

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT**

ASSOCIATION FOR ACCESSIBLE, MEDICINES,	:	CIVIL ACTION NO.
	:	3:25-cv-01757-OAW
	:	
<i>Plaintiff,</i>	:	
	:	
v.	:	
	:	
MARK D. BOUGHTON, in his official capacity as Commissioner of the Connecticut Department of Revenue Services, and	:	
WILLIAM M. TONG, in his official capacity as Attorney General of the State of Connecticut,	:	
	:	
<i>Defendants.</i>	:	December 12, 2025

**DEFENDANTS’ SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO  
PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION**

The text of Public Act 25-168 §§ 345 to 347 (Act) says that “no pharmaceutical manufacturer or wholesale distributor shall, on or after January 1, 2026, sell an identified drug *in this state* at a price that exceeds the reference price for the identified prescription drug, adjusted for any increase in the consumer price index.” Public Act 25-168 § 346(a)(1) (emphasis added). In opposing the plaintiff’s motion for a preliminary injunction, the defendants’ position was, and still is, that the Act passes constitutional muster because the Act regulates conduct, *i.e.*, the sale of identified drugs, occurring *within Connecticut*.<sup>1</sup> The defendants further maintained that the plaintiff’s

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<sup>1</sup> See Dkt. # 29, Defs.’ Memo. in Opp. (Memo), p. 1-2 (“Connecticut’s General Assembly and Governor responded . . . by enacting the [Act], which . . . cap[s] prices at which pharmaceutical manufacturers and wholesale distributors may sell certain prescription drugs in Connecticut.”); p. 13 (“Connecticut has passed a law prohibiting manufacturers and distributors from selling identified drugs in this state at a price that exceeds their reference price . . . . It applies equally to all that do business in Connecticut . . . .”); p. 22 (“[The Act] simply sets a price cap that applies to all such entities who do business in Connecticut.”).

dormant Commerce Clause arguments were without merit because the Act is neither discriminatory nor driven by economic protectionism, and because Connecticut was not directly regulating wholly out-of-state transactions. *See* Memo pp. 10-21; *see also Nat'l Pork Producers Council v. Ross*, 598 U.S. 356 (2023) (*Pork*). And at the December 9, 2025 preliminary injunction hearing, the defendants made clear that (1) the sale of an identified drug “in this state” triggers the Act’s application and (2) where one takes title to an identified drug demonstrates whether the sale for that identified drug took place “in this state.”<sup>2</sup>

Given the above, the Act does not violate the dormant Commerce Clause per the principles set forth in *Pork*. That was the focus of the defendants’ Memo to the Court and constitutes why the plaintiff is unlikely to prevail on the merits. And the defendants respectfully posit that because that the Act is constitutional both on its face and as applied to the circumstances raised by the plaintiff,<sup>3</sup> the Court’s inquiry into the likelihood of success can and should end there. *See Nat'l Shooting Sports Found., Inc. v. James*, 144 F.4th 98, 106-07 (2d Cir. 2025) (*James*) (“Generally, . . . a challenge to a statute before its enforcement will presumptively constitute a facial challenge. . . . Facial challenges are disfavored. . . . [and] the most difficult challenge to mount successfully

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<sup>2</sup> The defendants accept responsibility to the extent this position was not clear in their Memo. However, as discussed herein and in the defendants’ Memo, the Act’s language is plain that the sale must take place “in this state,” and the defendants read the plaintiff’s motion as arguing that, even if a sale occurs within Connecticut, the Act is unconstitutional because there might be out-of-state effects.

<sup>3</sup> *See* Dkt. # 1, Complaint, p. 37 (prayer for relief seeking “a declaration . . . that Defendants’ enforcement of the Act as to the wholly out-of-state transactions of AAM’s members . . . violates the Commerce Clause” and “a permanent injunction prohibiting Defendants from implementing or enforcing the Act against the wholly out-of-state transactions of AAM’s members[.]”).

because, as a general matter, the challenger must establish that no set of circumstances exists under which the Act would be valid.”); *id.* at 107 (“Prospective as-applied challenges are considered comparatively infrequently and seek[] to prove that a statute cannot constitutionally be applied to a specific course of conduct that the challenger intends to follow. . . . Such challenges generally must focus on specific conduct that the plaintiff would pursue but for fear of future enforcement. . . . Challengers bringing preenforcement as-applied challenges cannot rely on hypothetical situations. . . . [and must] identif[y] a specific course of action they would follow but for fear of . . . enforcement[.]”) (internal citations and quotation marks omitted). (internal citations and quotation marks omitted).

In fact, a preliminary injunction is inappropriate here *because* of the plaintiff’s allegations. The plaintiff seeks a declaration and injunction blocking the Act’s enforcement as to “wholly out-of-state transactions.” *See* Complaint, p. 37. But the plain language of the Act says that it applies to sales “in this state,” *i.e.*, on its face, the Act does not apply to “wholly out-of-state transactions.” And as noted above, where one takes title to an identified drug demonstrates whether the sale for that identified drug took place “in this state.” So there is simply no legal basis to enjoin the Act from doing something that it does not do in the first place. Moreover, the plaintiff has not alleged that any Connecticut state agency or official has threatened to enforce the Act against the “wholly out-of-state transactions” of the plaintiff’s members,<sup>4</sup> making the plaintiff’s

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<sup>4</sup>To be fair, the plaintiff did allege that it reached out to the Attorney General’s Office and “other officials,” who “declined to disavow the application of the Act to out-of-state manufacturers and distributors whose products are ultimately sold in Connecticut by third parties.” Complaint, p. 3 ¶ 5. That, however, is not the same as saying that the enforcing agency threatened to apply the Act to the plaintiff’s members, let alone threatened to apply it to the plaintiff’s members’ “wholly out-of-state transactions.”

claims hypothetical and inappropriate for injunctive relief. *See James*, 144 F.4th at 107. In fact, given the disconnect between the Act’s language and the plaintiff’s allegations, there is a serious question as to whether the plaintiff has standing to seek relief here at all. Therefore, to the extent that the Court must adjudicate the plaintiff’s preliminary injunction motion, the defendants continue to maintain that an injunction is not warranted, and herein rely upon and incorporate the arguments in the Memo that the plaintiff is unlikely to prevail on the merits, has not demonstrated an irreparable harm, and does not have the equities or public interest in its favor.

Finally, it is the defendants’ position that the Act’s drug price cap provisions apply only to sales “in this state,” as discussed above. Therefore, if none of the plaintiff’s members’ sales are “in this state” (*i.e.*, are “wholly out-of-state” as the plaintiffs have alleged), then the Act’s drug price cap provisions would not apply to those transactions. **The defendants note that the parties’ counsel have conferred pursuant to the Court’s order. Based on those discussions concerning the clarification presented during the preliminary injunction hearing, it appears that the plaintiff’s concerns might be alleviated, and the parties in this case might be able to resolve the plaintiff’s claims without the need for the Court’s adjudication of the plaintiff’s preliminary injunction motion. Therefore, the defendants anticipate filing, with the plaintiff, a joint notice to that effect pursuant to the Court’s order (Dkt. # 33).**

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Indeed, the fact that a third party ultimately sells an identified drug to a Connecticut patient does not foreclose the existence of earlier in-state sale of the very same drug by a manufacturer or wholesale distributor.

### **CONCLUSION**

For the foregoing reasons, the defendants respectfully request that the court deny the plaintiff's motion for a preliminary injunction.

DEFENDANTS  
MARK D. BOUGHTON, COMM'R OF  
REVENUE SERVICES and  
WILLIAM TONG  
ATTORNEY GENERAL

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### **CERTIFICATION**

I hereby certify that on December 12, 2025, a copy of the foregoing was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

/s/ Patrick T. Ring  
Assistant Attorney General