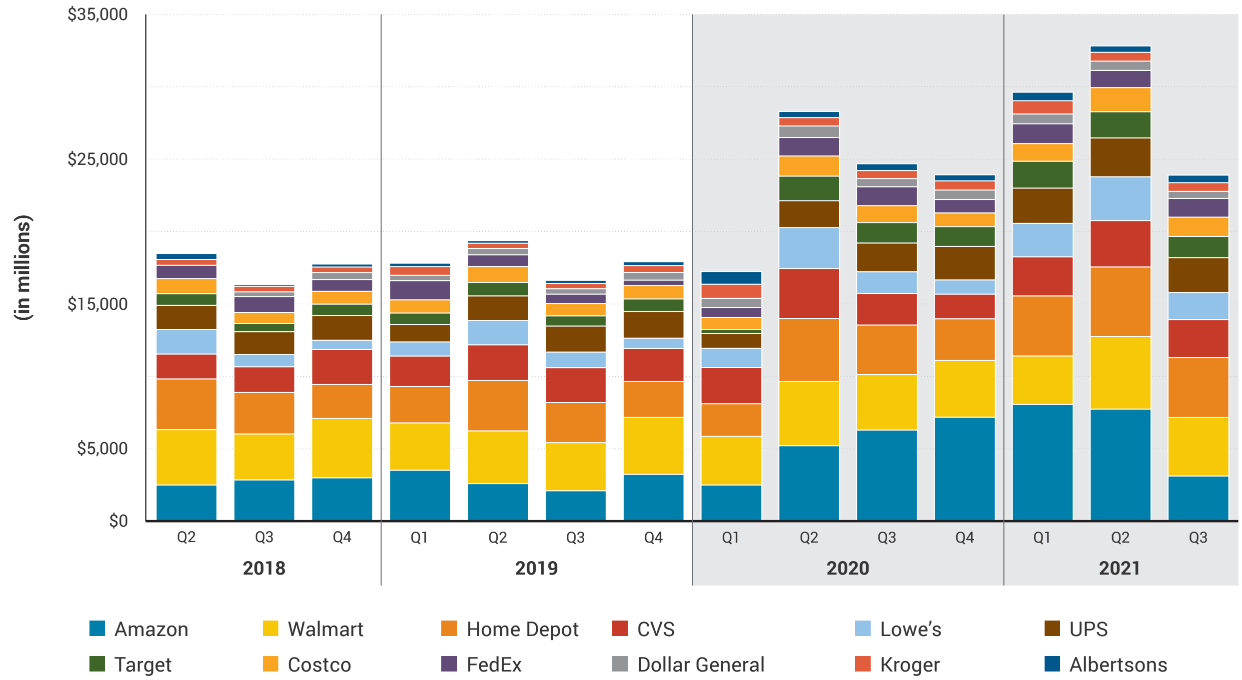
Company	REVENUE		PROFIT			STOCK PRICE
	7 pandemic Qs (in billions)	% change from previous 7 Qs	7 pandemic Qs (in billions)	Change from previous 7 Qs (in billions)	(%)	% change
Albertsons	$124.2	19%	$3.2	+$2.5	325%	106%
Amazon	$718.5	55%	$40.4	+$20.3	102%	80%
Costco	$336.9	23%	$8.6	+$2.1	32%	67%
CVS	$484.2	19%	$18.4	+$3.2	21%	22%
Dollar General	$59.3	25%	$4.5	+$1.5	51%	41%
FedEx	$146.8	21%	$8.0	+$2.1	35%	56%
Home Depot	$247.5	28%	$25.9	+$6.0	30%	68%
Kroger	$237.3	15%	$4.9	+$2.0	67%	40%
Lowe's	$164.5	30%	$13.9	+$6.2	82%	94%
Target	$168.0	23%	$9.9	+$4.4	81%	101%
UPS	$154.1	20%	$14.7	+$3.2	28%	80%
Walmart	$979.0	7%	$27.9	+$2.7	11%	26%
TOTAL	**$3,820.5**	**22%**	**$180.2**	**+$56.2**	**45%**	**325%**
AVERAGE						**65%**

Source: *Company earnings reports, Yahoo Finance*

Note: *The change in stock price is calculated between the closing stock price on December 31, 2019 and November 1, 2021.*

Figure 1: Winning companies' profit

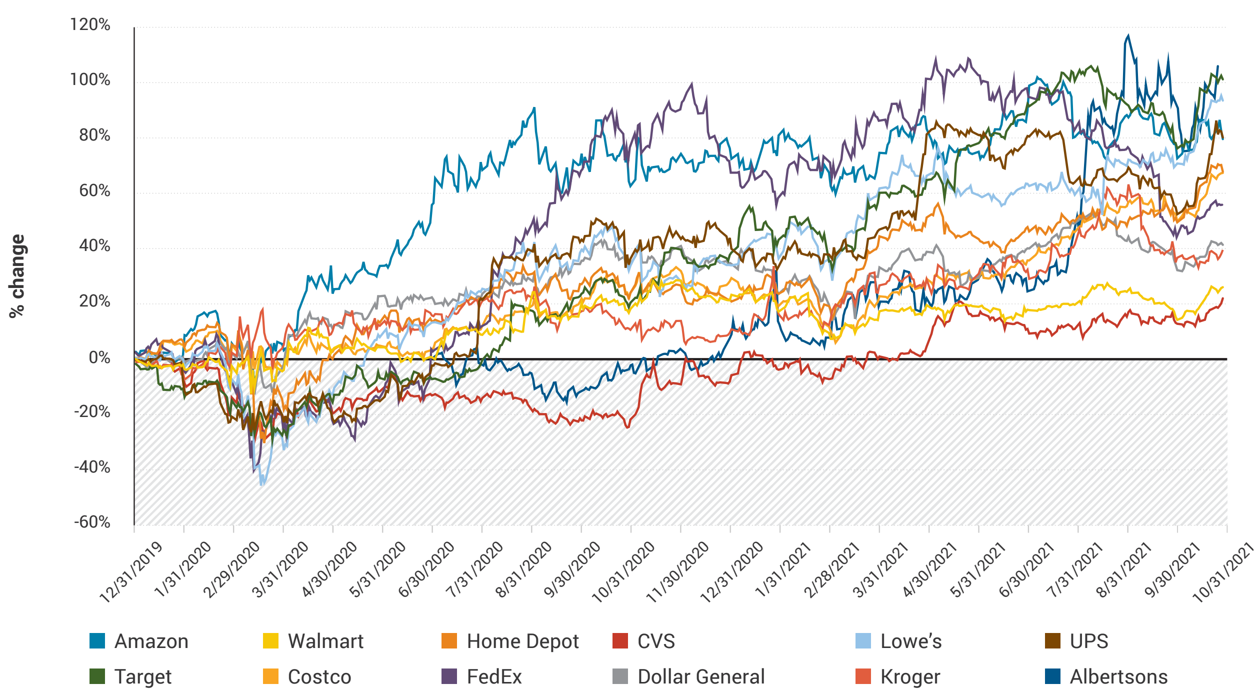
Seven pre-pandemic quarters versus seven pandemic quarters



Source: *Company earnings reports*

Figure 2: Winning companies' change in stock price

December 31, 2019 to November 1, 2021



Source: *Yahoo Finance*

"Mixed-performing" companies: Four companies had a more mixed financial record in the pandemic, with early losses followed by a full recovery that exceeded pre-pandemic financial performance. At these companies, partial and/or full closures early in the pandemic resulted in lost income in 2020. In the early months of the pandemic, most of the mixed-performers furloughed workers and/or cut worker hours. In 2020, these companies made $3.4 billion less in adjusted profit than the previous year—a decrease of 30%. Since those early losses, the mixed-performing companies fully recovered; for each, combined adjusted profits from the first three quarters of 2021 exceeded pre-pandemic profit levels in the same quarters in 2019. Three of the four mixed-performing companies—Best Buy, Chipotle and McDonald's—posted the best trailing 12 months (through the third quarter of 2021) of net income in company history.[22] All four companies suspended stock buybacks at the beginning of the pandemic, and all but Starbucks had restarted them by Q3 2021. Due to pandemic investments in digital relationships with customers, such as through store apps and mobile ordering, the four mixed-performing companies are better poised for future growth than they were at the outset of the pandemic. On average, the companies' stock price rose 52%.

Table 3: Mixed-performing companies' performance over the first 22 months of the pandemic

Seven pre-pandemic quarters versus seven pandemic quarters

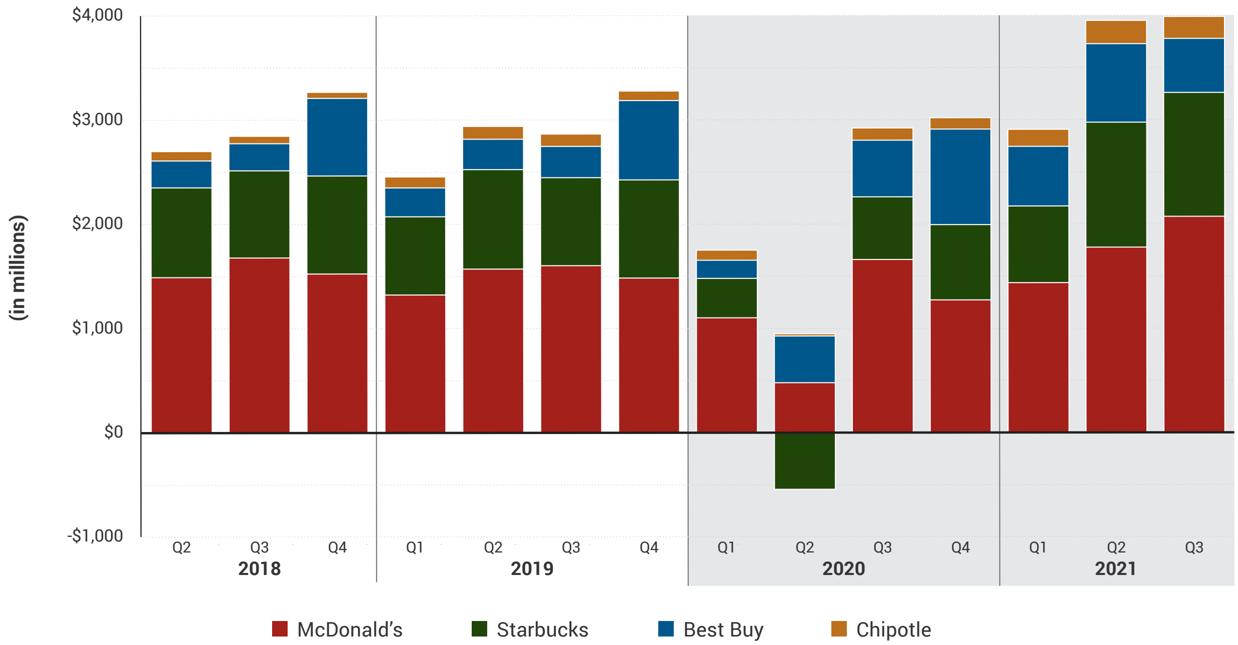
	REVENUE		PROFIT			STOCK PRICE		
Company	7 pandemic Qs (in billions)	% change from previous 7 Qs	7 pandemic Qs (in billions)	Change from previous 7 Qs (in billions)	Change from previous 7 Qs (%)	% change	# workers furloughed	# workers laid off
Best Buy	$82.7	7%	$3.9	+$1.0	36%	41%	51,000	5,000
Chipotle	$11.6	24%	$0.9	+$0.3	48%	115%	Less than 3%	
McDonald's	$36.4	-2%	$9.8	-$0.9	-8%	27%		
Starbucks	$45.5	-2%	$4.3	-$1.8	-30%	25%		
TOTAL	**$176.1**	**4%**	**$18.9**	**-$1.4**	**-7%**	**325%**	**51,000**	**5,000**
AVERAGE						**52%**		

Source: *Company earnings reports, Yahoo Finance*

Note: *The change in stock price is calculated between the closing stock price on December 31, 2019 and November 1, 2021.*

Figure 3: Mixed-performing companies' profit

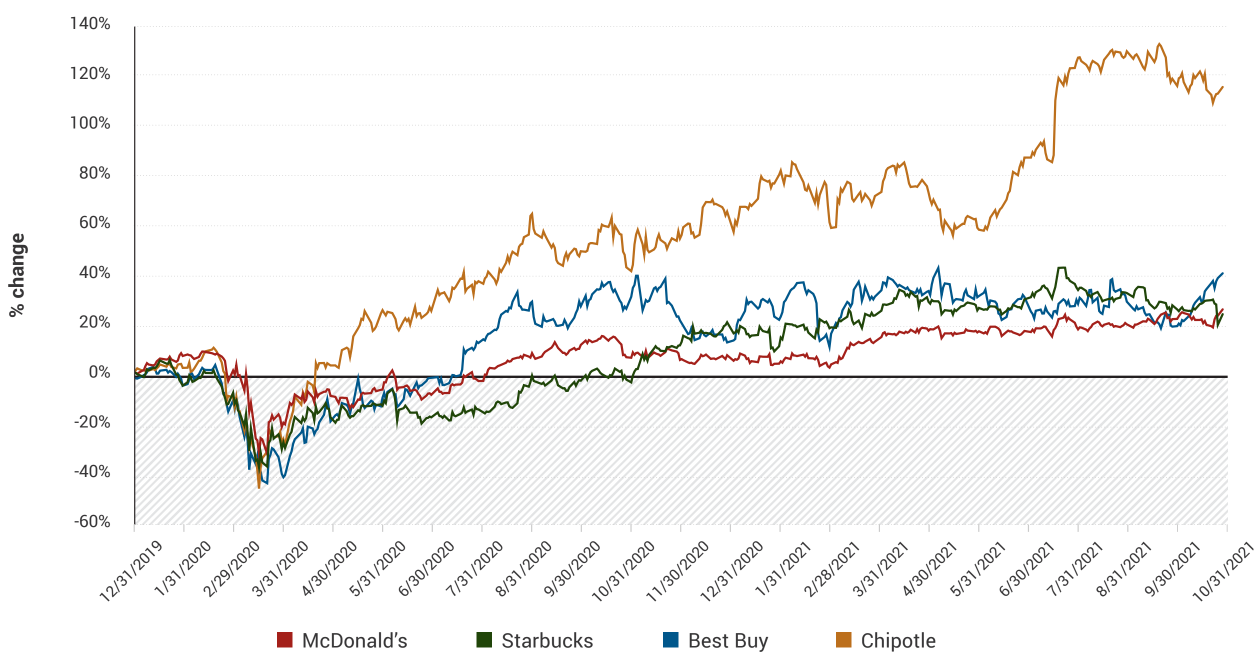
Seven pre-pandemic quarters versus seven pandemic quarters



Source: *Company earnings reports*

Figure 4: Mixed-performing companies' change in stock price

December 31, 2019 to November 1, 2021



Source: *Yahoo Finance*

"Struggling" companies: Six companies experienced significant losses, particularly in 2020. With the exception of Walgreens, whose financial struggles predate the pandemic, the remaining "struggling" companies were in industries that the pandemic hit particularly hard, including leisure, hospitality, fashion retail, and entertainment. The companies endured some of the worst financial quarters in their histories, posted large losses, suspended dividends and stock buybacks, and took on new debt to fund basic operations. In 2020, Disney, Gap, and Hilton posted their worst years on record, while Marriott and Macy's posted their second-worst years. The companies furloughed more than 329,000 workers during the pandemic and laid off more than 39,000.

We intentionally selected companies that experienced a range of pandemic financial performance. To be conservative, we focused mainly on companies that did well (the "winning" companies). We wanted to understand whether they would make good on their pledges when conditions were optimal. We make certain calculations just for the 12 winning companies, including profit and stock price increase, when analyzing their financial gains.

We also included companies in industries the pandemic hit hard in order to analyze who bears losses when times are bad (the "mixed-performing" and "struggling" companies). At times, we analyze the mixed-performing and struggling companies together, including in our section on how financial losses were distributed.

In the section on worker compensation, we do not distinguish between the three categories and evaluate all companies on their pay practices. In the section on financial gains, we examine total shareholder wealth generated across all companies, because the share prices of all but one of the 22 companies rose during the pandemic.

Table 4: Struggling companies' performance over the first 22 months of the pandemic

Seven pre-pandemic quarters versus seven pandemic quarters

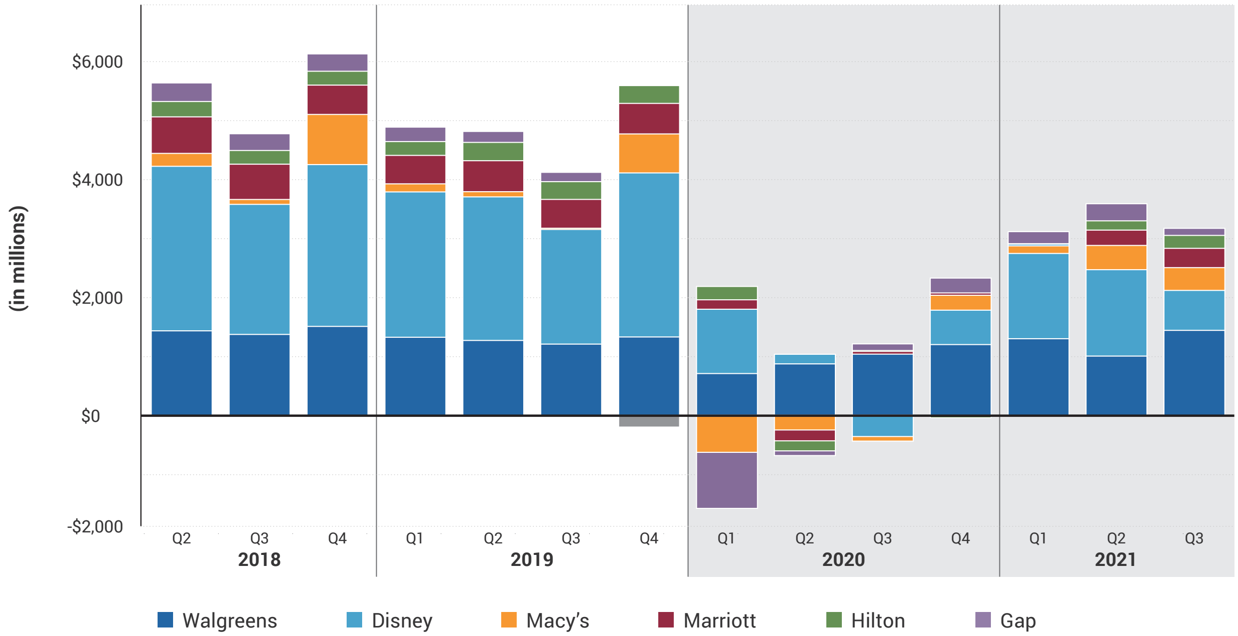
	REVENUE		PROFIT			STOCK PRICE		
Company	7 pandemic Qs (in billions)	% change from previous 7 Qs	7 pandemic Qs (in billions)	Change from previous 7 Qs (in billions)	(%)	% change	# workers furloughed	# workers laid off
Disney	$11.9	-7%	$5.0	-$12.3	-71%	18%	120,000	32,000
Gap	$25.9	-11%	-$0.1	-$1.3	-109%	34%	80,000	1,200 corporate staff
Hilton	$8.3	-49%	$0.4	-$1.4	-78%	31%	47,000	2,100 corporate staff
Macy's	$33.1	-25%	$0.2	-$1.8	-89%	67%	At least 62,000	4,000 corporate staff
Marriott	$20.0	-46%	$0.7	-$3.0	-82%	7%	"Tens of thousands"	
Walgreens	$232	-2%	$7.7	-$1.9	-20%	23%		
TOTAL	**$431.3**	**-11%**	**$13.9**	**-$21.8**	**-61%**		**>329,000**	**39,300**
AVERAGE						**31%**		

Source: *Company earnings reports, company communication, Yahoo Finance, Business of Fashion, Wall Street Journal*

Note: *The change in stock price is calculated between the closing stock price on December 31, 2019 and November 1, 2021.*

Figure 5: Struggling companies' profit

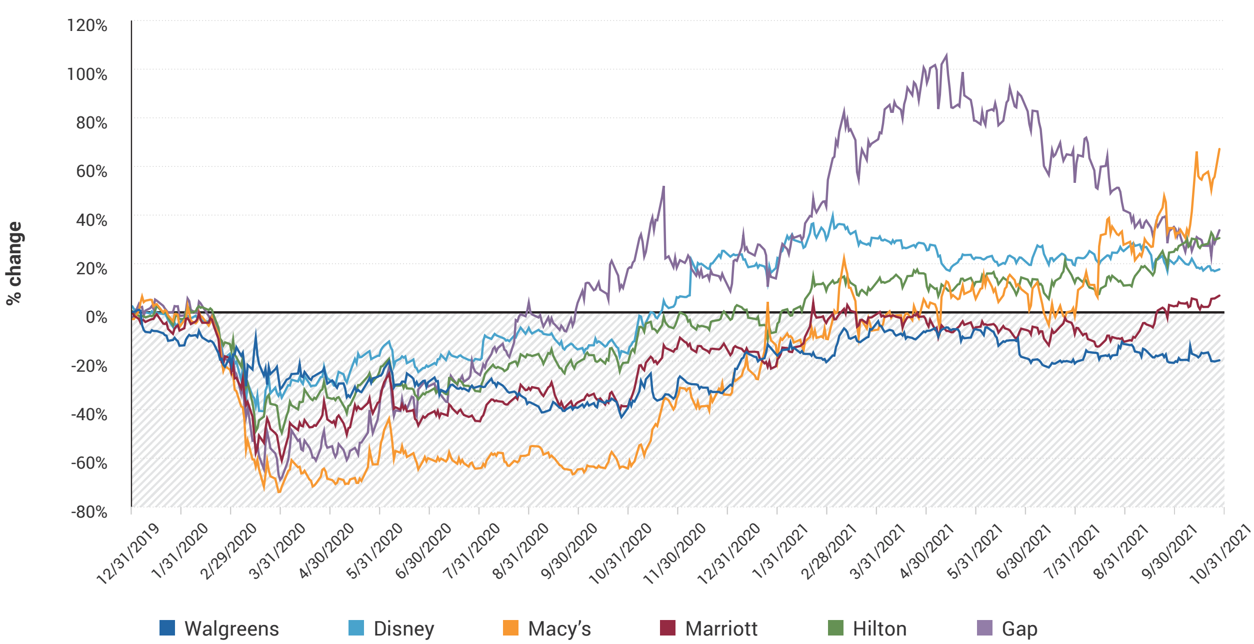
Seven pre-pandemic quarters versus seven pandemic quarters



Source: *Company earnings reports*

Figure 6: Struggling companies' change in stock price

December 31, 2019 to November 1, 2021



Source: *Yahoo Finance*

How companies compensated frontline workers

In this section, we examine compensation for frontline workers. We ask: Are the 22 companies paying workers enough to get by? To what extent have wages risen during the pandemic? Are companies living up to their pledges to pay workers “fairly”?

Because companies are not required to report on wage levels or hours worked, these can be surprisingly difficult questions to answer. To analyze compensation, we reviewed mandated reporting on median take-home pay, tracked public wage announcements, and communicated directly with companies.

We use a living wage as the minimal acceptable standard

Before reviewing the analysis, it is important to understand the wage standard we applied to the companies. The 2019 Business Roundtable pledge commits companies to paying workers “fairly.”[23] At a bare minimum, a fair wage would cover essential expenses like health care, food, and rent. Given that, we assess company pay practices in this report against a living wage benchmark.[24]

A living wage is the annual take-home pay that allows workers to cover only critical costs: rent, food, child care, health care, transportation, and taxes. It is the line that prevents a worker from going hungry, getting evicted, or forgoing critical health care. A living wage does not leave money left over for savings, emergency expenses, or even the smallest of luxuries, like ordering out. It is the minimum standard for financial independence.[25]

Of course, a living wage should be a floor, not a ceiling. The companies in this analysis include some of the most iconic and profitable corporations in the country, with greater resources than companies without their size and scale to go beyond this basic standard of survival. But for the purposes of this analysis, it is a useful minimum standard.

The living wage varies geographically, based on local costs of living. Because companies only share national wage data, we were unable to undertake locally specific analyses of living wages, and instead use national figures. According to researchers at the Massachusetts Institute of Technology, the annual U.S. living wage for each adult in a two-adult, two-child household in 2019 was about $34,400, or $16.54 per hour for a worker scheduled for 40 hours per week for 52 weeks.[26] As of October 2021, adjusted for inflation, the living wage would be $17.70 per hour, or just under $37,000 annually. Any worker getting less than 40 hours per week—as most service workers do—would need to earn more per hour to make a living wage. We use the 40-hour wage to give companies the benefit of the doubt.

We chose a living wage based on a four-person household size (two adults and two children), with both adults working, for two reasons. First, close to half of all low-wage workers in their prime working years are raising families.[27] Second, this household size provides a more conservative living wage than other measures. For instance, the living wage for a single adult with a child (or multiple children) is higher than the four-person size that we are using. (The living wage for a single adult without children is lower.)

While we are holding all companies in this report to the minimal standard of paying their workers a living wage, companies in sectors with higher median wages are closer to meeting that benchmark. Nationally, median hourly pay is lowest in the fast-food sector (the median food and beverage service worker earned just $11.60 per hour in 2020), followed by retail, and higher for typical occupations in the warehousing and delivery sectors (where delivery drivers earned a median wage of $16.51 per hour).

> "I have coworkers who stand all day serving people, and then have to go pay for their own groceries with food stamps. I am very lucky that my boyfriend works in pizza because that is our survival food. If we can't afford to buy food, he brings home a pizza."
>
> —Kroger cashier Lisa Harris

Photo: Kroger cashier Lisa Harris. Source: Joshua Cogan.

Low wages can be devastating for workers—and costly for taxpayers

When companies pay less than a living wage, the consequences for workers can be devastating. In a 2020 interview, Lisa Harris, a Kroger cashier outside of Richmond, Va., described the financial struggles her colleagues face: "I have coworkers who stand all day serving people, and then have to go pay for their own groceries with food stamps. I am very lucky that my boyfriend works in pizza because that is our survival food. If we can't afford to buy food, he brings home a pizza."

Sub-living wages have consequences for society too. In a 2020 report, the Government Accountability Office found that four companies in this analysis—Walmart, McDonald's, Dollar General, and Amazon—were among the top five U.S. employers with the most employees receiving federally funded safety net benefits in the nine states analyzed in the report.[28] In total, 14 of the 22 companies in this analysis were named among the employers with the most SNAP recipients as of February 2020.

At the start of the pandemic, most frontline workers did not earn enough to get by

At the end of 2019, just as the pandemic was about to begin, not a single company in our analysis had a minimum wage that ensured all full-time workers could pay for basic necessities. In fact, few even paid *half* of their employees a living wage.

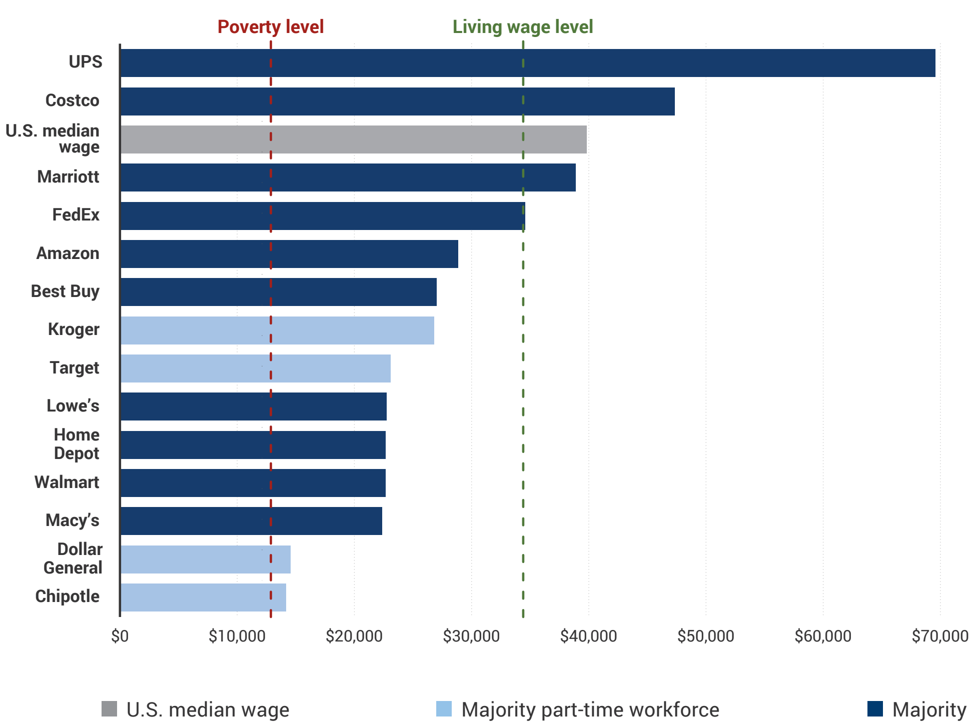
To evaluate whether companies paid their workers a living wage, we analyzed company disclosures on the 2019 annual pay of their median employee out of all full-time, part-time, and seasonal employees. The company median annual pay data is an imperfect measure, as most companies included at least some non-U.S. workers in their measurement of the median wage (see Figure 11). However, it is the only standardized measure of compensation that all companies are required to disclose, and thus provides some of the best available data to analyze. With the exception of Amazon, the other 21 companies have chosen not to voluntarily share a U.S.-specific median wage, which would have allowed more apples-to-apples comparisons. (Amazon only includes U.S. *full-time* workers in its U.S. median wage, which is a less comparable measure.)

Based on this median annual pay data, there were only four companies—UPS, Costco, Marriott, and FedEx—that paid at least half of their employees (including some non-U.S. employees) a U.S. living wage at the end of 2019.

Median and average pay, however, doesn't tell us much about a company's lowest earners. When the pandemic began, just two companies—Amazon and Costco—had a reported minimum of $15 per hour. Another seven companies had minimum wages ranging from $9 per hour to $14 per hour.

Figure 7: Only four companies paid most workers a living wage in 2019

2019 total annual compensation for the median-paid employee



% U.S. workers in company's reported median wage	
UPS	>80%
Costco	>65%
Marriott	>80%
FedEx	>65%
Amazon	>70%
Best Buy	>85%
Kroger	>95%
Target	>95%
Lowe's	>85%
Home Depot	>85%
Walmart	>65%
Macy's	>95%
Dollar General	>95%
Chipotle	>95%

Source: *Company proxy statements, MIT's 2019 living wage calculation for a household with two working adults and two children, HHS 2019 Poverty Guideline for a four-person household divided in half, and May 2019 OES median hourly wage for all occupations annualized (40 hours a week x 52 weeks a year). See full explanation at the report's webpage found at https://brook.gs/3EtNlOK.*

Table 5. Pre-Pandemic minimum and average hourly wages

As of January 2020

Company	Minimum hourly wage	Average hourly wage
Amazon	$15	$15.75
Costco	$15	–
UPS	$14	–
Target	$13	$14.48
CVS	$11	$15
Walmart	$11	$14
Walgreens	$10	$14.41
Gap	$10	–
Chipotle	$9	$13
Kroger	–	$15
Albertsons	–	–
Best Buy	–	–
Disney	–	–
Dollar General	–	–
FedEx	–	–
Hilton	–	–
Home Depot	–	–
Lowe's	–	–
Macy's	–	–
Marriott	–	–
McDonald's	–	–
Starbucks	–	–

Source: *Company reporting or direct company communication*

Note: *The companies without a minimum wage or average wage (as of January 2020) did not publicize or share this data with us.*

During the riskiest period of the pandemic in 2020, companies had the resources to do far more to compensate workers

When the COVID-19 pandemic began in 2020, simply going to work at a grocery store, warehouse, fast-food restaurant, big-box store, or delivery route put frontline essential workers and their families at risk. The pandemic cast a harsh glare on the low wages that many of these frontline workers earned as they put their lives on the line to keep our economy running.[29] These risks were especially elevated in 2020, when COVID-19 vaccines were not yet widely available to frontline workers. As public appreciation for the sacrifices of frontline workers rose, societal expectations of what workers deserve to earn shifted.

We found that in 2020, most of the companies in this analysis did raise wages temporarily through "Covid pay": a combination of pandemic-related bonuses and temporary hourly pay increases, often referred to as "hazard pay."[30] At some companies, Covid pay provided a meaningful, albeit temporary, raise:

- **Home Depot** offered the highest per-worker pay bump in 2020. The company paid employees a $150 weekly bonus until November 2020, when the company permanently raised wages.
- **Costco** paid an additional $2 per hour for an entire year, until March 2021, when the company permanently raised wages.
- **Starbucks** is notable for offering relatively generous hazard pay—a $3 hourly increase—at a time when the business was hit hard by store closures.

At the other end of the spectrum, FedEx, CVS, and UPS stand out for offering comparatively little (or no) additional Covid pay, despite their elevated earnings and CVS's role as a leading health care company on the frontlines of COVID-19 testing and immunizations. Several companies, including Gap and UPS, paid no Covid pay at all in 2020.

Table 6: Companies raised wages for frontline workers via “Covid pay”

The amount a full-time and part-time worker earned in 2020 from pandemic-related bonuses and temporary hourly wage increases

Company	2020 Covid pay full-time worker	2020 Covid pay part-time worker	% annual wage increase for the median worker from Covid pay
WINNING COMPANIES			
Home Depot*	$3,500	$1,750	13%
Costco*	$3,300	$1,760	7%
Lowe’s*	$2,121	$1,071	8%
Target*	$2046	$1,817	8%
Amazon*	$1,614	$834	5%
Walmart	$1,200	$600	4%
FedEx*	$1,000	$500	3%
Albertsons	$1,313	$1,050	5%
Kroger	$1,225	$770	3%
CVS*	$600	$600	2%
Dollar General	—	—	—
UPS	—	—	—
AVERAGE	**$1,792**	**$1,075**	**6%**
MIXED-PERFORMING & STRUGGLING COMPANIES			
Best Buy*	$1,781	$950	5%
Starbucks	$1,158	$617	4%
Chipotle	$585	$390	2%
Walgreens	$300	$150	1%
McDonald’s	$216	$115	1%
Disney	$0	$0	0%
Gap	$0	$0	0%
Hilton	$0	$0	0%
Marriott	$0	$0	0%
Macy’s	—	—	—
AVERAGE	**$449**	**$247**	**2%**
OVERALL AVERAGE	**$1,156**	**$683**	**4%**
OVERALL TOTAL	**$21,960**	**$12,974**	

** 2020 was best year on record as of the end of FY2020*

A blue box indicates whether company had a majority full-time or part-time workforce

Source: *Brookings analysis of company Covid pay. See full explanation at the report’s webpage found at https://brook.gs/3EtNlOK.*

When we calculated companies' 2020 expenditures on Covid pay, we found that most companies had the resources to raise pay more than they did. This was especially true of the 12 "winning" companies, many of which accumulated huge reserves of cash in the first year of the pandemic as revenues boomed. For context, two-thirds of the winning companies had their most profitable year ever in 2020, even after paying for the (mostly modest) temporary pay bumps to the workers who risked their lives to make these record profits possible. Across the 12 winning companies, Covid pay bumps averaged out to a temporary 6% annual average wage increase. The winning companies spent 7% of their cash holdings (plus stock buybacks) on Covid pay in 2020.

Even the "mixed-performing" and "struggling" companies had the resources to do more to compensate their employees in 2020. Unlike permanent wage increases, Covid pay was a temporary expense that companies easily could have funded from cash reserves. Yet these companies spent only 1% percent of their cash reserves (plus buybacks) on temporary Covid pay in 2020, and raised pay by an average of 2%. Had the companies in this analysis spent even a fraction more of their 2020 cash on workers, they could have dramatically increased additional pandemic compensation.

Ultimately, the extra wages that companies paid hourly workers through Covid pay were not enough for any additional companies to meet the benchmark of paying at least half of their employees a living wage. And by spring 2021, all temporary COVID-19 pay bumps had ended.

Despite hope and hype, companies raised pay only modestly since the start of the pandemic

While 2020 was the year of temporary Covid pay, 2021 ushered in a wave of permanent wage increases as companies struggled to retain and recruit workers in a tight labor market. With millions of unfilled jobs and workers quitting in historic numbers, many companies increased nominal wages—sometimes significantly. Reflecting the newfound leverage that workers gained over employers, newspapers declared 2021 "the year of the worker."[31]

But despite these headlines, average pay in real terms for workers across the 22 companies we analyzed has increased only modestly on average since the start of the pandemic. We found that nominal pay (not factoring inflation) *did* increase, sometimes significantly, at all but five of the 22 companies since the start of the pandemic. However, inflation of more than 7% between January 2020 and October 2021 erased most of the average gains. We estimate that across all 22 companies, the average real wage gain, factoring in inflation, was between 2% and 5% through October 2021.

In recent months, inflation rose even more sharply. Between January 2020 and March 2022, inflation was nearly 11.5%—more than four percentage points higher than the inflation through October 2021. Unless the 22 companies raised wages substantially since October 2021, fast-rising inflation would have eroded most, or even all, of the 2-5% average wage gains.

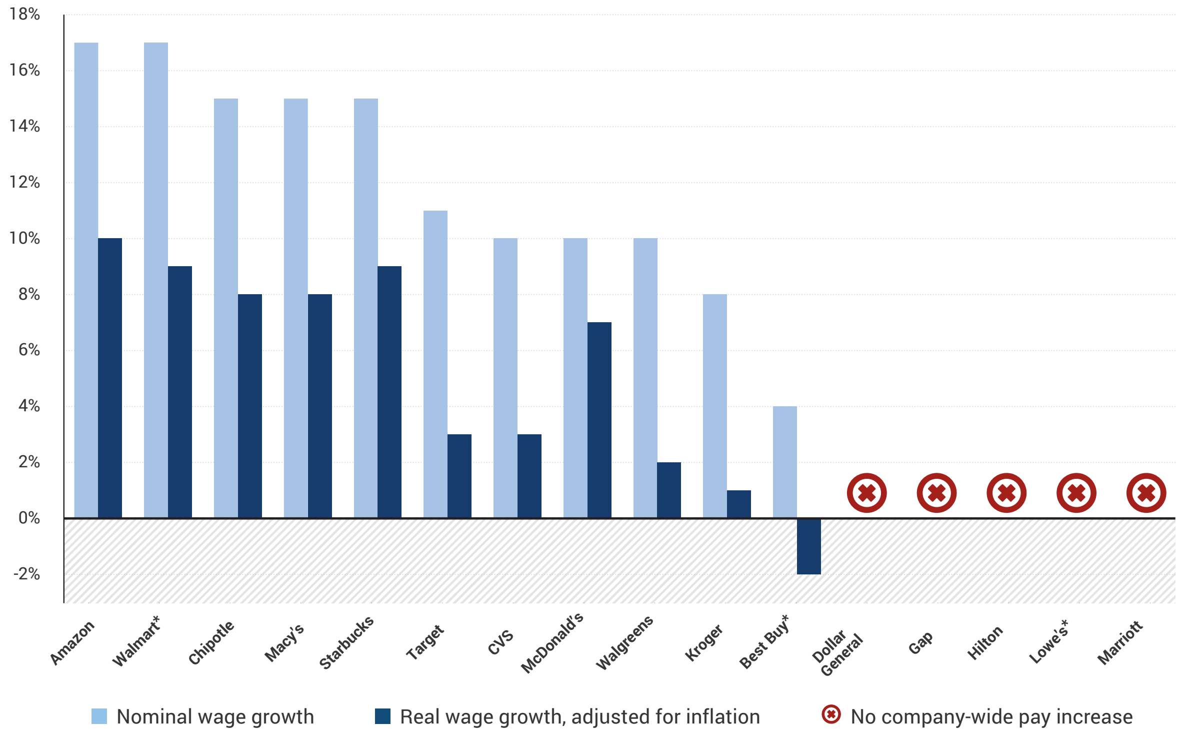
To calculate real wage gains, we gave credit to companies for increasing pay if: 1) the company made a public announcement of a company-wide increase; and/or 2) the company reported or shared directly with us an increase in average pay for workers. Given the tight labor market, it is likely that many companies in this analysis made location-specific pay increases for at least some workers since the start of the pandemic, but our methodology was unable to give credit for these one-off increases unless companies shared average pay data with us. We confirmed our data through direct company communications; all but Disney and Dollar General responded.

Based on the data we collected, the 22 companies fell into three categories:

- Five companies did not implement company-wide pay increases between January 2020 and October 2021: Dollar General, Gap, Hilton, Lowe's, and Marriott.
- Eleven companies did raise wages and shared the data, either publicly or directly with us: Amazon, Best Buy, Chipotle, CVS, Kroger, Macy's, McDonald's, Starbucks, Target, Walgreens, and Walmart.
- Six companies did raise wages, but we were unable to confirm the amount of the increase: Albertsons, Costco, Disney, FedEx, Home Depot, and UPS.

Figure 8: Inflation erased most of the modest wage gains since the start of the pandemic

Change in average hourly wages, January 2020 to October 2021



* *Worker wage increases are likely overstated for Walmart and Best Buy and understated for Lowe's. See full explanation at the report's webpage found at https://brook.gs/3EtNlOK.*

Source: *Brookings analysis of average hourly wage data via company reporting or direct communication. Wages adjusted using the Bureau of Labor Statistics CPI Inflation Calculator through October 2021. Average wages are adjusted for Best Buy, Gap, Lowe's, Macy's, McDonald's, and Starbucks from the month the wage increase went into effect.*

- Among the 11 companies that shared wage increase data, the average real wage increase was 5% through October 2021. At five of those companies, real wage gains were substantial, ranging from 8% to 10%. (Since then, inflation has risen further and likely eroded some of these wage gains. For example, if the 11 companies did not raise pay further between November 2021 and March 2022—and only one company announced increases in this period—the average real wage increase through January 2022 would be less than 1%.)

Looking at wages across all 22 companies, the average real wage change is likely smaller. Assuming that the six companies that are missing data had the same 5% average wage increase as the 11 companies that reported average pay bumps, and that the other five companies that did not implement company-wide pay increase did not raise wages at all, the average real wage increase between January 2020 and October 2021 across all 22 companies would be approximately 2%.

A few companies, such as Amazon, raised wages significantly more than the average wage gains across their respective industries. Overall, most companies did not. Though we specifically chose the companies in this analysis because they are leaders in their industries and nearly all signed the Business Roundtable pledge, most of the pay increases do not stand out compared to industry-wide pay bumps. For instance:

- The 8% average real pay bump across the three fast-food companies was just above the 7% average real wage increase for both nonsupervisory and all accommodation and food service industry jobs between January 2020 and October 2021.[32]
- Across the eight retail companies for which we have data, the 4% average real wage increase was equivalent to the 4% real wage growth for nonsupervisory retail jobs and slightly higher than the 2% real wage growth for all retail jobs between January 2020 and October 2021.[33]
- The range that we estimate for average wage gains across all 22 companies (between 2% and 5%) is similar in magnitude to the wage gains for all workers in those industries between January 2018 and October 2019. During this 22-month pre-pandemic period, retail workers experienced a 4% real wage increase, while leisure and hospitality workers saw a 2% real pay increase.[34]

Table 7: Nominal versus real average wages

Change in average hourly wages, January 2020 to October 2021

Company	January 2020 average wage	October 2021 average wage	Nominal change	Real change
Amazon	$15.75	$18.50	17%	10%
Walmart*	$14.00	$16.40	17%	9%
Starbucks	–	$14.00	15%	9%
Macy's	–	–	15%	8%
Chipotle	$13.00	$15.00	15%	8%
McDonald's	–	$13.00	10%	7%
Target	$14.48	$16.06	11%	3%
CVS	$15.00	$16.50	10%	3%
Walgreens	$14.41	$15.80	10%	2%
Kroger	$15.00	$16.25	8%	1%
Best Buy*	–	$17.67	4%	-2%
Dollar General	–	–	0%	⊗
Gap	–	–	0%	⊗
Hilton	–	–	0%	⊗
Lowe's*	–	–	0%	⊗
Marriott	–	–	0%	⊗

* *Worker wage increases are likely overstated for Walmart and Best Buy and understated for Lowe's. See full explanation at the report's webpage found at https://brook.gs/3EtNIOK.*

Source: *Brookings analysis of average hourly wage data via company reporting or direct communication. Wages adjusted using the Bureau of Labor Statistics CPI Inflation Calculator through October 2021. Average wages are adjusted for Best Buy, Gap, Lowe's, Macy's, McDonald's, and Starbucks from the month the wage increase went into effect.*

Note: *The companies without an average wage (as of January 2020 or October 2021) did not publicize or share this data with us. The companies demarcated with an "X" did not implement a company-wide wage increase between January 2020 and October 2021.*

Overall, companies made little progress on meeting the standard of a living wage

So where does this leave workers? Headlines about rising wages for frontline workers often obscure the reality that wage *levels* are still low today, even after the pay increases, especially when adjusted for inflation.

To assess whether the 22 companies paid at least half of their workers a living wage as of October 2021, we assessed several sources of data. We examined companies' average and minimum wages and the 2020 annual compensation of their median employee. (The 2021 median compensation data had not yet been released for most companies by the time of publication.) From this data, we determined the likelihood of each company meeting the bar of paying at least half of their workers a living wage.

Of the 22 companies we analyzed, there are just five companies—Amazon, Best Buy, Costco, Marriott, and UPS—that we can say with a high degree of confidence paid at least half of their workers a living wage as of October 2021, compared to four companies pre-pandemic. We believe Disney and FedEx may also meet that bar, but cannot confirm with the data available. It is very unlikely that any of the remaining 15 companies paid at least half of their workers a living wage.

Because wages are so low, we focus on whether companies pay at least half their workers a living wage. It is notable that despite the fact that more than half of companies increased their minimum wages during the pandemic, not one pays a minimum wage today that meets the living wage standard. In October 2021, $15 per hour is a full $2.70 per hour lower than a living wage. In fact, an hourly worker in October 2021 would need to earn more than $16 per hour just to have the same purchasing power as $15 per hour at the start of the pandemic. (The same worker would need to earn $16.50 in February 2022 to have the same purchasing power.) Only Costco has a minimum wage today ($17 per hour) that is close to a living wage for a full-time worker.

Because they started at a low base, some of the companies with the biggest wage increases still have very low pay today. This is especially true in the fast-food industry. For instance, McDonald's has garnered positive media coverage for raising pay for employees at company-owned stores by 7% in real terms. In 2021, McDonald's raised its minimum wage to $11 per hour and its average wage for nonsupervisory employees to $13. The company has pledged to raise *average* (not minimum) pay to $15 by 2024. At a $13 average hourly wage, a McDonald's employee working 20 hours per week (most McDonald's employees work part time) would take home less than $14,000 a year—an income so low it would put a household of two under the federal poverty line.[35]

Commitments to fair wages fell short

Ultimately, the companies' commitments to fair wages fell short in the pandemic. The vast majority of hourly employees at the 22 companies started the pandemic earning low wages. Nearly two years later, the majority of them still earned low wages. By October 2021, we estimate that at least two-thirds of companies in this analysis did not pay even half of their workers a U.S. living wage.

The companies' failure was not for lack of any investment in workers. Most companies that we analyzed did raise wages during the pandemic: both temporarily, through Covid pay, and permanently, through real wage increases. Yet despite the media coverage around rising worker pay, most of the wage increases at the companies we analyzed were relatively modest. We estimate that the average real wage gain across all 22 companies was between 2% and 5% over nearly two years. Overall, only a few companies raised pay substantially more than the average wage increase for their respective industries. Thus, while most workers at the 22 companies we analyzed are earning better wages, few are earning enough to survive. Today, we estimate that, at most, one-third of the 22 companies are paying half of their workers enough to cover basic expenses, even as the fortunes of shareholders and executives rose.

Table 8: Two-thirds of companies in this analysis did not pay half of their workers a U.S. living wage

As of October 2021

Company	2020 median wage	% U.S. workers in company's reported median wage	Average real wage increase	Minimum wage (as of Oct. 2021)	Average wage (as of Oct. 2021)	% FT workers	Likelihood of paying at least half of workers a living wage
Costco	$39,585	>65%	?	$17	$24	60%	Very high
UPS	$39,143	>80%	?	$15	–	>50%	Very high
Marriott	$36,352	>80%	⊗	–	–	85%	Very high
Best Buy*	$30,542	>85%	-2%	$15	$17.67	60%	Very high
Amazon	$29,007	>70%	10%	$15	$18.50	>50%	Very high
Fedex	$34,544	>70%	?	–	–	53%	Likely
Disney (Parks & Resorts)	–	>70%	?	$15	>$17**	80%	Likely
Hilton	$28,608	>40%	⊗	–	–	78%	Low
Home Depot	$27,389	>85%	?	–	–	>50%	Low
Kroger	$24,617	>95%	1%	–	$16.25	40%	Low
Lowe's	$24,554	>90%	⊗	–	–	65%	Low
Target	$24,535	>95%	3%	$15	$16.06	<50%	Low
Walmart*	$20,942	>70%	9%	$12	$16.40	64%	Low
Macy's	$20,085	>95%	8%	–	–	54%	Low
Dollar General	$16,688	>95%	⊗	–	–	<50%	Low
Chipotle	$13,127	>95%	8%	$11	$15	19%	Low
Starbucks	$12,113	>60%	9%	$12	$14	<50%	Low
McDonald's	$9,124	>25%	7%	$11	$13	<50%	Low
Gap	$7,037	>80%	⊗	$10	–	<50%	Low
CVS	–	>95%	3%	$13	$16.50	71%	Low
Walgreens	–	>65%	2%	$13	$15.80	67%	Low
Albertsons	–	>95%	?	–	–	<50%	Low

* *Worker wage increases are likely overstated for Walmart and Best Buy and the understated for Lowe's. See full explanation at the report's webpage found at https://brook.gs/3EtNIOK.*

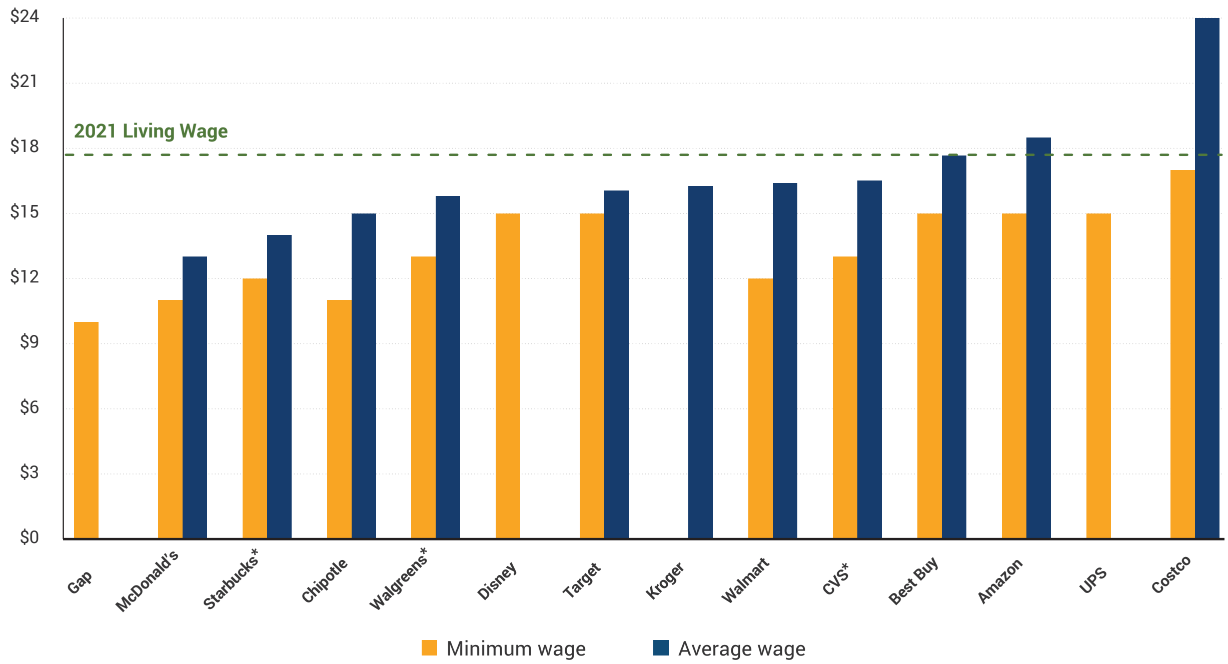
** *Disney's 2020 ESG report says the median wage (including tips) is "over $17" for parks and resorts workers.*

Source: *Company 2020 proxy statements, company reporting, or direct communication. The average real wage increases are calculated using the Bureau of Labor Statistics CPI Inflation Calculator through October 2021. Average wages are adjusted for Best Buy, Gap, Lowe's, Macy's, McDonald's, and Starbucks from the month the wage increase went into effect. See full explanation at the report's webpage found at Https://brook.gs/3EtNIOK.*

Note: *The companies without a minimum wage or average wage (as of October 2021) did not publicize or share this data with us.*

Figure 9: Even with wage increases, most workers still earn less than a living wage in 2021

Company average wage and minimum wage, as of October 2021



** Company pledges to increase minimum wage to $15 per hour in 2022*

Source: *Brookings analysis of MIT Living Wage Calculator data. Wage data via company reporting or direct communication.*

Note: *The companies without a minimum wage or average wage did not publicize or share this data with us.*

These are disappointing findings. There are a number of reasons that we might have expected companies to invest in higher wages during the pandemic. In 2020, employers faced public pressure to increase pay as COVID-19 posed health risks to workers and popular support for essential workers grew. In 2021, labor market shortages and elevated quit rates pushed companies to increase (nominal) wages significantly and gave frontline workers greater leverage. And corporate profits since the start of the pandemic reached their highest levels in history, providing employers additional resources to invest in workers.

Yet despite the hope and hype, on average, the companies in this analysis are paying workers only modestly more in real terms than they did before the pandemic—and, for most workers, not enough to get by. Looking at the data, it is hard not to conclude that most companies are falling far short of the Business Roundtable commitment to fair pay.

How financial gains were shared across workers, shareholders, and executives

In this section, we ask: How were companies' gains shared among workers, shareholders, and executives? Did workers share meaningfully in companies' financial success during the pandemic?

We found that the pay increases to millions of frontline workers during the pandemic were dwarfed by the vast wealth generated for rich shareholders, including billionaire founders and heirs, and executives, who are themselves shareholders.

Shareholders of the 22 companies grew $1.5 trillion richer, while workers got less than 2% of that benefit

On the whole, the companies in this analysis performed very well during the pandemic. Total profits rose by $33 billion, or 18%, over the first seven pandemic quarters. Among the 12 "winning" companies, the gains were even more striking: Profits rose by $56 billion, or 45%.

Shareholders reaped the benefits of this success. The average share price increase for the 22 companies between January 2020 and October 2021 was 51%, and 65% among the winning companies. Overall, the companies' rising stock prices generated more than $1.5 trillion in wealth for company shareholders from January 2020 through October 2021—nearly triple the wealth generated in the previous 22-month period. For context, $1.5 trillion is nearly one-third of the total U.S. federal budget.[36] Amazon was responsible for half of the wealth increase; still, the three-quarters of $1 trillion generated by the remaining 21 companies is double the amount of wealth they generated in the previous period.

Unlike shareholders, workers shared only minimally in company success. As discussed in the previous section, we found that workers' wages increased modestly over the first 22 months of the pandemic. The average wage increase across the 11 companies that shared data was 5%. We estimate that the average pay increase across all 22 companies could be as low as 2%. By October 2021, at least two-thirds of companies paid less than half of their employees a living wage.

But for low-wage workers, income is not a good proxy for wealth gains, because most of these workers are not paid enough to accumulate wealth. Low-wage workers generally spend their entire paycheck on basic necessities like rent, health care, and transportation; they have limited or no ability to save or invest. (In our methodology, we do not include the savings accumulated by low-income households during the pandemic from government transfers such as stimulus checks, unemployment benefits, and the Child Tax Credit.[37] We focus exclusively on wealth and income directly associated with company performance and company compensation.)

However, we can compare increased shareholder wealth to the *total* additional compensation that frontline workers at the 22 companies earned over that same period: temporary Covid compensation, permanent pay increases, profit sharing, and performance bonuses. It is likely the best comparison one can make to understand who benefitted most from pandemic success. But it is still an imperfect comparison: Additional compensation for workers does not represent wealth gains and share price increases do; pay increases are a flow while wealth is a stock. Despite these differences, it is the tradeoff between these two things that lies at the heart of the tension between shareholder capitalism and stakeholder capitalism.

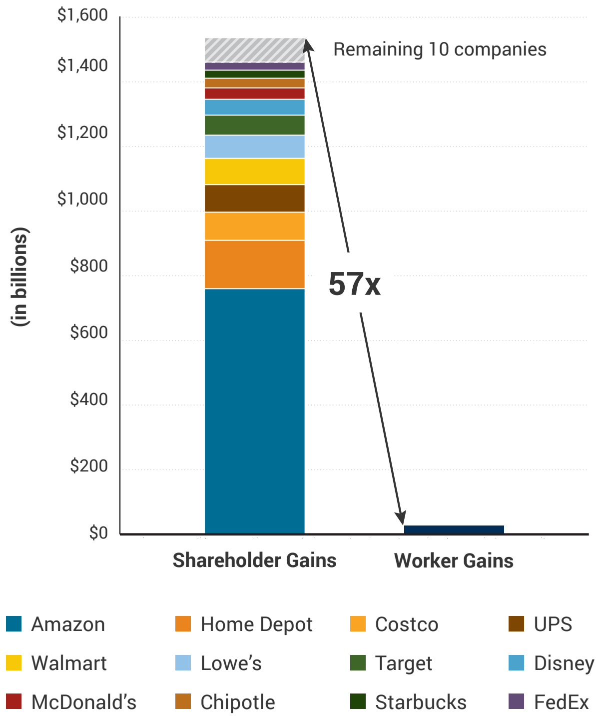
In total, the 7 million American workers employed by the 22 companies earned nearly $27 billion in additional compensation—less than 2% of the $1.5 trillion wealth increase that the companies' shareholders experienced.

The disparity between worker and shareholder gains is especially striking at several companies:

- **Amazon**: Of the 22 companies, Amazon stands out as having given the highest real wage increase to its workers. This additional pay for workers was dwarfed by the $767 billion in wealth that the company generated for its shareholders—as much as the wealth generated by all 21 other companies combined. Between January 2020 and October 2021, Amazon's shareholders grew 84% wealthier. In comparison, the average real pay of Amazon's workers grew by 10%. The company spent an additional $4.3 billion in worker pay during this period, including Covid pay, bonuses, and permanent wage increases. In other words, the additional wealth for Amazon's shareholders was 177 times greater than the additional pay that employees earned.
- **Home Depot:** Home Depot created $149 billion in wealth for its shareholders—46 times the additional pay for its workers.
- **Lowe's:** Lowe's generated $70 billion in additional wealth for its shareholders—42 times the additional pay for its workers.

Figure 10: Shareholders of the 22 companies grew $1.5 trillion richer, while workers got less than 2% of that benefit

Wealth generated for company shareholders versus the amount companies spent on additional compensation to workers, January 2020 to October 2021



Source: *Brookings analysis of company COVID pay, permanent wage increases, profit-sharing, and performance bonuses; company reporting and company communication; and Macrotrends. See full explanation at the report's webpage found at https://brook.gs/3EtNlOK.*

Nearly $1 trillion of wealth accrued to the 6 million richest American families

Of the $1.5 trillion in shareholder wealth gains, we estimate that 76%—or $1.16 trillion—accrued to U.S. (i.e., not foreign) shareholders, as is true for U.S. equities overall.[38]

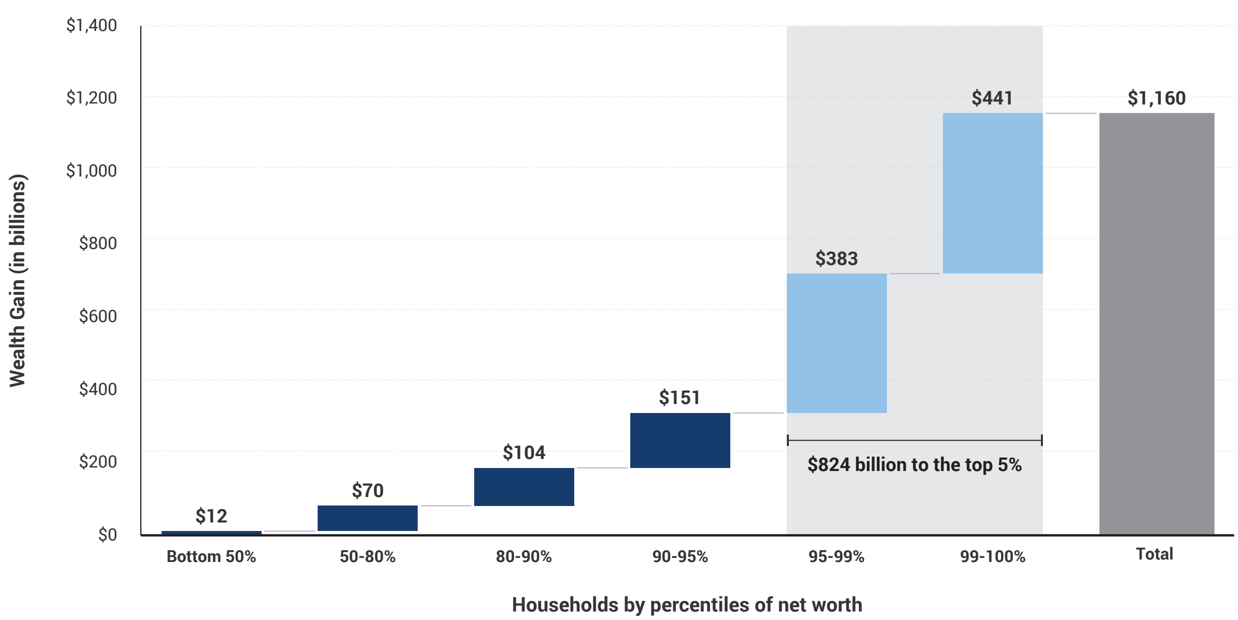
Of course, there are 7 million American employees at these companies, but *many* more U.S. shareholders who benefitted from this wealth increase, which may make the comparison between shareholders and employees seem unfair. Yet assuming stock ownership among the 22 companies mirrors U.S. equity ownership generally, the majority of the $1.16 trillion in U.S. shareholder wealth gains—more than $800 billion— benefitted around 6 million families: the richest 5% of Americans.[39] The bottom half of all American families shared in only 1% of the gains.

To better compare the more than $800 billion amassed by the richest 6 million families with the $27 billion in additional pay that 7 million workers earned, it is helpful to look at the gains on a per-family and per-worker basis. Certainly, the additional wealth and additional pay was not divided equally among shareholders or workers; the gains for some very wealthy households were significantly larger, and some workers earned far less than others. However, a per-capita and per-household comparison shows the orders-of-magnitude difference in gains between wealthy shareholders and workers.

The more than $800 billion in wealth generated for the top 5% richest households averages out to approximately $140,000 per household. In comparison, the extra pay to more than 7 million workers, assuming an equal distribution, amounts to less than $3,700 per worker for the 22-month period, or just under $1 per hour for a full-time employee working 40 hours per week.

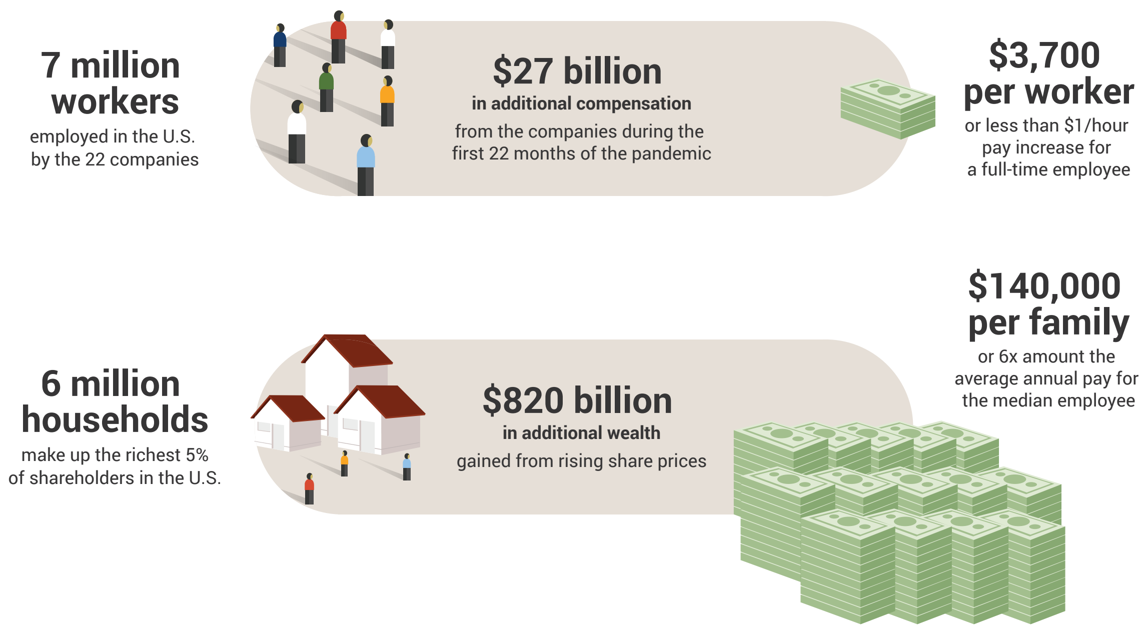
Figure 11: The richest 5% of households captured more than 70% of the wealth gains for US shareholders

Wealth increase for the companies' shareholders broken down by percentiles of net worth, January 2020 to October 2021



Source: *New York Times Upshot, the Federal Reserve's Survey of Consumer Finances, and Macrotrends. See full explanation at the report's webpage found at https://brook.gs/3EtNlOK.*

Figure 12: Additional pay for 7 million workers compared to additional wealth for 6 million wealthy households



Source: *Brookings analysis of company COVID pay, permanent wage increases, profit-sharing, and performance bonuses; company reporting and direct company communication; Macrotrends; New York Times Upshot; the Federal Reserve's Survey of Consumer Finances; and U.S. Census Bureau. See full explanation at the report's webpage found at https://brook.gs/3EtNlOK.*

It is worth understanding how these groups differ. The cutoff to be in the top 5% of wealth is $2.6 million.[40] In comparison, based on the companies' full-time pay, most of their workers are in the bottom third of U.S. income, with a total wealth below $45,000.[41] The richest Americans are overwhelmingly white; half of the frontline workers at these companies are nonwhite.[42] The vast majority of the highest-paid Americans, including most headquarter employees and executives at the 22 companies, could telework safely from home during the pandemic.[43] Frontline workers have had to work in person during the pandemic, at great risk to themselves and their families.

More than one-third of US shareholder wealth gains benefitted the wealthiest 1% of households

Within the gains to the top 5%, more than half those gains benefitted just the wealthiest 1% of households. And within the top 1%, financial gains were concentrated among the ultra-wealthy.

This extreme concentration is most evident at seven of the 22 companies, where five billionaire founders and eight billionaire family heirs hold millions—and often billions—of dollars' worth of company stock. For instance, Amazon founder Jeff Bezos owned 15% of all Amazon shares at the start of the pandemic; by the end of October 2021, his shares were worth almost $250 billion. Families that are heirs to the Walmart and Gap fortunes are also noteworthy. The three children of Walmart founder Sam Walton own just under half of all the company's shares, while the family of Gap co-founder Donald Fisher owns over 51% of all the company's shares.

To estimate wealth gains, we calculated the increased value through October 2021 of the company shares owned by the 13 billionaire founders or family heirs at the start of the pandemic, not including any sales or purchases in those 22 months. Based on the increased value of these shares, we estimate that the wealth of the 13 billionaires from these seven companies would have grown by nearly $160 billion—more than 12 times all extra pay to the 3.4 million workers the companies employed in the U.S. The wealth gains of these 13 billionaires represent more than one-third of all estimated wealth gains to the wealthiest 1% of U.S. shareholders.

The extreme gap between billionaires' wealth increases and additional worker pay is especially striking at the following companies:

- **Amazon:** Amazon posted record profits of $40 billion across the seven pandemic quarters, and the company's stock grew by 80%. Founder Jeff Bezos' wealth increased by an estimated $110 billion—25 times the combined additional pay that Amazon's more than 1 million frontline employees received during that same period.

- **Gap:** Gap's share price rose more than 34% since January 2020, despite losses early in the pandemic while stores were shut down. At the start of the pandemic, co-founder Doris Fisher and her three sons, billionaire heirs to the Gap fortune, owned 51% of all company shares. Based on the rising value of the shares they held at the start of the pandemic, their wealth would have risen $1.1 billion since January 2020, or 14 times the total additional pay to more than 100,000 Gap workers. During the pandemic, Gap did not institute a permanent, company-wide pay increase. The company gave one bonus of $300 in June 2021, over a year into the pandemic. As of October 2021, the company minimum wage was $10 per hour.

CEOs of the 22 companies earned nearly half a billion dollars in realized compensation in 2020 alone

Non-billionaire CEOs are also likely in the top 1% of wealth. The wealth of company CEOs increased in two ways through the pandemic: through their total realized compensation earned during the pandemic and through rising values of their company stock.

The vast majority of CEO compensation comes from performance-related bonuses and stock, not from base salary. Thus, we would expect total CEO compensation to be elevated when companies perform well, as the 11 winning companies did in 2020. Across the 22 companies, the total *realized* CEO compensation—the closest approximation to what they took home that year—was $487 million in 2020.

Table 9: Company founders and heirs added to their billions during the pandemic

Wealth increase from company shares, January 2020 to October 2021

Company	Billionare	WEALTH INCREASE (in millions)	(%)	% of company shares owned
Amazon	Jeff Bezos *(founder)*	+$110,343	80%	15%
Walmart	Alice, Jim, & Rob Walton *(heirs)*	+$44,437	26%	50%
FedEx	Fred Smith *(founder, current CEO)*	+$1,650	56%	8%
Best Buy	Richard Schulze *(founder)*	+$1,022	41%	11%
Gap	Fisher family *(co-founder & heirs)*	+$1,134	34%	51%
Starbucks	Howard Schultz *(founder)*	+$759	25%	<5%
Marriott	Bill & Richard Marriott *(heirs)*	+$510	7%	15%

Source: *Company FY 2020 proxy statements, Yahoo Finance. See full explanation at the report's webpage found at https://brook.gs/3EtNlOK.*

On average, CEO pay topped $22 million, while the median employee earned, on average, less than $25,000. Across all 22 companies, the average ratio of CEO pay to median employee pay was 904 to 1. Two-thirds of the companies had a more unequal ratio of CEO pay to median employee pay in 2020 than the average across the country's largest firms (351:1), as measured by the Economic Policy Institute.[44] (Of the few companies that had a less unequal ratio, several companies—including Gap, Marriott, Best Buy, and McDonald's—only recently appointed their CEOs, and thus they had not yet earned multiyear performance-based stock compensation.)

A few companies stand out:

- **Chipotle, Target, and Dollar General:** Of the 22 companies, these three had the highest-paid CEOs in 2020, earning between $58 million and $77 million each—yet they paid their median worker considerably less than a living wage in the same year. The median employees at Dollar General and Chipotle are among the lowest-paid of all the companies in this report. At Chipotle, where the CEO had the highest 2020 realized compensation of all 22 companies, the ratio between CEO pay and median employee pay was 4,623 to 1—or 13 times more unequal than the ratio at the average large U.S. firm.
- **Costco**: Costco stands out as having a comparatively equitable ratio of CEO pay to median employee pay, in large part because its CEO pay is modest while its median pay is among the highest. The company acknowledges that their CEO pay is lower than the industry; its 2021 proxy form states: "Executive base salaries and cash bonuses and the value of all equity-related awards are, in the Committee's view, generally lower than those at other companies in our peer group.'"[45]

In addition to their compensation during the pandemic, the wealth of many CEOs rose as their company share prices increased. This is especially true for CEOs with large stock holdings at the companies that experienced the biggest share price increases during the pandemic.

A widening gap between workers and shareholders, and a setback for racial equity

Overall, then, the way company gains were shared across stakeholder groups increased the gap between workers and rich shareholders, including executives. The 6 million richest families in America—the majority of whom played no role in these companies' performance—grew more than $800 billion richer. In 2020 alone, the 22 CEOs earned nearly half a billion dollars in just compensation (not including wealth gains from existing stock holdings); 2021 compensation may be higher. Meanwhile, the more than 7 million frontline workers, who risked their health to keep the companies running, collectively earned $27 billion in additional pay—around $3,700 per worker for nearly two years of risky work—which we can't even call "wealth" because their earnings are so low.

This inequitable distribution of company financial gains between workers, shareholders, and executives during the pandemic calls into question the companies' embrace of a more inclusive form of capitalism. It also undermines progress toward racial equity. At the 22 companies we analyzed, Black and brown workers are significantly over-represented among the 7 million frontline workers that benefitted modestly, or minimally, from company success. (Just over half of workers at the 22 companies are nonwhite, while across the U.S. economy, more than three-quarters of workers are white). In contrast, the company senior executives, CEOs, and billionaire founders and heirs who benefitted most from wealth gains are overwhelmingly white.

Table 10: These 22 CEOs earned nearly half a billion dollars in 2020

CEO realized compensation versus the median worker pay

Company	2020 CEO realized compensation (in millions)	2020 worker median wage	Ratio of CEO pay to worker median pay
WINNING COMPANIES			
Target	$77.0	$24,535	3,140:1
Dollar General	$58.5	$16,688	3,508:1
Walmart	$34.3	$20,942	1,638:1
Home Depot	$39.2	$27,389	1,432:1
FedEx	$39.7	$37,562	1,058:1
Kroger	$18.0	$24,617	732:1
UPS*	$19.2	$39,143	490:1
Costco	$17.2	$39,585	434:1
Lowe's	$7.3	$24,544	295:1
Amazon	$0.1	$29,007	3:1
CVS	$15.1	—	
Albertsons	$14.0	—	
TOTAL	**$339.6**		
AVERAGE	**$28.3**	**$28,401**	**996:1**
MIXED-PERFORMING & STRUGGLING COMPANIES			
Chipotle	$60.7	$13,127	4,623:1
Hilton	$26.2	$28,608	915:1
Gap*	$3.6	$7,037	506:1
Starbucks	$5.1	$12,113	418:1
McDonald's	$3.2	$9,124	347:1
Best Buy	$8.3	$30,542	273:1
Marriott	$9.9	$36,352	273:1
Macy's	$3.7	$20,085	186:1
Disney*	$22.1	—	—
Walgreens	$5.1	—	—
TOTAL	**$147.8**		
AVERAGE	**$14.8**	**$19,624**	**753:1**
OVERALL TOTAL	**$487.5**		
OVERALL AVERAGE	**$22.2**	**$24,500**	**904:1**

** There was a change in CEO in 2020*

Source: *Company 2021 proxy statements. See full explanation at the report's webpage found at https://brook.gs/3EtNlOK.*

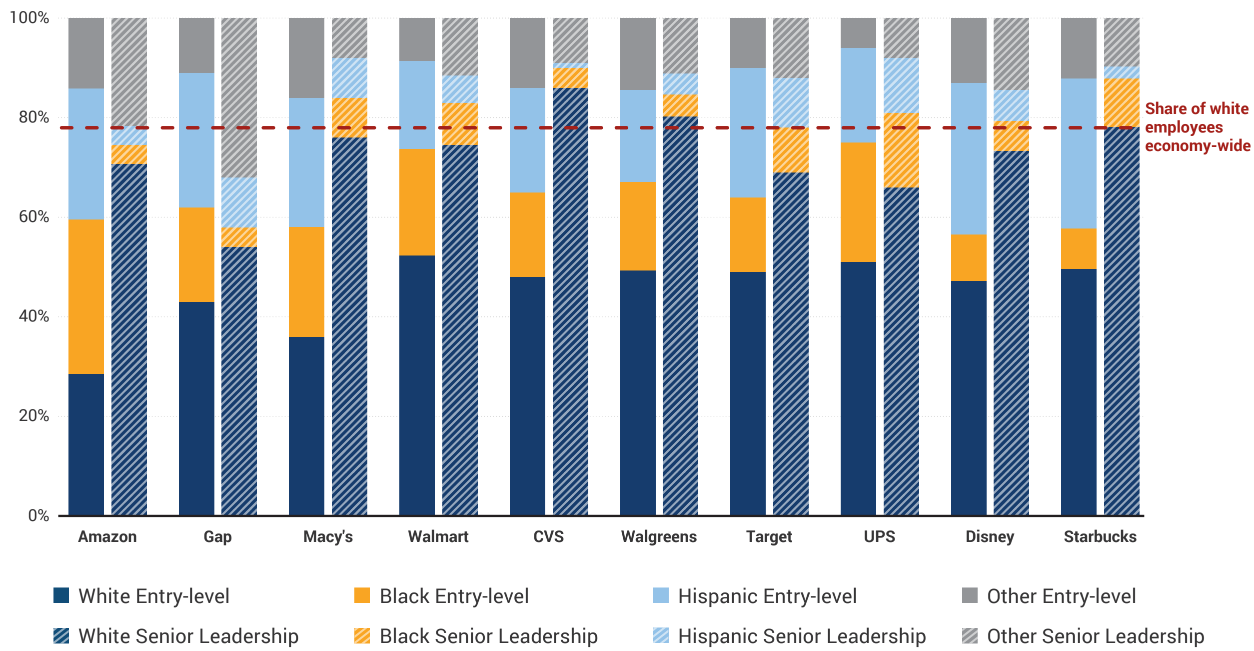
Averaged across the 10 companies that published detailed racial and demographic workforce data during the pandemic, we find:

- Black workers comprised 18% of all frontline, non-management positions (compared to 12% economy-wide[46]) and 7% of senior leadership and executive positions.
- Latino or Hispanic workers comprised 24% of all frontline, non-management positions (compared to 18% economy-wide[47]) and just 6% of senior leadership and executive positions.
- White workers comprised 45% of frontline, non-management positions (compared to 78% economy-wide[48]) and 73% of senior leadership and executive positions.
- This racial disparity is greatest among CEOs and billionaire founders and heirs, who benefitted most from companies' financial success: 18 of the 22 companies (82%) employed a white CEO in 2021, and all of the billionaire founders and heirs are white.

Thus, far from curbing inequality and advancing racial equity, the uneven distribution of financial success at the 22 companies has widened existing disparities.

Figure 13: Black and Brown workers are overrepresented in entry-level positions

Racial breakdown by employment level



Source: *Company Environment, Social, and Governance (ESG) reports, Diversity Equity and Inclusion (DE&I) reports, and the Bureau of Labor Statistics.*

How financial losses were distributed

In this section, we explore how financial losses incurred during the pandemic impacted workers, shareholders, and executives in the 10 "mixed-performing" and "struggling" companies in our analysis. The four mixed-performing companies are Best Buy, Chipotle, McDonald's, and Starbucks; the six struggling companies are Disney, Gap, Hilton, Macy's, Marriott, and Walgreens, which each sustained significant losses in 2020.

Workers experienced the brunt of companies' financial losses through layoffs and economic hardship

Hundreds of thousands of frontline workers at the companies hardest-hit during the pandemic experienced furloughs, layoffs, and reduced hours. Among the 10 mixed-performing and struggling companies, six in particularly impacted industries (travel, leisure, and nonessential retail) enacted large-scale furloughs starting in March and April 2020. Together, they furloughed more than 380,000 workers, with hourly, low-wage workers experiencing the brunt of the displacement. They also permanently laid off over 44,000 workers, including thousands of corporate employees.

While these six employers continued paying health insurance for their furloughed staff, most of the furloughs were entirely unpaid; some companies continued paying furloughed employees for the first few weeks. Hundreds of thousands of frontline workers were left without a paycheck for weeks and sometimes months.

These frontline workers earned low wages going into the pandemic, leaving them with limited or no financial cushion to help them make ends meet during unpaid furloughs. Adding to the financial insecurity, furloughed workers faced considerable uncertainty about when, and if, their jobs would resume, especially if they lacked recall rights through a union contract. For workers earning low incomes, any loss of income can result in profound hardship, forcing families to make cuts in essentials like rent, food, or health care, which they cannot afford to make. The impact of these cuts on health, housing, and well-being can be long-lasting.

Table 11: Over 400,000 workers were furloughed or laid off during the pandemic

Companies within particularly impacted industries

Company	# workers furloughed	# workers laid off	Duration of furloughs
Disney	120,000	32,000	10,000 furloughed Disneyland employees were recalled in March 2021. By August 2021, 60% of furloughed employees at Disneyland had been recalled.
Gap	80,000	1,200 corporate staff	Stores started to reopen in June 2020 and by the end of August 2020, 90% of stores reopened. Gap did not share or publish any data on length of furloughs or rehiring.
Best Buy	51,000	5,000	Best Buy started bringing back some furloughed employees in June 2020. By August, two-thirds were recalled. All remaining furloughed employees were offered seasonal holiday work in 2020.
Hilton	47,000	2,100 corporate staff	By the end of 2020, 20,000 Hilton employees remained furloughed.
Macy's	At least 62,000	4,000 corporate staff	Macy's furloughed the majority of its workforce in March 2020. Most returned the first week of July 2020.
Marriott	"Tens of thousands"		Marriott published and shared very little information on layoffs. The company furloughed "several thousand" employees and did not provide information on rehiring.
TOTAL	**>380,000**	**44,300**	

Source: *Company reporting and direct company communication.*

Robust federal support mitigated some of the impact of these income losses. In 2020 and 2021, the federal government provided critical relief through a series of stimulus checks (two in 2020 and one in the spring of 2021), enhanced unemployment benefits (offering an additional $600 per week supplement, and later $300 per week), and increased child tax credits. While this federal support provided a lifeline to unemployed workers and ultimately resulted in increased averaged savings for low-income households, remaining gaps created hardship, economic uncertainty, and stress.[49] Workers applying for unemployment benefits had to contend with overwhelmed state systems that were plagued by problems: lengthy delays, jammed phone lines, backlogs, and crashing websites.[50] Millions of workers faced delays of weeks or even months before receiving unemployment checks.[51] And the supplemental federal unemployment benefits, though relatively generous for the U.S., expired in early September 2020, without any further support until early 2021.

The experience of Disney's parks and resorts workers illustrates the hardship that thousands of displaced frontline workers endured. When the pandemic caused Disney's flagship parks and resorts to close, the company furloughed 120,000 employees, primarily in its parks and resorts division. This saved the company an estimated $500 million a month.[52] In tourist-dependent Orlando, Fla., home to Disney World and other shuttered venues, the summer unemployment rate exceeded 22%.[53] By the fall of 2020, Disney's parks were still operating at limited or no capacity, and tens of thousands of staff remained furloughed.

In September 2020, just as the federal government's $600 weekly federal unemployment benefits lapsed, Disney announced its plans to lay off 28,000 mostly part-time employees. Without the additional $600 weekly benefit, unemployed Disney workers in Florida earned just $275 per week from the state, one of the lowest rates in the country[54]—and only if they were fortunate enough to successfully navigate Florida's notoriously troubled unemployment system[55] and overcome the hurdles that for years have disqualified the vast majority of the state's unemployed workers from receiving benefits.[56] The $275 per week in state-provided unemployment benefits translates to just over $14,000 per year for a full-time (40 hours per week) worker, or about half of the income of a full-time Disney employee earning the company's then-minimum wage of $13 per hour for union members, and less than 40% of the earnings of Disney's parks workers earning the 2020 median hourly wage. At one Orlando food bank for furloughed Disney workers, the line in early September stretched for 2 miles.[57]

Even at mixed-performing companies that did not enact large-scale furloughs and layoffs, workers still felt the impact of company losses. For instance, at the three fast-food chains—Chipotle, Starbucks, and McDonald's—store closures in the early months of the pandemic resulted in reduced hours and lost income for some workers. In a May 2020 letter to employees, Starbucks acknowledged the challenge of reduced hours and offered an unpaid "leave of absence" policy under which employees could secure unemployment benefits while maintaining company health insurance.[58] At Chipotle, lower hours during the pandemic reduced median employee compensation by 7% in 2020 compared to 2019.[59]

Shareholder losses were relatively short-lived, and often became significant gains

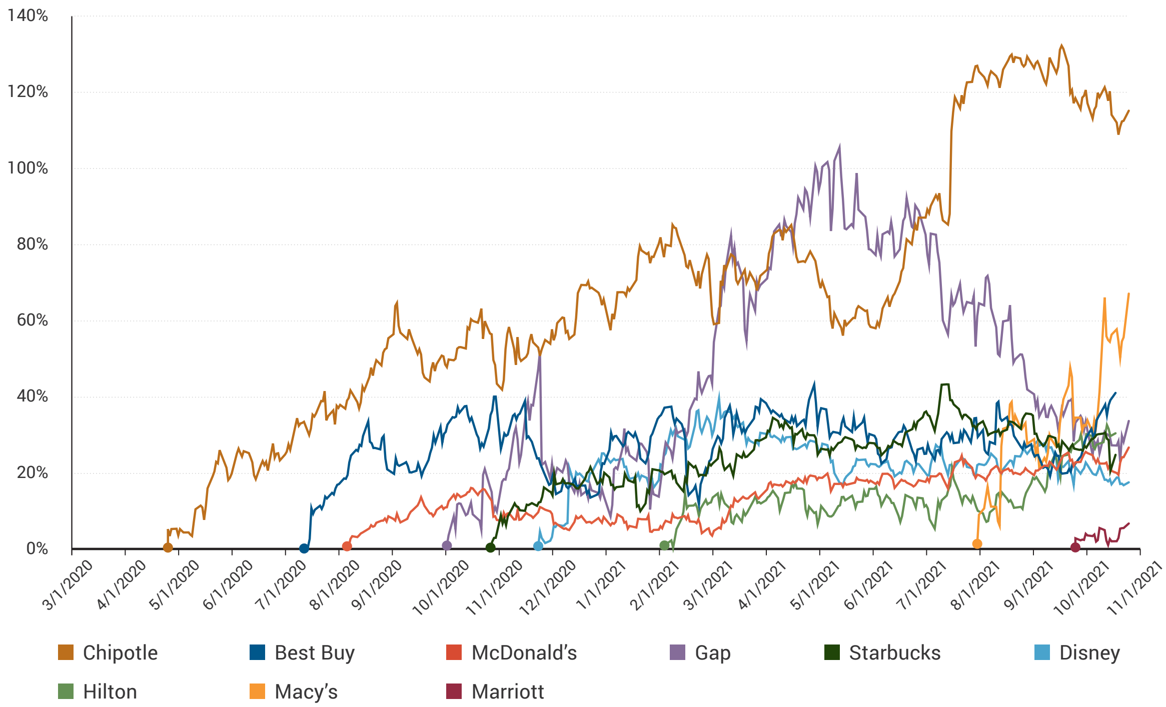
When the pandemic began, shareholders of hard-hit companies initially shared in financial setbacks. All of the mixed-performing and struggling companies suspended dividends and stock buybacks. Stock prices dropped precipitously, especially in the spring and summer of 2020, wiping out billions of dollars in shareholder wealth.

Compared to the profound hardship some workers endured, however, shareholders' financial setbacks were more mild and often shorter-lived. As discussed in the previous section, the vast majority of shareholder wealth is owned by the richest households. The wealth cutoff for the wealthiest 5% of households—who own 70% of U.S. corporate stock—is $2.6 million. So, a short-term decline in holdings is unlikely to impact most wealthy shareholders' day-to-day life. In contrast, pandemic job losses were concentrated among low-wage workers, and particularly workers of color, who were already economically vulnerable and suffered the greatest financial shocks.[60] Job losses were much less common among high-income earners (including those who own most stock), who were six times more likely to be able to telework than low-wage workers.[61]

With the exception of Walgreens, all of the companies in this analysis generated additional wealth for their shareholders during the 22 months we studied—even companies that experienced major financial losses and furloughed tens of thousands of workers. On average, it took less than nine months for the stock prices of the other nine mixed-performing and struggling companies to fully recover to their pre-pandemic levels. As share prices surpassed pre-pandemic levels, they generated an additional $163 billion in wealth ($152 billion if adjusted for inflation) for shareholders through the end of October 2021.

Figure 14: Most mixed-performing and struggling companies' stock prices recovered—and rose—a few months into the pandemic

The date a company's stock price recovered after the start of the pandemic through October 2021



Source: *Yahoo Finance*

Note: *A company's stock price "recovered" when it returned—and did not dip below—the company's stock price on December 31, 2019.*

The gap between workers' hardships and shareholders' wealth increase was especially large at the following companies:

- **Disney:** Disney's share price recovered to its pre-pandemic value by the end of November 2020—one day after the company increased planned layoffs from 28,000 to 32,000 workers.[62] At the time, Disneyland (in California) was still closed, Disney World (in Florida) was operating at reduced capacity, tens of thousands of employees remained furloughed, federal unemployment benefits had lapsed, and the company was in the midst of its worst year on record. Since recovering, the share price has increased nearly 20% through October 2021, creating more than $48 billion in wealth for shareholders. In contrast, revenue and operating profit at Disney's parks and resorts did not recover to pre-pandemic levels until more than a year later, during Disney's eighth pandemic quarter ending January 2022.[63]

- **Hilton:** Hilton's share price first returned to its pre-pandemic value at the end of December 2020, just as the company finished its worst year on record. In 2020, as the pandemic began, the company furloughed 47,000 workers and laid off nearly a quarter of its corporate staff. At the time that the stock price first hit its pre-pandemic value, the company was "still undergoing significant furloughs," according to direct communication from Hilton. Since the stock price fully recovered (without dipping below pre-pandemic levels again) in February 2021, Hilton's shares have increased 31% in value through October 2021, generating nearly $9 billion in wealth for shareholders.

- **Best Buy:** Best Buy's share price recovered by mid-July 2020, just a few months into the pandemic. At the time, about 25,000 employees were still furloughed.[64] Since the company's stock price recovered in July 2020, its shares have risen 41% in value through October 2021, generating nearly $8 billion in wealth for shareholders. 2020 was the company's most profitable year on record.

The resilience of share prices, even at the hard-hit companies, was in part a reflection of investors' confidence that the financial setbacks of the pandemic would be temporary and that prospects for growth and future profitability remained strong. It was also a direct result of public policy responses during the pandemic, especially aggressive measures taken by the Federal Reserve to reassure markets, buy bonds and securities, and keep interest rates close to zero, as well as the trillions of dollars that Congress authorized in federal stimulus and pandemic spending.

These measures were important for the economic recovery, ultimately providing a safety net for displaced workers and fueling the creation of millions of jobs. But by buttressing investor confidence and injecting cash into the economy, the government's policies resulted in shareholders experiencing only a temporary blip in their paper net worth before growing richer. This outcome is less a reflection of the specific policies pursued or companies' pandemic decisions than it is of the underlying structure of the economy: The dramatically unequal distribution of company ownership means that policies that ultimately buoy company success inevitably make the rich richer.

Nearly half of the hard-hit companies changed the rules to calculate CEO compensation, resulting in tens of millions of dollars in protected compensation

The vast majority of CEO compensation is tied to company financial performance. Typically, only a small fraction of a CEO's compensation comes from his or her base salary; much of the rest is performance-based, including annual bonuses and long-term stock incentives, which are usually conditional on the previous three years of performance. When companies have a bad year, like the mixed-performing and struggling companies did in 2020, we would expect CEO pay to be negatively impacted as bonuses and long-term stock payouts are reduced or forfeited.

At six of the 10 mixed-performing and struggling companies, that is exactly what happened. In 2020, company executives were paid based on the performance parameters previously agreed upon, and compensation was significantly reduced. For instance, Disney, Marriott, and McDonald's—the first two having suffered their worst years on record in 2020—did not pay out 2020 bonuses or multiyear performance-based stock incentives. This cost Disney's then-CEO Bob Iger nearly $9 million in lost compensation. However, the rising value of Iger's nearly $185 million in Disney stock during the pandemic more than offset this lost compensation; he sold half of his Disney stock in June 2021 for $98.67 million—$19 million more than it was worth pre-pandemic in January 2020.[65]

Yet at the remaining four mixed-performing and struggling companies, the boards of directors changed rules in ways that resulted in executives' 2020 compensation being insulated from losses. In total, the modifications made by those four companies resulted in $43 million in executive compensation that otherwise would not have been awarded based on the companies' financial performance.

Table 12: Four companies changed the rules to protect the CEO's compensation

2020 executive compensation

Company	% of CEO compensation tied to company performance	Company changed performance parameters	Amount of CEO compensation protected
Chipotle	91%	yes	$23,550,000
Hilton	94%	yes	$13,700,000
Walgreens	75%	yes	$3,600,000
Gap	75%	yes	$2,500,000
Best Buy	90%		
Disney	75%		
Macy's	54%		
Marriott	90%		
McDonald's	90%		
Starbucks	58%		

Source: Company 2021 proxy statements.

- **Hilton:** After suffering its worst financial year on record in 2020, with a non-adjusted net loss of $715 million, the company's board made changes to its performance-based stock incentive parameters, which resulted in an additional $13.7 million in pay for CEO Christopher Nassetta. That same year, the company furloughed 47,000 workers (one-third of its workforce) and laid off 22% of its corporate workforce. The company also implemented a 10% to 20% temporary salary reduction for corporate employees.
- **Chipotle:** In 2020, Chipotle's profits declined significantly in the first three quarters; after a strong fourth quarter, 2020 profits overall were down 23% compared to 2019. Chipotle's board made two changes to CEO Brian Niccol's 2020 performance-based compensation. First, they erased the worst pandemic quarter from all calculations. Second, they removed certain Covid-related expenses from the company's financial results, thereby showing higher profits than the company earned. Together, those changes resulted in nearly $24 million in compensation for Niccol that would not have been awarded absent these changes. In the same year, the median Chipotle worker earned 7% less than the previous year due to reduced hours. The nearly $24 million that Chipotle's CEO earned in 2020 as a result of the board's decisions is more than 60,000 times as large as the Covid pay ($390) earned by the median Chipotle worker in 2020, and nearly 1,800 times larger than the median worker's annual income of $13,127.
- **Gap:** Gap was hit hard in the early days of the pandemic. The company reported a $932 million loss of profit for the first quarter of the pandemic and a 43% decrease in revenue from the same period in 2019. Due to the company's poor financial performance in 2020, Gap executives would not have earned performance-based pay under the standard calculations. But the board reviewed each half of 2020 separately rather than as a whole (the latter would have resulted in zero payout), and included only the much more profitable second half in future long-term incentive calculations. These changes resulted in CEO Sonia Syngal earning an additional $2.5 million in 2020, and at least an additional $1 million in 2021. In contrast, Gap furloughed upward of two-thirds of its employees. Unlike all of the other retail companies in this analysis, Gap did not compensate its employees with Covid pay in 2020, nor did the company raise its minimum wage, which remains at $10 per hour—one of the lowest of the companies in our analysis.
- **Walgreens:** In 2020, Walgreens' profit was down 25% compared to 2019. For the three-year performance incentive awarded in 2018 and due to pay out in 2020, the company removed the first six pandemic months from its calculation. This change resulted in $3.6 million of then-CEO Stefano Pessina's compensation being protected. Walgreens' workers received just one Covid bonus in 2020, worth $300 for full-time workers. The additional CEO pay of $3.6 million is 12,000 times the Covid bonus for a typical Walgreens worker.

From a business perspective, there were two good reasons for companies to move the goalposts on executive compensation. First, the point of tying such a high percentage of CEO pay to financial performance is to incentivize the CEO to act in shareholders' best interests. At Chipotle, Gap, and Hilton, the calculation changes didn't just impact 2020 pay—they also apply to payouts in 2021 and 2022, because most performance pay is based on a three-year period. Without the modifications, future performance-based pay would have been of limited or no use as an incentive, because payouts would be suppressed by 2020 results. (This is no excuse for Walgreens, which applied its adjustment only retroactively.) Second, the market for senior corporate leaders is competitive, and no company wants to lose a CEO they consider high-performing. For example, Chipotle's Brian Niccol has overseen a strong financial and operational turnaround during his short tenure with the company, and would almost certainly have highly compensated opportunities elsewhere.

One could also make the argument that erasing COVID-19's impact from CEO performance calculations is fair. After all, CEOs could not control the fact that there was a pandemic. But by this logic, no worker should have been furloughed, laid off, or forced to work reduced hours, either. Yet hundreds of thousands of workers just at these 10 companies bore these losses directly, through no fault of their own. By their actions, boards and shareholders seem to consider frontline workers to be expendable, and CEOs irreplaceable. Companies offload the costs of financial protection for these workers to workers, while absorbing the costs of protecting their CEOs.

The current system automatically rewards—and often insulates—shareholders and executives

The contrast between company executives, shareholders, and workers gets to the heart of why the distribution of gains and losses was so inequitable during the pandemic. When times were good, our system of corporate ownership and executive incentives ensures that shareholders and executives benefit automatically and substantially. Workers, however, must rely on the whim of executive decisions to raise wages if they are to access gains. As shown in the previous section, that generosity has been modest, and dwarfed by gains to shareholders. Executives and shareholders amassed trillions of dollars while most of the workers generating those fortunes still do not earn a living wage.

When times are bad, we would expect shareholders and executives to take a hit through reduced share prices and lower compensation. Yet at the 10 mixed-performing and struggling companies, that financial hit was minimal. With one exception, share prices bounced back, generating hundreds of billions of dollars in wealth at companies that had suffered losses and furloughed hundreds of thousands of workers. And at nearly half of these companies, the boards changed the rules so their multimillion-dollar-earning CEOs did not have to take a pay cut.

Some of the 10 companies did take some steps to protect their workers from the worst of the losses, including by paying health benefits during furloughs. Disney and Best Buy paid workers during the initial weeks of their furloughs, while Starbucks had a COVID-19 policy that continued paying workers who needed to stay home. But on a per-worker basis, this mitigation was limited. Government support was instrumental in providing a safety net, but gaps remained and hardship endured. Workers bore the brunt of financial losses through layoffs, furloughs, and reduced hours—all of which amounted to reduced (from already low) wages. As a result, workers shared only minimally in pandemic gains, and bore the brunt of the losses. In comparison, shareholders were mostly insulated from losses.

Company choices that contributed to inequitable outcomes

In this report, we reviewed the performance of the 22 companies to answer three questions: Are companies paying their workers fairly? Are workers—not just shareholders—benefitting from companies' success? And are losses shared equitably? The results were disappointing. In general, worker pay is still far too low, compared to either a living wage or company financial performance; shareholders reaped tremendous rewards while workers shared only minimally in company success; and executives and shareholders were mostly insulated from losses that workers bore.

Company executives and boards were not wholly responsible for these outcomes. The fact that the richest 5% of Americans grew more than $800 billion richer while the bottom 50% gained only $12 billion reflects the existing—and unequal—distribution of stock ownership and wealth in society. Because the wealthiest Americans own most stock, rising share prices tend to increase wealth inequality.

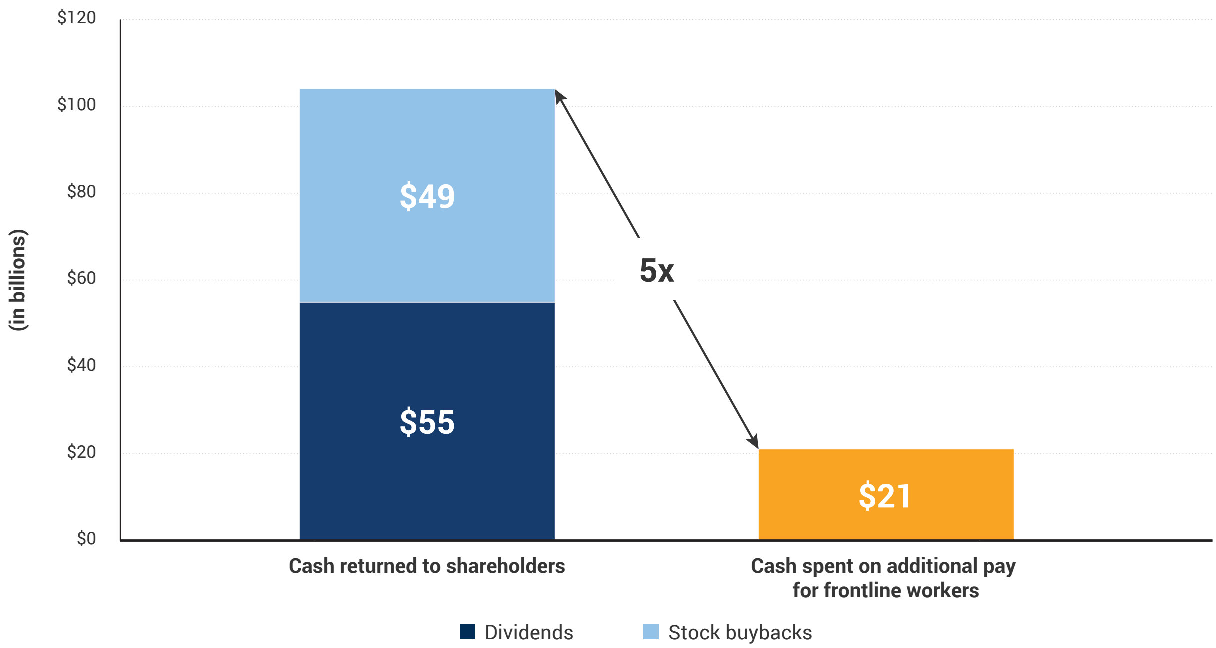
Many external factors contributed to share price increases that executives and board members benefitted from: a pandemic shift in consumer spending from services to goods, which drove record-breaking sales; actions taken by the Federal Reserve in 2020 and 2021 to stabilize the economy, including keeping interests rates close to zero and buying bonds and other securities; and trillions of dollars in additional government spending, which increased consumer demand and contributed directly to rising company revenues.

Nonetheless, executives and boards do have significant control over whether workers share equitably in gains and losses. Executives and boards choose how much money to pay their workers. They choose how much to return to shareholders, and how much to pay executives. They choose how much of their revenue to accumulate as profit. They choose whether to make business and operational decisions that enable workers to be more productive and paid higher. And they choose whether to use their power to suppress workers' voice.

In this section, we examine how companies' choices during the pandemic across three dimensions contributed to inequitable outcomes for workers, with a focus on how companies could have chosen to pay workers more.

Figure 15: Companies spent five times more on cash to shareholders than on raising pay for workers

The amount companies spent on dividends and stock buybacks over six pandemic quarters versus the amount companies spent on additional pay to workers over seven quarters, post-tax



Source: *Brookings analysis of company Covid pay, permanent wage increases, profit sharing, and performance bonuses from the start of the pandemic through October 2021; company SEC filings; and direct company communications.*

Note: *We excluded dividends and stock buybacks from Q1 2020. See full explanation at the report's webpage found at https://brook.gs/3EtNlOK.*

Companies spent cash on shareholders instead of workers

During the pandemic, the 22 companies spent five times more on dividends and stock buybacks than on all additional pay for workers (Covid pay, permanent wage increases, and profit sharing) combined. Diverting some, or all, of that shareholder cash would have allowed companies to increase wages significantly. (We excluded Q1 2020 dividends and buybacks from our calculations, because most were announced pre-pandemic, but included Q1 2020 spend on workers.)

It's worth taking a closer look at buybacks. Stock buybacks, or share repurchases, happen when a company buys shares of its own stock on the open market, pushing up its stock price in a way that is tax advantageous to shareholders. The concept of buybacks is linked to the idea of "excess cash": When a company buys back its shares, the implication is that executives believe they have cash the company cannot put to any more productive use. Instead of investing it or storing it as cash, they return it to shareholders.

Table 13: Companies spent nearly 40% of their profit on stock buybacks

Share repurchases over six pandemic quarters (excluding Q1 FY20)

Company	Pandemic stock buybacks (in millions)	Pre-pandemic stock buybacks (in millions)	Change (in millions)	Change (%)	Profit (in millions)	Stock buybacks as % of profit
WINNING COMPANIES						
Lowe's	$13,004	$5,504	$7,500	136%	$12,529	104%
Home Depot	$10,374	$13,807	-$3,433	-25%	$23,702	44%
Walmart	$9,270	$11,283	-$2,013	-18%	$24,571	38%
Target	$5,042	$2,735	$2,307	84%	$9,617	52%
Dollar General	$4,463	$1,858	$2,605	140%	$3,806	117%
Kroger	$1,951	$496	$1,455	293%	$3,885	50%
FedEx	$748	$858	-$110	-13%	$7,371	10%
Costco	$618	$324	$294	91%	$7,720	4%
UPS	$500	$1,494	-$994	-67%	$13,666	4%
Albertsons	$201	$26	$175	680%	$2,434	8%
TOTAL	**$46,171**	**$38,385**	**$7,786**	**20%**	**$109,302**	**42%**
MIXED-PERFORMING & STRUGGLING COMPANIES						
Best Buy	$1,978	$1,734	$244	14%	$3,751	53%
Walgreens	$479	$5,073	-$4,594	-91%	$6,940	7%
Chipotle	$301	$254	$47	18%	$784	38%
Macy's	$294	$0	$294	—	$865	34%
Gap	$128	$398	-$270	-68%	$827	15%
McDonald's	$18	$6,987	-$6,969	-100%	$8,727	0%
TOTAL	**$3,197**	**$14,446**	**-$11,248**	**-78%**	**$21,894**	**15%**
OVERALL TOTAL	**$49,369**	**$52,831**	**-$3,462**		**$131,196**	
OVERALL AVERAGE				**-7%**		**38%**

Source: *Company SEC filings*

Note: *We excluded Q1 FY2020 because most buybacks were announced pre-pandemic; stock buyback and profit data are from the six quarters between Q2 2020 and Q3 2021.*

Table 14: Companies could have raised annual pay by an average of nearly 40% had they redirected stock buybacks to workers

Company	Per worker stock buybacks (previous 4 Qs)	2020 median pay	If buyback were redirected to workers: Annual median pay	% increase
Lowe's	$36,594	$24,544	$61,138	149%
Home Depot	$20,551	$27,389	$47,940	75%
Best Buy	$19,453	$30,542	$49,995	64%
Dollar General	$18,733	$16,688	$35,421	112%
Target	$12,328	$24,535	$36,863	50%
Walmart	$3,829	$20,942	$24,771	18%
Chipotle	$3,079	$13,127	$16,206	23%
Kroger	$2,976	$24,617	$27,593	12%
Macy's	$3,267	$20,085	$23,352	16%
Costco	$1,573	$39,585	$41,158	4%
FedEx	$1,496	$34,544	$36,040	4%
Gap	$1,094	$7,037	$8,131	16%
UPS	$913	$39,143	$40,056	2%
McDonald's	$89	$9,124	$9,213	1%
Walgreens*	$489	–	–	–
Albertsons*	$58	–	–	–
AVERAGE	**$7,908**	**$23,707**	**$32,705**	**39%**

* *Albertsons did not report a 2020 total annual median compensation figure and Walgreens' figure included benefits*

Source: *Company earnings reports, proxy statements, and ESG reports. See full explanation at the report's webpage found at https://brook.gs/3EtNlOK.*

While the majority of companies in our analysis repurchased stock during the pandemic, six companies did not. Amazon, CVS, and Disney were not doing buybacks in the quarters prior to the pandemic, and continued not to through October 2021. (Amazon began repurchasing shares in January 2022.) Hilton, Marriott, and Starbucks were repurchasing shares as of Q1 2020, but suspended their programs when the pandemic hit, and have not resumed them as of Q3 2021. Starbucks resumed stock buybacks in its final quarter of 2021 that ended in January 2022, repurchasing $3.5 billion in shares.

In April 2022, acting CEO Howard Schultz announced a suspension of its stock buyback program, noting the decision "allow[s] us to invest more profit into our people and our stores—the only way to create long-term value for all stakeholders."[66]

We focus here on the 16 companies that repurchased shares in the six pandemic quarters between Q2 2020 and Q3 2021. Overall, these companies spent $49 billion on buybacks—nearly 40% of their total profit over these six quarters, and more than double what they spent on additional pay for workers.

We can also look at how much the companies could have paid to each of their workers over the past year had they reallocated the money spent on share repurchases. There are different ways that companies could equitably allocate this additional pay to workers, including through an across-the-board pay increase. As an illustration of the scale of the potential pay bumps, the figure below shows how much the company's median annual pay would have increased had the companies evenly divided the past year's stock buyback spend by the company's total number of employees. (Including stock buybacks from the fourth quarter of 2021 would have resulted in even higher pay bumps for workers.)

At five companies, the additional annual pay from redirecting stock buybacks exceeded $10,000, and would have raised median pay at those companies to a living wage. It is difficult to overstate how transformative an additional $10,000 of income would be for a worker who currently is making $30,000 or less. To give just a few examples, that additional $10,000 could: enable some small amount of savings to prepare for future cash needs or even retirement; allow workers to seek timely health care rather than waiting until issues are emergent; and provide the peace of mind that comes with knowing one can pay rent and buy food. The potential wage increase for workers from redirecting stock buybacks is especially significant at the following companies:

- **Lowe's:** Lowe's more than doubled the amount it spent on share repurchases in the six pandemic quarters compared to the previous six. In total, the company spent $13 billion buying back its stock—more than the company's entire profit for the six quarters. While Lowe's initially offered its employees relatively generous hazard pay in 2020 and has provided nearly $800 million in profit-sharing bonuses to its employees over seven quarters, it has not implemented a company-wide pay increase since the start of the pandemic. The company spent nearly eight times as much on stock buybacks over six quarters than it did on Covid pay and profit-sharing bonuses over seven quarters. Redirecting stock buybacks to workers would increase the median employee pay from less than $25,000 (below a living wage) to over $60,000—well above a living wage.
- **Dollar General**: Dollar General also more than doubled the amount spent on share repurchases in the six pandemic quarters. The $4.5 billion that the company spent on share repurchases was greater than its total profit over the same quarters. In 2020, Dollar General spent $167 million on "appreciation bonuses" for employees; the company has not announced a company-wide pay increase since the start of the pandemic. In total, Dollar General spent 27 times more on repurchasing stock than it did on additional pay to workers (through the 2020 bonuses) since the start of the pandemic. The median employee at Dollar General earned just under $17,000 in 2020, which would put a single parent under the federal poverty line. Redirecting stock buybacks to employees would more than double the 2020 pay for the median employee.
- **Home Depot**: Home Depot's six-quarter stock buyback amount was nearly 50% of its total profit for the same period. In 2021 alone, the company bought back nearly $15 billion of its stock across all four quarters—15 times its planned investment in worker wages during 2021.[67] Redirecting stock buybacks to Home Depot employees would represent a 75% pay increase for the median employee, who would then earn nearly $50,000 a year.

Companies struck an inequitable balance between profits and pay

Companies could have invested more in worker pay by balancing wages and profit more equitably. During the pandemic, the winning and some of the mixed-performing companies exceeded Wall Street's profit expectations quarter after quarter and posted some of highest profits in company history. A few significantly expanded their market share; most will exit the pandemic stronger than they entered it. Soaring stock prices reflect investors' expectations that these companies are positioned to do well in the future.

Yet during this time, real worker wages grew just 2% to 5% on average. At the five winning companies for which we have wage data, profits rose 41% when adjusted for inflation, while real wages increased just 5%. In other words, corporate profits at the five winning companies rose eight times faster than worker wages.

The divergence between company success and worker pay is a relatively recent phenomenon. In the years after World War II, when unionization rates were substantially higher, worker pay rose alongside productivity and profits. But under the shareholder capitalism that has characterized recent decades, the dominant paradigm of companies has been the pursuit of profit maximization. To many business leaders, this has meant paying workers only as much as necessary to keep the business running.

Pandemic wages and profitability at the companies we analyzed reflect the resulting lack of balance. There is no question profit is important, both to companies and the broader economy—it funds growth, drives innovation, and creates jobs. And while investments in workers can pay off in the long term, meaningfully raising pay is expensive and, in the short run, can reduce profit substantially. For instance, it could cost Walmart upward of $10 billion per year to raise all of its workers to a living wage—nearly two-thirds of the total profit the company posted in the 12 months through the third quarter of 2021.

But equity is also important, and most of these companies pledged to move toward a more equitable model of capitalism. There is currently a robust national debate about the correct minimum wage for workers; however, there is not a national conversation about a fair, equitable, or even reasonable balance between company profits and worker compensation.

As a crude but illustrative measure, consider what would happen if each of the winning companies redirected one quarter of their total profit to their workers. There are different ways companies could distribute these additional resources to increase pay, including a percent increase. The chart below displays an illustrative example of companies evenly dividing a quarter of their profits among all workers. (Note that this would not cost companies a full quarter of profits, because lower profit means lower taxes. A company with a 20% tax rate that reinvested a quarter of its profits in higher worker pay would really only be spending a fifth of its profits.)

At some companies, such as Kroger, the employee impact would be relatively small. At others, such as Home Depot, Lowe's, and Amazon, choosing to invest even a quarter of profits in workers would be life-changing for the workers involved. For example, the additional pay would put the median Home Depot employee (as of 2020) above the living wage.

Executives are not wrong that minimizing labor costs (e.g., underpaying workers, forcing workers to accept part-time hours, and understaffing stores) can be profitable. Research shows that one way a company can maximize profitability is with low pay, high turnover, and low-empowerment jobs.[68] (Many call this the "low-road" model.)

Of course, higher pay and higher profits are not necessarily zero sum, especially over the long run. One way that the companies could have increased pay more than they did—even as they maximized profitability in the long run—was to build a high-productivity, high-pay, "high-road" system. This is what the MIT Sloan School of Management's Zeynep Ton calls "the good jobs strategy."[69] One of us, working with Ton and the Good Jobs Institute, demonstrated that a retailer with only 2% profit margins can use these practices to raise frontline wages by 20% with no reduction in profit.[70] As we discuss in this report's conclusion, Costco embodies this approach.

Despite the benefits of a high-pay, high-productivity approach, many companies—including most of the companies in this analysis—continue to take the low road. There are various reasons, including the mismatch between short-term executive compensation incentives and the years it takes to build a better system; pressure from investors to meet quarterly profitability targets; and entrenched assumptions about how much low-wage workers can contribute to the business.[71] Nonetheless, investing in better jobs remains a profitable option for every business in this analysis.

Table 15: Corporate profits at the five winning companies rose eight times faster than worker pay

January 2020 to October 2021

Company	Profit adjusted for inflation		Stock price % change	Real wage increase
	7 pandemic Qs (in millions)	Change from 7 previous Qs (%)		
Amazon	$37,816	94%	80%	10%
Walmart	$25,999	6%	26%	9%
CVS	$17,222	17%	22%	3%
Target	$9,229	73%	101%	3%
Kroger	$4,521	59%	40%	1%
TOTAL	**$94,788**	**41%**	**54%**	**5%**
Lowe's	$12,908	74%	94%	⊗
Dollar General	$4,148	44%	41%	⊗
Home Depot	$24,151	24%	68%	–
UPS	$13,738	23%	80%	–
Costco	$7,920	26%	67%	–
FedEx	$7,417	28%	56%	–
Albertsons	$2,976	302%	106%	–

Source: *Brookings analysis of average hourly wage data via company reporting or direct communication; company SEC filings; Bureau of Labor Statistics CPI Inflation Calculator; Yahoo Finance. See full explanation at the report's webpage found at https://brook.gs/3EtNlOK.*

Note: *Lowe's and Dollar General did not implement a company-wide pay increase. Albertsons, Costco, FedEx, Home Depot, and UPS did implement company-wide pay increases, but we do not know the amount of the increase.*

Table 16: Companies could redirect some of their total profit to meaningfully raise worker pay

An illustrative example of the annual pay increase for the median employee if the company redirected a quarter of their profits

Company	Prev. 4 Qs profit (in millions)	Number of employees	If 25% of previous 4 Qs profit was redirected equally to workers: per worker increase	% increase on 2020 median pay
Home Depot	$15,938	504,800	**$7,893**	**29%**
CVS*	$10,235	300,000	**$8,529**	–
Lowe's	$8,213	340,000	**$6,039**	**25%**
Amazon	$26,263	1,335,000	**$4,918**	**17%**
Costco	$5,165	288,000	**$4,484**	**11%**
UPS	$9,825	548,000	**$4,482**	**11%**
Target	$6,502	409,000	**$3,975**	**16%**
Dollar General	$2,445	158,000	**$3,868**	**16%**
FedEx	$4,785	500,000	**$2,393**	**7%**
Walmart	$16,310	2,300,000	**$1,773**	**8%**
Albertsons*	$1,691	285,000	**$1,484**	–
Kroger	$2,747	465,000	**$1,477**	**6%**

* *Albertsons did not report a 2020 median pay figure and CVS' figure included benefits*

Source: *Company SEC filings and ESG reports. Profit figures from the previous four quarters are from Q4 2020 – Q3 2021. See full explanation at the report's webpage found at https://brook.gs/3EtNIOK.*

Companies were aggressive in responding to unionization efforts

One of the key ways that companies can move toward a more balanced model—something more akin to stakeholder capitalism—is to allow their workers greater power. Historically, unions have served as an important counterweight to shareholder and corporate power by curbing inequality, moderating excess profits, and securing wage gains for workers.[72]

That counterweight is mostly absent from the 22 companies in this analysis. The majority of them have no union representation at all, and only four have a union density of at least half of their workers. When workers try to change this, they are met with aggressive resistance, such as at Amazon, Dollar General, and Starbucks in 2021.

Two examples demonstrate how collective bargaining can help workers secure better wages:

- **UPS:** The Teamsters union represents more than three-quarters of the UPS workforce, giving the company the highest union density of any in this analysis. UPS drivers earn $36 per hour on average, among the highest in the industry.[73] In comparison, Amazon and FedEx pay their (non-union) drivers considerably less. A 2018 analysis found that Amazon Flex and FedEx drivers earned around $5.30 and $14.40 per hour, respectively, compared to UPS's then-rate of over $23 per hour.[74] Unsurprisingly, better-paid UPS drivers stay in their jobs—average tenure is 16 years, according to company communications.

- **Disney**: About half of Disney's parks and resorts employees belong to unions. In 2017, the six unions that represent Disney World employees in Orlando began a campaign to secure long-term wage increases. After a year of organizing and protests, which drew public attention to Disney's low wages, the unions secured a four-year contract from Disney that raised the minimum wage by 50% over several years, from $10 per hour (2018) to $15 per hour in 2021. (Florida's minimum wage was $8.25 per hour at the time.) A similar union campaign in California resulted in a three-year Disney contract that raised the minimum wage from $11 to $15 per hour by 2019 for some union workers—three years ahead of California's minimum wage increase. In 2019, when Disney unions secured the $15 wage commitments, only one other company in our analysis (Amazon) had a $15 per hour minimum wage.

The presence of a union alone does not always guarantee family-sustaining wages. Kroger and Albertsons both have high union density, with more than half of workers covered by multiyear union contracts with regular pay increases and health benefits. But neither company meets our standard of paying at least half its employees a living wage. (Safeway did not disclose median pay, but we do not expect the company to have met that bar.) However, on average, unions help workers earn more—members earn 11% more than non-union peers—and secure benefits and job protections.[75]

Two of the highest-profile stories about labor unions since the start of the pandemic featured companies in this analysis: Amazon and Starbucks. In 2021, Amazon warehouse workers held an (unsuccessful) union election in Bessemer, Ala., and Starbucks workers held elections at three stores in the Buffalo, N.Y. area, two of which voted to form a union. The stakes in each election were high: A successful vote would create each company's first unionized store or warehouse. Both companies responded to organizing efforts with aggressive campaigns to deter workers from voting for the union. Tactics included mandatory anti-union trainings (known as "captive audience meetings"), text messages, flyers, leaflets, and workplace visits by senior management. While most of these actions were legal, the National Labor Relations Board ordered Amazon to redo the Bessemer election after the company improperly pressured staff to vote against the union through "dangerous and improper" messaging.[76]

Amazon and Starbucks' aggressive resistance to unions is typical among major corporations, including many of the companies in this analysis. To avoid having to negotiate with a union, companies spend millions of dollars on anti-union consultants, trainings, and even store closures. They do this because they believe that unions are bad for business—in part because, as discussed above, many believe that higher wages are bad for business.

But especially in a tight labor market, the assumption that unions are bad for business may not be true. With workers quitting jobs at record rates and employers struggling to hire, unionized companies have a major competitive advantage: lower turnover.[77] Even in a normal labor market, the cost of replacing a single low-wage worker is around 20% of annual pay; that includes direct hiring costs and the lost productivity that comes with turnover.[78] At a high-turnover company such as Amazon, that can add up to billions of dollars each year. Furthermore, high turnover is bad for operations. In Q3 2021, lost productivity due to understaffing cost Amazon and FedEx hundreds of millions of dollars. Unionized UPS, on the other hand, had such a strong quarter that they raised their targets for the year.[79]

Table 17: Most workers in this analysis are not represented by unions

Union density among U.S. employees

Company	Union density	Unions
UPS	>75%	International Brotherhood of Teamsters (Teamsters)
Albertsons	70%	United Food and Commercial Workers (UFCW)
Kroger	>50%	UFCW
Disney (Parks & resorts)	~50%	The Service Trades Council Union (Florida) and Masters Services Council (California), including: the International Alliance of Theatrical Stage Employees (IATSE), the Bakers, Confectionery, Tobacco Workers and Grain Millers' (BCTGM), Service Employees International Union (SEIU), Teamsters, Transportation Communications International Union (TCU), UFCW, UNITE HERE
Hilton	45%	UNITE HERE
Marriott	20%	UNITE HERE
Costco	9%	Teamsters
Macy's	7%	UFCEW / RWDSU
CVS	4%	UFCW
FedEx	1%	Air Line Pilots Association
Amazon*	0%	
Best Buy	0%	
Chipotle	0%	
Dollar General	0%	
Gap	0%	
Home Depot	0%	
Lowe's	0%	
McDonald's	0%	
Starbucks*	0%	
Target	0%	
Walgreens	0%	
Walmart	0%	

* *Excludes the 2022 Starbucks stores and Amazon warehouse that voted to unionize*

Source: *Company SEC filings, annual reports, and union websites*

Conclusion and policy recommendations

If the pandemic was a test of corporate commitment to a more equitable business model, nearly all the companies in this analysis performed poorly. Although most of these companies raised wages since the pandemic started, the pay bumps overall were modest. Today, the majority of frontline workers are still not paid enough to get by. And while workers shared very little in companies' financial gains during the pandemic, shareholders—including executives—grew over a trillion dollars richer. When companies in hard-hit industries performed poorly, the unrecoverable losses disproportionately fell on workers.

The fact that change was limited should come as no surprise. Executives and boards benefit from the current system, and face consistent pressure to maintain it. The lack of ambition in the Business Roundtable stakeholder capitalism pledge was not a bug—it was a feature.

As we discuss, it is possible for companies to take a higher-road approach (as Costco has done) and invest in higher wages while still maximizing profits in the long run. Starbucks' recent decision to suspend stock buybacks to "invest more profit into our people and our stores" shows that companies can buck short-term pressure from investors. We strongly encourage the companies in this analysis, and others, to pursue this approach. But we believe the high-road model will remain an exception in a system that incentivizes short-term returns.

Rather than hoping that companies will transform the system they are incentivized to sustain, the U.S. needs to build counterweights to corporate influence. Below we discuss why company leaders are unlikely, by themselves, to fundamentally change the system—specifically, we consider the specific incentives and pressures that discourage company executives from investing more in workers. This is followed by recommendations for restoring a more equitable balance of power.

Table 18: Most of CEO compensation is tied to company financial performance

Percentage of executive compensation from base salary versus company financial performance, 2020

Company	% of compensation from base salary	% of compensation from company financial performance
Amazon	100%	0%
Best Buy	10%	70%
Chipotle	9%	76%
Costco	12%	85%
CVS	10%	86%
Disney	10%	68%
Dollar General	11%	89%
FedEx	8%	92%
Gap	5%	77%
Hilton	7%	68%
Home Depot	12%	76%
Kroger	9%	51%
Lowe's	11%	59%
Macy's	12%	41%
Marriott	10%	40%
McDonald's	10%	82%
Starbucks	4%	56%
Target	9%	65%
Walgreens	0%	75%
Walmart	6%	41%

Source: *Company proxy forms*

Executive compensation is based on short-term financial performance and shareholder returns, which often discourage investments in workers

The vast majority of executive compensation is tied to company financial performance, including profit and/or returns to shareholders. (Returns to shareholders include the company's stock price and dividends.) The stronger the company's financial performance, the higher the executive compensation. This incentive structure is not limited to the C-suite. Middle managers at major corporations also receive significant portions of their compensation in company stock, and are thus similarly incentivized to avoid actions that might reduce share price.

It is important to understand the element of timing. CEO compensation is often based on a three-year performance period; a performance decline in even one year can greatly limit compensation. Furthermore, a non-performing CEO may find himself out of a job.

The timing issue matters to a company's willingness to invest more in workers. Generally, executives must be long-term thinkers if they are to create good jobs. In the short term, as a company moves to a high-road model, profits may take a hit before productivity gains catch up with wage investments. Knowing that higher worker pay may mean lower profits in the short run disincentivizes companies from pursuing it.

It is important to note that the short-term thinking baked into executive incentives is not insurmountable. Costco demonstrates what is possible when companies take a longer view—it offers the highest pay in the retail industry (a $17 per hour starting wage and $24 average wage[80]) despite having profit margins below 3%. The only companies in our analysis that have comparably low margins are Albertsons, Kroger, and Walmart; and all have considerably lower wages. (It isn't only Costco's warehouse model where this can work. Grocer Trader Joe's and convenience store chain QuikTrip use a similar approach to keep pay high, turnover low, operations efficient, and customers happy.[81])

Costco can afford those wages in part because of their very low employee turnover of 13%. [82] This allows Costco to avoid spending time and money recruiting, training, and managing low-productivity newcomers. Costco's low turnover also enables it to design operations to make its workers more productive and empower them to contribute more to the business.[83] For Costco, this system isn't benevolence—it's good business. As the CEO Craig Jelinek told the Senate Budget Committee in February 2021, "At Costco, we know that paying employees good wages and providing affordable benefits makes sense for our business and constitutes a significant competitive advantage for us."[84]

As Costco demonstrates, higher pay for workers paired with improved productivity and lower turnover can be profit-maximizing. However, this analysis indicates that this high-road mentality remains the exception, and incentives built in the system deter its adoption. Costco co-founder Jim Sinegal captured this challenge when he said: "We have been in the business of trying to build a company that's here for years and years and years. Wall Street is generally in the business of trying to make money between now and next Tuesday, so there is that difference."[85]

Executives also face pressure from investors to maximize short-term shareholder returns

Executives may be wrong to believe that there is always a trade-off between worker pay and profitability. However, their belief that raising wages will decrease share price—and therefore their own compensation—is not necessarily misguided. Investors tend to view worker pay investments skeptically. For example, when Walmart announced wage increases in 2015, the company share price dropped 10%—wiping out $20 billion of value.[86] In February 2021, when Walmart announced it was moving to a $15 per hour average wage, share prices dropped 6%.[87] In both cases, the share price recovered within months. But few CEOs will voluntarily undergo a share price decline; their compensation, and sometimes job security, depend on them keeping the share price up.

To understand investor priorities and the pressure they exert on company executives, we reviewed transcripts of each company's earnings calls for each of the seven pandemic quarters. We focused on the questions investors asked—and, often, the questions they did not ask—pertaining to worker wages and welfare, and how company executives justified their investments in workers.

The trends were consistent. With few exceptions, investors framed questions about wage increases around their necessity (to maintain staffing levels) and their impact on the bottom line. Implicit in these questions is the assumption that labor costs should be kept at the lowest level possible that is compatible with running the business. For instance, they asked: How quickly would temporary (Covid-related) wage increases end? Could companies sustain lower pandemic staffing levels? Could companies address hiring needs without raising wages?

Often, their questions sought to clarify the extent to which companies would be forced to raise wages due to market conditions and external factors, as well as the potential impact on future earnings. The external factors company executives and investors cited included labor shortages, minimum wage increases, and enhanced unemployment benefits. Often, when executives discussed wage investments as a long-term business strategy, investors sought assurance that the investments would increase shareholder returns.

What was more striking than the questions investors asked were the questions that were not asked. In the more than 100 calls we reviewed, investors never asked about worker welfare, even perfunctorily, including during the devastating initial months of the pandemic when millions of workers' lives were at risk and hundreds of thousands of employees were furloughed. Questions that were not asked included:

- How many workers were furloughed or laid off, how many returned to their jobs, and what support did companies offer them?
- How many workers were ill, or even died, from COVID-19?
- Were Covid pay and benefits adequate to compensate workers for the risks they were taking? (To the extent investors spoke about this at all, it was only to ask how long they needed to factor the increased costs into their models.)

We also never heard investors ask how company decisions would impact worker welfare. For instance, as the Delta variant wave started to surge in late summer 2021, investors on a July 28 earnings call asked McDonald's executives whether franchisees had any hesitations about reopening all dining rooms. CEO Chris Kempczinski stated bluntly why opening 100% of dining rooms was important for their bottom line: "When you open the dining room, you get a sales lift."[88] In the discussion, no one on the call acknowledged or asked about the risks that this would pose to McDonald's employees, nearly half of whom were still unvaccinated as of early fall 2021.[89] Kempczinski explained: "We're 70% open today and on our way toward getting to 100%...There's not anybody kind of questioning why we need to have dining rooms open. It's a key part of what we offer here at McDonald's. We just have to work through what I would call transitory issues right now to just be able to get there by September."[90]

Investors' lack of interest in even the most rudimentary information about worker well-being, juxtaposed with their detailed, business-oriented questions about issues like hot trends in denim, fresh produce sales, and advertising revenue, was jarring.

Company boards of directors face similar incentives

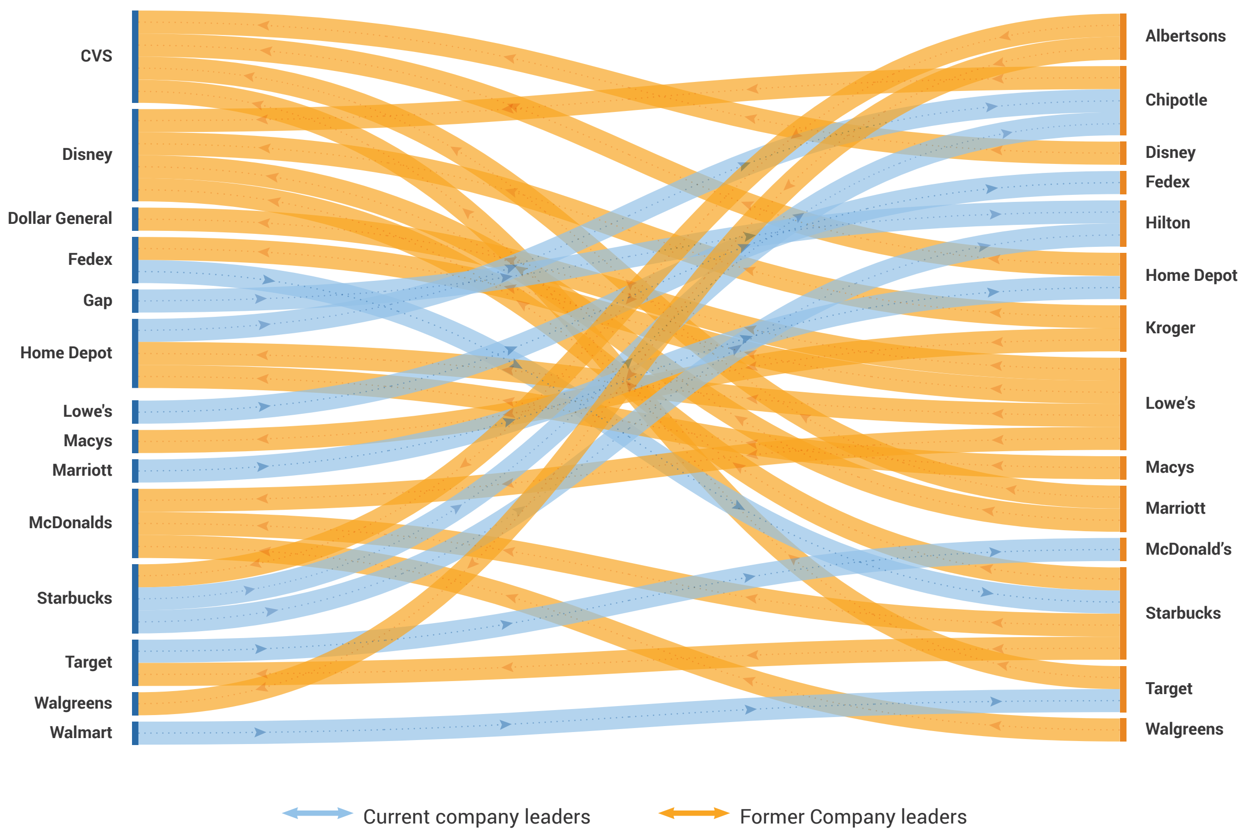
Boards of directors have significant influence on executive decisions, in part because they set executive compensation. They could provide a voice for workers and champion investments in worker pay, benefits, and safety. Yet their incentives, like those of company executives, discourage this. Board members are compensated in company stock, often around $300,000 a year for attending a handful of meetings.

Furthermore, board members come from a small, elite group of corporate executives and investors. They are the friends, former and future colleagues, and potentially, future replacements of the very executives they are overseeing.

We found substantial board of director overlap between just the companies in this analysis:

Given these relationships, board members do not represent a strong, independent check on company leaders. Rather, they themselves *are* company leaders, with the same incentives and pressures.

Figure 16: Board members are former and current company leaders



Source: *Company websites, SEC filings*

Note: *Blue arrows from left to right represent current company leaders (from companies on the left) as board members of companies on the right. Orange arrows from right to left show former company leaders (from companies on the right) who are current board members of companies on the left.*

Companies often stand in the way of change

While we noted earlier that change is unlikely to come from companies themselves, opposition to these reforms *has* come directly from companies. Notably, many of the leading corporations in this analysis—and the Business Roundtable itself—have actively opposed some of these reforms.

- **Opposition to labor law reform:** The National Retail Federation (NRF), which is closely linked to several companies in this analysis, opposes the Protecting the Right to Organize (PRO) Act—legislation that would introduce pro-worker labor law changes, as described below. The NRF is chaired by the CEOs of Walmart and Macy's, and its board includes the CEOs of Target, Albertsons, and Old Navy (part of Gap). The group has consistently and openly lobbied against provisions of the PRO Act—a bill that would make it easier for workers to unionize and would increase penalties on companies that violate workers' rights.[91] The NRF has called the proposed legislation "the worst bill in Congress."[92]

- **Opposition to a $15 per hour federal minimum wage:** In February 2021, the Business Roundtable expressed vocal opposition to the $15 per hour federal minimum wage legislation that Congress was considering.[93] Walmart CEO Doug McMillon, who is also chairman of the Business Roundtable, voiced similar opposition, expressing concern that the legislation did not take into account "regional differences" in wages.[94]

- **Opposition to worker representation on boards:** Several of the companies in this analysis have opposed efforts to give workers representation on company boards. In 2020, a Starbucks shareholder recommended that workers be allowed to submit potential board members for consideration. The recommendation fell short of workers *themselves* being selected as board members; rather, the suggestion was for workers to nominate board candidates for shareholders to consider. Starbucks recommended that shareholders vote down the proposal, which they did. In 2021, a shareholder resolution, backed by the nonprofit Oxfam America and top proxy adviser Institutional Shareholder Services, called for Amazon to consider nominating an employee to its board. Amazon's board recommended that shareholders reject the proposal.[95]

Ultimately, meaningful change will not happen because of company action, but *despite* company opposition. Building a more equitable model of capitalism will require a new balance of power between executives, shareholders, and other stakeholders, such as workers, government, and society at large.

Recommendations

The growing inequality of the past decades grew out of a power imbalance. As workers' power declined, they had limited ability to demand fair treatment. Short of threatening to quit, they had to hope that executives would *choose* to share gains with them and mitigate their losses. But with executive compensation increasingly tied to company performance that is measured quarterly—not for the long term—the system's incentives discourage investment in workers.

Building a more equitable system will require a more equitable balance of power. Rather than hoping companies will exercise their discretion to benefit workers, the U.S. needs laws, institutions, and policies requiring, pressuring, and incentivizing them to do so. Policy reforms are needed to enable labor to reclaim power. These reforms span labor law, regulation of working conditions (including wages), corporate disclosure, corporate governance, and more. No single step outlined below is sufficient in and of itself to create more equitable outcomes—they are all necessary.

Consumers, policymakers, and workers need better data

At a bare minimum, the federal government should require companies to disclose basic details of their compensation. Currently, companies are not required to disclose nearly any data on employee compensation, which is why it was challenging for us to say for certain what companies were paying today. The one existing requirement is the median employee pay disclosure. In 2015, the Securities and Exchange Commission (SEC) adopted a rule requiring public companies to disclose the ratio of compensation between CEOs and the median employee, as mandated by the Dodd-Frank Act.[96] However, the SEC gave considerable flexibility to companies in how they report median employee compensation. As a result, the pay data is neither standardized nor detailed enough, making it difficult to accurately compare companies' median pay.

For instance, we encountered several discrepancies in how the 22 companies in this report determined their median pay. Some companies included benefits in their figure, while others did not; only a handful of companies detailed the benefits amount. Most companies annualized the compensation, while at least one company (Gap) did not. Most companies included at least some workers outside of the U.S. in their calculation, while only Amazon disclosed a U.S.-only median wage. However, Amazon only included full-time workers in its U.S. median pay figure, whereas all other companies included part-time and, often, seasonal workers in their calculation.

Without being required to share basic details on employee compensation, many companies simply do not. Of the 22 companies in this report, only seven companies publicly disclose both their minimum and average wages; another two companies shared this data with us directly. Seven companies disclose no wage data at all, beyond their mandated median pay disclosure.

Table 19: Level of pay transparency at each company

Company	Disclose minimum wage	Disclose average or median hourly wage	Level of transparency
Amazon	✓	✓	High
Best Buy	✓	✓	High
Chipotle	✓	✓	High
Costco	✓	✓	High
Starbucks	✓	✓	High
Target	✓	✓	High
Walmart	✓	✓	High
CVS*	✓	✓	Somewhat high
Walgreens*	✓	✓	Somewhat high
Disney	✗	✓	Medium
Gap	✓	✗	Medium
Kroger	✗	✓	Medium
Macy's	✓	✗	Medium
McDonald's	✓	✗	Medium
UPS	✗	✗	Medium
Albertsons	✗	✗	Low
Dollar General	✗	✗	Low
FedEx	✗	✗	Low
Hilton	✗	✗	Low
Home Depot	✗	✗	Low
Lowe's	✗	✗	Low
Marriott	✗	✗	Low

Source: *Company ESG reports, annual reports, company websites, and direct company communication*

Note: *For companies marked with *, we received some of this data through direct company communications; the data was not publicly disclosed.*

This lack of pay transparency undermines the potential pressure on companies from customers and socially minded investors to raise wages. Several of the companies in this analysis have cultivated a socially conscious brand—an image that would be at odds with disclosures that they are not paying their workers enough to get by. Without pay data, however, the media and researchers like us have less ability to scrutinize companies' compensation, engaged consumers cannot discern whether companies are paying workers adequately, and investors have limited ability to act on the worker dimensions of their ESG (environmental, social, and governance) priorities.

As one of us has previously argued, a much better solution would be for the SEC to require that all publicly listed companies provide an annual report on the distribution of worker take-home pay.[97] Such a report should include the percentage of workers earning less than $5,000 or $10,000, for example, on an annualized basis. The advantage to using take-home pay as opposed to hourly wage is that it captures the impact of inadequate hours on how much a worker actually earns. The advantage of using a distribution is that it tells us how all workers are faring—not just the average or the median. It would not be a burdensome exercise, as companies already collect this data for payroll purposes.

Some promising efforts at the state level have been proposed. A bill proposed in the California state legislature would have required the state's largest private sector companies to disclose 18 job quality metrics such as pay and the percent of full-time workers that earn above the MIT living wage.[98]

Labor law reform is needed for workers to exercise their power

Historically, unions have served as one of the most important counterweights to shareholder and corporate power: curbing inequality, moderating excess profits, and securing wage gains for workers.[99]

Yet partly as a result of government policy, organized labor's power has significantly eroded. In the 1950s, more than one-third of workers[100] were members of a union. Today, after decades of declining union participation, that number is around 10%.[101] In 2021, the union membership rate across all American workers declined from 2020, dropping from 10.8% to 10.3%.[102] The decades-long decline in union density has been most precipitous among private sector workers; in 2021, just 6% of private sector workers were members of a union.[103]

Union density at the 22 companies in this analysis reflects national trends. Most companies in this report have no union membership at all. Only five companies have union density of approximately 50% or higher.

Surprisingly, this decline is occurring as labor unions are enjoying their highest popularity in decades. According to a 2021 Gallup poll, 85% of Americans approve of labor unions—the highest level since 1965.[104]

The fact that union membership is declining despite unions' growing popularity is in large part a function of the structure and implementation of labor law. The recent union drives at more than 100 Starbucks locations and in Amazon's Bessemer, Ala. and Staten Island facilities showcase the lengths employers are allowed to go to suppress unionization.[105] The tactics that Starbucks and Amazon deployed included mandatory anti-union trainings (known as "captive audience meetings"), text messages, flyers, leaflets, and workplace visits by senior management; recently, Starbucks fired several workers who were leading the union efforts. Amazon was rebuked by the National Labor Relations Board for violating labor laws and ordered to re-do the Bessemer election.[106] However, most of Amazon and Starbucks' tactics were legal—and representative of the uneven playing field between employers and workers seeking to organize.

Fixing the country's broken labor laws to give workers a more even playing field will require major legislative change. Democrats in Congress have proposed the Protecting the Right to Organize (PRO) Act, which would enable more workers to form a union, exert greater power in disputes, and exercise their right to strike, while curbing and penalizing employers' retaliation and interference and limiting right-to-work laws.[107] The PRO Act passed in the House of Representatives in 2020 but not in the Senate due to strong Republican opposition and fierce resistance from business.

In addition to this broader approach to labor law reform, building a system for sectoral bargaining would restore more power to workers. The existing system of decentralized "enterprise bargaining"—typically between unions and a single firm—is limited in several key ways, including by its small scale and the incentives it gives to employers to fight unionization.[108] In contrast, sectoral bargaining allows workers to bargain collectively at the sector or industry level, overcoming some of the limitations of enterprise bargaining and reaching some of the millions of workers not covered by collective bargaining agreements. For instance, through a sectoral bargaining system, unions representing workers across the fast-food industry (including at franchises, such as McDonald's) could negotiate for higher wages, benefits, and working conditions without putting a specific employer at a competitive disadvantage.[109] At the federal level, new labor laws are needed to establish a system of sectoral bargaining.

Even in the absence of federal labor law reform, several promising legislative initiatives at the state and local level illustrate the potential of sector-level efforts, including sectoral councils and wage boards. For example, tripartite wage boards comprised of representatives from government, employers, and workers can recommend working conditions and standards, such as wages.[110] Wage boards already exist in several cities. In New York City, a wage board raised wages for fast-food workers to $15 per hour, and Seattle has a board to set standards for domestic workers.[111] Legislation proposed in California illustrates this approach: The FAST Act proposes to establish a first-of-its-kind fast-food sectoral council to develop industry-wide minimum standards, including wages, through a state-appointed council spanning workers, employers, and the state government.[112]

Federal, state, and local governments should raise the minimum wage

Government's role should extend beyond enabling workers to exercise voice; government itself should provide protections. In particular, state, local, and especially the federal government should enact minimum wage laws to ensure workers earn a decent wage.

Overwhelmingly, the American public supports a $15 per hour minimum wage.[113] This was true two years ago, even before the pandemic cast a harsh light on low wages and shifted Americans' perceptions of the wages essential workers deserve to earn.[114] Today, due to inflation, a worker would need to earn over $16.50 per hour just to have the same purchasing power as $15 provided at the start of 2020.

Yet today, the federal minimum wage is less than half that level. For over a decade, it has been stuck at $7.25 per hour—a wage is so low it would put even a full-time worker with a dependent under the poverty line. So far, policy momentum for raising the minimum wage has happened mostly at the state and local level. At the start of 2022, 21 states and 35 cities and counties raised their minimum wage, including 33 (mostly in California) which moved to at least $15 per hour.[115] In addition, as of January 2022, the federal government implemented a $15 per hour minimum wage for all federal employees and contractors.[116]

In 2022, more states could follow. Possible ballot initiatives during the midterm elections could give voters an opportunity to pass $15 and $18 per hour minimum wages, similar to the ballot initiative that passed in Florida in 2020.[117] This state and local momentum is crucial given federal inaction. But large gaps remain: 20 states—mainly in the U.S. South—have not raised their minimum wages above the federal minimum.

Given the slow national progress, minimum wage laws alone are unlikely to be sufficient to ensure workers earn a living wage. This is especially true of the companies in our analysis, which include some of the most profitable and iconic corporations in America, and which have vastly more resources than smaller businesses to invest in worker wages. We should expect these companies to go beyond minimal standards.

Still, the companies we analyzed chose to pay their workers too little to get by. Despite their commitment to paying their workers "fairly," we found that the majority of them pay fewer than half of their workers a living wage. Just one company (Costco) pays a minimum wage that ensures all employees earn close to a living wage. Today, only six of the 22 companies pay a minimum wage of at least $15 per hour, with three more companies planning to raise their minimum wage to $15 per hour later this year. Many companies that we analyzed pay workers far less. Even a minimum wage as low as $11 or $12 per hour would raise wages substantially at several companies we analyzed.

Workers should have a greater voice in corporate governance

If companies are serious about shifting to "stakeholder" capitalism and going beyond a narrow pursuit of shareholder interests, they should give workers a greater voice in corporate governance, including through representation on corporate boards.

This already exists In European countries through a widespread practice known as "co-determination." For instance, German law requires that up to half of supervisory boards at certain companies be comprised of employee representatives.[118]

Taking a page from these models, two proposals from U.S. lawmakers would make such representation mandatory. Sen. Elizabeth Warren's (D-Mass.) Accountable Capitalism Act and Sen. Tammy Baldwin's (D-Wis.) Reward Work Act each would mandate that companies give workers the ability to elect a certain percentage of the boards of directors. Under Sen. Warren's proposal, companies with at least $1 billion in annual revenue would need to allow employees to elect no fewer than 40% of board directors.

Conclusion

When we started this analysis nearly a year ago, there were multiple reasons for optimism that the 22 companies in this analysis might live up to the potential of this moment. The deadly COVID-19 pandemic had heightened awareness of inadequate pay and conditions for frontline workers and shifted public sentiment about what workers deserve. Corporate leaders had made pledges to adopt "stakeholder capitalism" and enhance racial and economic equity. A historically tight labor market pressured companies to increase compensation and enhance benefits. And record profits filled company coffers with ample resources to raise pay.

Yet despite all that, the pandemic test of these companies reveals little meaningful change. Overwhelmingly, financial gains benefitted wealthy shareholders, including executives, while frontline workers bore the greatest losses and benefitted minimally from company success. This disappointing lack of progress suggests that change is unlikely to come from corporations themselves, and instead requires policy reforms and a new balance of power between executives, shareholders, and other stakeholders, such as workers, government, and society at large.

Methodology and data sources

Timeframe

We analyzed the 22-month period from January 1, 2020 through the end of October 2021. We chose January 2020 instead of March 2020 as our pandemic "start" for several reasons. First, to be as accurate as possible, we wanted a baseline for metrics such as stock price and worker pay just before the COVID-19 pandemic impacted them. Second, we used the first quarter of 2020 for profits and revenue, which for most companies started in January 2020.

Financial data

We gathered financial data primarily from earnings reports, SEC filings and other company financial disclosures, as well as external sources that track stock values.

- **Revenue and profit data:** We drew most financial data on revenues and profits from company earnings reports. The "seven pandemic quarters" that we analyze include the seven quarters beginning in January 2020 and ending in November 2021. When we compare to the "seven pre-pandemic quarters," we use the seven quarters between the second quarter of 2018 and the fourth quarter of 2019. Not all companies report their quarterly earnings on the same timeframe, so we aligned all companies' Q1 2020 for the quarter released in the first three months of the pandemic beginning January 2020. (For example, Starbucks' quarter that ended on March 29, 2020 is Q1 FY2020 for our calculations, even though the company calls it called Q2 FY2020). Throughout the report, we used companies' adjusted net income for their profit; for Amazon, Costco, and Home Depot, we did not adjust profit, as those companies did not provide an adjusted figure. When noted in the report, we adjusted a company's profits for inflation using the CPI inflation calculator.
- **Stock price***:* We used Yahoo Finance for historical stock price data. We evaluated each company's change in stock price between December 31, 2019 and November 1, 2021.
- **Stock buybacks and dividends**: Our data on stock buybacks and dividends came from company quarterly earnings reports and 10-Ks, and specifically the cash flow statement.
- **Market capitalization:** Our historical market cap data—the total dollar market value of a company's outstanding shares of stock—is from Macrotrends. We evaluated each company's change in market cap between December 31, 2019 and November 1, 2021.
- **Shareholder wealth increase***:* To calculate the wealth that companies generated for shareholders, we used companies' market cap information and stock price. For specific shareholders, such as the billionaire heirs and founders, we used beneficial ownership share data from company proxy forms (SEC Form DEF 14A) and from SEC Form 4.

Workforce data

We gathered workforce data primarily from company sources.

- **Company demographic data:** Data on company demographics, including employee headcount and race, came from company annual reports, ESG reports, direct company communication, and company press releases.
- **Furloughs, layoffs, and hiring:** Data on furloughs, layoffs, and hiring came from company annual reports, ESG reports, quarterly earnings calls, direct company communication, and news stories.

Compensation data

Data on company compensation and employee wages was the most difficult to access. Currently, companies have only minimal requirements to disclose their compensation to employees. They are not required to report minimum or average hourly wages, and most do not; only seven out of 22 companies in this analysis publicly reported both minimum and average hourly wages. While the SEC requires companies to disclose the annual pay of their median employee, companies have wide discretion in how they calculate this pay, and thus the disclosures are not standardized. We address these data gaps by leveraging an array of sources and directly communicating with each company, which in a few instances yielded additional pay data.

- **Minimum hourly wage:** We tracked company minimum wages through company websites and press releases, annual reports, ESG reports, and through direct company communication. We were able to identify the minimum wage at 13 of the 22 companies.
- **Average hourly wage:** Fewer companies publicly disclosed or shared directly with us their average hourly wage. Ten companies shared an average hourly wage, and one company disclosed a median hourly wage; 11 companies shared neither. We tracked company average wages through company websites and press releases, ESG reports, and direct company communications.
- **Median annual pay:** We tracked the median annual compensation through each company's proxy form (SEC Form DEF 14A) and clarified some of our questions through direct company communication. Throughout the report, we reference the annual total compensation of the median-paid employee as "median pay." While we compare each company's median compensation in the report, there are limitations to these comparisons due to the lack of standardization across company disclosures. The SEC requires U.S. publicly traded companies to annually disclose the ratio of their CEO's annual total compensation to the median of the annual total compensation of all employees of the company (other than the CEO). However, companies are given considerable flexibility in calculating this figure. The rule requires that a median employee be selected from all employees, including full-time, part-time, seasonal, and temporary employees. Companies are permitted to exclude non-U.S. employees from the median employee calculation if non-U.S. employees in a particular jurisdiction account for 5% or less of the company's total number of employees. However, some of the companies in this report included benefits in their calculation while others did not; only some companies specified the amount of their benefits. Most companies annualized the median employee's compensation; one company did not. Companies are not required to calculate a U.S.-specific median employee wage, and thus the companies in this report varied in the percent of non-U.S. workers in their calculation.
- **"Covid pay":** We used our own methodology (see below) for calculating a company's "Covid pay," which we define as the pandemic-related bonuses and temporary hourly pay increases that companies provided their frontline employees. We calculate Covid pay—and the amount companies spent on it—from March 2020 through October 2021.
- **CEO compensation:** We calculated realized CEO compensation using data in each company's annual proxy forms (SEC Form DEF 14A). We used *realized* compensation, meaning compensation that the CEO was paid out that year, as opposed to *awarded* compensation, which includes possible future payouts.
- **Living wage:** When we refer to the "living wage," we are using data from MIT's Living Wage Calculator. Our analysis uses the annual U.S. living wage for each adult in a two-adult, two-child household. When noted, we adjusted this figure for inflation using the CPI inflation calculator.

Methodology for calculating Covid pay

We used our own calculations for the amount of "Covid pay" that companies compensated workers during the pandemic. We define "Covid pay" as the temporary hourly pay increases and bonuses that were directly tied to the pandemic and that workers would *not* have been paid in 2019, pre-pandemic.

Our Covid pay calculations are not exhaustive—they do not include the full range of policies and benefits that companies enacted to support workers during the pandemic, such as COVID-19 paid sick leave, stay-at-home pay, and other important benefits.

The vast majority of Covid pay was awarded in 2020, while a few companies continued to provide it into 2021. We singled out 2020-specific Covid pay in the discussion of worker pay, and included all Covid pay from 2020 and 2021 in our calculations of all additional pay to workers during the pandemic.

Compared to typical data on compensation, companies were substantially more transparent and forthcoming in publicly sharing the amount, duration, and cost of Covid pay. To calculate Covid pay, we tracked data from company press releases, annual reports, ESG reports, and earnings call transcripts. We then reached out to every company to confirm this data and the assumptions we made to calculate the per-worker Covid pay amount. We could not determine their Covid pay for three companies due to insufficient data.

In our calculations, we excluded Covid pay that was ineligible to all or most employees. For instance, Gap provided Covid pay to its warehouse workers, who compose a small percentage of its workforce—thus, we did not include this compensation in our calculations. We also excluded most overtime pay. In some instances, when noted, we included the money a company spent on additional cleaning and safety measures if we could not readily disaggregate that spending from the company's Covid-related expenditures.

We adjusted the Covid pay amounts based on whether employees worked full time or part time. Typically, companies offered larger pandemic bonuses for full-time workers than part-time workers, and full-time workers earned more from hourly Covid pay bumps than part-time workers, in direct proportion to their hours worked. For example, Walmart's Covid pay consisted of four "special bonuses" in the amount of $300 for full-time employees and $150 for part-time employees.

Because the vast majority of companies do not disclose the average hours that employees work, we had to make some assumptions in order to calculate Covid pay. First, we determined whether a company had a majority full-time or part-time workforce through data from company proxy statements, ESG reports, and direct communication. We then made two calculations for our 2020 Covid pay calculations for each company: one for part-time workers, and another for full-time.

We assumed a 37.5-hour work week for full-time workers and a 20-hour work week for part-time workers, with a few exceptions. We used 25 hours for Chipotle, per the information it provided about their median employee's hours in the 2020 proxy statement, and we used 30 hours for Albertsons, Kroger, and Target's part-time employees.

Methodology for calculating real wage increases

For our calculations for real wage increases, we gave credit to companies for increasing pay if: 1) the company made a public announcement of a company-wide increase that impacted all employees and/or resulted in an increase in average or minimum wage; and/or 2) the company reported or shared directly with us an increase in the average pay for workers. Given the tight labor market, it is likely that many companies in this analysis made location-specific pay increases for at least some workers since the start of the pandemic, but our methodology was unable to give credit for these one-off pay increases unless companies shared average pay data with us.

We confirmed our data through direct company communications; all but Disney and Dollar General responded.

For 11 companies, we had enough data to calculate real wage increases over the first 22 months of the pandemic. For these companies, we first calculated the nominal change in the company's average wage from January 2020 through October 2021 based on wage data that we confirmed directly with company communication or that was publicly available. We assumed in our calculation that the average wage started going up from the time that the company made wage announcements. A few companies, including Best Buy and Target, confirmed with us pay increases that happened prior to October 2021 but did not share any further pay increases; in those instances, we used the most recent pay increase and assumed no further wage increases. A few companies, including Macy's, only shared their percent change in nominal wages, not the actual average wages. We then inflation-adjusted the nominal pay increases using the CPI calculator.

Two companies that we know of (Home Depot and Walmart) phased out other bonuses when they increased pay; in several instances, we note this in the text and give illustrative examples of what the lost bonuses might mean for average pay.

In our discussion of real wage increases, we assume that when a company's average wage goes up, that is because the company raised wages. It is plausible that wages rose because a company increased employee retention; however, in our analysis we assume average wage increases are due to pay increases.

Methodology for calculating the additional compensation to workers during the first 22 months of the pandemic

We also calculated the total amount each company spent on additional compensation to their frontline workers during the pandemic through temporary Covid pay, permanent pay increases, profit sharing, and performance bonuses. Our calculation for additional compensation to workers is not exhaustive; it does not reflect *all* the extra money that companies spent on benefits (such as paid leave, health insurance, or education benefits) and pay for their respective workforces during the pandemic. Nor does it include the additional labor costs that companies incurred due to increased staffing. Specifically, our measure of additional compensation includes the following:

- Covid pay from January 2020 through October 2021 (using the same assumptions)
- Compensation companies provided workers as incentives for COVID-19 vaccination (we included the cost of providing the incentive to 100% of employees if companies did not specify exact cost)
- Permanent wage increases from January 2020 through October 2021
- Profit sharing and performance bonuses
- In one case, Home Depot, we included the additional paid time off the company provided workers during the pandemic because employees were able to be paid out at the end of the year

Our sources for this data include company press releases, annual reports, ESG reports, earnings call transcripts, and direct company communication.

Some companies were transparent in their public communications about the total cost of some of these expenditures, such as Covid pay, profit sharing, and wage increases. In a few instances, we confirmed cost data through direct company communication.

When companies did not share cost data, we had to make further assumptions. If a company did not disclose the amount it spent on permanent wage increases but we knew the increase in the average wage between January 2020 and October 2021 (either through company communication, union contracts, or publicly disclosed date), we annualized the increased cost in labor. For Albertsons, Best Buy, Target, and Walmart, we had to make an additional assumption about labor as a percent of sales.

In most instances, we show the pre-tax amount that companies spent on additional compensation to workers during the pandemic. The actual cost to companies is lower when factoring in the company's lowered tax bill. We calculated an average effective tax rate for each company by dividing the income tax expense by the earnings before taxes over the seven pandemic quarters.

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Posted April 21, 2022 at 2:43 pm by **Josh Bivens**

Corporate profits have contributed disproportionately to inflation. How should policymakers respond?

The inflation spike of 2021 and 2022 has presented real policy challenges. In order to better understand this policy debate, it is imperative to look at prices and how they are being affected.

The price of just about everything in the U.S. economy can be broken down into the three main components of cost. These include labor costs, non-labor inputs, and the “mark-up” of profits over the first two components. Good data on these separate cost components exist for the non-financial corporate (NFC) sector—those companies that produce goods and services—of the economy, which makes up roughly 75% of the entire private sector.

Since the trough of the COVID-19 recession in the second quarter of 2020, overall prices in the NFC sector have risen at an annualized rate of 6.1%—a pronounced acceleration over the 1.8% price growth that characterized the pre-pandemic business cycle of 2007–2019. Strikingly, over half of this increase (53.9%) can be attributed to fatter profit margins, with labor costs contributing less than 8% of this increase. This is not normal. From 1979 to 2019, profits only contributed about 11% to price growth and labor costs over 60%, as shown in **Figure A** below. Non-labor inputs—a decent indicator for supply-chain snarls—are also driving up prices more than usual in the current economic recovery.

FIGURE A

Normal and recent contributions to growth in unit prices in the non-financial corporate sector

	1979–2019 average	2020 Q2–2021 Q4
Corporate profits	53.9%	11.4%
Non-labor input costs	38.3%	26.8%
Unit labor costs	7.9%	61.8%

Source: Author's analysis of data from Table 1.15 from the National Income and Product Accounts (NIPA) of the Bureau of Economic Analysis (BEA).

What does the abnormally high contribution of profits to price growth mean for how policymakers should respond to the recent outbreak of inflation?

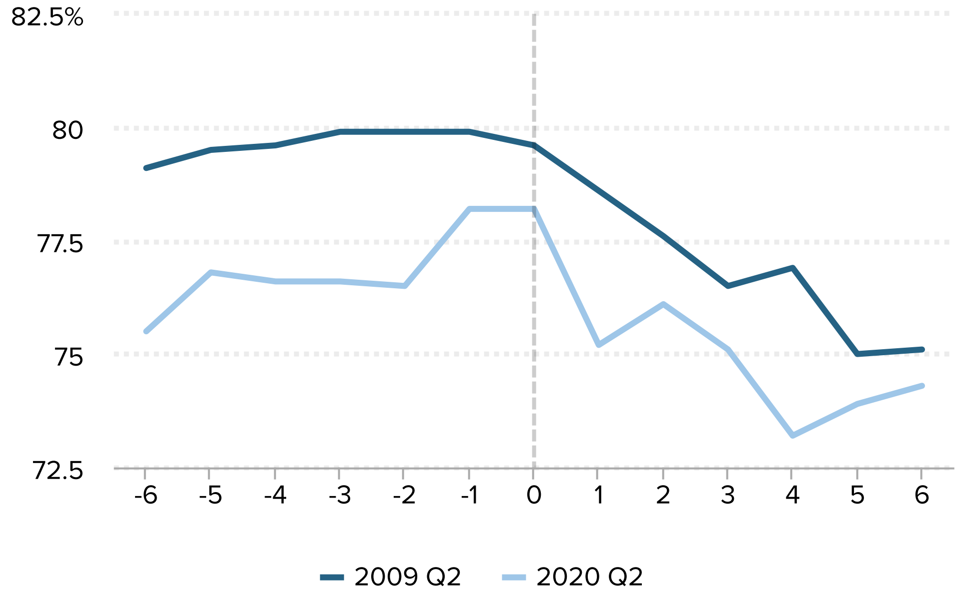
- It is unlikely that either the extent of corporate greed or even the power of corporations generally has increased during the past two years. Instead, the already-excessive power of corporations has been channeled into raising prices rather than the more traditional form it has taken in recent decades: suppressing wages. That said, one effective way to prevent corporate power from being channeled into higher prices in the coming year would be a temporary excess profits tax.
- The historically high profit margins in the economic recovery from the pandemic sit *very* uneasily with explanations of recent inflation based purely on macroeconomic overheating. Evidence from the past 40 years suggests strongly that profit margins should shrink and the share of corporate sector income going to labor compensation (or the *labor share of income*) should rise as unemployment falls and the economy heats up. The fact that the exact opposite pattern has happened so far in the recovery should cast much doubt on inflation expectations rooted simply in claims of macroeconomic overheating.

Do fatter profit margins imply *more* corporate power—or just power channeled differently?

The rise in profit margins that account for a disproportionate share of price growth in the current recovery have led to speculation that increased corporate power has been a key driver of recent inflation. Corporate power is clearly playing a role, but an *increase* in corporate power likely has not happened recently enough to make it a root cause of the inflation of 2021–2022. In fact, the rapid rise in profit margins and the decline in labor shares of income during the first six quarters of the current recovery is not that different from the rise in the first few years following the Great Recession and financial crisis of 2008. **Figure B** below shows that starting from the trough of the recession (zero on the horizontal axis) that the fall in the labor share of income was actually more pronounced during the early recovery from the Great Recession than it has been so far in the recovery from the COVID-19 recession.

FIGURE B

Labor share of income in first six quarters of recoveries, current and previous recession



Notes: Labor share for the fourth quarter of 2008 was smoothed to remove a large spike in the data stemming from large write-offs of underperforming assets in the financial sector during the financial crisis of that year. The vertical line at zero on the horizontal axis denotes the recession's trough.

Source: Underlying data from Tables 1.14 and 6.16D of the BEA NIPA. More detailed methodology can be found **here**.

In the Great Recession recovery, increased corporate power did not manifest in faster price growth that made room for fatter profit margins—price growth **was actually quite subdued** over the first few years of that recovery. Instead, corporate power manifested itself in extreme wage suppression (aided by high and persistent levels of unemployment). Unit labor costs actually *declined* over a three-year stretch from the recession's trough in the second quarter of 2009 to the middle of 2012. The general pattern of the labor share of income falling during the early phase of recoveries characterized most of the post-World War II recoveries, though it has become more extreme in recent business cycles (see Figures G and H in **this report**).

Given that the rise in profit margins was similar in the 2008 recovery and the current one, it's hard to say that some *recent* rise in corporate power is the key driver of current inflation. Rather, a chronic excess of corporate power has built up over a long period of time, and it manifested in the current recovery as an inflationary surge in prices rather than successful wage suppression. What was different this time that channeled this power into higher prices rather than slower wage growth? The short answer is the pandemic.

One reason to think the pandemic is the root cause of the recent inflationary surge is empirical. The inflationary shock has occurred in essentially all rich nations of the world—it's very hard to find any **country-specific policy** that maps onto inflation.

Another reason is to look where this inflation started: the rapid run-up of prices in the goods sector (particularly durable goods). The pandemic directly **shifted demand out of services and into goods** (people quit their gym memberships and bought Pelotons, for example) just as it also caused a **collapse of supply chains** in durable goods (with rolling port shutdowns around the world).

In previous recoveries, domestic demand growth was slow and unemployment was high in the early phases of recovery. This led firms to become desperate for more customers but also gave them the upper hand in negotiating with potential employees, which led to subdued price growth and wage suppression.

This time around, the pandemic drove demand through the roof in durable sectors and employment has rebounded rapidly, but the bottleneck in meeting this demand on the supply side was **largely *not* labor**. Instead, it was shipping capacity and other non-labor shortages. Firms that did happen to have supply on hand as the pandemic-driven demand surge hit had enormous pricing power vis-à-vis their customers.

A temporary excess profits tax could provide some countervailing weight to the pricing power firms currently have vis-à-vis their customers. Supporting such a tax does not mean that a sudden rise in corporate power is the root cause of current inflation, but it does mean that corporate pricing decisions in a pandemic-distorted environment are a propagator of inflation. It is also a recognition of the fact that price spikes in many sectors over the past year are not useful market signals about where the economy's resources should be redirected, instead they are just an extreme but short-lived mismatch between sectoral demands and supplies that will naturally unwind as the global economy normalizes after the pandemic.

High profit margins are generally not a signal of generalized macroeconomic "overheating"

Calls are getting louder for the Federal Reserve to adopt a much more contractionary stance of monetary policy by raising interest rates sharply. The rationale for this is simply that today's high inflation **must be driven** by an imbalance of aggregate demand (planned spending by businesses, governments, and households) and aggregate supply.

But over the entire post-World War II period, accelerating economic recoveries and falling unemployment that might indicate that the economy was running "hotter" have been associated with **rising real wages** and a rising **labor share of income**. The dynamic generally has been characterized by falling unemployment rates that increased bargaining power for workers that in turn led to real wage growth threatening to outpace economy-wide productivity growth. If this dynamic was allowed to get out of hand, the result could potentially be a wage-price spiral, with firms having to raise prices simply to meet workers' wage demands and workers in turn demanding pay increases to insulate them from rising prices. To be clear, these instances of spiraling inflation driven by macroeconomic overheating **have been far rarer** than commonly characterized, but the pattern of **lower unemployment leading to faster wage growth** and filtering through to some **slight upward pressure on inflation** is clear and consistent in economic data.

Currently, however, the **labor share of income** and **real wages** are falling sharply in the recovery even as unemployment falls. It seems strange to see a pattern in the data that is the *complete opposite* of how overheating-driven inflation has historically worked, and not ask if it might be something different this time causing inflation (i.e., the pandemic).

Many of those **most dismissive of claims** that increased corporate power has driven recent inflation adopt the view that generalized macroeconomic overheating is the culprit. But in dismissing the increased corporate power explanation for recent inflation, they also seem to be **discarding any useful information** that recent sky-high profit margins might provide about the validity of their alternative view. Profit margins may not be telling us that very recent increases in corporate power are the root cause of inflation. But they *are* telling us that a simple macroeconomic imbalance of supply and demand is not driving inflation either, unless the relationship between a "hot" economy and profit margins and real wages is just coincidentally behaving entirely differently in the current recovery than it has in the past.

It is true that in *very* recent quarters—between the second and fourth quarters of 2021, for example—profit margins have ticked down slightly (but are still extraordinarily high in historical terms) and labor cost growth has been running well above historical averages. But even in this much more-recent period of the COVID-19 recovery, labor costs are contributing just 50% to price growth—well below their historic average. Non-labor inputs—the data signature of supply-chain snarls—have been contributing well above their historical average in this more-recent period.

The overheating view often emphasizes the atypically fast nominal wage growth of the past year as justification of their arguments. But this nominal wage growth—while fast compared to the very recent past—still lags far behind overall inflation and hence signals that labor costs are still **dampening, not amplifying**, inflationary pressures.

In short, the rise in inflation has not been driven by anything that looks like an overheating labor market—instead it has been driven by higher corporate profit margins and supply-chain bottlenecks. Policy efforts meant to cool off labor markets—like very rapid and sharp interest rate increases—are likely not necessary to restrain inflationary pressures in the medium term.

Other tools that would be less damaging to typical families—like **care investments** to boost expected growth in labor supply or a temporary excess profits tax—could be effective in tamping down inflation over the next year and should be a bigger part of the policy mix.

From:	Circular File
To:	stopillegalprofiteering
Subject:	Incidence of Price Gouging and Corporate Greed?
Date:	Sunday, April 17, 2022 1:16:46 PM

[EXTERNAL]

I had been a frequent customer of Penske Truck Rental for a series of one-way DIY moves before the pandemic as I slowly relocate myself to Texas. Always making the same trip for the same number of days, my rental was consistently ~$1,600, after a AAA discount.

During the pandemic, I contacted them again for another rental in order to make another trip. However, the last time I was quoted a rate of ~$3,000 over the phone for the exact same trip. When I questioned the agent about the exorbitant doubled rate, I was told it was "due to demand."

Needless to say, I could not afford the company's new profiteering fee schedule and, therefore, was not able to make the trip that I wanted to.

Thank you for looking into this issue.

From:	Karen Lipson
To:	stopillegalprofiteering
Cc:	James W. Clyne Jr.
Subject:	LeadingAge New York Comments on Advance Notice of Proposed Rulemaking (Price Gouging)
Date:	Wednesday, April 13, 2022 10:40:50 PM
Attachments:	image002.png Letter to AG James on Price Gouging Advance Rulemaking.revised.pdf

[EXTERNAL]

Please see the attached comments from LeadingAge New York. We appreciate your attention to this issue. Please don't hesitate to contact me if you have any questions.

Karen Lipson
Executive Vice President
LeadingAge New York
13 British American Blvd., Suite 2, Latham, NY 12110-1431
Phone: 518.867.8383 ext. 124
Mobile: 518.461.8985

LeadingAge New York

April 13, 2022

Honorable Letitia James
Attorney General
State of New York
The Capitol
Albany, NY 12224

Re: Comments on Advance Notice of Proposed Rulemaking pursuant to N.Y. Gen. Bus. L. § 396-r(5) (Price Gouging)

Dear Attorney General James:

I am writing on behalf of the members of LeadingAge New York, a statewide association of not-for-profit and public providers of long-term care services, in response to your request for public comments in crafting rules to prevent price gouging pursuant to New York General Business Law § 396-r ("GBL 396-r"). Our members include the entire continuum of long-term care and aging services from senior housing, home care, adult day health care, and hospice to nursing homes, assisted living, and managed long-term care.

We were pleased to see this advance notice of proposed rulemaking. Price gouging by vendors of personal protective equipment and by staffing agencies during the pandemic has affected all of our members and the vulnerable older adults and people with disabilities whom they serve. While we don't have the expertise in economics or market dynamics that some of your questions demand, we can speak to the negative effects of price gouging and how it can be detected.

<u>Questions</u>

1) **What kinds of price gouging by suppliers and distributors is most likely to occur in a pandemic, and how would enforcers detect it? What industry characteristics are likely to facilitate and potentially mask price gouging? What particular medical goods and services have features that might make price gouging more likely and/or mask price gouging?**

Over the course of this pandemic, our members have reported skyrocketing costs in personal protective equipment, disinfectant, and especially staffing agency rates. These goods and services share several characteristics that have allowed price gouging to occur: (i) They were, and in the case of health care staff continue to be, in short supply; and (ii) The demand for these items and services is inelastic –qualified staff and personal protective equipment in adequate quantities are essential to the missions of health and long-term care providers and required by regulations.

We would like to focus on price gouging by staffing agencies. While staffing shortages in long-term care pre-date the pandemic, they have grown worse over the past two years. COVID-related absences, attrition due to pandemic fatigue and vaccination mandates, and the inadequacy of Medicaid rates in relation to the wages that today's workers demand and deserve have all intensified the workforce shortages plaguing long-term care. In particular, nursing homes and assisted living facilities face crippling shortages of nurses and aides and a lack of qualified candidates for these demanding and skilled positions.

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State policies have contributed to the constriction of the long-term care workforce and added to the demand for staff. Inadequate Medicaid rates have rendered long-term care providers unable to compete for workers with other health care providers and businesses. In addition, our members report that COVID vaccination mandates have led to an exodus of workers. While we support the vaccination of health care staff, the unfortunate fact is that too many health care workers are reluctant to accept the vaccine and have left the field. Adding to the unmet demand for staff are new staffing mandates in nursing homes – requirements that will generate the need for 12,000 more nurses and aides working in long-term care. And, the competitive position of nursing homes and assisted living in the labor market will likely be weakened further by the recently enacted state budget, which includes approximately $2.6 billion in Medicaid funding to support a raise in home care aide wages, but only a small fraction of that amount (less than 10 percent) to support nursing home workers, and nothing for the assisted living workforce.

As a result of the shortage of essential workers, nursing homes and assisted living facilities are increasingly relying on staffing agencies to ensure that they have sufficient staff to provide essential services to their residents. Facilities that never used agency staff in the past, have for the first time begun to use them routinely. Unfortunately, these temporary staffing agencies are exacerbating and exploiting the staffing issues faced by long-term care providers. As the demand for staff has risen and staffing agency leverage has increased, rates have skyrocketed. Nursing homes and assisted living facilities have very little leverage in the market. As noted above, the demand is inelastic – facilities have a duty to care for their residents 24/7 and a legal obligation to deliver care with sufficient, well-qualified staff. Our members offer excellent benefits, and most are unionized. Nevertheless, the staffing agencies are increasingly poaching nurses and aides away from their provider employers by offering them higher hourly rates, often with minimal or no benefits.

These dynamics have a negative impact on the health care system and result in a less effective and efficient use of resources. The facilities and their residents often suffer from the loss of consistent staff who know the routines and are familiar with the residents. Itinerant staff have been identified as a source of COVID infection across multiple facilities. While the agency staff are often unpredictable and transient, facilities are forced to pay staffing agencies exorbitant rates for their services. The agencies, in turn, pocket a sizeable percentage of the fees. And, precious Medicaid and Medicare dollars are diverted from the staff and the health care system into the coffers of staffing agencies. Unfortunately, the current situation may create a self-perpetuating cycle that drives up costs, drives down quality, and ultimately forces high-quality providers to close their doors.

The escalation of staffing agency fees during the pandemic is readily apparent. For example, in October 2021, the nursing homes were experiencing severe staffing shortages exacerbated by the recent implementation of the vaccination mandate for health care personnel. The State attempted to offer some assistance by providing a list of staffing vendors that agreed to provide contracts at what they (the vendors) considered 'reasonable' rates. Nursing homes that contacted those vendors were quoted rates of $95-145 per hour for registered nurses and $75-$105 per hour for licensed practical nurses (LPNs), and $55 per hour for nurse aides. Our members reported that this was two to three times the amounts that nursing homes paid agencies before the pandemic.

Agency rates charged to facilities also appear to be two to three times higher than mean hourly rates paid to individuals in nurse and aide positions. Based on an informal poll just a few weeks ago of approximately 100 non-profit and public nursing homes, rates charged by staffing agencies for nurses and nurse aides are nearly two to three times the mean hourly wages reported for those positions by the U.S. Bureau of Labor Statistics (BLS).[1]

[1] US Bureau of Labor Statistics, May 2021 State Occupational Employment and Wage Estimates

Twenty percent of homes that responded to the poll indicated that they were paying staffing agencies over $100 per hour for register nurses (RNs), 17 percent between $86-$100 per hour, and 17 percent between $71-$85 per hour. The mean hourly wage of registered nurse in New York State, according to the 2021 data reported by the U.S. Bureau of Labor Statistics (BLS), is $44.86. Among those nursing homes, approximately 27 percent are paying staffing agencies between $51-$65 per hour for licensed practical nurses (LPNs) and 21 percent are paying between $66-$80 per hour. The 2021 BLS data show that the mean hourly rates in New York for LPNs is $25.84. Our poll showed that agency rates for nurse aides are similarly inflated, with 30 percent paying between $36-$45 per hour, 12 percent paying between $46-$55 per hour and 10% paying over $55 per hour. The BLS data indicate a mean hourly wage of $19.56 for nursing assistants.

The characteristics that have led to price gouging in staffing during the pandemic are the shortage of supply and the inelasticity of demand. The detrimental impact of price gouging by staffing agencies on the health care system and the people it serves is clear, and this market behavior is ripe for enforcement under the State's General Business Law.

2) Is it appropriate to set thresholds at which price increases could give rise to a presumption of "unconscionably extreme" excesses in price? If so, which benchmarks should be used?

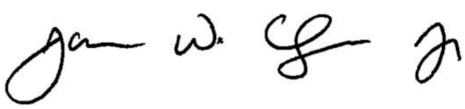
The determination that a price increase is "unconscionably extreme" should be based on the cost to the supplier of the good or service and the profit margin of the supplier. Other factors that should be considered are the level of concentration or competition in the market, the ability of the purchaser to seek alternatives or avoid the purchase, the effects of the price increases on the public welfare, and whether the supplier engaged in disruptive market conduct that contributed to the reduction in supply or escalation in demand (e.g., stockpiling goods).

3) What mechanisms should the Office offer to allow retailers to report price gouging by other firms in the supply chain? What other steps can be taken to improve the ability detect price gouging?

There are a variety of ways that wrongdoing can be brought to the attention of law enforcement officials. A hotline or dedicated email address to receive reports of price gouging would be a positive step. Outreach to associations like LeadingAge New York to raise awareness of the laws prohibiting price gouging and to gather information about market dynamics would also support enforcement efforts.

We appreciate the opportunity to offer input through this advance notice of rulemaking. Thank you very much for your attention to this issue of grave public importance.

Sincerely yours,



James W. Clyne, Jr.
President and CEO

New York, https://www.bls.gov/oes/current/oes_ny.htm#29-0000, accessed 4/12/2022.

From: nymarysia
To: stopillegalprofiteering
Subject: Let the market be free
Date: Sunday, March 6, 2022 7:15:20 AM

[EXTERNAL]

From:	5704396983@vzwpix.com
To:	stopillegalprofiteering
Date:	Monday, March 7, 2022 7:37:14 PM
Attachments:	text_0.txt

Up another 10 cents just today.

From:	Audrey Stoyle
To:	stopillegalprofiteering
Date:	Saturday, March 5, 2022 9:27:51 AM

[EXTERNAL]

March 04, 2022.
Dunkirk NY, Chautauqua County.
Price per gallon of gasoline at 3 different stores : $4.19
Price per gallon in Erie County : $3.89
I WOULD SAY THIS IS PRICE GOUGING

From: 3158689649@vzwpix.com
To: stopillegalprofiteering
Date: Wednesday, March 9, 2022 1:10:36 PM

[EXTERNAL]

PLEASE put a stop to the rising prices in stores and gas. I feel the pandemic was an excuse to raise prices and "rape" the American people. It has gotten completely out of control. I have noticed an abundance of stock on shelves, so why do prices keep going up?!

From:	Christopher Pom
To:	stopillegalprofiteering
Subject:	New Price Gouging Rules
Date:	Friday, March 25, 2022 4:34:23 PM

[EXTERNAL]

Just wanted to voice my support for tackling both anti-consumer price action and going against the overwhelming pro-business narrative that dominates the country. Thank you!

From:	Boxleyboy@outlook.com
To:	stopillegalprofiteering
Subject:	Outrages Gas Pricing
Date:	Thursday, April 14, 2022 9:47:59 AM

[EXTERNAL]

In reviewing the exporting data it seems that the oil companies are creating a supply issue by exporting more products to other countries.
In the past, the were allotted export quotas but after 2015 they can export as much as the want.

Good Luck fight big Business

Sent from Mail for Windows

From: Josh Lever
To: stopillegalprofiteering
Subject: Platinum Volkswagen banks gouging
Date: Friday, April 1, 2022 2:39:58 PM

[EXTERNAL]

To whom this may concern, I write to you as an industry insider owning a dealership in Nassau NY for the past 14 years. While retail has its ups and downs, we are in unprecedented time today. The banks who are held by certain authorities are now gouging not only the dealers but the end user thus making loans unaffordable for many Americans today. We have seen increases in rates that we have not seen in several decades. Thus making it harder even with no cars to sell what we have at a fair rate to our consumers. This is going to cause a huge issue for all pirates involved in the near future. With rates this high the defaults will be substantial in the near future. The banks will be owning cars that they don't want and in the end the consumer is left in a bad spot. We as consumers and industry people cannot allow this to go on as it will have devastating consequences to the lending industry. Repossessions are going to go through the roof and this is a huge downward spiral that can be contained if the authorities don't step in today.

Thank you,

Josh Lever

Platinum Volkswagen
D: (516) 342-7771
F: (516) 331-0000
W: PlatinumVW.com

From: Kelly S. Lowery
To: stopillegalprofiteering
Subject: price gauging
Date: Monday, April 11, 2022 7:59:32 AM
Attachments: SKM_C360i22041107250.pdf
SKM_C360i22041107200.pdf

[EXTERNAL]

Good morning,

I'm attaching a staffing invoice from 2019 and one from 2022. LPNs used to be $48 hr and now they're $75.

Thank you.

Kelly Lowery, VP of Finance
United Helpers Mgmt Co.
315-393-3074 ext. 4222

Medefis

Invoice

Medefis Consolidated
P.O. Box 5068
New York, NY 10087-5068

Bill To
United Helpers- Maplewood
205 State Street Road
Canton , NY 13617
Kelly Lowery

Date	Invoice #
2/26/2019	344630

Billing for the Week of
02/17/2019 - 02/23/2019

Due Date
3/28/2019

Billing Code	Traveler Name Position-Company	Week Of	GTD Hrs	OT Strt	Regular Hrs		OT Hrs		OT2 Hrs		Holiday Hrs		On Call Hrs		Call Back Hrs		Misc Amount	Admin Fee	Amount
					Hrs	Rate	Hrs	Rate	Hrs	Rate	Hrs	Rate	Hrs	Rate	Hrs	Rate			
	[redacted] - Worldwide Travel Staffing	2/17/19	40	40	40.00	$48.00	10.43	$58.00	0.00	$0.00	0.00	$0.00	0.00	$0.00	0.00	$0.00	$0.00	$0.00	$2,524.94

Payment Due in 30 Days

Balance Due $2,524.94

Phone # 866-711-6333

invoices@medefis.com

RECEIVED FEB 28 2019

Medefis

Invoice

Medefis Consolidated
P.O. Box 5068
New York, NY 10087-5068

Bill To
United Helpers- Maplewood
205 State Street Road
Canton , NY 13617
Kelly Lowery

Date	Invoice #
3/28/2022	482496

Billing for the Week of
03/20/2022 - 03/26/2022

Due Date
4/27/2022

	Traveler Name		GTD	OT	Regular Hrs		OT Hrs		OT2 Hrs		Holiday Hrs		On Call Hrs		Call Back Hrs		Misc	Admin	
Billing Code	Position-Company	Week Of	Hrs	Strt	Hrs	Rate	Hrs	Rate	Hrs	Rate	Hrs	Rate	Hrs	Rate	Hrs	Rate	Amount	Fee	Amount
	[redacted] Centra Healthcare Solutions, Inc.	3/20/22	40	40	40.00	$75.00	14.38	$85.00	0.00	$0.00	0.00	$0.00	0.00	$0.00	0.00	$0.00	$0.00	$0.00	$4,222.30
	[redacted] Genie Healthcare Inc	3/20/22	40	40	21.67	$75.00	0.00	$0.00	0.00	$0.00	0.00	$0.00	0.00	$0.00	0.00	$0.00	$0.00	$0.00	$1,625.25

Payment Due in 30 Days		**Balance Due**	$5,847.55 TT
Phone #			
866-711-6333	invoices@medefis.com		

RECEIVED MAR 29 2022

From:	Jason C. M. Atkins
To:	stopillegalprofiteering
Subject:	Price Gouging - oil industry
Date:	Wednesday, April 20, 2022 8:03:53 AM

[EXTERNAL]

The oil industry does not lower prices anywhere nearly as quickly as they raise them.

When the price of a barrel of oil goes down, they slow walk decreases in prices. When the price goes up, prices jump.

This difference in pricing changes results in greater costs borne by consumers at the fuel pump and in all other places where oil is a critical input (e.g power grid).

Please have someone study has pricing over time as a function of the price of crude and it will be evident.

Legislative remedies to tax their windfall profits would be appropriate, but I'm open for any and all ways to hold them accountable.

Jason Atkins
849 Lincoln pl
Brooklyn, NY 11216
347-277-8874
jcmatkins@gmail.com

From:	Nancy Blum
To:	stopillegalprofiteering
Subject:	Price Gouging
Date:	Tuesday, April 19, 2022 5:00:29 PM

[EXTERNAL]

WholeFoods has almost doubled its prices. I shop at Union Square & Houston Street/Bowery.
It's absolutely price gouging.

Trader Joe's on 14th Street has not increased their prices so it can be done.
Sincerely yours,
NANCY BLUM
East Village NYC

Sent from my iPhone

From:	manuel izaguirre
To:	stopillegalprofiteering
Subject:	Price gouging / Theft of public funds by Livingston Management
Date:	Friday, April 22, 2022 9:40:21 AM
Attachments:	Rent spreadsheet from Livingston Management for Torres Janette.pdf

[EXTERNAL]

Dear Attorney General,

Please find attached proof that Livingston Management is illegally and knowingly double and perhaps triple dipping at the expense of the NY State public funds by overstating Ms. Janette Torres' rental bill.
Livingston applied for LERAP knowingly that Ms. Torres is a section 8 recipient, and got payed by both ERAP (full fraudulent arrears rent) in the amount of $1,218 for 12 months, and received for the same period Section 8 payments of $1,218.35 in fact double dipping. Ms. Torres has also informed me that HRA was paying the "Tenants share" of $168.00 for the same period. And as if that's not enough Livingston Management is continuously harassing Ms. Torres with threat of eviction for rent arrears of $15,795.00 going for triple dipping.
Ms. Torres is a single mother of 4 that continues to fight management for lack of repairs due to the deplorable conditions of her apartment unit, yet she's being retaliated against by threatening letters of eviction.
Imagine if Livingston management is doing this to this lady what else have they done to other tenants unknowingly.
We hope that your office steps in and audits these crooks from top to bottom.
If your office needs further information please feel free to contact me.

Ms. Janette Torres address:
2512 University Ave. Apt 4C, Bronx NY 10468

Livingston Management
225 West 35th St. Suite 1400
New York, NY 10001
Tel (646) 214-0333

Manny Izaguirre

Jeanette Torres
22-Apr-22

2512 University
Apartment 4C
New York, New York 10030

As per NYCHA Section 8 your rent share was as follows:

	Base Rent	Section 8 paid	Tenant share	Late Fee	Adj.	MCI	Tenant paid	DSS Paid	Balance Owed
Opening Balance									$13,876.50
Aug-20	$ 1,218.35	$ 1,218.35	$ -	$ -	$ -	$ -	$ -	$ 144.50	$13,732.00
Sep-20	$ 1,218.35	$ 1,218.35	$ -	$ -	$ -	$ -	$ -	$ -	$13,732.00
Oct-20	$ 1,218.35	$ 1,218.35	$ -	$ -	$ -	$ -	$ -	$ 289.00	$13,443.00
Nov-20	$ 1,218.35	$ 1,218.35	$ -	$ -	$ -	$ -	$ -	$ -	$13,443.00
Dec-20	$ 1,218.35	$ 1,218.35	$ -	$ -	$ -	$ -	$ -	$ -	$13,443.00
Jan-21	$ 1,218.35	$ 1,218.35	$ -	$ -	$ -	$ -	$ -	$ -	$13,443.00
Feb-21	$ 1,218.35	$ 1,218.35	$ -	$ -	$ -	$ -	$ -	$ -	$13,443.00
Mar-21	$ 1,218.35	$ 1,050.35	$ 168.00	$ -	$ -	$ -	$ -	$ -	$13,611.00
Apr-21	$ 1,218.35	$ 1,050.35	$ 168.00	$ -	$ -	$ -	$ -	$ -	$13,779.00
May-21	$ 1,218.35	$ 1,050.35	$ 168.00	$ -	$ -	$ -	$ -	$ -	$13,947.00
Jun-21	$ 1,218.35	$ 1,050.35	$ 168.00	$ -	$ -	$ -	$ -	$ -	$14,115.00
Jul-21	$ 1,218.35	$ 1,050.35	$ 168.00	$ -	$ -	$ -	$ -	$ -	$14,283.00
Aug-21	$ 1,218.35	$ 1,050.35	$ 168.00	$ -	$ -	$ -	$ -	$ -	$14,451.00
Sep-21	$ 1,218.35	$ 1,050.35	$ 168.00	$ -	$ -	$ -	$ -	$ -	$14,619.00
Oct-21	$ 1,218.35	$ 1,050.35	$ 168.00	$ -	$ -	$ -	$ -	$ -	$14,787.00
Nov-21	$ 1,218.35	$ 1,050.35	$ 168.00	$ -	$ -	$ -	$ -	$ -	$14,955.00
Dec-21	$ 1,218.35	$ 1,050.35	$ 168.00	$ -	$ -	$ -	$ -	$ -	$15,123.00
Jan-22	$ 1,218.35	$ 1,050.35	$ 168.00	$ -	$ -	$ -	$ -	$ -	$15,291.00
Feb-22	$ 1,218.35	$ 1,050.35	$ 168.00	$ -	$ -	$ -	$ -	$ -	$15,459.00
Mar-22	$ 1,218.35	$ 1,050.35	$ 168.00	$ -	$ -	$ -	$ -	$ -	$15,627.00
Apr-22	$ 1,218.35	$ 1,050.35	$ 168.00	$ -	$ -	$ -	$ -	$ -	$15,795.00

over stated

ERAP payed 12mos X $1,218 = 14,616 (Nov 2020 - Oct 2021)

Section 8 payed 12 mos X $ 1,218.35 (Nov 2020 - Oct 2021) = $14,620.20

NEW YORK STATE OF OPPORTUNITY | Office of Temporary and Disability Assistance

P.O. Box 979
Albany, NY 12201
844-NY1-Rent

*************AUTO**ALL FOR AADC 100 Tray 2 : Piece 177
Jeanette Torres
2512 University Ave Apt 4C
Bronx NY 10468-4081

Application #: **GL2ZV**

Date: **01/31/2022**

Dear Jeanette Torres,

This letter is to inform you that **Bx 2512 LLC** has applied for the Landlord Rental Assistance Program (LRAP). Their LRAP Application **GL2ZV** for **Jeanette Torres** for **2512 University Ave 4C, Bronx, NY 10468 is approved for a rental payment and a rental payment has been scheduled**. Payment will be issued directly to the Landlord/Property Owner/Property Management Company.

The total rental amount scheduled to be paid to **Bx 2512 LLC** for **2512 University Ave 4C, Bronx, NY 10468** is: **$14616**

The following is the total amount of rental arrears (back rent) to be paid per month:

- March 2020: $0
- April 2020: $0
- May 2020: $0
- June 2020: $0
- July 2020: $0
- August 2020: $0
- September 2020: $0
- October 2020: $0
- 1. November 2020: $1218
- 2 December 2020: $1218
- 3 January 2021: $1218
- 4 February 2021: $1218
- 5 March 2021: $1218
- 6 April 2021: $1218
- 7 May 2021: $1218
- 8 June 2021: $1218
- 9 July 2021: $1218
- 10 August 2021: $1218
- 11 September 2021: $1218
- 12 October 2021: $1218
- November 2021: $0

IMPORTANT NOTE: If a Landlord / Property Owner participates in the program and provides a cumulative record of arrears (back rent), the months that appear on this notice may not match the landlord's monthly record. The LRAP payment shall be applied to reduce the total arrears due. The total LRAP payment is the maximum that you are eligible for, but would not be more than the total arrears due as documented by the Landlord / Property Owner (up to a maximum of 12 months).

P.O. Box 979
Albany, NY 12201
844-NY1-Rent

After the landlord receives this money, they must:

- Apply the money to the past-due rent
- Waive any late fees on the past-due rent

If you are still residing in the unit for which rental assistance was received, your landlord must:

- Not raise the rent for 1 year after the first rental arrears payment is received
- Not evict you for reasons of expired lease or holdover tenancy for 1 year after the first payment is received
- Notify you of the protections listed above

We Notified the Landlord/Owner of This Decision
A notification was also sent to **Bx 2512 LLC** to let them know their LRAP Application **GL2ZV** was approved and a rental payment is scheduled.

Please note that the **Tenant Safe Harbor Act** may prohibit a court from evicting you for not paying your rent during the COVID-19 covered period, which began on March 7, 2020 and continued until January 15, 2022, if you suffered a financial hardship during that same COVID-19 covered period.

If you think you are at risk of eviction, funding is available to provide legal services or attorney's fees for tenants. These services — intended to help tenants maintain housing stability — may include legal advice, representation in housing court, tenant/landlord mediation, and linkages to additional assistance and resources.

If you live outside of New York City and your income is 80% or less of Area Median Income (AMI) you may be eligible for help with legal services. Please go to Free Legal Services | Emergency Rental Assistance Program | OTDA (ny.gov) for information about accessing these services.

If you live in New York City, please go to Legal Services for Tenants - HRA (nyc.gov) for information about accessing legal services.

Do You Have Questions?
If you have any questions, you may reach us through any of the following methods:

- Contact us by phone:
  - 844-NY1RENT (844-691-7368)
  - For the hearing impaired, TTY phone number: 1-833-843-8829.
- Contact us by Webchat: Chat with a representative
- Contact an Emergency Rental Assistance Program (ERAP)/LRAP Community Based Organization in your area: https://otda.ny.gov/programs/emergency-rental-assistance/help-applying/

Thank you, New York State Landlord Rental Assistance Program 844-NY1-RENT (844-691-7368)

Ha recibido un mensaje importante del Programa de asistencia con el alquiler para arrendadores (LRAP, por sus siglas en inglés) del estado de Nueva York (NYS, por sus siglas en inglés).

Asunto: Aprobación de solicitud para el LRAP

1/25/2022
Jeanette Torres
2512 University Ave 4C, Bronx, NY 10468
GL2ZV

From:	Jennifer E. Benten
To:	stopillegalprofiteering
Subject:	Price Gouging /Jason Sherman Jack Frost Heating and Air
Date:	Thursday, March 10, 2022 4:14:07 PM

[EXTERNAL]

On 1/30/22, my husband called Jack Frost Heating & Air because our 5 yr old furnace wasn't working. Jason Sherman came out that day, and charged $120 for the 5 minute service call (he insisted on cash, which he was paid with) and would be out the next day with the part. On 1/31/22, Jason Sherman arrived at the house approximately 10:15 am. He was there a total of 45 minutes installing a motor on our 5 yr old furnace and charged us $780.12 for parts and labor. My husband asked him for an itemized bill, but Mr. Sherman stated that the place he got the part from, put it on his account at the store, and when he received his monthly statement from the, he will give him a copy of the receipt for the part. I got home from work and called Mr Sherman and asked how much was the part. He stated it was $490.00 for the motor. I then asked how much was his hourly rate and he stated $75. I asked where did he get the motor, and AT FIRST he said Buffalo Johnstone, at which I said I will call them for the price of the motor, then he stated VP Supply (7165-895-2800), at which time I then called them up and spoke to someone in customer service who stated that Mr. Sherman was there that morning for the part, which is in stock all over WNY for a new furnace, paid $289 CASH for it (which he does not have an account there) and left approximately 8am. I then called Mr. Sherman back and told him he overcharged us for the part, and he was there less than an hour installing the part. He then stated he charged us FOUR (4) hours to locate the part (his service call was on a Sunday, and he was at the place when they opened, and the part is in stock all over WNY) and 3 hours drive time.

Why are we paying him for his "drive time" and his "locating the part", his apparent and ridiculous outside labor charge? Since when does anyone get charged for locating and driving to get a part.

It is clear that when I called him and stated that the company only charged him $278 for the part and he charged us almost $500 for the part, "his supplier overcharged him for the part". Mr. Sherman could of put this through the warranty for the 5 yr old motor for our 5 year old furnace, thus, he would of got the $278 from the company, rather than the almost $500 he charged us (difference of $222!!!), and his hourly rate of $75 for the less than 45 minute install (difference of $427 that he overcharged us).

I can only imagine Mr. Sherman overcharging every customer like this. His number on his bill is disconnected and there is no address on his bill. He doesn't break down his price or labor and in his letter to Capital One, states that he will re do a new bill if need be.

This man, obviously, is price gouging and taking advantage of people in desperate need of heat and must be stopped. He insisted on us paying cash, which my husband did for the service call, but not the install.

Attached, please see his bill, and his letter to Capital One trying to justify a $278 part and $75 service call, which the total would be $353 total cost!!! His total bill for this job was $900 (he overcharged us $547). We are just sickened by this senseless act of price gouging.

Thank you for your time in the matter.

Jennifer E. Benten
10302 Smithley Road
Alexander, NY 14005
716-867-0319

JACK FROST

Heating & Air Conditioning

"Quality You Deserve"

№ 0320

Phone: 585.815.9909
Fax: 585.250.4494
jackfrost09@yahoo.com

CHECKLIST

HEATING

GAS VALVE
PRESSURE IN ___ OUT ___
PILOT SAFETY
IGNITOR
THERMOSTAT
LIMIT SET ___ WORKING ___
BLOWER MOTOR AMPS
START ___ RUN ___
RETURN AIR
TEMP ___ STATIC ___
SUPPLY AIR
TEMP ___ STATIC ___
TEMP RISE
TOTAL STATIC
HEAT EXCHANGER
VENT TYPE
INDUCER AMPS
INDUCER WC"
CONDENSATE PUMP
FILTER

AIR CONDITIONING

VOLTAGE DROP
COMPRESSOR AMPS
START ___ RUN ___
CONTACTOR
CONDENSOR FAN MOTOR AMPS
START ___ RUN ___
CONDENSOR COIL
TEMP IN ___ TEMP OUT ___
HEAD PRESSURE
SUCTION PRESSURE
EVAPORATOR COIL
TEMP IN ___ TEMP OUT ___
STATIC IN ___ STATIC OUT ___
SUPER HEAT / SUB COOLING
CONDENSATE DRAIN

WATER TYPE
TDS
PRESSURE

REFRIGERANT
TYPE: ___ QTY: ___
Refrig. ___
1. Recovered yes no ___
2. Recycle yes no ___
3. Reclaimed yes no ___
Returned to yes no ___
This System ___
4. Disposal ___
Non-useable yes no ___
5. Disposal ___

EQUIPMENT
Changed out (or replaced) yes no
Dismantled yes no
6. Refrig Disp.
OWNER'S INIT.

CUSTOMER INFO.

FULL NAME Tim Benton
DATE 1-31-2022
STREET 10302 Smithley Rd
CITY Alexander STATE NY ZIP 14005
PHONE 716-587-1848 WORK PHONE
E-MAIL
MAKE Ingersoll Rand MODEL ___ SERIAL # ___
MAKE ___ MODEL ___ SERIAL # ___

REASON FOR CALL
No Heat
FOUND WRONG
IDM

DESCRIPTION OF WORK

PART #	DESCRIPTION	ACCEPT	DECLINE	SERVICE
	Installed x1 IDM motor			$816.12
	Service call credit			$60
	GAS LINE LEAK SEARCH			
	HUMIDIFIER MAINTENANCE			
	UNIVERSAL SAVINGS AGREEMENT			
	WATER HEATER SERVICE			
	PLUMBING PROTECTION PLAN			

REPAIR AUTHORIZATION

I HAVE THE AUTHORITY TO ORDER THE ABOVE WORK AND DO SO ORDER AS OUTLINED ABOVE

☐ Customer Has Authorized
☐ Declined Repair
X ___ SIGNATURE ___ DATE

NOTE: ALL REPAIRS PERFORMED AT A FUTURE DATE WILL BE SUBJECT TO ADDITIONAL CHARGES

DIAGNOSTIC FEE $
SUBTOTAL $756.12
TAX $24
TOTAL DUE $780.12

Your Service Agreement Saved You
$ ___ Today

☐ CASH ☐ CHECK #
☐ VISA ☐ MC ☐ DISC

X TBenton
SIGNATURE

X 1/31/22
DATE

PARTS DISPOSAL

I request any defective parts to be removed and disposed of as a service to me. I understand any parts removed will be recycled and cannot be returned at a later date. INITIAL: ___

On Jan. 30, 2022, I received a "No Heat" call from Tim Benten, soon after I showed up at 10302 Smithley Road in Alexander, NY and determined that the furnace draft motor was no good. I charged him around $100 for the service call that day. I didn't have the part on my truck so I told Tim that I would give him a call in the morning with price and availability. On Jan. 31, 2022, after locating the parts the following morning, I called Tim and told him that with parts and repair that the total amount would be around $800. He gave me authorization over the phone to go ahead and do the repair. After picking up the part in Buffalo, NY and going back to Alexander, NY I completed the repair and gave Tim the bill. The bill with parts, labor, & tax came to $780.12 in which Tim signed, dated and paid with a credit card. Jan. 31, 2022, around 4:25pm I received a call from Mrs. Benten wanting to know if there was any way that she could warranty the part along with other questions about the warranty and I told her that she had to contact the company that installed the furnace, I was only there for the repair. She also brought to my attention that the place that I purchased the part gave her a purchase price of around $300.00 and I was charged $476.00 for the part. With her bringing that to my attention I didn't want to discuss that with her any further at that time, so the following morning I called my supplier, and they overcharged me for the part and credited my account for $140.89. I proceeded to contact Mrs. Benten at 9:07am to tell her that I would be making up the price difference from what the part was and what they charged me, and so I mailed out a check that day for the price difference of $140.89. Mrs. Benten never returned my phone call. The draft motor total breakdown; Parts=$315.23, Labor= $260.00 & Tax=$19.20. My hourly rate is $75.00/hour and I had over 4 hours in locating the part, driving to purchase the part (round trip was over 75 miles for me), & installing the part. On the bill I didn't deduct the $60.00 credit for the previous call, so the total amount should be $579.23, so the bill should read $719.23, and I mailed a check to them for $140.89 for the difference for the part. I didn't have to give them the $60.00 credit from the previous call and that was my fault for not deducting it from the bill. By giving the $60.00 credit it lowers the tax amount on the bill from $24.00 to $19.20. I can write a new invoice out if need be. They are contesting the whole charge and from my understanding they don't want to pay for any of it. Thank you for your time.

Sincerely,

Jason Sherman

"Jack Frost Heating & Cooling of Batavia LLC"

Phone#: 585-297-9833

E-Mail: Jackfrost09@yahoo.com

From: Colleen Church
To: stopillegalprofiteering
Subject: Price gouging by mirabito, Verona in Delhi and oneonta new york
Date: Friday, March 4, 2022 11:38:11 AM

[EXTERNAL]

In the last three days gas, at both vendors in Delhi and Oneonta New York has gone up $.30. The only explanation given when asked, was that corporate was enforcing gas price hikes due to the pandemic, inflation and the war. We have survived without a major gas spike this throughout the pandemic and the year of rising inflation. As for the war, it has nothing to do with us and we do not get a large amount of oil from Russia, if any at all. What happened to our pipeline and getting oil from our own country? Paying $4.19 a gallon for gas is ridiculous and is price gouging by all of the gas companies. Something needs to be done and quickly before people cannot afford gas to be able to go work.

Seriously concerned about the state of our country.

Colleen T Church

From:	Richard Chapman
To:	stopillegalprofiteering
Subject:	price gouging car dealers
Date:	Saturday, March 5, 2022 7:14:01 PM

[EXTERNAL]

Hi,
Thank you for being aware of price gouging. Can anything be done about car dealers adding 5 to10 thousand dollar mark up on cars! The manufacturers don't get this money, just the greedy car dealers!
thank you,
Richard Chapman

From: ishraque nazmi
To: stopillegalprofiteering
Subject: Price Gouging Comments
Date: Sunday, March 6, 2022 1:46:17 PM

[EXTERNAL]

Con-Ed's recent increase in prices have been outrageous and unfair. They're website claims the increases will be 3-10% in New York City, for electricity and gas, and that they are not making any profits on these increases.

In reality, prices have doubled for many residents, myself included.

There are no other options to get power into our homes, we're beholden to this company and their malpractices.

-Ish Nazmi in Brooklyn, New York.
--
Sent from Gmail Mobil

From: garywood@optonline.net
To: stopillegalprofiteering
Subject: Price Gouging complaint
Date: Tuesday, March 15, 2022 6:32:23 PM

[EXTERNAL]

I saw an article in Newsday "State AG launches price gouging probe" and am responding with a price gouging complaint. The article provided this email address to send complaints.

Over Thanksgiving weekend of 2021, I needed to buy a car because my car had been totaled from being hit by a deer. The worst possible timing.

I went to the Hyundai dealership in Riverhead, NY. I had previously purchased 2 cars at that dealership and always got a fair deal. This time was different. I purchased a 2022 Hyundai Tuscon. The dealer was originally charging $5,000 over sticker price. I was able to negotiate that down to $3500. The two times I had previously purchased a car from this dealership, I actually paid less than the MSRP. When I asked the salesperson, I was told that it was due to COVID. This is pure price-gouging and taking advantage of the situation through profiteering.

I was never given a bill of sale that showed this additional cost. After I got home, I called the accounting dept at the dealership and was forced to leave a message. I asked to get a copy of the bill of sale for my new car. Needless to say, my call was never returned and I have not heard back from them.

I would like to pursue whatever charges apply in this situation in hopes of getting my $3500 refunded. I would be happy to speak with anyone about this or provide whatever I can in order to expose and prosecute this unscrupulous dealer for what they are, crooks!

Thank you for you consideration. I can be reached at the contact info below.

Gary Wood

11 Lily Pond Lane

Eastport, NY 11941

631-325-2109

garywood@optonline.net

From:	Dr. David A. Grossman
To:	stopillegalprofiteering
Subject:	Price Gouging complaint
Date:	Monday, March 28, 2022 9:23:25 AM

[EXTERNAL]

Dear Sir/ Madame:
I appreciate your efforts in combating price gouging during times of public crises. I wish to file a complaint against one of Long Island's largest businesses, the "beloved" Henry Schein company. Henry Schein is "a leading global distributor of healthcare products" (Dunn & Bradstreet), whose record-breaking profits over the past two years have come on the backs of medical and dental professionals trying to survive in these tumultuous times. I am not going to discuss gloves, facemasks or other PPE- obviously Covid has wreaked havoc in the cost and availability of PPE around the world. I am instead going to mention other items that I- along with other dentists- have routinely utilized over the years in daily practice.

I turned 60 on March 15, 1960, The Covid restrictions and shutdown in New York started the following day. Prior to that weekend, here is what I paid for several items, as taken from receipts that I still possess, along with subsequent price increases and dates:

item #	description	cost	date	cost	date	increase	current cost	as of	increase over pre-Covid cost
112-4855	sterilization pouches	$18	3/2/20	$23.79	7/6/20	32%	$33.79	2/5/22	88%
107-7388	saliva ejectors	6	3/2/20	10.29	8/6/20	72%	10.29	2/11/22	72%
101-5830	autoclave spore test	62.25	3/13/20	91.79	7/1/20	47%	108.99	12/23/21	75%
104-2613	prophy angles	44.97	3/13/20	49.29	7/1/20	19%	43.43	1/28/22	-3%
726-3175	impression material	62.25	3/2/20	74.49	6/5/20	20%	71.36	2/25/22	15%

I strongly believe that Henry Schein grossly profited by taking advantage of healthcare providers, and I thank you for taking the time to read this email. I would be happy to discuss this issue further should you so desire.
Sincerely,
David Grossman

David A. Grossman, DDS FAGD PC
131 Main Street suite 10
East Rockaway, New York 11518
(516) 223-0726
drdavidg22@gmail.com

From:	Luke Herrine
To:	stopillegalprofiteering
Subject:	Price Gouging Rulemaking Comment
Date:	Thursday, April 14, 2022 12:52:30 PM
Attachments:	Herrine Price Gouging Comment.pdf

[EXTERNAL]

To whom it may concern:

Please find attached a comment submitted in response to the Advance Notice for Proposed Rulemaking of March 3, 3022, pursuant to N.Y. Gen. Bus. L. § 396-r(5).

Best,

Luke Herrine

To: New York State Office of the Attorney General
From: Luke Herrine
Re: Comment in Response to Advance Notice for Proposed Rulemaking of March 3, 3022, pursuant to N.Y. Gen. Bus. L. § 396-r(5)

I submit this comment primarily to explain the relevance of the concept of *fair price* (also called "just price", both translating the Latin *justum pretium*) in making sense of price gouging laws and the enforcement thereof. I am an incoming Assistant Professor of Law at the University of Alabama and a current PhD Candidate in Law at Yale University, with a research focus on the governance of consumer-facing markets and on the contemporary relevance of moral economy approaches to market governance when combined with non-neoclassical economic theory. My concern here is with the theory and intuitions that should guide regulation rather than with making specific claims about which form of price gouging regulation will work best. The latter would have to be based on more extensive empirical work than I engage with here. Accordingly, this comment does not directly address most of the excellent practical questions in the ANPRM, but my hope is that it will be of use in helping to think about those questions. That said, I do provide thoughts on a couple of more practical questions, including how to think about different *types* of market disruptions, on one dimension (local versus general) and some ideas for conceptualizing "unfair leverage" under the statute.

What is Fair Price?

My core claim is that price gouging regulation exists in order to help ensure that the burdens of sudden disruptions to the normal social provisioning process are shared fairly insofar as those burdens are mediated through market prices. Thus, it is a form of fair price regulation. But what is fair price regulation?

If one spends too much time around mainstream economists, one might be inclined to think the whole idea of a state enforcing norms of fair price is either extraneous or perverse. In standard economic thinking, if "fair price" means anything, it means an "efficient" price, i.e. the price that emerges from the unplanned equilibration of supply and demand in a "perfectly competitive" market embedded within other "perfectly competitive" markets, such that all factors of production (including workers) are paid their marginal contribution to a maximized total social surplus. Thus, to enforce a "fair price" is a matter of setting up a social system in which nobody has the power to determine which price is fair–only "the market" as a whole can do so through the "signals" that prices send about the relative social priorities for different allocations of resources. To say that such a price is "fair" is redundant, since it tracks the (allegedly) more precise concept of efficiency.[1] If, on the other hand, a state attempts to impose a different norm of fairness, it risks interfering with the "price mechanism", inviting not just inefficiency but shortages, hoarding, rationing, black markets, and other horribles.[2]

This general way of thinking about the process of price setting and its relation to fairness is based on a faulty model of how markets work that can easily lead one astray. First of all, there is no preexisting market process in which a state can choose to intervene or not. Rather, the state–which (as any lawyer will quickly recognize) is not a singularity but actually a multitude of organizations constantly negotiating their relationships to each other–is *always* involved in determining how prices are set in various different ways. Robert Hockett and Roy Kreitner illustrate how easy it is to underestimate the state's role: "On the obvious side, public employment and procurement effectively benchmark prices for some of the most important goods and services in the putatively privately ordered economy. Similarly, changing background rules make all the difference in pricing many of the most important market interactions. It is hard to imagine pricing pharmaceuticals without patent law; impossible to make sense of real estate prices without local zoning ordinances; incoherent to consider the price of medical care without insurance law."[3]

[1] For a sense of how "price gouging" might be a legitimate form of regulation on this way of viewing the world, see Ian Ayres, *Market Power and Inequality*, 95 CAL. L. REV. 669 (2007) (referring to "price gouging" as prices set by firms exploiting pricing power over consumers–collecting "rents"--rather than pricing for the marginal cost of providing for those consumers). For a related approach, see Ramsi A. Woodcock, *Toward a* Per se *Rule Against Price Gouging*, CPI ANTITRUST CHRONICLE (2020), https://www.competitionpolicyinternational.com/wp-content/uploads/2020/09/07-Toward-a-Per-Se-Rule-Against-Price-Gouging-By-Ramsi-A.-Woodcock.pdf ("Gouging is the use of price to ration access to a good that is in shortage, where shortage means that demand unexpectedly exceeds supply at the original price set by the seller before the unexpected demand materialized.").

[2] A general version of the argument that aiming at fairness undermines the more important value of efficiency is made in LOUIS KAPLOW & STEVEN SHAVELL, FAIRNESS VERSUS WELFARE (2006) (Kaplow & Shavell argue for a concept of welfare that is broader than Pareto optimality, but that does not matter for present purposes). For a response that dismantles the core argument in favor of efficiency versus fairness, see Jules L. Coleman, *The Grounds of Welfare*, 112 YALE L.J. 1511 (2003). There is a much larger literature debating this question and the related question, also associated with Shavell and Kaplow, of whether all "distributive"/fairness concerns should go through the tax system to avoid the "double distortion". *See generally* Chris William Sanchirico, *Deconstructing the New Efficiency Rationale*, 86 CORNELL L. REV. 1003 (2001).

[3] Robert Hockett & Roy Kreitner, *Just Prices*, 27 CORNELL J. L. & PUB. POL'Y 771, 783 (2018).

Even the process of price formation through market competition among private firms is structured by "the state" through law, when–through property, corporate, antitrust, labor, securities, etc. law–it determines who has control over the prices of which output over which period of time at which stage of the production process, who must be consulted and who may not be, etc.[4]

Nor is there any way for a state to set up a "neutral" market in which prices emerge merely from the de-socialized actions of competitive agents. There is not now nor has there ever been a market in which all market participants are "price takers" forced to set prices at marginal cost at every moment (with prices perfectly signaling underlying "information" about "preferences"). Rather, as many studies have shown, market participants set prices as a mark up of (estimated future) costs based on strategic goals (e.g. revenue targets, profit targets, increased market share, etc.) and ability to influence other market participants.[5] Pricing works differently in different markets depending on a number of different factors, among which is how the law regulates price setting: Is it legal to have a single firm serve as a clearinghouse through which all trades pass? Must workers or consumers be involved in the price setting process (via board representation, collective bargaining, or otherwise)? Etc. In other words, whether *publicly* or not, price setting is always *governed*–that is, it is the subject of ongoing coordination by those with power in the relevant market. There is no pure price that merely reflects the intersection of preferences and costs.

It makes little sense, then, to draw a clean separation between a "market" setting a price and "the state" intervening. And it makes little sense to use an unattainable ideal of perfect competition to guide our moral judgments. Rather, prices are always the subject of various forms of governance, shaped in various ways by the legal regimes that govern actors in the market. To aim at a "fair price" is simply to ask how to ensure that the governance of prices in a given context appropriately balances the interests of those affected by those prices.

Of course a full account of the justice of any given pattern of prices would implicate nearly every aspect of a social system, including aspects well beyond governance of the price setting system. Practical efforts to police prices for fairness focus

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[4] *See generally* Nathan Tankus & Luke Herrine, *Competition Law as Collective Bargaining Law*, *in* LABOR IN COMPETITION LAW (Forthcoming 2022); Sanjukta Paul, *Antitrust as Allocator of Coordination Rights*, 67 UCLA L. REV. 378 (2020); William Boyd, *Ways of Price Making and the Challenge of Market Governance in U.S. Energy Law*, 105 MINN. L. REV. 739 (2020).

[5] *See* FREDERIC S. LEE, POST KEYNESIAN PRICE THEORY 201-31 (1998).

on a narrower matter: how to manage the way prices are set in a given set of markets to balance the socially recognized interests of the parties in those markets. Where fair price regulation is most visible is where the legal system aims to correct for potential sources of *unfairness*, of *imbalances of power* between buyers and sellers in a market.[6] Usually these inequalities of power will have been created by other parts of a social system and the goal of fair price regulation is to minimize their impact on the price setting process in a given market–to prevent the market from amplifying those inequalities. Once one has an eye to look, one can find examples of regulation of this sort all over the place. Minimum wage laws, collective bargaining laws, rent stabilization laws, utility price regulation, anti-discrimination laws, tariffs, anti-manipulation rules on organized exchanges, unconscionablity doctrine, and on and on aim to correct for imbalances of power that tip decentralized bargaining in favor of some parties. I emphasize that these laws do not necessarily correct for market *failures*: many aim to correct for the *efficient* operation of the price mechanism, which sorts people by ability to pay and to bargain.

In consumer markets, fair price regulation has, both historically and contemporaneously, meant paying special attention to buyers' vulnerabilities and to sellers' power, and especially to their interaction. With respect to price, that means a primary focus on situations in which sellers can charge more at the expense of buyers without competition from other sellers serving as a sufficiently disciplinary influence (or, indeed, serving as an amplifying influence). Such power asymmetries might be due to inelastic demand, to few options for buyers (due to market concentration, product differentiation, situational monopoly, market segmentation due to discrimination), to relatively unsophisticated buyers and/or insufficient information to produce reputational consequences, to sellers colluding to throttle supply or to avoid adjusting prices for cost, and so on. Buyers' vulnerabilities might also be the subject of concern where they are unevenly distributed, causing disadvantaged buyers to bear the brunt of high prices. In such situations, fair price focuses as much on intra-consumer fairness as consumer-seller fairness. Fair price policing in consumer markets has also involved focusing special attention on markets for essential goods, which, in addition to being likely to contain several of these asymmetries of power, are also markets where the stakes of being priced out are especially high (try: starvation, houselessness, social isolation) and where advantage-taking is especially contemptible. And it has long included special provisions

[6] On some of the history of the concept as it relates to decentralizing power, see William Boyd, *Justice Price, Public Utility, and the Long History of Economic Regulation in America*, 35 YALE J. REG. 721 (2018).

to prevent advantage-taking during emergencies (food scarcity in particular), which, as with markets for essential goods, present especially ripe circumstances for one-sidedness in which one-sidedness is especially morally salient.[7]

Price Gouging as Fair Price Regulation

The special attention to emergencies or, in the language of New York's price gouging statue, "abnormal disruptions", is obviously of particular relevance here. From a fair price perspective, price gouging laws can be understood as one tool to prevent disruptions of the normal operation of the social provisioning process from disproportionately harming the most vulnerable and/or from allowing those with power over the social provisioning profiting off of common vulnerability.

High prices during disruptions raise fairness questions even when those prices are caused by increased costs of provisioning or backlogs[8]–that is, even when they are not due to outright predatory behavior from firms. In a system of persistently unequal incomes, high prices tend to be most harmful to those who are already vulnerable, either pricing them out of a market or forcing them to pay money that is relatively more valuable to them (especially if their sources of income and/or access to payment systems have also been disrupted). In a market for essential goods like food or water or fuel or electricity or healthcare, being priced out has especially high stakes and being forced to pay high prices (given the relatively low price elasticity of demand for such goods) will mean being forced to confront potentially deadly trade-offs. The moral urgency of prioritizing everybody's basic survival before anybody's luxury also makes fairness concerns about the availability of essential goods a particularly apt focus for officials charged with protecting the public interest.[9]

Due to these and related considerations, there is good reason to be worried about price-based rationing in emergencies (even more so than in normal times). These might even be compelling enough considerations to provide a *prima facie* case for compelling

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[7] The discussion of "moral economy" that began with E.P. Thompson's historical research on food riots has uncovered various legal and customary practices with respect to how to deal with scarcity of essentials, especially grain, including the regulation of prices. *See generally* E.P. Thompson, *The Moral Economy Reviewed*, *in* CUSTOMS IN COMMON 259 (1991).

[8] Backlogs do not necessarily imply increased costs, so increased prices to manage backlogs can also be a way for firms to increase profit margins.

[9] *See generally* K. Sabeel Rahman, *Constructing Citizenship: Exclusion and Inclusion through the Governance of Basic Necessities*, 118 COLUM. L. REV. 2447 (2018). On urgency and its relation to the moral evaluation of preferences, see Thomas Scanlon, *Preference and Urgency*, 72 J. PHIL. 655 (1975).

firms to *reduce* profit margins or even to take losses with respect to certain goods during emergencies (knowing that firms with access to retained earnings, capital markets, and the possibility of cross-subsidizing by raising prices on other goods can well survive temporary dips in earnings). Taking such an action could, of course, cause perverse consequences–from collapsing a market altogether (in the worst case) to promoting panicked buying by the best-informed consumers to interfering with the investment necessary to increase supply. Navigating this territory would require a thickly empirically informed and finely tuned approach, and is likely to be most effective if it includes more than just price regulation (e.g. emergency subsidies, releasing stockpiles). So it is perhaps not the ideal territory for price gouging enforcement on its own, at least not in general.

Price gouging laws generally, and New York's in particular, tend to target a source of unfairness that layers on top of these: firms taking advantage of the disruptions caused by an emergency to increase their profits. Exactly the spikes in demand (both changes in composition and changes in price elasticity) that make price-based rationing itself problematic make it easier to charge higher prices even when doing so is not necessary to cover costs.[10] And the confusion that follows an emergency can make it easier for firms to increase prices without facing as much of a reputational cost as they usually would (we should not forget that, contrary to the impression one might from thinking in terms of market equilibrium, firms often maintain medium-term price stability even when doing so is not the short-term profit-maximizing strategy so as to maintain customer loyalty). What is more, if disruptions are of sufficient scale and scope, they can heighten the advantages of incumbents by raising barriers to entry or even to new investment. All of which makes it easier for firms to increase prices even more than their costs increase without being punished by consumer exit.

Policing this type of advantage-taking by firms involves its own balancing act, but, in principle, it is a simpler practical and moral task than policing high prices due to increased costs. It presents all the same intra-consumer and consumer-seller fairness concerns plus the additional consumer-seller fairness concern that the price charged is

[10] For a neoclassical discussion of price-based rationing in moments of shortage and the value of banning it (even more broadly than the New York statute does), see Ramsi A. Woodcock, *Toward a* Per se *Rule Against Price Gouging*, CPI ANTITRUST CHRONICLE (2020), https://www.competitionpolicyinternational.com/wp-content/uploads/2020/09/07-Toward-a-Per-Se-Rule-Against-Price-Gouging-By-Ramsi-A.-Woodcock.pdf; Ramsi A. Woodcock, *The Economics of Shortages*, LAW AND POLITICAL ECONOMY BLOG (Jun. 2, 2020), https://lpeblog.org/2020/06/02/the-economics-of-shortages/

even more than necessary to manage the cost of disruption (over and above the normal cost of provision).[11] There is also the practical consideration that preventing firms from charging higher prices than necessary to bring a good to market will be much less likely to cause the perverse consequences of market collapse or underinvestment.[12] In other words, price gouging regulation can work alone to police fair prices (rather than only if it works hand-in-hand with, say investment policy) without undermining its own purpose.

One can also think about the focus on profit margins in another way. The main social purpose of profit (where it has any purpose at all) is to induce socially beneficial investment. Prices that generate profits that are higher than necessary to induce investment are prices that provide advantages to investors at the expense of consumers without legitimate social purpose. They are *unfair*: extractive, exploitative. They may also pull investment away from places where it could be more useful–making them *perverse*. Determining the point at which profits are "excessive" is no straightforward matter, but, in a time of disruption, it is sensible to use profit margins that prevailed before the disruption (perhaps establishing a band of the minimum and maximum during a business cycle or setting the average margin as the "normal" point toward which margins gravitate) as a starting point: these are margins that would seem to have been *at least* enough to induce the necessary investment. Any margin greater than that would then be presumptively excessive unless there were evidence that higher margins are needed to induce investment *and* that disruption does not make new investment impractical (thus undermining the effectiveness of high margins in inducing investment). Conversely, if there is evidence that profit margins prevailing before the pandemic were excessive, a

[11] This oversimplifies a bit, since increased margins could be justified as the short-term cost for longer-term benefits that come with the increased investment necessary to build capacity to move past the disruption.

[12] Woodcock argues for a price gouging rule that focuses on the short-term effects of sudden increases in demand, since firms in such a situation face the same costs as they did before, making any increase in price a "scarcity rent" that (in most cases) transfers surplus from consumers to firms. This analysis is sound for the subset of cases in which nothing changes except for a surge in demand and for the time period between that surge and the increase in inventories that resolves the temporary shortage (which, under competitive circumstances, is likely to bring prices back down). In other words, it is a useful framework for thinking about relatively pure "rationing" situations, and a useful starting point more generally. But disruptions can also cause slower increase in inventories, changes in ability to shop around, changes in ease of entry, changes in labor costs, and other circumstances that make the analysis more complicated. Additionally, price gouging laws might usefully target both shortages and price surges (whether or not the one causes the other) that last longer than one inventory cycle.

lower margin should serve as a baseline (absent evidence that higher margins are now justified to induce investment).[13]

Finally, intervening to prevent opportunistic increases in profit margins can be a way to dampen inflationary dynamics. If firms are taking advantage of unhinged price expectations to increase their own prices, that can create a profit-price spiral or "profit-push inflation", in Gardiner Means's terminology.[14] Means argued that this is more likely in more concentrated industries, although his evidence has been reconsidered.[15] Whether or not market concentration has something to do with it, preventing increases in profit-margin-increasing prices can both lower certain prices in the short term and prevent broader and recursive price increases (something closer to "general" price increases) in the medium term, all without throttling production (as, say, increased interest rates would). Likely these will not be the primary set of considerations for price gouging enforcement, but they might be benefits of price gouging enforcement relative to other means of inflation control in scenarios where inflation control is called for.

Some Practical Considerations

The purpose of this comment is primarily conceptual ground clearing. But I wish to highlight some implications of this ground clearing by exploring the consequences of two idealized types of disruptions: localized disruptions such as hurricanes or tornadoes and generalized disruptions such as pandemic lockdowns or trade embargoes. By "localized", I mean disruptions that have an impact primarily on consumers' lives (and their patterns of demand) and the most consumer-proximate portion of the distribution system, which includes brick-and-mortar retailers, service delivery (including hospitals), and package shipment. By "generalized", I mean disruptions that have an impact higher up the chain of production and/or distribution.

In the case of localized disruptions, a price gouging analysis will usually be relatively simple. Production and wholesaler costs will not have been affected by the disruption, so increased prices from either producers or wholesalers will be intrinsically

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[13] Determining any of these facts requires collecting a lot of information that is not readily available. Arriving at proxies and/or developing automatic and mandatory disclosure schemes for costs would thus be desirable.

[14] Gardiner C. Means, *Simultaneous Inflation and Unemployment: A Challenge to Theory and Policy*, 18 CHALLENGE 6 (1975).

[15] *Compare id. with* Federic S. Lee & Paul Downward, *Retesting Gardiner Means's Evidence on Administered Prices*, 33 J. ECON. ISSUES 861 (1999); WILLI SEMMLER, COMPETITION, MONOPOLY, AND DIFFERENTIAL PROFIT RATES (1984).

suspicious–justifiable only if delivery costs increase or *perhaps* if the increase in demand is so great that it requires new investments (in such case, it's not inevitable that high prices will be necessary since higher volume will increase revenues). Price increases from retailers will be hard to justify unless retailers face increased delivery costs or perhaps increased wage demands (for hazard pay, for example), in which case one would expect increased prices across the board or perhaps, if firms internalize norms of fairness, concentrated in non-essential goods. Increased prices simply in response to increased demand should be treated as presumptively unfair.[16] High prices will usually not be needed as a signaling mechanism, since retailers are well aware of their inventory and of the unusual circumstances.[17] Since suppliers and producers have not been disrupted (and assuming the localized disruption is not of sufficient size to produce a demand so great it strains the ability of existing producers and distributors to meet it without expanding capacity), retailers can simply increase their orders, perhaps even receiving volume discounts in doing so. And they are an unfair form of queuing–one that disproportionately disadvantages the most vulnerable consumers while allowing retailers to earn profits well in excess of what is necessary to bring forth goods to the market.

In the case of generalized disruptions, the analysis will generally be more complicated. Price signaling, for instance, might serve a useful purpose in drawing forth new entrants who are not privy to internal inventory records but who can see the possibility of a profit opportunity. But allowing signaling for new investments is only a justifiable reason for high prices if new investments can successfully be made–something that may not be so due to other aspects of the disruption (e.g. bottlenecks in an intermediate goods supplier). These and (many) other complications justify a more cautious approach–one that focuses more closely on the way a disruption is rippling through a chain of distribution, with attention to market structure of each link. That said, confusing environments create greater opportunity for manipulation and advantage-taking (as expectations come unhinged and peoples' ability to track price changes becomes overwhelmed) and chaotic environments are ones in which there is enormous

[16] Here I overlap with Woodcock's analysis and have benefited greatly from reading it.
[17] Woodcock argues that low-inventories may themselves serve as a signal to other market entrants, and perhaps a better one since they also signal the efficient price. I am not so sure that inventories are as easily observed by potential entrants, unless those entrants are themselves already involved in the industry in question (e.g. upstream suppliers). It may depend on industry. In such a case, new entry might also present the threat of increased market power in the long term.

money to be made in speculating on inherently uncertain price trajectories. Likely the best approach in such circumstances is to focus first on opportunism, excess profit margins, and unequal treatment of different customers (including first order price discrimination, *if* its effects are regressive) rather than attempting to police price-based queueing as it ripples through a production-distribution system.

A Final Note on Unfair Leverage

A fair pricing perspective also may be able to assist in defining "unfair leverage" under the statute. First, market structure will not always be important in defining unfair leverage. The situation of disruption itself gives firms leverage–whether through situational monopoly,[18] through scarcity rent,[19] through reduced possibility for entry, or otherwise–merely by virtue of their control over goods/services that people need. The first order concern of price gouging laws is to prevent sellers from exercising such leverage. And such leverage can generally be presumed, especially in cases of local disruptions.

Market power (or market segmentation) can make such leverage *worse* by making it easier to exercise or even to acquire such leverage (perhaps even by creating disruptions!), by allowing firms to increase prices more than they might have if worried about competitive undercutting, by making the price increases more longer-lasting, and in other ways. In most of these circumstances, market power merely increases leverage and should not be a precondition for finding unfair leverage at all. Rather, it should be a reason to increase damages or to exercise prosecutorial discretion to target some price increases over others. However, if market power allows a firm to throttle supply or to create a disruption, that power might itself facilitate unfair leverage. Even so, preexisting market power is not the dispositive question: the ability and willingness to exert leverage enabled by a disruption (which might itself have been caused by a firm!) is.

As for "unconscionable means", any effort to create or increase leverage over customers should be classified as such. That might include throttling supply to prevent inventories from replenishing, price discriminating to target demand inelasticity (which is likely to represent intensity of need) or lack of options, other other efforts. Again, market power might make some of these efforts easier to get away with, but a finding of market power should not be required.

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[18] On which, see MICHAEL J. TREBILCOCK, THE LIMITS OF FREEDOM OF CONTRACT 93-96 (1993).

[19] Discussed in Woodcock, *supra*.

Conclusion

This is, of course, a high-level discussion of complicated issues. My hope is that it provides some use in moving past standard ways of thinking about price gouging based on a marginal cost or perfect competition baseline as well as standard worries about interfering with “the price mechanism”. Perhaps it also helps in thinking about a positive regulatory scheme. It would be my pleasure to follow up on any point.

From:	Kimberly Ehrenburg
To:	stopillegalprofiteering
Subject:	Price gouging Tops Fuel Depew Transit Rd
Date:	Saturday, March 5, 2022 10:39:45 AM

[EXTERNAL]

Good day,

This past week on Channel 2 news WGRZ in Buffalo, NY, Thursday March 3, there was a story about low gas prices in WNY. It was stated that the Tops Fuel on Transit Rd in Depew was at 3.50 per gallon. When I arrived there later that night, it was up to 4.19, within hours of that story being aired in TV. Please look into this potential instance of price gouging.

Thank you,

Kim Petersdorf

Sent from Yahoo Mail on Android

From:	K G K
To:	stopillegalprofiteering
Subject:	Price gouging
Date:	Saturday, March 5, 2022 6:48:30 AM

[EXTERNAL]

All of these big corporations have profited massively in the very recent 2 years, all the while we have to suffer for their greed. It is corporate greed, corporate profiteering, price gouging, nothing less. None of these so called: "corporations are people" could care less about us suffering just to survive. It is, as always "profits" nothing less on their agenda!!! I want to thank our Attorney General Letitia James for looking into this, with the premise of actually stopping this greed on a national level. It is and always will be "We the people". When are we going to actually wake up in this country, I do not know, I just hope it is in the very near future.

Thank You,
Kurt Kronemberg

From:	SUSAN HAUNER
To:	stopillegalprofiteering
Subject:	Price gouging
Date:	Saturday, March 5, 2022 4:01:30 PM

[EXTERNAL]

Speedway gas station East Northport Rd, Kings Park,NY. And Speedway Indian Head RdKings Park (I am assuming same owner) gas prices are 15 to 30 cents higher than other stations in neighborhood. This has been going on prior to the recent gas hikes. I know Sukkolk County passed a law where stations are allowed to charge for air but both these stations are charged 2 dollars for 5 minutes! Susan Hauner 16 Thistle Ln, Kings Park, NY 517 328 0158

Sent from my iPhone

From: Deana DeGeorge
To: stopillegalprofiteering
Subject: Price gouging-Honda dealerships LI
Date: Monday, March 7, 2022 9:57:00 AM

[EXTERNAL]

Babylon Honda
Huntington Honda
Baron Honda
Honda city

Are all doubling their destination fees as well as charging $4-5k above MSRP for all new vehicles

Sent from my iPhone

From: Margaret Smith
To: stopillegalprofiteering
Subject: Price Increases / Gouging - Enough is enough!
Date: Friday, March 4, 2022 5:45:57 PM

[EXTERNAL]

To whom it May Concern,

I'd like to lodge a formal complaint if that's what's needed regarding the price gouging of many expenses that we New Yorkers are dealing with right now. It's been an ongoing problem and I'm tired of it.

In the past year we've dealt with many increases month after month after month. It's getting out of hand. I have seen my weekly pay check dwindle down to almost nothing over the past year and few months. I'm working very hard to live check to check- and at 62 1/2 years old, that's not fairing well for me to EVER retire.

With that said, I have also lost money from my 401k with the state of the stock market. My SS amount has also gone down the past year or so- in addition to my check having more taken out for taxes and other deductions.

When does it stop? When we're all relying on the state and federal government programs to make ends meet?

NYS needs to do something immediately or there will be many more residents moving out of state to live more comfortably. We can't keep doing this.

I feel that since the pandemic (and political party changes, as well as some U.S. / Int'l issues) American citizens have been dealing with increases in EVERY aspect of life. Large rent increases and renewal rates, Travel (Gas, airfare, some hotel rates, etc.). Groceries, Student Loan interest increases, utility costs, and so on. It's never ending. The gasoline rate right now in the Saratoga County region has gone from 3.74 gal to 4.19 in one week! That's insane! That's PRICE GOUGING - without a doubt.

Personally, I'm sick of the little guy always taking it on the chin. It's completely unfair that corporations and the like are raking people over the coals each and every day.

Thank you for letting me contact you about this. It is greatly appreciated.

Margaret G. Smith

From:	yeows66
To:	stopillegalprofiteering
Subject:	Prive gouging
Date:	Wednesday, April 20, 2022 9:25:06 AM

[EXTERNAL]

Fuel oil jumped by 2.oo per gallon when the Ukraine war started. Suburban propone is my provider. Can you check into them?

Ellen Yousey

Sent from my Verizon, Samsung Galaxy smartphone

From: chribrndt@aol.com
To: stopillegalprofiteering
Subject: Proposed profit gouging rules
Date: Monday, March 7, 2022 10:02:48 AM

[EXTERNAL]

Inflation of consumer prices ***never*** occurs because consumers insist on paying more.
It's ***always*** because the sellers raise the prices, passing higher costs on to us while not taking any sort of hit themselves. Corporate profits *spiked* during Covid, so companies could have - and should have - absorbed some of the spike in costs.

Chris Brandt

From: Friends of Mike Conners
To: stopillegalprofiteering
Subject: Question #27
Date: Saturday, March 12, 2022 11:41:21 PM

[EXTERNAL]

Please send me the questions for this hearing so I may comment. Thank you,

Michael F Conners II
Albany County Comptroller 1996-2019

From: Mcfly Fernandez
To: stopillegalprofiteering
Subject: RE: a citizen"s comment
Date: Wednesday, March 23, 2022 6:05:20 AM

[EXTERNAL]

Hello. I believe there's definitely price gouging occurring - as prices are not reflecting the 7% inflation number in how high they have gone. In many cases, prices are up 30%-50% on many items. I believe that inflation provides a ready excuse for these types of hikes.

The danger to the country is huge, because this kind of stuff can trigger a recession - as the greed causes people to limit spending, causing job cuts, causing business closures, causing more limits in spending, causing the economy to plummet. I don't wish to be an alarmist; but I am already seeing businesses closing - now that there is no more PPP money and prices are disrupting the economy.

Recently, I am going to Jersey for my groceries - because where I live, in the Bronx, food has become ridiculous. It's an outrage, what people are asking for in exchange for a bottle of juice or a sandwich. Please pursue these profiteering companies AGGRESSIVELY.

From:	Jenni Ingerick
To:	stopillegalprofiteering
Subject:	Re: Gas prices
Date:	Tuesday, March 8, 2022 12:36:21 AM

[EXTERNAL]

Up another 10 cents just today.

Sent from my iPhone

> On Mar 6, 2022, at 6:53 PM, Jenni Ingerick <jingerick@yahoo.com> wrote:
>
> I am a little concerned about the everyday price per gallon increases at the Kwik Fill/Red Apple and Speedway located on Addison Rd., State Route 417 in Painted Post, Ny. They both have increased their price per gallon more than .50 cents in a matter of just a few days. I understand there's a lot that factors into price increases but this seems a little excessive. Thank you
>
> Sent from my iPhone

From:	Woodcock, Ramsi
To:	stopillegalprofiteering
Subject:	Re: Submission regarding Advance Notice of Proposed Rulemaking (Price Gouging)
Date:	Saturday, April 23, 2022 12:28:32 AM
Attachments:	NYAG Price Gouging 2.pdf

[EXTERNAL]

Hello,

I inadvertently sent you an incomplete draft of my comment a few minutes ago. Please find the complete draft attached. Thank you. I apologize for the confusion.

Ramsi

On Sat, Apr 23, 2022 at 12:01 AM Woodcock, Ramsi <rwo236@g.uky.edu> wrote:

> Please see attached.
>
> Thank you.
>
> --
> Ramsi Woodcock
> Assistant Professor
> College of Law
> Secondary Appointment
> Department of Management
> Gatton College of Business & Economics
> University of Kentucky
> Law Building, 620 South Limestone
> Lexington, KY 40506-0048
> 859-257-1253
> ramsi.woodcock@uky.edu

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New York State Office of the Attorney General
stopillegalprofiteering@ag.ny.gov

April 22, 2022

Re: Advance Notice of Proposed Rulemaking Pursuant to N.Y. Gen. Bus. L. § 396-r(5) (Price Gouging)

To the Attorney General:

I write to respond to your office's solicitation of comments regarding New York General Business Law § 396-r on the subject of price gouging. I have written extensively on antitrust law, price gouging, and related data-driven forms of pricing such as surge pricing, dynamic pricing, and personalized pricing, and am therefore in a position to comment on a number of questions posed in the solicitation.[1] I will not address any particular question directly, but instead offer a general analysis that touches on many of them.

The economic rationale for a prohibition on price gouging is that price gouging produces rent in the economic sense of payments to firms in excess of the minimum they require to be ready, willing, and able to continue producing for the market at optimal levels

[1] *See* Ramsi Woodcock, *The Efficient Queue and the Case against Surge Pricing* (2021), https://osf.io/preprints/socarxiv/g8tym/; Ramsi A. Woodcock, *Toward a Per Se Rule against Price Gouging*, CPI ANTITRUST CHRON. (Sep. 2020), https://papers.ssrn.com/abstract=3710997; Ramsi A. Woodcock, *Personalized Pricing as Monopolization*, 51 CONN. L. REV. 311 (2019); Ramsi Woodcock, *Personalizing Prices to Redistribute Wealth in Antitrust and Public Utility Rate Regulation* (2019), https://papers.ssrn.com/abstract=3378864; Ramsi A. Woodcock, *The Antitrust Duty to Charge Low Prices*, 39 CARDOZO L. REV. 1741 (2018); Ramsi A. Woodcock, *Big Data, Price Discrimination, and Antitrust*, 68 HASTINGS L.J. 1371 (2017); Ramsi Woodcock, *Antitrust Can't Tame Inequality, Let Alone Inflation*, THEHILL (Jan. 28, 2022), https://thehill.com/opinion/finance/591609-antitrust-legislation-cant-tame-inequality-let-alone-inflation; Ramsi A. Woodcock, *What Those Shocking Texas Power Bills Have in Common With Uber Surges, Broadway Tickets, and Airfare*, SLATE (Feb. 25, 2021), https://slate.com/business/2021/02/texas-electricity-bills-griddy-marginal-cost-pricing-alfred-kahn.html; Ramsi A. Woodcock, *The Hidden Shortages of the Market Economy*, LAW & POL. ECON. BLOG (Jun. 3, 2020), https://lpeblog.org/2020/06/03/the-hidden-shortages-of-the-market-economy/; Ramsi A. Woodcock, *The Economics of Shortages*, LAW & POL. ECON. BLOG (Jun. 2, 2020), https://lpeblog.org/2020/06/02/the-economics-of-shortages/; Ramsi Woodcock, *Irma Price Gouging Highlights Sad Truth: Consumer Fleecing is the New Normal*, THE CONVERSATION (Sep. 13, 2017), http://theconversation.com/irma-price-gouging-highlights-sad-truth-consumer-fleecing-is-the-new-normal-83858.

(including the minimum required to attract an optimal level of investment). Because such payments are in excess of the minimum necessary to keep firms in the market, they are not necessary for economic efficiency. Instead, they represent a pure redistribution of wealth from consumers to firms—what economists call economics *rents*. To the extent that the state is interested in promoting a relatively equal distribution of wealth, and to the extent that consumers are on average less wealthy than the shareholders of firms, such a pure redistribution of wealth from consumers to firms is *regressive* in nature—it expands inequality.

As your statement suggests, there are many situations in which firms are able to charge above-cost prices and so to earn economic rents. Why should we suppose that during moments of "abnormal disruption" in markets firms would be more likely to generate economic rents, as the New York price gouging law suggests? The answer has to do with expectations. Disruptions are, almost by definition, unexpected events. If they were expected, then they could have been planned for, and so would not be disruptions at all. There is one unexpected event in particular that not only affords firms the opportunity to generate rents but in fact guarantees firms rents, at least so long as they are able quickly to raise their prices: that is the unexpected surge in demand, and its functional equivalent, the unexpected shortfall in supply.

As I argue in my recent paper, *The Efficient Queue and the Case against Surge Pricing*,[2] an unexpected surge in demand gives a firm the opportunity to generate economic rents because (1) the increase in demand enables the firm to raise its prices and (2) the firm's pre-surge prices necessarily were already high enough to cover the firm's costs, because the firm expected to be able to charge the pre-surge prices and so would have planned production accordingly. It follows that any higher price charged by the firm immediately after the surge is an above-cost price and generates economic rents.

The following important consideration qualifies this analysis. In competitive markets, firms will respond to an unexpected surge in demand by seeking to capture the excess demand and deny it to competitors—that is, firms will view the surge as an opportunity to expand market share. Thus they will invest in bringing additional output to market, and that will drive up their costs. As a result, we can only say for sure that an increase in prices incident to a surge in demand represents above cost pricing and the generation of economic rent when the price increase takes place faster than the firm is able to increase output.

This may seem like a burdensome limitation; in fact, it creates a powerful tool for the prosecutor of price gougers. For it establishes conditions according to which one can infer above-cost, economic-rent-generating pricing *without requiring any evidence regarding the level of a firm's costs or the size of a firm's profit margins*. So long as (1) there has been an unexpected increase in demand or, equivalently, an unexpected shortfall in supply and (2) the firm has increased prices in response (3) faster than the firm is able to increase its output, then (4) one can conclude that the price increase was not necessary to cover costs and instead represents a pure redistribution of wealth from consumers to the firm. The ability to reach this conclusion without having to prove costs or, equivalently, profit

[2] Ramsi Woodcock, *The Efficient Queue and the Case against Surge Pricing*, *supra* note 1.

margins, is valuable because proving costs or profit margins is very, very difficult. Indeed, it may reasonably be said that deregulation in the 1970s and the running-aground of the entire New Deal regulatory state was caused by the persistent difficulty that rate regulators encountered in trying accurately to determine costs and profit margins as part of the rate making process. To the extent that New York State can avoid having to prove costs or profit margins in order to prevail in price gouging litigation, it should seek to do so. The aforementioned four-factor test offers the state the opportunity to do so.

The foregoing analysis has some important implications for New York's current statute. First, the "abnormal disruption" requirement is defined too narrowly by the statute. It ought to be broadened to cover any unexpected surge in demand or unexpected shortfall in supply. Such unexpected surges or shortfalls do not occur only in the face of an act of god or state of emergency. A Broadway show that books a small venue not expecting to receive good reviews and sellout crowds, and which responds to its unexpected success by using higher ticket prices to ration access to the venue, engages in price gouging just as surely as a longtime purveyor of surgical masks that raises prices on the heels of the declaration of a global pandemic. The harm to consumers is the same and like cases should be treated alike.

Second, the requirement of "unconscionably excessive" pricing should be interpreted broadly to include *all* above-cost pricing. That is, all economic rents should be treated as the product of "unconscionably excessive" pricing. The reason is that *all* economic rent represents a pure redistribution of wealth from consumers to firms, one that is unnecessary to create an incentive for firms to produce. There is no basis in economics, law, or, indeed, morality, for distinguishing between one dollar of economic rent and one million dollars of economic rent any more than there is a basis for distinguishing between a dollar stolen and a million dollars stolen. It is theft economic, legal, and moral either way. The same is true of economic rent. The economic, legal, and moral "phase transition" takes place at the point at which revenues rise above costs in the economic sense of all payments necessary to induce production, including all payments needed to induce optimal levels of investment. That is the threshold above which pricing becomes unconscionably excessive. For purposes of making out a prima facie case, *any disparity* should count as "a gross disparity" between the actual price and price immediately prior to the surge in demand or shortfall in supply.

As a practical matter, only this understanding of what it means for pricing to be "unconscionably excessive" will permit the state to make full use of the powerful analytical tool that I outlined above. In order to be able to dispense with proof of costs of profit margins and take the fact of a price increase incident to a surge in demand alone as proof enough of price gouging, it is necessary to recognize that any amount of economic rent is too much rent. Otherwise, the question then arises whether the price increase was "large" or "small" and to answer that a court will naturally wish to compare the increase to costs, or to calculate margins, and so the problem of proving costs or margins reappears.

The requirement of "unconscionably excessive" pricing can be read broadly to encompass all economic rent thanks to one of the definitions that the statute provides for the phrase. The statue defines "unconscionably excessive" pricing in part as "an exercise of unfair leverage." *Any* price increase incident to an unexpected surge in demand or shortfall in supply should count as an exercise of unfair leverage because the surge in demand or shortfall in supply creates scarcity—there is more demand for the firm's product than the firm has inventories to satisfy the demand—and scarcity is the source of all leverage. Power—whether over price or other things—comes from having something that others want and cannot get. The leverage is unfair in this context because it is not earned. The surge in demand or shortfall in supply is unexpected, meaning that firms did not plan for it; they did not bring it about by fielding a better product. Why should consumers be forced to pay more for goods because a firm got lucky?

Your solicitation statement suggests that your office is considering interpreting the "unfair leverage" language by reference to the antitrust laws and monopolization concepts. I believe that would be a mistake. It threatens to collapse the price gouging law into the antitrust laws and so to deprive the price gouging law of its unique role in regulating pricing power that derives from *involuntary* scarcity as opposed to the voluntary, artificial scarcity regulated by the antitrust laws.

Finally, a prima facie case of a violation of the statute should *not* be rebuttable with evidence that the price increase was needed to preserve profit margins or cover additional costs if the above-mentioned four-factor test is met. That is, if it is proven that the price increase took place faster than the firm was able to increase inventories, then as a matter of economic theory, the price increase must have generated economic rent and no amount of evidence of cost increases is capable of rebutting that conclusion.

I have a great deal more to contribute on the questions posed in the solicitation and would be delighted to continue to communicate with your office on this matter. Thank you for the opportunity to comment here. I am

Very sincerely yours,

Ramsi Woodcock

Ramsi Woodcock.

From:	Woodcock, Ramsi
To:	stopillegalprofiteering
Subject:	Re: Submission regarding Advance Notice of Proposed Rulemaking (Price Gouging)
Date:	Saturday, April 23, 2022 1:02:51 PM
Attachments:	NYAG Price Gouging 2.pdf

Thank you. Please use the attached version; I had inadvertently attached an unfinished draft to my original email to you.

Ramsi

On Sat, Apr 23, 2022 at 9:56 AM stopillegalprofiteering <stopillegalprofiteering@ag.ny.gov> wrote:

> Thank you so much for your submission. It will be helpful to us in this important process.
>
> **From:** Woodcock, Ramsi <rwo236@g.uky.edu>
> **Sent:** Saturday, April 23, 2022 4:01 AM
> **To:** stopillegalprofiteering <stopillegalprofiteering@ag.ny.gov>
> **Subject:** Submission regarding Advance Notice of Proposed Rulemaking (Price Gouging)
>
> **[EXTERNAL]**
>
> Please see attached.
>
> Thank you.
>
> --
> Ramsi Woodcock
> Assistant Professor
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From:	Joan Cooper
To:	stopillegalprofiteering
Subject:	Shore Drug charged me $50.00 for text kits
Date:	Sunday, March 20, 2022 4:17:01 PM

[EXTERNAL]

Hi,
I needed test kits before Christmas 2021 for my family and Shore Drug in Bay Shore charged $50 for $17 kits. They denied it was price gouging, but it was.
Can you get me my money back?
Thanks,
Joan Eisele-Cooper
77 Shore Lane
Bay Shore, NY 11706
631-872-7298

From:	Hal Singer
To:	stopillegalprofiteering
Subject:	Singer Comment in Advance Notice for Proposed Rulemaking of March 3, 3022, pursuant to N.Y. Gen. Bus. L. § 396-r(5)
Date:	Friday, April 22, 2022 4:31:22 PM
Attachments:	Singer HHRG-117-EF00-Wstate-SingerH-20220406.pdf

[EXTERNAL]

To: New York State Office of the Attorney General

From: Hal Singer

Re: Advance Notice for Proposed Rulemaking of March 3, 3022, pursuant to N.Y. Gen. Bus. L. § 396-r(5)

This comment draws on remarks I recently delivered in testimony before the House Select Committee on Economic Disparity and Fairness in Growth, in a hearing titled: "(Im)Balance of Power: How Market Concentration Affects Worker Compensation and Consumer Prices."[1] I have attached a copy of that testimony for the New York State Office of the Attorney General (OAG) to consider as part of this comment, and for your convenience a link to my testimony is included here as well.

As the OAG's Advance Notice of Proposed Rulemaking (ANPRM) correctly notes, the "COVID-19 pandemic led to significant price increases for consumers, patients, retailers, and state and local governments in New York." The ANPRM goes on to detail the extent to which some of the increases in prices for essential goods and services likely constituted illegal price gouging under existing New York State Law, even if some of the inflation experienced by consumers has also been caused by supply chain disruptions and other factors.

New empirical results that I have compiled reveal that the largest price hikes in 2021 tended to occur in the most concentrated industries. As stated in my earlier Congressional testimony, these results "lend credence to the hypothesis that the current bout of inflation reflects, at least in part, the exercise of market power."[2] In other words, the recently observed price gouging could reflect the collective exercise of market power by firms in concentrated industries, some of whom are communicating their future price intentions via the airwaves on earnings calls. My initial results were based on 2020 concentration data from Compustat, based on publicly traded firms. My results are robust to using 2017 concentration data from Census Reports (to predict inflation by industry in 2018), based on all publicly traded and private firms.

In addition to these empirical findings, I would like to highlight the following excerpt from my earlier testimony on the policy implications:

> "Courts have determined that parties injured via tacit collusion now must provide exceptional evidence in support of the allegations before having the opportunity to conduct in-depth factual discovery. This standard means such cases rarely survive a motion to dismiss or motion to summary judgment, thus blocking credible price-fixing cases.[3] As in the *Bag Fee Antitrust Litigation*, courts have implicitly adopted the notion that oligopolistic interdependence is just as likely to achieve prices inflated over competitive conditions as agreement, and so 'merely'

April 6, 2022

The Honorable Jim Himes
Chair
House Committee on Economic Disparity and Fairness in Growth

The Honorable Brian Steil
Ranking Member
House Committee on Economic Disparity and Fairness in Growth

In Re: (Im)Balance of Power: How Market Concentration Affects Worker Compensation and Consumer Prices

I want to thank the Committee for inviting me to testify on the important topic of how market concentration adversely affects workers and consumers.[1] Because other witnesses are covering worker harms, the bulk of my comments today will focus on the consumer harms from concentrated power, which largely manifests as price hikes, and how to amend antitrust law to better protect consumers from price-fixing conspiracies.[2] I present new empirical results indicating that the largest price hikes in 2021 tended to occur in the most concentrated industries. These results lend credence to the hypothesis that the current bout of inflation reflects, at least in part, the exercise of market power. The results are inconsistent with an alternative hypothesis, peddled by certain economists, that workers' demands for higher wages are driving inflation; under that theory, the price hikes would be uniformly distributed across U.S. industries as opposed to being clustered in concentrated industries.

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1. The views I express in this testimony are entirely my own, and do not represent those of any client, or from Georgetown University or Econ One, my employers. My testimony is not intended to impact any ongoing litigation or regulatory matter on which I am working. There are two bills in Congress on which I have testified before other committees within the recent past—the American Innovation and Choice Online Act (February 2021) and the Journalism Competition and Preservation Act (February 2022). I do not discuss those bills in my written or oral testimony, but if asked a question during the hearing, I will answer truthfully. I am not representing any company that would benefit from policies that I am proposing here.

2. With respect to amending antitrust law to better protect workers, in a new paper co-authored with Ted Tatos, we propose a "no offset" rule, which calls for a prohibition on judicial balancing of claimed benefits to any group other than the group that suffered antitrust injury, which would effectively reverse *American Express*. *See* Ted Tatos & Hal Singer, *The Abuse of Offsets as Procompetitive Justifications: Restoring The Proper Role of Efficiencies After Ohio v. American Express* and *NCAA v. Alston*, GEORGIA STATE LAW REVIEW (forthcoming 2022) (available upon request from the authors). Consistent with the broader policy of protecting labor from anticompetitive conduct, including the exercise of monopsony power, legislative intervention should prohibit such balancing. In wage-fixing cases involving multiple defendants, the no-offset rule would immediately condemn the restraint and bar courts from considering any claimed efficiencies, regardless of whom they benefit. In single-firm monopsony cases, the no-offset rule would bar courts from considering any offsetting benefits to parties other than the injured group of workers or input providers.

In addition to teaching advanced pricing at Georgetown's McDonough School of Business, I serve as an economic expert in several antitrust litigation matters, through the economic consulting firm Econ One, on behalf of both workers[3] and consumers.[4] I cannot comment on ongoing litigation matters, but I can advise Congress on how defendants in former price-fixing cases flouted the antitrust laws, and how such laws can be amended to better police would-be conspirators. In particular, I am calling for a change in the presumption—and associated burden of proof—in price-fixing cases once plaintiffs have established certain evidentiary criteria, and for sanctions that would bar executives in firms found guilty of violating Sherman Act Section 1 cases from working in the industry.[5]

Some of the proposals I put forward today echo those in a forthcoming report to be released by American Economic Liberties Project, with contributions from Professor Robert Lande, Eric Cramer, Alex Harman, and me.

*   *   *

Market power is defined as the ability to raise prices over competitive levels or exclude rivals.[6] Competitive price levels are understood as reflecting a firm's incremental costs of making the last unit of production. When we observe episodes of massive price hikes that cannot be explained by rising costs, as we did in 2021, particularly in concentrated industries such as shipping and meatpacking, we should understand those price hikes through the prism of market power.[7]

Yet too many in my profession are quick to blame workers for the pricing decisions made by their employers. Lawrence Summers, an oft-quoted economist and purveyor of this

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3. For example, I am the fighters' expert in Cung Le et al. v. Zuffa, LLC, d/b/a Ultimate Fighting Championship and UFC, Case No.: 2:15-cv-01045-RFB-(PAL) (D. Nev.). I am also the workers' expert in a series of ongoing "no-poach" cases.

4. For example, I am the consumers' expert in In re Google Play Consumer Antitrust Litigation, Case No. 3:20-cv-05761-JD (N.D. Cal). The complete list of my active cases is available on my curriculum vitae, which is available for download at https://www.econone.com/staff-member/hal-singer/.

5. I have also called for automatic investigations by antitrust authorities in industries with (1) highly concentrated; (2) rising margins; and (3) year-over-year price hikes in excess of 10 percent. *See* Hal Singer, *Antitrust Should Be Used to Fight Inflation*, AMERICAN PROSPECT, Feb. 2, 2022, *available at* https://prospect.org/economy/antitrust-should-be-used-to-fight-inflation/.

6. 2B PHILLIP E. AREEDA & HEBERT HOVENKAMP, ANTITRUST LAW ¶521 (5th ed. 2021)

7. An alternative explanation for the recent bout of inflation is that government spending to combat the pandemic shifted out aggregate demand, pushing up prices. But this hypothesis is easily ruled out, as aggregate demand did not shift out, but rather the *composition* of demand shifted from services to physical products, which stressed our supply systems. *See, e.g.*, Paul Krugman, *Why Are Progressives Hating on Antitrust?*, NEW YORK TIMES, Jan. 18, 2022, *available at* https://www.nytimes.com/2022/01/18/opinion/biden-inflation-monopoly-antitrust.html. My empirical results are also inconsistent with the hypothesis that government spending caused inflation, as any excess demand would be uniformly distributed across industries. Moreover, if demand were causing inflation, then we would see profits and revenues rise across the board for small and large firms alike; but 38 percent of small business saw revenue *declines* since last year in 2021. *See* Small Business Majority, Small businesses seek a level playing field and chance to compete fairly, Mar. 30, 2022, *available at* https://smallbusinessmajority.org/sites/default/files/research-reports/033022-EC-poll-toplines.pdf.

outdated view, suggests that labor markets are running too tight, workers are making unrealistic wage demands, and firms are defensively raising prices to accommodate these wage demands.[8] This blame-the-worker mentality is contradicted by the *lack* of correlation between wage growth and inflation by industry in 2021.[9] It also fundamentally misunderstands a firm's pricing decision, which according to the classic Lerner Index, is set according to the own-price elasticity of demand it faces and the firm's *marginal* costs or those costs that vary with the last unit produced.[10] Because firms in high fixed-cost industries do not incur incremental labor costs when producing the last unit of output—a pharmaceutical company does not incur incremental labor costs when producing the last pill, a rental car company does not incur incremental labor costs when renting the last car, a shipping company does not incur incremental labor costs when moving the last container—labor costs do not enter the pricing calculus for such firms, and thus labor cannot be blamed for rising prices in many industries in our modern economy.

Moreover, U.S. firms are doing much more than just passing through costs (labor or non-labor) dollar-for-dollar; otherwise their profit margins would be shrinking, not growing. Consider a simple example where price is $10, marginal cost is $5, and the firm's margin is 50 percent (equal to ($10 - $5)/$10). If the firm's marginal costs go up by $1 and all of it is passed on to consumers, then the new margin falls to 45 percent (equal to ($11 - $6)/$11). As reported in the *Wall Street Journal*, however, "Nearly two out of three of the biggest U.S. publicly traded companies reported fatter profit margins than they did before the pandemic."[11] Indeed, in 2021, U.S. corporate profits jumped 25 percent in 2021 to record high.[12] Rising profits are not consistent with the hypothesis that firms are merely

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8. *See, e.g.*, Lawrence Summers, *The stock market liked the Fed's plan to raise interest rates. It's wrong.,* WASHINGTON POST, Mar. 17, 2022 ("Focusing on the tightness of labor markets as a basis for forecasting inflation is firmly within progressive Keynesian tradition."); Lawrence Summers, *On inflation, we can learn from the mistakes of the past — or repeat them*, WASHINGTON POST, Feb. 3, 2022 ("But the key to understanding medium-term fluctuations in inflation is labor costs, which represent more than two-thirds of all costs across the economy. Everyone wants a raise, but periods when wages rise rapidly can also be periods when workers' purchasing power falls sharply due to inflation — as the experience of this past year illustrates.").

9. *See, e.g.*, Josh Bivens, *U.S. workers have already been disempowered in the name of fighting inflation*, Economic Policy Institute, Working Economics Blog, Jan. 21, 2022 (noting in "those sectors where labor scarcity has put upward pressure on wages, like hotels and other accommodations, it has not led to atypically fast price growth"); David Brancaccio & Jarrett Dang, *Another cure for inflation? Making markets more competitive*, MARKETPLACE, Apr. 1, 2022 (interviewing Trevon Logan), *available at* https://www.marketplace.org/2022/04/01/another-cure-for-inflation-making-markets-more-competitive/. *See also* Josh Bivens, *Debunking the Myth of Wage-Led Inflation*, WALL STREET JOURNAL, June 6, 2014, available at https://www.wsj.com/articles/BL-WB-46181 (finding that price growth since the end of the Great Recession is has been largely driven by rising *profits*, not rising labor costs)

10. The equation is $(P - C) / P = 1/E$, where P is the price, C is the marginal cost, and E is the firm's own-price elasticity of demand.

11. *See* Kristin Broughton & Theo Francis, *What Does Inflation Mean for American Businesses? For Some, Bigger Profits*, WALL STREET JOURNAL, Nov. 14, 2021, *available at* https://www.wsj.com/articles/inflation-yellen-biden-price-increase-cost-shipping-supply-chain-labor-shortage-pandemic-11636934826?msclkid=495e1627b1c011ec8ecc43836ee6b6bd

12. *See* Jeffrey Bartash, *U.S. corporate profits jump 25% in 2021 to record high as economy rebounds from pandemic*, MARKETWATCH, Mar. 30, 2022, *available at* https://www.marketwatch.com/story/u-s-corporate-profits-jump-25-in-2021-as-economy-rebounds-from-pandemic-11648644379.

passing along higher costs, including labor costs. While cost increases could explain part of the overall price increase in 2021, certain firms in concentrated industries are abusing the market disruption of inflation to maximize price increases.

A basic tenet of economics is that concentrated industries are more susceptible to coordinated pricing—indeed, antitrust laws exist because concentrated power in the trusts made it easier to fix prices.[13] It is easier to coordinate with three rivals in an oligopoly than with thirty in a competitive industry. This is why antitrust is rightly concerned about coordinated price effects, in addition to unilateral price effects, when reviewing mergers.[14] In his seminal book, *Lectures in Antitrust Economics*, Michael Whinston talks about the two challenges for a cartel: the incentive problem and the coordination problem.[15] The cover of inflation solves both.

Regarding the first problem, a firm is less likely to join a cartel and raise prices to monopoly levels if its customers will react harshly to the price hike. Consumer resistance to price hikes may soften with inflation because there now is a pretext for the price increase. If consumers view price increases as the outcome of widespread economic cost increases and thus inescapable, they are less likely to attempt to evade the price increases by substituting to other products.

Regarding the second problem, coordination is hard because there are typically many possible price points and the firms have to pick one, presumably without communicating. Inflation solves this problem by giving firms a target to hit—for example, if general inflation is seven percent, we should raise our prices by seven percent. Inflation basically provides a "focal point" that allows firms to figure out how to raise prices on consumers without communicating.

To demonstrate that concentration is a significant force behind the recent bout of inflation, I gathered data on concentration by industry from Standard & Poor's Compustat Capital IQ, obtained through Wharton Research Data Services. For each industry code, at both the NAICS 5 and 6 level,[16] I computed the share of domestic revenues accounted for by the three and four largest suppliers in that code, for the year 2020. I then matched that data with 2021 inflation data by industry code from the Bureau

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13. *See* AMY KLOBUCHAR, ANTITRUST: TAKING ON MONOPOLY POWER FROM THE GILDED AGE TO THE DIGITAL AGE 39-61 (Knopf 2021).

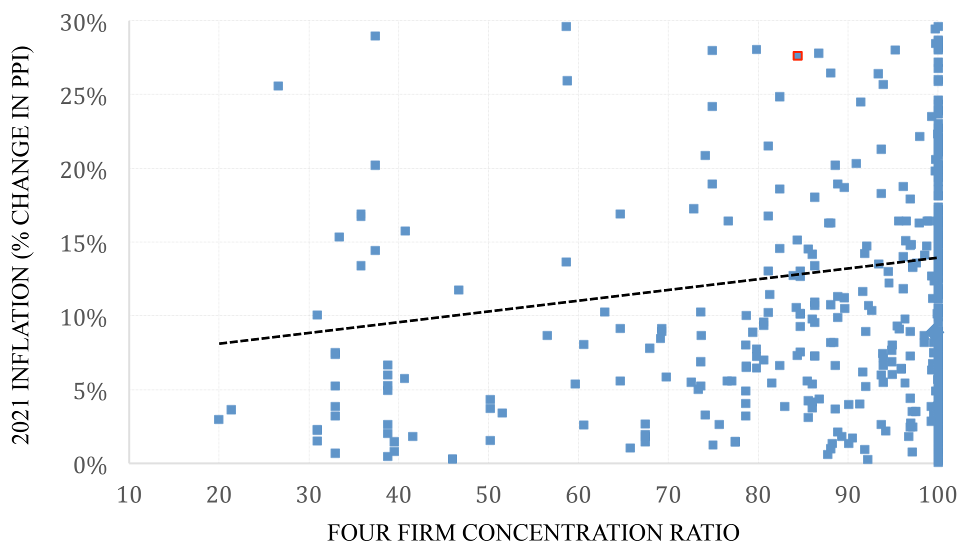
14. Department of Justice & Federal Trade Commission, Horizontal Merger Guidelines, Aug. 18, 2010, Section 7 ("Coordinated Effects").

15. MICHAEL WHINSTON, LECTURES IN ANTITRUST ECONOMICS 21 (MIT Press 2008).

16. *See* Introduction to NAICS, U.S. Census Bureau, *available at* https://www.census.gov/naics/ ("The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy."). NAICS codes run from 2 to 6 digits, with higher digit codes offering more granular industry detail. For instance, the broader NAICS code 311 is comprised of "Food Manufacturing, while the more specific NAICS code 311611 within it is classified as "Animal, except poultry, slaughtering." *Producer Price Index by Industry: Animal, Except Poultry, Slaughtering: Beef, Fresh/Frozen, Primal and Subprimal Cuts, Made in Slaughtering Plants*, FRED, *available at* https://fred.stlouisfed.org/series/PCU31161131161117.

of Labor Statistics.[17] The inflation data captures the "average change over time in the *selling* prices received by *domestic producers* for their output," and reflect the "*first commercial transaction* for many products and some services" in the industry.[18] The figure below shows a scatter plot of the data.

SCATTER PLOT OF 2021 INFLATION AND 2020 FOUR-FIRM CONCENTRATION RATIO



Notes: The four-firm concentration ratio is computed at NAICS level 5. BLS's PPI measures the "average change over time in the *selling* prices received by domestic producers for their output. The prices included in the PPI are from the *first commercial transaction* for many products and some services." U.S. Bureau of Labor Statistics, Producer Price Indexes, *available at* https://www.bls.gov/ppi/ (emphasis added).

Industries with high concentration in 2020 appear on the right side of the graph. Industries with large price hikes in 2021 appear on the top of the graph. Concentrated industries with large price hikes appear in the top-right quadrant. There you can find the Animal Slaughterhouse and Processing Industry (NAICS code 31161, marked in red), with a four-firm concentration of 84 percent and a 2021 price increase of a staggering 28 percent. The dotted line captures the correlation between these two variables. As the figure shows, these data series are positively correlated, with a one percentage point increase in four-firm ratio associated with a 0.073 percentage point increase in inflation. This means the largest bouts of inflation in 2021 tended to occur in the most concentrated industries.

To determine whether these observed relationships are statistically significant, I regressed the inflation measure for various intervals beginning in January 2021 for a given industry code on the industry's concentration. The results are presented in the table below.

17. U.S. Bureau of Labor Statistics, Producer Price Indexes, *available at* https://www.bls.gov/ppi/. For each NAICS code where I can calculate industry concentration, I apply the most specific measure of inflation possible. If the BLS does not report the PPI for a given NAICS industry sublevel, I use the broader industry level encompassing it.

18. *Id.* (emphasis added).

REGRESSION OF INFLATION ON CONCENTRATION, BY INDUSTRY
DEPENDENT VARIABLE = INFLATION BY INDUSTRY

NAICS Level	Concentration Measure	3 Month Inflation	6 Month Inflation	9 Month Inflation	12 Month Inflation
5	Three-Firm Ratio	0.007	0.021*	0.038*	0.062**
	P-Value	*0.507*	*0.083*	*0.052*	*0.035*
	Four Firm Ratio	0.015	0.033*	0.047**	0.073**
	P-Value	*0.205*	*0.019*	*0.034*	*0.029*
6	Three-Firm Ratio	0.018	0.024	0.017	0.014
	P-Value	*0.185*	*0.128*	*0.504*	*0.711*
	Four Firm Ratio	0.031*	0.034*	0.012	0.005
	P-Value	*0.062*	*0.07*	*0.691*	*0.907*

Note: * and ** indicate statistical significance at the 10% and 5% levels, respectively.

The P-value indicates the probability of obtaining a ratio as large or larger in absolute value assuming no relationship exists between concentration and inflation. As the table shows, at the NAICS 5 level, the relationship between the three- and four-firm industry concentration ratio and industry inflation was positive (in all cases) and positive and statistically significant (defined as P-values less than 10%) in six of eight cases. At the NAICS 6 level, the relationship between the three- and four-firm industry concentration ratio and industry inflation was positive (in all cases) and positive and statistically significant in two of eight cases. These relationships, at least for the NAICS 5 level, bolster the view that concentration at least partly explains the recent bout of inflation, and undermines the view that worker demands are to blame.

It bears noting that concentration is not a sufficient condition for coordinated pricing at near-monopoly levels; rather, concentration makes coordination easier at the margin, especially when triggered by a supply shock or a bout of inflation. This would explain why prices were not elevated at monopoly levels in concentrated industries before the inflation bout.

If worker demands were to blame for the recent bout of inflation, then concentration and inflation at the industry level should not exhibit any correlation.[19] While these relationships are insufficient to demonstrate that industry concentration *causes* inflation,[20] they are consistent with the oligopoly theory and not what one would expect to see if workers' wages were the source of inflation.

19. Summers might argue that concentration in the output market is really picking up an industry's exposure to rising labor costs, but that conjecture is dubious, particularly to the extent that a firm's selling power in the output market is correlated to its buying power in the labor market.

20. The econometric analysis required to rule out alternative hypotheses, including controlling for cost increases, is beyond the scope of this testimony. One would have to separate out legitimate supply problems versus those caused by oligopolistic market power. For example, if oil companies reduce refining capacity as a means to extract higher prices, then supply problems are caused by the concentration, so controlling for any supply reductions would cause endogenous selection bias.

Some industrial organization (IO) economists have designed "just so" stories to deflect blame of rising prices back to workers, even in the face of profit-concentration linkages. Writing in *Brookings Papers on Economic Activity* in 1990, Michael Salinger noted that high levels of industry concentration in the early 1970s were associated with cost and price increases from 1972 to 1982—similar to the results presented in the figure above—yet inferred that "this finding is consistent with other evidence concerning rent-seeking by workers."[21] The implication is that workers demand payments in excess of their contributions or marginal revenue product (MRP), and that these demands just happen to be most acute in concentrated industries, where high margins presumably allow large wage payments. Yet workers rarely if ever command wages in excess of their MRP,[22] and given the decay of unionization in the last 40 years, the notion of rent-seeking among large swaths of workers seems particularly implausible. On the contrary, economic research indicates that worker wages have stagnated relative to executive pay.[23] Moreover, to the extent some large employers in concentrated industries command both selling power in the output market and buying power in the labor market, the notion the wage demands are behind rising inflation in concentrated industries is even more farfetched.[24]

Through the late 1960s, there was a consensus in economics that concentration increased profitability and facilitated collusion,[25] which came to be known as the "traditionalists" or the structure-conduct-performance paradigm.[26] In the early 1970s, however, certain IO economists, such as Harold Demsetz, who taught at the University of Chicago Business School from 1963 to 1971, began muddling this understanding, insisting that the correlation between profits and concentration did not reflect oligopoly profits, but instead reflected costs advantages to superior firms that came to dominate an industry.[27] According to this "revisionist" camp, often associated with the Chicago School of Economics, more concentrated markets are more competitive, because the most efficient firm gaining market share is evidence of competition, not its absence. Their technical

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21. Michael Salinger, *The Concentration-Margins Relationship Reconsidered*, BROOKINGS PAPERS: MICROECONOMICS, 1990, at 291, *available at* https://www.brookings.edu/wp-content/uploads/1990/01/1990_bpeamicro_salinger.pdf.

22. An exception might be administrators in college athletes, siphoning off value that is created by student athletes. *See* Ted Tatos & Hal Singer, *Antitrust Anachronism: The Interracial Wealth Transfer in Collegiate Athletics Under the Consumer Welfare Standard*, 66(3) ANTITRUST BULLETIN (2021).

23. Lawrence Mishel & Julia Wolfe, *CEO compensation has grown 940% since 1978. Typical worker compensation has risen only 12% during that time*, ECONOMIC POLICY INSTITUTE, Aug. 14, 2019, *available at* https://www.epi.org/publication/ceo-compensation-2018/.

24. *See* Josh Bivens, *Inflation and the policy response in 2022*, Economic Policy Institute, Working Economics Blog, Feb. 9, 2022, *available at* https://www.epi.org/blog/inflation-and-the-policy-response-in-2022/ ("Given the past generation has seen relentless policy attacks on workers' leverage, it seems highly likely that the labor market will dampen, not amplify, inflationary pressures regardless of *what workers expect*.") (emphasis in original).

25. Salinger, *supra*, at 288.

26. Whinston reviews an early literature from showing that most successful criminal price-fixing cases brought by the DOJ from 1963 to 1972 occurred in highly concentrated markets, consistent with the structure-conduct-performance paradigm. Whinston, *supra*, at 43 (citing George Hay & D. Kelley, *An empirical survey of price-fixing conspiracies*, 17 JOURNAL OF LAW AND ECONOMICS 13-38 (1974)).

27. Harold Demsetz, *Industry Structure, Market Rivalry, and Public Policy*, 16(1) JOURNAL OF LAW AND ECONOMICS 1-10 (1973).

"correction" to the regression of margins on concentration was to add a market share variable—itself highly correlated with concentration—and to claim that concentration was no longer positively related to margins once market share was controlled for.[28] If the concentration-profits relationship is caused by short-term rents earned by superior firms with a cost advantage, the revisionists reasoned, then even concentrated markets can be viewed as competitive, and mergers do not facilitate collusion and higher prices.

This rewriting of the very meaning of concentration, and alleged technical defects (called "endogeneity") in any regression of margins on concentration,[29] allowed the Chicago School view to remake antitrust. Without a unifying model that revealed concentration's pernicious effects across industries, merger review would entail a series of bespoke models that were unique to each industry, controlled by economic insiders. For the decades of the 1980s, 1990s, and aughts, graduate students seeking placement in economics departments and publication in peer-reviewed journals steered clear of pursuing the structure-conduct relationship, and IO gatekeepers made sure concentration metrics became less relevant in antitrust. And for that reason, we have now reached this monopoly moment.

What originated in the Chicago School grew quickly into the mainstream of IO economics, with concentration potentially reflecting an efficiency in driving down *costs*. Indeed, IO economists continue to push back against structural explanations to this day.[30] As noted above, these revisionist arguments are not compelling, and are even more tenuous when applied the labor markets, because the ability to drive *wages* below competitive levels is not a plausible expression of a firm's efficiency. To the contrary,

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28. Salinger, *supra*, at 290. Salinger refers to this questionable alteration as "extremely influential" in upsetting the structural presumption, with "F. M. Scherer and others consider[ing] the finding that market share rather than concentration determines firm profitability the most important result that has emerged from those data." *Id*. at 290.

29. Detractors claimed that concentration was a flawed explanatory variable in a regression model because output decisions, which inform concentration, are a choice variable of the firm and thus are endogenous to the system: "If a large firm chooses a higher output than is predicted by the underlying (implicit) model, concentration will be higher and profits will be lower than expected. Thus output errors by large firms reduce the correlation between concentration and profitability. By the same line of reasoning, output errors by small firms increase the correlation between concentration and profitability." *Salinger* at 299-300. As Salinger notes, however, because the magnitude of errors of large firms with more discretion in output decisions likely exceed those of small firms, this alleged bias would tend to *reduce* the correlation between concentration and profit margins on net, making it harder to observe. Even critics of the structure-conduct-performance model acknowledge that econometric techniques could disentangle different causal stories. *See* Timothy Bresnahan, *Empirical Studies of Industries with Market Power*, Chap. 17 in HANDBOOK OF INDUSTRIAL ORGANIZATION, vol. 2, edited by Richard Schmalensee and Robert Willig, 1011–57. Amsterdam: Elsevier. at 1031 ("The next section treats the question of what constitutes an adequately rich specification of cost and demand so as to permit a reasonably convincing case that a strategic interaction hypothesis is in fact being tested. The section will show that the hypothesis of market power is in fact identified on reasonable data. … *Only econometric problems*, not fundamental problems of interpretation, cloud this inference about what has been determined empirically.") (emphasis added).

30. *See e.g.*, Steven Berry, Martin Gaynor, and Fiona Scott Morton, *Do Increasing Markups Matter? Lessons from Empirical Industrial Organizations*, 33(3) JOURNAL OF ECONOMIC PERSPECTIVES, 44–68 (2019), at 46 ("Within the field of industrial organization, the structure-conduct-performance approach has been discredited for a long time (Bresnahan 1989; Schmalensee 1989). But outside of industrial organization, the paradigm seems to have been readopted in recent years.").

one would expect larger and more efficient firms to pay higher wages than others, as their workers are more productive. In any event, evidence that higher concentration and monopsony power depress wages is convincing and has been established by multiple methodologies, including concentration-wage relationships.[31]

One of the reasons that firms in concentrated industries are exploiting the pandemic and turning small bouts of inflation into large bouts of inflation is because they can. And they are even willing to explore the boundaries of collusive behavior because there are little consequences: When it comes to price fixing, courts give great deference to defendants in the absence of smoking-gun evidence of an agreement to fix prices. Recognizing this lenient standard, executives are exploiting the pandemic and are potentially seeking to coordinate their pricing through the public airwaves on earnings calls. The Department of Justice and Federal Trade Commission *Collaboration Guidelines* warn that a firm's sharing its current or future pricing plans with a horizontal rival could be anticompetitive.[32]

To an economist, a public announcement of wielding "pricing power that we would have *going forward*" (Disney), or noting that it will "*continue to take* further price increases"[33] (Unilever) on an earnings call can be understood as an encouragement to one's rivals to raise prices, as the speaker is planning to raise his.[34] Even defenders of the beleaguered consumer-welfare standard acknowledge that when it comes to price fixing, antitrust is plagued by a problem of "under-deterrence."[35] Because collusion is rarely detected and would be masked by shortages, bottlenecks, and general chaos in the marketplace, firms would be silly not to try it. And so long as antitrust law regarding cartels is permissive, firms would be silly not to try to coordinate their pricing via the airwaves.

A short digression of a price-fixing case in which I served as the consumers' expert is in order. Delta was one of the last remaining legacy airlines to impose a bag fee. The

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31. *See e.g*., *See* José Azar, Ioana E. Marinescu & Marshall Steinbaum, *Labor Market Concentration,* JOURNAL OF HUMAN RESOURCES (2020) (showing that variation in wages could be explained by measures of labor market concentration using vacancy shares from CareerBuilder.com); Elena Prager & Matt Schmitt, *Employer Consolidation and Wages: Evidence from Hospitals*, AMERICAN ECONOMIC REVIEW 397-427 (2021).

32. Department of Justice and Federal Trade Commission, Antitrust Guidelines for Collaboration Among Competitors, April 2000, at 15 ("Other things being equal, the sharing of information relating to price, output, costs, or strategic planning is more likely to raise competitive concern than the sharing of information relating to less competitively sensitive variables. Similarly, other things being equal, the sharing of information on current operating and future business plans is more likely to raise concerns than the sharing of historical information.").

33. Matt Stoller, *Unilever CEO: "We will, of course, continue to take further price increases...."*, BIG, Feb. 11, 2022, *available at* https://mattstoller.substack.com/p/unilever-ceo-we-will-of-course-continue?s=r.

34. As observed by Stoller, "one way to understand what Unilever is doing with this public signaling is the firm is price-fixing, or exploiting the collective power of the small number of firms competing in its various lines of business." Matt Stoller, *Why Are Judges Encouraging Inflation?*, BIG, Mar. 16, 2022, *available at* https://mattstoller.substack.com/p/why-are-judges-encouraging-inflation?s=r.

35. *See* Douglas H. Ginsburg& Joshua D. Wright, *Who Should be The Target of Cartel Sanctions?: Antitrust Sanctions*, 6 COMPETITION POL'Y INT'L 3 (2010) (noting that only about a quarter of cartels are caught).

problem was that Delta shared a hub (Atlanta) with a low-cost carrier (AirTran), which was committed to upholding its value image. Based on internal analyses, Delta calculated that it would lose money if it unilaterally imposed a bag fee. That calculus changed, however, with an October 23, 2008 earnings call in which AirTran's then-CEO, Robert Fornaro, answered a question on bag fees this way:

> Kevin, good question. Let me tell you what we've done on the first bag fee. We have the programming in place to initiate a first bag fee. And at this point, we have elected not to do it, primarily because our largest competitor in Atlanta where we have 60% of our flights hasn't done it. And I think, we don't think we want to be in a position to be out there alone with a competitor who we compete on, has two-thirds of our nonstop flights and probably 80 to 90% of our revenue is not doing the same thing. So I'm not saying we won't do it. *But at this point, I think we prefer to be a follower in a situation rather than a leader right now*.[36]

Within days, Delta revised its bag-fee calculus and imposed a bag fee. AirTran quickly followed with its own bag fee. The public assurance granted by AirTran, which can be understood as a *contingent* offer to raise prices, solved the coordination problem. The district court judge, despite certifying the class based on my model of impact, granted summary judgment for the airline defendants due to the conduct—parallel pricing and the earnings call—being just as consistent with "tacit collusion" as with "explicit collusion."

Courts have determined that parties injured via tacit collusion now must provide exceptional evidence in support of the allegations before having the opportunity to conduct in-depth factual discovery. This standard means such cases rarely survive a motion to dismiss or motion to summary judgment,[37] thus blocking credible price-fixing cases. As in the *Bag Fee Antitrust Litigation*, courts have implicitly adopted the notion that oligopolistic interdependence is just as likely to achieve prices inflated over competitive conditions as agreement, and so "merely" alleging or putting forward evidence of parallel pricing, excess capacity, and artificially inflated prices is insufficient to prove agreement under Section 1. But why should we assume that it is just as easy to maintain artificially inflated prices tacitly than through agreement?

Congress should flip the presumption, effectively reversing *Twombly* and *Valspar*. In particular, Section 1 of the Sherman Act should be amended so that the following evidentiary criteria shall create a presumption of agreement: Evidence of parallel pricing accompanied by evidence of (a) inter-firm communications deemed suspect under DOJ and FTC *Collaboration Guidelines*, or (b) other actions that would be against the unilateral interests of firms not otherwise colluding, or (c) prices exceeding those that would be predicted by fundamentals of supply or demand.

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36. In Re Delta/Airtran Baggage Fee Antitrust Litigation, Civil Action File No. 1:09–md–2089–TCB, 03-28-2017 (emphasis added), *available at* https://casetext.com/case/in-re-deltaairtran-baggage-fee-antitrust-litig-4#N196689.

37. *See Bell Atl. Corp. v. Twombly,* 550 U.S. 544 (2007); *Valspar Corp. v. Du Pont,* 873 F.3d 185 (2017); *Indirect Purchaser Plaintiffs v. Samsung*, No. 21-15125 (9th Cir. 2022).

If plaintiffs do put forward such evidence, then the burden would shift to the defendants to prove either that prices are not inflated above competitive levels or that oligopolistic interdependence is a more likely explanation for the performance of the market than agreement is. The presumption would require defendants to put forward the exact kinds of evidence that the FTC or DOJ would put forward in opposing a merger. This change would grant state and private enforcers similar powers to those enjoyed by the FTC under Section 5 of the Federal Trade Commission Act, which allows prosecution of cases where there is an *invitation* to collude.[38]

Finally, the Sherman Act should be amended to permit courts to sanction corporate executives who participated in any price-fixing conspiracy upon a guilty verdict, by barring the executives from working in the industries in which they broke the law, either indefinitely or for a period of time. Until corporate executives understand that they personally bear liability for seeking to orchestrate a conspiracy, we will be bombarded with more invitations to collude via the public airwaves—and ever increasing prices.

38. FTC, Analysis of Proposed Consent Order to Aid Public Comment In the Matter of Sigma Corporation, File No. 101-0080, at 4 ("The complaint includes allegations of a stand-alone Section 5 violation, namely that Sigma invited McWane and Star to collude with Sigma to increase DIPF prices in early 2009."), *available at* https://www.ftc.gov/sites/default/files/documents/cases/2012/01/120104sigmaanal.pdf. Every state with a Baby FTC Act may prosecute invitations to collude under Section 5, but my proposal would grant explicit authority for the states to do so.

> alleging or putting forward evidence of parallel pricing, excess capacity, and artificially inflated prices is insufficient to prove agreement under Section 1. But why should we assume that it is just as easy to maintain artificially inflated prices tacitly than through agreement?
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> Congress should flip the presumption, effectively reversing *Twombly* and *Valspar*. In particular, Section 1 of the Sherman Act should be amended so that the following evidentiary criteria shall create a presumption of agreement: Evidence of parallel pricing accompanied by evidence of (a) inter-firm communications deemed suspect under DOJ and FTC *Collaboration Guidelines*, or (b) other actions that would be against the unilateral interests of firms not otherwise colluding, or (c) prices exceeding those that would be predicted by fundamentals of supply or demand.
>
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It is worth exploring whether New York's state law concerning price fixing could be amended in a similar way. As the OAG proceeds in drafting rules to prevent price gouging by firms that exercise market power, my hope is that the attached testimony and referenced empirical research will be helpful in informing those efforts. I would be pleased to participate further in any such discussions.

Sincerely,
Hal Singer

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[1] "(Im)Balance of Power: How Market Concentration Affects Worker Compensation and Consumer Prices." *Congress.gov*, Library of Congress, 21 April 2022, https://www.congress.gov/event/117th-congress/house-event/114615.

[2] *Id*.

[3] See Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007); Valspar Corp. v. Du Pont, 873 F.3d 185 (2017); Indirect Purchaser Plaintiffs v. Samsung, No. 21-15125 (9th Cir. 2022).

[4] FTC, Analysis of Proposed Consent Order to Aid Public Comment In the Matter of Sigma Corporation, File No. 101-0080, at 4 ("The complaint includes allegations of a stand-alone Section 5 violation, namely that Sigma invited McWane and Star to collude with Sigma to increase DIPF prices in early 2009."), available at https://www.ftc.gov/sites/default/files/documents/cases/2012/01/120104sigmaanal.pdf. Every state with a Baby FTC Act may prosecute invitations to collude under Section 5, but my proposal would grant explicit authority for the states to do so.

From:	the4seas1990@optonline.net
To:	stopillegalprofiteering
Subject:	Stub Hub
Date:	Saturday, March 12, 2022 4:04:19 PM

[EXTERNAL]

Hello,

I purchased tickets to an Elton John Concert in September 2019. The show was scheduled for Saturday, April 18, 2020 and then rescheduled for Sunday, March 6, 2022 due to the pandemic.

Stub Hub held on to my money for 2 1/2 years and would not refund me. I needed the money because money was tight during that time. I put the tickets up for sale on Stub Hub in the fall of 2021 because I was not sure we could go due to the Omicron surge, change of date and day of the week and because there was a lot going on in our lives at that time.

My tickets did not sell and I honestly forgot to take them down. We went to the concert and while at the concert, I was checking my email and found out that the tickets had sold 55 minutes before the show was to begin. Stub Hub was called and they told me that I have to pay a penalty charge. I know that I made a mistake and should have taken the tickets down but I completely forgot. I do not have a problem with paying a penalty charge; however, Stub Hub is charging me 100% of the price of the tickets that I was listing them for, $820.

I did some research and found out that they use to charge 30% and then 40% but since the pandemic, they have increased their penalty to 100%, That is a lot of money and I feel that they are taking advantage. Is there something that can be done? Is there any way you can help me with this issue.

Thank you,

Judy-Lynne Ciancarelli

From: Woodcock, Ramsi
To: stopillegalprofiteering
Subject: Submission regarding Advance Notice of Proposed Rulemaking (Price Gouging)
Date: Saturday, April 23, 2022 12:01:55 AM
Attachments: NYAG Price Gouging.pdf

[EXTERNAL]

Please see attached.

Thank you.

--
Ramsi Woodcock
Assistant Professor
College of Law
Secondary Appointment
Department of Management
Gatton College of Business & Economics
University of Kentucky
Law Building, 620 South Limestone
Lexington, KY 40506-0048
859-257-1253
ramsi.woodcock@uky.edu

From: Georgia Cotrell
To: stopillegalprofiteering
Subject: thank you, AG James...
Date: Sunday, March 6, 2022 2:37:58 PM

[EXTERNAL]

...for fighting price gouging. Enough is enough. Keep the faith, baby!

--Georgia Cotrell.

From:	Diane Lauzon
To:	stopillegalprofiteering
Subject:	The Dollar Tree Chain
Date:	Friday, March 4, 2022 5:39:08 PM

[EXTERNAL]

I think that the recent 25% raise in prices at Dollar Tree may be something your office may want to look into.

About 2 months ago or so, their prices had jumped from $1 to $1.25 overnight, for everything within their store.

I am only familiar with their Portage Road location in Niagara Falls, NY, though I have heard that this same price increase had affected all of their locations.

I had been able to go to Family Dollar, which is owned by the same company as DT, and purchase the same item or quantity (such as paperclips) for 25¢ less, after this price increase.

They could have raised their prices only 10¢ higher. It is unheard of to raise ALL their prices 25%!

I do not feel that they can substantiate the need to increase the price of ALL their merchandise. I understand the need to keep all of their prices the same, BUT, surely there was no need to raise the sale price as high as they had.

I would not be surprised to find that they have made an astronomical profit, all without increasing their wages.

Online, they had been quoted as saying that they will then be able to offer more of a variety of products, but I have not seen this happen within one of their smaller stores which I had frequented.

I am a SNAP recipient, and this dramatic price increase really puts a dent in my purchasing.power. It's shocking to think that they could just up and do this. I am no longer receiving great value for my dollar.

The only way I feel that they could justifiably get away with this is if they had experienced HEAVY losses for several quarters. Still...how much in the black will they become???

Incidentally, they never have sales.

Thank-you for your interest in this matter. Should you have any question, I can also be reached at 716.579.4374.

Sincerely,
Diane Lauzon

From:	Landers Hawthorne, Kelly B.
To:	stopillegalprofiteering
Subject:	United Egg Producers - Comment to Inform New Price Gouging Rules
Date:	Friday, April 22, 2022 3:43:24 PM
Attachments:	United Egg Producers - Comments re NY GBL 396-r(5).pdf

[EXTERNAL]

Good afternoon,

Attached please find the United Egg Producers' comments in response to the Advance Notice of Proposed Rulemaking pursuant to N.Y. Gen. Bus. L. § 396-r(5) (Price Gouging).

Regards,
Kelly

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United Egg Producers

April 22, 2022

Comments on the Advance Notice of Proposed Rulemaking Pursuant to N.Y. Gen. Bus. L. § 396-r(5) (Price Gouging)

We submit these comments on behalf of United Egg Producers, a Capper-Volstead agriculture cooperative with egg farmer-members from around the country, who collectively represent approximately 95 percent of U.S. egg production. UEP works at the direction of its members to advance high standards for egg safety, environmental responsibility, and hen well-being while producing a nutritious and affordable supply of eggs. UEP has a strong interest in protecting its farmer-members by ensuring that any rulemaking related to the New York state price gouging law is crafted and applied to them based on the economic realities of the marketplace. The vast majority of eggs are a fungible commodity, and producers of eggs must take the price that is offered by the large and powerful buyers of that product; they do not control prices.

Introduction

Egg producers are price-takers.[1] Because of the nature of the egg industry, farmer-members must accept the prevailing prices. As detailed below, the egg industry took extraordinary measures to respond to the needs of the public during the pandemic, from quickly pivoting away from restaurant sales and entering retail sales to reflect new consumption patterns, to paying workers hazard pay and adopting strict COVID-19 safety measures, to operating at a loss. Nonetheless, because of a temporary spike in wholesale egg prices at the outset of the pandemic, egg producers have been unfairly targeted by multiple price gouging lawsuits and investigations.

We understand that the Advance Notice of Proposed Rulemaking ("ANPR" or the "notice") is intended, in part, to assist the state in determining what rulemaking would help deter price gouging. The notice cites examples of industries that have experienced price increases in the past year, and notes a handful of industries that have been the subject of prior price gouging enforcement activity by the New York State Office of the Attorney General. One of the examples concerns the price of eggs. The example misunderstands how egg prices are set, and how eggs are sold and who the customers are. We write, in part, to clarify the description of the egg industry and its pricing, and to present an accurate record for the rulemaking process and any application to egg farmers.

[1] See, e.g., *A.A. Poultry Farms, Inc. v. Rose Acre Farms, Inc.*, 881 F.2d 1396, 1402 (7th Cir. 1989).

These comments address three of the questions raised for public comment:[2]

4) Is there any reason that, in the presence of abnormal disruptions, it would not be feasible to limit price increases for covered goods and services to the amount of cost increases?

13) If a percentage increase from the benchmark is used as one of the indicators, what percentage increase is unconscionable?

25) Several industries that are in the supply chain for covered goods experienced significant increases in prices and/or profitability since the beginning of the pandemic, including shipping, meat packing, lumber and other homebuilding products, rental housing, grocery stores, online platforms, and basic household goods like diapers. What information about these industries, including the nature of their supply chains, could help shed light on whether price gouging is occurring in these industries? How are prices set in each of these industries? Are there features of these industries that would make price gouging likely and/or would mask price gouging?

Egg Producers Sell to Retailers – Not Direct to Consumers

Price gouging laws are valuable to protect consumers during times of crises from unreasonable discretionary price increases by sellers of important household products. But egg producers do not set the prices that consumers pay. The price at which an egg producer sells to a retailer generally is based on independent, third-party price quotations such as the Urner Barry index or the USDA Agricultural Marketing Service quotations, as explained below. The retailer – not the egg farmer – then determines what state or states those eggs are sold in, and the price at which the eggs on the shelf will be sold to the consumer.

In a typical year, egg producers sell roughly 60 percent of the eggs produced in the United States to national grocery store chains and other similar retailers, that then price and sell the eggs to the public.[3] Egg producers have virtually no direct influence on the price of eggs set by those stores. For instance, the Urner Barry price is currently approximately $2.50/dozen. However, at least one major grocery store is currently running a special on eggs for $1.25/dozen. At other times, the Urner Barry price may be $0.90/dozen while grocery stores are selling eggs for $1.50/dozen. Regardless, those consumer-facing pricing decisions are outside the egg farmers' control.

How Prices Are Set in the Egg Industry (Question 25)

Standard shell eggs – those bought in cartons in a grocery store bought by general consumers – are a commodity. The primary input cost for egg farmers – grain – is also a commodity. They are interchangeable with other goods of the same type. For the common eggs produced by egg farmers, an "egg is an egg." A shell egg from one producer is similar to or the

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[2] Because the Proposed Rule covers myriad topics, we are not able to comment on every question. However, the fact that we do not discuss a particular question does not mean that UEP agrees with its framing.

[3] *See* UEP, "Utilization of U.S. Eggs," *available at* https://unitedegg.com/facts-stats/ (source: USDA 2019 data).

same as a shell egg produced by another producer. Commodities-sellers, like UEP's farmer-members, are price-takers. Grocery stores, by contrast, are price-setters. They determine at what price they sell the eggs, and they may well sell eggs at a price below what they are buying them, when they decide it is in their interest to do so. But even the largest egg producers in the United States lack the market power to dictate their own prices. The prices received by egg producers are those set by others – their customers, who include some of the largest multi-national corporations in the world.

The price at which most eggs are sold is set using the Urner Barry Index price. The Urner Barry Index, published by Urner Barry Publications (www.urnerbarry.com), functions as a pricing benchmark for commodity eggs, among many other products. See *A.A. Poultry Farms, Inc. v. Rose Acre Farms, Inc*., 881 F.2d 1396, 1398 (7th Cir. 1989) (explaining that the "Urner Barry index" can be used as a benchmark by buyers to evaluate prices). It is, as the notice acknowledges, "not tied to costs." ANPR at 8. The USDA also publishes quotes for egg prices, which, with a slight lag due to their modeling, are generally consistent with Urner Barry prices.

The notice references the Urner Barry price indexes but then mischaracterizes how these price indexes are established. The Office recognizes that, "[m]ost egg producers peg their egg prices to indices set by Urner Barry – indices that are based, at least in part, on market assessments provided by the major companies in the industry." ANPR at 8. This index-based pricing is criticized in the notice, however, as a problematic "feedback loop" that allows "producers to converge to a higher price even in the absence of cost increases."

The Office is correct that Urner Barry indexes are used as the basis for pricing most of the generic shell eggs sold. UEP's experience is that Urner Barry establishes its index price by reaching out to various stakeholders throughout the supply chain, including processors, retailers, wholesalers, and distributors to find out at what prices eggs are being sold.[4] Urner Barry states that its pricing methodologies and processes received third-party assurance that they are aligned with the International Organization of Securities Commission (IOSCO) Principles for Price Reporting Agencies. (IOSCO is the international body that brings together the world's securities regulators and is recognized as the global standard setter for the securities sector.)[5] In no way do egg producers have control over the market quote Urner Barry publishes, as suggested in the notice.

<u>Cost Increases as a Poor Proxy in the Egg Industry (Question 4)</u>

Costs do not always control the rise or fall of the price of eggs in the short terms such as an emergency; changes in demand or supply chain can be the controlling factors. In fact, as USDA and Egg Industry Center statistics verify, egg producers have experienced long periods of time during which they received prices below their cost of production – due to the power of the buyers and the commodity nature of eggs. Realistically, if egg producers had the suggested control of a

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[4] This market pricing methodology can be viewed at Urner Barry, *Price Reporting Methodology: Shell Egg Market,* October 1, 2020, *available* https://www.urnerbarry.com/pdf/methodology/ub_methodology_shell_eggs_2020.pdf.

[5] *See* Urner Barry, Press Release, *Urner Barry Price Reporting Receives Independent Assurance*, February 10, 2022, *available at* https://www.urnerbarry.com/pdf/IOSCO-PressRelease-20220210.pdf.

"feedback loop," they would never sell eggs below the cost of production (at a loss) at any time. But for the three straight years prior to the short run-up in prices at the beginning of the global pandemic, many egg producers received prices for their eggs below their cost of production (being forced to sell at a loss).

Retailers have various reasons for the price at which they sell shell eggs. It may have little to do with the price that egg producers are selling eggs to them. Egg producers receive prices for their eggs based on the index price Urner Barry sets, at times ***whether that price is profitable or not***, because egg producers sell a fungible, commodity good.

Additionally, costs in the egg industry are tied to some long-term inputs. Shell eggs come from animals, not production lines. It takes months, if not years, to plan for increasing or reducing the number of chickens an egg producer has to affect the supply of eggs. Egg production cannot be shut on or off on short notice. As a result, cost increases often occur months prior to the pricing at which egg producers sell their eggs.

For example, in order to have enough birds for the winter holidays, producers usually will have more birds (and hence more eggs) than needed during the summer months. Egg prices are therefore usually lower in the summer. An emergency declaration that strictly locked in low summertime prices and remained in place through the winter holidays could be ruinous for egg producers – even if it allowed for cost increases attributable to the emergency.

To require an egg producer to show that any change in prices is attributable to short-term cost changes would also ignore the economic reality that corn and soybean prices (the two main feed ingredients for chickens) are separate markets that change based upon their own supply/demand factors. Those prices may change months prior to a declared emergency that might drive a sudden demand for the eggs, thereby increasing egg prices; yet a strict limit on cost increases during a declared emergency period would mean that those increased ingredient costs would not be able to be shown to have an impact on the price of eggs.

Relationship Between the Egg Prices and Production (Question 25)

Prices for generic eggs produced are, in most cases, set by contracts with egg purchasers and adjusted weekly based on the published Urner Barry price index. Because purchasers use contracts that rely on the independently-determined Urner Barry prices for eggs, the egg producers have little or no practical control over the weekly changes in market prices. Egg producers, in general, have no ability to set the weekly price of eggs based on production changes. There is little if any correlation between weekly production levels of eggs and prices. This makes sense under established principles of economics – market prices for price-takers, like the UEP members, will have minimal or no correlation to short-term changes in production levels of the individual firm or producer.

Rigid Benchmarks Would Not Account for Economic Realities (Question 13)

There are limitations on how useful percentage increases are as measures of price gouging. A declared emergency should not require producers to sell their product at a loss. Should the state wish to enact finite price gouging benchmarks, therefore, we urge that they not be established for agriculture products, which are regularly sold at a loss. Price gouging determinations should take into account whether, at the beginning of the emergency, products *already* are being sold at a loss, and – considering the length of time those producers had been losing money – what it would take for the market to balance that loss out. This evaluation should precede any other price gouging analysis.

<u>Egg Prices during the COVID-19 Pandemic</u>

We also write to clarify the notice's characterizations of the egg prices over the course of the pandemic. As a result of misunderstandings about how industry pricing works, the egg industry has been targeted by some price gouging enforcement actions based on lack of information about how egg pricing occurs and the challenges the U.S. egg supply faced during the start of the pandemic.

By their nature, wholesale shell egg prices fluctuate with the supply/demand balance throughout the year. Prices are generally highest around holidays, and then run lower during the rest of the year. Due to these fluctuations, UEP members sometimes experience periods of profitability that are followed by periods of significant losses, and their financial results change dramatically even between quarters in the same fiscal year.

Also by their nature, shell egg prices can be significantly affected by small decreases in production or increases in demand because it takes time to increase egg supply. As discussed above, increasing supply takes time. It requires growing additional hens to a mature laying age, which takes months. And eggs are perishable, meaning that egg producers cannot maintain significant excess inventory in the event it is desired.

In March 2020, egg prices were beginning their typical climb toward higher Easter pricing.[6] As the food service industry slowed down and Americans rushed to grocery stores in the early days of the COVID-19 pandemic, retailers saw a surge in demand for staple supplies, including eggs.[7] The number of eggs purchased by the retail sector increased significantly, while demand from the food service industry plummeted.[8]

Faced with significantly increased demand from consumers at home, the egg industry hurried to ensure a steady supply of eggs to grocery stores. Where a producer has contracted to provide eggs to a retailer at a specific price and has fewer eggs available on their farm than due under the contract (a reasonably frequent occurrence given fluctuations in demand and the perishability of eggs), they may need to purchase the remaining eggs on the "spot sale" market, which reflects the wholesale price of eggs on a given day. If the price of eggs goes up, the producer could pay a higher price for the eggs they are selling to the retailer than the retailer will be paying them under the contract. The early days of the pandemic created a significant marketplace

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[6] *See, e.g.*, USDA, Economic Research Service, LDP-M-309, *Livestock, Dairy, and Poultry Monthly Outlook: March 2020*, p. 18, *available at* https://www.ers.usda.gov/publications/pub-details/?pubid=98073.

[7] *See, e.g.*, U.S. Bureau of Labor Statistics, *The impact of the COVID-19 pandemic on food indexes and data collection*, August 2020, *available at* https://www.bls.gov/opub/mlr/2020/article/the-impact-of-the-covid-19-pandemic-on-food-price-indexes-and-data-collection.htm.

[8] *See, e.g.*, USDA, Economic Research Service, LDP-M-311, *Livestock, Dairy, and Poultry Monthly Outlook: May 2020*, p. 28, *available at* https://www.ers.usda.gov/publications/pub-details/?pubid=98462.

disruption for egg producers – producers that did not have sufficient supply, in many cases, were forced to purchase eggs themselves at increased prices on the spot sale market, to then use to fulfill their customers' requirements. This was often at a steep loss for the egg farmer.

Significantly, a sizeable portion of the U.S. egg supply normally goes to the food-service industry. When that industry was largely shut down, that volume was essentially bottlenecked from reaching consumers. Egg producers that usually sell eggs to the food service industry were stuck holding eggs as many of those businesses shut down, either temporarily or permanently. A United States regulation known as the "Egg Safety Rule" prohibits switching breaking stock eggs – which are primarily used the food service industry – over for sale on retailers' shelves. For a period of weeks at the beginning of the pandemic, this regulatory bar caused a significant disruption. UEP proactively petitioned the FDA on an emergency basis to identify this as a bottleneck, and secured temporary exceptions to the "Egg Safety Rule," to enable eggs slated for further processing to temporarily be sold safely in grocery stores.[9]

At the same time, the outsized flow of eggs to retailers created a carton shortage. So egg producers in real-time developed new packaging methods and secured retail-sized cartons for these shifted eggs. In certain instances, producers used packaging without their preferred logos (at a loss to their own brand recognition) in order to meet retail demand. In other instances, they bought cartons that were up to 80% more expensive than the cartons they normally use. By May 2020, eggs previously destined for now-closed restaurants and food service businesses were successfully redirected to grocery store supply channels.

In addition, egg production itself became more expensive during the pandemic. Producers incurred significant burdens and increased costs, including for employee health screenings, crisis pay, hiring additional employees to meet demand, inflated grain costs and absorbing various cost increases related to additional transportation and logistics. These costs could not always be passed through to retailers in the wholesale price of eggs.

Egg prices generally decreased to pre-COVID-19 levels by May 2020, tracking both the natural fluctuation of the market and the egg industry's extraordinary efforts to meet retail demand for eggs.[10] The price went up as the sudden demand shift occurred in the early days of the pandemic. A few weeks later, as adjustments were able to be made, the Urner Barry price once again went to normal seasonal levels, in many cases throughout 2020 even *below the cost production* again for many egg farmers. The efforts by egg producers to try to adjust to the sudden demand shift and get eggs to retailers simply is not price gouging.

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[9] *See* U.S. Food and Drug Administration, Guidance Document, *Temporary Policy Regarding Enforcement of 21 CFR Part 118 (the Egg Safety Rule) During the COVID-19 Public Health Emergency*, April 2020, *available at* https://www.fda.gov/regulatory-information/search-fda-guidance-documents/temporary-policy-regarding-enforcement-21-cfr-part-118-egg-safety-rule-during-covid-19-public-health.

[10] *See, e.g.*, U.S. Bureau of Labor Statistics, *The impact of the COVID-19 pandemic on food indexes and data collection, supra* note 7.

CONCLUSION

Given this unique situation – where the ongoing state of emergency two years into this global pandemic has resulted in continued activation of price restrictions that are usually temporary in nature – additional analysis of the purpose and success of the application of this law is warranted. N.Y. Gen. Bus. L. § 396-r(5) offers important protection from price gouging by prohibiting "unconscionably excessive" pricing during "any abnormal disruption of the market." As noted in the proposed rulemaking, certain price increases during a time of disruption should be allowed. But consumers, businesses, regulators, and enforcers often lack clarity in understanding what is and is not permitted.

UEP calls on the Office to consider the economic realities of how pricing functions in the egg industry in its rulemaking, including that:

- egg producers generally are price-takers in a highly volatile market where they frequently incur losses for months out of every year;
- an artificial price cap during one of these months would cripple the industry and this part of the nation's food supply;
- the vast majority of eggs are sold on a price index developed by a third party that interacts with retail/grocery stores to determine grocery store prices; and
- egg producers generally do not sell eggs to end consumers, and have virtually no say or input as to what price the end consumer pays.

Respectfully,

United Egg Producers & United Egg Association
d/b/a Egg Farmers of America

From: Jeremy May
To: stopillegalprofiteering
Subject: Wood
Date: Sunday, March 6, 2022 8:44:42 AM

[EXTERNAL]

The price of a 2”x3”x8’ piece of lumber at Kelley Agway in Cobleskill is $4.99. The cost at Home Depot is $6.25. How can a small town store have better deals than a big box store with more buying power? Greed.

Jeremy May 518-848-1769
GreizMonkey@me.com

Sent from my iPhone

From:	Paul Dyckes
To:	stopillegalprofiteering
Subject:	price gouging
Date:	Saturday, March 5, 2022 2:29:17 PM
Attachments:	image001.png

[EXTERNAL]

This is a follow -up email stemming from a price gouging incident on 12/21/21--where a local (Huntington) pharmacy charged $60/test kit-- See attached receipt.

There has been no response from the AG--from the initial report made--several days after the incident occurred.

Can you provide a status update?

Please let me know if anyting else is required.

Kind Regards
Paul Dyckes MAI SRA MRICS
Dyckes Realty Advisors
T 631-385-4558
VALUATION + CONSULTING + ASSESSMENT

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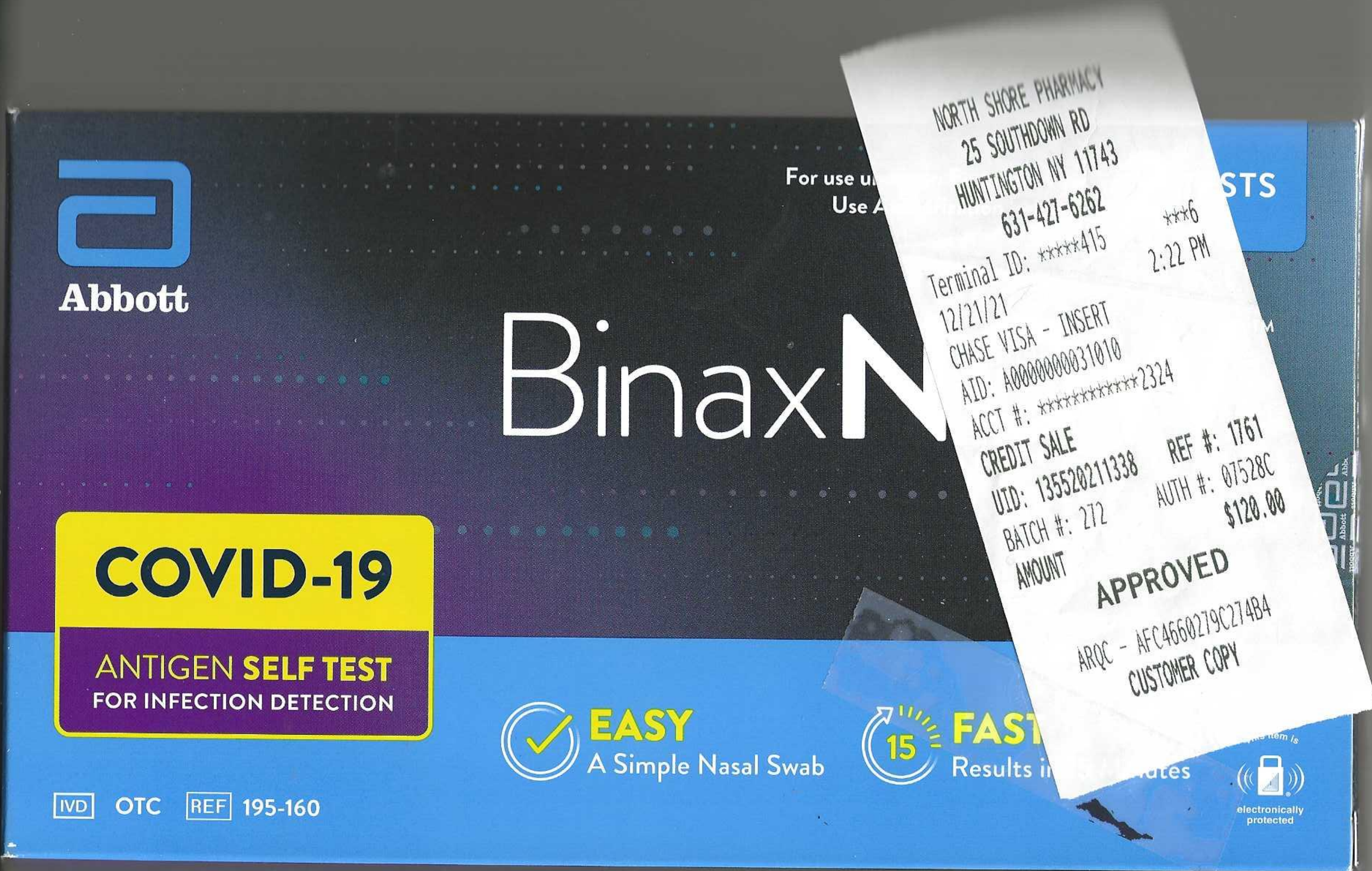

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ANTIGEN SELF TEST
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EASY
A Simple Nasal Swab
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electronically protected
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HUNTINGTON NY 11743
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From: Rony Kessler
To: stopillegalprofiteering
Subject: Price gouging
Date: Saturday, March 5, 2022 8:13:13 AM

[EXTERNAL]

Dear AG Letitia James

I read in today's Newsday that you are looking into price gouging. The Auto Industry proudly announces their price gouging policies, no shame there. I personally can testify to two instances.

I have encountered the price increases beyond MSRP in both Toyota on Franklin Ave in Garden City LI. In this case I had to insist on seeing the MSRP sticker since they did not display it. They were asking for $10,000 over due to low inventory.
The second encounter was on the phone with IKA in Brooklyn. This was after an inquiry for the Telluride. When I asked if they charged over MSRP since their soliciting email showed MSRP with a slash, suggesting even less, The sales person on the phone told me they are asking for 4 to $6,000 over MSRP sometimes more Due to low inventory.

Rony Kessler
861 Hemlock Street
Franklin Square, NY 11010
516-369-2376
Sent by Rony Kessler from iPhone

From:	Jesse Fehr
To:	stopillegalprofiteering
Subject:	Addressing questions posed by Zephyr Teachout
Date:	Monday, April 25, 2022 12:16:24 PM

[EXTERNAL]

I would like to respond to these questions posed by Dr Zephyr Teachout:

What are good benchmarks for unfair leverage? How to address benchmarking for dynamic pricing? What tools could help uncover hidden upstream price gouging?

I think there are two key benchmarks for deciding unfair leverage. The first is whether or not the item or service is a "need." Need can be debatable, but it should be universally agreed that healthcare, housing, clothing, utilities, and food are need items. Does one "need" the $300 running shoe? Debatable, but that brings me to the second benchmark;

How many viable options and competitors exist? In the shoe example, there are a myriad of shoe manufacturers and styles for each shoe. One needn't the most expensive running shoe to live a quality life.

A great example of overleveraged items would be that of housing. The prices are such that you either pay them, or be criminalized by the mayor and his gestapo of homeless removal teams. It's a similar death threat with healthcare.

A more, easier to address service would be internet. Where I live, I have only one service provider. Yet they continually raise prices while offering nothing in terms of a better product. In fact, Optimum dumped their lowest tier entirely to force every customer onto the 100mbps plan. I didn't have a choice. Either get the internet at the price, or go without internet. There is no competitor and researching alternatives I came to find that the government itself has made it so that there can be no competitors.

So, is internet necessary? Yes. In the 21st century it is. Are there viable options and competitors? No. Therefore, internet should be a public utility at no cost at the point of service. Which, of course is a legislative concern, but from a policing standpoint can still be enforced as unfair pricing given nobody is a given a "free market" choice.

To determine dynamic pricing being justified, I think it's fair to look at where a company's revenue is going. Are employees receiving raises, or just executives? Are profits going into investments for the community or to better the business and its workers?; Or are the profits merely being shoveled back into stock buybacks to fluff the wealth of executives?

Companies cannot raise prices simply to enrich the top.

For the last question regarding upstream pricing, I think one tool is looking at revenue and cost of production. Units sold or services requested might increase, and cost of production might increase so it would justify raising prices. But if the percentage of each of those increases is dwarfed by the point of sale price increase in addition to the previous benchmarks of viable options and need, then the government needs to step in.