

**TESTIMONY OF STANLEY F. PRUSS**

**BEFORE THE UNITED STATES HOUSE  
ENERGY AND COMMERCE COMMITTEE**

**May 22, 2007**

Good Afternoon. My name is Stanley Pruss and I appreciate the opportunity to address the issues of high gasoline prices, oil company profits and impacts on the American consumer.

I am appearing on behalf of Michigan Governor Jennifer Granholm. The Governor has submitted written testimony to this Committee which reflects her active engagement on the issue of high petroleum prices for more than eight years. As the Attorney General of the State of Michigan, Governor Granholm investigated petroleum industry pricing and participated, with the Federal Trade Commission, in an investigation in Midwest price spikes that occurred in the summer of 2000. In her capacity as Governor, she has continued to have a leadership role in urging Congress to enact legislation in several key areas – all directed at alleviating the pain American consumers experience at the pump.

Governor Granholm's testimony goes beyond mine in that it constitutes a broader assessment of the situation facing consumers. Governor Granholm's testimony outlines the causes of high gasoline prices and price volatility and offers specific remedies, including support for H.R. 1252, as introduced.

My statement will be limited to price-gouging with respect to retail sale of gasoline and Michigan's experience in that regard.

I served as the Assistant Attorney General In-Charge of the Consumer Protection and Antitrust Division under Michigan Attorney General Granholm. While we were long focused on the causes of high gasoline prices and the effect on Michigan consumers, the tragic events of September 11, 2001 precipitated occurrences that profoundly affected consumers around the country with immediate and harsh consequences beyond their grief and sympathy. I speak, of course, of price-gouging.

Like many other states, the Consumer Protection and Antitrust Division of the Michigan Department of Attorney General administers a Consumer Complaint Section that receives and records consumer complaints. Within minutes of the terrorist attack on the Trade Center, we began to receive complaints from consumers around the state of sharply elevated prices at the pump. This stream of complaints quickly became a deluge, literally tying up all our intake lines.

The complaints had a common theme: Gasoline prices that were generally between \$1.60 – \$1.80 per gallon prior to the attack were being increased precipitously by some, but not all gasoline retailers, to as high as \$5.00 per gallon. The complaints were coming in from all over the state. Attorney General Granholm came down to the Division to meet with staff attorneys, investigators and intake staff to assess the situation and to identify and direct our course of action.

Price gouging falls under Michigan Consumer Protection Act (MCPA). The MCPA prohibits unfair, deceptive or unconscionable methods, acts or practices in trade or commerce, and these prohibited methods, acts or practices are specifically enumerated and defined.

They include “charging a consumer a price that is grossly in excess of the price and which similar property or services are sold.” Unlike most state laws that address price gouging (and like H.R. 1252, as introduced), the Michigan price-gouging prohibition is not effectuated or triggered by a declaration of emergency. Of the at least 28 states that have price-gouging provisions, I believe only the Michigan and Maine statutes are not dependent on emergency declarations.

To address what was clearly price-gouging activity, our Division established a protocol to identify, evaluate and confirm price-gouging occurrences. Attorney General Granholm assigned additional support staff to the Division. Complaint information and details were carefully recorded into a database as they were received. When we received two or more complaints from consumers concerning a single gasoline retailer, an investigator was routed to location of the retailer to confirm the price. From this universe of putative violators we selected the most egregious for legal action under the MCPA.

Under the MCPA, the enforcement process was initiated by the issuance of a “Notice of Intended Action” that recited the factual basis for the violation, the statutory provisions that were violated, and the consequences that would ensue. The “Notice of Intended Action” demanded that the unlawful activity cease and desist, indicated that restitution to consumers would be required, and civil penalties would be exacted. It also explained that the recipient would have an “opportunity to confer” to offer explanations or defenses to the action. Finally, it set forth a process through which the recipient could consensually resolve the violations through execution of an “Assurance of Discontinuance” that incorporated these elements.

Ultimately, we issued “Notices of Intended Action” to 46 gasoline retailers. The vast majority of these retailers entered into Assurances of Discontinuances that required full restitution to any consumers who could prove through receipts or credit card statements that they were over charged. Some retailers chose to make refunds even to those consumers who did not have proof of purchases. In addition to restitution, approximately, \$30,000 in civil penalties were collected. We filed lawsuits against two gasoline retailers. These were ultimately resolved prior to trial.

The defenses interposed by the gasoline retailers were both factual and legal. Some retailers maintained that their price escalations were justified under the circumstances. This explanation typically was based upon the assertion that the retailer must pay for the next load of petroleum from the wholesaler with the receipts derived from the existing inventory. They asserted it was not unreasonable to anticipate immediate price increases at the wholesale level. Some indicated that they were put on “notice” by wholesalers that sharp increases should be anticipated and that they should raise prices. However, no one, to the best of my recollection, could substantiate such claims.

Others asserted that there can be no such thing as a “grossly excessive” price or “price-gouging” in the marketplace and that such price spikes are not actionable. In legal terms they assert that statutes like the MCPA and H.R. 1252 are unconstitutionally vague because terms like “unconscionable” and “grossly excessive” are too indefinite to provide effective notice of behaviors that sanctionable. While the Michigan price-gouging effort did not result in any appellate decisions, a lower court judge did opine that he did not find the “void for vagueness” defense compelling.

In conclusion, as someone who has supervised the enforcement of price-gouging actions, I believe that a federal statute like H.R.1252 can be an effective, indeed essential, legal mechanism to not only combat price-gouging activity but to deter such occurrences from happening. It is a certainty that there will be future public emergencies and unusual market conditions that result in economic hardship, if not actual harm, to American consumers. It is imperative that both federal and state law enforcement authorities be equipped with the appropriate means of protecting consumers.

Thank you.