

**THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

ASSOCIATION FOR ACCESSIBLE  
MEDICINES,

*Plaintiff,*

v.

KWAME RAOUL,  
in his official capacity as Attorney  
General of the State of Illinois,

*Defendant.*

Case No. 1:24-cv-00544

**PLAINTIFF’S UNOPPOSED MOTION FOR LEAVE TO FILE NOTICE OF  
SUPPLEMENTAL AUTHORITY IN SUPPORT OF RENEWED MOTION FOR A  
PRELIMINARY INJUNCTION**

Plaintiff Association for Accessible Medicines (“AAM”) respectfully files this Motion for Leave to File a Notice of Supplemental Authority in Support of Renewed Motion for a Preliminary Injunction. In support of this motion, AAM states as follows:

1. On July 9, 2024, AAM filed an Amended Complaint alleging that HB 3957, Pub. L. No. 103-0367, violates the U.S. Constitution. [ECF Nos. 33-35](#).
2. On January 3, 2025, AAM filed its renewed motion for a preliminary injunction. [ECF No. 51](#). That motion has now been fully briefed. *See* [ECF Nos. 52, 58, 62](#).
3. On June 12, 2025, the U.S. Court of Appeals for the Eighth Circuit ruled in AAM’s favor and affirmed a preliminary injunction, based on the dormant Commerce Clause, against Minnesota’s impermissibly extraterritorial price control statute for generic drugs. [AAM v. Ellison, No. 24-1019 2025 WL 1660112](#). The preliminary injunction decision that the Eighth Circuit affirmed is discussed extensively in the motion papers in this case because Minnesota’s statute is

analogous to Illinois's in relevant respects. [ECF No. 52, at 12-13, 19](#); [ECF No. 58, at 19](#); [ECF No. 62, at 3-4, 10, 12-13](#). The Eighth Circuit specifically rejected the notion that the preliminary injunction is inconsistent with the Supreme Court decision in [National Pork Producers Council v. Ross, 598 U.S. 356 \(2023\)](#), which is the Illinois Attorney General's primary basis for resisting an injunction here. The Eighth Circuit's decision therefore provides additional support for AAM's pending motion for a preliminary injunction.

4. Accordingly, AAM requests that the Court grant it leave to file the notice of supplemental authority that is attached to this motion as Exhibit 1.

5. Defendant does not oppose this motion.

Dated: June 13, 2025

William M. Jay (#480185)  
GOODWIN PROCTER LLP  
1900 N Street, NW  
Washington, DC 20036  
(202) 346-4000  
wjay@goodwinlaw.com

Respectfully submitted,

s/ Andrianna D. Kastanek  
Andrianna D. Kastanek (#6286554)  
JENNER & BLOCK LLP  
353 N. Clark Street  
Chicago, IL 60654  
(312) 840-7285  
akastanek@jenner.com

*Counsel for Plaintiff*

# **EXHIBIT 1**

**THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

ASSOCIATION FOR ACCESSIBLE  
MEDICINES,

*Plaintiff,*

v.

KWAME RAOUL,  
in his official capacity as Attorney  
General of the State of Illinois,

*Defendant.*

Case No. 1:24-cv-00544

**PLAINTIFF’S NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF  
RENEWED MOTION FOR A PRELIMINARY INJUNCTION**

Plaintiff Association for Accessible Medicines (“AAM”) respectfully submits this Notice of Supplemental Authority to inform the Court of the Eighth Circuit’s recent decision in [Association for Accessible Medicines v. Ellison, --- F.4th ---, 2025 WL 1660112 \(June 12, 2025\)](#) (Exhibit A). In *Ellison*, the court affirmed a preliminary injunction in favor of AAM, enjoining enforcement of Minnesota’s similarly extraterritorial price control law aimed at generic drugs and biosimilars. The Eighth Circuit held that the Minnesota law had “the specific impermissible extraterritorial effect of controlling prices outside of Minnesota.” The Illinois law has the same effect and is impermissible for the same reasons. The Eighth Circuit’s decision therefore supports granting AAM the same preliminary injunction here.

The Minnesota statute and the *Ellison* district court’s decision to enjoin it are discussed extensively in the motion papers already before the Court. [ECF No. 52, at 12-13, 19](#); [ECF No. 58, at 19](#); [ECF No. 62, at 3-4, 10, 12-13](#). The Eighth Circuit reviewed the district court’s analysis of the dormant Commerce Clause *de novo*, [2025 WL 1660112, at \\*1](#), and concluded that the district

court was correct: Minnesota’s statute impermissibly regulates transactions between manufacturers and wholesalers that occur outside the State. *Id.* at \*2-3. The Eighth Circuit agreed with the only other court of appeals that has examined such a statute. *Id.* at \*2 (discussing *AAM v. Frosh*, 887 F.3d 664, 672 (4th Cir. 2018)). And the Eighth Circuit specifically rejected the defendant’s reliance on *National Pork Producers Council v. Ross*, 598 U.S. 356 (2023). As the court explained, in *Ross*, “the [Supreme] Court did not overturn its cases that applied the dormant Commerce Clause to invalidate statutes that have the specific impermissible extraterritorial effect of controlling prices.” *Ellison*, 2025 WL 1660112, at \*3. Those cases do not permit a state law that “directly regulates transactions which take place wholly outside the State.” *Id.* (quoting *Ross*, 598 U.S. at 376 n.1) (in turn quoting *Edgar v. MITE Corp.*, 457 U.S. 624, 641-43 (1982) (plurality opinion)) (brackets and ellipsis omitted; emphasis in *Ross*).

In this case, Defendant has argued that the Eighth Circuit’s pre-*Ross* precedent on extraterritorial price regulation was the same as—indeed, “primarily followed”—the Seventh Circuit’s, and that *Ross* had overturned that circuit precedent. *ECF No. 58, at 19*. The Eighth Circuit’s decision in *Ellison* makes clear that Defendant is wrong, and that Supreme Court and circuit precedent barring extraterritorial regulation remains good law. Under that body of precedent, Illinois’s statute violates the dormant Commerce Clause. *ECF No. 52, at 9-11*. “[A] Colorado manufacturer would be penalized if it sold drugs to a New Jersey distributor at prices above those proscribed by the Act and those drugs ended up in [Illinois]”—and that is impermissible. *Ellison*, 2025 WL 1660112, at \*2.

Finally, in affirming the district court’s analysis of the other preliminary-injunction factors, the Eighth Circuit agreed that it is “always in the public interest to protect constitutional rights.” *Id.* at \*3. It rejected the argument, which Defendant also makes here (*ECF No. 58, at 21*), that that

principle applies only to rights protected by the First Amendment and not to the rest to the Constitution. [2025 WL 1660112, at \\*3 & n.2](#). The Court should reach the same conclusion here.

Dated: June 13, 2025

William M. Jay (#480185)  
GOODWIN PROCTER LLP  
1900 N Street, NW  
Washington, DC 20036  
(202) 346-4000  
wjay@goodwinlaw.com

Respectfully submitted,

s/ Andrianna D. Kastanek  
Andrianna D. Kastanek (#6286554)  
JENNER & BLOCK LLP  
353 N. Clark Street  
Chicago, IL 60654  
(312) 840-7285  
akastanek@jenner.com

*Counsel for Plaintiff*

# **EXHIBIT A**

2025 WL 1660112

Only the Westlaw citation is currently available.

United States Court of Appeals, Eighth Circuit.

ASSOCIATION FOR ACCESSIBLE  
MEDICINES, Plaintiff - Appellee

v.

[Keith M. ELLISON](#), in his official capacity as Attorney  
General of the State of Minnesota, Defendant - Appellant

No. 24-1019

|

Submitted: October 23, 2024

|

Filed: June 12, 2025

Appeal from United States District Court for the District of  
Minnesota

#### Attorneys and Law Firms

Counsel who presented argument on behalf of the appellant  
and appeared on the appellant brief was Nicholas J. Pladson,  
AAG, of Saint Paul, MN. The following attorney(s) also  
appeared on the appellant brief; [Noah Lewellen](#), AAG, of  
Saint Paul, MN., [Jason Timothy Pleggenkuhle](#), AAG, of Saint  
Paul, MN.

Counsel who presented argument on behalf of the appellee  
and appeared on the appellee brief, was [William M. Jay](#), of  
Washington, DC. The following attorney(s) also appeared  
on the appellee brief; Collin Mark Grier, of Washington,  
DC., Benjamin Timothy Hayes, of Washington, DC., [David  
Leonard Hashmall](#), of Minneapolis, MN.

Before [COLLTON](#), Chief Judge, [GRUENDER](#) and  
[KOBES](#), Circuit Judges.

#### Opinion

[KOBES](#), Circuit Judge.

**\*1** The Association for Accessible Medicines (AAM)  
is a trade organization whose members include generic  
prescription drug manufacturers. AAM sued Minnesota  
Attorney General Keith M. Ellison, challenging the state's  
law regulating drug prices, [Minn. Stat. § 62J.842](#) (the Act).

The district court <sup>1</sup> granted AAM's motion for a preliminary  
injunction, finding that the Act likely violated the dormant  
Commerce Clause. We affirm.

I.

Drug manufacturers sell prescription drugs to nationwide  
wholesale distributors, who then resell to pharmacies,  
healthcare facilities, and other dispensers of prescription  
drugs. Generic drug manufacturers sell drugs in bulk to  
wholesale distributors under long-term, nationwide contracts.  
While manufacturers don't control the prices at which  
wholesalers or retailers sell their products or where they  
are eventually sold, manufacturers impact prices downstream  
by setting the wholesale acquisition cost. The wholesale  
acquisition cost is the baseline price wholesale distributors  
and retailers use to set their prices.

None of the AAM manufacturers are Minnesota entities.  
Nor are the three largest wholesalers. But AAM's members  
are licensed in Minnesota because all manufacturers and  
wholesalers in the supply chain must be licensed in the state  
for a drug to be distributed or sold there. [Minn. Stat. §  
151.252, subd. 1\(g\)](#); [Minn. Stat. § 151.47, subd. 1a\(f\)](#); [Minn.  
R. 6800.1400, subp. 3](#).

The Act prohibits manufacturers from “impos[ing], or  
caus[ing] to be imposed, an excessive price increase ... on  
the sale of any generic or off-patent drug sold, dispensed, or  
delivered to any consumer in the state.” [Minn. Stat. § 62J.842  
subd. 1](#). An “excessive price increase” is defined as a price  
increase that exceeds a certain percentage over the wholesale  
acquisition cost or that exceeds \$30 for a 30-day supply of the  
drug. *Id.*, subd. 2. The Act regulates only manufacturers, not  
wholesale distributors or pharmacies. *See id.*, subd. 3.

AAM sought injunctive relief claiming, among other things,  
that the Act violates the dormant Commerce Clause's  
prohibition on state laws that regulate extraterritorially.  
In granting the preliminary injunction, the district court  
concluded that AAM was likely to succeed on the merits of  
its claim, that AAM's members faced a threat of irreparable  
harm, and that it was a wash whether AAM's harm was greater  
than any injury suffered by granting the injunction or whether  
the injunction would serve the public interest. Minnesota only  
appeals the likelihood of success on the merits and the balance  
of harms/public interest.

II.

“We review a district court’s ultimate ruling on a preliminary injunction for abuse of discretion, though we review its underlying legal conclusions de novo.” *Home Instead, Inc. v. Florance*, 721 F.3d 494, 497 (8th Cir. 2013). A party seeking to preliminarily enjoin the implementation of a state statute must show that it is likely to succeed on the merits, that there is a threat of irreparable harm to the movant if the injunction is not granted, that the balance of harms favors the movant, and that the injunction is in the public interest. *Dataphase Sys., Inc. v. C L Sys., Inc.*, 640 F.2d 109, 113 (8th Cir. 1981) (en banc); *Planned Parenthood Minn., N.D., S.D. v. Rounds*, 530 F.3d 724, 731–32 (8th Cir. 2008) (en banc). “Because our decision is predominantly one of determining whether the established facts fall within the relevant legal definition, albeit a constitutional definition, we apply a *de novo* standard of review in deciding whether there has been a violation of the commerce clause.” *R & M Oil & Supply, Inc. v. Saunders*, 307 F.3d 731, 734 (8th Cir. 2002) (cleaned up) (citation omitted).

\*2 The Commerce Clause grants Congress the power “[t]o regulate Commerce ... among the several States.” U.S. Const. art. I, § 8, cl. 3. “Although the Clause is framed as a positive grant of power to Congress, we have long held that this Clause also prohibits state laws that unduly restrict interstate commerce.” *Tenn. Wine & Spirits Retailers Ass’n v. Thomas*, 588 U.S. 504, 514, 139 S.Ct. 2449, 204 L.Ed.2d 801 (2019) (cleaned up) (citation omitted). A state violates the so-called dormant Commerce Clause by “(1) clearly discriminat[ing] against interstate commerce in favor of in-state commerce, (2) impos[ing] a burden on interstate commerce that outweighs any benefits received, or (3) ha[ving] the practical effect of extraterritorial control on interstate commerce.” *Styczinski v. Arnold*, 46 F.4th 907, 912 (8th Cir. 2022) (cleaned up) (citation omitted). The third way of violating the dormant Commerce Clause—the extraterritoriality doctrine—is at issue here.

In *National Pork Producers Council v. Ross*, the Supreme Court rejected the argument that the extraterritoriality doctrine created an “almost per se rule forbidding enforcement of state laws that have the practical effect of controlling commerce outside the State.” 598 U.S. 356, 371, 143 S.Ct. 1142, 215 L.Ed.2d 336 (2023) (*Pork Producers*) (cleaned up). The Court instead upheld the challenged law, distinguishing it from laws that “had a *specific* impermissible ‘extraterritorial effect.’ ” *Id.* at 374, 143 S.Ct. 1142 (quoting *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 339, 109 S.Ct. 2491, 105 L.Ed.2d 275 (1989)). Unlike the statute in *Pork Producers*, the laws the Court had previously struck down

in its extraterritoriality cases like *Baldwin*, *Brown-Forman*, and *Healy* had the specific impermissible extraterritorial effect of “deliberately ‘prevent[ing] out-of-state firms from undertaking competitive pricing’ or ‘depriv[ing] businesses and consumers in other States of “whatever competitive advantages they may possess.” ’ ” *Id.* (quoting *Healy*, 491 U.S. at 338–339, 109 S.Ct. 2491 (quoting *Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*, 476 U.S. 573, 580, 106 S.Ct. 2080, 90 L.Ed.2d 552 (1986))) (cleaned up); see also *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 521, 55 S.Ct. 497, 79 L.Ed. 1032 (1935). The Court did not overturn “the rule that was applied in *Baldwin* and *Healy*,” preserving its precedent that a state violates the extraterritoriality principle when it enacts “price control or price affirmation statutes that tie[ ] the price of in-state products to out-of-state-prices.” *Pork Producers*, 598 U.S. at 374, 143 S.Ct. 1142 (cleaned up) (citation omitted). So the “classic observation that ‘[a state] has no power to project its legislation into [another state] by regulating the price to be paid in that state’ ” for drugs sold there remains good law. See *Pharm. Rsch. & Mfrs. of Am. v. Walsh*, 538 U.S. 644, 669, 123 S.Ct. 1855, 155 L.Ed.2d 889 (2003) (quoting *Baldwin*, 294 U.S. at 521, 55 S.Ct. 497).

We conclude the Act has the specific impermissible extraterritorial effect of controlling prices outside of Minnesota. Minnesota insists that the Act does not restrict pricing or set policy in other states. But, like our sister circuit when posed with a challenge to a nearly identical Maryland law, we find this argument unavailing. See *Ass’n for Accessible Meds. v. Frosh*, 887 F.3d 664, 672 (4th Cir. 2018). Minnesota argues that because the drugs must eventually end up in Minnesota for a manufacturer to be subject to liability, the Act is not a price control and does not set the price of transactions in other states. But Minnesota concedes that a Colorado manufacturer would be penalized if it sold drugs to a New Jersey distributor at prices above those proscribed by the Act and those drugs ended up in Minnesota. Minnesota “cannot, even in an effort to protect its consumers from skyrocketing prescription drug costs, impose its preferences in this manner.” *Id.* at 673.

The Supreme Court’s decision in *Walsh* confirms our conclusion that Minnesota’s law has the specific impermissible extraterritorial effect of controlling prices under *Baldwin* and *Healy*. There, the Court considered a Maine law challenged under the extraterritoriality doctrine and concluded that “[t]he rule that was applied in *Baldwin* and *Healy*” did not apply because Maine was not “regulat[ing] the price of any out-of-state transaction,” “insist[ing] that

manufacturers sell their drugs to a wholesaler for a certain price,” or “tying the price of its in-state products to out-of-state prices.” *Walsh*, 538 U.S. at 669, 123 S.Ct. 1855 (citation omitted). But under the Act, Minnesota regulates the price of out-of-state transactions, insists that out-of-state manufacturers sell their drugs to wholesalers for a certain price, and ties the price of in-state products—prescription drugs—to the price that out-of-state manufacturers charge their wholesalers. See *Minn. Stat.* § 62J.842, subd. 1, 2.

\*3 Minnesota argues that *Pork Producers* created a “practical presumption against dormant Commerce Clause challenges where a state law does not discriminate.” But the Court did not overturn its cases that applied the dormant Commerce Clause to invalidate statutes that have the specific impermissible extraterritorial effect of controlling prices, nor did it once use the word “presumption.” We cannot conclude that the Court created this presumption while admittedly “say[ing] nothing new” about the extraterritoriality doctrine. *Pork Producers*, 598 U.S. at 374, 143 S.Ct. 1142. We also find the facts in this case analogous to those in *Edgar v. MITE Corp.*, 457 U.S. 624, 641, 102 S.Ct. 2629, 73 L.Ed.2d 269 (1982) (plurality opinion). Here, as there, the law “ ‘directly regulate[s] transactions which [take] place ... wholly outside the State.’ ” *Pork Producers*, 598 U.S. at 376 n.1, 143 S.Ct. 1142 (quoting *Edgar*, 457 U.S. at 641, 102 S.Ct. 2629). Because discrimination is not required when a statute has the specific extraterritorial effect of controlling the price of wholly out-of-state transactions, we think AAM is likely to succeed on the merits of its claim.

Moving to the balance of harms and public interest, these factors “merge” since Minnesota is the nonmoving party. *Eggers v. Evnen*, 48 F.4th 561, 564–65 (8th Cir. 2022). The district court found the balance of the harms and the public

interest to be “a wash.” Minnesota insists that the district court erred by finding a “public interest to protect constitutional rights,” by failing to weigh Minnesota’s interest in enforcing its laws, and by not considering that the Act serves the public interest by making prescription drugs cheaper.

We find no abuse of discretion below. Although Minnesota is right that the public interest is generally “served by maintaining the ability to enforce the law adopted by the Minnesota Legislature,” *Carson v. Simon*, 978 F.3d 1051, 1061 (8th Cir. 2020), it is also “always in the public interest to protect constitutional rights,” *id.* (quoting *Phelps-Roper v. Nixon*, 545 F.3d 685, 694 (8th Cir. 2008), *overruled on other grounds by Phelps-Roper v. City of Manchester*, 697 F.3d 678, 692 (8th Cir. 2012) (en banc)).<sup>2</sup> And the balance of harms is not as clear as Minnesota insists. While the Act might make generic prescription drugs more affordable, it could also backfire and, for example, force generic manufacturers to pull out of the market. All told, the district court did not abuse its discretion by finding that the remaining factors were neutral and in granting the preliminary injunction based on AAM’s likelihood of success on the merits—“the most important of the *Dataphase* factors”—and irreparable harm. *Craig v. Simon*, 980 F.3d 614, 617 (8th Cir. 2020) (per curiam) (cleaned up) (citation omitted).

### III.

Affirmed.

### All Citations

--- F.4th ----, 2025 WL 1660112

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## Footnotes

- 1 The Honorable Judge Patrick J. Schiltz, Chief Judge, United States District Court for the District of Minnesota.
- 2 Minnesota also argues that the district court erred by citing *Carson* for this proposition, since that case was about First Amendment rights. But we have considered upholding constitutional rights in the public interest in other contexts too. See, e.g., *D.M. ex rel. Bao Xiong v. Minn. State High Sch. League*, 917 F.3d 994, 1003 (8th Cir. 2019) (Equal Protection Clause and Title IX).

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