

# Campaign Promises to Address Rising Prices at the Grocery Store Signal Stronger Price Gouging Investigations, Enforcement Actions, and Prohibitions to Come

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Republican and Democrat candidates alike have promised along the campaign trail that they will work to address the costs of everyday essentials for American consumers, particularly for food. One of the centerpieces of the Harris-Walz campaign is enacting “the first-ever federal ban on price gouging on food and groceries”[1] and the Trump-Vance campaign has decried the rising price of eggs as a byproduct of the Biden Administration’s economic policies.[2] Candidates’ focus on the checkout counter is unsurprising given reports that rising prices are one of voters’ top concerns this election cycle. And while the Consumer Price Index indicates that the current rate of inflation is 2.4% and on a downward trend,[3] certain data show that the price for food has increased by an average of 25% across urban cities in the United States since 2020.[4]

But while the term “price gouging” has been used in political rhetoric to describe sustained, increased prices for goods resulting from sellers trying to increase profits, the act is legally defined under certain state laws as a seller charging more for a good or service than permitted under a temporary statutory price cap during a declared state of emergency.[5] This requirement of a triggering, emergency event applies in the nearly 40 states that have adopted price gouging laws. The recent push for federal intervention to address rising prices, however, shows that a broader interpretation of price gouging as “unfair pricing” is here to stay and will likely shape upcoming federal legislation and enforcement going forward.

For instance, in February of 2024, Senators Elizabeth Warren (D-Mass.), Tammy Baldwin (D-Wisc.), and Bob Casey (D-Pa.) and Representative Jan Schakowsky (D-Ill.) reintroduced the *Price Gouging Prevention Act of 2024*, which provides that it is unlawful for “a person to sell or offer for sale a good or service at a grossly excessive price, regardless of the person’s position in a supply chain or distribution network”—where the term “good or service” is defined to include “any good or service offered in commerce.”[6] The purpose of the Act is to empower the Federal Trade Commission (FTC)

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and state attorneys general to enforce the federal ban “on grossly excessive price increases” and “crack down on greedflation by finally prohibiting price gouging and holding corporations accountable for raising costs excessively.”[7]

Less than a month later, in March 2024, the Biden Administration launched a Strike Force on Unfair and Illegal Pricing to be led by the FTC and Department of Justice (DOJ), which was designed to “strengthen interagency efforts to root out and stop illegal corporate behavior that hikes prices on American families through anti-competitive, unfair, deceptive, or fraudulent business practices.”[8] Months later, the FTC and DOJ hosted a Strike Force meeting that included several federal agencies, during which FTC Chair Lina Khan said the FTC would be investigating why food prices are “too costly” while “many large grocery chains are still raking in enormous profits.”[9] Chair Khan emphasized that the FTC was launching this investigation because prices for essentials remained high years after the pandemic, underscoring that the FTC is considering enforcement options to address pricing regardless of whether a triggering event has occurred.[10]

Each of these actions has been untethered to any pending state of emergency, but recent catastrophes have added momentum to the push for federal action to address price gouging. For example, in response to Hurricanes Helene and Milton, Vice President Harris issued a statement on October 9, 2024, cautioning that “the Administration is monitoring for allegations of fraud and price gouging and will hold those taking advantage of the situation accountable.”[11] On the same day, the FTC, DOJ, and Consumer Financial Protection Bureau issued a joint statement warning that they would be investigating reports of alleged price gouging and that “[t]he Antitrust Division and its law enforcement partners will act quickly to root out anticompetitive behavior and use every tool available to hold wrongdoers accountable.”[12] The next day, a bipartisan group of congressmembers wrote to Chair Khan to ask her to consider the FTC’s current authority to address price gouging and whether a “federal ban on price gouging [would] enable the FTC and state attorneys general to combat price gouging more effectively than is currently possible?”[13] And on October 30, 2024, a group of 15 state attorneys general wrote to House and Senate leaders asking Congress to adopt a federal price gouging law that “complement[s] state prohibitions . . . .”[14]

Given the threat of increased regulation and enforcement, particularly at the federal level, we recommend that sellers—especially in industries that impact everyday consumers, such as the food and beverage sector—keep the following in mind:

1. **Federal legislation or regulation of price gouging will likely be complementary to, rather than preemptive of, state price gouging laws.** Accordingly, sellers will still need to be cognizant of variations in state law related to the pricing threshold, triggering events, and goods and services encompassed by price gouging laws, and what defenses are available for such claims. Moreover, given the appetite we have seen for the federal government to get involved with policing alleged price gouging, sellers should be on the lookout for the passage of federal statutes or regulations to address price gouging, which will likely do nothing to address—and may add to—the uncertainty interstate sellers face when dealing with the patchwork of price gouging laws throughout the United States.
2. **Sellers should take inventory of their pricing practices, adopt best practices for setting prices, and document reasons for increasing prices.** Under most state laws as well as the proposed *Price Gouging Prevention Act of 2024*, price increases directly attributable to cost increases are generally not considered price gouging. Sellers should adopt policies that foster good hygiene in documenting pricing decisions. To the extent sellers are adopting dynamic pricing, zone pricing, or algorithmic pricing tools, sellers should consider whether it makes sense to adopt protocols that prevent significant, automated price increases unless such

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increases have been reviewed and the justification for the price is documented.

3. **Sellers should consider whether it makes sense to adopt an emergency pricing plan.** Similar to the guidance above, if a seller's prices are set according to a plan implemented pre-emergency, this may give rise to a defense against price gouging claims depending on the jurisdiction. Such plans should detail what economic factors are driving the pricing schema.

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## FOOTNOTES

[1] [\*Press Release: Vice President Harris Lays Out Agenda to Lower Costs for American Families\*](#), Harris Walz (Aug. 16, 2024).

[2] Samuel Lovett, [\*Why Team Trump is talking about eggs \(and Democrats cry foul\)\*](#), The Times (Oct. 25, 2024).

[3] Paul Davidson, [\*Inflation slowed again, new CPI report shows: Will the Fed keep cutting rates?\*](#), USA Today (Oct. 10, 2024 8:37 AM, updated Oct. 10, 2024 4:41 PM).

[4] [\*Consumer Price Index for All Urban Consumers: Food in U.S. City Average\*](#), FRED Economic Data | St. Louis Fed, (last visited Oct. 31, 2024).

[5] [\*E.g., Cal. Penal Code § 396; accord Price Gouging, California Governor's Office of Emergency Services\*](#).

[6] [\*Proposed Legislation, Price Gouging Act of 2024\*](#).

[7] [\*Casey, Colleagues Introduce Legislation to Crack Down on Price Gouging by Big Corporations\*](#), Casey.Senate.gov (Feb. 15, 2024).

[8] [\*Remarks by President Biden and Members of the Competition Council Announcing New Actions to Lower Costs for Hardworking Families by Fighting Corporate Rip-offs\*](#), The White House (Mar. 5, 2024 2:50 PM ET).

[9] [\*Remarks of Fed. Trade Comm'n Chair Lina Khan\*](#), Strike Force Virtual Meeting (Aug. 1, 2024).

[10] *Id.*

[11] [\*Statement From Vice President Kamala Harris Warning Against Price Gouging and Fraud\*](#), Whitehouse.gov (Oct. 9, 2024).

[12] [\*Justice Department, Federal Trade Commission and Consumer Financial Protection Bureau Warn Consumers About Potential Scams and Price Gouging in the Wake of Hurricanes and other Natural Disasters\*](#), Office of Public Affairs U.S. Dep't of Justice (Oct. 10, 2024), (quoting Manish Kumar, Deputy Assistant Attorney General, Antitrust Division, DOJ).

[13] [\*Letter from Senator Elizabeth Warren et al. to Lina Khan\*](#) (Oct. 10, 2024).

[14] Letter from Letitia James, Attorney General of New York, et al. to The Honorable Mike Johnson, Speaker of the House, et al. (Oct. 30, 2024).

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