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REPRESENTING AMERICA'S TRAVEL PLAZAS AND TRUCKSTOPS
NATSO

SIGMA
AMERICA'S LEADING FUEL MARKETERS

May 16, 2022

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Capitol Building
H-232
Washington, DC 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Capitol Building
H-204
Washington, DC 20515

Dear Speaker Pelosi and Minority Leader McCarthy:

Our trade associations represent America's retail fuel community.[1] More than 90 percent of retail sales of motor fuel in the United States occur at our members' outlets. Our members sell these fuels in a highly transparent and competitive market every day across the nation. While the nation undergoes a variety of stresses as part of the aftershocks of the COVID-19 pandemic and other world events, high motor fuel prices are just one of many cost issues that consumers face. Our industry feels the pain from these high costs as well, since the higher prices customers pay for fuel at retail reflect the higher prices that retailers pay for fuel at wholesale. This high price environment is not optimal for our industry, as retail margins get squeezed when fuel prices increase and customers are less likely to make in-store purchases when the price of fuel is so high. Like consumers, our industry benefits when there are plentiful fuel supplies and low prices.

Given these dynamics, we have concerns about new legislation, H.R. 7688, which singles out motor fuel sales for legal scrutiny and peril. Most states already have laws prohibiting price gouging. We all oppose gouging, which harms the American public and the industry as a whole. That said, actual gouging at retail is very rare. Gouging is simply is not a characteristic or driving force of the retail market prices we see today.

- **Overview of the Retail Fuels Industry**

The retail fuels industry's sole objective is to sell legal products, in a lawful way, to customers who want to buy them. While agnostic as to what types of fuel they sell to satisfy consumer demand, our industry's members do have a bias: they believe it is best for the American consumer and America's industrial position in the world marketplace to have reasonably low and stable energy prices.

[1] The National Association of Convenience Stores (NACS) is an international trade association representing the convenience store industry with more than 2,200 retail and 1,600 supplier companies as members, the majority of whom are based in the United States. NATSO, Representing America's Travel Plazas and Truckstops, currently represents approximately 5,000 travel plazas and truck stops nationwide, comprised of both national chains and small, independent locations. SIGMA: America's Leading Fuel Marketers represents a diverse membership of approximately 260 independent chain retailers and marketers of motor fuel.

Fuel retailers are generally independent businesses. Although some might bear the name of a large oil company, this is not indicative of any ownership stake in the business or the real estate, but simply of a marketing relationship or announcement to passing motorists that a certain company's product is available for purchase at that location (comparable to a soft drink advertisement in a grocery store window).

The convenience and retail fuels industry employed approximately 2.34 million workers and generated more than $548.2 billion in total sales in 2020, representing more than 3 percent of U.S. gross domestic product. Of those sales, approximately $292.6 billion came from fuel sales alone.

The industry, however, is truly an industry of small business. More than 60 percent of convenience stores are single-store operators. Less than 0.2% of convenience stores that sell gas are owned by a major oil company and about 4% are owned by a refining company. More than 95% of the industry, then, are independent businesses.

Members of the industry process more than 160 million transactions every single day. That means about half the U.S. population visits one of the industry's stores on a daily basis. In fact, ninety-three percent of Americans live within 10 minutes of one of our industry's locations. These businesses are particularly important in urban and rural areas of the country that might not have as many large businesses. In these locations, the convenience store not only serves as the place to get fuel but is often the grocery store and center of a community.

- **Duplicative Laws**

Most states already have price gouging laws on the books that apply to sales of motor fuels. The bill does not preempt these laws. The overlap of a federal law with these state laws can create confusion and unwarranted risk of legal investigation and expenses. The state laws have different triggers for what constitutes an emergency than the federal law and apply different standards. If there is going to be a federal law on price gouging relating to motor fuels, it should preempt those state laws to avoid duplication, expense and confusion. The provision of the bill delaying state action while a federal action is pending does not fully address this concern.

- **Unwarranted Retail-Focused Enforcement**

The bill properly considers all levels of the market as within its purview. But, it provides state attorneys general with the ability to bring enforcement actions exclusively on retail sales of motor fuels. This differential treatment and focus on retail sales is not consistent with the fact that the market changes leading to high prices today are not occurring at retail – and, in fact, retail margin is one of the smallest components of the price of motor fuel going back many years. There is no reason to have an enforcement provision that is exclusive to retail sales.

This focus also undermines the stated intention in the bill of having enforcement focus on large businesses. More than 60 percent of retailers in this industry are single store operators and many more own just a handful of locations. These businesses operate in a highly competitive market and are frequently blamed for high fuel prices even though they are not the cause of high fuel prices. Enforcement provisions should not focus on these small businesses when the stated goal of the bill is ensuring large businesses follow the law.

- **One-Sided Consideration of the Market**

In addition to the exclusive focus on motor fuels, we are concerned that the legislation only takes into account one side of the market forces that can impact motor fuel pricing. The bill contemplates that pricing significantly above the market can be evidence of potential gouging. The bill should similarly recognize that pricing at or below the market is evidence that gouging has not occurred and should be spelled out in the bill as a mitigating factor. That should be included in any balanced bill on this topic.

We greatly appreciate that the legislation provides an affirmative defense recognizing that cost increases – including reasonably anticipated cost increases – provide a defense to allegations of gouging. This is an incredibly important provision and should be part of any bill on this topic to ensure that no one is legally required to sell product at a loss, or at a price that is insufficient to allow a retailer to purchase additional inventory.

But, that defense does not fully cover all market conditions that may legitimately affect pricing decisions. For example, there have in the past been times when markets have moved and speculation seemed to drive those moves.[2] Those market changes can themselves impact businesses across the spectrum even if costs have not yet changed. The bill should ensure it accounts for those real-world scenarios.

- **Increased Credit Card Costs' Role in Fuel Prices**

When prices get higher and retailers' margins get smaller, costs such as credit card fees – which are a large part of retailers' costs of selling fuel – increase because credit card fees are a percentage of sales prices. Credit card swipe fees therefore accelerate as retail fuel prices increase. Retailers pay card fees on more than 75 percent of their motor fuel sales.[3] These fees are levied as a percentage of the total price of the transaction, so the fees rise as the cost of gasoline and diesel fuel rises and create additional price pressure on retailers. In fact, these fees are charged on the tax portion of every transaction as well so retailers must pay the credit card industry for revenue that they know they will never see.

If credit card swipe fee costs were the product of a functioning market, they would simply be another factor in the overall cost mix of a gallon of fuel. Unfortunately, Visa and Mastercard control approximately 80 percent of the credit card market and set the prices that the banks that issue their credit cards charge retailers on every transaction. Unlike the retail fuels market, the ongoing antitrust violations, price-setting and lack of transparency in the credit card ecosystem ensure that market forces are unable to discipline the credit card swipe fees.

Last year alone, the swipe fees paid by the convenience and fuel retailing industry increased by more than 26.5 percent. As prices rise and retail margins narrow, in fact, there are

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[2] See Senate Permanent Subcommittee on Investigations, "The Role of Market Speculation in Rising Oil and Gas Prices," S. Prt. 109-65 (June 27, 2006) available at https://www.govinfo.gov/content/pkg/CPRT-109SPRT28640/html/CPRT-109SPRT28640.htm.

[3] Swipe fees are fuel retailers' second-highest operating cost, behind only labor. The fees are much more than retailers' costs of utilities and rent, just to take two examples.

times when the credit card fees paid by retailers on fuel transactions exceed their own margins earned on the sales. While the impact of those fees on gasoline prices is dramatic – the fees inflate the costs of nearly everything that Americans buy, not just gasoline.

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We urge you to take these concerns into account as you consider any price gouging legislation and not to pass any legislation before addressing these issues.

Sincerely,

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