IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Pharmaceutical Research and Manufacturers of America, Plaintiff, vs. Stuart Williams, et al., Defendants.	No. 0:20-cv-01497-DSD-DTS **BRIEF *AMICUS CURIAE* OF THE GOLDWATER INSTITUTE**

INTEREST OF *AMICUS*

The interest of amicus is set forth in the accompanying motion for leave to file.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Insulin Act is a gesture of specious compassion which unconstitutionally and wrongfully seizes the property of innocent parties in order to transfer it to others. This is almost the dictionary definition of a physical taking of personal property for which compensation must be paid (or the taking enjoined). *See Horne v. Dep't of Agric.* (*Horne II*), 576 U.S. 350, 362 (2015). Regardless of whether the state has authority in an emergency to seize medical supplies from private owners for public use, the Constitution guarantees the Plaintiff just compensation—or, absent that, a prohibition against the taking of its property. To mandate the uncompensated seizure of its property on an *ongoing basis*—that is, to force the Plaintiff to provide free goods indefinitely into the future—is not only unconstitutional, but unethical and harmful public policy that will leave Minnesotans worse off—in particular, those suffering from other ailments, who will be

forced to pay more for their medicines to cross-subsidize the Act's beneficiaries. The Plaintiff's motion for summary judgment should be granted.

ARGUMENT

I. The state must compensate for taking medical supplies for public use.

Courts have long held that the government may commandeer medical supplies for public use in an emergency. *Brooke v. United States*, 2 Ct. Cl. 180, 183–84 (1866). There can also be no doubt that it must pay the owner compensation when it does so. *Id.*; *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980) ("[A] State, by *ipse dixit*, may not transform private property into public property without compensation."). Forcing a manufacturer to turn over its product, on demand, for no charge, simply *is* a taking of that product, for which the manufacturer must be compensated. Where, as here, no mechanism for compensation is provided—and where the taking is not a single, discrete act to remedy a specific emergency, but a duty imposed into the indefinite future—the proper remedy is an injunction against the taking. *E. Enters. v. Apfel*, 524 U.S. 498, 521 (1998).

As a legal matter, this case is indistinguishable from *Horne II, supra*. There, the property taken was raisins, and here it is insulin, but either way, the state's "formal demand" that the Plaintiff "turn over" its personal property to others "without charge," is a taking of property without just compensation. 576 U.S. at 362.[1]

One potential source of confusion arises from the fact that some courts have, in cases similar to this, improperly used *regulatory* takings theories when this is a *physical*

[1] The act that imposed the taking at issue in *Horne*—the Agricultural Marketing Agreement Act of 1937—was adopted in response to an asserted emergency. *See* 7 U.S.C. § 601.

takings case, and therefore *not* appropriate for regulatory taking analysis. In fact, that was the error the *Horne II* Court sought to correct. This Court should take care to avoid a similar error.

Horne II was one of several cases involving federal laws by which a substantial fraction of the annual raisin crop was confiscated by the federal government (in an effort to control prices). Erroneously relying on regulatory takings precedent, lower courts initially declared that these seizures were not compensable takings, but merely non-compensable regulations of property. They said this for two reasons. First, they viewed the seizures as merely a condition imposed upon a farmers' use of her *total* crop, rather than as a taking of the expropriated raisins. For instance, the Ninth Circuit said that the confiscation only "imposed a condition on the Hornes' use of their crops by regulating their sale." *Horne v. U.S. Dep't of Agric*. (*Horne I*), 750 F.3d 1128, 1142 (9th Cir. 2014); *see also Evans v. United States*, 74 Fed. Cl. 554, 563–64 (2006) (same). Second, courts held that the takings were essentially voluntary, because farmers chose to sell their raisins, and therefore subjected themselves to the expropriation requirement. The Federal Court of Claims, for example, characterized the confiscations as merely an "admissions fee" or "toll" for the privilege of selling raisins, and the Ninth Circuit agreed. *Evans*, 74 Fed. Cl. at 563–64; *Horne I*, 750 F.3d at 1142 (takings were voluntary because farmers "voluntarily [chosen] to send their raisins into the stream of interstate commerce").

Horne II corrected both errors. First, it explained that a *physical* taking was happening, and it was therefore wrong to "confuse our inquiry" by using a *regulatory* takings approach. 576 U.S. at 364. The raisin seizures were not a regulatory condition

imposed on a farmer's entire crop, but were just what they looked like: *physical* takings of the *confiscated* raisins. "Actual raisins are transferred from the growers to the Government," and the raisin growers "lose the entire 'bundle' of property rights in the appropriated raisins." *Id.* at 361. A straightforward physical taking was occurring, and no further analysis was necessary.[2]

As for being voluntary, the Court observed that the expropriations were not an agreed-to cost that farmers paid in exchange for benefits, but were a mandate imposed on all raisin growers who sold their product. This could not be characterized as voluntary. The idea that "if raisin growers don't like it, they can 'plant different crops'" was not a valid argument against the just compensation requirement. *Id.* at 365. If it were, it would mean the government could confiscate property without compensation whenever any person exercised his or her freedom in *any* manner: the government could, for example, "'requisition a certain number of apartments [from an apartment owner] as permanent government offices.'" *Id*. (quoting *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 439 n.17 (1982)). That consequence demonstrated the fallacy of characterizing the taking as a "voluntary" condition on exercising a freedom.

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[2] Unlike a typical regulatory taking, a physical taking results, as former Tenth Circuit Judge Michael McConnell puts it, in the government obtaining "a thing of value that it can use for its own purposes, or to please constituents and supporters." Michael W. McConnell, *The Raisin Case*, Cato Sup. Ct. Rev., 2014-2015, at 313, 319, https://www.cato.org/sites/cato.org/files/serials/files/supreme-court-review/2015/9/2015-supreme-court-review-chapter-11.pdf. The line courts have drawn between the two "reflects the reality that government is more likely to invade property rights if it thereby gains control over valuable resources that can be redistributed to its friends." *Id*. at 320.

In *Horne II*, the Supreme Court said that the essential fallacy lower courts committed was in "regarding basic and familiar uses of property as a 'Government benefit'" for which the government could demand some form of payment or toll. *Id*. at 366. Lower courts had been led into this error by relying on cases such as *Ruckelshaus v. Monsanto Co*., 467 U.S. 986 (1984), where the federal government had, indeed, required the surrender of a valuable right in exchange for a permit to sell dangerous pesticides. But selling raisins, the Court said, was different from a permit to sell dangerous pesticides. While selling raisins was "certainly subject to reasonable government regulation," it was "not a special governmental benefit that the Government may hold hostage, to be ransomed by the waiver of constitutional protection." 576 U.S. at 366.

The same analysis applies here. The confiscation of insulin is also a *physical*, not a regulatory, taking—and cannot be characterized as voluntary. The Insulin Act forces manufacturers, upon receipt of a qualified application, to "send to the pharmacy a 90-day supply of insulin … at no charge to the individual." Minn. Stat. § 151.74(6)(c). This insulin, like the raisins at issue in *Horne*, is appropriated and consumed, and the Plaintiff loses the entire "bundle" of property rights in it. The Insulin Act therefore takes Plaintiff's property. The Act is not a regulation, or a condition on the use of the Plaintiff's entire yield of insulin, for the reasons explained in *Horne II*: no abstract strand in the bundle of property is taken, nor is it a mere reduction in total property value—instead, actual, physical quantities of insulin are directly appropriated by the state for the state's own use.[3] And

[3] It is immaterial that the property is transferred to a pharmacy and/or a consumer instead of the government directly. *See, e.g., Horne II*, 576 U.S. at 362 (coercive transfer of

insulin is not analogous to the poisons at issue in *Monsanto*; while it can be harmful to patients if taken wrongly, insulin is not poisonous, or bad for the environment, or explosive, or otherwise hazardous. Even if it were, Minnesota does not license insulin in the way the federal government licenses pesticides under the programs at issue in that case. This case is therefore like *Horne II*, not *Monsanto.*

Unfortunately, it is not unusual in the medical context for courts to erroneously use a regulatory takings analysis in a physical takings or trespass case, in just the ways *Horne II* counseled against. For example, in *Franklin Mem'l Hosp. v. Harvey*, 575 F.3d 121 (1st Cir. 2009)—which antedated the *Horne II* decision—the First Circuit held that there was no taking when the state of Maine forced hospitals to treat people for no payment. That decision was poorly reasoned in several ways, *see generally* E.H. Morreim, *Dumping the "Anti-Dumping" Law: Why EMTALA is (Largely) Unconstitutional and Why It Matters*, 15 Minn. J.L. Sci. & Tech. 211 (2014), but pertinent here is that it employed a regulatory takings analysis where a physical takings analysis was called for. Among the property being taken in that case were medical devices, pills, and equipment such as bandages,

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property to other users "gives rise to a taking as clearly 'as if the Government held full title and ownership.'" (citation omitted)); *Loretto*, 458 U.S. at 425–26 (law forcing landowners to allow trespass by private company was a taking).

It is also immaterial whether or not the insulin is already in existence at the time the transfer of ownership is mandated. A government order compelling a manufacturer to transfer ownership of a product not yet made is no less a compensable taking than a government order confiscating property *in esse*. Thus in *Omnia Commercial Corp. v. United States*, 261 U.S. 502, 508-10 (1923), the Court concluded that it was a taking for the government to force steel makers to deliver steel to the government instead of to the buyers who had signed contracts for future delivery.

which were entirely consumed by patients. Yet the *Harvey* court used a regulatory takings analysis, and committed the same two errors *Horne II* later repudiated: it concluded that the statutory mandate merely reduced the hospitals' *total* property value, but "[left] the core rights of property ownership intact," 575 F.3d at 129—and it asserted that the confiscation was voluntary because if a hospital didn't like the taking, it could just "choose to stop using its property as a hospital." *Id*. at 126. Neither point was persuasive. Bandages, pills, and other medical devices are not left "intact" after being used by patients—they are consumed and destroyed, and the hospital's property right in them is extinguished, no less than the farmers' rights in their raisins in the *Horne* case. Morriem, *supra*, at 218. Nor can the fact that the hospital chose to operate as a hospital instead of something else be grounds for labeling such takings "voluntary." A person's, or a business's, decision to engage in the lawful use of its property cannot be conditioned on forfeiting the constitutional right to compensation for takings. *Horne II*, 576 U.S. at 365-66.

In two better-reasoned decisions, the Ninth and Eleventh Circuits rejected takings claims brought by ambulance companies who argued that laws requiring them to provide indigent patients with medical transportation at no charge took their property without compensation. *See Baker Cnty. Med. Servs. v. U.S. Attorney General*, 763 F.3d 1274 (11th Cir. 2014); *Sierra Med. Servs. Alliance v. Kent*, 883 F.3d 1216 (9th Cir. 2018). Those cases are easily distinguishable from this one, however, as well as from *Horne II*, because the mandates at issue in those cases were plausibly described as voluntary—they applied only to ambulance companies that chose to participate in the Medicaid program. That did

not necessarily defeat the takings claims, *Kent*, 883 F.3d at 1225, but it meant the requirements were better viewed as conditions in exchange for benefits than as a taking of property.

Here, by contrast, the Insulin Act does *not* apply just to companies that choose to participate in a state program. And the taking of Plaintiff's insulin cannot be characterized as a mere condition voluntarily undertaken in exchange for benefits. On the contrary, this mandate applies to *all* "manufacturer[s] engaged in the manufacturing of insulin that is self-administered on an outpatient basis," except those that make less than $2 million from sales inside Minnesota. Minn. Stat. § 151.74(1)(b)(1), (c).[4] Thus the expropriation is mandatory, not voluntary.

In short, this case is like *Horne II*, which went out of its way to caution lower courts not to employ a regulatory takings analysis to a law that compelled physical takings, as this one does. The Insulin Act mandates the confiscation and consumption of physical property belonging to the Plaintiff—not as a condition of voluntary membership in a program, but as a straightforward appropriation for public use. The Plaintiff is therefore entitled to compensation.

[4] The statute therefore plainly contemplates out-of-state manufacturers—meaning that it anticipates consequences on interstate commerce and treats manufacturers differently on that basis—a relevant factor in addressing Plaintiff's Commerce Clause claim.

II. The taking of Plaintiff's insulin is morally indefensible.

A. All businesses deserve to have their rights respected.

Hovering over this case is a moral question. While courts are obviously not charged with resolving moral questions, *Rexam, Inc. v. United Steel Workers of Am.*, No. 03-CV-2998 PJS/JJG, 2007 WL 2746595, at *2 (D. Minn. Sept. 17, 2007), the false presumption that the state's actions here are morally proper, and that Plaintiff deserves to lose its insulin because it is "greedy," cannot be left unaddressed. *See, e.g.*, Brian Bakst, *Waltz Lauds New Insulin Affordability Law, Blasts Big Pharma for Suing*, MPR News, July 1, 2020 (characterizing Plaintiff as motivated by "unbridled greed.")[5]; Cynthia M. Ho, *Unveiling Competing Patent Perspectives*, 46 Hous. L. Rev. 1047, 1049 (2009) ("Patent-owning pharmaceutical companies are called greedy corporations that place profits above life.").

Our constitutional and legal system rests on the premise that each person is in charge of his or her own life. *See, e.g.*, *Bowers v. Hardwick*, 478 U.S. 186, 204 (1986) (Blackmun, J., dissenting) (referring to "the 'moral fact that a person belongs to himself and not others nor to society as a whole.'" (citations omitted)). This right is inherent in human nature because life requires productive effort, which requires reasoned action—and since reasoned action is an attribute of the individual, every individual is entitled to a realm of personal sovereignty within which to act without interference from others. This is what we call "rights." Tara Smith, *Moral Rights and Political Freedom* 33 (1995).

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5 https://www.mprnews.org/story/2020/07/01/pharmaceutical-industry-sues-to-block-minnesota-insulin-law

These principles mean that people owe each other *only* the obligation of *not interfering* with others' actions. Nobody is under any general duty to labor or produce for the benefit and enjoyment of others, or to serve "society's" needs. "The essence of private property is the right to use that property as one sees fit and for one's *own* advantage." *San Remo Hotel L.P. v. City and Cnty. of San Francisco*, 27 Cal. 4th 643, 693 (2002) (Brown, J., dissenting) (emphasis added); *see also* Letter from Thomas Jefferson to James Monroe (May 20, 1782), *in* Merrill Peterson, ed., *Jefferson: Writings* 779 (1984) ("If we are made in some degree for others, yet in a greater are we made for ourselves. It [is] … ridiculous to suppose that a man had less right in himself than one of his neighbors or indeed all of them put together.")

Industrious persons, therefore, who invest time, effort, ingenuity, and money in businesses[6] that produce medicine have as much right as any other people to pursue their own interest. They have *no* moral duty to produce insulin for any person, and when they *choose* to produce it, they have every right to demand payment in exchange for it—just as the owners of restaurants and grocery stores, or farmers, or lawyers, have the right to demand payment for their services. "[E]very man has a natural right to the fruits of his own labour," and "no other person can rightfully deprive him of those fruits, and appropriate them against his will." *The Antelope*, 23 U.S. (10 Wheat) 66, 120 (1825); *see*

[6] It is immaterial that they choose to do business in the corporate form, since they vest the corporation with their own rights. *See* Robert Hessen, *In Defense of the Corporation* (1979); *Railroad Tax Cases*, 13 F. 722, 747 (C.C.D. Cal. 1882) ("the property of a corporation is in fact the property of the corporators. To deprive the corporation of its property, or to burden it, is, in fact, to deprive the corporators of their property or to lessen its value.").

also Granger v. Craven, 199 N.W. 10, 12 (Minn. 1924) ("What one creates by his own labor is his. Public policy does not intend that another than the producer shall reap the fruits of labor. Rather it gives to him who labors the right by every legitimate means to protect the fruits of his labor and secure the enjoyment of them to himself.").

By contrast, taking away the fruits of a person's or a business's labor in order to give it to others inflicts an injustice upon the victim. As philosopher Anthony de Jasay puts it,

> For [alleged] rights [to the satisfaction of basic needs] to be exercised, others must be placed under the obligation to provide [them]. Unless it can be successfully argued that the involuntary, coerced obligors are in fact responsible for the basic needs of others being unmet … it is an injustice to coerce them to provide redress and serve these putative rights, however important they are.

Justice and Its Surroundings 157 (2002). Or, in Jefferson's memorable words, "[t]o take from one, because it is thought that his own industry … has acquired too much, in order to spare to others, who … have not exercised equal industry and skill, is to violate arbitrarily the first principle of association, the guarantee to every one of a free exercise of his industry, and the fruits acquired by it." Letter to Joseph Milligan, Apr. 6, 1816, *in* 1 Philip Kurland & Ralph Lerner, eds., *The Founders' Constitution* 573 (1987).[7]

Those who seek to take away the property of others often accuse their victims of being "greedy," as a way of rationalizing the seizure of property—that is, by characterizing the victims as either unworthy of having rights, or of having rights that are of lesser value.

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[7] Jefferson was quoting the economist Destutt de Tracy, whose *Treatise on Political Economy* Jefferson translated.

(In today's social science, this technique is called "othering.") But in fact, the term "greedy" is more properly applied to those who use the state's coercive powers to confiscate the property of individuals or businesses to satisfy their own desires. As economist Thomas Sowell has observed, it is perverse that "it is 'greed' to want to keep the money you have earned, but not greed to want to take somebody else's money." *Barbarians Inside the Gates* 250 (1999). The Plaintiffs have not tried to confiscate the property of anyone else; they are the victims of the confiscation here.

Equally invalid is the tendency to equate need with injustice, *see* Jasay, *supra*, at viii ("It is one of the most pervasive fallacies of contemporary political theory that … every unfilled need, every blow of ill luck, every disparity of endowments, every case of conspicuous success or failure, and every curtailment of liberties, is a question of justice"), or to assert that a great need for something gives one a "right" to that thing. But inequalities that do not result from unjust acts are not themselves unjust. *See* Robert Nozick, *Anarchy, State and Utopia* 160-63 (1974) (employing the famous Wilt Chamberlain example). To coercively redistribute Plaintiff's property to create "equality" is not an act of justice, but the opposite. *See further* Wallace Matson, *Uncorrected Papers* 113-25 (2006).

A purported *right* to services others must provide, or to goods that others must produce, necessarily means a "right" to the *labor* of others, which means the "right" to force others to serve one's will. This is incompatible with constitutional guarantees of liberty and property, as well as with deeper principles of consideration for the dignity and selfhood of others. A purported right to the insulin Plaintiff makes "impose[s] a form of involuntary servitude" on the Plaintiff, and relegates the Plaintiff to a subordinate status—

a status incompatible with the respect due to free persons. David Kelley, *A Life of One' Own: Individual Rights and the Welfare State* 97 (1998).

Moreover, such confiscations are unsustainable and counterproductive. They create a disincentive for future growth and productivity, penalize effort and thrift, and encourage dependency in ways that are ultimately self-destructive. *See, e.g.*, Jeffrey A. Miron, *Rethinking Redistribution*, National Affairs, Winter 2011[8] ("Rather than devoting themselves to increasing innovation and productivity, people throw their energies into chasing government transfers."). Government intervention also creates a "crowding out" effect, which undermines efforts at actual charity because the public—which would otherwise offer to assist those in need—assume the problem has been addressed and spend their money elsewhere, instead. *See* Kelley, *supra* at 116-17.

Just as it is immoral to steal, regardless of whether the victim is rich or poor, so it makes no moral difference whether or not pharmaceutical companies are characterized as "wealthy." Our constitutional system exists in part to protect "discrete and insular minorities," no matter how maligned they may be, against injustices committed by legislative majorities, including the taking of their property. *United States v. Carolene Prod. Co.*, 304 U.S. 144, 152 n.4 (1938); *Communist Party v. Subversive Activities Control Bd.*, 367 U.S. 1, 190 (1961) (Douglas, J., dissenting) ("Our Constitution protects all minorities, no matter how despised they are."). It is contrary to both moral principle and constitutional law to rationalize the confiscation of *anybody's* property—whether a poor

[8] https://www.nationalaffairs.com/publications/detail/rethinking-redistribution

farmer or a wealthy corporation—by vilifying the victim and using that as an excuse to treat his or her rights and interests as being of lesser weight.

To repeat: *amicus* is well aware that it is not this Court's role to determine the resolve to moral arguments of this sort. This case will be resolved on constitutional grounds. But it is nevertheless imperative that the Court not be swayed by the pseudo-moralistic language in which the Defendants rationalize their seizure of the Plaintiff's property. The reality is that taking the Plaintiffs' insulin is not only *not* a moral act, but is positively *im*moral.

B. Seizure of the Plaintiffs' property is counterfeit compassion.

In 1766, crop failures led the British monarchy to prohibit the exportation of grain from Europe. This amounted to a seizure of wealth from the farmers (who might have earned more exporting their crops) and a distribution of their wealth to those who received the grain. In response, Benjamin Franklin wrote an article excoriating the monarchy's act as a form of pretended compassion. "You say, poor labourers cannot afford to buy bread at a high price, unless they had higher wages," he told the king. "But how shall we Farmers be able to afford our labourers higher wages, if you will not allow us to get, when we might have it, a higher price for our corn?" Benjamin Franklin, *On the Price of Corn, and Management of the Poor, in* J.A. Lemay, ed., *Franklin: Writings* 587 (1987). The royal proclamation was, in effect, "a tax for the maintenance of the poor…. But I ask, Why a partial tax? Why laid on us Farmers only?—If it be a good thing, pray, Messrs. the Public, take your share of it, by indemnifying us a little out of your public treasury." *Id.*

In other words, the act "forc[ed] some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49 (1960). It confiscated the wealth of one portion of society for the benefit of another portion, thus harming the farmers who had done no wrong, so that political leaders could look compassionate.

Yet, the act was false kindness. Had the ministers acted out of genuine compassion, they would have shouldered the costs *themselves*, rather than forcing those costs on farmers. But the king instead inflicted an injustice on the farmers, which, in turn, harmed the laborers whom the farmers had planned to hire, but who were rendered jobless when the farmers could no longer afford to pay them.

A century later, sociologist William Graham Sumner described the same phenomenon with the phrase "Forgotten Man." *Actual* compassion, he observed, means a person assisting another out of his *own* means. But political pseudo-compassion occurs when the government forces others to pay—others who are not at fault for the predicament:

> As soon as A observes something which seems to him to be wrong, from which X is suffering, A talks it over with B, and A and B then propose to get a law passed to remedy the evil and help X. Their law always proposes to determine what C shall do for X or, in the better case, what A, B, and C shall do for X. ... [W]hat I want to do is to look up C. I want to show you what manner of man he is. I call him the Forgotten Man. Perhaps the appellation is not strictly correct. He is the man who never is thought of. ... He works, he votes, generally he prays—but he always pays.

The Forgotten Man (1876), *reprinted in* Albert Galloway Keller, ed., *The Forgotten Man and Other Essays* 466, 491 (1919). The Forgotten Man is the true victim of false compassion.

In this case, the Forgotten Man is not the pharmaceutical companies, but *their other customers*[9]—users of medicines other than insulin, who are not to blame for the fact that some people have difficulty affording insulin, but who will be forced to shoulder the higher costs of *their* medicines in order to offset the confiscations imposed by the Insulin Act.

The companies affected by the Act—insulin manufacturers such as Eli Lilly and Sinofi—produce everything from anti-depressants Cymbalta and Prozac to Methodone, which is used to treat drug-addiction, as well as vaccines for flu, polio, and rabies, and treatments for multiple sclerosis and heart disease. Forcing these companies to provide insulin at no cost means they must make up their costs elsewhere—and they must inevitably do so by raising prices on these other products. Thus, although shrouded in the language of compassion, the Insulin Act is actually a form of pseudo-compassion, which forces other patients—many of them just as poor as those whose needs were contemplated by the Act—to pay more for *their* medicines in order to afford free insulin for qualified individuals.

The magician Penn Jillette probably said it best: "It's amazing to me how many people think that voting to have the government take money by force through taxes to give poor people money is compassion. Helping poor and suffering people is compassion.... [Y]ou get no moral credit for forcing other people to do what you think is right." Penn Jillette, *God No!* 151 (2011).

[9] As well as their innocent investors.

Schemes for "eating the rich" are as old as time. And the result is invariably the same. The diminishment of the profit incentive and the confiscation of property stifles economic investment and expansion, resulting in shortages and, when pushed to the extreme, the destruction of economic growth. At a time when the nation is especially dependent on the pharmaceutical industry to address a once-in-a-lifetime crisis, such an effort is particularly misguided. It is both foolish *and* wrong to kill the golden goose.

CONCLUSION

The Plaintiffs' motion for summary judgment should be *granted*.

Dated: October 1, 2020

/s/ James V. F. Dickey

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