

Testimony before the House Judiciary Committee
“Prices at the Pump: Market Failure and the Oil Industry”
Rep. Heather Wilson, (NM-01)

Chairman Conyers and Ranking Member Smith, thank you for providing me the opportunity to testify before the House Committee on the Judiciary.

We need to make America more energy independent and that is going to take a long-term, balanced approach that deals with supply, demand and protecting consumers.

Americans are again seeing gasoline price spikes at the pump with prices reaching over \$3 a gallon all over the country. Back home in Albuquerque, New Mexico, prices for unleaded gas range from \$3.09 to \$3.25. A month ago prices in New Mexico hovered around \$2.80 and a year ago prices were around \$2.90.

While price fixing, collusion and other anti-competitive practices are currently illegal on the federal level, there is no federal statutory prohibition against price gouging.

Following the Hurricane Katrina disaster, gasoline prices fluctuated up to \$6 per gallon in some communities. I was concerned that current law does not adequately address price gouging that does not rise to the level of antitrust prohibitions.

Last Congress I introduced HR. 5253, the Federal Energy Price Protection Act of 2006. A little more than a year ago, on May 3, 2006 the House passed H.R. 5253 by a vote of 389-34. Unfortunately, the Federal Price Protection Act of 2006 stalled in the Senate.

I have reintroduced the Federal Energy Price Protection Act.

The Federal Energy Price Protection Act prohibits price gouging—at any time—in the market for gasoline, diesel fuel, crude oil, home heating oil, and biofuels.

The Federal Energy Price Protection Act directs the Federal Trade Commission to define by rule the terms “price gouging”, “wholesale sale”, and “retail sale”. The existing state statutes in this area have vastly different definitions and interpretations.

Under a rulemaking, the FTC would have the benefit of receiving, and the obligation to consider, comment from interested parties on the definition of price gouging. The Act directs the FTC to define price gouging within 6 months of enactment.

The Federal Energy Price Protection Act provides for strong civil enforcement by the FTC, by States’ Attorneys General, and criminal enforcement by the U.S. Attorney General and the Department of Justice.

The Federal Energy Price Protection Act provides for civil penalties for price gouging. For “wholesale sale” violations, the penalties are 3 times the ill-gotten gains of the seller, plus an amount not to exceed \$3 million, per day of a continuing violation. For “retail sale” violations, the penalties are simply 3 times the ill-gotten gains of the seller.

The Federal Energy Price Protection Act provides for criminal penalties. “Whole sale” violations will be punishable by a fine of no more than \$150 million, imprisonment for not more than 2 years, or both. “Retail sale” violations will be punishable by a fine of no more than \$2 million, imprisonment for not more than 2 years, or both.

At least 30 states have laws that prohibit price gouging or excessive price increases. Most states have laws that are triggered in the event of a declared emergency, with a few having laws that may be applicable at other times as well. Other states may also exercise authority under general deceptive trade practice laws depending on the nature of the state law and the specific circumstances in which price increases occur.

When defining “price gouging”, the devil is in the details. Under the provisions of The Federal Energy Price Protection Act, the Federal Trade Commission would consider public comment in defining exactly what wholesale pricing is, what retail pricing is, and it gives them some regulatory authority to come up with definitions. The truth is, there are about 30 State laws. Some of those laws are very, very different, and it makes sense to allow the States and those involved to come up with a national definition that will work best for consumers in the marketplace.

The government doesn’t set prices, but we do have a responsibility to prohibit price gouging and unfair manipulation of the markets. Opportunists should not be able to reap ill-gotten windfall profits on the backs of America’s families, particularly when disaster strikes.

A federal statutory prohibition against price gouging is one piece of the puzzle. We also need to deal with other pieces of the puzzle as we move along, everything from building refinery capacity, encouraging more hydrogen-powered cars, using ethanol in our gas tanks, exploring for energy in America and in American waters and conservation so that America becomes more energy independent.

We need a balanced, long term energy plan for the country that makes us more energy independent.

Again, thank you for allowing me the opportunity to testify before the Committee on the Judiciary.