

Congress of the United States

Washington, DC 20515

October 10, 2024

The Honorable Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, D.C. 20580

Dear Chair Khan:

We write regarding the activation and enforcement of price gouging laws in states impacted by Hurricane Helene. On September 26, 2024, Hurricane Helene made landfall in the Florida Gulf Coast as a Category 4 storm.¹ The hurricane caused significant damage across the Southeast United States, particularly in Florida, Georgia, North Carolina, South Carolina, Tennessee, and Virginia,² and the death toll is now over 200.³ Over the past two weeks, offices of attorneys general in each of these states have reiterated that their state-specific price gouging laws are in effect⁴ to protect consumers during what has become “one of the deadliest storms in American history.”⁵ We write to seek information on whether a federal price gouging ban might be helpful to complement state efforts to hold bad actors accountable when grappling with a large-scale, multi-state emergency such as Hurricane Helene.

¹ National Weather Service, “Tropical Storm Helene: September 26-27, 2024,” <https://www.weather.gov/ilm/Helene2024>.

² NBC News, “Hurricane Helene live updates: More than 200 dead as hope fades in search for survivors,” Austin Mullen and Denise Chow, October 3, 2024, <https://www.nbcnews.com/news/weather/live-blog/hurricane-helene-live-updates-rcna173767>.

³ NBC News, “Hurricane Helene: Death toll rises to at least 215,” October 4, 2024, <https://www.nbcnews.com/news/weather/live-blog/hurricane-helene-live-updates-rcna173973>.

⁴ Office of Florida Attorney General, “Attorney General Moody Activates Price Gouging Hotline Following Declared State of Emergency for Potential Tropical Cyclone Nine,” press release, September 23, 2024, <https://www.myfloridalegal.com/newsrelease/attorney-general-moody-activates-price-gouging-hotline-following-declared-state-0>; Office of Georgia Attorney General, “CONSUMER ALERT: Beware of Scams & Fraud Following Hurricane Helene,” press release, <https://law.georgia.gov/key-issues/consumer-protection/consumer-alert-beware-scams-fraud-following-hurricane-helene>; North Carolina Department of Justice, “North Carolina’s Price Gouging Phone Line is Open,” press release, September 29, 2024, <https://ncdoj.gov/north-carolinas-price-gouging-phone-line-is-open/>; South Carolina Attorney General, “Attorney General Alan Wilson announces state’s price gouging law in effect because of Hurricane Helene,” press release, September 26, 2024, <https://www.scag.gov/about-the-office/news/attorney-general-alan-wilson-announces-state-s-price-gouging-law-in-effect-because-of-hurricane-helene/>; Office of the Tennessee Attorney General & Reporter, “TN AG Skrmetti Issues Warning to Scammers and Price Gougers Following Tennessee’s Devastating Flooding,” press release, October 1, 2024, <https://www.tn.gov/attorneygeneral/news/2024/10/1/pr24-70.html>; Tweet by Virginia Attorney General Jason Miyares, September 29, 2024, <https://x.com/JasonMiyaresVA/status/1840478229192409407>.

⁵ New York Times, “Biden Traces Helene’s Ruinous Trail in Visits to Florida and Georgia,” Michael D. Shear, October 3, 2024, <https://www.nytimes.com/2024/10/03/us/politics/biden-hurricane-helene-florida-georgia.html>.

Businesses May Take Advantage of Consumers by Price Gouging on Essential Goods and Services

Price gouging occurs when sellers rapaciously expand their profit margins by raising prices by far more than needed to cover increases in their costs. Often, these price gougers blame inflation and supply chain disruptions to justify these excessive price increases,⁶ and price gouging often takes place during a declared emergency or natural disaster. Nearly 40 states have price gouging laws that allow them to investigate and hold accountable companies that increase prices excessively, especially during market disruptions.⁷

Price gouging occurs across the country, in numerous sectors, and in varying situations. In January 2024, the Oklahoma Attorney General began investigating potential insulin price gouging;⁸ in August 2024, a Texas County Attorney sued two gas stations for price gouging after a hurricane;⁹ and in October 2024 during the eastern dockworker strike, the governors of Massachusetts, New York, New Jersey, and Maryland released a joint statement warning companies against price gouging, saying “they should not use this moment as an opportunity to unfairly profit off of working families.”¹⁰

Every State Impacted by Hurricane Helene Has Taken Action on Price Gouging

Price gouging laws are common across the country and are enforced by both Democratic and Republican state attorneys general. Every state hit by Hurricane Helene has a price gouging law to protect consumers. In the two weeks since the hurricane made landfall, Florida and North Carolina activated state-specific price gouging hotlines, which allow consumers to report instances of suspected price gouging.¹¹ The Governor of Virginia warned that his state would “strictly enforce” its price gouging laws, and encouraged his constituents to inform the attorney general’s office about instances of price gouging.¹² Consumers are taking action to hold price gougers accountable: the North Carolina Attorney General’s Office has received nearly 200 complaints of price gouging in Helene’s aftermath,¹³ and South Carolina has received over 300 complaints.¹⁴

⁶ Harvard Business School Online, “Supply and Demand or Price Gouging? An Ongoing Debate,” April 1, 2020, <https://online.hbs.edu/blog/post/supply-and-demand-or-price-gouging-an-ongoing-debate>.

⁷ National Conference of State Legislatures, “Price Gouging State Statutes,” March 10, 2022, <https://www.ncsl.org/financial-services/price-gouging-state-statutes>.

⁸ KOSU, “Oklahoma attorney general eyes legal action over alleged insulin price gouging,” Nyk Daniels, January 10, 2024, <https://www.kosu.org/health/2024-01-10/oklahoma-attorney-general-eyes-legal-action-over-alleged-insulin-price-gouging>.

⁹ Click2Houston, “Lawsuit filed against 2 Harris County gas stations over price gouging during Hurricane Beryl,” Christian Terry, August 19, 2024, <https://www.click2houston.com/news/local/2024/08/19/lawsuit-filed-against-2-harris-county-gas-stations-over-price-gouging-during-hurricane-beryl/>.

¹⁰ New York State Governor, “Joint Statement from Governor Kathy Hochul, Governor Phil Murphy, Governor Maura Healey, and Governor Wes Moore,” press release, October 3, 2024, <https://www.governor.ny.gov/news/joint-statement-governor-kathy-hochul-governor-phil-murphy-governor-maura-healey-and-governor>.

¹¹ Office of Florida Attorney General, “Attorney General Moody Activates Price Gouging Hotline Following Declared State of Emergency for Potential Tropical Cyclone Nine,” press release, September 23, 2024, <https://www.myfloridalegal.com/newsrelease/attorney-general-moody-activates-price-gouging-hotline-following-declared-state-0>; North Carolina Department of Justice, “North Carolina’s Price Gouging Phone Line is Open,” press release, September 29, 2024, <https://ncdoj.gov/north-carolinas-price-gouging-phone-line-is-open/>.

¹² Tweet by Virginia Governor Glenn Youngkin, October 1, 2024, <https://x.com/GovernorVA/status/1841144616461942804>.

This week, Hurricane Milton is making landfall on the coast of Florida as residents are still trying to recover from Hurricane Helene.¹⁵ Gulf Coast counties have ordered residents to flee the area in what may become the largest evacuation in Florida since Hurricane Irma in 2017.¹⁶ As residents evacuate, Department of Transportation (DOT) Secretary Pete Buttigieg has warned airlines against price gouging the cost of airline tickets, saying that DOT “takes all allegations of airline price-gouging seriously,” and that the Department was “keeping a close eye on flights in and out of areas affected by Hurricane Milton to make sure airlines are not charging excessively increasing fares.”¹⁷ The Federal Trade Commission (FTC), Department of Justice (DOJ), and Consumer Financial Protection Bureau (CFPB) have also warned consumers about price gouging in the wake of the hurricanes.¹⁸ You pledged that, “[i]n partnership with state enforcers, the FTC will keep fighting to ensure that Americans can get the relief they need without being preyed on by bad actors exploiting a crisis.”¹⁹

A Federal Price Gouging Law Would Bolster Efforts to Combat Price Gouging

A federal price gouging law would strengthen and complement state-level efforts to combat price gouging. Price gouging laws differ across states with regard to the time period when the restriction goes into effect and the time periods for which price gougers can be investigated and held accountable. For example, North Carolina’s statute requires the attorney general to consider whether a “price charged by the seller exceeds the seller’s average price in the preceding 60 days before the triggering event.”²⁰ Meanwhile, Virginia’s statute requires the attorney general to consider whether the “price charged by the supplier grossly exceeded the price charged by the supplier for the same or similar goods or services during the 10 days immediately prior to the time of disaster.”²¹ State laws also vary as to what triggers their effectiveness. Some states’ price gouging laws, such as Florida’s and Georgia’s, are contingent upon the governor issuing a “declaration of emergency,”²² whereas other states’, such as Tennessee’s, merely require an “abnormal economic disruption.”²³ A federal price gouging law would provide baseline consumer protections to all consumers, no matter where they live.

¹³ North Carolina Department of Justice, “Attorney General Josh Stein Provides Updates on Price Gouging and Helene-Related Scams,” press release, October 4, 2024, <https://ncdoj.gov/attorney-general-josh-stein-provides-updates-on-price-gouging-and-helene-related-scams/>.

¹⁴ WMBF News, “Over 300 price gouging complaints reported in SC during Helene aftermath, AG’s office says,” Kristin Nelson, October 3, 2024, <https://www.wmbfnews.com/2024/10/03/over-300-price-gouging-complaints-reported-sc-during-helene-aftermath-ags-office-says/>.

¹⁵ Washington Post, “Tampa Bay braces for what could be strongest storm in a century,” Lori Rozsa, Molly Hennessy-Fiske, and Bryan Pietsch, October 7, 2024, <https://www.washingtonpost.com/weather/2024/10/07/hurricane-milton-helene-florida-tampa-debris/>.

¹⁶ *Id.*

¹⁷ Tweet by Transportation Secretary Pete Buttigieg, October 7, 2024, <https://x.com/secretarypete/status/1843464151324389620?s=12&t=Og8nis1AZUSwley11P2fMg>.

¹⁸ Federal Trade Commission, “FTC, DOJ and CFPB Warn Consumers About Potential Scams and Price Gouging in the Wake of Hurricanes and other Natural Disasters,” press release, October 9, 2024, <https://www.ftc.gov/news-events/news/press-releases/2024/10/ftc-doj-cfpb-warn-consumers-about-potential-scams-price-gouging-wake-hurricanes-other-natural>.

¹⁹ *Id.*

²⁰ *N.C. Gen. Stat. § 75-38 (2005)*.

²¹ *Va. Code Ann. § 59.1-527 (2004)*.

²² *Fla. Stat. §501.160; Ga. Code §10-1-393.4; Ga. Code §10-1-438*.

²³ *Tenn. Code Ann. §47-18-5101*.

Furthermore, a federal price gouging law would help tackle difficulties that might arise if price gouging occurs by a supplier higher up in the supply chain or by a business operating in multiple states. Despite the fact that nearly 40 states have price gouging laws, limits on the jurisdiction of state attorneys general may allow larger distributors or companies further up the supply chain to escape liability. The current regulatory system forces state attorneys general to focus on smaller retailers operating within their state, who often are themselves victims of price gouging from larger suppliers. Consumers would benefit from a federal price gouging ban that would allow the FTC to help state attorneys general target large, multi-state entities that may be engaged in price gouging. This is why some of us have introduced the *Price Gouging Prevention Act of 2024*, which would empower the FTC and state attorneys general to combat price gouging at any level of the supply chain.²⁴

Conclusion

Price gouging laws are a widely used, important tool to protect consumers from corporate wrongdoing. A federal price gouging law, enforced by the FTC, would help consumers, particularly during disasters like Hurricane Helene. To better understand the potential benefits of a federal price gouging ban, we ask that you answer the following questions by October 23:

1. What authorities does FTC currently have to combat price gouging, and how are those deployed?
2. How do the FTC's current authorities as to price gouging overlap with the authorities of state attorneys general? Would a federal ban on price gouging support state-level efforts to combat price gouging?
3. Overall, would a federal ban on price gouging enable the FTC and state attorneys general to combat price gouging more effectively than is currently possible? In what way? In your response, please address the effect of a federal ban:
 - a. Enforcers' ability to conduct investigations and identify instances of price gouging;
 - b. Enforcers' ability to bring enforcement actions against price gouging;
 - c. Enforcers' ability to inform consumers of their rights and to encourage consumer reporting on price gouging.

Sincerely,




Elizabeth Warren
United States Senator



Henry C. "Hank" Johnson, Jr.
Member of Congress

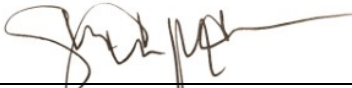
²⁴ Senator Elizabeth Warren, "Warren, Baldwin, Casey, Schakowsky Reintroduce Legislation to Crack Down on Price Gouging by Giant Corporations," press release, February 15, 2024, <https://www.warren.senate.gov/newsroom/press-releases/warren-baldwin-casey-schakowsky-reintroduce-legislation-to-crack-down-on-price-gouging-by-giant-corporations>.



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