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**VIA ECF**

Hon. Maureen W. Gornik  
Acting Clerk of Court  
United States Court of Appeals for the Eighth Circuit  
111 South 10th Street  
Room 24.329  
St. Louis, MO 63102

**Re: Response to Notice of Supplemental Authority,  
No. 24-1019, *Association for Accessible Medicines v. Ellison***

Dear Ms. Gornik:

The Association for Accessible Medicines respectfully submits this response to the Rule 28(j) letter submitted by Appellant regarding *New Jersey Staffing Alliance v. Fais*, 110 F.4th 201 (3d Cir. 2024). The Third Circuit did not decide whether a direct regulation of out-of-state transactions violates the dormant Commerce Clause, as the district court held here, and its decision is not relevant to this appeal.

In this case, the district court held that Minnesota's price-control law violates the dormant Commerce Clause because it "*directly regulates* upstream sales that take place wholly outside of Minnesota." Add. 13 (emphasis added); see Answering Br. 14-17. By contrast, the Third Circuit in *New Jersey Staffing Alliance* did not address whether the New Jersey law at issue there *directly* regulated out-of-state transactions. It addressed two different arguments: first, whether the law was discriminatory, 110 F.4th at 206-207 (emphasis added), and second, whether the law was invalid simply because of its "extraterritorial *effects*," an argument that failed under *National Pork Producers Council v. Ross*, 598 U.S. 356 (2023). 110 F.4th at 207 (emphasis added).

Because the Third Circuit never addressed whether the law was invalid as a *direct* regulation of wholly out-of-state commerce, the court had no occasion to cite or discuss either the plurality opinion in *Edgar v. MITE Corp.*, 457 U.S. 624 (1982), which concluded that a



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law violated the dormant Commerce Clause because it “directly regulate[d] transactions which take place across state lines,” *id.* at 641, or *Ross*’s explicit statement that its holding did not disturb the *Edgar* plurality opinion or other precedent prohibiting state “law[s] that *directly* regulate[] out-of-state transactions,” 598 U.S. at 376 n.1; *see* Answering Br. 24-25, 28-29.

The New Jersey law at issue in *New Jersey Staffing Alliance* is structured to regulate the many staffing agencies operating *in* New Jersey, whereas Minnesota’s statute directly targets generic pharmaceutical manufacturers, all of which are located *outside* Minnesota. The district court enjoined only those unconstitutional out-of-state applications.

Respectfully submitted,

s/William M. Jay  
William M. Jay

cc: Counsel of Record (via ECF)