

**United States Court of Appeals  
for the Third Circuit**

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NOVARTIS PHARMACEUTICALS CORPORATION,

*Appellant,*

v.

SECRETARY UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; ADMINISTRATOR CENTERS FOR MEDICARE & MEDICAID SERVICES; UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; CENTERS FOR MEDICARE & MEDICAID SERVICES,

*Appellees.*

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On Appeal from the United States District Court for the District of New Jersey in Civil Action No. 3:23-cv-14221-ZNQ-JBD

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**APPELLANT NOVARTIS'S REQUEST FOR ORAL ARGUMENT AND UNOPPOSED MOTION TO SCHEDULE ARGUMENT FOR APRIL 8, 2025 TO ALIGN WITH RELATED CASE**

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February 21, 2025

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Plaintiff-Appellant Novartis Pharmaceuticals Corporation (Novartis) respectfully requests that this Court schedule oral argument in this case for April 8, 2025, the same day the Court has scheduled oral argument in a related appeal, *Novo Nordisk, Inc. v. Secretary, United States Department of Health and Human Services (Novo Nordisk)*, No. 24-2510 (3d Cir.). The government consents to this request. These two appeals raise interrelated and overlapping legal questions about the constitutionality of the drug-pricing provisions of the Inflation Reduction Act (IRA). The cases were combined for oral argument below, and the district court heavily relied on its opinion in *Novo Nordisk* in deciding the *Novartis* case. Hearing these two appeals together is the best way for a panel to assess the full range of arguments in either case for challenging the constitutionality of the IRA. And briefing for *Novartis* will conclude nearly a month before the requested argument date. There would be no delay or prejudice in either case from granting this motion. On the contrary, the government has an interest in addressing these related cases in one single day, and doing so would serve judicial economy.

1. This appeal challenges the IRA’s “Drug Price Negotiation Program,” enacted in August 2022. Under that Program, manufacturers must enter into a “negotiation” process, where they are obligated to accept a “maximum fair price” for their most popular drugs, significantly below the prevailing market price—or

else pay a draconian “tax” amounting to billions of dollars. *See, e.g.*, 42 U.S.C. § 1320f-2(a)(1).

2. The Program has been subject to numerous constitutional challenges in courts across the country, including five challenges brought in district courts located within the Third Circuit. One such challenge was filed in the District of Delaware and then dismissed by the district court in early 2024. *See AstraZeneca Pharmaceuticals LP v. Secretary, United States Department of Health and Human Services (AstraZeneca)*, No. 1:23-cv-0931 (D. Del.), *appeal filed*, No. 24-1819 (3d Cir.) (raising Fifth Amendment Due Process and statutory challenges). Four other cases, including *Novartis* and *Novo Nordisk*, were filed in the District of New Jersey and then combined for purposes of oral argument below. *See Janssen Pharmaceuticals, Inc. v. Secretary, United States Department of Health and Human Services (Janssen)*, No. 3:23-cv-3818 (D.N.J.), *appeal filed*, No. 24-1821 (3d Cir.) (First Amendment Compelled Speech and Fifth Amendment Takings Clause challenges); *Bristol Myers Squibb Co. v. Secretary, United States Department of Health and Human Services (BMS)*, No. 3:23-cv-3335 (D.N.J.), *appeal filed*, No. 24-1820 (3d Cir.) (same); *Novo Nordisk*, No. 3:23-cv-20814 (D.N.J.), *appeal filed*, No. 24-2510 (3d Cir.) (First Amendment Compelled Speech, Fifth Amendment Due Process, and statutory challenges); *see also Novartis v. Secretary, United States*

*Department of Health and Human Services*, No. 3:23-cv-14221, ECF No. 48 (D.N.J. Feb. 7, 2024) (order combining these four cases for oral argument).

3. Although the four District of New Jersey cases were argued together on March 7, 2024, the district court reached decisions in the cases at different times. In April 2024, the district court granted summary judgment to the government in the *BMS* and *Janssen* cases. *See BMS-Janssen v. Secretary, United States Department of Health and Human Services*, 2024 WL 1855054 (D.N.J. Apr. 9, 2024). Nearly four months later, the district court granted summary judgment to the government in *Novo Nordisk*. *See Novo Nordisk v. Secretary, United States Department of Health and Human Services*, 2024 WL 3594413 (D.N.J. July 31, 2024). Then, a further two months later, the district court granted summary judgment to the government in this case. *See Novartis v. Secretary, United States Department of Health and Human Services*, 2024 WL 4524357 (D.N.J. Oct. 18, 2024).

4. Each of the plaintiffs in these IRA challenges appealed the district court's decisions. Recognizing the benefits of aligning oral argument in these cases, this Court combined the *BMS*, *Janssen*, and *AstraZeneca* cases for oral argument, which took place on October 30, 2024. *See* No. 24-1819, ECF No. 72. The Court has not yet issued a decision in those cases.

5. On February 20, 2025, this Court granted a motion to expedite oral argument in the *Novo Nordisk* appeal, and scheduled argument for April 8, 2025.

*See* No. 24-02510, ECF Nos. 74, 75. This Court has not yet scheduled oral argument for the *Novartis* appeal.

6. Novartis respectfully requests that this Court schedule oral argument in its appeal for April 8, 2025, to coincide with the argument date the Court has set for the related *Novo Nordisk* appeal. Briefing in this appeal will conclude by March 12, 2025, *see* ECF No. 17-1—providing ample time for a panel of this Court to review the full *Novartis* briefing before an April 8, 2025 argument. And hearing these cases together would promote judicial economy, as both cases challenge the IRA’s constitutionality, share overlapping arguments, and were combined for oral argument in the district court.

7. As the district court acknowledged in its *Novartis* opinion, *Novo Nordisk* involves “nearly identical constitutional challenges to the Program.” 2024 WL 4524357, at \*2. Both appeals present a First Amendment compelled-speech challenge to the IRA. *Compare* *Novartis* Opening Br. 46-57, ECF No. 19 in No. 24-2968, *with* *Novo Nordisk* Opening Br. 65-67, ECF No. 18 in No. 24-2510. And the district court heavily relied on its earlier decision in *Novo Nordisk* when dismissing *Novartis*’s First Amendment claim. *See Novartis*, 2024 WL 4524357, at \*3. Both cases also address whether the Program is “voluntary,” and share overlapping arguments on how “voluntariness” impacts a constitutional analysis. *Compare* *Novartis* Opening Br. 36-43, 52-54, *with* *Novo Nordisk* Opening Br. 57-65.

8. Having the same panel consider and hear arguments in these related appeals would enhance judicial economy, avoiding piecemeal consideration of overlapping arguments and theories by separate panels. And hearing these two appeals together is the best way for any one panel to assess the full range of arguments in either case against the IRA. No party faces any prejudice from this approach, as the *Novo Nordisk* argument is still six weeks away, and the government already must prepare for argument on the overlapping issues in the *Novo Nordisk* case regardless of this motion's outcome. Ultimately, hearing these two appeals together *maximizes* efficiency for both the Court and the parties, especially given the government's interest in addressing these related cases on the same day. The government consents to hearing argument in this case on April 8, 2025, alongside the *Novo Nordisk* appeal.

9. Pursuant to Third Circuit Local Rule 34.1(b), Novartis requests 20 minutes of oral argument time per side at any such hearing. *See* 3rd Cir. L.A.R. 34.1(b). While this Court allotted 15 minutes per side for the *Novo Nordisk* argument, this case involves an additional, significant constitutional claim under the Eighth Amendment's Excessive Fines Clause that has not been argued or decided by this Court or any other court of appeals. That claim presents a threshold jurisdictional question with significant implications for future cases. Additional argument time is warranted so the Court can benefit from full argument on the issues presented.

## CONCLUSION

Novartis respectfully requests that this Court set oral argument in this appeal for April 8, 2025, and allot 20 minutes of argument time per side.

Dated: February 21, 2025

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Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

This motion complies with the typeface requirements of Federal Rule of Appellate Procedure 27(d)(2), because it contains 1,189 words and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) and 3d Cir. L.A.R. 32.1(c) because it has been prepared in a proportionally spaced typeface using Microsoft Word 365 in Times New Roman 14-point font.

Dated: February 21, 2025

*s/ Daniel Meron*  
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Daniel Meron



## **CERTIFICATE OF SERVICE**

I hereby certify that on February 21, 2025, I caused a copy of the foregoing motion to be served by electronic means, via the Court's CM/ECF system, on all counsel registered to receive electronic notices.

*s/ Daniel Meron* \_\_\_\_\_  
Daniel Meron