

House Democratic Policy Committee Hearing

Ending Corporate Inflation

Monday, June 22, 2022 | 9 a.m.

418 Main Capitol

Rep. Nick Pisciotano

OPENING REMARKS

9 a.m. Rep. Ryan Bizzarro, D-Erie
Rep. Nick Pisciotano, D-Allegheny

9:05 a.m. Lee Hepner, Legal Counsel
American Economic Liberties Project

Q & A with Legislators

Remarks and Testimony can be found by scanning the QR Code below:

June 22, 2022

Hearing: Combatting Inflation with the Stop Price Fixing Act

Written Testimony of the American Economic Liberties Project before the House Democratic Policy Committee

Chair Bizzarro and Committee Members:

On behalf of the American Economic Liberties Project, we submit this comment regarding the Stop Price Fixing Act, H.B. 2641, introduced by Rep. Nick Pisciotto, Rep. Hohenstein, Rep. Sanchez, Rep. Hill-Evans, Rep. Benham, Rep. D. Williams, Rep. Briggs, Rep. Madden, Rep. Schlossberg, Rep. Dellosa, Rep. Millard, Rep. Parker, Rep. Bizzarro, Rep. Snyder, and Rep. Ciresi, on June 6, 2022.¹ By way of introduction, the American Economic Liberties Project is a nonprofit research and advocacy organization dedicated to understanding and addressing the problem of concentrated economic power in the United States.

1. Inflation is harming Pennsylvanians, and voters are demanding accountability.

The House Democratic Policy Committee is well-steeped in the issue of inflation in Pennsylvania, including its causes and impact on working Pennsylvanians. Just last week, this Committee held a hearing during which Marc Stier of the Pennsylvania Budget & Policy Center spoke to the policy undergirding

¹ Pennsylvania General Assembly, Bill Information Page, H.B. 2641:
https://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?year=2021&ind=0&body=H&type=B&bn=2641

today's inflation crisis, and – relevant to the legislation before the Committee today – acknowledged the fact that while Pennsylvania residents are paying high prices, dominant corporations are earning extraordinary profits. As of May, the United States Labor Department reported that price inflation was at 8.6% - the highest rate in more than 40 years. Amid a period of consolidation across the energy sector, and record profits for oil companies, farmers are being crushed by record diesel prices that are 75% higher than they were just a year ago. The Pennsylvania Farm Bureau testified last week that if farmers can't afford to pull crops from the ground, Pennsylvania residents will face food shortages. Price hikes are causing retirees back into the workforce because they simply can't afford to make ends meet, with Pennsylvania ranking third in the country in the number of older adults going back to work. We could go on.

It's no surprise that inflation and its root causes are top concerns for Pennsylvania residents. A Suffolk University/USA Today Network poll from just last week showed 45% of Pennsylvanians rate the economy as in poor condition, up from just 12% in 2018.² Survey results released earlier this month by Fight Corporate Monopolies, a branch of the American Economic Liberties Project, showed inflation was the top priority for 73% of voters, who labeled it a “very

² Suffolk University Poll, Pennsylvania General Election Voters with USA Today Network, June 15, 2022
<https://www.suffolk.edu/academics/research-at-suffolk/political-research-center/polls/other-states>

serious problem.”³ The sponsors of this legislation and members of this Committee know the issues well, as set forth in a recent Opinion piece: “Corporate greed is driving these price increases, and the money is flowing out of the pockets of working people and into stockholder dividends, company stock buybacks, and to inflate the salaries and benefits of corporate officers who get to boost their compensation by taking credit for 300% profit increases.”⁴

2. The Stop Price Fixing Act would provide immediate relief to Pennsylvania residents – and puts corporate executives on notice.

It’s in this context that the House Democratic Policy Committee is considering legislation which would provide an immediate, tangible response to corporate price hikes that are exacerbating the inflation crisis. Inflation is an issue of grave bipartisan concern, and we commend Rep. Pisciotano for introducing the Stop Price Fixing Act with bipartisan support.⁵

By way of background, price fixing occurs when sellers of the same product or service agree to set actual prices, establish limits on prices or discounts, or fix price-related terms of sale. Price fixing tends to occur in industries that have already seen a lot of consolidation, which makes practical sense inasmuch as it’s easier to collude

³ Fight Corporate Monopolies poll with GABO, “Widespread Concern About Corporate Influence & Support for its Remedies,” June 7, 2022: https://fcm-prod.s3.amazonaws.com/media/documents/GBAO_FCM_Survey_Memo.pdf

⁴ “Our Plan Would End Price Gouging and Protect the People.” Reps. Bizzaro, Innamorato, Pisciotano, and McClinton. GoErie, June 15, 2022.

⁵ As of the time of submission of this comment, H.B. 2641 lists 36 sponsors: https://www.legis.state.pa.us/cfdocs/billinfo/bill_history.cfm?year=2021&sind=0&body=H&type=B&bn=2641

among a smaller number of actors. It also means less risk that another actor will go against the grain. Unfortunately, that consolidation has occurred across markets. According to a statement accompanying the 2021 Executive Order on Promoting Competition in the American Economy, over 75% of U.S. industries have come under the control of just a small number of large companies. When that consolidation is paired with under-enforcement, price fixing occurs in plain sight.

The Stop Price Fixing Act grows out of decades of bad judicial decisions that have rendered existing laws almost entirely unenforceable, and dominant corporations unaccountable to working people, families, and people on fixed incomes. These cases have put the burden on the victims of price fixing to plead exceptionally detailed facts about conspiracies between oligopolistic corporations, before they've had an opportunity to discover that detailed information.

Even when the appearance of price fixing is crystal clear, when plaintiffs allege very detailed circumstantial evidence of collusion, courts have dismissed cases, granted motions for summary judgment, and prevented meritorious price-fixing cases from advancing to trial.⁶ This heightened standard has been used to shield large corporations, deter enforcement of laws, and leave victims of price fixing with a murky path toward relief.

⁶ See, e.g., *Monsanto Co. v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 761 (1984); *Brooke Grp. Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 227 (1993); *In re Baby Food Antitrust Litig.*, 166 F.3d 112 (3d Cir. 1999); *In re Chocolate Confectionary Antitrust Litig.*, 801 F.3d 383 (3d Cir. 2015); *Valspar Corp. v. E.I. DuPont De Nemours and Co.*, 873 F.3d 185 (3d Cir. 2017); *Kleen Prods. LLC v. Georgia-Pacific LLC*, 910 F.3d 927 (7th Cir. 2018); *In re Dynamic Random Access Memory (DRAM) Indirect Purchaser Antitrust Litig.*, No. 21-15125, 2022 WL 665236 (9th Cir. Mar. 7, 2022).

By shifting the burden of proof to large corporate actors and creating an “inference of collusion,” the Stop Pricing Fixing Act gives victims of price fixing a fighting chance. This burden shifting makes sense: not only are those massive corporations typically involved in price fixing conspiracies better resourced to defend themselves, they are also custodian of the records showing whether they have or have not engaged in such price fixing.

In addition to giving the victims of price fixing a viable path to relief, the Stop Price Fixing Act would also:

- Confirm the power of courts to bar people who violate price fixing laws from returning to the industries in which they committed their violations;
- Prohibit plaintiffs from being forced to pursue relief through arbitration, rather than through litigation; and
- Establish a whistleblower bounty program, as well as protections for whistleblowers against retaliation by employers, buyers, and sellers.

Enhanced remedies are designed to encourage compliance with laws against price fixing. Giving plaintiffs their day in court enhances the likelihood that enforcement cases will be brought, instead of being decided in arbitration settings that are too often tilted against complainants. And the whistleblower protections are designed to provide a safe avenue for people with intimate knowledge of price fixing to come forward.

3. Conclusion

When considering new policy, we strive to ensure that laws present clear, bright-line rules so that the regulated community knows *how* to comply; and we simultaneously want to create real avenues to enforcement, to encourage that compliance in the first place. The Stop Price Fixing Act accomplishes exactly that, without re-inventing the wheel. It addresses a problem that has attracted universal acknowledgment, and gives teeth to existing laws that were designed to address that problem but instead have been eroded over the decades.

By strengthening price fixing laws, the Stop Price Fixing Act puts large corporate actors on notice, and makes executives at large corporations think twice before conspiring to raise prices. In this moment, that relief can't come soon enough for Pennsylvania residents.