

STATEMENT OF TODD LEATHERMAN
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BEFORE THE U.S. SENATE SUBCOMMITTEE ON CONSUMER PROTECTION, PRODUCT
SAFETY, AND DATA SECURITY OF THE COMMITTEE ON COMMERCE, SCIENCE, &
TRANSPORTATION
Hearing entitled: "Stopping COVID-19 Fraud and Price Gouging"
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Chairman Blumenthal, Ranking Member Blackburn, and members of the Subcommittee, thank you for inviting me to participate in today's hearing. My name is Todd Leatherman. I currently serve as Program Counsel at the National Association of Attorneys General (NAAG). Founded in 1907, NAAG is the nonpartisan national forum for America's state and territory attorneys general. NAAG provides a community for attorneys general and their staff to collaboratively address issues important to their work, as well as training and resources to support attorneys general in protecting the rule of law and the United States Constitution.

Prior to joining the association, I spent 23 years in the Kentucky Attorney General's Office of Consumer Protection. I served as the office's executive director for 20 of those years focusing on a wide range of consumer protection issues. In my current role, I am one of two attorneys within the National Attorney General Training and Research Institute's Center for Consumer Protection, the nation's only entity dedicated to providing support to attorney general staff who are committed to protecting the public against consumer fraud and abuse.

The Center supports the work of the NAAG Consumer Protection Committee, which currently has 19 members and is co-chaired by Illinois Attorney General Kwame Raoul and Tennessee Attorney General Herbert H. Slatery III.

In my role, I support 2022 NAAG President and Iowa Attorney General Tom Miller's Presidential Initiative, "Consumer Protection 2.0: Tech Threats and Tools". As part of the initiative, Attorney General Miller welcomes the opportunity to collaborate with the federal government and Congress on our shared priorities. I encourage you to participate in the many events and meetings scheduled this year focused on the initiative and protecting consumers.

Role of State Attorneys General

Attorneys general are the primary enforcers of consumer laws within their state or territory. Their activities and enforcement actions are critically important for protecting consumers across the country. They deal with a full range of issues that consumers encounter in the marketplace and at home, including health, safety, and privacy. Because consumer protection is uniquely "people law," it is often the place where individuals have

the closest contact with not only the attorney general's office, but with any governmental entity.

Attorneys general serve the public in a variety of ways in the sphere of consumer protection. These include:

- Education: Making consumers aware of their consumer rights and potential scams/frauds through speaking engagements, websites, press releases, public service announcements, mobile offices, social media, and other communications.
- Mediation: Serving as an independent mediator regarding disputes that consumers have with businesses.
- Enforcement: Investigation, settlement, and litigation of consumer protection matters.

COVID-19 Scams and Fraud

Whenever disaster strikes, unscrupulous individuals see an opportunity to profit off their fellow citizens' vulnerability. To individuals willing to profit off the misfortune of others, the COVID-19 pandemic has presented the opportunity of a lifetime. Phony cures, treatments, and products supposed to prevent infection; bogus testing sites, telemarketing, phishing and smishing scams cloaked as contact tracing calls, emails, or text messages; sales of counterfeit or knock-off N95 masks or other PPE; puppy scams – requiring consumers to send money for a new pet that never arrives. Schemes like these, as well as price gouging, have occurred during the pandemic and been the subject of enforcement actions by attorneys general. In addition, attorneys general have helped recover millions of dollars in wrongfully retained cancellation fees, obtained refunds for cancelled travel and entertainment events.

A few COVID-related cases to highlight:

- Missouri and Arkansas sued and won cases against James Bakker and his associated television production company regarding false claims about a "silver solution" product that was marketed as a cure or treatment for COVID.¹
- Nebraska settled with a testing company regarding deceptive and misleading statements to consumers regarding the ability of their antibody tests to identify the presence of a current or prior COVID-19 infection.²

¹ Arkansas: <https://arkansasag.gov/media-center/news-releases/rutledge-sues-jim-bakker-for-peddling-colloidal-silver-products-to-cure-covid-19/>; Missouri: <https://ago.mo.gov/home/news/2020/03/10/ag-schmitt-files-suit-against-jim-bakker-for-selling-fake-coronavirus-cure>.

² <https://ago.nebraska.gov/news/ag-peterson-reaches-settlement-omaha-companies-deceptive-and-misleading-statements-regarding>.

- Oregon’s attorney general announced agreements with six companies and medical practitioners selling products and services advertising a so-called Covid-19 "cure," or an ability to boost immunity and protect people from the disease.³
- New York’s attorney general sent cease and desist letters to multiple companies allegedly selling fake COVID-19 treatments.⁴
- Arizona’s attorney general secured an agreement with Ticketmaster, returning over \$71 million in refunds for consumers who purchased tickets to live events that were cancelled, postponed, or rescheduled due to the COVID-19 pandemic.⁵
- The Texas attorney general obtained a temporary restraining order against a Texas clinic for misrepresenting the character of its COVID-19 testing and failing to secure patients' sensitive personal information.⁶

Price Gouging

Thirty-nine states and several of the territories have price gouging statutes, most of which grant the jurisdiction’s attorney general civil enforcement authority for any violations⁷. Some states, such as Florida, Louisiana, and Mississippi, also give the attorney general criminal enforcement authority in price gouging cases. States that may lack a specific price gouging statute, may still combat price gouging under their deceptive trade practices act, specifically as an unfair practice.

How price gouging is defined in specific statutes, varies by state. However, price gouging laws generally prohibit a merchant from increasing prices for essential consumer goods and services, during a declared state of emergency, to a level that takes unfair advantage of consumers. The laws generally recognize that if a merchant’s costs increase, they may pass on those cost increases to consumers. However, when merchants’ costs have not increased, they may not increase prices simply to make a windfall profit following a spike in demand for an essential good or service, whether it be a generator, motel room, bottled water, gasoline, hand sanitizer, or masks. This type of market behavior is illegal, unfair to consumers, and harms communities at their most vulnerable moments.

Attorneys general have used their price gouging authority following multiple disasters. For example:

³ <https://www.doj.state.or.us/media-home/news-media-releases/ag-rosenblum-settles-with-six-companies-and-medical-clinics-selling-unproven-covid-19-treatments/>.

⁴ <https://ag.ny.gov/press-release/2020/attorney-general-james-orders-companies-stop-selling-fake-treatments-coronavirus>.

⁵ <https://www.azag.gov/press-release/ag-brnovich-secures-71-million-ticket-refunds-arizona-events-impacted-covid-19>.

⁶ <https://www.texasattorneygeneral.gov/news/releases/ag-paxton-files-lawsuit-against-clinica-hispana-fraudulent-covid-testing-and-failing-secure-personal>

⁷ <https://www.ncsl.org/research/financial-services-and-commerce/price-gouging-state-statutes.aspx>

- In 2017, the Texas attorney general took action against gasoline stations and motels who raised their prices exorbitantly in the aftermath of Hurricane Harvey.⁸
- The New York and New Jersey attorneys general obtained settlements from hotels, gas stations, and a hardware store for price increases following Hurricane Sandy.⁹
- The North Carolina attorney general obtained settlements from an out of state water damage restoration company for charging excessive prices following Hurricane Florence¹⁰.

Price gouging restrictions may also be implemented following an unexpected supply disruption, a recent example being the 2021 Colonial Pipeline ransomware attack that led to the shutdown of the pipeline supplying much of the gasoline to the East Coast. Following that event, a number of attorneys general, including the those from Kentucky,¹¹ North Carolina,¹² and Virginia,¹³ filed price gouging actions against gasoline stations who raised their prices to unlawful levels.

Price Gouging Enforcement During the COVID Pandemic

As the committee is aware, consumers have reported gouging on a wide range of products from hand sanitizer to masks, even on eggs during the COVID-19 pandemic.

One such incident made the national press in the early days of the pandemic. A pair of brothers from Tennessee drove from store to store purchasing large quantities of hand sanitizer in Tennessee and Kentucky. The brothers then jacked up the prices and sold the bottles of hand sanitizer on Amazon for \$8 to \$70 each, many times higher than their purchase price. The Tennessee and Kentucky attorneys general quickly took action, obtaining a settlement in which the brothers gave up the supplies and made them available for emergency responders and others serving the public.

A few other cases to highlight:

⁸ <https://www.texasattorneygeneral.gov/news/releases/ag-paxton-files-more-lawsuits-against-businesses-accused-price-gouging-during-hurricane-harvey>

⁹ <https://www.nj.com/mercer/2013/07/mercer-county-hotels-settle-with-state-over-alleged-price-gouging-during-sandy.html>; <https://ag.ny.gov/press-release/2013/ag-schneiderman-announces-40k-settlement-brooklyn-hotel-price-gouging-wake#:~:text=Espa%C3%B1ol-,A.G.%20Schneiderman%20Announces%20%2440k%20Settlement%20With%20Brooklyn%20Hotel%20For,In%20Wake%20Of%20Hurricane%20Sandy&text=NEW%20YORK%20%2D%20As%20part%20of,Sandy%2C%20Attorney%20General%20Eric%20T.>

¹⁰ [https://ncdoj.gov/attorney-general-josh-stein-reaches-100000-settlement-in-hurricane-florence-price-gouging-investigation/.](https://ncdoj.gov/attorney-general-josh-stein-reaches-100000-settlement-in-hurricane-florence-price-gouging-investigation/)

¹¹ https://www.kentuckytoday.com/state/price-gouging-settlement-with-fuel-retailer-reached/article_ca5ed3f0-3b45-50c0-b69a-3de3cd1522fe.html.

¹² <https://ncdoj.gov/wp-content/uploads/2022/01/doc05140920220120142958.pdf>.

¹³ <https://www.oag.state.va.us/media-center/news-releases/2158-september-23-2021-herring-holds-gas-station-accountable-for-price-gouging>.

- Colorado’s attorney general announced a settlement with a business for making misleading claims about masks and respirators it sold and for charging unreasonably excessive prices for those products.¹⁴
- Oregon’s attorney general settled with five Oregon companies for consumer protection violations related to the COVID-19 pandemic.¹⁵
- Pennsylvania’s attorney general has taken action against numerous retailers who raised prices on sanitizer, wipes, masks, and bottled water;¹⁶
- The attorneys general of New York and Minnesota obtained settlements from egg wholesalers alleged to have price gouged and obtained more than 1 million eggs each for food pantries serving low-income communities in their states.

Attorneys general across the country have sent warning letters, activated price gouging hotlines, and launched mobile apps for consumers to report exorbitant prices.

The authority of attorneys general to pursue price gougers operating online was recently affirmed by the U.S. Sixth Circuit Court of Appeals when it upheld Kentucky’s authority to investigate third party sellers offering products on Amazon. The court reversed a lower court ruling which had held that Kentucky’s statute violated the dormant commerce clause of the U.S. Constitution by, in effect, regulating prices in other states. A bipartisan coalition of 39 states filed an amicus brief in support of Kentucky and the Sixth Circuit agreed with the states that the law was constitutional.

Attorneys general are vigilant when it comes to price gouging and active in enforcing these laws.

Responding to Disasters

During times of disaster, attorneys general have an important role to play in keeping their communities safe, whether it be from price gougers, scam artists selling bogus products, fake charities preying on the public’s sympathy to con them out of donations, or fly-by-night storm chasers offering shoddy or expensive construction, repair, or other damage-related services. Just recently, when my home state of Kentucky suffered a devastating rash of tornados in early January, Attorney General Cameron and his office reached out to local officials and created a [contractor registration program](#), requiring contractors offering emergency-related services to register with his office so they have identifying and contact information for all such businesses operating in the area. The contractors are then required to place a conspicuous placard on their vehicles so residents know who has been approved to perform work in the area and can avoid those who are not. The program is a creative

¹⁴ <https://coag.gov/press-releases/1-25-21/>.

¹⁵ <https://www.doj.state.or.us/media-home/news-media-releases/attorney-general-announces-settlements-in-covid-19-consumer-protection-cases/>.

¹⁶ <https://www.attorneygeneral.gov/avcs/>.

initiative to help deter con men and unscrupulous businesses and, so far, has been a huge success.

On the consumer education front, attorneys general have continued to provide vital consumer alerts and public outreach to warn consumers about the latest scams, as well as to put unscrupulous businesses on notice that ignoring the law will result in enforcement action.

NAAG has been coordinating with federal consumer agencies like the Federal Trade Commission (FTC) and Consumer Financial Protection Bureau (CFPB) in providing timely public alerts and educational materials, alerting consumers regarding emergent scams and tips on how to avoid them. Among those efforts are campaigns regarding free at-home test kits which we released last month, as well as efforts warning of fake COVID clinical trials and vaccine scams at earlier stages of the pandemic. We will soon be issuing tips to consider when visiting a testing site or obtaining an at-home test kit. This new campaign comes amid a number of anecdotal reports of bogus pop-up testing sites, delayed test results, and questions about at-home kits.

The materials related to these campaigns are available on our [COVID-19 resource page](#) on NAAG's consumer-facing website www.consumerresources.org. We encourage you and your staffs to make use of these materials along with other information on the site. Of particular interest may be the page which lists every attorney general's [consumer protection website and complaint intake portal](#), which many of your colleagues and their staffs have told us has been very useful in referring consumers to their attorney general.

Online Dangers Grow During COVID Pandemic

Apart from scams directly related to COVID, all of us are spending increasing amounts of time online and so are scammers. This growing online presence has led to other problematic issues – including impersonator scams like romance scams, which according to the FTC is the fastest growing scam in the U.S. and one resulting in more than \$300 million in consumer losses in 2020. As part of Attorney General Miller's NAAG Presidential Initiative, we are hosting a public webinar regarding romance scams on Valentine's Day, with members of the Federal Bureau of Investigations, Commodity Futures Trading Commission, AARP, and dating site company the Match Group, to provide information about this pernicious and financially and emotionally devastating crime.

Conclusion

In closing, I'd like to voice my appreciation once again to Chairman Blumenthal, Ranking Member Blackburn, and the entire Subcommittee for holding today's hearing. Keeping consumers safe is a team effort. I applaud your focus on educating the public and urge you to continue using your platform to grow awareness among your constituents and the consumers across the nation on how to identify and report scams and fraud.

I look forward to your questions today and working with the Subcommittee on keeping consumers safe in the future.