UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Pharmaceutical Research and Manufacturers of America,

Plaintiff,

v.

Ronda Chakolis, et al.,

Defendants.

Case No. 0:20-cv-01497-DSD-DTS

DEFENDANTS' REPLY MEMORANDUM SUPPORTING DISMISSAL

Defendants' principal memorandum established that the Court should dismiss PhRMA's amended complaint. The Alec Smith Insulin Affordability Act as amended, Minn. Stat. § 151.74 (2024), provides just compensation for any insulin provided under it. As such, PhRMA cannot carry its burden to establish a redressable injury that confers standing to seek equitable relief for its alleged taking. Nor can PhRMA state a claim that the Act effects an uncompensated taking.

PhRMA's response reinforces that the Court should dismiss the amended complaint. PhRMA admits that the Act's reimbursement amounts justly compensate manufacturers for any insulin products they may supply. PhRMA instead relies on an unsupported legal theory that a registration fee in a separate statute may be used to "offset" and reduce the just compensation explicitly provided by Act, making the Act's compensation unjust. This "offset" theory flouts the plain statutory language and established canons of statutory interpretation. Unsurprisingly, PhRMA has no legal support for its offset theory. Its opposition amounts to a policy-based argument that the registration fee is unfair. Because

PhRMA lacks standing and its claim fails as a matter of law, the Court should dismiss the amended complaint.

ARGUMENT

PhRMA has no viable takings claim against the amended Act. Because PhRMA cannot invalidate the Act directly, it attempts to do so indirectly by conflating a separate statute with the Act. PhRMA's offset theory is not only unsupported by law but is directly contrary to the basic tenets courts must follow in determining the constitutionality of a statute. PhRMA both lacks standing to bring its claim against the Act and fails to state a claim as a matter of law.

I. PHRMA LACKS STANDING.

PhRMA lacks associational standing because it has failed to prove that its members have standing. *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977). To establish Article III standing, PhRMA must show an injury that is "concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013). It has failed to do so. First, PhRMA fails to fully address Defendants' redressability arguments, clinging to a now baseless multiplicity-of-suits argument. Second, PhRMA fails to allege injuries traceable to the alleged taking and the equitable relief it seeks. As such, the Court should dismiss PhRMA's amended complaint.

A. PhRMA's Takings Claim Is Not Redressable.[1]

PhRMA bears the ultimate burden to prove that its claimed injury is redressable, which, in the context of a takings claim for equitable relief brought in federal court, requires proving that there is no adequate legal remedy. *See Clapper*, 568 U.S. at 408-09; *Equitable Life Assur. Soc. of U.S. v. Wert*, 102 F.2d 10, 15 (8th Cir. 1939) (stating a theoretical inadequate legal remedy is insufficient for the court to exercise equitable jurisdiction); *Invs.' Guar. Corp. v. Luikart*, 5 F.2d 793, 795-97 (8th Cir. 1925) (stating plaintiff has burden to show it had no plain, speedy, and adequate remedy at law). When an adequate provision for obtaining just compensation exists, equitable relief to enjoin a taking is foreclosed. *See, e.g.*, *Knick v. Twp. of Scott*, 588 U.S. 180, 185, 201, 205 (2019).

PhRMA cannot meet its burden on standing. Unlike the prior version of the Act that the Eighth Circuit analyzed, the Act now provides manufacturers with just compensation for any insulin they may provide. *See* Minn. Stat. § 151.74, subds. 3(h), 6(h). PhRMA does not claim that the Act's new reimbursement provisions are inadequate. And PhRMA admits that the compensation provided under the Act is just. (Doc. 159 at 26.) This admission effectively bars its request for equitable relief against the Act. Because the Act adequately provides for just compensation, *Knick* forecloses equitable relief. And because *Knick* forecloses the relief PhRMA seeks, PhRMA's takings claim is not redressable and PhRMA lacks standing.[2]

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[1] PhRMA admits that any challenge to the pre-amended Act is moot and not before the Court. (Doc. 159 at 25, n.10.)

[2] PhRMA argues against *Knick*'s bar as a merits issue. (*Id.* at 30-31.) But the Eighth Circuit analyzed *Knick's* foreclosure of equitable relief for a takings claim as determinative

Despite this, PhRMA attempts to avoid *Knick* by invoking the multiplicity-of-suits argument that led the Eighth Circuit to remand. The central problem with this argument is that it disregards the language of the amended Act and attempts to bootstrap in a separate law: the registration fee under Minn. Stat. § 151.741. Such conflation defies basic principles both for interpreting statutes and for determining their constitutionality, as explained further below. Regardless, *Knick*'s bar applies here because PhRMA failed to plausibly allege facts showing there would be any actual multiplicity of suits related to the Act. The Act adequately compensates manufacturers for insulin. PhRMA does not explain why the manufacturers would need to bring these hypothetical and multiple inverse-condemnation suits for compensation when they will have been justly compensated under the Act.

PhRMA instead baldly insists that the separate obligation to pay a registration fee would require the manufacturers "to bring a continuous series of inverse condemnation suits to obtain just compensation of the insulin that they are required to give away under the Act." (Doc. 159 at 30-31.)

PhRMA's argument fails because it ignores how the Act's compensation provisions and the registration fee provisions operate. Under the amended Act, manufacturers will be justly reimbursed for any insulin provided upon request and on a rolling basis. Minn. Stat. § 151.74, subds. 3(h), 6(h). Because the Act provides, upon request, just compensation for any insulin provided under it, *no* inverse condemnation suits will be necessary to receive

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of redressability and standing. *See PhRMA v. Williams*, 64 F.4th 932, 940-46 (8th Cir. 2023). Whether analyzed under rule 12(b)(1) or (b)(6), PhRMA's takings claim fails.

just compensation for insulin. *See*, *Knick*, 588 U.S. at 195 ("[A] fully compensated plaintiff has no further claim . . ."); *cf. PhRMA*, 64 F.4th at 945 (stating prior Act without compensation provision would require repetitive successive inverse-condemnation suits to receive compensation for each discrete alleged taking of insulin).

Given its reliance on its "offset" theory, it appears that PhRMA's hypothetical suits would, at best, challenge or seek reimbursement of the registration fee once a manufacturer pays it starting in March 2025. Minn. Stat. § 151.741, subd. 3. PhRMA asserts that "the Act and fee work together to effect a taking of the manufacturers' property" and that "[t]he Act and fee must fall together." (Doc. 159 at 31.) This position is flatly rejected by the elementary rules of statutory construction, the registration fee statute's plain language, and the cases it relies on as discussed in detail below. But while the offset theory has no merit, it would, in any event, present an issue that could be decided in a single action, not multiple repetitive actions. PhRMA thus still fails to explain how the annual registration fee will cause a multiplicity of suits.

B. PhRMA Fails to Allege an Injury in Fact Traceable to the Act.

In addition to lacking a redressable injury, PhRMA cannot establish any injury that is traceable to the alleged takings under the Act and related to its sought equitable relief. *See Town of Chester, N.Y. v. Laroe Estates, Inc.*, 581 U.S. 433, 439 (2017) (requiring plaintiff to demonstrate standing for each claim and each form of relief sought). PhRMA first argues that giving away insulin is an injury. While loss of property ordinarily constitutes an injury in fact, PhRMA brings only a takings claim, asserting lack of compensation. A property owner has a takings claim when the government takes property

without paying for it. *Knick*, 588 U.S. at 185. If compensated, a plaintiff has no further claim under the Takings Clause. *Id.* at 195. PhRMA admits that the Act justly compensates manufacturers for any insulin provided. *See* Minn. Stat. § 151.74, subds. 3(h), 6(h); Doc. 159 at 26 (assuming the $35 payment is just compensation for a 30-day supply of insulin). The Act therefore does not inflict an injury sufficient to maintain standing for a takings claim.

PhRMA asserts that receiving compensation for any alleged takings will not erase the manufacturers' injuries for standing purposes. (Doc. 159 at 20.) The case PhRMA cites to support its position is inapposite as it did not involve an uncompensated takings claim. In *B&J Oil & Gas v. FERC*, the plaintiff challenged FERC's decision to allow an underground gas storage facility to expand onto the plaintiff's property. 353 F.3d 71, 74 (D.C. Cir. 2004). FERC argued that the plaintiff lacked standing to challenge its decision because a subsequent eminent-domain proceeding would remedy any harm its order might cause the plaintiff. *Id.* at 75. The Court rejected FERC's argument as the plaintiff claimed FERC's decision to allow the expansion was arbitrary and capricious. *Id.* at 74-75. But here, PhRMA is not challenging the underlying validity of the Act or claiming that the alleged taking is for a private purpose. Its claim is for alleged future uncompensated takings. Because the Act now will compensate any alleged future takings, PhRMA's members lack standing. To the extent that PhRMA claims that the Act's compensation is "offset" by the registration fee, that injury is traceable to the *registration-fee* statute, Minn. Stat. § 151.741, not the *Act*.

Second, PhRMA asserts an injury based on the compliance costs that the manufacturers incur by "administering" the Act's programs. *See* Minn. Stat. § 151.74, subds. 3-6. But PhRMA has never asserted that these compliance costs are takings. (Am. Compl. ¶¶ 88-94.) The compliance costs are unrelated and irrelevant to its takings claim for insulin provided under the Act and to the relief requested. Nor does PhRMA even seek relief to redress its members' compliance costs; it seeks to enjoin only the Act's provisions requiring the manufacturers to provide insulin. (*Id.* at 30.) These compliance costs would still exist even if the Court granted the relief requested.

Third, PhRMA claims that paying the annual registration fee under Minn. Stat. § 151.741, subds. 2 and 3, is an injury. Again, this may constitute an injury if PhRMA challenged the registration-fee statute. It did not. Nor could it, as registration fees are not takings. *See e.g.*, *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 615 (2013) (stating that taxes and user fees are indisputably not takings); *E. Enters. v. Apfel*, 524 U.S. 498, 540 (1998) (Kennedy, J., concurring in part); *id*. at 554 (Breyer, J., dissenting) (stating that no protected property interest exists in money under the Takings Clause). Regardless, any injury caused by paying the registration fee is not fairly traceable to the Act. The registration fee applies independent of whether a manufacturer provides any insulin under the Act, and the Act's requirements continue independent of whether a manufacturer pays the registration fee. *See* Minn. Stat. §§ 151.74, .741, subds. 2, 3, 6.

Finally, PhRMA fails to plausibly allege that its members will continue to provide insulin under the Act in the future. PhRMA argues that it only needs to plausibly establish that at least one manufacturer will give away at least one vial of insulin under the Act at

some undetermined time in the future. (Doc. 159 at 21.) This is directly contrary to PhRMA's multiplicity-of-suits argument. If only one vial of insulin were to be provided under the Act, *Knick* would indisputably bar PhRMA's claim for equitable relief.

PhRMA further relies on its members' compliance with the prior version of the Act to claim an ongoing future injury under the Act. But past exposure to alleged illegal conduct does not establish a present case or controversy for equitable relief. *O'Shea v. Littleton*, 414 U.S. 488, 495-96 (1974); *Frost v. Sioux City*, 920 F.3d 1158, 1161 (8th Cir. 2019). This is particularly true when, like here, intervening events may alter the past exposure. PhRMA concedes that numerous events affecting insulin pricing and access have occurred since they sued in 2020. (*E.g.*, Am. Compl. ¶¶ 52-57.) Defendants further identified several recent intervening events of public record that could alter eligible Minnesotans' usage of the Act, including Eli Lilly and Sanofi's insulin-pricing settlements with the State of Minnesota. *See Minn. by Ellison*, No. 2:18-cv-14999-BRM-RLS (Feb. 15, 2024 and Aug. 31, 2024 Orders); Doc. 155 at 13-17. It is PhRMA's burden to show the Act's usage is "certainly impending." *Clapper*, 568 U.S. at 409 ("[T]hreatened injury must be certainly impending to constitute injury in fact . . .") It has failed to do so.

II. PHRMA FAILS TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED.

Rule 12(b)(6) requires a court to dismiss a claim based on a dispositive issue of law, regardless of whether the claim is based on an outlandish legal theory or a close-but-ultimately unavailing one. *Neitzke v. Williams*, 490 U.S. 319, 326-27 (1989). Here, PhRMA fails to state a valid takings claim. PhRMA's takings claim depends on its theory that the Court can import the annual registration fee under Minn. Stat. § 151.741 to "offset"

the just compensation its members will receive for insulin provided under the Act, rendering the otherwise constitutional Act unconstitutional. This theory fails as a matter of law.

A. PhRMA's "Offset" Theory Fails As a Matter of Law.

As evidenced by the dearth of authority from PhRMA, no legal authority supports its offset theory. There is no basis for using a statute with a severability provision to render a separate, otherwise constitutional statute, unconstitutional. PhRMA's "offset" theory directly contradicts the statutes' plain language and the basic tenets of statutory construction, which presume statutes are constitutional.

1. The Court Must Separately Analyze the Act and the Registration Fee Statute.

PhRMA seeks to invalidate the Act by asserting it is part of a "scheme" that operates in conjunction with the registration-fee requirements in Minn. Stat. § 151.741, subds. 2 and 3. PhRMA asserts that "the Act and the fee must fall together." (Doc. 159 at 31.) This assertion is contrary to law and the plain language of the two statutes at issue.

A longstanding and cardinal principle of statutory interpretation is that courts must hold a statute constitutional if any reasonable interpretation can save it. *Edward J. DeBartolo Corp. v. Florida Gulf Coast Bldg. & Const. Trades Council*, 485 U.S. 568, 575 (1988); *Jones & Laughlin Steel Corp.*, 301 U.S. 1, 30 (1937). Courts must refrain from invalidating more of a statute than is necessary, retaining the portions that are constitutionally valid, capable of functioning independently, and consistent with the legislature's basic objectives in enacting a statute. *United States v. Booker*, 543 U.S. 220,

258 (2005). PhRMA invites the Court to discard these principles and do the exact opposite: find a constitutional life-saving Act unconstitutional by unnecessarily and improperly conflating it with a separate statute. The Court should decline this invitation and instead adhere to well-settled principles of statutory interpretation.

No legal or factual basis exists to interpret the Act and registration-fee provisions together to invalidate them. Even in the cases PhRMA cites for support, the Supreme Court recognized that a government's taking power is distinct from its power to tax or otherwise raise revenue for its operations. (*See* Doc. 159 at 27-28.) For example, in *Baker v. Village of Norwood*, the village exercised eminent domain to appropriate a portion of a landowner's land for a street. 74 F. 997, 998 (S.D. Ohio 1896). By ordinance, the village then assessed the landowner the value of the property taken and the costs and expenses the village incurred to bring the eminent-domain proceeding. *Id.* The landowner sued and the district court enjoined the village from making, enforcing, or collecting the assessment. *Id.* at 997, 1000. On review, the Supreme Court analyzed the government's separate powers and ultimately determined that the assessment was a taking to the extent that it substantially exceeded the benefits conferred on the landowner by the road improvement. *Village of Norwood v. Baker*, 172 U.S. 269, 297 (1898). The Court did not apply PhRMA's "offset" theory and did not enjoin or invalidate the taking of the landowner's property.

Likewise, *Scott v. City of Toledo*, 36 F. 385 (N.D. Ohio 1888), supports analyzing the separate statutes separately. In *Scott*, landowners brought a due process challenge against an ordinance (1) directing eminent-domain proceedings to acquire land for a street expansion, and (2) imposing a special assessment to cover the street-expansion costs,

including the costs to acquire the land. 36 F. at 385-86. While the court enjoined the portion of the ordinance relating to the assessment, it upheld the provisions directing the taking of the plaintiff's property upon providing just compensation. *Id.* at 401-02. In other words, the court did not use the assessment to "offset" and invalidate the taking, which is what PhRMA asks this Court to do. It only enjoined enforcement of the assessment and allowed the taking of plaintiffs' land to proceed.

The distinct nature of compensation for an alleged taking and other financial obligations to the government is confirmed by other courts that have analyzed *Village of Norwood* and *Scott*. For example, the Oregon Court of Appeals upheld a property assessment that included some of the government's cost to take a portion of the plaintiffs' property for improvements. *Parker v. City of Albany*, 246 P.3d 16, 20 (Or. Ct. App. 2010). The court analyzed the taking and the assessment separately, acknowledging *Village of Norwood*'s distinction between the two. *Id.* at 18. It affirmed the taking and then upheld the assessment, concluding that it was distinguishable from that in *Scott*, because, "by its nature and focus" the assessment was not directed at recapturing the money paid to the landowner in the condemnation process. *Id.* at 19. The court did not use the assessment fee to offset the compensation that the plaintiffs received from the related taking or to invalidate the taking.

The cases that PhRMA predominately relies on therefore contradict its theory that the Court can invalidate the Act due to an "offset" with the registration fee. The cases support that the Act would stand, regardless of the validity of the registration fee. And, unlike the assessments in *Norwood* and *Scott*, the registration fee here is not tied to the

compensation provided under the Act. In those cases, the local governments assessed the landowners the just compensation they were owed for the taking and the expenses the government incurred in taking their property. That is substantively different from the relationship between the registration fee and the Act. The purpose of the registration fee, like all registration fees, is to defray the boards' costs in administering and enforcing a licensing regulation; not to recapture the compensation that will be paid under the Act. *See* Minn. Stat. § 151.74, subds. 3-4. The registration fees do not correlate to or fund the Act's reimbursements. The annual fee obligation is the same, regardless of the amount of insulin a manufacturer provides and regardless of the amount the Department of Administration reimburses under the Act. Minn. Stat. § 151.741, subd. 2-5. The registration fees are deposited in a special account for the MNsure and Pharmacy boards to administer the Act; none of the registration fees are provided to the Administration Department to pay reimbursements. *Id.* And whether manufacturers pay the registration fee has no bearing on whether manufacturers receive compensation under the Act. *Id.* § 151.74, subds. 3(h), 6(h).

Finally, the legislature affirmatively declared that the validity of the fee does not affect the operation of—or reimbursements under—the Act. *Id.* § 151.741, subd. 6. Even if the registration fee was somehow improper, it would not support invalidating the Act as unconstitutional. PhRMA's memorandum is devoid of any authority that would require this Court to use one statute to determine a separate statute unconstitutional.

2. PhRMA's Claim Fails Because Severability Law Requires Construing the Act and the Registration Fee Separately.

Conflating the registration fee with the Act is also contrary to severability law.[3] Even if the registration fee was unconstitutional (which it is not), it is severable from the Act. Severability is a question of state law. *Leavitt v. Jane L.*, 518 U.S. 137, 139 (1996). Courts sever as little as possible from an unconstitutional law. *Back v. State*, 902 N.W.2d 23, 31 (Minn. 2017). Minnesota law presumes that statutes are severable unless the legislature has specifically provided otherwise. *State v. Melchert-Dinkel*, 844 N.W.2d 13, 24 (Minn. 2014). If any statutory provision is unconstitutional, the remaining provisions remain valid unless one of two exceptions applies: (1) the remaining provisions are "so essentially and inseparably connected with, and so dependent upon" the unconstitutional provisions that the Court cannot presume the legislature would have enacted the remaining provisions without the unconstitutional one; or (2) the remaining provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent. Minn. Stat. § 645.20 (2024). Neither exception applies.

The legislature expressly intended for the Act and registration fee to be independent, specifically and unambiguously stating that if the registration fee provisions are held invalid it does not affect any other provisions. *Id.* § 151.741, subd. 6. As discussed above, the Act's structure is consistent with this legislative intent. Neither program under the Act is conditioned on funding from the registration fee. *See generally id.* § 151.74.

[3] Notably, although discussed in Defendants' brief, PhRMA failed to address the registration fee's severability provision. (Doc. 155 at 18, 21.)

Reimbursements to manufacturers under the Act are paid out of the state's health care access fund. *Id.* § 151.741, subd. 5. In contrast, the registration fees are deposited into a separate account and used to pay the administrative costs of operating the Act. *Id.*, subd. 4. Severing the registration fee provisions, however, would have no impact on the amended Act. *See id.*, subd. 6 (directing agency to fund Act's operation if registration fee held invalid).

B. PhRMA Fails to State a Takings Claim Against the Act.

Lack of just compensation is an essential element of a takings claim. *See Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1000-01 (discussing elements of takings claim). A plaintiff who receives just compensation has no claim under the Takings Clause. *Knick*, 588 U.S. at 195. And "[a]s long as an adequate provision for obtaining just compensation exists, there is no basis to enjoin the government's action effecting a taking." *Id.* at 201.

PhRMA admits (for the purposes of this litigation) that the Act's compensation provisions of $35 for a 30-day supply of insulin would be just compensation. (Doc. 159 at 26.) Because the Act provides for just compensation, PhRMA's takings claim seeking injunctive relief necessarily fails as a matter of law.[4] PhRMA Fails to State a Claim Against the Registration Fee.

[4] Defendants dispute that the Act effects a taking in the first instance. That issue, however, would require factual findings making it inappropriate for this motion.

C. PhRMA Fails to State a Claim Against the Registration Fee.

Although it seeks to enjoin them, PhRMA fails to state any claim against the registration fee provisions themselves. (*See generally* Am. Compl.) As such, it fails to state a claim against the registration fee.

Although PhRMA makes no specific legal claim against the registration fee, it states that it impermissibly "takes back" the compensation provided under the Act. (Am. Compl. ¶ 93, Doc. 159 at 28.) It does not. As discussed above, unlike the assessments in *Norwood* and *Scott*, whose purpose was to recapture compensation paid for a taking, the purpose of the registration fee is to defray the cost of administering and enforcing a regulation. The registration fee is not commensurate to or contingent upon any alleged takings or compensation provided under the Act. The registration fees are deposited in a special account for the MNsure and Pharmacy boards to administer the Act; none of the registration fees are provided to the Administration Department to pay reimbursements. Minn. Stat. § 151.741, subds. 2-5.

PhRMA asserts that these distinctions do not matter, because the registration fee will reduce Minnesota's financial burden. (Doc. 159 at 28.) But, as discussed in *Parker*, the purpose of the fee does matter. All permissible registration and licensing fees reduce the government's financial burdens; that is their purpose, to defray the government's administrative costs. Private entities do not get to keep a running balance sheet with the state and assert a taking anytime they may be in the red. Under PhRMA's theory, any amounts its members must pay the state would negate any *compensated* takings they may endure. Such a theory is not the law.

Governments may impose fees designed to defray the administrative costs of a regulation and the maintenance of public order in the matter regulated. *See e.g., Koontz*, 570 U.S. at 615 (stating taxes and user fees are indisputably not takings); *Kwong v. Bloomberg*, 723 F.3d 160, 165, 172 (2d Cir. 2013) (upholding handgun licensing fee against Second Amendment and due process challenges, and collecting fee cases); *Zeyen v. Bonneville Joint Dist., # 93*, 114 F.4th 1129 (9th Cir. 2024) (upholding fees to participate in educational and extracurricular activities against takings challenge); *Inv. Co. Inst. v. Hatch*, 477 N.W.2d 747, 752 (Minn. Ct. App. 1991) (upholding securities registration fee against due process and equal protection challenges); *Hous. First Minn. v. City of Corcoran*, No. A23-1049, 2024 WL 1244047 (Minn. Ct. App. Mar. 25, 2024), *review denied* (Minn. June 26, 2024), *cert. denied sub nom. Hous. First. Minn. v. Corcoran, Minn.*, No. 24-268, 2024 WL 4486403 (U.S. Oct. 15, 2024) (upholding building-permit fees against takings and procedural due-process challenges). The registration fee under Minn. Stat. § 151.741, subds. 2 and 3, is constitutional and PhRMA makes no claim otherwise.

D. PhRMA Fails to State a Claim for Injunctive or Declaratory Relief.

PhRMA fails to state claims for equitable relief against the Act, because such claims are foreclosed by *Knick* as discussed above. In passing, PhRMA asserts that, even if enjoining the registration fee would remedy the alleged takings, it is somehow entitled to a declaration that the Act effects a taking without just compensation. (Doc. 159 at 31 n.16.) As previously addressed, there is no basis to enjoin the registration fee. But even if the Court did so, PhRMA would not be entitled to declaratory relief against the Act.

First, because the Act provides just compensation for any insulin the manufacturers may provide, no basis exists to declare that the Act effects a taking without just compensation. PhRMA does not dispute that $35 for each 30-day supply and $105 for each 90-day supply is just compensation. Rather, PhRMA claims that the registration fee renders this reimbursement a charade. (Doc. 159 at 20.) If the Court severed the registration fee, the asserted violation would be remedied and there would be no risk of a "multiplicity of suits" justifying equitable relief. Instead, PhRMA's members could avail themselves of the "provision for obtaining just compensation" provided by the legislature. *Knick*, 588 U.S. at 201; *see* Minn. Stat. § 151.74, subds. 3(h), 6(h). Given PhRMA's failure to challenge the adequacy of the compensation, there is no basis to enjoin the Act or to declare it unconstitutional if the registration fee is found invalid.

Second, this Court has already determined, "[a] declaration that the Act is an unconstitutional taking would be the functional equivalent of an injunction barring enforcement." (Doc. 81 at 11.) Accordingly, if an injunction barring enforcement of the Act is inappropriate, so too is a declaration that the Act is an unconstitutional taking.

CONCLUSION

The Court should dismiss PhRMA's amended complaint. The amended Act provides just compensation for any insulin provided under the Act. PhRMA therefore lacks standing to pursue its equitable claims and failed to state a takings claim against the Act.

Dated: November 20, 2024

Respectfully submitted,

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