

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

HEALTHCARE DISTRIBUTION ALLIANCE,	:	CIVIL ACTION NO.
	:	3:25-cv-01724-OAW
<i>Plaintiff,</i>	:	
	:	
v.	:	
	:	
MARK D. BOUGHTON, in his official capacity	:	
as Commissioner of the Connecticut	:	
Department of Revenue Services, and	:	
WILLIAM TONG, in his official capacity as	:	
Attorney General for 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

<sup>1</sup> See Dkt. # 34, 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. 12 (“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. 16 (“[The Act] simply sets a price cap that applies to all such entities who do business in Connecticut. . . . [W]hen a manufacturer or distributor sells an identified drug *in Connecticut*, the Act requires that the manufacturer or distributor . . . fix the price to the *national* WAC.”) (emphasis in original).

dormant Commerce Clause argument—whereby Connecticut would be prohibited from regulating conduct in Connecticut because there might be out-of-state effects—is incorrect because it advances the “almost per se” rule of extraterritoriality, which the Supreme Court has rejected. *See* Memo pp. 13-19; *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 on its face, the Court’s inquiry into the likelihood of success *in this case*—which is a broadside attack the Act in its entirety<sup>3</sup>—can and should end there. *See Nat’l Shooting Sports Found., Inc. v. James*, 144 F.4th 98, 106-07 (2d Cir. 2025) (“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 because, as a general matter, the challenger must establish that no set of circumstances

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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 the Act violates the Constitution and “a permanent injunction prohibiting Defendants . . . from implementing or enforcing the Drug Price Cap[.]”)

exists under which the Act would be valid.”) (internal citations and quotation marks omitted). That is to say, in such a facial challenge, it is not for the defendants to identify every possible avenue that the sale of an identified drug might take, and it is not clear from the Complaint that the plaintiff could even do so.

But beyond that, it appears that the plaintiff wants some kind of pledge from the Commissioner of Revenue Services (or possibly an order from this Court) stating whether the Act does or does not apply in particular situations. The problem there is that, as the plaintiff itself admitted at the preliminary injunction hearing, prescription drugs move through a complex distribution chain involving various parties, contracts, and transactions. The issue of where one takes title is so fact-specific that the defendants cannot possibly give a general assurance that there is no set of circumstances under which the Commissioner of Revenue Services would enforce the Act against the plaintiff's members, nor can (or should) the Commissioner of Revenue Services opine on the Act's applicability to a particular transaction without having a fully developed factual record that would help him reach a conclusion as to whether a manufacturer or wholesale distributor sold an identified drug “in this state.”<sup>4</sup> And in the context of whether the Court should grant an injunction with respect to any prospective “as applied” challenge to the Act's constitutionality, the plaintiff simply has not presented a

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<sup>4</sup> For example, it might be one thing for an out-of-state purchaser to buy identified drugs on behalf of a chain and ship those drugs to a centralized out-of-state warehouse, from which the identified drugs are eventually shipped to individual locations in Connecticut; and another for single Connecticut-based entity to purchase identified drugs from a wholesale distributor under a contract stating that title is taken outside Connecticut (even if the wholesale distributor shipped those drugs directly to the Connecticut-based entity in Connecticut). In that second hypothetical, the parties would need to evaluate the applicable law on whether such a contractual provision does, in fact, govern where title was taken, or can it be rebutted based on the facts of the transaction.

specific, factual basis to do so. *See 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).<sup>5</sup>

In any event, based on recent discussions among counsel, it is the defendants’ understanding that, even with the clarification presented during the preliminary injunction hearing, some of the plaintiff’s members’ activities would be subject to the Act’s provisions, namely, there are circumstances in which the plaintiff’s members sell identified drugs for which title is taken in Connecticut. Plaintiff’s counsel has represented to defendants’ counsel that the clarification does not affect their position on the dormant Commerce Clause issues, which still require adjudication. Therefore, with respect to the plaintiff’s requested preliminary injunction, the defendants herein rely upon and incorporate the arguments in the Memo that the plaintiff is unlikely to prevail

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<sup>5</sup> To that point, the plaintiff is not without relief. If the plaintiff or one of its members does have a question concerning “the applicability to specified circumstances of a provision of the general statutes, a regulation, or a final decision on a matter within the jurisdiction of [an] agency[,]” it can petition that agency for a declaratory ruling under Connecticut’s Uniform Administrative Procedure Act. *See* Conn. Gen. Stat. § 4-176(a). If the agency issues a ruling, the petitioner has the opportunity to seek judicial review, *see id.* § 4-183(a); and if agency declines to issue a ruling the petitioner has the opportunity to bring a declaratory judgment action directly in court, *see id.* § 4-175(a).

on the merits, has not demonstrated an irreparable harm, and does not have the equities or public interest in its favor.

### **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