

U.S. District Court
U.S. District of Minnesota (DMN)
CIVIL DOCKET FOR CASE #: 0:23-cv-02024-PJS-JFD
Internal Use Only

Association for Accessible Medicines v. Ellison
Assigned to: Chief Judge Patrick J. Schiltz
Referred to: Magistrate Judge John F. Docherty
Cause: 42:1983 Civil Rights Act

Date Filed: 07/05/2023
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

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V.

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Date Filed	#	Docket Text
07/05/2023	<u>1</u>	COMPLAINT against Keith Ellison (filing fee \$ 402, receipt number AMNDC-10387820) filed by Association for Accessible Medicines. Filer requests summons issued. (Attachments: # <u>1</u> Exhibit(s) A, # <u>2</u> Civil Cover Sheet) (Hashmall, David) (Entered: 07/05/2023)
07/05/2023	<u>2</u>	RULE 7.1 DISCLOSURE STATEMENT. There is no parent corporation, publicly held corporation owning 10 percent or more of

January 3 2024 2

		its stock, or any subsidiaries to report for Association for Accessible Medicines. (Hashmall, David) (Entered: 07/05/2023)
07/05/2023	<u>3</u>	MOTION for Admission Pro Hac Vice for Attorney William M. Jay. Filing fee \$ 100, receipt number AMNDC-10387884 filed by Association for Accessible Medicines. (Hashmall, David) (Entered: 07/05/2023)
07/05/2023	<u>4</u>	MOTION for Admission Pro Hac Vice for Attorney Benjamin Hayes. Filing fee \$ 100, receipt number AMNDC-10387907 filed by Association for Accessible Medicines. (Hashmall, David) (Entered: 07/05/2023)
07/05/2023	<u>5</u>	(Text-Only) CLERK'S NOTICE OF INITIAL CASE ASSIGNMENT. Case assigned to Chief Judge Patrick J. Schiltz per Civil (3rd, 4th – Civil Rights) list, referred to Magistrate Judge John F. Docherty. Please use case number 23-cv-2024 (PJS/JFD). <u>Notice: All Nongovernmental Corporate Parties must file a Rule 7.1 Corporate Disclosure Statement.</u> (MKB) (Entered: 07/05/2023)
07/05/2023	<u>6</u>	Summons Issued as to Keith Ellison. (MKB) (Entered: 07/05/2023)
07/06/2023	<u>7</u>	(Text-Only) ORDER granting <u>3</u> Motion for Admission Pro Hac Vice of Attorney William Jay for Association for Accessible Medicines.; granting <u>4</u> Motion for Admission Pro Hac Vice of Attorney Benjamin Timothy Hayes for Association for Accessible Medicines. Approved by Magistrate Judge John F. Docherty on 7/6/2023. (jam) Modified text on 7/6/2023 (jam). (Entered: 07/06/2023)
07/06/2023	<u>8</u>	DOCUMENT FILED IN ERROR – NOTICE of Appearance by Nicholas J Pladson on behalf of Keith Ellison. (Pladson, Nicholas) Modified text on 7/6/2023 (ABR). (Entered: 07/06/2023)
07/06/2023	<u>9</u>	NOTICE of Appearance by Nicholas J Pladson on behalf of Keith Ellison. (Pladson, Nicholas) (Entered: 07/06/2023)
07/06/2023	<u>10</u>	SUMMONS Returned Executed by Association for Accessible Medicines. Keith Ellison served on 7/6/2023, answer due 7/27/2023. (Hashmall, David) (Entered: 07/06/2023)
07/07/2023	<u>11</u>	NOTICE of Appearance by Jason T Pleggenkuhle on behalf of Keith Ellison. (Pleggenkuhle, Jason) (Entered: 07/07/2023)
07/07/2023	<u>12</u>	NOTICE of Appearance by Noah Lewellen on behalf of Keith Ellison. (Lewellen, Noah) (Entered: 07/07/2023)
07/13/2023	<u>13</u>	BRIEFING ORDER. See order for dates and details. Signed by Chief Judge Patrick J. Schiltz on 7/13/2023.(CLG) (Entered: 07/13/2023)
07/19/2023	<u>14</u>	MOTION for Preliminary Injunction filed by Association for Accessible Medicines. (Hashmall, David) (Entered: 07/19/2023)
07/19/2023	<u>15</u>	NOTICE OF HEARING ON MOTION <u>14</u> MOTION for Preliminary Injunction : Motion Hearing set for 8/30/2023 at 01:30 PM in Courtroom 15 (MPLS) before Chief Judge Patrick J. Schiltz. (Hashmall, David) (Entered: 07/19/2023)
07/19/2023	<u>16</u>	

		MEMORANDUM in Support re <u>14</u> MOTION for Preliminary Injunction filed by Association for Accessible Medicines. (Attachments: # <u>1</u> LR7.1/LR72.2 Word Count Compliance Certificate)(Hashmall, David) (Entered: 07/19/2023)
07/19/2023	<u>17</u>	SEALED Declaration of Kevin Galownia in Support of <u>14</u> MOTION for Preliminary Injunction filed by Association for Accessible Medicines.(Hashmall, David) (Entered: 07/19/2023)
07/19/2023	<u>18</u>	Redacted Document for <u>17</u> Sealed Declaration of Kevin Galownia filed by Association for Accessible Medicines.(Hashmall, David) (Entered: 07/19/2023)
07/19/2023	<u>19</u>	SEALED Declaration of Timothy de Gavre in Support of <u>14</u> MOTION for Preliminary Injunction filed by Association for Accessible Medicines.(Hashmall, David) (Entered: 07/19/2023)
07/19/2023	<u>20</u>	Redacted Document for <u>19</u> Sealed Declaration of Timothy de Gavre filed by Association for Accessible Medicines.(Hashmall, David) (Entered: 07/19/2023)
07/19/2023	<u>21</u>	MEET and CONFER STATEMENT re <u>14</u> Motion for Preliminary Injunction filed by Association for Accessible Medicines.(Hashmall, David) (Entered: 07/19/2023)
07/19/2023	<u>22</u>	PROPOSED ORDER TO JUDGE re <u>14</u> MOTION for Preliminary Injunction filed by Association for Accessible Medicines.(Hashmall, David) (Entered: 07/19/2023)
07/31/2023	<u>23</u>	MOTION to Dismiss/General filed by Keith Ellison. (Pladson, Nicholas) (Entered: 07/31/2023)
07/31/2023	<u>24</u>	NOTICE OF HEARING ON MOTION <u>23</u> MOTION to Dismiss/General : Motion Hearing set for 8/30/2023 at 01:30 PM in Courtroom 15 (MPLS) before Chief Judge Patrick J. Schiltz. (Pladson, Nicholas) (Entered: 07/31/2023)
07/31/2023	<u>25</u>	MEMORANDUM in Support re <u>23</u> MOTION to Dismiss/General filed by Keith Ellison. (Attachments: # <u>1</u> LR7.1/LR72.2 Word Count Compliance Certificate)(Pladson, Nicholas) (Entered: 07/31/2023)
07/31/2023	<u>26</u>	Declaration of Noah Lewellen in Support of <u>23</u> MOTION to Dismiss/General filed by Keith Ellison. (Attachments: # <u>1</u> Exhibit(s), # <u>2</u> Exhibit(s), # <u>3</u> Exhibit(s), # <u>4</u> Exhibit(s), # <u>5</u> Exhibit(s), # <u>6</u> Exhibit(s), # <u>7</u> Exhibit(s))(Pladson, Nicholas) (Entered: 07/31/2023)
07/31/2023	<u>27</u>	Declaration of Katrina Howard in Support of <u>23</u> MOTION to Dismiss/General filed by Keith Ellison. (Attachments: # <u>1</u> Exhibit(s), # <u>2</u> Exhibit(s), # <u>3</u> Exhibit(s), # <u>4</u> Exhibit(s))(Pladson, Nicholas) (Entered: 07/31/2023)
07/31/2023	<u>28</u>	Declaration of Randall Armbruster in Support of <u>23</u> MOTION to Dismiss/General filed by Keith Ellison.(Pladson, Nicholas) (Entered: 07/31/2023)
07/31/2023	<u>29</u>	MEET and CONFER STATEMENT re <u>23</u> Motion to Dismiss/General filed by Keith Ellison.(Pladson, Nicholas) (Entered: 07/31/2023)
07/31/2023	<u>30</u>	PROPOSED ORDER TO JUDGE re <u>23</u> MOTION to Dismiss/General filed by Keith Ellison.(Pladson, Nicholas) (Entered: 07/31/2023)
07/31/2023	31	(Text-Only) ORDER in Response to <u>23</u> Motion to Dismiss/General. Due to the pending Motion to Dismiss, the Court finds there is good cause to delay the entry of a pretrial scheduling order. The Court will schedule a pretrial conference, if needed, promptly after a decision is issued on the pending motion. Ordered by Magistrate

		Judge John F. Docherty on 7/31/2023.(TJS) (Entered: 07/31/2023)
08/11/2023	<u>32</u>	RESPONSE re <u>23</u> MOTION to Dismiss/General , <u>14</u> MOTION for Preliminary Injunction filed by Association for Accessible Medicines. (Attachments: # <u>1</u> LR7.1/LR72.2 Word Count Compliance Certificate)(Hashmall, David) (Entered: 08/11/2023)
08/11/2023	<u>33</u>	SEALED Declaration of Brian Savage in Support of <u>14</u> MOTION for Preliminary Injunction filed by Association for Accessible Medicines.(Hashmall, David) (Entered: 08/11/2023)
08/11/2023	<u>34</u>	Redacted Document for <u>33</u> Sealed Declaration of Brian Savage filed by Association for Accessible Medicines.(Hashmall, David) (Entered: 08/11/2023)
08/21/2023	<u>35</u>	JOINT MOTION REGARDING CONTINUED SEALING re <u>19</u> Declaration in Support, <u>33</u> Declaration in Support, <u>17</u> Declaration in Support filed by Association for Accessible Medicines. (Hashmall, David) (Entered: 08/21/2023)
08/23/2023	<u>36</u>	Reply to Response to Motion re <u>23</u> MOTION to Dismiss/General filed by Keith Ellison. (Attachments: # <u>1</u> LR7.1/LR72.2 Word Count Compliance Certificate)(Pladson, Nicholas) (Entered: 08/23/2023)
08/30/2023	<u>37</u>	(Text–Only) MINUTE ENTRY for proceedings held before Chief Judge Patrick J. Schiltz on 8/30/2023: Motion Hearing. Court Reporter: Paula Richter Minneapolis Courthouse, Courtroom 15E Time: 1:24 PM/2:50 PM Total Time: 1 Hour 26 Minutes APPEARANCES: For Plaintiff: Benjamin Hayes, David Hashmall, William Jay For Defendant: Nicholas Pladson, Noah Lewellen PROCEEDINGS: Hearing on: <u>23</u> MOTION to Dismiss/General filed by Keith Ellison, <u>14</u> MOTION for Preliminary Injunction filed by Association for Accessible Medicines. Motions taken under advisement, written order to be issued. (CLG) (Entered: 08/30/2023)
08/30/2023	<u>38</u>	TRANSCRIPT REQUEST for an Expedited 14–Day Transcript of 37 Motion Hearing,, to Court Reporter Paula Richter. (Hashmall, David) (Entered: 08/30/2023)
09/13/2023	<u>39</u>	TRANSCRIPT of Motions Hearing held on 8/30/2023 before Chief Judge Patrick J. Schiltz. (68 pages). Court Reporter: Paula Richter. For a copy of the transcript, please file a Transcript Request under <i>Other Filings/Other Documents</i>. Parties have 7 days to file a <i>Notice of Intent to Request Redaction</i>. In accordance with Judicial Conference policy and <u>Local Rule 80.1</u>, the transcript may be released and made remotely electronically available to the public in 90 days. For further information on redaction procedures, please review <u>Local Rule 5.5</u> and <u>Case Information</u> >Transcripts, Court Reporters and Digital Audio Recordings.

		Notice Intent/No Intent to Request Redactions due 9/20/2023. Redaction Request due 10/4/2023. Redacted Transcript Deadline set for 10/16/2023. Release of Transcript Restriction set for 12/12/2023. (PKR) (Entered: 09/13/2023)
09/19/2023	<u>40</u>	NOTICE THAT NO REDACTION IS REQUIRED by Association for Accessible Medicines re <u>39</u> Transcript,,,, . Attn: Court Reporter Paula Richter. (Hashmall, David) (Entered: 09/19/2023)
09/29/2023	<u>41</u>	(Text–Only) ORDER granting <u>35</u> Joint Motion Regarding Continued Sealing. Permanent Sealing GRANTED for Document Number(s): 17, 19, 33. Order on continued sealing becomes final on 10/27/2023 unless further timely submissions are filed. Ordered by Magistrate Judge John F. Docherty on 9/29/2023. (TJS) (Entered: 09/29/2023)
12/04/2023	<u>42</u>	ORDER. IT IS HEREBY ORDERED THAT: 1. Plaintiff's motion for a preliminary injunction <u>14</u> is GRANTED. 2. Defendant, and all of his officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with him, are ENJOINED from enforcing, or taking any other action under, Laws of Minnesota 2023, ch. 57, art. 2 §§ 2223, 2526, to be codified at Minn. Stat. §§ 62J.84162J.842, 62J.84462J.845, against any of plaintiff's members, or any of the members' agents, privies, or licensees, based on any member's sale of generic or off–patent drugs outside of Minnesota. 3. Defendant's motion to dismiss <u>23</u> is GRANTED IN PART and DENIED IN PART as follows: a. The motion is GRANTED as to plaintiff's third and fifth causes of action, and those claims are DISMISSED WITHOUT PREJUDICE. b. The motion is DENIED in all other respects. LET JUDGMENT BE ENTERED ACCORDINGLY. (Written Opinion) Signed by Chief Judge Patrick J. Schiltz on 12/4/2023. (CLG) (Entered: 12/04/2023)
12/04/2023	<u>43</u>	JUDGMENT (Attachments: # <u>1</u> Civil Notice – appeal)(MKB) (Entered: 12/04/2023)
		<i>Main Document</i>
		<i>Attachment # 1 Civil Notice – appeal</i>
12/14/2023	<u>44</u>	ORDER/NOTICE OF PRETRIAL CONFERENCE: Rule 26 Meeting Report due by 1/11/2024. Pretrial Conference set for 1/18/2024 at 09:30 AM via Audio–only Conference (no courtroom) before Magistrate Judge John F. Docherty. Signed by Magistrate Judge John F. Docherty on 12/14/2023. (Attachments: # <u>1</u> 26(f) Template, # <u>2</u> Consent Form)(TJS) (Entered: 12/14/2023)
12/22/2023	<u>45</u>	STIPULATION <i>for an Extension of Time to Respond to Complaint</i> by Keith Ellison. (Lewellen, Noah) (Entered: 12/22/2023)
12/27/2023	<u>46</u>	ORDER on <u>45</u> Stipulation. Keith Ellison answer due 1/10/2024. Signed by Magistrate Judge John F. Docherty on 12/27/2023.(TJS) (Entered: 12/27/2023)
01/02/2024	<u>47</u>	NOTICE OF APPEAL TO 8TH CIRCUIT as to <u>42</u> Order on Motion for Preliminary Injunction,,,,, Order on Motion to Dismiss/General,,,,, <u>43</u> Judgment by Keith Ellison. Filing fee \$ 605, receipt number AMNDC–10746388. (Pladson, Nicholas) (Entered: 01/02/2024)

		01/02/2024)
01/03/2024	<u>48</u>	TRANSMITTAL OF APPEAL LETTER TO U. S. COURT OF APPEALS, 8TH CIRCUIT, Re: Notice of Appeal to 8th Circuit <u>47</u> . (MKB) (Entered: 01/03/2024)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

ASSOCIATION FOR ACCESSIBLE
MEDICINES,

Case No. 23-CV-2024 (PJS/JFD)

Plaintiff,

v.

ORDER

KEITH ELLISON, in his official capacity
as Attorney General of the State of
Minnesota,

Defendant.

William M. Jay and Benjamin T. Hayes, GOODWIN PROCTER LLP; David L. Hashmall and Brandon J. Wheeler, FELHABER LARSON, for plaintiff.

Nicholas J. Pladson, Noah Lewellen, and Jason T. Pleggenkuhle, MINNESOTA ATTORNEY GENERAL'S OFFICE, for defendant.

Plaintiff Association for Accessible Medicines ("AAM") is a trade association that represents manufacturers and distributors of generic and biosimilar medicines. AAM brings this action to challenge a new Minnesota law that regulates the price of generic and off-patent prescription drugs ("the Act"). *See* Laws of Minnesota 2023, ch. 57, art. 2 §§ 22–27, *to be codified at* Minn. Stat. §§ 62J.841–62J.846.

This matter is before the Court on AAM's motion for a preliminary injunction and the State's motion to dismiss AAM's complaint for failure to state a claim. For the

reasons that follow, AAM's motion is granted and the State's motion is granted in part and denied in part.

I. BACKGROUND

A. *The Act*

The Act, which took effect on July 1, 2023, *see* Minn. Stat. § 645.02, regulates the price of generic and off-patent prescription drugs.¹ Specifically, the Act provides as follows:

No manufacturer shall impose, or cause to be imposed, an excessive price increase, whether directly or through a wholesale distributor, pharmacy, or similar intermediary, on the sale of any generic or off-patent drug sold, dispensed, or delivered to any consumer in the state.

Minn. Stat. Ann. § 62J.842, subd. 1. An “excessive price increase” is defined mathematically as a certain dollar and percentage increase over various benchmarks. *See id.* subd. 2.

Notably, the provision applies only to manufacturers, not to anyone else in the supply chain. *See id.* subd. 1 (stating that “[n]o *manufacturer* shall impose” an excessive price increase (emphasis added)). Another provision states that “[i]t is not a violation of

¹The record does not seem to reflect why the Minnesota Legislature targeted only generic and off-patent drugs, and not all drugs. One possible explanation is that the Federal Circuit has previously held that a similar price-control law directed at patented drugs was preempted by federal patent law. *See Biotechnology Indus. Org. v. Dist. of Columbia*, 496 F.3d 1362, 1374 (Fed. Cir. 2007).

this section for a wholesale distributor or pharmacy to increase the price of a generic or off-patent drug if the price increase is directly attributable to additional costs for the drug imposed on the wholesale distributor or pharmacy by the manufacturer of the drug.” *Id.* subd. 3. Although this latter provision seems to imply that it *would* be “a violation of this section” for a distributor or pharmacy to increase the price of a generic drug when that increase was *not* “directly attributable” to an increase imposed by a manufacturer, the parties seem to agree that the Act does not regulate prices charged by anyone but manufacturers. In short, the focus of the Act is not on what Minnesota consumers *pay*, but on what manufacturers *charge*.

The state health commissioner is responsible for notifying the attorney general and the relevant manufacturer of any price increase that the commissioner believes is excessive under the Act. Minn. Stat. Ann. § 62J.844, subd. 1. Various other commissioners, agency officials, and state pharmacy-benefit contractors may also provide notice. *See id.* On receipt of such notice, the manufacturer must submit certain information relevant to costs and pricing to the attorney general, who may investigate whether a violation has occurred. *See id.* subd. 2. The Act provides for a civil penalty of up to \$10,000 per day for each violation of § 62J.842. *See id.* subd. 3(a)(6). Finally, the Act imposes a \$500,000 penalty on any manufacturer who withdraws a generic or off-

patent drug from sale or distribution within Minnesota for the purpose of avoiding the prohibition on excessive price increases in § 62J.842. *See* Minn. Stat. Ann. § 62J.845.

B. The Prescription Drug Market

Pharmaceutical manufacturers are the start of the drug-supply chain. Compl. ¶ 23. Manufacturers typically sell to large national wholesale distributors, who, in turn, resell to retail pharmacies, hospitals, and other healthcare facilities. Compl. ¶ 23. Generic and biosimilar manufacturers typically sell their products to wholesale distributors pursuant to pre-negotiated, long-term bulk contracts that cover a range of products for resale nationwide. Compl. ¶ 24. The vast majority of such sales occur outside of Minnesota. Compl. ¶ 26. None of AAM’s generic or biosimilar manufacturer-members are located in Minnesota. Compl. ¶ 26. Similarly, the three largest wholesale distributors—who collectively control over 90% of the market—are all incorporated and headquartered outside of Minnesota. Compl. ¶ 26. In short, almost no one regulated by the Minnesota Act is actually present in Minnesota.

Manufacturers do not control the prices at which wholesalers or retailers sell their products, nor do they control where the products are ultimately resold. Compl. ¶ 24. Nevertheless, manufacturers have the most influence over prices because they establish a baseline price called the “wholesale acquisition cost” (“WAC”). Lewellen Ex. B at 3, 19. The prices at which wholesalers buy drugs from manufacturers—and the

prices at which wholesalers sell drugs to retailers—are based on the WAC. Lewellen Ex. A at 11, 23; *id.* Ex. B at 3, 19.

For a drug to be sold or otherwise distributed in Minnesota, the manufacturers and wholesalers at every step of the distribution chain must be licensed by the state. Minn. Stat. § 151.252, subd. 1(g); Minn. Stat. § 151.47, subd. 1a(f); Minn. R. 6800.1400, subp. 3. The annual licensure process for manufacturers appears to consist of filing a fairly basic form application and paying a relatively small fee. Minn. Stat. § 151.065; Howard Decl. ¶ 9 & Ex. B.

II. PRELIMINARY INJUNCTION

A. Standard of Review

In reviewing a motion for a preliminary injunction, a court must consider four factors: (1) the movant’s likelihood of success on the merits; (2) the threat of irreparable harm to the movant if the injunction is not granted; (3) the balance between that harm and the harm that granting the injunction will inflict on the other parties; and (4) the public interest. *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 114 (8th Cir. 1981) (en banc).

“Ordinarily, the movant must show only a ‘fair chance’ of success on the merits.” *Eggers v. Evnen*, 48 F.4th 561, 565 (8th Cir. 2022) (citation omitted). But a party seeking to enjoin the implementation of a state statute must meet a higher standard by showing

that it is likely to succeed on the merits. *See Planned Parenthood Minn., N.D., S.D. v. Rounds*, 530 F.3d 724, 731–32 (8th Cir. 2008) (en banc). “A preliminary injunction is an extraordinary remedy, and the burden of establishing the propriety of an injunction is on the movant.” *Watkins Inc. v. Lewis*, 346 F.3d 841, 844 (8th Cir. 2003) (citation omitted).

B. Likelihood of Success

In its first cause of action, AAM alleges that the Act is unconstitutional under the dormant Commerce Clause because it directly regulates transactions that take place wholly outside of Minnesota. The Court finds that AAM is likely to succeed on this claim.

The Commerce Clause grants Congress the power to regulate interstate commerce. U.S. Const. art. I, § 8, cl. 3. This grant of power to Congress also “contains a further, negative command, one effectively forbidding the enforcement of certain state economic regulations even when Congress has failed to legislate on the subject.” *Nat’l Pork Producers Council v. Ross*, 598 U.S. 356, 368 (2023) (cleaned up). This negative command—known as the dormant Commerce Clause—limits state power in various ways. Among other limitations, the dormant Commerce Clause prohibits states from directly regulating out-of-state transactions. *See Edgar v. MITE Corp.*, 457 U.S. 624, 640–43 (1982) (plurality opinion); *see also Pork Producers*, 598 U.S. at 376 n.1 (noting that

Edgar “spoke to a law that *directly* regulated out-of-state transactions by those with *no* connection to the State”).

Recently, in *Pork Producers*, the Supreme Court clarified that a state law does not necessarily violate the dormant Commerce Clause merely because its regulation of in-state activity has out-of-state *effects*. *Pork Producers*, 598 U.S. at 371–76. The State does not dispute, however, that *Pork Producers* did not change the rule that a state may not directly regulate transactions that take place wholly outside the state and have no connection to it. *See id.* at 376 n.1 (distinguishing *Edgar* because the law at issue in *Pork Producers* did not directly regulate out-of-state transactions); Hr’g Tr. 24–26 [ECF No. 39]. The State likewise concedes that the Act directly regulates extraterritorial sales of drugs. Hr’g Tr. 9. The only issue, then, is whether those transactions have a sufficient connection to Minnesota to give the Minnesota Legislature authority to regulate them.

As the Court noted at oral argument, the operative language in § 62J.842 is somewhat odd. It prohibits manufacturers from imposing (or causing to be imposed) “an excessive price increase, whether directly or through a wholesale distributor, pharmacy, or similar intermediary, on the *sale* of any generic or off-patent drug *sold, dispensed, or delivered* to any consumer in the state.” (Emphasis added.) If § 62J.842 simply prohibited excessive price increases on the “sale” of any generic drug “sold” in

the state, one could plausibly read it as applying only to in-state sales. But the additional language referring to drugs “dispensed” or “delivered” within the state suggests that the initial “sale” that the Act regulates does not have to be the sale of a drug *in Minnesota*.

In response to the Court’s queries, the State confirmed that this language subjects manufacturers to liability as a result of sales that take place wholly outside of Minnesota—say, the sale of a drug by a manufacturer in Colorado to a national distributor in New Jersey—so long as the drug in question is eventually “sold, dispensed, or delivered” by *anyone* to any consumer in Minnesota. Hr’g Tr. 3–5. The State further confirmed that this is true even if, say, the Colorado manufacturer has no control whatsoever over what is done with its drugs after they are sold to the New Jersey distributor. Hr’g Tr. 6. The State likewise confirmed that this is true even if the Colorado manufacturer does not *know* whether drugs it sells to the New Jersey distributor will ever make their way to Minnesota. Hr’g Tr. 6. Indeed, the State indicated that the Act imposes liability on manufacturers whose drugs wind up in Minnesota even if the manufacturer has done everything in its power to *prevent* its drugs from being resold in Minnesota. Hr’g Tr. 30–32.

The State contends that the Minnesota Legislature can impose liability on such manufacturers because the Act is not triggered unless and until a drug that the

manufacturer sells outside of Minnesota somehow makes its way to Minnesota. According to the State, that means that the manufacturer's initial sale outside of Minnesota (such as the Colorado manufacturer's sale to the New Jersey distributor)—even though it has no connection whatsoever to Minnesota at the time it occurs—will *acquire* a sufficient connection to Minnesota when someone else (even someone far down the supply chain, acting outside of the control or knowledge of the manufacturer or the distributor to whom the manufacturer sold the drug) sells, dispenses, or delivers the drug to any consumer in Minnesota.

The Court cannot find any support for the notion that the dormant Commerce Clause permits Minnesota to directly regulate a sale that occurs in another state simply because the product eventually makes its way into Minnesota. To the contrary, such an expansive notion of an individual state's power to regulate commerce occurring in other states was rejected by *Styczinski v. Arnold*, 46 F.4th 907 (8th Cir. 2022), in which the Eighth Circuit held that a Minnesota law regulating out-of-state bullion transactions violated the dormant Commerce Clause.

The statute at issue in *Styczinski* regulated "Minnesota transactions," which it defined as transactions:

- (1) by a dealer that is incorporated, registered, domiciled, or otherwise located in Minnesota;
- (2) by a dealer representative at a location in Minnesota;

- (3) between a dealer and a consumer who lives in Minnesota; or
- (4) between a dealer and a Minnesota consumer when the transaction involves:
 - (i) delivering or shipping a bullion product to an address in Minnesota;
 - (ii) delivering to or shipping from a precious metal depository on behalf of a Minnesota resident; or
 - (iii) making payment to a consumer or receiving a payment from a consumer at an address in Minnesota, unless the transaction occurs when the consumer is at a business location outside of Minnesota.

Id. at 910 (quoting Minn. Stat. § 80G.01, subd. 5a). The Eighth Circuit found the statute invalid because “it applies Minnesota law to commerce wholly outside of Minnesota,” such as, for example, a “transaction anywhere in the world between a bullion trader and a Minnesota resident.” *Id.* at 913. Despite the fact that the statute regulated only transactions involving a Minnesota resident, the Eighth Circuit regarded the transactions as having an insufficient Minnesota connection to pass muster under the dormant Commerce Clause.

Here, the Minnesota connection is even weaker. Whereas the statute in *Styczinski* regulated only transactions that involved a dealer or resident who had a connection to

Minnesota, the Act in this case applies to out-of-state drug transactions between parties that have no connection whatsoever to Minnesota. The only requirement for such a transaction to be subject to the Act is that somehow, someday, in some way, someone who is *not* a party to the transaction must sell, dispense, or deliver the drug to any consumer in Minnesota. Under *Styczinski*, the Act's regulation of transactions with such an attenuated connection to Minnesota clearly violates the dormant Commerce Clause.

The State contends that, because manufacturers must be licensed in Minnesota in order for their drugs to be distributed here, manufacturers know that their drugs will eventually be distributed in Minnesota. But the one does not follow from the other. AAM offers evidence that its members sell most of their products in bulk via negotiated multi-drug contracts and do not control where the drugs are resold. Galownia Decl. ¶¶ 4–5; *see also* de Gavre Decl. ¶¶ 4–5. In other words, the evidence indicates that, while the manufacturers may know, in the abstract, that *some* of their drugs may wind up in Minnesota, they do not know *which* of their drugs will do so. Given that *Styczinski* found that out-of-state sales to actual Minnesota residents did not have a sufficient connection to Minnesota to be regulated by the Minnesota Legislature, the Court does not understand how a non-Minnesota manufacturer's knowledge that some of the drugs that it sells to a non-Minnesota distributor may someday find their way into

Minnesota could be sufficient to validate Minnesota's direct regulation of that out-of-state sale.

The State points to *Cotto Waxo Co. v. Williams*, 46 F.3d 790 (8th Cir. 1995), and *Swanson v. Integrity Advance, LLC*, 870 N.W.2d 90 (Minn. 2015), as examples of cases supporting a more expansive view of the connection between a state and an out-of-state transaction. Both of these cases are easily distinguishable, however, as both cases involved laws that directly regulated only *in-state* sales. See *Cotto Waxo*, 46 F.3d at 794 (explaining that the law at issue did not have an impermissible extraterritorial reach because it “is indifferent to sales occurring out-of-state” and “Cotto Waxo is able to sell to out-of-state purchasers regardless of Cotto Waxo’s relationship to Minnesota”); *Integrity Advance*, 870 N.W.2d at 92 (explaining that the law at issue applied if the borrower was a Minnesota resident and completed the transaction while physically located in Minnesota). By contrast, while the Act at issue here is not triggered until there is a sale or distribution in Minnesota, the Act directly regulates—and, in fact, attaches potentially astronomical liability to—conduct that occurs wholly outside of Minnesota between parties with no connection to Minnesota.

Finally, the State compares the Act to the law upheld in *Pork Producers*. Again, however, *Pork Producers* is readily distinguishable. The California law at issue in *Pork Producers* prohibited business owners and operators from “knowingly engag[ing] in the

sale *within the state* of . . . [w]hole pork meat that the business owner or operator knows or should know is the meat of a covered animal who was confined in a cruel manner.”

Cal. Health & Safety Code § 25990(b)(2) (emphasis added); *Pork Producers*, 598 U.S.

at 365–66, 376 n.1 (explaining that § 25990(b)(2) “regulates only products that companies choose to sell ‘within’ California”).

Here, by contrast, the State admits that the Act directly regulates upstream sales that take place wholly outside of Minnesota and imposes liability on those engaged in those sales, even though neither the sales nor the contracting parties have any connection to Minnesota. The State contends that the laws are nevertheless comparable because the offending conduct in *Pork Producers*—animal cruelty—occurs outside of California. The crucial difference, however, is that the California law does not attempt to impose liability on out-of-state actors for engaging in out-of-state conduct; instead, it regulates in-state actors who engage in in-state conduct (specifically, in-state sales of meat that has been produced in a certain way).

Although the Minnesota Act is not comparable to the California law at issue in *Pork Producers*, the Act does closely resemble the Maryland law found invalid in *Association for Accessible Medicines v. Frosh*, 887 F.3d 664 (4th Cir. 2018). True, the Maryland law could be triggered without an actual sale or distribution of a drug in Maryland, as long as the drug was “made available for sale” in Maryland. *Id.* at 671

(noting that the Maryland law’s “plain language allows Maryland to enforce the Act against parties to a transaction that did not result in a single pill being shipped to Maryland”). In that sense, the Maryland law appears to have a slightly broader reach than the Act, which is not triggered until a drug is “sold, dispensed, or delivered to any consumer” in Minnesota.

As the Fourth Circuit went on to explain, however, “[e]ven if the Act did require a nexus to an actual sale in Maryland, it is nonetheless invalid because it still controls the price of transactions that occur wholly outside the state.” *Id.* This is so, the Fourth Circuit said, because “[t]he Act, by its own terms, is not fixated on the price the Maryland consumer ultimately pays for the drug. Instead, the lawfulness of a price increase is measured according to the price the manufacturer or wholesaler charges *in the initial sale of the drug*”—sales which, the parties agreed, nearly always took place outside Maryland. *Id.*

That is exactly how the Act works here. Although the Act is not triggered until a sale or distribution occurs in Minnesota, “the lawfulness of a price increase is measured according to the price the manufacturer or wholesaler charges *in the initial sale of the drug*” and “the conduct the Act targets is the upstream pricing and sale of prescription drugs.” *Id.* As a result, just as in *Frosh*, the Act “effectively seeks to compel manufacturers . . . to act in accordance with [Minnesota] law outside of [Minnesota].”

Id. at 672; *see also Pharm. Rsch. & Mfrs. of Am. v. Dist. of Columbia*, 406 F. Supp. 2d 56, 68–71 (D.D.C. 2005) (holding that a similar law violated the dormant Commerce Clause and rejecting the argument that the requirement of a downstream sale in the District was a sufficient connection), *aff'd sub nom. Biotechnology Indus. Org. v. Dist. of Columbia*, 496 F.3d 1362 (Fed. Cir. 2007).

The Court also finds significant the fact that the Act imposes a \$500,000 penalty on manufacturers who try to avoid the risk of incurring liability under the Act by prohibiting their drugs from being sold or distributed in Minnesota. *See* Minn. Stat. Ann. § 62J.845. This provision reinforces the impermissible extraterritorial nature of the Act, as it puts manufacturers between a rock and a hard place: As noted, a manufacturer could be subjected to liability for wholly out-of-state sales based on the decisions and actions of others over whom it has no control, yet it must incur a significant financial penalty if it chooses to avoid this state of affairs by (for example) selling only to distributors who promise not to distribute its drugs in Minnesota. (Apparently, the manufacturer will still be subject to liability for any distribution of its drugs in Minnesota that nevertheless occurs through no fault of the manufacturer.) The extraterritorial reach of the Act is therefore nearly unavoidable, as the only sure way for a manufacturer to avoid liability is to either stop selling drugs altogether or to sell *all* of

its drugs—including the vast majority that will never reach Minnesota—only at prices that comply with the Act.

Moreover, the fact that the Act penalizes manufacturers for choosing not to engage in commerce in Minnesota in order to avoid the Act is fundamentally at odds with dormant Commerce Clause jurisprudence, which often relies on the principle that anyone who wishes to avoid being subject to a state’s economic regulation can simply avoid doing business in that state. *See Pork Producers*, 598 U.S. at 384 (plurality opinion) (noting that the plaintiffs had the choice to withdraw from the California market if they wished to avoid the challenged law); *id.* at 364 (noting that “[c]ompanies that *choose* to sell products in various States must normally comply with the laws of those various States” (emphasis added)). The Minnesota Legislature was unwilling to give manufacturers that freedom.

The Court therefore concludes that AAM is likely to prevail on its claim that the Act violates the dormant Commerce Clause insofar as it applies to out-of-state sales of drugs.

C. Threat of Irreparable Harm

Two of AAM’s members offer evidence that, due to increased manufacturing costs, supply shortages, and other factors, they intended to raise prices on certain drugs in a manner that would violate the Act. Galownia Decl. ¶¶ 8–16; de Gavre Decl.

¶¶ 8–16. Due to the threat of incurring liability under the Act, the members have decided not to proceed with the intended price increases. Galownia Decl. ¶¶ 11, 16; de Gavre Decl. ¶ 16. There is no dispute that the financial injuries that the members will suffer as a result of forgoing the intended price increases are not recoverable from the State or anyone else. These members are therefore facing a threat of irreparable harm.² See *Iowa Utils. Bd. v. FCC*, 109 F.3d 418, 426 (8th Cir. 1996) (“The threat of unrecoverable economic loss, however, does qualify as irreparable harm.”).

The State characterizes this threat as speculative and unsupported. In particular, the State contends that the members have offered no evidence that the factors they cite (such as increased costs) require price increases that would violate the Act. It is not clear to the Court why that matters, however. The fact remains that, according to the

²The State argues that one of these AAM members, Teva Pharmaceuticals USA, Inc. (“Teva”), is not currently licensed in Minnesota and therefore distribution of Teva’s drugs in Minnesota would violate Minnesota law no matter the price. In response, however, Teva points out that (1) one of the drugs whose price it intended to increase is manufactured at a foreign facility, Galownia Decl. ¶ 8, and the licensing requirement therefore does not apply, see Howard Decl. ¶ 9, Ex. B at 1 (stating an exception to the licensing requirement “if the manufacturer is located outside of the United States or its territories”), and (2) the other drug whose price it intended to increase is manufactured at a facility operated by a Teva subsidiary that, at least according to AAM’s briefing, is licensed in Minnesota, Galownia Decl. ¶ 13; Savage Decl. ¶¶ 1–2. (The Court notes that, although there does not appear to be record evidence of the subsidiary’s licensure, the State does not seem to dispute that it is licensed. The Court likewise notes that, while the State points out that “manufacturing” includes packaging and labeling, ECF No. 36 at 4 n.4, the State does not contend that Teva performs those functions for the drugs at issue.)

evidence before the Court, the members are refraining from implementing planned price increases to avoid incurring liability under the Act. Whether or not such price increases are the result of increased costs, supply shortages, or other factors is simply irrelevant to the members' potential liability under the Act. Moreover, even if a lower price increase that complied with the Act would cover any increased manufacturing costs, such a course of action would still result in irreparable harm in the form of unrecoverable lost revenue.

The State also contends that the members cannot show a threat of irreparable harm absent a showing that enforcement is imminent. *See Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 382 (1992) ("In suits such as this one, which the plaintiff intends as a 'first strike' to prevent a State from initiating a suit of its own, the prospect of state suit must be imminent, for it is the prospect of that suit which supplies the necessary irreparable injury."). The Supreme Court has recognized, however, that a plaintiff has standing to "bring a preenforcement suit when he has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 160 (2014) (citation and quotation marks omitted). And the Supreme Court has applied this principle in the context of granting injunctive relief pending final disposition of the case. *See, e.g., Roman Cath. Diocese of*

Brooklyn v. Cuomo, 141 S. Ct. 63, 68 (2020) (per curiam) (citing *Susan B. Anthony List*); see also *Rogers Grp., Inc. v. City of Fayetteville*, 629 F.3d 784, 785, 789–90 (8th Cir. 2010) (affirming preliminary injunction in preenforcement suit alleging that a municipality’s ordinance was beyond its powers under state law and finding a sufficient threat of irreparable harm where the plaintiff “admit[ted] that the Quarry currently operated at a level the Ordinance permitted” but “testified that the Ordinance would prevent the Quarry from expanding”).

D. The Balance of Harms and the Public Interest

The remaining *Dataphase* factors are essentially a wash. While AAM offers evidence that two of its members are facing a threat of irreparable harm, the magnitude of that threatened harm is unclear. At the same time, although the Court does not doubt that, as a general matter, Minnesota consumers face harm from excessive price increases on generic medication, the record on this issue is not well developed; in particular, it is far from clear how much of this harm the Act would prevent, given that it does not regulate price increases by anyone in the supply chain but manufacturers, and given that it does not regulate the price charged to Minnesota consumers.

With respect to the public interest: On the one hand, “it is always in the public interest to protect constitutional rights.” *Carson v. Simon*, 978 F.3d 1051, 1061 (8th Cir. 2020) (per curiam) (citation omitted). On the other hand, “governmental policies

implemented through legislation or regulations developed through presumptively reasoned democratic processes are entitled to a higher degree of deference and should not be enjoined lightly.” *Planned Parenthood Minn., N.D., S.D.*, 530 F.3d at 732 (citation omitted).

In sum, AAM has established that it is highly likely to succeed on the merits, and likelihood of success on the merits is “[t]he most important of the *Dataphase* factors.” *Shrink Mo. Gov’t PAC v. Adams*, 151 F.3d 763, 764 (8th Cir. 1998); *see also Sleep No. Corp. v. Young*, 33 F.4th 1012, 1016 (8th Cir. 2022) (“the third factor—probability of success—is the most significant”). Because AAM is likely to prevail, and because AAM has established at least some threat of irreparable harm, the Court will grant AAM’s motion for a preliminary injunction.

E. Security

Under Fed. R. Civ. P. 65(c), “[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” AAM asks that it not be required to post security, ECF No. 22, and the State has not objected to that request. Accordingly, the Court will not require AAM to post security. *See Richland/Wilkin Joint Powers Auth. v. U.S. Army Corps of Eng’rs*, 826 F.3d 1030, 1043 (8th Cir. 2016) (“Courts in this circuit have

almost always required a bond before issuing a preliminary injunction, but exceptions have been made where the State has not objected to the failure to require a bond or where the damages resulting from a wrongful issuance of an injunction have not been shown.” (citation omitted)).

III. MOTION TO DISMISS

A. Standard of Review

In reviewing a motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6), a court must accept as true all of the factual allegations in the complaint and draw all reasonable inferences in the plaintiff’s favor. *See Perez v. Does 1–10*, 931 F.3d 641, 646 (8th Cir. 2019). Although the factual allegations need not be detailed, they must be sufficient to “raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The complaint must “state a claim to relief that is plausible on its face.” *Id.* at 570.

B. Analysis

As the Court has found that AAM is likely to succeed on the merits of its first cause of action, the Court will deny the State’s motion to dismiss that claim. Likewise, the Court will deny the State’s motion to dismiss AAM’s fourth cause of action, which alleges that the Act runs afoul of the dormant Commerce Clause under the balancing test set forth in *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970).

The State argues that, under *Pork Producers*, a plaintiff must allege discrimination against interstate commerce to state a plausible *Pike* claim. The Court does not agree. The hopelessly fractured nature of the opinions in *Pork Producers* makes the holding of the case difficult to identify, but a majority of the Justices acknowledged that the “Court has left the courtroom door open to [*Pike*] challenges premised on even nondiscriminatory burdens.” *Pork Producers*, 598 U.S. at 379 (cleaned up); *see also id.* at 392 (Sotomayor and Kagan, JJ., concurring in part) (“*Pike* claims that do not allege discrimination or a burden on an artery of commerce are further from *Pike*’s core. As THE CHIEF JUSTICE recognizes, however, the Court today does not shut the door on all such *Pike* claims.”); *id.* at 395–96 (Roberts, Alito, Kavanaugh, and Jackson, JJ., concurring in part and dissenting in part) (“As a majority of the Court acknowledges, ‘we generally leave the courtroom door open to plaintiffs invoking the rule in *Pike*, that even nondiscriminatory burdens on commerce may be struck down on a showing that those burdens clearly outweigh the benefits of a state or local practice.’” (citation omitted)).

The State contends that, under *Pork Producers*, the only nondiscrimination claims that remain viable are those challenging alleged burdens on the instrumentalities of interstate commerce (such as trains and trucks). If that were true, though, the Supreme Court could have issued a very brief opinion affirming the dismissal of the plaintiffs’

complaint in *Pork Producers*, as the plaintiffs expressly disavowed any claim of discrimination, *id.* at 370–71, and as the plaintiffs were not challenging any burden on the instrumentalities of interstate commerce. Instead, a majority of the Court agreed that the plaintiffs had failed to state a claim under *Pike*, but they disagreed as to why, with a plurality opining that the plaintiffs had failed to plausibly plead a substantial burden on interstate commerce, *id.* at 383–87, and with three justices opining that *Pike* does not allow courts to strike down laws that regulate only in-state sales of ordinary consumer goods, *id.* at 380–83. Ultimately, however, a majority agreed on the more abstract premise that the plaintiffs’ claim failed because the *Pike* line of cases has never “prevent[ed] a State from regulating the sale of an ordinary consumer good within its own borders on nondiscriminatory terms.” *Id.* at 391.

As discussed above, this case differs from *Pork Producers* in a crucial respect: Unlike the California law at issue in *Pork Producers*, the Minnesota Act at issue here directly regulates out-of-state transactions. Indeed, based on AAM’s allegations, it appears that the vast majority of the transactions that the Act regulates occur outside of Minnesota. In the Court’s view, these facts give rise to a plausible claim under *Pike*, and nothing in *Pork Producers* suggests otherwise. And because AAM has pleaded a plausible *Pike* claim, the Court will permit AAM’s due-process claim to proceed, as that

claim appears similar to AAM's *Pike* claim, and the Court would prefer to assess both claims on a full record.

The Court will, however, dismiss AAM's third and fifth causes of action. In its third cause of action, AAM alleges that the Act violates the Constitution's horizontal separation of powers. But the Court is unaware of any case applying this concept as a standalone cause of action separate from other express constitutional provisions. The third cause of action is therefore dismissed. AAM's fifth cause of action is also dismissed, as it simply cites 42 U.S.C. §§ 1983 and 1988 and requests various forms of relief, and thus it duplicates other claims.

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY ORDERED THAT:

1. Plaintiff's motion for a preliminary injunction [ECF No. 14] is GRANTED.
2. Defendant, and all of his officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with him, are ENJOINED from enforcing, or taking any other action under, Laws of Minnesota 2023, ch. 57, art. 2 §§ 22–23, 25–26, *to be codified at* Minn. Stat. §§ 62J.841–62J.842, 62J.844–62J.845, against any of plaintiff's members, or

any of the members' agents, privies, or licensees, based on any member's sale of generic or off-patent drugs outside of Minnesota.

3. Defendant's motion to dismiss [ECF No. 23] is GRANTED IN PART and DENIED IN PART as follows:

- a. The motion is GRANTED as to plaintiff's third and fifth causes of action, and those claims are DISMISSED WITHOUT PREJUDICE.
- b. The motion is DENIED in all other respects.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: December 4, 2023

s/Patrick J. Schiltz

Patrick J. Schiltz, Chief Judge
United States District Court

UNITED STATES DISTRICT COURT
District of Minnesota

Association for Accessible Medicines

JUDGMENT IN A CIVIL CASE

Plaintiff,

v.

Case Number: 23-cv-02024-PJS-JFD

Keith Ellison

Defendant.

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT:

1. Plaintiff's motion for a preliminary injunction [ECF No. 14] is GRANTED.
2. Defendant, and all of his officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with him, are ENJOINED from enforcing, or taking any other action under, Laws of Minnesota 2023, ch. 57, art. 2 §§ 22–23, 25–26, *to be codified at* Minn. Stat. §§ 62J.841–62J.842, 62J.844–62J.845, against any of plaintiff's members, or any of the members' agents, privies, or licensees, based on any member's sale of generic or off-patent drugs outside of Minnesota.
3. Defendant's motion to dismiss [ECF No. 23] is GRANTED IN PART and DENIED IN PART as follows:
 - a. The motion is GRANTED as to plaintiff's third and fifth causes of

action, and those claims are DISMISSED WITHOUT PREJUDICE.

b. The motion is DENIED in all other respects.

Date: 12/4/2023

KATE M. FOGARTY, CLERK



UNITED STATES DISTRICT COURT DISTRICT OF MINNESOTA

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Building and U.S. Courthouse
316 North Robert Street
Room 100
St. Paul, MN 55101

Diana E. Murphy
U.S. Courthouse
300 South Fourth Street
Room 202
Minneapolis, MN 55415

Gerald W. Heaney Federal
Building and U.S. Courthouse
and Customhouse
515 West First Street
Duluth, MN 55802

Edward J. Devitt U.S.
Courthouse and Federal
Building
118 South Mill Street
Fergus Falls, MN 56537

CIVIL NOTICE

The appeal filing fee is \$505.00. If you are indigent, you can apply for leave to proceed in forma pauperis, ("IFP").

The purpose of this notice is to summarize the time limits for filing with the District Court Clerk's Office a Notice of Appeal to the Eighth Circuit Court of Appeals or the Federal Circuit Court of Appeals (when applicable) from a final decision of the District Court in a civil case.

This is a summary only. For specific information on the time limits for filing a Notice of Appeal, review the applicable federal civil and appellate procedure rules and statutes.

Rule 4(a) of the Federal Rules of Appellate Procedure (Fed. R. App. P.) requires that a Notice of Appeal be filed within:

1. Thirty days (60 days if the United States is a party) after the date of "entry of the judgment or order appealed from;" or
2. Thirty days (60 days if the United States is a party) after the date of entry of an order denying a timely motion for a new trial under Fed. R. Civ. P. 59; or
3. Thirty days (60 days if the United States is a party) after the date of entry of an order granting or denying a timely motion for judgment under Fed. R. Civ. P. 50(b), to amend or make additional findings of fact under Fed. R. Civ. P. 52(b), and/or to alter or amend the judgment under Fed. R. Civ. P. 59; or
4. Fourteen days after the date on which a previously timely Notice of Appeal was filed.

If a Notice of Appeal is not timely filed, a party in a civil case can move the District Court pursuant to Fed. R. App. P. 4(a)(5) to extend the time for filing a Notice of Appeal. This motion must be filed no later than 30 days after the period for filing a Notice of Appeal expires. If the motion is filed after the period for filing a Notice of Appeal expires, the party bringing the motion must give the opposing parties notice of it. The District Court may grant the motion, but only if excusable neglect or good cause is shown for failing to file a timely Notice of Appeal.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

ASSOCIATION FOR ACCESSIBLE
MEDICINES,

Court File No. 0:23-CV-2024 (PJS/JFD)

Plaintiff,

vs.

DEFENDANT’S NOTICE OF APPEAL

KEITH ELLISON,
in his official capacity as Attorney
General of the State of Minnesota,

Defendant.

Pursuant to Fed. R. App. P. 3(c)(1) and 4(a), notice is hereby given that Defendant Keith Ellison, Attorney General for the State of Minnesota, hereby appeals to the United States Court of Appeals for the Eighth Circuit.

The above-named party hereby appeals from the final judgment of the U.S. District Court for the District of Minnesota that was entered on December 4, 2023, (Doc. No. 43) relating to the District Court’s Order of the same date, (Doc. No. 42), granting Plaintiff’s motion for a preliminary injunction. (Doc. No. 14).

Signature is on the next page.

Dated January 2, 2024:

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

/s/ Nick Pladson

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THE STATE OF MINNESOTA



**UNITED STATES
DISTRICT COURT
DISTRICT OF MINNESOTA**

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**Diana E. Murphy
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Room 202
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**Gerald W. Heaney Federal
Building and U.S. Courthouse
and Customhouse**
515 West First Street
Duluth, MN 55802

**Edward J. Devitt U.S.
Courthouse and Federal
Building**
118 South Mill Street
Fergus Falls, MN 56537

TRANSMITTAL OF APPEAL

Date: January 3, 2024

To: U.S. COURT OF APPEALS, 8TH CIRCUIT

From: MKB U.S. District Court-Minnesota

In Re: District Court Case No. 23-cv-02024-PJS-JFD
Eighth Circuit Case No.: Not yet assigned
Case Title: Association for Accessible Medicines v. Ellison

The statutory filing fee has:

☒ been paid, receipt number: AMNDC-10746388

☐ not been paid as of

IFP ☐ is ☐ is not pending

☐ been waived because:

☐ Application for IFP granted ☐ USA filed appeal

Length of Trial: N/A

Was a court reporter utilized? ☒ Yes ☐ No

If yes, please identify the court reporter: Paula Richter