

LINCOLN MEMORIAL UNIVERSITY LAW REVIEW

VOLUME 8

SPRING 2021

ISSUE 2

PANDEMIC PIRATES:

AN ESSAY CALLING FOR LEGISLATION CURBING
PANDEMIC PROFITEERING¹

*Chief Judge Gregory D. Smith*²

¹ This article is dedicated to the memory of the Honorable L. Raymond Grimes, Judge of the Montgomery County, Tennessee General Sessions Court, Division III. Judge Grimes, a gentleman and fine judge, died on Thanksgiving Day 2020 of COVID-19 complications. See Chris Smith, *Judge Ray Grimes, 22-year Montgomery County Judge, Dies of COVID-19* (Nov. 26, 2020, 11:46 AM), <https://clarksvillenow.com/local/judge-ray-grimes-22-year-montgomery-county-judge-dies-of-covid-19/>. The article is also dedicated to Miss Shannon Martinez, who was scheduled to walk down a wedding aisle on Saturday, March 28, 2020, and her mother, Rhonda Martinez, who taught Shannon that the perfect wedding day is worth an unexpected wait. Finally, the article is also dedicated to Philip T. Smith, Jacob Coleman, and all other college graduates, who had their graduations cancelled due to the Coronavirus. Although your achievements go unheralded, they do not go unnoticed.

² Gregory D. Smith is the Chief Judge of the U.S. Department of the Interior's Court of Indian Appeals in Miami, Oklahoma. He is the Chief Justice of the Nottawaseppi Huron Band of the Potawatomi Supreme Court (MI). Judge Smith also serves on five other tribal appellate courts in Arizona, California, Nebraska, Oklahoma, and Wisconsin. Judge Smith is a municipal judge in Tennessee, where he served as the president of the Tennessee

INTRODUCTION

The months of March through December 2020 were a showcase for Charles Dickens' declaration, "It was the best of times, it was the worst of times."³ In the realm of the greedy plundering upon the victims of world disaster or war, *it was not the first of times*.⁴ In 2020, the world came to a virtual halt due to pandemic COVID-19, called the Coronavirus.⁵ A "pandemic" is an "epidemic of unusual extent and severity," "occurring over a wide geographic area," that affects "an exceptionally high proportion of the

Municipal Judges Conference from 2018-2020. Judge Smith teaches for the National Judicial College and was awarded the Outstanding Tennessee Municipal Judge designation for 2017. Judge Smith received his undergraduate degree from Middle Tennessee State University in 1985 and his J.D. from Cumberland School of Law in 1988. He recently completed a leadership certificate program in Executive Education from the Harvard Kennedy School of Government. In November 2019, Judge Smith was the focus of an article in the ABA JOURNAL. Judge Smith lives in Clarksville, Tennessee. Opinions made in this paper reflect the author's views alone, and not the position or opinion of any court or university listed above.

³ CHARLES DICKENS, *A TALE OF TWO CITIES* 1 (Chapman & Hall Pub. 1859).

⁴ See e.g., *Lichter v. United States*, 334 U.S. 742, 769 (1948), where the U.S. Supreme Court, citing Congressional Hearings, discusses the long and unsavory history of war profiteering, opining, "The problem of war profits is not new. In this country, every war we have engaged in has provided opportunities for profiting and they have been too often scandalously seized."

⁵ See C.D.C. Press Release: *Coronavirus (COVID-19)* (n.d.), <https://www.cdc.gov/coronavirus/2019-ncov/index.html> (last visited Dec. 10, 2020).

population.”⁶ Not all pandemics are fatal.⁷ Sometimes, when scientists bravely, yet blindly, combat dreaded pandemics, even the cure for a pandemic disease can be deadly.⁸ People hit with a natural disaster, epidemic, pandemic or war can be crushed economically, hopeless, devastated and stumbling through life.⁹ In the wake of the initial trauma of the Coronavirus pandemic, businesses were ordered closed (unless the service was deemed “essential”).¹⁰ Mandatory closings or curfews during emergencies is not unprecedented.¹¹ Likewise, starving people, barred from working and providing for their families, deciding for themselves that eating is “**essential**,” is not

⁶ See Vickie J. Williams, *Fluconomics: Preserving Our Hospital Infrastructure During and After a Pandemic*, 7 YALE J. HEALTH POL’Y, L., & ETHICS 99, 100 n.2 (2007). While a pandemic can be a form of epidemic, it is improper to call an epidemic a form of pandemic according to Webster’s Dictionary. See WEBSTER’S DICTIONARY ON-LINE: *Pandemic Definition* (n.d.), <https://www.merriam-webster.com/words-at-play/epidemic-vs-pandemic-difference> (last visited Dec. 10, 2020). See also William O. Shults and Michael Caskey, *Tennessee Law in the Time of Pandemic Disease: Balancing the Needs of Society with Personal Liberties*, 56 TENN. B.J. 14, 15 n.14 (March 2020).

⁷ E.g., the pandemic of tooth decay. See *infra* note 45.

⁸ See e.g., *Shyface v. Secretary of HHS*, 165 F.3d 1344, 1352-53 (Fed. App. 1999) (*discussing National Childhood Vaccine Injury Act*, 42 U.S.C. § 300aa-1 *et seq.*) and *Petty v. United States*, 679 F.2d 719, 724-25 (8th Cir. 1982) (Swine Flu medication caused death).

⁹ See e.g., *Virgin Island Tree Boa v. Witt*, 918 F. Supp. 879, 898 (D. V.I. 1996) (*discussing 1995’s Hurricane Marilyn*). See also Jeffrey R. Baker, *et al.*, *In Times of Chaos: Creating Blueprints for Law School Responses to Natural Disasters*, 80 LA. L. REV. 421, 475 n.165 (Winter 2020).

¹⁰ See e.g., S.C. Press Release: *Gov. McMaster Orders Non-Essential Businesses Closed Throughout S.C.* (Mar. 31, 2020), <https://governor.sc.gov/news/2020-03/gov-henry-mcmaster-orders-non-essential-businesses-closed-throughout-sc>.

¹¹ See e.g., *Occupy Nashville v. Haslam*, 769 F.3d 434, 436 (6th Cir. 2014) (*protesters occupying the state legislative grounds challenging a curfew closing the grounds at night*). See also *Hirabayashi v. United States*, 320 U.S. 81, 92 (1943) (wartime curfews).

unprecedented.¹² When *Pandemic Pirates* enjoy prosperity, at the expense of the needy, this disparity only increases already mounting tensions because emergency control corruption statutes are designed to address *pilfering*, not petulance.¹³

¹² See e.g., *City of Los Angeles v. U.S. Dept. of Trans.*, 179 F.3d 937, 937 (D.C. Cir. 1999), Silberman, concurring in decision to deny en banc rehearing, (referencing Marie Antionette’s infamous phrase about the starving people of Paris, “Let them eat cake.”). See also Victor Hugo’s character from LES MISERABLES, Jean Valjean, who was imprisoned for nearly nineteen years for stealing a loaf of bread to save his starving sister and her small children. Abraham Jimenez, LES MISERABLES: JEAN VALJEAN, <https://lesmischaracters.weebly.com/jean-valjean.html> (last visited Dec. 10, 2020).

¹³ See generally *United States v. King*, 834 F.2d 109, 111-12 (6th Cir. 1987). New terms, such as “porch pirates,” are creeping into common usage. See e.g., OKLA. STAT. ANN., tit. 21 § 1740.2 (West 2020). A porch pirate steals e-commerce packages left on doorsteps by shipping companies such as UPS or FedEx. See Allen D. Pace, Jr. and Shea Place, Feature: *Criminal Law*, 82 TEX. B. J. 613, 614 (Sept. 2019).

In mid-March 2020, countries closed borders,¹⁴ professional sports stopped,¹⁵ travel ceased,¹⁶ and *ESQUIRE MAGAZINE* reported that dolphins were swimming again in the once polluted canal of Venice, Italy.¹⁷ On March 11, 2020, President Donald J. Trump issued an Executive Order banning American overseas travel, and calling for social distancing, until March 31, 2020.¹⁸ On March 29, 2020, President Trump extended his social distancing order that

¹⁴ See e.g., Sandra MacGregor, *Everything You Need to Know About the New Extended Canada-US Border Closure*, *FORBES* (July 20, 2020),

<https://www.forbes.com/sites/sandramacgregor/2020/07/20/everything-you-need-to-know-about-the-new-extended-canada-us-border-closure/?sh=9847e5f6fc68>. Accord Edmund DeMarche, *Coronavirus Brings Life in the US to a Grinding Halt as Federal, Local Governments Work to Stop Spread*, *FOX NEWS* (Mar. 16, 2020), <https://www.foxnews.com/health/coronavirus-brings-life-in-us-to-grinding-halt>.

¹⁵ See e.g., *Professional Sports Leagues Nationwide Suspend, Cancel Games Over COVID-19*, *PHOENIX BUSINESS J.* (Mar. 12, 2020, 6:24 PM),

<https://www.bizjournals.com/phoenix/news/2020/03/12/professional-sports-leagues-nationwide-suspend.html>. See also *List of 2020-21 College Football Bowl Games Canceled Due to COVID-19*, *YAHOO SPORTS* (Dec. 7, 2020), [https://sports.yahoo.com/list-of-202021-college-football-bowl-games-canceled-due-to-covid-19-173529933.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2x1LmNvbS8&guce_referrer_sig=AQAAADM5Hb_OgZwB3XRriIzb2lrY8hfLk-](https://sports.yahoo.com/list-of-202021-college-football-bowl-games-canceled-due-to-covid-19-173529933.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2x1LmNvbS8&guce_referrer_sig=AQAAADM5Hb_OgZwB3XRriIzb2lrY8hfLk-ZaW2i2CC9h6P7OizBKtoicii1jQMsmVvH4A4WeMS2mvUca4-JrdIQI6XjpR8oiGKOkSILVIEdgiNJKNJICA4EHKt1nSCvw1lakmEEs-oY2Jw55A-x9nj8VSUZl0HhZ1bNMnobXarAmzqb)

[ZaW2i2CC9h6P7OizBKtoicii1jQMsmVvH4A4WeMS2mvUca4-JrdIQI6XjpR8oiGKOkSILVIEdgiNJKNJICA4EHKt1nSCvw1lakmEEs-oY2Jw55A-x9nj8VSUZl0HhZ1bNMnobXarAmzqb](https://sports.yahoo.com/list-of-202021-college-football-bowl-games-canceled-due-to-covid-19-173529933.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2x1LmNvbS8&guce_referrer_sig=AQAAADM5Hb_OgZwB3XRriIzb2lrY8hfLk-ZaW2i2CC9h6P7OizBKtoicii1jQMsmVvH4A4WeMS2mvUca4-JrdIQI6XjpR8oiGKOkSILVIEdgiNJKNJICA4EHKt1nSCvw1lakmEEs-oY2Jw55A-x9nj8VSUZl0HhZ1bNMnobXarAmzqb).

¹⁶ See e.g., Christophe Zialor, *Travel Industry Crippled by COVID-19 Outbreak*, *SEYCHELLES NATION* (Mar. 17, 2020),

<http://www.nation.sc//articles/3916/travel-industry-crippled-by-covid-19-outbreak>.

¹⁷ See Sarakshi Rai, *Covid-19 upside? Dolphins return to Italy and clear Venice canals as humans self-isolate*, *ESQUIRE* (Mar. 18, 2020), <https://www.esquireme.com/content/44556-covid-19-upside-dolphins-return-to-the-venice-canals-as-humans-self-isolate>.

¹⁸ See U.S. STATE DEPARTMENT ALERT: INTERNATIONAL TRAVEL (Aug. 6, 2020),

<https://travel.state.gov/content/travel/en/international-travel.html>.

was set to expire on March 31, 2020.¹⁹ The ban now continues, *at least*, through the end of 2020.²⁰ The amazing change the world faced in mere weeks in the Spring of 2020 harkens one to a twisted version of an old Paul Simon song, “The Sound of Silence,”²¹ that was number 1 on Billboard Records’ “Top 100 Songs” for several weeks in 1966.²² That song declares, “**The words of the prophets are written on the subway walls.**”²³ It also talks of Simon seeing “**10,000 people, maybe more.**”²⁴ Today, and for the foreseeable future, those subway walls are limited to ten (10) people per gathering, standing at least six feet apart for “social distancing” purposes.²⁵ Empty trains, restaurants,

¹⁹ See U.S. STATE DEPARTMENT ALERT: TRAVEL ADVISORY (Mar. 12, 2020),

<https://travel.state.gov/content/travel/en/traveladvisories/ea/Presidential-Proclamation-Coronavirus.html>.

²⁰ See Michael Shear, *Trump Extends Social Distancing Guidelines Through End of April*, N.Y. TIMES (Apr. 1, 2020), <https://www.nytimes.com/2020/03/29/us/politics/trump-coronavirus-guidelines.html>; Gov. Lee Extends State of Emergency to Aug. 29, 2020, TN GOV (June 29, 2020),

[https://www.tn.gov/governor/news/2020/6/29/gov--lee-extends-state-of-emergency-to-aug--29--2020.html#:~:text=29%2C%202020,-](https://www.tn.gov/governor/news/2020/6/29/gov--lee-extends-state-of-emergency-to-aug--29--2020.html#:~:text=29%2C%202020,-New%20executive%20orders&text=%E2%80%93%20Tennessee%20Governor%20Bill%20Lee%20today,pandemic%20to%20August%2029%2C%202020)

[New%20executive%20orders&text=%E2%80%93%20Tennessee%20Governor%20Bill%20Lee%20today,pandemic%20to%20August%2029%2C%202020](https://www.tn.gov/governor/news/2020/6/29/gov--lee-extends-state-of-emergency-to-aug--29--2020.html#:~:text=29%2C%202020,-New%20executive%20orders&text=%E2%80%93%20Tennessee%20Governor%20Bill%20Lee%20today,pandemic%20to%20August%2029%2C%202020).

[New%20executive%20orders&text=%E2%80%93%20Tennessee%20Governor%20Bill%20Lee%20today,pandemic%20to%20August%2029%2C%202020](https://www.tn.gov/governor/news/2020/6/29/gov--lee-extends-state-of-emergency-to-aug--29--2020.html#:~:text=29%2C%202020,-New%20executive%20orders&text=%E2%80%93%20Tennessee%20Governor%20Bill%20Lee%20today,pandemic%20to%20August%2029%2C%202020).

²¹ SIMON & GARFUNKEL, *The Sound of Silence*, WEDNESDAY MORNING, 3 A.M. (Columbia Records 1964).

²² See SIMON & GARFUNKEL, *The Sound of Silence*, WEDNESDAY MORNING, 3 A.M. (Columbia Records 1964),

<https://www.allmusic.com/song/the-sound-of-silence-mt0030490291> (n.d.) (last visited Dec. 10, 2020).

²³ SIMON & GARFUNKEL, *The Sound of Silence*, WEDNESDAY MORNING, 3 A.M. (Columbia Records 1964),

<https://genius.com/Simon-and-garfunkel-the-sound-of-silence-lyrics> (n.d.) (last visited Dec. 10, 2020).

²⁴ *Id.*

²⁵ See e.g., Justin Sedgwick, *President Trump Says Gatherings Should Be Limited to 10 People Amid COVID-19 Outbreak*, FOX 5 ATLANTA (Mar. 16, 2020),

<https://www.fox5atlanta.com/news/president-trump-says-gatherings-should-be-limited-to-10-people-amid-covid-19-outbreak>.

and public events (pursuant to Executive Orders and legislative mandate)²⁶ keep people away from work and in homes.²⁷ The problem here is that some people see the Coronavirus as an opportunity to plunder as pirates,²⁸ instead of looking to tomorrow as prophets making self-

²⁶ Legislation and Executive Orders have seen tandem use to address emergency situations in both peacetime and war. *See e.g.*, *United States v. Briddle*, 212 F. Supp. 584, 585 (S.D. Cal. 1962) (discussing gold hoarding during the Great Depression); *People v. Abelow*, 179 A.D. 3d 39, 44 (N.Y. Supreme, A.D. 2019) (discussing Grand Jury investigations); and *Territory of Hawaii v. McCandless*, 24 Haw. 485, 490 (Haw. Terr. 1918) (profiteering on rice production/sales illegal during World War I).

²⁷ *See e.g.*, *New Yorkers Avoid Subway Trains During Morning Rush Hour Commute*, EXPRESS INFORMER (Mar. 10, 2020), <https://expressinformer.com/new-yorkers-avoid-subway-trains-during-morning-rush-hour-commute/>; Max Dibble, *Hawai'i State Legislature Shuts Down Amid COVID-19 Outbreak*, BIG ISLAND NOW (Mar. 16, 2020), <https://bigislandnow.com/2020/03/16/hawai%ca%bbi-state-legislature-shuts-down-amid-covid-19-outbreak/>; and Kasey Chronis, *Gov. Evers Orders Bars, Restaurants to Close; Bans Gatherings of More Than 10 People*, FOX 6 MILWAUKEE (Mar. 17, 2020), <https://www.fox6now.com/news/gov-evers-orders-bars-restaurants-to-close-bans-gatherings-of-more-than-10-people>.

²⁸ Two Tennessee brothers in the Chattanooga area purchased nearly 18,000 bottles of handwipes and surgical masks to price-gouge panicking shoppers about the Coronavirus via Amazon sales on the internet as the COVID-19 pandemic began. The brothers were selling \$3.00 wipes for \$16.00 to \$19.00 per unit. *See e.g.*, Sedgwick, *supra* note 25. The American public “thoroughly demonized” the brothers and after prosecutors and Amazon blocked their profit, the brothers elected to “donate” their handwipes to charity. Leandra Bernstein, *DOJ Cracks Down on Hoarders, Price Gougers as Patterns Arise in States*, NBC 24 NEWS (Mar. 24, 2020), <https://nbc24.com/news/coronavirus/doj-to-crack-down-on-hoarders-price-gougers-as-patterns-arise-in-states>. *See also*, *D.H. Griffin Wrecking Co. v. 1031 Canal Dev., LLC*, 463 F. Supp. 3d 713, 723 (E.D. La. 2020) (discussing price-gouging during emergencies as unfair labor acts).

fulfilling prophesies of the good in mankind.²⁹ I call these profiteers “**Pandemic Pirates**.”³⁰

On March 23, 2020, President Trump signed an Executive Order barring price gouging and hoarding of essential products, such as surgical masks.³¹ In the same news report that announced President Trump’s “No Hoarding” Executive Order, the Associated Press noted that Amazon, the giant on-line buying/selling conduit, suspended 3900 sellers’ accounts for price gouging items such as toilet

²⁹ By way of example, a small whiskey distillery in Clarksville named “Old Glory” got permission from the FDA (Food and Drug Administration), to temporarily transform its process from liquor manufacturing to distilling hand sanitizer to give away (free of charge) to Clarksville area citizens, as well as hospitals and emergency first responders throughout the United States. *See Old Glory Distilling Company Switching From Whiskey to Hand Sanitizer*, CLARKSVILLE NOW (Mar. 19, 2020), <https://clarksvillenow.com/local/old-glory-distilling-company-switching-from-whiskey-to-hand-sanitizer/>. Legitimate businesses often take active actions to thwart price-gougers. *See 3M Co. v. Performance Supply, LLC*, 458 F. Supp. 3d 181, 189 (S.D.N.Y. 2020) (discussing actions by 3M Corporation to stop COVID-19 scams).

³⁰ The New York Supreme Court (*a trial level court*) describe a World War II scam version of **Pandemic Pirates** by opining, “an enterprise of this nature constitutes a particularly contemptible form of war profiteering. It serves to divert money, given by a generous public for worthy objects, into the pockets of sordid exploiters of those patriotic impulses of our people which are so readily appealed to in these tragic war times. The scheme is a shabby subterfuge to enable its creators to realize profits” *Bennett v. American-Canadian Ambulance Corp, Inc.*, 37 N.Y.S. 2d 470, 470 (N.Y. Sup. Ct. 1942).

³¹ *See Trump Signs Executive Order to Prevent Hoarding, Price Gouging*, NEWSMAX (Mar. 23, 2020, 5:45 PM), <https://www.newsmax.com/politics/executive-order-hoarding-price/2020/03/23/id/959596/>. For an example of a state governor using an Executive Order to ban price gouging, *see* SOUTH CAROLINA GOVERNOR HENRY MCMASTER’S EXEC. ORDER 2020-75, at point G. (Dec. 8, 2020), <https://governor.sc.gov/sites/default/files/Documents/Executive-Orders/2020-12-08%20FILED%20Executive%20Order%20No.%202020-75%20-%20State%20of%20Emergency.pdf>.

paper.³² This essay will discuss a microcosm of how businesses handled the 2020 Coronavirus pandemic, look at how other pandemics were addressed, and how legislatures can protect citizens and businesses from *Pandemic Pirates* during future pandemics and epidemics.³³

See if the following sounds familiar:

As a result of Chinese government misinformation, the international community did not begin to mobilize an effective campaign to stop the spread of the virus The first three months of government obfuscation gave the disease time to evolve from an easily controllable problem that could have been solved by quarantine into a barely stoppable pandemic . . . foreign investors and businessmen had begun to cross China off their agenda out of fear for their own survival. Action was finally seen as critical to China's economy.³⁴

³² *Id.*

³³ The difference between a pandemic and an epidemic is that a pandemic is considerably larger in exposure and potential victims. For a comparison of the two terms, see, Vanessa Caceres, *What's the Difference Between an Epidemic and a Pandemic?*, U.S. NEWS (Mar. 13, 2020), <https://health.usnews.com/conditions/articles/whats-the-difference-between-an-epidemic-and-pandemic>. Basically, a pandemic is worldwide. An epidemic is generally contained in a smaller and specific area, such as the 2019 Ebola Epidemic in West Africa. See *Ebola Health Update – North Kivu/Ituri, DRC*, WORLD HEALTH ORG. (2018–2020), <https://www.who.int/emergencies/diseases/ebola/drc-2019/> (last visited Dec. 10, 2020). See also Andra Le Roux-Kemp, *International and Operational Responses to Disease Control: Beyond Ebola and Epistemological Confines*, 15 IND. HEALTH L. REV. 247, 247 n.13 (2018).

³⁴ William Thatcher Dowell, *The Internet, Censorship, and China*, 7 GEO. J. INT'L AFF. 111, 116 (2006).

The author of this quote was talking about the 2003 S.A.R.S.³⁵ pandemic. On March 19, 2020, I was “flipping channels” on the television and saw a huge mass of people in the streets of a major city wearing masks to avoid infection from a deadly pandemic. The video I saw was a PBS documentary from the series “*American Experience*” discussing the 1918 Spanish Flu.³⁶ The people seen were in the streets of San Francisco celebrating the end of World War I.³⁷ The 1918 Influenza pandemic (a/k/a Spanish Flu), according to a 1920 North Dakota Supreme Court opinion, killed between 350,000 to 460,000 Americans.³⁸ A 2014 New Hampshire State Supreme Court opinion placed the number of American deaths from the 1918 Spanish Flu at 700,000.³⁹ In a twenty-four (24) week span, the Spanish Flu killed between 20 million and 100 million people throughout the world.⁴⁰ That is more deaths in less than one-half of a year than A.I.D.S.⁴¹ took in twenty-four (24) years.⁴² It is more caskets than American wars required from World War I through Vietnam *combined*.⁴³ History and medical experts suggest that a new version of the deadly Influenza virus can be expected to appear approximately every ten years.⁴⁴ A

³⁵ S.A.R.S. = Severe Acute Respiratory Syndrome., as defined in Southgate Master Fund, LLC ex rel. Montgomery Capital Advisors, LLC v. U.S., 651 F. Supp. 2d 596, 623 (N.D. Tex. 2009).

³⁶ See Robert Kenner, *Influenza 1918*, P.B.S AMERICAN EXPERIENCE (Jan. 2, 2018),

<https://www.pbs.org/wgbh/americanexperience/films/influenza/>.

³⁷ See *The Flu in San Francisco* (n.d.), P.B.S. AMERICAN EXPERIENCE,

<https://www.pbs.org/wgbh/americanexperience/features/influenza-san-francisco/> (last visited Dec. 10, 2020).

³⁸ *Gorder v. Lincoln Nat. Life Ins. Co.*, 180 N.W. 514, 516 (N.D. 1920).

³⁹ *Appeal of the Local Gov’t Center, Inc.*, 85 A.3d 388, 397 (N.H. 2014).

⁴⁰ Williams, *supra* note 6, at 100.

⁴¹ A.I.D.S. = Acquired Immune Deficiency Syndrome. See *Bragdon v. Abbott*, 534 U.S. 624, 633 (1998).

⁴² Williams, *supra* note 6, at 100, n.8.

⁴³ *Id.*

⁴⁴ *In re Swine Flu Immunization Products Liability Litigation*, 533 F. Supp. 567, 571 n.6 (D. Colo. 1980). This same footnote (from *In re Swine Flu*) lists some of the more recent Influenza

pandemic does not always have to be deadly, just widespread,⁴⁵ even though potential death is what most people associate with the word “pandemic.”⁴⁶ The good news is that Dr. Jeremy Brown, M.D., a medical expert on the Spanish Flu, asserted in a March 3, 2020, article in the **THE ATLANTIC** magazine, that the 2020 Coronavirus is *not* the 1918 Spanish Flu because today, we have medical technology far beyond what existed in that tragic Fall of 1918.⁴⁷ While Dr. Brown would prefer COVID-19 never existed, COVID-19’s death count will never rival the 1918 Spanish Flu in his expert opinion.⁴⁸ On December 11, 2020, a vaccine for

pandemics, to include the Asian Flu, the Hong Kong Flu, and the Swine Flu. For a list of approximately a dozen different deadly pathogens that have unleashed devastation on the world, see *Allen v. Nat’l Institutes of Health*, 974 F. Supp. 2d 18, 26-27 (D. Mass. 2013).

⁴⁵ See e.g., *Ass’n. of Nat’l Advertisers, Inc. v. FTC*, 617 F.2d 611, 623 (D.C. Cir. 1979); *Chapman v. City of Shreveport*, 74 So.2d 142, 144 (La. 1954) (both cases calling tooth decay a “pandemic”).

⁴⁶ See e.g., *State v. Smith*, 621 A.2d 493, 513 n.2 (N.J. Super. Ct. App. Div. 1993) (discussing the A.I.D.S. virus as a pandemic and a person who knows they have A.I.D.S. attempting to bite someone being guilty of aggravated assault). *Accord State v. Richardson*, 209 P.3d 696, 703 (Kan. 2009). For a history of the A.I.D.S. pandemic, see *Casarez v. NME Hosps., Inc.*, 883 S.W.2d 365 n.4 (Tex. Ct. App. 1994) and *Mathocian v. State*, 194 S.W.2d 59, 69 n.6 (Tex. Ct. App. 2006).

⁴⁷ See Jeremy Brown, *The Coronavirus is no 1918 Pandemic*, **THE ATLANTIC** (Mar. 3, 2020), <https://www.theatlantic.com/ideas/archive/2020/03/were-not-facing-second-spanish-flu/607354/>. The Ohio Court of Appeals referred to medical advances occurring within the last twenty-five years as “staggering.” *McCulley v. Good Samaritan Hosp.*, 722 N.E.2d 563, 567 (Ohio Ct. App. 1998). For a comparison of the devastation caused by the Swine Flu of the late 1970s and the Spanish Flu of 1918, see *Heitz v. County of Sacramento*, 87 Cal. App. 3d 754, 759 (Cal. Ct. App. 1978).

⁴⁸ *Id.* But see *White House Projects Grim Toll From Coronavirus*, **N.Y. TIMES** (Apr. 7, 2020), <https://www.nytimes.com/2020/03/31/world/coronavirus-live-news-updates.html>, (which says American deaths from the 2020 Coronavirus could reach 240,0000). That March 2020 estimate was surpassed. As of December 3, 2020, over 13.5 million people in the United States have contracted COVID-19, resulting in

COVID-19 was finally approved and released as a “Emergency Use Authorization” by the U.S. Food and Drug Administration (FDA).⁴⁹

EXAMPLE CASE-STUDY – MARCH 27, 2020, THE START OF A PERFECT VACATION.

On Friday, March 27, 2020, my wife and I were set to fly to Dublin, Ireland for the first leg of a dream working vacation. The plane tickets were purchased in September 2019, through a travel agency called ASAPTICKETS.COM. The roundtrip flight was on Delta Airlines and cost \$1,346.00. The tickets were listed as “non-refundable.” The trip included lunch with a member of the British House of Lords in London, England to discuss lost Native American treaties that may still exist in the British Archives;⁵⁰ followed a few days later by lunch with a retired member of the Supreme Court of Ireland and a tour of the “Four Courts” (Ireland’s Supreme Court);⁵¹ concluding with a speech at the University of Limerick School of Law in Limerick, Ireland. Two Tennessee universities,⁵² the National Judicial College,⁵³ and the Tennessee Administrative Office of Courts donated items to give to law students and dignitaries during this trip. Three large boxes of donated items were shipped to

269,763 deaths. *United States v. Thomas*, ___ F. Supp. 3d ___, 2020 WL 7137898 (D.N.J. Dec. 4, 2020), at * 5. As of October 6, 2020, over 1 million people worldwide have died from COVID-19 related issues. See *NAACP v. United States Postal Serv.*, ___ F. Supp. 3d ___, 2020 WL 5995032 (D.D.C. Oct. 10, 2020), at * 6.

⁴⁹ *FDA Takes Key Action Against COVID-19 by Issuing Emergency Use Authorization for First COVID-19 Vaccine*, U.S. FOOD & DRUG ADMIN. (Dec. 11, 2020), <https://www.fda.gov/news-events/press-announcements/fda-takes-key-action-fight-against-covid-19-issuing-emergency-use-authorization-first-covid-19>.

⁵⁰ Lady Emma Nicholson, Baroness of Winterbourne.

⁵¹ The Honorable Justice Mary Finlay-Geoghegan.

⁵² Middle Tennessee State University and Austin Peay State University.

⁵³ The National Judicial College is a part of the University of Nevada – Reno and is considered the premiere training ground for American state and tribal judges. *See generally A Legacy of Learning*, NATIONAL JUDICIAL COLLEGE, www.judges.org/about/ (last visited Dec. 12, 2020).

Ireland in February 2020, in preparation for the March 2020 trip. For a history buff who was reared in humble beginnings, this was a dream trip that became a nightmare.

On March 11, 2020, the U.S. State Department suspended all non-essential government travel.⁵⁴ Since I was representing the U.S. Department of the Interior's Court of Indian Appeals for my speech at the University of Limerick School of Law, (the primary reason for my trip), it looked doubtful that I was going to Europe. That same day, flights were still going into Ireland and the U.K., even though the rest of Europe was off-limits to Americans until April 1, 2020, pursuant to an Executive Order travel ban from President Trump.⁵⁵ A couple of days later, the President's travel ban was extended to Ireland and the U.K., and all colleges and universities in Ireland were shut down by the Irish Government for the same period.⁵⁶ I awoke to the reality that my dream trip would remain a dream. Would I get any of the money I paid returned?

Hotels were gracious about refunding money or offering to reschedule rooms, even on non-refundable and prepaid accommodations.⁵⁷ Ryanair,⁵⁸ a small commuter

⁵⁴ See Humeyra Pamuk and Arshad Mohammad, *U.S. State Department to Suspend Non-Essential Travel for Staff-Sources*, MSN (Mar. 11, 2020), <https://www.msn.com/en-us/news/world/exclusive-us-state-department-to-suspend-non-essential-travel-sources/ar-BB113Uol>.

⁵⁵ See Fionnuala O'Leary and James Beal, *Europe Locked Out Donald Trump Suspends All Flights to US from Europe except UK and Ireland for Next 30 Days Due to Coronavirus*, THE SUN (Mar. 12, 2020, 11:28 AM), <https://www.thesun.co.uk/news/11154366/us-considering-ban-on-travelers-from-europe-amid-coronavirus-pandemic-as-trump-mulls-declaring-national-disaster/>.

⁵⁶ See *Coronavirus: US to Extend Travel Ban to UK and Ireland*, BBC NEWS (Mar. 14, 2020), <https://www.bbc.com/news/world-us-canada-51891662>.

⁵⁷ See generally Brad Tuttle, *Every Major Hotel Chain's Coronavirus Cancellation and Refund Policy*, MONEY (May 6, 2020), <https://money.com/coronavius-hotel-reservations-refunds-cancel/>.

⁵⁸ See generally *Refunds FAQ* (n.d.), RYANAIR, <https://www.ryanair.com/ie/en/refundfaqs/directbookings> (last visited Dec. 11, 2020).

airline based in Ireland that flew between London and Dublin, gave complete and polite refunds for flights Ryanair cancelled or travel bans grounded.⁵⁹ Delta Airlines, like most major American airlines, would reschedule any prepaid and non-refundable flight set for take-off between March 14–31, 2020 to any date of the traveler's choice before December 31, 2020, without additional fees.⁶⁰ My roundtrip America/Ireland tickets were Delta Airlines tickets, purchased through an internet travel agency called ASAPTICKETS.COM, so logic suggested that the travel agency would honor Delta's Coronavirus rescheduling policy, right? Wrong! The ASAPTICKETS.COM response was a different story.

On March 15, 2020, Delta Airlines referred me to the travel agency to reschedule travel. This referral began a marathon of attempts by phone, voice messages, and e-mail. The one time I finally got to speak with any representative from ASAPTICKETS.COM, March 21, 2020, they said I could reschedule my trip *if* done so before my flight was set to take-off and then fly the second trip before May 31, 2020, a mere two months away (*and far short of the end-of-the-year policy Delta was following*). For flight no-shows, *even though the flights were cancelled*, all fees paid to ASAPTICKETS.COM were considered waived by the traveler according to the ASAPTICKETS.COM representative. Basically, I had until March 27, 2020, to reschedule my flight or the opportunity to modify my trip plans would be cut off. Upon rechecking with Delta Airlines, on March 21, 2020, they did not know why ASAPTICKETS.COM set May 31st as their cut-off date for travel, which was contrary to Delta's own policy, but since

⁵⁹ See Fatima Turla, *Ryanair Refund Policy – How to Cancel Flight and Get a Refund with Ryanair*, TWO MONKEYS: EUROPE TRAVEL BLOG (Mar. 29, 2020), <https://twomonkeystravelgroup.com/ryanair-refund-policy-cancel-flight/>.

⁶⁰ See Ricky Radka, *COVID-19 Flight Waivers and Refund Policies by Airline*, AIRFAREWATCHDOG (Apr. 20, 2020), <https://www.airfarewatchdog.com/blog/50104455/covid-19-flight-waivers-and-refund-policies-by-airline/>. Cf. Fed. Maritime Comm., *Fact Finding Investigation No. 30*, 2020 FMC Lexis 175 (July 27, 2020) (discussing cruise-line refund policies under COVID-19).

the Delta tickets were obtained through a travel agency, Delta Airlines deferred to ASAPTICKETS.COM. From that date forward, there was no contact with ASAPTICKETS.COM, although I made multiple attempts to contact them by phone and e-mail seeking a refund or *reasonable* rescheduling of the tickets.⁶¹ March 27, 2020, the date *ASAPTickets.com* said I would forfeit my payment for the cancelled travel, came and went. To the date this essay was submitted for publication, in December 2020, ASAPTICKETS.COM has still not returned phone call messages or e-mails made between March 22, 2020 and March 27, 2020. The money I paid to travel was lost or forfeited due to the travel agency manipulating circumstances in a fashion that would have made Captain Jack Sparrow proud. It appears the scenario just described is common because FOX NEWS reported, on April 1, 2020, that nine U.S. Senators sent a joint letter to eleven major airlines demanding that, in light of the fact that the U.S. government just gave the airlines a \$25 billion bailout for Coronavirus losses, the airlines must refund passengers money for cancelled flights.⁶²

While the loss of \$1,346.00 is annoying, it is not a crippling loss of money in my household. For many others, that amount represents years of savings. During the extensive amounts of wait-time listening to ASAPTICKETS.COM telephone hold music (before the program insisted on leaving voice messages that were never returned) I thought to myself, "People all over the world are enduring this same sort of run-around." Businesses that stall until modification deadlines pass can manufacture their own financial windfalls from any emergency, epidemic, or pandemic that comes about. Industries ripe for *Pandemic*

⁶¹ As of December 10, 2020, most of the world's travel and tourism options are deemed off-limits or *de facto* off-limits for the foreseeable future. See generally Karen Schwartz, *I'm a U.S. Citizen. Where in the World Can I Go?*, N.Y. TIMES (Dec. 10, 2020) <https://www.nytimes.com/article/coronavirus-travel-restrictions.html> for a list of world travel restrictions.

⁶² See Ronn Blitzer, *Lawmakers Demand Airlines Refund Customers for Coronavirus Cancellations*, FOX NEWS (Apr. 1, 2020), <https://www.foxnews.com/politics/lawmakers-demand-airlines-refund-customers-for-coronavirus-cancellations>.

Pirates' attack in emergency scenarios include gasoline prices, grocery stores, the travel industry, the health care industry, event planning (e.g., weddings/funerals), or any contract industry that can say "not my problem" when fate (or governments) cancel plans. That is when I decided to suggest legislative change to protect citizens from *Pandemic Pirates* who seek to profit from mass tragedy. Both state and federal statutes prohibit predatory pricing and profiteering in times of emergency,⁶³ but those statutes need to address profiteering *before* it happens, not after-the-fact.

A SHORT HISTORY LESSON

While the term "*Pandemic Pirates*" may be a new name, the concept behind a business or person profiting from the heartache and trouble of others has been around for centuries under names such as "War Profiteering."⁶⁴ First, let it be said that reasonable profits are not what is of concern to the government, even in time of war or pestilence.⁶⁵ Legislative measures to curb profiteering is designed to protect both the government and the consumer from *unreasonable charges*, not reasonable costs for goods

⁶³ Exxon Corp. v. Governor of Md., 437 U.S. 117, 144 (1978) (Blackmun, J., dissenting).

⁶⁴ See e.g., Fancois Bouloc, *War Profiteers*, INTERNATIONAL ENCYCLOPEDIA OF THE FIRST WORLD WAR (June 22, 2015), https://encyclopedia.1914-1918-online.net/article/war_profiteers. See also Kern-Limerick v. Scurlock, 347 U.S. 110, 123 n. * (1954) (Black, J., dissenting) (discussing the unsavory history of military profiteering) and State v. Francis, 95 Misc. 2d 381, 384 (N.Y. Sup. Ct. 1978) (discussing charity scams and war profiteering). See also Riley v. Moyed, 529 A.2d 248, 252 n.4 (Del. 1987) (discussing the Delaware Civil Servant Profiteering Act which is similar in intention to stock market insider trading regulations).

⁶⁵ See e.g., Brown v. Bottom Creek Coal & Coke Co., 118 S.E. 284, 285 (W. Va. 1923) (discussing World War I price caps). For a general discussion of World War II's "War Powers Act," probably the best-known statute addressing profiteering, see Ring Construction Corp. v. Sec. of War, 8 T.C. 1070, 1080 (1947). Cf. Garcia v. Ebling Motor Co., Inc., 201 P.2d 854, 856 (Cal. App. 1949) (for a discussion on the War Power Act's sister legislation, the "Emergency Price Control Act").

and services.⁶⁶ Congress can set its own rules to combat profiteering, or hoarding of vital materials, during war or other emergencies.⁶⁷

In 1777, Abigail Adams, wife of President John Adams and mother of President John Quincy Adams, wrote her husband of riots by women against shopkeepers that were price gouging and hoarding food during the American Revolution.⁶⁸ In the 1940s, Senator Harry S. Truman rose to national prominence, and later the presidency, because of his efforts to curb profiteering during World War II. Truman, known for his straight-talking manner, called war profiteering “treason.”⁶⁹ Abraham Lincoln faced similar problems with unscrupulous vendors during the American Civil War.⁷⁰ The U.S. Supreme Court noted in 2003 that the

⁶⁶ *United States v. Alexander Wool Combing Co.*, 66 F. Supp. 389, 391-92 (D. Mass. 1946). *See generally* Sharona Hoffman and Isaac D. Buck, *Specialty Drugs and the Health Care Cost Crisis*, 55 WAKE FOREST L. REV. 55 (2020).

⁶⁷ *See e.g.*, *Fairbanks, Morse & Co. v. Comm. of Taxes*, 47 A.2d 123, 127 (Vt. 1946); *United States v. Chabot*, 193 F.2d 287, 288-90 (2nd Cir. 1951) (no hoarding gold during the Great Depression); *Campbell v. Medalie*, 71 F.2d 671, 672 (2nd Cir. 1934) (no hoarding gold during the Great Depression); and *Maxwell v. Brayshaw*, 258 F. 957, 961 (D.C. App. 1919) (discussing how to stop World War I profiteering); and *Kittrell v. Hatter*, 10 So. 2d 827, 831-33 (Ala. 1942) (discussing why the Emergency Price Control Act must be challenged in federal, not state courts).

⁶⁸ *See The Female Food Riots of the American Revolution* (n.d.), NEW ENGLAND HISTORICAL SOCIETY, <https://www.newenglandhistoricalsociety.com/the-female-food-riots-of-the-american-revolution/> (last visited Dec. 10, 2020). This same article discusses multiple riots where patriot women beat profiteering shopkeepers for price gouging and hoarding needed supplies in the name of profit.

⁶⁹ *See* AL FRANKEN, *THE TRUTH (WITH JOKES)* 262 (E.P. Dutton & Co. 2005). The U.S. Tax Court has opined, “Profiteering is a serious detriment to the successful prosecution of war. It tends to cause waste and inefficiency It adversely affects the morale of troops and civilians.” *Stein Bros. Mfg. Co. v. Sec. of War*, 7 T.C. 863, 872 (1946).

⁷⁰ *See* Bummer, *Lincoln’s War Profiteers or the Gruesome Twosome*, CIVIL WAR BUMMER (Jan. 17, 2019), <http://www.civilwarbummer.com/lincolns-war-profiteers-or-the-gruesome-twosome/>.

False Claims Act⁷¹ was enacted because “Congress's primary concern in 1863 was stopping the massive frauds perpetrated by large [private] contractors during the Civil War.”⁷² Remember, epidemics, pandemics, wars and other emergencies impact interstate commerce,⁷³ so they impact the economy.

Similar logic applies to civil situations where ***Pandemic Pirates*** prey on the fear and vulnerability of the masses for personal gain under an unjustified guise of insight or authority.⁷⁴ One early court described a pirate as one who is “depredating . . . without being authorized”⁷⁵ Today, multiple groups are calling on the government to ensure that profiteering on the Coronavirus is not tolerated.⁷⁶ Preying upon innocent citizens facing crisis as a means of profiteering was so common in the 1930’s “Great Depression” that states created statutes and boards or commissions to regulate the problem.⁷⁷ WEBSTER’S DICTIONARY defines “profiteering” as:

⁷¹ 31 U.S.C. § 3729.

⁷² *Cook County v. United States*, 538 U.S. 119, 128 (2003) (parenthetical in original text) (Internal quotations from original text omitted).

⁷³ See *United States v. Gibert*, 677 F.3d 613, 626 n.12 (4th Cir. 2012) (discussing how a potential “Bird Flu” pandemic could adversely impact interstate commerce).

⁷⁴ WEBSTER’S DICTIONARY defines “pirate,” in the verb form, as “to take or make use of under a guise of authority but without actual right.” *Pirate* (n.d.), WEBSTER’S DICTIONARY ONLINE, <https://www.merriam-webster.com/thesaurus/pirate> (last visited Dec. 10, 2020). *Accord* *Grommet v. Newman*, 220 P.2d 795, 815 (Wyo. 2009), (opining that defendant’s conduct “smacked of unconscionable wartime profiteering” disguised as good business. The Court bluntly declared, “Affectio tua nomen imponit operi tuo.” {Your motive gives a name to your act} (Parenthetical in original text). Even today, the term “pirate” is not a compliment. See also *U.S. v. Abdi Wali Dire*, 680 F.3d 446, 456 (4th Cir. 2012).

⁷⁵ *Dole v. New England Mut. Marine Ins. Co.*, 7 F. Cas. 837, 847 (1st Cir. 1864).

⁷⁶ See e.g., Justice Department Press Release: *Combatting Coronavirus Fraud* (Nov. 11, 2020).

⁷⁷ See e.g., *Franklin v. State ex rel. Ala. State Milk Control Bd.*, 169 So. 295, 302 (Ala. 1936). For a lighthearted spoof on burdens

the act or activity of making an unreasonable profit on the sale of essential goods especially during times of emergency.⁷⁸

Likewise, WEBSTER'S defines "price gouging" as "**charging customers too much money.**"⁷⁹ An odd, yet common, hypocrisy of *Pandemic Pirates* is that they strictly enforce their own contracts with patrons, while seeking, *and expecting*, government aid and mercy for themselves.⁸⁰ Pirates pre-date the modern era, as shown by the fact that Julius Caesar was held hostage, in 75 B.C., by Cilician pirates.⁸¹ The difference in modern-day pirates and those of yesteryear is that today's pirates sometimes wear business suits.⁸² That being said, there are also examples

and sadness of the 1930s, and how con artists played on that sadness, see the movie "Paper Moon." Roger Ebert, *Reviews: Paper Moon*, ROBERTEBERT.COM (June 15, 1973), <https://www.rogerebert.com/reviews/paper-moon-1973>.

⁷⁸ *Profiteering* (n.d.), WEBSTER'S DICTIONARY ONLINE, <https://www.merriam-webster.com/dictionary/profiteering> (last visited Dec. 10, 2020). See generally *State v. Goldstein*, 93 So. 308, 309 (Ala. Ct. App. 1922) (for a discussion on anti-profiteering statutes) and *State v. Linville*, 423 P.3d 842, 848 (Wash. 2018) (Gonzalez, J. concurring).

⁷⁹ *Price gouging* (n.d.), WEBSTER'S DICTIONARY ONLINE, <https://www.merriam-webster.com/dictionary/price%20gouging> (last visited Dec. 10, 2020). See also *Ass'n for Accessible Meds v. Frosh*, 887 F.3d 664, 666 (4th Cir. 2018) (defining 'price gouging' of prescription drugs as "an unconscionable increase in the price of a prescription drug").

⁸⁰ For a discussion on this type of problem in the U.K., see Karen McVeigh, *UK Government Under Fire for Failure to Regulate Contractors*, THE GUARDIAN (APR. 3 2017, 19.01 EDT), <https://www.theguardian.com/global-development/2017/apr/04/uk-government-under-fire-for-failure-to-regulate-aid-contractors>.

⁸¹ See Wu Mingren, *When Julius Caesar was Kidnapped by Pirates – and Made Them Increase the Ransom!*, ANCIENT ORIGINS (Jan. 18, 2019, 22:45 DHWTY), <https://www.ancient-origins.net/history-famous-people/julius-caesar-kidnapped-0011344>.

⁸² Junter Valentin, *Pirates in Business Suits: Carl Schmitt: 'Ordinary Businessman' and Crimes of Aggression*, 88 NORDIC J. OF INT. L. 459, 460 (2019).

of corporate and individual altruism in the face of epidemics where doctors, scientists, and even pharmacy manufactures skipped cash for cure.⁸³

History tells us that pandemics have reared their ugly heads about every ten years over the last seventy years,⁸⁴ but pandemics reach back as far as 430 B.C. and the Peloponnesian War, in terrifying names such as Bubonic Plague, Leprosy, and Smallpox.⁸⁵ As previously noted, the difference between an epidemic and a pandemic is as follows:

In the realm of infectious diseases, a pandemic is the worst case scenario. When an epidemic spreads beyond a country's borders, that's when the disease officially becomes a pandemic.⁸⁶

One cannot help but see irony, *and comfort*, from the person who declared, **"We have nothing to fear, but fear itself,"** President Franklin Roosevelt. President Roosevelt (FDR), who piloted America through the Great Depression and World War II, was the victim of the Polio epidemic.⁸⁷ A healthy FDR ran for Vice President in 1920 on the heels of the devastation left from World War I and

⁸³ See e.g., N. Pieter M. O'Leary, *Combating Nature's Insurgency: Tamiflu and Vaccination in the Fight Against Avian Influenza*, 10 MICH. ST. U. J. MED. & L. 469, 488 (2006) (praising Swiss pharmaceutical company Roche for keeping the cost of Tamiflu reasonable). Other countries, such as Canada, also fight against profiteering. See also Lorne Neudorf, *Reassessing the Constitutional Foundation of Delegated Legislation in Canada*, 41 DALHOUSIE L.J. 519, 560 n. 213 (2018).

⁸⁴ JOHN M. BARRY, *THE GREAT INFLUENZA* 449 (2005). See also, *The Worst Outbreaks in U.S. History*, HEALTHLINE (Apr. 9, 2020), <https://www.healthline.com/health/worst-disease-outbreaks-history#7> (A general discussion of the most-deadly world plagues in history).

⁸⁵ *Pandemics That Changed the World*, HISTORY (Jan. 30, 2020), <https://www.history.com/topics/middle-ages/pandemics-timeline>.

⁸⁶ *Id.*

⁸⁷ F.D.R. Presidential Library and Museum, *Facts and Figures: F.D.R.*, NATIONAL ARCHIVES, <https://www.fdrlibrary.org/fdr-facts> (last visited Dec. 10, 2020).

the Spanish Flu pandemic.⁸⁸ By the 1930s, FDR was in a wheelchair due to polio. FDR's optimism of the 1930s and 1940s should inspire people facing the Coronavirus today. The real issue at hand is how should Congress, state legislatures, courts, and citizens address *Pandemic Pirates*?

RETRIBUTE, REGULATE, OR REBOOT?

American courts and legislatures have faced earlier versions of *Pandemic Pirates*. If I wished to seek retribution against ASAPTICKETS.COM, the Tennessee General Sessions Court (Tennessee's small claims court) is an excellent place "just to punish them." Stepping back to our ASAPTICKETS.COM case study, one could complain to chat sites such as *tripadvisor.com*, as many have previously done.⁸⁹ One could also file a lawsuit if dissatisfied with the travel agency, as others have done.⁹⁰ If I were to file a lawsuit in the local General Sessions Court, I would pay approximately \$200.00 for filing fees. ITN, (International Travel Network), a Delaware corporation, is the parent company of ASAPTICKETS.COM.⁹¹ The corporate office has a telephone exchange listing in the San Francisco, California area.⁹² For this company to defend a lawsuit in Tennessee would cost far more than the \$1,346.00 at issue. Further, Tennessee allows civil plaintiffs to take a "voluntary nonsuit," which dismisses a case without prejudice and allows for the suit to be refiled

⁸⁸ *Id.*

⁸⁹ See Excursion43563596982, *ASAP Tickets is a Scam*, TRIP ADVISOR: FORUMS (2018), https://www.tripadvisor.com/ShowTopic-g1-i10702-k12076011-ASAP_tickets_is_a_scam-Air_Travel.html (last visited Dec. 10, 2020).

⁹⁰ See e.g., *Delgreco v. Asaptickets.com*, No. AR-04-005695 (Pa. Com. Pl. 2004) and *Chicago Tribune v. AsapTickets.com*, Case No. CGC-03-424095 (Cal. Super. 2003).

⁹¹ *International Travel Network*, ELLIOTT ADVOCACY (Jan. 21, 2021), <https://www.elliott.org/company-contacts/international-travel-network/>.

⁹² *Id.*

within one year.⁹³ The General Sessions Court for the city where I live is about one-half block from my office. If the defendant fails to appear, a default judgement is entered. If they attempt to use diversity of citizenship to remove the case to federal court, I simply abandon the case. While this may make me personally satisfied, the problem only continues. This approach does not offer an altruistic answer for the multitude of similar situations occurring daily throughout the world. Further, litigation probably will violate the maxim/proverb, “don’t throw good money after bad.”⁹⁴

The second option of merely adding another blind “don’t do that” statute or regulation to the pre-existing law books, also falls short of addressing the problem. By way of example, pickpockets used the “Tyburn Hangings”⁹⁵ of other apprehended pickpockets as fertile soil for pickpocketing, because onlookers were morbidly mesmerized by the hanging of a thief.⁹⁶ Likewise, “Black Market Sellers,” the military’s cousin to *Pandemic Pirates*, are hard to detect and thus hard to deter.⁹⁷ Simply put, confusion, which *Pandemic Pirates* depend upon to promote their schemes, thrives and survives under the fog

⁹³ TENN. R. CIV. P. 41.01. *See also* Lacy v. Cox, 152 S.W.3d 480, 488-89 n. 18-19 (Tenn. 2004) (for a discussion on Tennessee’s and other jurisdictions’ versions of nonsuits).

⁹⁴ *In re Antaeus Technical Services, Inc.*, 345 B.R. 556, 563 (Bkrcty. W.D. Va. 2005) and *Brunson v. Brunson*, 19 Tenn. 630, 631 (1838).

⁹⁵ “Tyburn Hangings” is a reference to the place in London, England where criminals were executed prior to 1783. *See Being Handed at Tyburn*, CAPITAL PUNISHMENT UK, <http://capitalpunishmentuk.org/hangedt.html> (last visited Dec. 10, 2020).

⁹⁶ *See Harmelin v. Michigan*, 501 U.S. 957, 1008 (1991) (Kennedy, J. concurring); *United States v. Barbara*, 683 F.2d 164, 168 (6th Cir. 1982); and *Johnson v. State*, 416 So.2d 383, 397-98 (Miss. 1982).

⁹⁷ *See United States v. Williams*, 27 M.J. 710, 728 (ACMR 1988) (en banc) (Gilley, J. concurring in part and dissenting in part). *See generally*, Maxwell J. Mehlman and Kirsten M. Rabe, *The Genetics Revolution: Conflicts, Challenges and Conundra: Any DNA to Declare? Regulating Offshore Access to Genetic Enhancement*, 28 AM. J. L. AND MED. 179, 210 (2002) (declaring, “Shutting down black markets is virtually impossible”).

and anonymity of chaos originating from emergencies and war.⁹⁸ Merely adding another generic statute adds to the pre-existing chaos and confusion that overlapping statutes already cause.⁹⁹ As with option one, (the lawsuit), this approach is illogical.

The third approach, with some slight modifications, would seem to work to curb *Pandemic Pirates*. The “hit them in their pocketbook” concept,¹⁰⁰ which is similar to criminal drug forfeitures,¹⁰¹ is a sound approach to deterring *Pandemic Pirates*. The difference suggested here is to take the action on a “carrot-and-the-stick” approach, as opposed to trying to find the *Pandemic Pirates’* booty after the fact, by encouraging statutory compliance on the front end of commerce, rather than seeking to punish statutory violations.¹⁰² Many businesses and individuals seek government loans or bailouts in time of economic downturns, such as recessions, depressions, and national emergencies.¹⁰³ This approach would allow businesses and individuals the right to seek state or federal loan relief upon the affirmative condition-precedent that the person or business seeking relief has shown similar largesse to their own debtors and patrons. This is a

⁹⁸ Cf. *In re* Complaint and Petition of the United States, 331 F. Supp. 3d 1112, 1128 n. 9 (S.D. Cal. 2018). See also John C. Dehn, *Why a President Cannot Authorize the Military to Violate (Most of) the Law of War*, 59 WM. & MARY L. REV. 813, 880 (2018) and Nicholas W. Mull, *The Honor of War: Core Values of the Warrior Ethos and Principle of the Law of War*, 18 CHI-KENT J. INT’L & COMP. L. 1, 31 (2018).

⁹⁹ See e.g., *Lamonte v. State*, 839 N.E.2d 172, 175 n. 1 (Ind. App. 2005).

¹⁰⁰ See e.g., *Florida Steel Corp. v. N.L.R.B.*, 648 F.2d 233, 240 (Former 5th Cir. 1981) and *Covad Communications Co. v. Revonet, Inc.*, 267 F.R.D. 14, 30 (D.D.C. 2010).

¹⁰¹ See e.g., *United States v. Wells*, 631 Fed. Appx. 408, 413 (6th Cir. 2015). Cf. *Env’t Tex. Citizen Lobby v. Exxonmobil Corp.*, 968 F. 3d 357, 371-72 (5th Cir. 2020) (discussing the deterrent effect of monetary fines/forfeitures).

¹⁰² See e.g., *Tyler v. Hillsdale County Sheriff’s Dept.*, 837 F.3d 678, 682 (6th Cir. 2016) (en banc).

¹⁰³ See e.g., *In re* Visnicky, 401 B.R. 61, 66 n. 10 (Bkrtcy. D.R.I. 2009); *Puckett v. Rufenacht, Bromagen, & Hertz, Inc.*, 587 So.2d 273, 278 n. 2 (Miss. 1991).

“Reboot” concept that is literally of **Biblical** proportion.¹⁰⁴ Basically, a prerequisite for seeking government aid, low interest government loans, or temporary debt relief, is an affirmative showing that the person or business requesting governmental help is not hypocritically fleecing their own customers while begging for mercy.

¹⁰⁴ See *Matt*, 18:23-34 (Christian Standard Bible) (the parable of the unforgiving debtor). The text of this First Century parable states the following:

[T]he kingdom of heaven can be compared to a king who wanted to settle accounts with his slaves. When he began to settle accounts, one who owed ten thousand talents was brought to him. Since he had no way to pay it back, his master commanded that he, his wife, his children, and everything he had to be sold to pay the debt.

At this, the slave fell down on his face before him and said, “Be patient with me, and I will pay you everything!” Then the master of that slave had compassion, released him, and forgave him the loan.

But that slave went out and found one of his fellow slaves who owed him a hundred denarii. He grabbed him started choking him, and said, “Pay what you owe!”

At this his fellow slave fell down and began begging him, “Be patient with me, and I will pay you back.” But he wasn’t willing. On the contrary, he went and threw him into prison until he could pay what was owed. When the other slaves saw what had taken place, they were deeply distressed and went and reported to their master everything that had happened.

Then, after he had summoned him, his master said to him, “You wicked slave! I forgave you all that debt because you begged me. Shouldn’t you have had mercy on your fellow slave, as I had mercy on you?” And his master got angry and handed him over to the jailers until he could pay everything that was owed.

By 2019 standards, 10,000 talents would be about \$ 4.5 billion and 100 denarii would be approximately \$8,800.00. See Honza Pokorny, *He Forgave How Much?! (1/22/2019)*, <https://honza.ca/2019/01/he-forgave-how-much/>.

THE HOW & WHYS OF THE OPTION 3 REBOOT

Equity has long ago given us a blunt, but simple, answer to the “why?” Profiteers such as *Pandemic Pirates* should not be rewarded for taking unfair advantage of emergency situations.¹⁰⁵ Perhaps the best-known literary war profiteer was Lt. Milo Minderbender, a fictional character from Joseph Heller’s book, *CATCH-22*.¹⁰⁶ Lt. Minderbender summed up the *Pandemic Pirate*’s “watch out for # 1” mentality, over fair dealing and the showing of empathy for hurting people, when Minderbender said, “Frankly, I’d like to see the government get out of war altogether and leave the whole field to private individuals.”¹⁰⁷ A common rule of equity says that:

A wrongdoer is precluded from profiteering from his fraud or willful misrepresentation in an ordinary civil suit.¹⁰⁸

This concept is a branch of the “unclean hands doctrine,” which “closes the door of a court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief.”¹⁰⁹ Stated another way, “The doctrine [of unclean hands] bars relief to a plaintiff who has violated conscience, good faith or other equitable principles in his

¹⁰⁵ See e.g., *Noriega-Rodriguez v. Colon*, 122 D.P.R. 650, 22 P.R. Off. Trans., 613, 619 (P.R. 1988) (discussing Cold War profiteering and other scams during the Iran-Contra scandal). See also Todd Tiahr, *Federal Price Gouging Prevention Act*, 152 Cong. Rec. E1175-76 (May 25, 2007).

¹⁰⁶ See *In re Davis*, No. 01-53754-C, 2007 WL 1858922, at *1 n.1 (W.D. Tex. Jun. 27, 2007) (explaining the self-preservation definition of a “Catch-22”).

¹⁰⁷ See *In re KBR, Inc.*, 736 F. Supp. 2d 954, 955-56 (D. Md. 2010).

¹⁰⁸ *Federal Copper & Aluminum Co. v. Dickey*, 493 S.W.2d 463, 464 (Tenn. 1973). Quotation cited with approval in *Freeman v. J.L. Rothrock*, 657 S.E.2d 389, 395 (N.C. App. 2008).

¹⁰⁹ *ABF Freight System, Inc. v. N.L.R.B.*, 510 U.S. 317, 329-30 (1994). *Accord Truck Ins. Exchange v. Palmer J. Swanson, Inc.*, 189 P.3d 656, 662 (Nev. 2008); *Gateway Inc. v. Companion Products, Inc.*, 320 F. Supp. 2d 912, 928 (D.S.D. 2002).

prior conduct, as well as to a plaintiff who has dirtied his hands in acquiring the right presently asserted."¹¹⁰ Courts have held that a person must “do right” and treat others fairly before seeking the power of the government and equity to offer help to the wrongdoer.¹¹¹

Courts and legislatures are disinclined to reward a litigant’s deliberate misbehavior or fraud.¹¹² This logical concept fits nicely into the scheme of curbing the abuses of *Pandemic Pirates*. One federal appellate judge stated the obvious, that Congress would *never* sanction war profiteering.¹¹³ The North Carolina Supreme Court, interpreting the legislative intent behind a state anti-price gouging statute, called price gouging during any time of emergency “**particularly distasteful.**”¹¹⁴ Anti-price gouging statutes are construed liberally to promote the public good.¹¹⁵ State governors are quick to issue executive

¹¹⁰ Seller Agency Council, Inc. v. Kennedy Center for Real Estate Educ., Inc., 621 F.3d 981, 986 (9th Cir. 2010).

¹¹¹ See e.g., Nave v. Nave, 28 Mo. App. 505, 511 (1888). *Accord* Collection & Recovery of Assets, Inc. v. Patel, 276 So.3d 494, 497 (Fla. App. 2019) (calling rewarding a wrongdoer and punishing a victim “impermissible goals” of any court).

¹¹² See e.g., People v. Stoops, 728 N.E.2d 1241, 1247 (Ill. App. 2000) and Mark W. Peacock, *An Equitable Approach to Products Liability Statutes of Repose*, 14 N. Ill. U. L. Rev 14 N. ILL. U. L. REV. 223, 249 (1993).

¹¹³ United States v. Peach Mtn. Coal Min. Co., 161 F.2d 476, 480 (2nd Cir. 1947) (Clark, J. dissenting). See also J.E. (Buddy) Stockwell, *Department: Lawyers Assistance: The Pharmacist*, 68 LA. BAR JNL. 36, 36 (June/July 2020) (condemning Big Pharma price gouging).

¹¹⁴ Bumpers v. Community Bank of N. Va., 747 S.E.2d 220, 228 (N.C. 2013). See also State ex rel. Hood v. Louisville Tire Center, Inc., 204 So.3d 1250, 1253 (Miss. 2016); Quartz Castle, Inc. v. Jade Consol. Mgmt., Inc., No. 09-10-00266-CV, 2010 WL 5232991 (Tex. App. December 16, 2010).

¹¹⁵ State ex rel. Murray v. Palmgren, 646 P.2d 1091, 1097 (Kan. 1982). Profiteering issues have a spill-over effect to other areas of litigation such as: A) fights over repaying F.E.M.A. loans, B) responsibility for cleaning up environmental problems the emergency’s response required, and C) service providers turning blind eyes to obvious disaster/epidemic concerns to avoid negative publicity. See e.g., Alpine Haven Property Owners Assn, Inc. v. Deptula, 830 A.2d 78, 88 (Vt. 2003) (repaying F.E.M.A. loan);

orders based upon state statutes to stop price gouging during emergency situations such as Hurricane Katrina¹¹⁶ or the 1998 Labor Day Storms of New York.¹¹⁷ Likewise, federal statutes protect against price gouging of FEMA¹¹⁸ funds in emergency situations such as Hurricane Katrina.¹¹⁹ Profiteers have exploited economic situations such as the 1973 Arab Oil Embargo as an excuse to price gouge.¹²⁰ Some of those *Pandemic Pirates* of yesteryear earned criminal convictions and public ostracization for price gouging.¹²¹ Having addressed the “why?” I now turn to “how?”

States and the federal government both have money set aside for emergency loans to citizens hit with a natural disaster catastrophe.¹²² Likewise, emergency funding is possible for businesses ravished by unexpected disasters.¹²³ These loans are normally short-term emergency funds.¹²⁴ Usually, disaster relief loans carry a lower interest rate

Exxon Mobil Corp. v. United States, 108 F. Supp. 486, 498 (S.D. Tex. 2015) (paying for environmental clean-up); *Harbottle v. Braun*, 447 P.3d 654, 662 (Wash. App. 2019) (doctors ignore Swine Flu symptoms resulting in wrongful death).

¹¹⁶ See e.g., *Marathon Petrol. Co., LLC v. Stumbo*, 528 F. Supp. 2d 639, 641 (E.D. Ky. 2007); *Cole v. Chevron, USA, Inc.*, 554 F. Supp. 2d 655, 658 (S.D. Miss. 2007).

¹¹⁷ *People ex rel. Spitzer v. Dame*, 289 A.D. 2d 997, 997 (N.Y. App. Div. 2001).

¹¹⁸ FEMA = Federal Emergency Management Authority. See *Wozniak v. Town of Colchester*, 220 A. 3d 132, 134 (Conn. 2019).

¹¹⁹ See e.g., *U.S. ex rel. Nulty v. Reddy Ice Holdings, Inc.*, 835 F. Supp. 2d 341, 356 (E.D. Mich. 2011). Cf. *United States v. Masciandaro*, 638 F.3d 458, 463 (4th Cir. 2011) (discussing war-time price capping to contain profiteering).

¹²⁰ *Kalodner v. Bodman*, 241 F.R.D. 6, 8 (D.D.C. 2006).

¹²¹ *Palombi v. Getty Oil Co.*, 501 F. Supp. 158, 159 (E.D. Pa. 1980).

¹²² See e.g., 7 U.S.C. §1941(a)(1) (federal emergency farm loans for economic stress situations); W. Va. Code § 5B-1-8 (state small business loans for emergency situations). See also *Rutherford v. State*, 188 Cal. App. 3d 1267, 1275 & 1280 (Cal. App. 1987) (discussing emergency small business “SBA” loans).

¹²³ See e.g., 20 U.S.C. §11611-3(a) (emergency monetary support for colleges hit by disaster situations).

¹²⁴ See *Moseanko v. Yeutter*, 944 F.2d 418, 421 n. 4 (8th Cir. 1991).

than common market loans carry.¹²⁵ It is not uncommon that the person seeking this emergency relief must affirmatively show themselves worthy and eligible of the government's helping hand.¹²⁶ The allocation of emergency loans can come with condition-precedent "strings attached," (such as proof of good citizenship).¹²⁷ The abuse of the process, such as multiple unpaid emergency relief loans, can lead to a person being denied future loans.¹²⁸ State and federal authorities can address abuses by ***Pandemic Pirates*** who mistreat the public while asking for their own economic safety net.¹²⁹ It is also worth remembering that occasionally, the consumer, not the

¹²⁵ See e.g., *Bentley v. Glickman*, 234 B.R. 12, 14 (Bkrcty. N.D.N.Y. 1999); *Dubrow v. Small Bus. Admin.*, 345 F. Supp. 4, 5 (C.D. Cal. 1972).

¹²⁶ See e.g., 20 U.S.C. §11611-3(c) (applicants for the emergency college disaster relief must provide proof of need and regulatory compliance to be eligible for the funds); 7 U.S.C. §1961 (individual citizen's eligibility criteria for FSA emergency disaster relief funds).

¹²⁷ See e.g., *In re Beattie*, 31 B.R. 703, 708 (Bkrcty. W.D.N.C. 1983) (individual dairy farmer's emergency disaster relief loan repayment deferral conditioned on assignment of percentage of milk proceeds).

¹²⁸ See e.g., *In re Kjeldahl*, 52 B.R. 916, 919-20 n. 1 (D. Minn. 1985). See also Zephyr Teachout, *Money, Politics, and the Constitution: Beyond Citizens United: The Unenforceable Corrupt Contract: Corruption and Nineteenth Century Contract Law*, 35 N.Y.U. REV. L. & SOC. CHANGE 681, 687 (2011).

¹²⁹ See generally, *Southern Ry. Co. v. Farmer*, 39 S.E.2d 714, 715 (Ga. App. 1946) (discussing ceiling caps on state negligence cases under federal World War II Office of Price Administration regulations); *People v. Schacher*, 181 Misc. 770, 771 (N.Y. Sup. Ct. 1944) (applying the New York State War Emergency Act, a state statute); and *Comprehensive Designers, Inc. v. United States*, 545 F.2d 1283, 1285 (Ct. Cl. 1976) (discussing the retroactive application of the World War II Renegotiation Act, which allowed the United States to restructure completed government war contracts that the United States decided were overcharges in time of war). *Contra Nat. Elec. Welding Machine Co. v. Stimson*, 10 T.C. 49, 58-59 (1948) (holding that completed and paid government war contracts cannot be renegotiated).

merchant, is the party trying to manipulate “the system.”¹³⁰ For this reason, one court declared the following:

Simulating the appearance of legitimate businesses economically controlled or governed by fair standards, war profiteering grasps all within reach and crushes those who fall prey to hidden greed. The effective safeguard is vigilant legislative regulation and control of all excessive profits¹³¹

With this backdrop, I propose the legislative addition discussed below.

Natural disasters and emergencies are widespread, sometimes even national, in their impact.¹³² Reasonable profits, even in time of emergency, are acceptable.¹³³ Anti-price gouging in emergency situation laws can

¹³⁰ See e.g., *Dunakin v. Southwestern Consumers Co-Op Assn.*, 157 P.2d 243, 249 (N.M. 1945) (discussing purportedly overpriced tomato juice); *Agullo v. Consumer Serv. Admin.*, 104 D.P.R. 244, 4 P.R. Off. Trans. 346, 353 (P.R. 1975) (discussing “reasonable rent” caps from World War II being used three decades later).

Profiteering concerns became so common during World War II that courts sometimes emphasized when litigants were *not* guilty of profiteering tactics. See e.g., *Wilson Line, Inc. v. United States*, 78 F. Supp. 821, 829 (Ct. Cl. 1948).

¹³¹ *Kuperschmid v. Globe Brief Case Corp.*, 185 Misc. 748, 753 (N.Y. App. Div. 1945).

¹³² See e.g., *Pigford v. Glickman*, 182 F.R.D. 341, 342-43 & 348-49 (D.D.C. 1998) (discussing a fifteen-state, 400-member, class action suit involving discrimination in FSA/FmHA emergency disaster loan practices).

¹³³ *Highland v. Russell Car & Plow Co.*, 135 A. 759, 763 (Pa. 1927). See generally Gregory R. Kirsch, *Hurricanes and Windfalls: Takings and Price Controls in Emergencies*, 79 VA. L. REV. 1235 (Aug. 1993). For an interesting twist to this view, see *Simonetti, Inc. v. State ex rel. Gallion*, 132 So.2d 252 (Ala. 1961), where the “profiteering” complaint was that a seller was undercutting competition cigarette prices, not unjustly inflating them. The Alabama Supreme Court determined that if a good or service is publicly essential, a statute could set a minimum price for the product, but not if the product or service is considered non-essential. The Alabama Supreme Court determined that cigarettes were non-essential goods.

constitutionally restrict a merchant's profits,¹³⁴ but those laws must be specific in nature instead of general, and must be narrowly tailored to emergency situations.¹³⁵ There are multiple emergency disaster loans, temporary debt relief, debt forgiveness, or monetary stipends/bailouts available.¹³⁶ Congress and state legislatures should enact the following language, or language with similar intent, into pre-existing emergency war or disaster relief loan and stipend statutes:

Applicants for any emergency epidemic, pandemic, natural disaster, or war relief, irrespective of the nature of the relief sought being loans, materials, debt forgiveness, debt repayment extension, emergency monetary relief stipends, or any other governmental largesse valued over \$50,000.00, shall show affirmative proof, as a condition-precedent to relief being approved, that said applicant, individual, business, corporation or non-profit, has not engaged in predatory pricing, price-gouging, or profiteering, as defined by the Legislature, within the previous ninety (90) days prior to making application for emergency relief.

While this variant of "The Golden Rule" will not completely stop *Pandemic Pirates* from cheating people, an affirmative showing of good faith in emergency disaster relief applicants' own business dealings with the public is not an

¹³⁴ *Kuperschmid, supra* note 131, at page 753. *Accord* *Crave v. Tracy*, 955 F. Supp. 1047, 1048-49 & 1057 (E.D. Wis. 1996); *Hunt v. Gilmore*, 198 Misc. 50, 52-53 (N.Y. App. Div. 1950).

¹³⁵ *Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373, 398 (2015) (Scalia, J. dissenting). *Accord* *Alexander Tthesis, Social Media Accountability for Terrorism Propaganda*, 86 *FORDHAM L. REV.* 605, 627 (Nov. 2017).

¹³⁶ For discussions and lists of some of the multiple and various emergency or disaster relief loans available, see *Green v. Veneman*, 159 F. Supp.2d 360, 362 n. 2 (S.D. Miss. 2001) and *Chandler v. Block*, 589 F. Supp. 876, 877, 883 (W.D. Mo. 1983).

outlandish requirement for the applicants seeking governmental mercy themselves.¹³⁷

CONCLUSION

Almost 100 years ago, the South Carolina Supreme Court talked about their time period's version of *Pandemic Pirates* and bluntly declared that no profiteer should, "**reap a golden harvest, nourished by the tears of widows, the blood of human beings, and the distress of mankind.**"¹³⁸ The U.S. Court of Appeals for the Eleventh Circuit, in *U.S. v. Svete*,¹³⁹ referred to similar behavior, ironically, as "**an epidemic of large-scale swindles, get-rich-quick schemes, and financial frauds.**"¹⁴⁰ Nothing in an emergency situation anti-profiteering statute "appears designed to suspend all processes of justice or to impair the concepts of ethics and morality."¹⁴¹ Instead, this simple statutory modification proposal follows legendary U.S. Supreme Court Justice Felix Frankfurter's opinion that "courts [and legislatures] will not permit themselves to be used as instruments of inequity and injustice."¹⁴² If Congress and state legislatures apply the suggested statutory language presented in this essay, it will not eliminate *Pandemic Pirates* outright, but it may curb some Pirates' appetite for pouncing on vulnerable prey, so that the

¹³⁷ See e.g., *U.S. Steel Corp. v. Federal Power Comm.*, 510 F.2d 689, 691 (D.C. Cir. 1975). Cf. *Pride Hyundai, Inc. v. Chrysler Fin. Co., LLC*, 369 F.3d 603, 613 (1st Cir. 2004) (discussing the reasonableness and good faith requirement of Article 9 of the U.C.C.).

¹³⁸ *Pacolet Mfg. Co. v. Query*, 177 S.E. 653, 654 (S.C. 1934) (discussing price gouging from World War I). See generally *U.S. ex rel. Cimznhca, LLC v. UCB, Inc.*, 970 F.3d 835, 838 (7th Cir. 2020).

¹³⁹ 556 F.3d 1157 (11th Cir. 2009).

¹⁴⁰ *Id.* at 1162 (11th Cir. 2009) (discussing mail fraud) (internal quotations from original text omitted).

¹⁴¹ *Dunakin*, *supra* note 130, at 247.

¹⁴² *United States v. Bethlehem Steel Corp.*, 315 U.S. 289, 326 (1942) (Frankfurter, J. dissenting) (Parenthetical added); *Moller-Vandenboom Lumber Co. v. Boudreau*, 85 S.W.2d 141, 146 (Mo. App. 1935).

Eleventh Circuit's "*Svete epidemic*" does not become a "***Svete Pandemic***."¹⁴³

¹⁴³ Accord Emily Rae, *Are Anti-Price Gouging Legislations Effective Against Sellers During Disasters?*, 4 ENTREPREN. BUS. L.J. 83 (2009).