UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 25-3216 _____ Caption [use short title] Healthcare Distribution Alliance v. Boughton

Motion for: emergency motion for injunction pending appeal; expedition of appeal

Set forth below precise, complete statement of relief sought:

(1) emergency injunction pending appeal of Connecticut Drug Price Cap, which goes into effect Jan. 1, 2026 as applied to plaintiff and its members; (2) expedited review of appeal

MOVING PARTY: Healthcare Distribution Alliance **OPPOSING PARTY:** Mark D. Boughton and William Tong

- [x] Plaintiff
- [ ] Defendant
- [x] Appellant/Petitioner
- [ ] Appellee/Respondent

MOVING ATTORNEY: Jonathan Massey **OPPOSING ATTORNEY:** Patrick Ring

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Court- Judge/ Agency appealed from: U.S. Distict Court for hte District of Connecticut

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
- [x] Yes
- [ ] No (explain):

Opposing counsel's position on motion:
- [ ] Unopposed
- [x] Opposed
- [ ] Don't Know

Does opposing counsel intend to file a response:
- [ ] Yes
- [ ] No
- [x] Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUCTIONS PENDING APPEAL:

Has this request for relief been made below? [x] Yes [ ] No

Has this relief been previously sought in this court? [ ] Yes [x] No

Requested return date and explanation of emergency: January 2, 2026, which is the effective date of the Drug Price Cap Plaintiff has made a showing that the Cap will cause irreparable harm as of that date.

Is oral argument on motion requested? [x] Yes [ ] No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? [ ] Yes [x] No If yes, enter date:

Signature of Moving Attorney:

/s Jonathan Massey **Date:** 12-29-2025 Service by: [x] CM/ECF [ ] Other [Attach proof of service]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

HEALTHCARE DISTRIBUTION ALLIANCE, *Plaintiff-Appellant*, *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, *Defendants-Appellees*.	:	No. 25-3216

EMERGENCY MOTION OF PLAINTIFF-APPELLANT
HEALTHCARE DISTRIBUTION ALLIANCE
FOR INJUNCTION PENDING APPEAL AND FOR EXPEDITED APPEAL

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, Plaintiff-Appellant Healthcare Distribution Alliance states that it is a 501(c)(6) nonprofit, voluntary association. It does not have a parent corporation, and no publicly held company has a 10% or greater ownership interest in it.

By: */s/ Jonathan S. Massey*
Jonathan S. Massey

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INTRODUCTION

Pursuant to Rule 8(a)(1)(C) of the Federal Rules of Appellate Procedure, Plaintiff-Appellant Healthcare Distribution Alliance ("HDA") respectfully moves on an emergency basis for an injunction pending appeal and for an expedited appeal with respect to the Connecticut Drug Price Cap of Public Act No. 25-168, §§ 345–47 ("the Drug Price Cap" or "Cap") (A109–121), which is effective January 1, 2026. HDA is the trade association for wholesale distributors, which ensure the safe, efficient, and reliable delivery of 10.5 million healthcare products every day from manufacturers to pharmacies, hospitals, and other healthcare providers. A015.

Given the January 1, 2026 effective date, HDA respectfully requests that this Court provide relief on or before that date. Plaintiff has met and conferred with counsel for the State, who have stated that the State opposes the request for an injunction pending appeal but does not oppose the request for expedition so long as the State is given 45 days to prepare its appellee's brief.

The Drug Price Cap freezes the prices for Connecticut sales of covered products (off-patent branded drugs, generic drugs, and interchangeable biologic products) at a specific "reference price," defined as the Wholesale Acquisition Cost ("WAC") (*i.e.*, the manufacturer's list price) as of January 1, 2025, adjusted by the Consumer Price Index ("CPI"). Conn. Pub. Act 25-168, § 345(11). Regardless of

how much WAC increases in the rest of the United States, the Drug Price Cap freezes the Connecticut price at the reference price, adjusted for inflation.

Distributors are subject to the Drug Price Cap *even though they do not set or control WAC for drug products*. It is undisputed that drug manufacturers set WAC, and they do so on a national, not state-by-state, basis. A081, 084, 087. Similarly, distributors operate on an interstate basis, purchasing from manufacturers and serving their downstream customers (*i.e.*, retailers, medical practices, hospitals, and other patient-facing organizations) through a network of distribution centers geographically dispersed throughout the nation. *Id.* It is undisputed that no member of HDA has a distribution facility inside Connecticut. *Id.*

The Drug Price Cap displays impermissible in-state favoritism and protectionism by mandating a lower reference price for Connecticut than the prevailing WAC price in other states and thus ensuring that the prices of covered products will be artificially lower in Connecticut than in New York, Massachusetts, and every other state where WAC is the prevailing price. The price differential between Connecticut and other states will only grow over time.

Moreover, the State has reinterpreted the Cap during the course of this litigation in a way that creates additional constitutional infirmities. By its terms, the Cap applies to both "pharmaceutical manufacturer[s]" and "wholesale distributor[s]," § 346(a)(1), but not the downstream entities in Connecticut (like

pharmacies) that actually sell covered products to consumers. At a December 9, 2025 preliminary injunction hearing in this case, the State "for the first time" (A008) announced a new interpretation of the statute under which both out-of-state manufacturers *and* in-state downstream entities (like pharmacies) are exempt from the Cap. A008–009. The State invoked the doctrine of "constitutional avoidance" in support of this new interpretation (A071), evidently recognizing the grave constitutional questions raised by the Cap.[1] But the new interpretation creates the bizarre situation in which the Cap will *not* apply to entities that set WAC (out-of-state manufacturers) or actually sell drug products to consumers (such as in-state pharmacies). Instead, the Cap will target the entities stuck in the middle (distributors) that have no control over either WAC or the prices ultimately charged to consumers. Such a Kafkaesque construction puts distributors in the untenable position where they face potentially endless increases in WAC without recourse (absent injunctive relief). A price control law that does not cover the entities that actually control prices is unconstitutionally arbitrary.

Distributors already face irreparable harm. According to a database that reports only WAC increases greater than 16%, manufacturers have already raised the WAC of *over 650* covered products by far more than the rate of inflation since

[1] "[T]hose who invoke the doctrine [of constitutional avoidance] must believe that the alternative is a serious likelihood that the statute will be held unconstitutional." *Almendarez-Torres v. United States*, 523 U.S. 224, 238 (1998).

January 1, 2025. A089–91; *see also* ECF No. 44, at 2 n.3.[2] Accordingly, as of January 1, 2026, HDA members purchasing at WAC will face a Hobson's choice: (1) buy the covered product at the manufacturer's *higher* WAC price and sell to Connecticut customers at the *lower* reference price, or (2) violate the Drug Price Cap and face severe civil penalties. This Court should grant the motion for an injunction pending appeal with respect to HDA and its members.

BACKGROUND

In the District Court, the State did not controvert any of the declarations filed in support of the Motion for Preliminary Injunction. The State explained that "[t]he parties largely agree on how the pharmaceutical supply chain works." ECF No. 34, at 2. It acknowledged that "[m]anufacturers, not distributors, set the WAC." *Id.* at 3. It affirmed HDA's statement that none of its members even has a distribution facility inside Connecticut. *Id.* at 16 n.16.

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[2] Although the 16% figure within this dataset includes cumulative increases within the two previous calendar years, the CPI increased less than 3% in 2025 and only about 8% between January 2023 and December 2025. *See Consumer Price Index for All Urban Consumers*, Fed. Rsrv. Bank of St. Louis (FRED) (Dec. 18, 2025), https://fred.stlouisfed.org/series/CPIAUCSL. Manufacturers' 2025 increases in WAC range as high as 40.73%, 56.4%, 93.72%, and even 98.8%. *See November Monthly Update – Prescription Drug WAC Increases (Excel)*, CalHHS (Nov. 7, 2025) (respectively, Nystatin (row 1137), silver sulfadiazine cream (row 84), Flotrex (row 939), and Lidotral (row 941) (NDC Numbers 00904727670, 67877012420, 59088001554, 59088020407)), https://data.chhs.ca.gov/dataset/prescription-drug-wholesale-acquisition-cost-wac-increases/resource/b4554543-fec7-46c7-a518-b7d07bd1c1f3.

Beginning on January 1, 2026, a distributor is prohibited from selling a covered drug product in Connecticut at a price that exceeds the reference price adjusted for any increase in the CPI unless the drug has been identified by the Department of Health & Human Services as being in shortage.[3] Conn. Pub. Act No. 25-168, § 346(a). Any distributor that violates this provision is subject to civil penalty equal to 80% of the difference between: (i) revenue the distributor would have earned from all sales of the identified drug in the state in the calendar year, and (ii) revenue that the distributor would have earned from all sales of the drug in the state during the calendar year if the distributor had sold the product at a price that did not exceed the reference price. *Id.* § 346(b)(1). The law also prohibits distributors from withdrawing prescription drugs from Connecticut without 180 days' notice and from withdrawing drugs for the purpose of avoiding the civil penalties prescribed by the Act, subject to a $500,000 civil penalty. *Id.* § 347.

HDA filed an action on October 14, 2025, raising Commerce Clause, Fourteenth Amendment, and other claims. The complaint alleged that the Cap violates the Fourteenth Amendment because it "exposes wholesale distributors to penalties for activities beyond their control. Wholesale distributors operate under

[3] Currently, only 75 drugs are designated by HHS as being in shortage. *FDA Drug Shortages*, U.S. Food & Drug Admin., https://www.accessdata.fda.gov/scripts/drugshortages/default.cfm (last visited Dec. 28, 2025). In contrast, the Drug Price Cap applies to *thousands* of drug products.

contract with manufacturers and do not set or control the WAC for drug products." ECF No. 1 ¶ 46. HDA sought expedited consideration (which the District Court granted) so that a pre-enforcement injunction could be issued before the Drug Price Cap takes effect. *See* ECF Nos. 1, 31–32. The District Court held a preliminary injunction hearing on December 9, at which the State announced its new interpretation of the Cap and HDA responded that it aggravated the constitutional flaws in the Cap. A031, A054, A058, A063–064.

The District Court denied HDA's motion for preliminary injunction on December 24, 2025, ruling that HDA had failed to establish a likelihood of success on the merits but not reaching the other preliminary injunction factors. A003–021. On December 26, HDA filed a notice of appeal to this Court and a motion for injunction pending appeal in the District Court, which the District Court denied on December 28. A122–126, A133–34 (ECF Nos. 46–48).

ARGUMENT

Substantially the same four-factor test applies to motions for a preliminary injunction and motions for an injunction pending appeal: Plaintiff must show that "(1) [it is] likely to succeed on the merits; (2) [it is] likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in their favor; and (4) an injunction is in the public interest." *Agudath Israel of Am. v. Cuomo*, 980 F.3d 222, 225–26 (2d Cir. 2020).

I. HDA Is Likely to Succeed on Its Claim That The Drug Price Cap is Unconstitutional.

The District Court's order in this case conflicts with every federal appellate decision to have considered similar state drug price controls. In *Association for Accessible Medicines v. Frosh*, 887 F.3d 664 (4th Cir. 2018), for example, the Fourth Circuit invalidated a state drug price cap, explaining that "[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*. at 671. The Fourth Circuit noted that the law applied to sales by distributors, "*none of which are based in Maryland*." *Id*. at 667 (emphasis in original). Here, no HDA member has a distribution facility in Connecticut. The Fourth Circuit continued: "Significantly, the retailers that sell the drug directly to the consumer cannot be held liable under the Act; only '[a] manufacturer or wholesale distributor' is prohibited from 'engag[ing] in price gouging.'" *Id.* at 671 (alterations in original). The Connecticut Cap likewise does not apply to the in-state retailers that actually sell covered drug products to consumers. The Fourth Circuit also observed that, "[b]ecause the Act targets wholesale rather than retail pricing, an analogous restriction imposed by a state other than Maryland" had the potential to create "conflicting state requirements." *Id*. at 673. Again, the same is true here.

The Supreme Court cited *Frosh* with approval in *National Pork Producers Council v. Ross*, 598 U.S. 356, 374 (2023) (citing *Frosh*, 887 F.3d at 669),

commenting that *Frosh* read prior cases[4] condemning state price controls "in exactly the same way" as the Supreme Court did. *Id.* at 374.

Subsequently, the Eighth Circuit invalidated a Minnesota drug price statute because it had "the specific impermissible extraterritorial effect of controlling prices outside of Minnesota." *Ass'n for Accessible Meds. v. Ellison*, 140 F.4th 957, 960 (8th Cir. 2025). That reasoning is squarely applicable here.

In *Pharm. Rsch. & Mfrs. of Am. v. District of Columbia* (*PhRMA*), 406 F. Supp. 2d 56 (D.D.C. 2005), *aff'd sub nom., Biotech. Indus. Org. v. District of Columbia*, 496 F.3d 1362 (Fed. Cir. 2007), the district court invalidated a District of Columbia drug price cap as extraterritorial, noting that the relevant distributors were "found out of state," even though the law's application was "triggered by an in-state sale." *Id*. at 69–70. The Federal Circuit affirmed on preemption grounds. *See* 496 F.3d at 1374.

And in *Pharm. Rsch. & Mfrs. of Am. v. Comm'r, Maine Dep't of Hum. Servs*., Civ. 00-157-B-H, 2000 WL 34290605, at *2 (D. Me. Oct. 26, 2000), the district court struck down a Maine drug price control on extraterritoriality grounds, noting that "by far the greater bulk of . . . wholesalers and distributors" were located "outside Maine." Maine did not appeal the district court's preliminary injunction against the

[4] *Healy v. Beer Inst.*, 491 U.S. 324 (1989); *Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*, 476 U.S. 573 (1986); *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511 (1935).

price control provision, and the First Circuit acknowledged that "price control" schemes have been held invalid where they sought "to benefit the buyers and sellers in the home state," *Pharm. Rsch. & Mfrs. of Am. v. Concannon*, 249 F.3d 66, 81 (1st Cir. 2001), which is exactly what the Drug Price Cap does in Connecticut.

The Drug Price Cap is unconstitutional for multiple reasons.

A. The Drug Price Cap Is Protectionist.

1. The Cap is Protectionist On the Consumer Level.

The Drug Price Cap is impermissibly protectionist because it mandates an artificially lower price for Connecticut than the prevailing WAC price in other states and thus "attempts to give local consumers an advantage over consumers in other States." *Camps Newfound/Owatonna, Inc. v. Town of Harrison*, 520 U.S. 564, 577–78 (1997) (quoting *Brown-Forman*, 476 U.S. at 580)). Either consumers in other states will absorb the costs not borne by Connecticut or other states will respond by enacting their own price caps mandating even lower prices with even more burdensome reference price formulas, setting off an "artificial race between legislatures to set the lowest" reference price for drugs. *PhRMA*, 406 F. Supp. 2d at 70 (striking down D.C. drug price regulation under Commerce Clause).

The Supreme Court has consistently instructed that "[a]voiding this sort of 'economic Balkanization,' and the retaliatory acts of other States that may follow, is one of the central purposes of our negative Commerce Clause jurisprudence," *Camps*

Newfound/Owatonna, 520 U.S. at 577 (quoting *Hughes v. Oklahoma*, 441 U.S. 322, 325 (1979)); *see also C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383, 390 (1994) (Commerce Clause "prohibit[s] . . . laws that would excite those jealousies and retaliatory measures the Constitution was designed to prevent").

The Supreme Court in *Pork Producers* recognized the risk of economic retaliation, explaining (in its discussion of *Healy*) that, "if the Connecticut law stood, 'each of the border States' could 'enac[t] statutes essentially identical to Connecticut's' in retaliation—a result often associated with avowedly protectionist economic policies." 598 U.S. at 373 (alteration in original) (quoting *Healy,* 491 U.S. at 339–40). *Pork Producers* also condemned state price-control laws for depriving "consumers in other States of whatever competitive advantages they may possess." *Id*. at 374 (internal citations and quotation marks omitted). The Drug Price Cap offends that principle by forcing consumers in other states to absorb the costs not borne by Connecticut consumers and thereby denying out-of-state consumers the competitive advantages they would otherwise enjoy.

In a similar case, the State of New York did not *even challenge* a district court order striking down under the Commerce Clause a prohibition on the pass-through of opioid taxes to New York consumers. *Healthcare Distrib. All. v. Zucker*, 353 F. Supp. 3d 235, 262 (S.D.N.Y. 2018), *rev'd in part on other grounds sub nom., Ass'n for Accessible Meds. v. James*, 974 F.3d 216 (2d Cir. 2020). The district court

reasoned that "New York opioid customers would be protected from any price increases in their purchases," and "out-of-state drug purchasers, with no representation in New York's legislature or executive, would bear the cost of New York's policy program. This shifting of burdens and benefits is antithetical to the idea of intra-national free trade and demonstrates why the Dormant Commerce Cause exists . . . ." *Id.* at 262 (internal quotation marks and citation omitted). This Court noted that New York did not challenge the invalidation of the cost-pass-through prohibition, *James*, 974 F.3d at 228, and on remand the district court noted that the prohibition remains "constitutionally invalid." 2021 WL 12103902, at *2 (S.D.N.Y. Oct. 20, 2021).

The District Court below did not deny the risk that the Drug Price Cap could force consumers in other states to absorb costs not borne by Connecticut consumers. Indeed, the District Court acknowledged that distributors could respond to the Drug Price Cap by selling covered drugs in other states at prices "higher than the Reference Price." A018. Rather than contend with the Cap's cost-shifting effects, the District Court reasoned that the Cap "does not mandate that HDA's members sell identified drugs in Connecticut at prices lower than anywhere else." *Id.* But the mandate is a matter of simple economics. Distributors purchasing drugs at WAC and selling them in Connecticut at the artificially low reference price will lose revenue on every Connecticut transaction. The Cap will necessarily require

consumers in other states to bear a greater burden, just as the New York prohibition on the pass-through of opioid taxes did.

2. The Cap Is Protectionist on the Commercial Level.

Although this Court need not go further to conclude that the Drug Price Cap is protectionist, it is clear that Cap also discriminates against out-of-state entities (distributors) by forcing them alone to bear the cost of Connecticut's program, rather than in-state retailers. The District Court brushed aside this discrimination on the ground that retailers and distributors are not "competitors." A013 n.6. But the District Court's approach misreads Supreme Court precedent. *General Motors Corp. v. Tracy*, 519 U.S. 278, 298 (1997), asked merely whether entities were "substantially similar." Here, in-state retailers and out-of-state distributors are both links in the chain of moving important medicines from manufacturer to patient. Forcing one but not the other to shoulder the costs of Connecticut's program is plainly an attempt to favor local economic interests. *See Pork Producers*, 598 U.S. at 371 (noting "the familiar concern with preventing purposeful discrimination against out-of-state economic interests"); *Ore. Waste Sys., Inc. v. Dep't of Env't Quality*, 511 U.S. 93, 99 (1994) (discrimination "simply means differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter"). And the District Court's reasoning conflicts with the Fourth Circuit's decision in *Frosh*, 887 F.3d at 671 (noting that the Cap applied to out-of-state

distributors but not in-state retailers), which the Supreme Court cited with approval in *Pork Producers*, 598 U.S. at 374.

The District Court was also wrong in ruling that the Cap "treats all covered distributors the same," A013, and does not "prevent or discourage competition among distributors." A019. A distributor that does a disproportionate amount of business in Connecticut will be put at a competitive disadvantage in other States vis-à-vis other distributors because it will be saddled with extra costs that Connecticut has forced it to absorb. Thus, the Cap hinders distributors "from undertaking competitive pricing" outside Connecticut. *Pork Producers*, 598 U.S. at 374 (internal citations and quotation marks omitted). It creates a perverse incentive for distributors not to sell drug products in Connecticut but rather to focus their business on other jurisdictions where they can earn a fair return.

Healy and *Brown-Forman* invalidated state price control laws based on much less severe economic impacts. In both cases, the plaintiffs could have complied with the challenged state laws by ending their promotional and discount schemes. But the Supreme Court held that putting beer brewers and liquor distillers to a choice between (i) continuing those schemes or (ii) complying with state price control statutes amounted to an unconstitutional interference with commerce. *See Healy*, 491 U.S. at 339 (statute impermissibly "deter[ed] volume discounts" and "promotional discounts"); *Brown-Forman*, 476 U.S. at 578 ("Appellant contended

that the only way to avoid this dilemma was to stop offering promotional allowances . . . ."). Offering an out-of-state company "the Hobson's choice . . . of discontinuing the promotional allowances altogether" would amount to "extraterritorial regulation of interstate commerce in violation of the Commerce Clause." *Healy*, 491 U.S. at 332 (noting the "Court agreed" with this argument by plaintiffs).

These interferences with interstate commerce at the commercial level are yet another reason that the Cap is invalid.

3. The State's Position Has No Limiting Principle.

The State's position in this case would open a Pandora's box permitting any jurisdiction to set its own unilateral price caps on any and all interstate goods—whether gasoline, grocery items, cars, or anything else—in the name of consumer protection. Such a move would provoke the kind of destructive cycle that prompted the adoption of the Constitution in the first place: "the conviction that in order to succeed, the new Union would have to avoid the tendencies toward economic Balkanization that had plagued relations among the Colonies and later among the States under the Articles of Confederation." *Tenn. Wine & Spirits Retailers Ass'n v. Thomas*, 588 U.S. 504, 517 (2019) (citation omitted). "The Constitution was framed . . . upon the theory that the peoples of the several states must sink or swim together,

and that in the long run prosperity and salvation are in union and not division." *Baldwin*, 294 U.S. at 523.

B. The Drug Price Cap Is Impermissibly Extraterritorial.

Next, the Drug Price Cap takes aim at pricing decisions that occur entirely outside Connecticut and therefore violates the constitutional prohibition on extraterritorial state legislation embodied in the Commerce Clause.

The District Court held that the extraterritoriality principle is a "dead letter" after *Pork Producers*. A012 (citation omitted). Not so. *Pork Producers* reaffirmed that state "price control or price affirmation statutes" are invalid if they tie "the price of . . . in-state products to out-of-state prices." 598 U.S. at 374 (quoting *Pharm. Rsch. and Mfrs. of Am. v. Walsh*, 538 U.S. 644, 669 (2003)). That is exactly what the Cap does. It imposes an in-state reference price defined according to a nationwide metric (January 1, 2025 WAC, adjusted for inflation) which will ensure that Connecticut prices remain below manufacturer list prices prevailing nationally. The Cap ties Connecticut prices to a discounted version of out-of-state prices.

Although *Pork Producers* distinguished the prior price regulation cases, it did not overrule or reject them. It simply found them inapplicable to a California hog-slaughtering law having nothing to do with price (and carrying no risk of a race-to-the-bottom among states). The District Court's holding creates a sharp conflict with the Eighth Circuit, which correctly observed that *Pork Producers* "[said] nothing

new" about *Healy*, *Brown-Forman*, and *Baldwin*, and applied those cases to strike down Minnesota's drug price cap due to its "specific impermissible extraterritorial effect of controlling prices outside of Minnesota." *Ellison*, 140 F.4th at 960–61. There is no dispute in this case that WAC is set outside Connecticut.

Other cases cited by the District Court below recognized the key distinction (for Commerce Clause purposes) between state price control laws and other forms of state legislation. For example, the District Court cited *New Jersey Staffing Alliance v. Fais*, 749 F. Supp. 3d 511, 525 (D.N.J. 2023), *aff'd*, 110 F.4th 201 (3d Cir. 2024), as "describing *Pork Producers* as a 'revolution.'" A011. In fact, the district court in *Fais* noted that the price cases of *Healy*, *Brown-Forman*, and *Baldwin* "clearly survived the *National Pork* revolution." 749 F. Supp. 3d at 525. The Third Circuit also recognized the price-centric nature of those cases. *See Fais*, 110 F.4th at 206 (noting the "price-control laws" in those cases that "'operated like a tariff or customs duty'" (citation omitted)).

The District Court also cited *GenBioPro, Inc. v. Sorsaia*, No. CV 3:23-0058, 2023 WL 5490179, at *11 (S.D.W. Va. Aug. 24, 2023), *aff'd sub nom., GenBioPro, Inc. v. Raynes*, 144 F.4th 258 (4th Cir. 2025), as stating that *Pork Producers* "abrogated" the "principle against extraterritoriality." A012. In fact, *GenBioPro* opined that *Pork Producers* "appeared to limit dormant Commerce Clause extraterritoriality claims to statutes that discriminate against interstate commerce by

tying in-state prices to out-of-state prices." 2023 WL 5490179, at *11 n.15. The Connecticut Drug Price Cap violates that principle.[5]

C. The State's New Interpretation of the Cap Creates Additional Constitutional Defects.

The State's eleventh-hour reinterpretation of the Drug Price Cap to exempt out-of-state manufacturers makes it even *more* unconstitutional, in two respects. First, the State's new approach based on the situs of title transfer (A008–09) renders the Cap *more* extraterritorial. The State now tells distributors they can avoid the Cap only by changing the fundamental nature of their business and arranging for title to transfer at distribution centers outside Connecticut—in other words, to take additional out-of-state actions to avoid the irreparable harm the Cap would otherwise impose. However, the undisputed evidence showed that transferring title outside Connecticut is impossible, because Connecticut retailers and other customers demand that distributors bear the risk of loss, insurance requirements, and regulatory burdens until the products are delivered in-state. A099–100, A103–104, A106–108. Moreover, if other states adopted the same "situs" test as Connecticut, then distributors would face even more burdens. For example, if New York adopted a

[5] *Ass'n for Accessible Meds. v. Raoul*, No. 24 C 544, 2025 WL 2764558 (N.D. Ill. Sept. 26, 2025), upheld an Illinois price control law but acknowledged that *Pork Producers* "did not answer the precise question this case presents," *id.* at *4, thereby effectively conceding that *Pork Producers* could not have overturned existing price-control extraterritoriality precedent.

similar statute, a distributor (having moved the situs of title transfer to its New York facility in response to Connecticut's new interpretation) would now find that sales to Connecticut retailers were governed by the New York statute—unless the distributor moved its operations out of New York as well. And so on. In sum, the State is merely piling one extraterritorial feature upon another.

Second, the Drug Price Cap as reinterpreted by the State is wholly arbitrary. It is a form of price control that does not apply to the entities that actually control prices—manufacturers and downstream entities like retailers. Instead, the Cap targets distributors, even though it is undisputed that they do not set or control WAC. Such an arbitrary classification is unconstitutional. *See, e.g., Allegheny Pittsburgh Coal Co. v. Cnty. Comm'n of Webster Cnty.*, 488 U.S. 336, 345–46 (1989) (arbitrary tax treatment); *Saint Joseph Abbey v. Castille*, 712 F.3d 215, 225 (5th Cir. 2013) (noting fatal "disconnect" between law and rationale); *Merrifield v. Lockyer*, 547 F.3d 978, 991 (9th Cir. 2008) ("[A] rationale so weak . . . fails to meet the relatively easy standard of rational basis review").

The District Court acknowledged HDA's argument that the reinterpreted law was "Kafkaesque" but deferred to the findings of a "bipartisan, bicameral" task force. A015–16. But the task force report, while discussing manufacturers' role in

drug pricing, said nothing about distributors' role.[6] In fact, there is not a shred of legislative history indicating that the Governor and legislature intended an arbitrary measure that would target distributors but not manufacturers. Indeed, the Governor's press statement focused only on manufacturers, explaining that the Cap would "levy a civil penalty on manufacturers that raise prices above that threshold."[7]

II. HDA's Members Will Suffer Imminent Irreparable Harm Without An Injunction.

HDA's members face at least two forms of irreparable harm sufficient to justify injunctive relief. First, "the alleged violation of a constitutional right triggers a finding of irreparable injury." *Conn. Dep't of Env't Prot. v. O.S.H.A.*, 356 F.3d 226, 231 (2d Cir. 2004) (internal quotation marks and citations omitted). This Court has applied this rule in the dormant Commerce Clause context. *See Variscite NY Four, LLC v. N.Y. State Cannabis Control Bd.*, 152 F.4th 47, 60 (2d Cir. 2025).

Second, HDA's members face irreparable harm because WAC prices for over 650 covered drug products have already increased faster than inflation during

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[6] *See* Prescription Drug Task Force, Final Report and Recommendations (Feb. 26, 2025), https://www.cga.ct.gov/hs/tfs/20241204_Prescription%20Drug%20Task%20Force/Final%20Report/CT%20Prescription%20Drug%20Task%20Force%20Final%20Report_20250226.pdf.

[7] Press Release, Governor Lamont Announces 2025 Legislative Proposal: Reduce Prescription Drug Costs (Feb. 6, 2025), https://portal.ct.gov/governor/news/press-releases/2025/02-2025/governor-lamont-announces-2025-legislative-proposal-reduce-prescription-drug-costs?language=en_US.

calendar year 2025. Thus, distributors purchasing at WAC already face the Hobson's choice of (1) buying covered product at WAC and selling at the lower reference price, or (2) facing civil penalties under the Cap. *See Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 381 (1992). The State's suggestion that distributors should shift the situs of title transfer outside Connecticut is impossible. A099–100, A103–104, A106–108. It would require a "[m]ajor disruption of [their] business" and constitutes further irreparable harm warranting injunctive relief. *Nemer Jeep-Eagle, Inc. v. Jeep-Eagle Sales Corp.*, 992 F.2d 430, 435 (2d Cir. 1993). And in light of Connecticut's sovereign immunity, which it asserted in the District Court (ECF No. 34 at 29), an after-the-fact monetary award would not be available to compensate HDA members for their losses. *See Am. Trucking Ass'ns, Inc. v. Gray*, 483 U.S. 1306, 1309 (1987) (granting stay in Commerce Clause case in light of sovereign immunity obstacles to after-the-fact compensation); *United States v. New York*, 708 F.2d 92, 93 (2d Cir. 1983) (harm irreparable in light of Eleventh Amendment).

III. The Balance of Hardships and Public Interest Militate in Favor of an Injunction.

Balancing the equities favors an injunction pending appeal. HDA members face clear irreparable harm. An injunction will simply temporarily "preserve the

relative positions of the parties" until this appeal is resolved. *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). That purpose favors HDA here.

In contrast, "the Government does not have an interest in the enforcement of an unconstitutional law." *N.Y. Progress and Prot. PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013) (citation and internal quotation marks omitted). Nor can consumer protection justify a Commerce Clause violation. *See Hunt v. Wash. State Apple Advertising Comm'n*, 432 U.S. 333, 353 (1977) (state law invalid "even if enacted for the declared purpose of protecting consumers").

The State's interest is also diminished because multiple provisions of federal law already address drug prices. For example, Medicare, which covers over 69 million Americans,[8] includes two major prescription drug programs addressing drug prices. *See* 42 U.S.C. §§ 1395k(a)(l), 1395x(s)(2)(A), 1395w-3a (Part B); 42 U.S.C. §§ 1395w-102, 1395w111(i)(l) (Part D). Other federal drug price initiatives include the Inflation Reduction Act's Drug Price Negotiation Program, 42 U.S.C. § 1320f, which creates a procedure by which pharmaceutical manufacturers sell certain drugs at steeply discounted prices negotiated by HHS, *Nat'l Infusion Ctr. Ass'n v. Becerra*, 116 F.4th 488, 494 (5th Cir. 2024), and Section 340B of the Public Health Service Act, 42 U.S.C. § 256(b), which requires pharmaceutical manufacturers participating

[8] *Medicare Enrollment Dashboard*, Data.CMS.gov (Sept. 2025), https://data.cms.gov/tools/medicare-enrollment-dashboard.

in Medicaid to provide significant discounts on outpatient drugs to qualified safety-net healthcare providers.

Moreover, given the State's reinterpretation of the Drug Price Cap to exclude out-of-state manufacturers, it cannot rely on the legislative record that was assembled to justify a completely different statute. Rather than furthering the public interest, the Cap threatens to disturb the essential logistical function performed by distributors and ultimately imperil patient access to important medicines. Thus, this case is not simply about harm to interstate markets and wholesale distributors; it is also about protecting patients' access to covered products. The public interest weighs decidedly in HDA's favor.

IV. In the Alternative, This Court Should Grant Expedition of the Appeal.

Given the pressing issues requiring timely resolution, HDA respectfully requests that the Court expedite the appeal. HDA is prepared to file its appellant's brief on or before January 14, 2026, submits the State should be required to file its appellees' brief within 30 days thereafter, and will be prepared to file its reply brief within 14 days. HDA respectfully requests that the Court hold argument at its earliest convenience. The State opposes having 30 days to prepare its appellees' brief but does not oppose the request for expedition so long as it is given 45 days.

CONCLUSION

HDA's motion for an injunction pending appeal should be granted.

Dated: December 29, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2025, a copy of the foregoing document was filed electronically and served by email on counsel for the State. 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 below. Parties may access this filing through the Court's CM/ECF System.

By: */s/ Jonathan S. Massey*
Jonathan S. Massey

CERTIFICATE OF COMPLIANCE

1. This document complies with the word limit of Fed. R. App. P. 27(d)(2)(A) and Local Rule 27.1(a)(3) because it contains 5,195 words, excluding the exempted portions of this document.

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By: */s/ Jonathan S. Massey*
Jonathan S. Massey

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

HEALTHCARE DISTRIBUTION ALLIANCE, *Plaintiff-Appellant*, *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, *Defendants-Appellees*.	:	No. 25-3216

APPENDIX TO EMERGENCY MOTION OF
PLAINTIFF-APPELLANT HEALTHCARE DISTRIBUTION ALLIANCE
FOR INJUNCTION PENDING APPEAL AND FOR EXPEDITED APPEAL

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

HEALTHCARE DISTRIBUTION ALLIANCE, *Plaintiff*, 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), *Defendants*.	)	Civil No. 3:25-cv-1724-OAW

ORDER

THIS ACTION is before the court upon the Motion for a Preliminary Injunction filed by Plaintiff Healthcare Distribution Alliance (hereinafter, "HDA"). ECF No. 27.

HDA is a national trade association representing wholesale distributors of prescription drugs. ECF No. 27-1, at 1. It seeks to enjoin the Attorney General of Connecticut, Defendant William Tong, and the Commissioner of Connecticut's Department of Revenue Services, Defendant Mark D. Boughton, from enforcing against its members Sections 345 through 347 of Public Act No. 25-168 (hereinafter, the "Act"), which will "cap" the prices of certain prescription drugs sold by certain manufacturers and distributors in Connecticut beginning on January 1, 2026. *Id.*

The court held a hearing on the Motion on December 9, 2025, *see* ECF No. 40, and carefully has reviewed the parties' initial and supplemental memoranda of law, as well as the broader record before it, *see* ECF Nos. 27, 27-1–27-5, 34, 35, 41, 42, 43, 44, 44-1–44-3. For the reasons that follow, the Motion is **DENIED.**

I. BACKGROUND

A. Rising Prescription Drug Costs

The "rising cost of prescription drugs presents a significant challenge" to maintaining and improving people's health. Conn. Gen. Assembly's Prescription Drug Task Force, Final Rep. and Recommendations, at 2 (Feb. 26, 2025) (available at https://www.cga.ct.gov/hs/taskforce.asp?TF=20241204_Prescription%20Drug%20Task%20Force); *see also Ass'n for Accessible Medicines v. Raoul*, No. 24-C-544, 2025 WL 2764558, at *1 (N.D. Ill. Sept. 26, 2025) (acknowledging "skyrocketing drug prices, sometimes by more than 1,000%, and sometimes overnight," in 2025); *Ass'n for Accessible Medicines v. Frosh*, 887 F.3d 664, 674 (4th Cir. 2018) (Wynn, J., dissenting) (noting, in 2018, "a series of high-profile incidents" of "multiple-thousand-fold price increases for single-source generic drugs that treat rare and life-threatening conditions"); *Pharm. Rsch. & Mfrs. of Am. v. Walsh*, 538 U.S. 644, 649 n.1 (2003) (acknowledging, in 2003, that prescription drug costs "increased at an average annual rate . . . [higher] than any other component of the healthcare sector") (internal citation and quotation marks omitted).

A "'significant portion'" of Connecticut residents "'delay filling prescriptions, cut pills in half, and take extreme measures because of these costs.'" Liese Klein, *New Connecticut laws aim to tame surging prescription drug prices for patients, hospitals*, CT Insider (Jul. 27, 2025), https://www.ctinsider.com/ business/article/new-laws-target-rising-prescription-drug-costs-20786384.php (quoting Alex Reger, Director of the Connecticut Office of Health Strategy's HealthCare Benchmarks Initiative); *see also* Conn. Off. of Health Strategy, Cost Growth Benchmark Initiative Rep., at 51 (Apr. 24,

2025) (available at https://portal.ct.gov/ohs/services/cost-growth-quality-benchmarks-primary-care-target/reports-and-updates?language=en_US). Indeed, in a recent statewide survey, nearly one quarter of respondents—and, notably, nearly one third of respondents whose annual household incomes were under $50,000—admitted to "rationing" prescription drugs "due to cost concerns." Healthcare Value Hub, Connecticut Survey Respondents Struggle to Afford High Health Care Costs; Worry about Affording Health Care in the Future; Express Bipartisan Support for Policy Solutions, at 1–2 (September 2025) (available at https://healthcarevaluehub.org/wp-content/uploads/2025-Affordability-Brief.pdf); *see also* Healthcare Value Hub, Connecticut Residents Struggle to Afford High Healthcare Costs; Worry about Affording Healthcare in the Future; Support Government Action across Party Lines, (Oct. 18, 2022) (available at https://healthcarevaluehub.org/chess-state-survey/ connecticut/2022/connecticut-residents-struggle-to-afford-high-healthcare-costs-worry-about-affording-healthcare-in-the-future-support-government-action-across-party-lines/).[1]

In response, Connecticut's General Assembly empaneled a "bipartisan, bicameral" task force to propose policies for lowering prescription drug costs. Conn. Gen. Assembly's Prescription Drug Task Force, Final Rep. and Recommendations, at 2 (Feb. 26, 2025) (available at https://www.cga.ct.gov/hs/taskforce.asp?TF=20241204_Prescription%20Drug%20Task%20Force). Governor Ned Lamont also proposed policies with the same goal. Press Release, Governor Lamont Announces 2025 Legislative Proposal: Reduce Prescription Drug Costs (Feb. 6, 2025) (available at https://portal.ct.

[1] The court "may take judicial notice of facts 'not subject to reasonable dispute' when they 'can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.'" *Kravitz as Tr. of Aegean Litig. Tr. v. Tavlarios*, No. 20-2579-CV, 2021 WL 5365582, at *3 (2d Cir. Nov. 18, 2021) (summary order) (quoting Fed. R. Evid. 201(b)(2)).

gov/governor/news/press-releases/2025/02-2025/governor-lamont-announces-2025-legislative-proposal-reduce-prescription-drug-costs?language=en_US). In July 2025, several of the governor's and the task force's proposals became laws, including the Act. ECF Nos. 27-1, at 7; 34, at 6; *see* Margaret A. Bartiromo and Stephen M. Cowherd, *New Connecticut Health Care Laws Effective in the New Year*, Pullman & Comley Conn. Health Blog (Nov. 5, 2025), https://www.pullcom.com/connecticut-health-law- blog/new-connecticut-health-care-laws-effective-in-the-new-year).

B. The Act

The Act regulates sales of certain prescription drugs[2] in Connecticut by certain manufacturers and distributors,[3] but not sales by retailers. ECF Nos. 27-1, at 3; 34, at 6. "This is largely a function of how the . . . prescription drug industry is structured." *Raoul*, 2025 WL 2764558, at *1; *see also* ECF Nos. 27-1, at 3–4; 34 at 2–6. Put simply, manufacturers of prescription drugs "sell nationally" to distributors, who then "resell" to retailers, "who in turn sell to patients." *Raoul*, 2025 WL 2764558, at *1 (internal citation and quotation marks omitted); *see also Ass'n for Accessible Medicines v. Ellison*, 140 F.4th 957, 959 (8th Cir. 2025). The price set by manufacturers is called the "wholesale acquisition cost" (hereinafter, "WAC"). *Raoul*, 2025 WL 2764558, at *1; *see also* ECF Nos. 27-1, at 1–2, 4; 34, at 2–4. Manufacturers "actually sell drugs" to distributors at negotiated prices, oftentimes "far below . . . WAC." *In re Pharm. Indus. Average Wholesale Price Litig.,* 230 F.R.D. 61, 68 (D. Mass. 2005); *see also* ECF No. 34, at 3–4.

[2] The Act applies to sales of any "brand-name drug or biological product to which all exclusive marketing rights granted under . . . [federal law] have expired for at least twenty-four months," and any "generic drug." *See* Public Act No. 25-168, § 345(6).
[3] The Act applies to manufacturers and distributors who earn at least $250,000 "in total annual sales in this state." *See* Public Act No. 25-168, § 346(b)(2).

Nevertheless, a drug's WAC "serves as the benchmark" for how it is priced by distributors and retailers. *Raoul, 2025 WL 2764558, at *1* (internal citation and quotation marks omitted); *see also Ellison*, 140 F.4th at 959 (describing the WAC as "the baseline price").

While the Act has many elements,[4] its primary operation is as a "drug price cap." ECF No. 34, at 6; *see also* ECF No. 27-1, at 1–3. Beginning on January 1, 2026, covered manufacturers and distributors will be prohibited from selling "an identified prescription drug in this state" at a price that exceeds the WAC set on January 1, 2025, as "adjusted for any increase in the consumer price index" (hereinafter, the "Reference Price"). Public Act No. 25-168, §§ 345(11), 346(a)(1); *see also* ECF Nos. 27-1, at 2; 34, at 6. Unless determined to be "in shortage" by the Secretary of Health and Human Services, selling an identified drug above its Reference Price will result in a civil penalty "equal to eighty per cent of the difference" between the revenue of the non-compliant sales and the revenue that would have been earned if such sales had complied with the Reference Price. Public Act No. 25-168 §§ 345(a)(2), 346(b)(1)(A)–(B); *see also* ECF Nos. 27-1, at 2–3; 34, at 7.

C. The Motion for a Preliminary Injunction

HDA brought this action against Defendants on behalf of its members, all of whom are distributors located outside of Connecticut. ECF No. 1; *see also* ECF No. 27-1, at 2. The Association for Accessible Medicines (hereinafter, "AAM"), a national trade association representing manufacturers, brought a related action against Defendants. *Ass'n for Accessible Medicines v. Boughton et al*, No. 3:25-cv-01757-OAW, ECF No. 1

[4] For example, it is a violation of the Act for covered manufacturers and distributors to withdraw their prescription drugs from Connecticut to avoid compliance therewith. *See* Public Act No. 25-168, § 347(a). The Act also requires certain officers and employees of such manufacturers and distributors to report certain information to the Connecticut Department of Revenue Services. *See id.*, § 346(j)(1).

(D. Conn. Oct. 17, 2025). On October 23, 2025, HDA and AAM filed separate motions for preliminary injunction. ECF No. 27; *Boughton*, No. 3:25-cv-01757-OAW, at ECF No. 20. At their request, the court held a consolidated hearing thereupon, on December 9, 2025. ECF Nos. 31, 32, 40; *Boughton*, No. 3:25-cv-01757-OAW, at ECF Nos. 25, 27, 32.

HDA and AAM contemplated a broad interpretation of the Act in their initial memoranda of law, as if the Act encompassed identified drugs sold outside of Connecticut but later made available by third-parties to patients in Connecticut. *See* ECF No. 27-1, at 7–11, 12–17; 35, at 1–7; *see also Boughton*, No. 3:25-cv-01757-OAW, at ECF Nos. 20-1, 30. Laws similar to the Act operate (or have operated) in this manner in other states. *See, e.g.*, *Raoul*, 2025 WL 2764558, at *1 (describing a similar state law in Illinois); *Ellison*, 140 F.4th at 959 (describing a similar state law in Minnesota); *Pharm. Rsch. & Manufacturers of Am. v. Comm'r, Maine Dep't of Hum. Servs.*, No. CIV. 00-157-B-H, 2000 WL 34290605, at *1–*2 (D. Me. Oct. 26, 2000), *rev'd sub nom. Pharm. Rsch. & Mfrs. of Am. v. Concannon*, 249 F.3d 66 (1st Cir. 2001), *aff'd sub nom. Pharm. Rsch. & Mfrs. of Am. v. Walsh*, 538 U.S. 644, (2003) (describing a similar state law in Maine); *Pharm. Rsch. & Mfrs. of Am. v. D.C.*, 406 F. Supp. 2d 56, 60–61 (D.D.C. 2005), *aff'd sub nom. Biotechnology Indus. Org. v. D.C.*, 496 F.3d 1362 (Fed. Cir. 2007) (describing a similar law in the District of Columbia).

At the hearing, Defendants clarified "*for the first time*" that they do not interpret the Act so broadly, and only intend to enforce it against covered manufacturers and distributors selling identified drugs where title is taken in Connecticut. ECF No. 41 (emphasis in original); *see also* ECF Nos. 42, at 38:3–8; 43, at 2. Accordingly, the court ordered the parties to submit "limited supplemental briefing" explaining how Defendants'

"position on the Act's applicability . . . as articulated at the hearing, affects the merits" of HDA's and AAM's motions for preliminary injunctions. ECF No. 41. On December 12, 2025, Defendants confirmed their position on the Act's applicability in their supplemental memoranda of law. ECF No. 43, at 2; *see also Boughton*, No. 3:25-cv-01757-OAW, at ECF No. 36.

Because AAM's members do not sell identified drugs to any distributors who take title to such drugs in Connecticut, AAM voluntarily dismissed its action against Defendants on December 16, 2025. *Boughton*, No. 3:25-cv-01757-OAW, at ECF Nos. 39, 40. HDA's members *do* sell identified drugs to retailers who take title to such drugs in Connecticut. ECF No. 44, at 1–3. Accordingly, HDA submitted a supplemental memorandum of law on December 16, 2025, urging the court to grant its Motion for a Preliminary Injunction and arguing that the Act violates the dormant Commerce Clause of the United States Constitution. *Id.* at 3–10; *see also* ECF Nos. 27-1, at 7–11, 12–17; 35, at 1–7.

II. LEGAL STANDARD

A preliminary injunction is "not a matter of right." *Auracle Homes, LLC v. Lamont*, 478 F. Supp. 3d 199, 217 (D. Conn. 2020). It is "'an extraordinary and drastic remedy, one that should not be granted unless the movant, by a *clear showing*, carries the burden of persuasion.'" *Sussman v. Crawford*, 488 F.3d 136, 139 (2d Cir. 2007) (quoting *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original)).

Where, as here, the movant "seeks a preliminary injunction that will affect government action taken in the public interest pursuant to a statutory or regulatory scheme, the injunction should be granted only if the moving party meets the . . . likelihood-

of-success standard." *Cnty. of Nassau, N.Y. v. Leavitt*, 524 F.3d 408, 414 (2d Cir. 2008) (citing *Wright v. Giuliani*, 230 F.3d 543, 547 (2d Cir.2000)). To do so, HDA must demonstrate, by "a better than fifty percent probability," *see Nat'l Ass'n for Gun Rts. v. Lamont*, 685 F. Supp. 3d 63, 76 (D. Conn. 2023), *aff'd*, 153 F.4th 213 (2d Cir. 2025) internal citations and quotation marks omitted), that **(i)** it is "likely to succeed on the merits" of its claims, **(ii)** its members are "likely to suffer irreparable harm" absent a preliminary injunction, **(iii)** the "balance of equities tips" in its favor, and **(iv)** a preliminary injunction "would be in the public interest," *see Mahmoud v. Taylor*, 606 U.S. 522, 546 (2025); *see also Salinger v. Colting*, 607 F.3d 68, 79–80 (2d Cir. 2010).

The United States Court of Appeals for the Second Circuit (hereinafter, the "Second Circuit") "reviews a grant or denial of a preliminary injunction for abuse of discretion." *Sunward Elecs., Inc. v. McDonald*, 362 F.3d 17, 24 (2d Cir. 2004). However, "where allegations of error in a preliminary injunction involve questions of law . . . review is *de novo*." *Briggs v. Bremby*, 792 F.3d 239, 241 (2d Cir. 2015); *see also Nat'l Ass'n for Gun Rts. v. Lamont*, 153 F.4th 213, 228–229 (2d Cir. 2025).

III. DISCUSSION

HDA claims that the Act violates the dormant Commerce Clause. ECF Nos. 27-1, at 7–11, 12–17; 35, at 1–7; 44, at 3–10.[5]

[5] HDA devoted all but three paragraphs of its thirty-one-page initial memorandum of law, *see* ECF No. 27-1, at 11-12, nearly all of its time at the December 9, 2025, hearing, *see* ECF No. 42, and the entirety of its supplemental memorandum of law, *see* ECF No. 44, to its dormant Commerce Clause claim. Nonetheless, HDA also alleges that the Act violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution by attempting to "regulate and control activities wholly beyond its boundaries.'" ECF No. 27-1, at 12 (quoting *Watson v. Emps. Liab. Assur. Corp.*, 348 U.S. 66, 70 (1954)). Given Defendants' clarification of the Act's applicability, *see* ECF Nos. 41, 43, the court does not find that HDA is likely to succeed on the merits of its Due Process Clause claim.

A. Likelihood of Success on the Merits

The Commerce Clause vests United States Congress with the exclusive authority to "'regulate Commerce . . . among the several States.'" *Rest. L. Ctr. v. City of New York*, 90 F.4th 101, 118 (2d Cir. 2024) (citing U.S. Const. art. I, § 8, cl. 3). Within it, "the Supreme Court has interpreted a negative implication known as the 'dormant' Commerce Clause, intended to prevent 'economic protectionism'" by prohibiting state laws that "'benefit in-state economic interests by burdening out-of-state competitors.'" *Id.* (quoting *New Energy Co. of Ind. v. Limbach*, 486 U.S. 269, 273, (1988)). "As a judge-made and enforced doctrine, the strictures of the dormant Commerce Clause have ebbed and flowed over time through case law, with the Supreme Court refining the doctrine's proper scope." *Flynt v. Bonta*, 131 F.4th 918, 923 (9th Cir. 2025). It did so most recently in *National Pork Producers Council v. Ross*, 598 U.S. 356 (2023). *See, e.g., id.* at 924 (acknowledging that *Pork Producers* "substantially clarified" the dormant Commerce Clause); *New Jersey Staffing All. v. Fais*, 749 F. Supp. 3d 511, 525 (D.N.J. 2023), *aff'd*, 110 F.4th 201 (3d Cir. 2024) (describing *Pork Producers* as a "revolution").

A state law generally violates the dormant Commerce Clause if it **(i)** "'clearly discriminates against interstate commerce in favor of intrastate commerce,'" **(ii)** "'imposes a burden on interstate commerce incommensurate with the local benefits secured,'" or **(iii)** "'has the practical effect of extraterritorial control of commerce occurring entirely outside the boundaries of the state in question.'" *Nat'l Shooting Sports Found., Inc. v. James*, 144 F.4th 98, 113 (2d Cir. 2025) (quoting *Grand River Enters. Six Nations, Ltd. v. Boughton*, 988 F.3d 114, 123 (2d Cir. 2021)). "For many years," courts accepted the theory that "a challenged law's extraterritorial effects" could render it unconstitutional

under the dormant Commerce Clause. *Fais*, 749 F. Supp. 3d at 524, *aff'd*, 110 F.4th at 209. However, *Pork Producers* clarified that "extraterritorial effects alone are no longer sufficient to show a violation." *Id*. (describing the extraterritoriality principle as "a dead letter" after *Pork Producers*); *see also GenBioPro, Inc. v. Sorsaia*, No. CV 3:23-0058, 2023 WL 5490179, at *11 (S.D.W. Va. Aug. 24, 2023), *aff'd sub nom. GenBioPro, Inc. v. Raynes*, 144 F.4th 258 (4th Cir. 2025) (acknowledging that *Pork Producers* "abrogated" the "principle against extraterritoriality" as articulated in prior case law, including *Ass'n for Accessible Medicines v. Frosh*, 887 F.3d 664 (4th Cir. 2018)); *New York Times Co. v. Microsoft Corp.*, 777 F. Supp. 3d 283, 326 (S.D.N.Y. 2025) (acknowledging that *Pork Producers* "rejected" the "theory" of extraterritoriality). In the modern, "interconnected national marketplace, many (maybe most) state laws," "long understood to represent valid exercises of the [s]tates' constitutionally reserved powers," necessarily will have extraterritorial effects. *Pork Producers*, 598 U.S. at 374–375. Accordingly, a challenged law must have the "*specific* impermissible 'extraterritorial effect'" of discriminating against interstate commerce, *see id.* at 373–374 (citing *Baldwin v. G.A.F. Seelig, Inc*. 294 U.S. 511 (1935); *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573 (1986); *Healy v. Beer Institute, Inc.*, 491 U.S. 324 (1989)), or "directly" regulating commerce occurring "wholly" out-of-state, *see id*. at 376 n. 1 (citing *Edgar v. MITE Corp.*, 457 U.S. 624, (1982)), to run afoul of the dormant Commerce Clause.

The Supreme Court's "dormant Commerce Clause jurisprudence has 'eschewed formalism for a sensitive, case-by-case analysis of purposes and effects.'" *Rest. L. Ctr.*, 90 F.4th at 119 (citing *West Lynn Creamery, Inc. v. Healy,* 512 U.S. 186, 201 (1994)). That is because "the dormant Commerce Clause's scope is not 'absolute.'" *Id.* at 118

(citing *Maine v. Taylor*, 477 U.S. 131, 138 (1986)). Indeed, "states retain 'broad power' to regulate their own affairs, even if they 'bear adversely upon interstate commerce.'" *Id.* (citing *H.P. Hood & Sons, Inc. v. Du Mond*, 336 U.S. 525, 531–32 (1949)). Therefore, the Second Circuit warns judges "not to wield the dormant Commerce Clause as 'a roving license . . . to decide what activities are appropriate for state and local government to undertake.'" *Id.* (citing *Pork Producers*, 598 U.S. at 380 (Gorsuch, J., plurality opinion)).

(i) Discrimination

Under the dormant Commerce Clause, a state law is clearly discriminatory if it authorizes "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." *Rest. L. Ctr.*, 90 F.4th at 118 (internal citation and quotation marks omitted). Here, the Act applies to covered distributors regardless of whether they are located or headquartered inside or outside of Connecticut. *See* ECF Nos. 41; 43, at 2. Because the Act treats all covered distributors the same, it is not clearly discriminatory.[6] *See, e.g.*, *Iowa Pork Producers Ass'n v. Bonta*, No. 22-55336, 2024 WL 3158532, at *1 (9th Cir. June 25, 2024), *cert. denied*, 145 S. Ct. 2866, 222 L. Ed. 2d 1147 (2025) (finding that, because the challenged statute "'treats all [covered] companies exactly the same,' it 'does not discriminate against interstate commerce'") (quoting *United Haulers Ass'n v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 342 (2007)); *Fais*, 110 F.4th at 207 (finding that, because the challenged act "applies equally to in-

[6] For this reason, HDA also fails to demonstrate that the Act is discriminatory "in its effect." *Rest. L. Ctr.*, 90 F.4th at 12 (acknowledging that "a law is only clearly discriminatory in its effect where it 'confer[s] a competitive advantage upon local business vis-à-vis out-of-state competitors'") (citing *Town of Southold v. Town of E. Hampton*, 477 F.3d 38, 49 (2d Cir. 2007)). Although HDA argues that the Act advantages in-state retailers vis-a-vis out-of-state distributors, the comparison is inapposite, as retailers and distributors do not perform the same functions in the pharmaceutical industry, and therefore are not "competitors." *Id.*; *see also Gen. Motors Corp. v. Tracy*, 519 U.S. 278, 298 (1997) (recognizing that "any notion of [economic] discrimination assumes a comparison of substantially similar entities").

state and out-of-state [covered] firms," it is not discriminatory); *Flynt*, 131 F.4th at 926 (finding that the challenged act is not discriminatory because it "appl[ies] evenly to Californians and non-Californians alike").

(ii) Undue Burden

"Even laws that do not explicitly discriminate against interstate commerce may incidentally, and impermissibly, burden interstate commerce." *Nat'l Shooting Sports Found., Inc.*, 144 F.4th at 114. HDA does not argue that the Act would fail the "permissive *Pike* balancing test" used to determine "whether a given statute imposes such a burden." *Id.* (citing *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142, (1970)). However, its focus on the "potential . . . burdens on interstate commerce" which may result from the Act implies such an argument. *Rest. L. Ctr.*, 90 F.4th at 121–122.

HDA's members sell prescription drugs "Free On Board ('F.O.B.') Destination," meaning that "title does not pass until the drug . . . is delivered to the [retailer] inside Connecticut."[7] ECF No. 44, at 1–2. To avoid liability under the Act for exceeding Reference Prices, HDA argues that its members would have to "completely overturn their existing business models," which depend on F.O.B. delivery. *Id.* at 5. It argues that doing so would be "not just impractical" but also "operationally impossible" before the Act takes effect on January 1, 2026. *Id.* at 2, 4–5. That argument fails the *Pike* test, as "regulations that impose wholesale change on a market's structure do not impermissibly burden commerce." *Fais*, 749 F. Supp. 3d at 527, *aff'd*, 110 F.4th at 209 (citing *Exxon Corp. v. Gov. of Md.*, 437 U.S. 117, 127, (1978)); *see also Flynt*, 131 F.4th at 928 (recognizing that the dormant Commerce Clause does not "'protect[] the particular structure of

[7] And the F.O.B. industry standard reinforces the fact that the Act is not discriminatory, as it applies to *all* distributors making sales in Connecticut, regardless of where such distributors are based.

operation'" of a given industry) (quoting *Exxon Corp.*, 437 U.S. at 127); *Rest. L. Ctr.*, 90 F. 4th at 120 (finding that "the dormant Commerce Clause 'protects the interstate market, not particular interstate firms, from prohibitive or burdensome regulations'") (citing *Exxon Corp.*, 437 U.S. at 127).

HDA also argues that the Act is "Kafkaesque." ECF No. 44, at 3. Because it does not apply to retailers who sell to patients, or manufactures who set the WAC, distributors may "face potentially endless increases in WAC with no recourse" to maintain their current profitability and operations, and patients in Connecticut may continue facing rising costs.[8] *Id.* at 3–5; *see also* ECF No. 27-1, at 9–11. The court appreciates HDA's concerns, and does not deny the importance of distributors to the prescription drug industry. *See* ECF No. 27-1, at 3–4 (explaining that "distributors move approximately 10.5 million medical products across the nation every day from manufacturers" to retailers, thereby "reduc[ing] the number of transactions that would occur if . . . retailers had to order products directly from manufacturers"). Yet the court also appreciates that Connecticut enacted the Act "after compiling ample legislative findings" over the course of several months, *see Rest. L. Ctr.* 90 F.4th at 122, including from a "bipartisan, bicameral" task force comprised of "legislators, healthcare providers, pharmacists, patient advocates, pharmaceutical industry experts, insurers, manufacturers, pharmacy benefit managers, state agencies, and other key stakeholders," *see* Conn. Gen. Assembly's Prescription Drug Task Force, Final Rep. and Recommendations, at 2 (Feb. 26, 2025) (available at

[8] HDA laments that the WAC for several identified drugs has increased since January 1, 2025, but it fails to assert *by how much*. ECF Nos. 27-1, at 5–6; 44, at 2 n.3. If such increases were nominal, or otherwise less than (or even equal to) corresponding increases in the consumer price index, then it would seem that HDA's members could easily maintain their current profitability under the Act. *See* Public Act No. 25-168, §§ 345(11), 346(a)(1); *see also* ECF Nos. 27-1, at 2; 34, at 6.

https://www.cga.ct.gov/hs/taskforce.asp?TF=20241204_Prescription%20Drug%20Task%20Force). "Whatever the policy ramifications" of Connecticut's decision to focus on the prices charged, in particular, by distributors, *see Fais*, 110 F.4th at 207, the court may not enjoin "duly enacted state laws regulating the in-state sale of ordinary consumer goods," like prescription drugs, "based on nothing more" than HDA's "assessment" of the Act's "costs and benefits.'" *Pork Producers*, 598 U.S. at 380 (Gorsuch, J., plurality opinion); *see also Rest. L. Ctr.* 90 F.4th at 118 (reminding district courts that "the dormant Commerce Clause's scope is not absolute," that "states retain broad power to regulate their own affairs," and that judges should "not to wield the dormant Commerce Clause as a roving license . . . to decide what activities are appropriate for state and local government to undertake") (internal citations and quotation marks omitted).

(iii) Extraterritoriality

HDA argues that the Act will have the same "specific impermissible extraterritorial effect[s]" as the challenged laws in *Baldwin v. G.A.F. Seelig, Inc.* 294 U.S. 511 (1935), *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573 (1986), and *Healy v. Beer Institute, Inc.*, 491 U.S. 324 (1989). ECF No. 27-1, at 8–10, 15–16; 35, at 4–6; 44, at 8. The court disagrees.

In *Baldwin*, the Supreme Court invalidated New York's law effectively prohibiting out-of-state dairy farmers from selling milk in New York for less than the minimum price legally guaranteed to in-state dairy farmers. 294 U.S. at 519–522 (explaining that "a state may not, in any form or under any guise, directly burden the prosecution of interstate business"). In *Brown-Forman*, the Court invalidated New York's law effectively prohibiting liquor distillers from charging less for liquor in any other state than they charged for liquor

in New York. 476 U.S. at 582 (explaining that such law "regulates out-of-state transactions in violation of the [dormant] Commerce Clause"). And in *Healy*, the Court invalidated Connecticut's law effectively prohibiting beer merchants from selling beer at a cheaper price in any neighboring states than in Connecticut. 491 U.S. at 337 (explaining such law's "undeniable effect of controlling commercial activity occurring wholly outside the boundary of [Connecticut]"). The Court "struck down" these laws for being "plainly protectionist." *Fais*, 749 F. Supp. 3d at 525, *aff'd*, 110 F.4th at 209; *see also Pork Producers*, 589 U.S. at 371–375.

To the extent HDA suggests that disrupting "established business practices" was among the specific impermissible extraterritorial effects of the laws challenged in *Baldwin*, *Brown-Forman*, and *Healy*, *see* ECF No. 44, at 5–6, the dormant Commerce Clause does not "'protect[] the particular structure or methods of operation'" of a given industry, *see Flynt*, 131 F.4th at 928; *see also Pork Producers*, 589 U.S. at 371 (finding, instead, that "each" of *Baldwin*, *Brown-Forman*, and *Healy* "typifies the familiar concern with preventing purposeful discrimination against out-of-state economic interests").

HDA asserts that tying "'the price of . . . in-state products to out-of-state prices" was among the specific impermissible extraterritorial effects. ECF No. 44, at 8 (quoting *Pork Producers*, 589 U.S. at 374); *see also* 27-1, at 9–10, 15–16. While the challenged laws in *Baldwin*, *Brown-Forman*, and *Healy* indeed tied in-state prices for milk, liquor, and beer to the prices of such products in specific other states, *see* 294 U.S. at 519–522; 476 U.S. at 582; 491 U.S. at 337, the Supreme Court did not invalidate such laws merely for taking the regulatory form of a price affirmation or price control, but because they "deliberately prevent[ed out-of-state firms] from undertaking competitive pricing" in other

states and "deprive[ed] businesses and consumers in other [s]tates of whatever competitive advantages they may possess." *Pork Producers*, 598 U.S. at 374 (internal citations and quotation marks omitted). Unlike such laws, the Act does not tether an identified drug's Reference Price to prices in any other *state*, but to such drug's WAC, which manufacturers (and not distributors, such as HDA's members) set *nationally*. *See* ECF Nos. 27-1, at 4; 34, at 2–4. And whereas in *Brown-Forman* the challenged law impacted liquor prices in other states, *see* 476 U.S. at 583 (finding "that once a distiller's posted price is in effect in New York, it must seek the approval of the New York State Liquor Authority before it may lower its price for the same item in other [s]tates), there is no similar applicable provision in the Act.

HDA also asserts that the Act has the "specific impermissible extraterritorial effect" of "mandat[ing] an artificially lower price" for identified drugs sold by covered distributors in Connecticut "than the prevailing WAC in other states," which will "give local consumers an advantage over consumers in other [s]tates." ECF No. 44, at 8 (internal citation and quotation marks omitted); *see also* ECF Nos. 27-1, at 17; 35, at 1, 4–6. However, the Act does not mandate that HDA's members sell identified drugs in Connecticut at prices lower than anywhere else, as did the challenged laws in *Brown-Forman* and *Healy*. *See* ECF Nos. 27-1, 1–3; 34, at 6. HDA's members are free to sell identified drugs in other states at prices lower or higher than the Reference Price. *Cf. Healy*, 491 U.S. at 336 (noting that the dormant Commerce Clause prevents a state from regulating commerce which takes place "*wholly outside*" its borders) (emphasis added). Instead, the Act prohibits HDA's members from selling such drugs in Connecticut at prices that exceed what Connecticut's General Assembly considers to be safe and affordable, regardless of what

prices they may be charging elsewhere. *See* ECF Nos. 27-1, 1–3; 34, at 6; *see also* ECF No. 27-1, at 8 (recognizing that "'price regulation statutes' are impermissible if they 'require[] out-of-state commerce to be conducted according to in-state terms,'" but not otherwise) (quoting *Nat'l Elec. Mfrs. Ass'n v/ Sorrell*, 272 F.3d 104, 110 (2d Cir. 2001)); *Fais*, 749 F. Supp. 3d at 526, *aff'd*, 110 F.4th at 209 (finding that the challenged law "is nothing like those Connecticut and New York laws" in *Baldwin*, *Brown-Forman*, and *Healy* because it "applies equally to New Jersey businesses and out-of-state businesses, so out-of-state businesses are on no way disadvantaged as compared to their New jersey competitors," and because "every burden imposed upon out-of-state businesses is likewise imposed on New Jersey businesses").

Finally, HDA expresses concern that other states may follow Connecticut's legislative lead.[9] ECF No. 27-1, at 9, 11. The Supreme Court noted in *Healy* that the challenged law "might be enacted" by other states if not invalidated, thereby creating "just the kind of competing and interlocking local economic regulation that the Commerce Clause was meant to preclude." *Healy*, 491 U.S. at 337. But, as discussed *infra*, the Act is not comparable to the challenged law in *Healy*, as it does not prevent HDA's members from increasing or decreasing their drug prices in other states. *See* ECF Nos. 27-1, 1–3; 34, at 6. Nor does it otherwise prevent or discourage competition among distributors, who may still offer volume discounts outside of Connecticut, as they wish, free from interference by Connecticut. *Id.*

[9] The court notes that there is some irony in arguing that a state's action to protect against price gouging or oppressive pricing essentially amounts to a concerted effort (or at least inspires the possibility) for states to do the opposite in similarly protecting their citizens from predatory but constitutional pricing.

Antidiscrimination "lies at the 'very core'" of the dormant Commerce Clause. *Pork Producers*, 598 U.S. at 369 (citing *Camps Newfound/Owatonna, Inc. v. Town of Harrison*, 520 U.S. 564, 581 (1997)). Because HDA has not shown that the Act is protectionist or discriminatory, the court finds that it is unlikely to succeed on the merits of its dormant Commerce Clause claim. Heeding the Second Circuit's warning "not to wield the dormant Commerce Clause as 'a roving license . . . to decide what activities are appropriate for state and local government to undertake,'" the court will not enjoin Defendants from enforcing the Act based on HDA's arguments about effectiveness. *Rest. L. Ctr.*, 90 F.4th at 119. (citing *Pork Producers*, 598 U.S. at 380 (Gorsuch, J., plurality opinion)).

B. Remaining Preliminary Injunction Factors

The court cannot "'stay" Defendants' enforcement of the Act absent a clear showing of HDA's "likelihood of success on the merits" of its claims. *Nat'l Ass'n for Gun Rts.*, 685 F. Supp. 3d at 75 (quoting *Plaza Health Laboratories, Inc. v. Perales*, 878 F.2d 577, 580 (2d Cir. 1989)). HDA has not made such a showing. *See infra*, 11-18. Accordingly, the court "need not reach the remaining preliminary injunction factors" before denying its Motion for a Preliminary Injunction. *Id.* at 113.

IV. CONCLUSION

For all the foregoing reasons, it hereby is **ORDERED AND ADJUDGED** as follows:

(1) The Motion for a Preliminary Injunction is **DENIED**;

(2) HDA **SHALL** file either an amended complaint accounting for Defendants' clarifications concerning the Act's applicability, or a notice that it does not intend to amend the Complaint, on or before **January 23, 2026;** and

(3) Defendants **SHALL** file a response to the operative complaint within **twenty-one days** of HDA filing its amendment or notice, *see* ECF No. 32, or on or before **February 13, 2026**, whichever date is sooner.

IT IS SO ORDERED in Hartford, Connecticut, this 24th day of December, 2025.

/s/
OMAR A. WILLIAMS
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

HEALTHCARE DISTRIBUTION ALLIANCE -and- ASSOCIATION FOR ACCESSIBLE MEDICINES v. BOUGHTON et al	Case No. 3:25cv01724 Case No. 3:25cv01757 (OAW) December 9, 2025 CONSOLIDATION HEARING

CONSOLIDATION HEARING

450 Main Street
Hartford, CT 06103

BEFORE: THE HONORABLE OMAR A. WILLIAMS

COURT REPORTER: Catherine Cullen
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Proceedings recorded by mechanical stenography; transcript produced by computer.

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COURTROOM DEPUTY: (Opens the courtroom).

THE COURT: Thank you so much, Mr. Courtroom Deputy. Thank you. Good morning. You may all have a seat.

Thank you so much. Thank you, Madam Court Reporter. Good morning, everybody. And good morning again, I should say.

We are here for a consolidated hearing on applications for a preliminary injunction and temporary restraining order in the cases of Healthcare Distribution Alliance, or HDA, and Association for Accessible Medicines, or AAM, versus Boughton, et al, with corresponding Docket numbers 25cv1724 and 25cv1757 respectively.

Attorney Konstantinos Karamanakis is my law clerk today. I want to sincerely thank Robert Wood for being here as courtroom deputy standing in for us. There was a sudden loss in the Clerk's Office and Mr. Wood has covered on zero notice. So that's to ensure we didn't have to reschedule, so I thank you for that.

And I'll make sure I do my part to make sure the parties have very thoroughly briefed these issues. I have some questions and that's why I scheduled the hearing, but I'll be mindful of that time under these circumstances. So thank you so much.

And Catherine Cullen is our court reporter. I always tell them, and I certainly tell the parties, please speak up if you ever need anything repeated, or if Madam Court Reporter needs it to be repeated, or you need anything corrected or if anything is misstated by the Court or otherwise.

The Court, again, does thank the parties for your thorough briefing. The Court has reviewed all of it and does have a few follow-up questions. But I'm also realizing I have not yet taken your appearances, so if you would please, for anyone who is going to be speaking today, perhaps we can start with HDA, please.

MR. MASSEY: Good morning. John Massey on behalf of HDA. We would thank the Court for scheduling this on an expedited basis and we appreciate the staff's commitment as well.

THE COURT: I really mean it when I say, the parties briefing made it a lot easier to narrow the focus of the Court, so thank you, to all of you, for that.

MR. JAY: Good morning, Your Honor. For AAM, William Jay.

THE COURT: Thank you so much. Good morning, Attorney Jay.

MS. FIELD: Good morning, Your Honor. For the defendants, Victoria Field.

THE COURT: Thank you, Attorney Field. All right. Very well. Thank you so much.

Now, I mean as I say, I did have some questions for the parties, and so if I may start with that. First, for the defense, if I may, would the defense please explain the scope of Public Act 25168, which I'll refer to as the act or as the law.

When it applies to sales of generic prescription drugs in this state, what does the State of Connecticut mean by talking about sales in the state when we are talking about a manufacturer, for instance? And just for context, you know, in an era of electronic transactions where pretty much everything happens everywhere, and you know, when we look at wire fraud cases where data is passing through servers in other states, in a broad sense, what does the State of Connecticut think constitutes a sale in this state for the purposes of this statute, please?

MS. FIELD: Thank you, Your Honor. Just returning to the text of the statute very quickly to set the stage.

THE COURT: Sure.

MS. FIELD: It says, no pharmaceutical manufacturer or wholesale distributor shall on or after January 1st, 2026, sell an identified prescription drug in

this state at a price that exceeds the reference price.

Your Honor, this refers to sales by wholesalers and manufacturers for which the situs of sale is in Connecticut. This does not refer to sales through which a manufacturer or wholesaler is selling to a third party which is then resold in Connecticut.

THE COURT: Okay. Through the briefing, is that how the plaintiffs all understood it?

MS. FIELD: It doesn't appear to be the case, Your Honor.

MR. JAY: Good morning, Your Honor. Speaking for AAM, which is the manufacturer's trade association, we asked the state this question before filing suit and sought what I take to be the interpretation that Mr. Field has just given, that a sale by a manufacturer to someone else, presumably a wholesaler because that's who manufacturers sell to, if the manufacturer is in Pennsylvania and the distributer is in Ohio, their contract may specify what the situs of sale is, because that matter is for when the risk of the shipment transfers from the seller to the buyer that such a sale is not covered by the reference in the statute to in this state.

We didn't get that assurance and we do think there's a good basis in the statute to read it that way. But we wouldn't have brought the action if not for the

threat that the state would apply in this state to transactions outside the state on the theory that the state, I took to be referring to in its briefs, that if it, if the drugs make their way to this state that the whole chain is regulated by the state.

I took Ms. Field to be saying that's not the state's interpretation now. And if we were understanding that correctly, then I think that that reads the statute in a way that would give AAM's member the relief it's seeking.

THE COURT: On the statute as written?

MR. JAY: On the statute as written. We recognized that the statute has not yet taken effect and there's not yet a history of implementation. There are no regulations and so on. But the whole question is, what is the meaning of the prohibition in Subsection A1 of 346 in sell and identify prescription drug in this state at a price exceeding the reference price. And if a sale between a manufacturer in Pennsylvania and a wholesaler in Ohio is not a sale in this state, even if the wholesaler then resells to someone else, who resells to someone else, who sells to a pharmacy in Hartford, Connecticut, even if that, the state will agree that's not a transaction in this state. That's in substance what our proposed injunction asks the Court to prevent this law from

applying to.

THE COURT: I agree. Okay. So that does resolve a lot of the Court's questions. I'll say that. But that also seems to involve a good amount of trust.

I'm thinking also of the 11th Amendment concerns, the sovereign immunity concerns, where the state has not waived sovereign immunity. So do you want to speak to that; that I'm not sure that everyone would read the statute to interpret it in that way? And do you want to be heard?

MR. JAY: I would like to make three points. There's a footnote in our reply briefs that addresses this point somewhat, but I want to elaborate on that.

So if the Court were to say there's no controversy between AAM and of the state because of the representations the state made at this hearing, and AAM's suit is therefore dismissed, I think the state would be judicially estopped from taking a different position in whether the administrative proceedings, or anywhere else, and I think we would be able to come back to this Court to make that clear or I think we would be able to assert the judicially estopping force of this Court's decision in other proceedings as well. That's the first point.

The second point, I agree with Your Honor that it's possible to read the act both ways. I think that the

thing that is most compelling to us, at least in deciding what the right reading is, is the definition of pharmaceutical manufacturer in 345 Subsection 9. And a pharmaceutical manufacturer is defined as a person that manufactures a prescription drug and sells directly, or through another person, the prescription drug for distribution in this state. And you will see that the substantive prohibition which says don't sell in this state for a price exceeding the reference price is worded differently.

So, in other words, if the general assembly wanted to pick up indirect sales and call them sales in this state, it likely would have used wording like what it used in the definition of pharmaceutical manufacturer. Instead it just said, sells an identified prescription drug in this state. And we think that contrast is the most compelling textual evidence of the best reading of the statute. I think that covers the point that I want to make, if I answered Your Honor's questions.

THE COURT: Yes. Thank you.

MR. MASSEY: Your Honor, if I may. John Massey on behalf of HDA, the distributors. We have a couple of issues with the state's interpretation.

First, the notion of situs is a little unclear in how Ms. Field articulated it. In particular, if title

to the drugs is taken outside the state, say a wholesaler, none of whom have facilities, distribution facilities in Connecticut, if a wholesaler sells to a hospital or a retailer or medical practice inside Connecticut and the contract stipulates that title is taken outside Connecticut, would that qualify as a sale outside Connecticut under the state's interpretation? So we would need, at minimum, clarity on that.

Second, I think the state's position this morning highlights the whole constitutional problem with the statute because distributors are caught in the middle. The distributers don't set or control WAC, the wholesale acquisition cost. They provide a valuable service in distributing drugs, 10.5 million healthcare products every day brought across the country under very compelling situations, life-saving drugs that have to be refrigerated or delivered on the day of within hours from one place to another, but they don't set or control WAC.

So the notion that the wholesalers could be sort of whipsawed here, that they would buy at current WAC from the manufacturers for brand of drugs and then have to sell at the reference price inside Connecticut when they don't have control over WAC, seems to be, essentially, unconstitutional.

And of course in other cases that we have cited

in the briefs, the Supreme Court has held the fact that a sale occurs inside the state does not allow the state to regulate the price of the interstate good under the commerce clause.

The law in Brown-Forman, for example, was triggered only by liquor sales in New York, but the Supreme Court said that fact was irrelevant. That's at 476 U.S. at 583. The price control on Healy, which is a Connecticut statute, governed only prices posted in Connecticut. But that didn't save the law.

In the Fourth Circuit's Froch's case, which is the case that the pork producers, the Supreme Court cited Froch with approval, in the Froch decision the Fourth Circuit said that even if there were a nexus, even if the state 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 of this state. And that's at page 671 of the Froch decision.

So I want to make clear, the state's position in no way eliminates the Dormant Commerce Clause problem with this statute. If it did, it would open the whole pandora's box, because there's lots of interstate goods which are sold into Connecticut.

And we have an affordability crisis in this country. People are worried about grocery prices, car

prices are too high. If states could unilaterally adopt price caps and price control laws whenever there was a sale inside that state, the country would have a patchwork of 50 different price control laws. And, frankly, the next state after Connecticut is going to try to do better and reduce prices even lower. And that's what the district court in the striking down the D.C. drug control law said would produce a race to the bottom. And as a country, we rejected that approach.

It's kind of telling, that even today when people are concerned about high prices for lots of things, you don't see states adopting price caps for groceries and for goods that people care about; because we understand that one of the reasons we moved from the articles of confederation to the constitution was the desire to have an interstate market, and the federal government is the appropriate regulator of products and prices in the national market.

THE COURT: Thank you very much. Do defendants want to respond to that?

MS. FIELD: Thank you, Your Honor. If I may first address plaintiffs' concern about the transfer of liability through the supply chain. If I understand correctly, they are reading the definition of manufacturer, which again, is a person that manufactures a

prescription drug and sells directly or through another person the prescription drug for distribution in this state.

There are two clues in the text that point to this not being a transfer of liability through resellers, but rather an implication of agency. So the pharmaceutical manufacturer cannot create a shell corporation that is under its control in order to dodge liability of the statute.

If it was applying to any reseller, then there would be no need for the statute to include a separate definition for wholesalers, because they would by default be included in the sales through another person. So this is not referring to supply chain, but rather to issues of agency.

Second, plaintiffs have raised concerns about the extraterritoriality of application of the law. And for that, I would point to the laws in Maryland and Minnesota which were struck down as unconstitutional and I would distinguish them from this case.

The Maryland law applied to drugs made available for sale in Maryland; not just sales made in Maryland. And the Minnesota law applied to drugs dispensed or delivered to any consumer in this state. In both of those cases, liability applied to sales that made their way to

the state in which the law was passed; not sales that were made directly in the state.

Furthermore, plaintiffs have alleged a concern about this being a pandora's box whereupon this law would allow the state to regulate the price of any goods sold here. For that, I would refer plaintiffs to the Pike case, which contains a balancing test for any laws that have a discriminatory result coming from a facially neutral application of the law.

In Pike, the Court found that as long as the law was applied neutrally and it effectuates a legitimate public interest, then as long as the public interest that was being effectuated did not overcome the burden on interstate commerce - that was not directly being forced, so there's no direct discrimination - then the law could be allowed. And in this case, the legit public interest being enforced is affordable healthcare. This is in contrast to the Pike case itself where the legitimate public interest was simply the reputation of fruit and vegetable growers in this state. So here we have a much more legitimate interest.

THE COURT: Definitely true. We are not talking about luxury cars or stocks. The public interest is clear here.

Did the defendant's wish to speak to - I brought

it up, I think with respect to Attorney Jay from AAM, but the sovereign immunity aspect, do the defendants wish to speak to that with respect to irreparable harm and its impact?

MS. FIELD: Your Honor, every single law, or virtually every law, has an impact on somebody's pockets, and in all cases in Connecticut such people are able to go through the claim's commissioner, which is an action in state court, and that is available to them here.

There's no reason why plaintiffs in this case should have any other cause of action or cause for restitution than any other person has been for as long as the law has been in place. This is the system that the legislature put in place as representatives of the state and of the industries that exist within this state.

THE COURT: I've given all three parties a chance to address. Does anyone else want to address the sovereign immunity part?

MR. MASSEY: Yes, Your Honor. Thank you.

THE COURT: Sure.

MR. MASSEY: The Second Circuit has already held in a case called New York Progress that the only remedies that can be considered on the irreparable harm point are federal remedies. And that therefore, the state's attempt to use our Chapter 53 of the general Connecticut statutes

doesn't get them to first base.

In other words, in considering an irreparable harm, the only thing this Court can consider is the federal remedies that would be available to the plaintiff. And so the possibility of Chapter 53 doesn't save the law; it doesn't save the irreparable harm point for the state.

And, obviously, the way Chapter 53 works is, this claim's commissioner has to grant a waiver and has authority if and only if the state would be liable if the state were a private person. That's the test under Chapter 53 for the commissioner to grant a waiver. That can't happen here.

If the state were a private person, it wouldn't be violating the commerce laws. I don't think Chapter 53 applies in this case, but if it does, it's so ephemeral that the Second Circuit says you shouldn't even consider it.

Finally, the argument that the state makes would be available in any preliminary injunction case. Even at the federal level, the Court of Federal Claims, or congress, could pass an act. That is another option under the Chapter 53, is the general assembly could grant compensation after the fact. That's true in every jurisdiction. That just means there would never be preliminary injunctions against the government, except in

extraordinary cases, but in the normal course there would not be a preliminary injunction because the government could hint it might compensate after the fact, and that's clearly not the law in this country.

And Your Honor has granted preliminary injunction in cases where the government has violated the law without the hint of possible after-the-fact money damages that would just be a promise to the ear to be broken to the hope.

THE COURT: Response?

MS. FIELD: Your Honor, a preliminary injunction is an extraordinary remedy for an extraordinary situation. If every time a law was passed that had a potential impact on someone's pockets and they could obtain a preliminary injunction, then our ability to pass laws would be completely hamstrung.

On the other hand, plaintiffs have alleged two different kinds of harm here. The first being constitutional harm and the second being financial harm. As to their constitutional harm, I would be happy to address their concerns about the extraterritoriality and the Dormant Commerce Clause and demonstrate they would not likely win on the merits.

As for their financial harm, my statement remains, that they could go through the claim's

commissioner.

THE COURT: I guess turning back to Attorney Massey, HDA, do we even get there with the available exception for shortages? Would that kick in and allow sales above the WAC?

MR. MASSEY: That's what the text says, Your Honor, but it has to be certified as being in shortage by HHS. And there isn't any - there's no showing this would happen. And most drugs are not in shortage, thankfully. That's reserved for emergency situations. In the mind run of cases, the wholesaler would be trapped in this bind where it's buying at the current WAC and selling at the January 2025 WAC.

So I don't think that exception is a safety valve for the most extraordinary cases where there's actual shortage that's been satisfied. But the state has failed to show that that would apply to eliminate the constitutional defects. And I don't believe that there's, right now - the percentage of drugs certified as being in shortage is extremely low right now, thankfully.

And so the law will, in the mind run of cases, in the vast majority of cases, the law would put wholesalers in a bind where they can't sell at the price which they are buying brand name drugs. And that's an extraterritorial and protectionist violation of the

commerce clause.

The state referred to the Pike balancing test, which comes in only if a state does not have impermissible extraterritorial effect or is a protectionist. In this case, I think we have shown the state has an impermissible extraterritorial effect under both pork producers, Froch, LSN, all of those cases, even the Maine case which throughout the price control law in Maine, the First Circuit, the state didn't even appeal that aspect of the district court's ruling.

So the reason it's extraterritorial, as the Court said and the Supreme Court said, in pork producers it would tie the instate price to an out-of-state price. And the out-of-state price is the WAC that is prevailing in all other states. That's also a reason the law is protectionist. Because what Connecticut is trying to do is say the price for these covered products in Connecticut will be lower than the prevailing price in all the surrounding states. And that will cause one of two things to happen. Either Connecticut is pushing costs onto other states, because the wholesalers are forced to eat some of that cost that is borne by Connecticut, or if the other states see the costs being passed to them, those states will enact similar statutes, or even lower statutes, as I mentioned before, and that precipitates the race to the

bottom that the commerce clause is meant to prevent.

The statute is also protectionist on the commercial level, because the Connecticut statute does not govern the cost charged by retailers, medical practices, and hospitals. Under the cap, they are allowed to charge whatever they want. It's only the upstream distributors and wholesalers that are governed by the cap. And that was one of the protectionist flaws that the Fourth Circuit identified in Froch.

And just to repeat, Froch is the case the Supreme Court in pork producers said was reading the Supreme Court precedence in exactly the same way as the Supreme Court was, so it was endorsing Froch. And Froch said, when you are regulating only the out-of-state upstream parts of the supply chain and not regulating the people who are actually selling drugs to consumers, that proves the extraterritorial and protectionist nature of the statute and it also undermines the state's interest.

We can all agree drugs prices, it would benefit consumers if prices were lower. Of course the federal government is trying to do that through Medicare and Medicaid, the Inflation Reduction Act, Section 340B. But the jarring thing about the Connecticut law is it doesn't regulate the prices that consumers pay. The consumers, the cap doesn't regulate what CVS can charge consumers for

its prices, and that's the mismatch which demonstrates the benefit to instate interests, the mismatched to the state's articulated objective.

So Pike, we don't get to the Pike balancing test in this case because the law is invalid on its face, both as an extraterritorial impermissible regulation and as a protectionist law that is protectionist on two levels, both the consumer and commercial level.

The other thing this law does on the commercial level that is protectionist, it puts distributors at a competitive disadvantage in other states. If you are a distributer who has a disproportionate amount of business in Connecticut, then you will be hurt when you are competing in other states, because you will not be able to cover all of your Connecticut costs in Connecticut; Connecticut will be pushing its costs onto you.

And so if you have to compete in New York or Massachusetts as a distributer, you're handicapped. And that was the same defect that the Supreme Court identified in Healy and Brown-Forman, where it said the people who are selling beer and liquor in New York and Connecticut in those two cases are going to be, they were going to be robbed of their promotional and rebate programs. That was what was going to happen to the distillers and the beer sellers. So they were placed at a competitive

disadvantage in other states.

The same thing will happen here to distributors that have a disproportionate amount of business in Connecticut compared to other distributors, and that's a further disruption and a further kind of protectionist interference with interstate commerce.

And the last thing I would say is, I would still, if the state's position is that the act does not apply where the situs of the sale is not in Connecticut, then the wholesalers need to know: Does that mean if their contract says we are selling to a Connecticut hospital, but title to the drugs will be taken in New York where our distribution facility is, is that transaction subject to the law or not?

MS. FIELD: Your Honor, plaintiffs have alleged two forms of violation of the Dormant Commerce Clause, extraterritorial and protectionism, and neither are present here.

The law does not have extraterritorial application because it only applies to sales occurring within the state. As AAM mentioned in its reply brief on page seven, it does not intend to challenge the state's power to regulate instate sales. The argument should stop there, because there are only instate sales occurring here.

Regarding any idea of protectionism, economic discrimination requires a showing of an instate entity that is being preferenced over a substantially similar out-of-state agency. This is coming from GMC v. TRACY which says that any notion of discrimination assumes a comparison of substantially similar entities.

The entities in question here as alleged by the plaintiffs are three sets of potential pairings, none of which are substantially similar for the purpose of a discrimination analysis.

The first is instate brand manufacturers which are not substantially similar to out-of-state generic manufacturers. The role of a brand manufacturer is to research new drug products and obtain FDA approval to bring those to market, a process that can cost billions of dollars and take several years.

The role of a generic manufacturer in addition to manufacturing drugs is to copy existing brand drugs, a process that can be obtained in an abbreviated application to the FDA and doesn't take as long as new drug development.

If a brand drug manufacturer were to go out of business, no generic drug manufacturer is a kind of competitor that could take over their functions.

The second pairing that plaintiffs have

suggested is instate manufactured brand drugs being protected from out-of-state manufactured generic drugs. And again, we see that brand drugs and generic drugs are not necessarily substantially similar. Even brand drugs for which all patents and exclusivity have expired and which have a generic alternative that is perfectly comparable from a treatment perspective is treated in antitrust cases as potentially being in a separate market due to the market structure and the way that brand and generics are viewed differently by consumers.

We see that in Lorazepam and Clorazepate antitrust litigation. Although this is not an anti-trust case, anti-trust law is similar to the Dormant Commerce Clause analysis; a branch of law that uses the unique characters of the product and the market, and the consumers in the market, in order to identify competing products and is therefore a useful analogy here.

There's also brand name drugs for which there are still patents or exclusivity applied. Those drugs, as plaintiffs note, may have generic alternatives, but those alternatives will need to have the indications that are still patented, carved out; meaning that there are patients who can only be treated by the brand version of the drug and cannot be treated by the generic. This means that the market that is consuming the brand product is

going to be fundamentally different from the market that is consuming the generic drug. Therefore, under each of these situations, brand drugs and generic drugs are not necessarily substantially similar under the Dormant Commerce Clause for purposes of discrimination.

The final potential pairing that plaintiffs have alleged is that instate distributors, meaning hospitals and retail pharmacies, are being protected from out-of-state manufacturers and wholesalers. Once again, there is no substantial similarity between an instate hospital or CVS as to an out-of-state manufacturer or wholesaler. If a hospital went out of business, a manufacturer could not move in and continue to provide those same services.

Furthermore, it would not make sense for this law to apply to retail pharmacies because the cost structure of sales at retail are incredibly complicated. Payments are shared by consumers and their insurers and costs can change on a person-to-person basis. Pharmacies themselves are reimbursed for the cost of drugs by a pharmacy benefit manager and that payment is not necessarily made public. A lot of the payments, in fact at that level of the pharmaceutical distribution chain, are protected by trade secret.

So this law, which is very straightforward and

tries to identify one point in the pharmaceutical distribution chain where there's a simple pricing mechanism that can be regulated, would simply not be applicable at the retail level and might even be preempted by several federal laws such as the 340B Drug Discount Program which establishes drug prices for certain hospitals for generic drugs.

THE COURT: May I ask, I did see where the act can be read as part of a larger legislative attempt to manage prescription drug prices, specifically in that there's another public act that was aimed at the pharmacy benefit managers, right? So is there any other legislative tool to go after retailers? Or is it because of the complexity that you mentioned or because of legislative realities that the legislature has not gone after the retailers in the same way? And, if not, then why should it not be viewed as a form of discrimination in that instate Connecticut retailers, even though they are substantially different than the distributors, and certainly than the manufacturers, if the goal is to cap, to make sure we have affordable generic drugs for Connecticut residents, this would seem to be a potential gaping hole preventing that. So do you wish to speak to any of that? Is there a law aimed at the retailers and does it matter?

MS. FIELD: I would first say that the complexity of the market at the retail level is a challenge to directly regulating price there. There are, as you mentioned, Your Honor, laws targeting pharmacy benefit managers and the commissioner of insurance would be addressing drug pricing from the insurance perspective.

There are various angles that would need to be taken to address drug pricing from a big picture perspective, and I would ask Your Honor to focus on this one discrete law on the constitutionality thereof, and know that I cannot speak for the legislature about their intentions to regulate the other pieces of the market.

THE COURT: Thank you, counsel. Does either plaintiff want to be heard?

MR. JAY: I would like to respond specifically to the point about whether instate brand manufacturers and favoring instate brand manufacturers, as I think our friends on the other side don't seem to deny, is the type of discrimination that matters for purposes of the Dormant Commerce Clause. I want to disagree with the notion that a brand product and a generic product are sufficiently different, that this isn't the kind of discrimination the Dormant Commerce Clause aims at, because if a brand product and a generic product are chemically the same, they are bioequivalent to each other - to the use the FDA

lingo - they can be used the same way by the same patients usually for the same indications.

So one example which there is a brand with a patent and a generic without a patent, so a brand covered by the law and a generic not covered by the law, is the pretty straightforward circumstance where the brand has at least one patent. So it has exempted itself from the law, but the generic doesn't infringe that patent.

So you have a brand and generic product that are chemically the same, bioequivalent, can be used by the same patient population. One of them is subject to a price control; the other is not.

There's no generic manufacturer in Connecticut. There's a substantial brand industry in Connecticut. I think this is really no different than the circumstances in the Bacchus Imports case that we cited in our papers from the Supreme Court from 1984 which involved pineapple wine in Hawaii. That was not a big slice of the market or substitutable for other types of liquor and beer that the tipplers of Hawaii might have chosen to drink. But favoring one slice of Hawaiian industry is discrimination, and the Supreme Court had no trouble saying so without going through a complicated economic analysis of whether pineapple wine could be a substitute for the beer and liquor needs of people in Hawaii.

THE COURT: Is it meaningfully different that we are talking about access to prescription medication here and not pineapple wine?

MR. JAY: I think the point I made first underscores that doesn't help the state here, because we are talking about medications bioequivalent to each other. So in a circumstance where there's no difference, or the only difference is in the label, in other words, which indications each medication is labeled for which doesn't affect what substitutions a pharmacy can make; in other words, Connecticut law allows a pharmacy to take a prescription written for the brand product and substitute the generic product.

So if it is substitutable at the pharmacy by law, that's a pretty good indication they are usable by the same population and that they are similar enough to be comparators in the Dormant Commerce Clause, which I don't think is as tight of a type of connection that might happen in antitrust cases where you have expert evidence that goes to establishing a relevant market. That's not the kind of proof that the Supreme Court is required in discrimination cases here.

Before handing off to Mr. Massey, I want to underscore one thing Ms. Field said. Several of her remarks were if a hospital or if a brand company were to

go out of business, which I took to be a statement that the state does not care if out-of-state generic manufacturers go out of business; whereas it is trying to protect the brand companies and retailers to make enough money on these products to go out of business. And both, on the harm to our clients and on the public interest point, I would point the state back to their own footnote nine in their opposition, which is that if there are not generic companies willing to market generic alternatives, then there's a lack of competition for those brand products and there's no way to bring those high prices of brand products down.

THE COURT: Does defense want to be heard on that issue before I turn to HDA, on any of that, including the bioequivalence and why that might be an indicator of discrimination?

MS. FIELD: Thank you. The issue of bioequivalence is a little more nuanced than the plaintiffs have alleged. If there's a brand name product for which even a single patent remains, and if that patent is related to an indication, meaning a particular illness, then even if there's a bioequivalent generic alternative for that drug, the patented indication can only be treated by the brand product. This is quite different from any other product, such as pineapple wine or any other alcohol

where the consumer is the one who is choosing which variety of the products to purchase.

When it comes to pharmaceuticals, the physician is the one writing the prescription and the laws are the ones determining which prescriptions can be used to treat different illnesses. And so if the patient is somebody who has an illness that is a patented indication for the brand name drug, then they are not choosing to take the patented drug; they can't seek substitution at the pharmacy counter. They have one drug and they are not the one choosing it.

MR. MASSEY: Thank you, Your Honor. I'm sorry, Mr. Jay.

MR. JAY: What Ms. Field said is not correct about how substitution works, but this is a side issue that I don't want to take the Court's time with. I just want to note that we fundamentally disagree how substitution works at the pharmacy in a carve-out case, but I'll sit down and let Mr. Massey speak.

MR. MASSEY: Thank you, Mr. Jay. From the distributor's standpoint, there are three types of discrimination that makes this law protectionist and I hear the state responding to only one, so if I could recap briefly.

First is, there's protectionism on the consumer

level because Connecticut is making or seeking to make drugs cheaper in Connecticut than in other states. And the problem with that is, that as the Supreme Court said in the Camps Newfound case that we cite in our reply brief, quote, attempts to give local consumers an advantage over consumers in other states is protectionist.

And that was the defect in the opioid tax case in New York that the State of New York conceded that the passthrough prohibition, which operated basically to have distributors in New York push costs of the opioid tax onto consumers in Connecticut and in Massachusetts; was unconstitutional for that very feature because it externalized the cost of the tax in New York.

This is just the flip side. Instead of New York doing it to Connecticut, Connecticut is trying to do it to New York.

THE COURT: Other than the liquor related cases, this isn't the state saying you can't sell it cheaper than you are selling it in Connecticut. They are saying there's a cap, right? Is that a material difference? Those lines of cases?

MR. MASSEY: We don't believe so, Your Honor. Because what is happening is Connecticut is setting - it's true these are not minimum prices, but maximum/minimum, although the Court in Baldwin said it didn't matter if it

was higher or lower. But the point here is, if the prevailing WAC is higher than the reference price, then the consumers in other states are going to be bearing the costs of Connecticut purchases, or distributors and manufacturers in other states, and those in turn get passed along, ultimately absorbed through the supply chain by consumers.

So it's an externalization of Connecticut's costs when it imposes a price cap that is set below WAC. In a world where the distributors, like I said before, are in the middle; we are not able to set or control WAC. And so to force the distributors to buy at current WAC and sell at lower reference price WAC for brand name drugs is a protection of Connect--

THE COURT: Well, does the law say it has to be lower or just not higher than?

MR. MASSEY: It has to be at the reference price. It can't be higher than the reference price. But we know in 2025, WAC has increased for 500 products. And so as of January 1, 2026, distributors that have purchased drugs throughout 2025 at higher than the reference price WAC, because the WAC went up in 2025, they are sitting with inventory they will have to sell January 1, 2026, at reference price, which is lower. So that is an imminent, immediate injury. That's why we are here in December as

opposed to waiting and suing later, because this injury will happen now, and that is the reason for the preliminary injunction.

But the second kind of discrimination that the state has not responded to is a discrimination among distributors based on how much business they have in Connecticut. If you're a distributor with a lot of business in Connecticut, a disproportionate amount in Connecticut, you are handicapped outside of Connecticut in competing with other distributors, which is the defect in Healy and Brown-Forman which had a desperate impact on distillers and beer sellers whether they had promotional or rebate schemes.

Now, the last commercial level protectionism that the state addressed is the notion that distributors are not similarly situated to the instate retailers, hospitals, and medical practices that operate at the retail level. Now that, of course, was the very defect I mentioned that Froch identified in the Fourth Circuit case. And I hate to repeat myself, but Froch was cited by approval by the Supreme Court for pork producers, so Froch is pretty good authority.

And the state relies on a tax case called GMC versus Tracy. That's not the way the Supreme Court has approached discrimination in the commerce clause cases

involving interstate regulations beside taxes. For example, in the Oregon Waste Systems case, the Supreme Court said discrimination, quote, means differential treatment of instate and out-of-state economic interests that benefit the former and burdens the latter. That's all it is. It doesn't have to necessarily line up on an apples-to-apples basis. And pork producers itself describe protectionism as laws seeking to benefit, quote, instate interests. And the Eighth Circuit in Ellison held the Minnesota law unconstitutional even though there were no instate Minnesota manufacturers. So I think the state's standard for when discrimination occurs at the commercial level is artificially constricted.

THE COURT: Just pausing you there, counsel, when you refer to Ellison and Froch, those are cases, those were AAM cases, those were manufacturer cases, right? So where does that leave distributors like your members; should they be treated similarly or get the same protections or not?

MR. MASSEY: We were not in the caption in those cases. But the Maryland law, in particular, did govern both manufacturers and distributors and it was invalidated for both. And the Fourth Circuit even said, noted in striking down the law, that distributors had no facilities in Maryland; and that was one of the reasons why the law

was extraterritorial and impermissible. And of course we have, HDA members have, no distribution facilities in Connecticut. So we line up, really on all fours, with Froch. Even though we were not the plaintiffs, we basically obtained relief.

The other thing I would say when Your Honor asked what could the state do, the main litigation is very instructive. Because the main litigation, like Connecticut, Your Honor noted that the Connecticut package was originally a bunch of things besides the price. I mean, what is a bunch of things besides the price?

The main litigation involved several different provisions, as did the Connecticut legislation. The main legislation involved an anti-profiteering provision that barred unconscionable pricing. It also allowed the Maine Health Commissioner to buy drugs in bulk and ask for rebates equivalent to the Medicaid level of rebates.

And the first provision, the price control provision, was struck down by the District Court in Maine and the state gave up. The state conceded that that provision was unconstitutional under the commerce laws.

The second provision, the price negotiation and rebate provision, was upheld by the First Circuit. That's the only part the state appealed. The state won in the First Circuit and the First Circuit eventually got

affirmed.

So that part of the judgment still contains a prohibition on the price control provision, but allows Maine to do other things to solve, to address the drug price issues in Maine. And I think that is a good lesson, that just as New York did not appeal or question the invalidation of the cost passthrough prohibition - because New York recognized it was impermissibly pushing costs onto consumers in other states, just as Maine did not appeal the invalidation of the anti-profiteering provision because it recognized that it was unconstitutional under commerce clause grounds - the law here, just as those states made those decisions, Connecticut should scale back and not target distributors who will be stuck in the middle if transactions - since they don't set a control lack - if the state is allowed to adopt, to follow its interpretation that Ms. Field articulated, I would still like an answer.

THE COURT: I was going to ask if we got an answer to that one. Specifically back to your question about, you mentioned if a distributor contracts with - I think you said a hospital in Connecticut - but title is taken in New York where the distribution center is, your question is would that constitute a sale in Connecticut?

MR. MASSEY: Exactly, Your Honor.

THE COURT: Sorry if I missed it too, but does defense have a response to that?

MS. FIELD: So the situs of a transaction will be where the title is taken. So if a wholesaler sells a product to a buyer, if the wholesaler is California and the buyer is in Arkansas and then that product is distributed to a facility in Connecticut, the transaction has occurred outside of the state.

THE COURT: Do you want to be heard on that?

MR. MASSEY: I mean, that is kind of news to us, so it would be important for HDA to have that representation memorialized somehow. It's an issue that I have not had a chance to discuss with my client, so I don't have a position on how that affects our case. But I do think, as I said before, even under cases like Brown-Forman and even when there's a sale into a state, cases like Brown-Forman say it doesn't allow the state to regulate it in violation of the commerce clause. And because in this - I don't think the state's position necessarily moots our commerce cause challenge, because the relevant transactions are occurring out of state. So I do need to - I can't offer Your Honor a position beyond that.

THE COURT: To the extent you are saying that your hypothetical - sorry. You are saying in your

hypothetical the act still would implicate the commerce clause even though - go ahead.

MR. MASSEY: For example, it would force our members to renegotiate all the contracts to say now the situs is going to be someplace else.

THE COURT: To perform an end run around the law?

MR. MASSEY: Essentially. We didn't know this existed until this morning, Your Honor. And whether that's feasible, I don't know. And, obviously, the burden to renegotiate a contract is itself an injury and an interference with commerce.

So if the state is inviting the members of HDA to redo all of our contracts, I don't know whether that can happen between now and January 1st. There are a lot of practical, logistical complications that make it very difficult.

THE COURT: I do want to go back to that, because you raised another point. But I'll pause to ask the defense, Attorney Field, if that's the case, that there's this potential end run around the law, is it effective at all? Or is it enough that it would be effective for a year before everyone adjusts how they do business? Or does that matter?

MS. FIELD: The law will affect as many

transactions as it can cover. And for all of those transactions that it applies to, it will save consumers money on life-saving drugs.

THE COURT: Fair enough. Going back to HDA - maybe this is a question for AAM - but don't manufacturers often, I'll say sometimes, don't they sometimes sell medication to distributors below WAC, sometimes even well below it? And, if so, can you explain why that is? Why that doesn't undercut some of your argument here?

Because the point I'm making is, can't bulk sales, can't discounted bulk sales, still be lucrative? Their whole business model is based on that concept. There are very successful companies built on that type of model. So do you wish to speak to that? Isn't it true that there are below WAC sales, why is that, and why does that matter, if you would, please.

MR. MASSEY: I can speak first.

THE COURT: Sure.

MR. MASSEY: That issue on the record that comes before the Court, that issue has not been developed. The state didn't controvert any of the facts. It comes on, the PI motion, comes on the record that we submitted.

For brand drugs, WAC is generally both the purchase price from the manufacturer and the sales price to the retailer. There are exceptions. There are, in

some cases, Your Honor pointed out, for the discounts. But in general, WAC is the metric that drives all the pricing decisions. Generics are a different matter. Generics are often below WAC, that is true; but the same is true in lots of other cases.

In other words, the law in Froch banned price gauging. The law in Minnesota banned increases of WAC in excessive certain percentages. So there were a lot of sales that existed that those laws didn't touch, but that didn't mean that the laws were constitutional. In fact, it meant that every time the law did have application, every time the law did have an impact on transactions, it was unconstitutional.

So I would say to Your Honor, that the fact there might be some situations in this case where the law, the Connecticut drug price cap doesn't affect the price, because in some transaction or another it was not set exactly at WAC. That does not allow the law to survive constitutional scrutiny any more than the laws in Minnesota or Maryland did, because basically any time the law has bite, it is regulating commerce in an extraterritorial and protectionist way.

So that's really true, I think, for all laws when people challenge the constitutionality. In some sense, sometimes laws have a permissible application. But

in this case, every time it actually has an impact on a transaction, it will be unconstitutional.

So I don't think - I think that the issue Your Honor posed, which reflects a sophisticated understanding of the pharmaceutical pricing situation, is a valid question, but it doesn't affect the outcome of this case.

THE COURT: Also talking about - and I understand that Attorney Jay may want to respond as well - but putting a pin in that for a moment. You did talk about ways in which your members might adjust their contract structure going forward with this new understanding of the act as interpreted by the state.

Similarly, won't manufacturers - well, can manufacturers just adjust up the WAC in future years if Connecticut and other states pass laws like this? Can't manufacturers just inflate the WAC and protect themselves that way without a higher starting price at the beginning of the year? Or is that unlikely because of the nationwide nature of the WAC in general?

MR. MASSEY: Well, Your Honor, we read the law as creating a reference price of January 1, 2025--

THE COURT: Yep.

MR. MASSEY: -- that's adjusted by the CPI. In 2026, it's that same price. So if the manufacturers increase WAC, the distributors are stuck in a bigger bind.

We are stuck at the reference price which is going to be capped at the January 1, 2025 WAC, adjusted by the CPI. If WAC goes up fast, then we are just bleeding. And that's why we fear, as distributors, that we are stuck in the middle. And we don't set or control WAC, and would be at the mercy of manufacturers in that situation.

THE COURT: Thank you. Attorney Jay.

MR. JAY: I'll add two quick points. One is a principal and the other practicality. On the point of principal, the problem with the extraterritorial application of laws like this is not exactly what cap they set but the fact that every one of the 50 states could in theory set its own conflicting cap.

You can see by the different formulas used in Maryland, in Minnesota, in Connecticut, and a proposed legislation in other states, that not only do they adopt different numbers, but they even cover different and overlapping drugs in different ways. So it would make it fundamentally impossible to try to comply with individual state caps.

On your question, could the manufacturers increase the WAC, my understanding is the same as Mr. Massey's. And this is the practical point, that this law caps, imposes the cap, at the January 21st, 2025 WAC forever. The only adjustment is the general consumer

price index. That doesn't take account of the costs, the increased cost of producing a particular drug. It doesn't take account of price increases in the pharmaceutical sector, generally. It's the general consumer price index, the general basket of goods, the most general measure of inflation there is.

So our declarants have explained why it's more expensive to make certain products and they need to increase prices to make money on those products and not have to take them off the market as money losers. And this legislation doesn't take account of that at all. It's the January 21st, 2025 price forever.

So even if the discounts made it possible to stay beneath that cap now for some products, because the cap stays there forever as the cost increases, like more and more products bump up against that cap, and discounting isn't going to solve that.

THE COURT: Does defense want to be heard on that, on the impact of setting the cap at the 2025 WAC?

MS. FIELD: The goal of the legislation is to cap the rise of drug prices for covered purchases at inflation. So setting the WAC at the January 1st, 2025 price and capping it at inflation would, for covered transactions, keep that price potentially lower than future WAC prices being set.

However, I am curious as to what transactions plaintiffs think would be covered by this. It almost feels like there's a Schrödinger's transaction where there is something that is sufficiently connected to a nexus in Connecticut where we would have some ability to enforce against the transaction while also not being connected to Connecticut such that it is unconstitutional for us to enforce against it. And I think it is likely that plaintiffs are considering more transactions to be covered by this law than are in actuality covered by it.

THE COURT: Do plaintiffs want to be heard on that?

MR. JAY: I'll repeat my earlier answer, that if Ms. Field's position today is that, for example, the two products described in our declarations, which our members sell outside of Connecticut to wholesalers outside of Connecticut - the concept of situs doesn't appear in their papers - but it's consistent with how we would naturally read in this state.

So if the state's position is that those transactions are not covered by the law, then as I said before, I agree that that concession, if memorialized by a ruling from Your Honor, would give us the same relief we are seeking. But unless and until that happens, I've tried to answer the Court's questions based on the

positions we have taken in this and other litigation, why it's unconstitutional to reach beyond the state's borders to set prices or to cap prices in transactions charged out of state.

So our client, at least, is content with a ruling that prevents this law from applying to those out-of-state transactions. And if that's the state's position and if Your Honor memorializes it, then to your question earlier about trust, we wouldn't just be going on trust; we would be protected by this Court's ruling.

THE COURT: Going back to your previous argument on extraterritoriality and if Connecticut is allowed to do this every state can come up with their own similar law creating chaos for the manufacturers; but isn't that what the Supreme Court allowed in California with respect to pork? Couldn't other states come up with similar health based or ethics based laws that then farmers have to adjust to and they just had to do it?

MR. JAY: The reason that's not the analogy to what is going on here, I think, is that the state doesn't preclude any product from coming - I should say Connecticut doesn't preclude any product from coming into Connecticut or being resold in Connecticut. So California's law said, you may not resell in California pork that was not produced in compliance with California's

standards.

And so Connecticut has no problem with a retailer in Connecticut selling to a consumer a product that was sold to the retailer at a price Connecticut doesn't like. It's just punishing whoever sold the product to that retailer.

Now this is, of course, subject to the question about what does it mean to be sold in this state. And so if the state, if the legislation does mean what Attorney Field says it means, that would carve out the set of transactions that AAM at least is challenging, which are transactions that occurred outside of the state.

THE COURT: And plaintiffs would not be able to share the costs with consumers down the road because of the law.

MR. JAY: I want to make sure I understand the Court's question. That manufacturers--

THE COURT: In California, when we talk about pork production and how the increased costs of complying with California's law, those increased costs could be shifted to the consumer, to some degree, whereas this law may prevent plaintiffs from doing the same because of the cap.

MR. JAY: That is exactly right. A pork producer in Iowa who finds it more expensive to raise hogs

in a way that will produce California compliant pork, can charge more for California compliant pork. And if that raises prices in the entire pork market, that's the kind of downstream effect that California was not regulating. It was just regulating the ability to sell noncompliant pork in California, period, full stop. It didn't regulate the price.

When you try to regulate a manufacturer or wholesaler's ability to pass on a fee, that is exactly what the HDA versus Zucker litigation that both of us cited in our papers was about. It was about the opioid fee in New York in which the state said we are going to impose a fee on you and bar you from passing it onto consumers. And because that regulated the prices charged by manufacturers outside the state, the Southern District of New York enjoined that aspect of the law.

And as with the Maine law to which Mr. Massey alluded, New York didn't even appeal that aspect of the injunction because it was so clearly extraterritorial. And it really gets to the same point Your Honor was making, that a health and safety regulation that costs money to comply with allows that cost to be passed onto the ultimate consumer.

MR. MASSEY: Your Honor, if I could just address the question you posed earlier about whether the state's

position as to situs affects our constitutional claim, the notion that the distributors could redo their contracts to establish that title was taken outside of Connecticut. I do think that it doesn't solve the problem completely. As I said, the renegotiation or the duty or obligation, the burden of renegotiating the contracts, is itself an injury. It's an extraterritorial interference with interstate commerce.

I think it lines up with the burden in Healy and Brown-Forman, which was the discontinuance of rebate and promotional programs, which itself seems in some ways like not such a big deal. So the liquor distillers and the beer sellers couldn't run the rebate programs they wanted, but the Supreme Court said - and they had the choice, they could have complied with the state laws by giving up those programs - the Supreme Court said that's a Hobson's choice and that required that the laws in those cases be invalidated.

And so here, the obligation to do so something you don't want to do, because obviously we structured our contracts a certain way for a reason, if we go back to renegotiate, we probably have to give something up; there's no free lunch. And so the reason the contracts are structured the way they are is for a business purpose, and the obligation to redo them in derogation of that

business purpose is itself the constitutional injury.

MS. FIELD: Plaintiffs have had time to renegotiate contracts in accordance with the plain meaning of this law. Instead, they have interpreted an implausible interpretation that is contrary to the plain meaning. They have cited Commissioner Gifford's testimony, and the relevant portion of this testimony reads and I quote, the prices in the whole chain of transactions through the system where multiple entities touched on the sale of a drug, end quote.

This is referring to trickledown sales from a reduced fee upstream, not to liability that is being passed upstream.

Furthermore, the canon of constitutional avoidance provides that a plausible reading of a statute that would render the statute unconstitutional should seed to a reasonable alternative reading that would not render it unconstitutional.

So between the plain meaning and the lack of legislative history that would imply that this would have the alleged enforcement mechanism, as well as the canons of constitution, canons of statutory interpretation all point to the fact that this law regulates instate transactions where the manufacturer or wholesaler is selling in this state.

To decide now that it is too late to renegotiate contracts and that there would be some kind of injury for failure to renegotiate contracts when this law and its plain meaning have been available for months is inappropriate.

THE COURT: On that point of how much notice plaintiffs have had, I imagine their response would be similar to their explanation as to why they filed suit in the time they did, which is that - Well, I guess the Court's question would be, did the state clarify its interpretation of the statute through its briefing or otherwise before the clarity that was provided today on the record?

MS. FIELD: The statute is quite clear on its face. Plaintiffs have said that they--

THE COURT: But plaintiffs asked for clarity from defendants, right? And was today's clarity given to them prior to today?

MS. FIELD: Plaintiffs have said they had some conversation or sought clarity from the state and I don't know which conversations or with whom they were had. If plaintiffs would like to provide that information or the contents of those conversations, I would be better situated to answer this.

THE COURT: Fair enough. Okay. All right.

This has shifted, some of the analysis that I had undertaken in preparing for today, so I appreciate the parties entertaining the Court's questions and some of the representations made today from each of the three parties. It was very helpful in clarifying some of these issues for the Court.

Is there anything else? I'll be respectful of our courtroom deputy's time as well.

Does anyone have anything else they feel beyond their briefing that they would like to put on the record for the Court's consideration before we conclude?

MR. MASSEY: For HDA, I can represent we did not have prior notice of the state's interpretation of the situs issue. That is something that we have learned today for the first time.

Also, for the Court's convenience, I have a proposed order I could hand up, if that's of interest.

THE COURT: You can do that or docket it. Does each other party have it?

MR. MASSEY: Yes. The state has it.

THE COURT: You can approach. Do you have this in Microsoft Word form?

MR. MASSEY: We do.

THE COURT: So that can be emailed through the courtroom deputy or whomever. That would be fine--

MR. MASSEY: Thank you, Your Honor.

THE COURT: -- for consideration. Thank you very much, counsel. The Court is in receipt of that.

Anything else?

MR. MASSEY: Sorry. A little more context on the contract renegotiation process, since that's on the table. They are often multiyear contracts and they are not done by locality. So the burden of negotiating where situs is taken in Connecticut can't be done, can't be changed immediately, and the contracts are not state specific.

So the wholesalers, effectively, the only seller into the state, and that bears on the burden of the cap targeted to the manufacturer, while they don't, the distributors do not set the price which occurs out of state. But my point is, the contract renegotiation process is much more complicated than the state's suggestion and it's a sizable, substantial burden on commerce.

THE COURT: Attorney Jay.

MR. JAY: Just to respond to Attorney Field's question. The allegation in our complaint about meeting with the state, it was a meeting with two senior people in the Attorney General's Office.

The only other thing I'll say is that we also

have a proposed order which memorializes what we said, in ECF-20, which is our cover motion asking for a PI against extraterritorial impact.

In light of what the state has said today, it may be that the appropriate disposition in our case is something different. So I guess I'll refrain from handing that up to the Court at this time, but if the Court would like that from us, we are happy to submit it.

THE COURT: Fair enough. Thank you, Attorney Jay. Attorney Field.

MS. FIELD: If I may add two things. The first is, if there are existing nationwide contracts, it is the role of the State of Connecticut to govern sales that are occurring within Connecticut; not to get out of the way of nationwide contracts that are being made regardless of Connecticut law.

The pharmaceutical industry is already governed by a regulatory patchwork, and the participants in the industry are already skilled at navigating that patchwork and adapting to it as it changes.

The second thing that I would add is that the case cited by plaintiffs stating that since the Attorney General has allegedly failed to disavow an alleged enforcement mechanism, the case they cited is Susan B. Anthony List versus Dreihaus, has as very key distinction

from the situation at hand. In that case, the plaintiff had to be faced with a credible threat of enforcement, and that case was told that if his conduct continued that he would be prosecuted. The prosecution then failed to disavow that threat. But it was a credible and direct threat of enforcement. Here, we have a statute whose plain meaning does not imply the alleged enforcement mechanism. Thank you.

THE COURT: Anything else from anyone? All right. For HDA, one follow-up question. Are you aware of any current contracts where the situs - well, where title is to be taken in Connecticut?

MR. MASSEY: Your Honor, as I stand here today, no. But I also don't know the details of the contrary. I do know, all I know is, that we have multiyear, complex contracts that are not specific to Connecticut. And in some instances the contracts might say that title is taken at the distribution facility. In other instances it may say title was taken at the place of delivery. Neither would be specific to Connecticut. The contracts don't really have Connecticut specific provisions. But I'm speaking on behalf of a lot of members.

THE COURT: I get it. With a lot of contracts, sure.

MR. MASSEY: With a lot of contracts, and I

don't want to overstate my ability to answer that question. But I believe it would be a large task to even answer that question, frankly, even to understand exactly, to analyze each contract and determine where title would be taken. I raise the issue today because of the state's comment about situs.

THE COURT: Right.

MR. MASSEY: It raised a new question for us, how the state is doing it.

THE COURT: I appreciate that.

MR. MASSEY: And I do need to know that for my members. But at the end of the day, I think they are going to say that is a very large undertaking for us and that is not something that can happen between now and January 1st, 2026.

And so if the law goes into effect on January 1st, 2026, we will have to comply with it at great expense, and we believe the constitutional injury itself is a form of irreparable harm.

Aside from that, there's also the financial cost. And both of those are forms of irreparable harm. And we don't think, with all respect, that the law was very clear on its face if that's really what the Connecticut General Assembly meant.

THE COURT: I thank you all for, again, a very

helpful briefing, citations to helpful case law, and your arguments today. I thank you so much for all of that.

Anything further before the Court takes a recess? Thank you all. The Court stands in recess.

MR. MASSEY: Thank you, Your Honor.

MS. FIELD: Thank you, Your Honor.

COURTROOM DEPUTY: The United States District Court is now in recess.

(Adjourned at 11:33 a.m.)

C E R T I F I C A T E

I, Catherine Cullen, Official Court Reporter for the United States District Court for the District of Connecticut, do hereby certify that the foregoing pages are a true and accurate transcription of my shorthand notes taken in the aforementioned matter to the best of my skill and ability.

/S/ CATHERINE CULLEN

Catherine Cullen
Official Court Reporter
450 Main Street
Hartford, CT 06103
(914) 552-3201

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Healthcare Distribution Alliance, *Plaintiff*, 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, *Defendants*.	**Case No. 3:25-cv-1724 (OAW)**

DECLARATION OF MARTIN IGEL IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

I, Martin Igel, am over 18 years of age and hereby declare as follows:

1. I am the Vice President of Strategic Sourcing and Manufacturer Services at Cardinal Health, Inc. ("Cardinal Health") and provide this declaration based on my own personal knowledge.

2. Wholesale distributors in the pharmaceutical industry play a critical role in ensuring the safe, efficient, and reliable delivery of healthcare products every day from manufacturers to pharmacies, hospitals, and other healthcare providers. Distributors provide sophisticated services, including thermally controlled packaging and transport, electronic data reporting, advanced analytics, administrative third-party contract management, exception management systems, quality controls, and inventory logistics.

3. Distributors efficiently and securely serve pharmacies, hospitals, clinics, long-term care facilities, and other patient-facing organizations. They do this through a network of

distribution centers geographically dispersed across the nation. These distribution centers and the systems they support provide consistent just-in-time delivery to their service areas so that providers can reliably deliver high quality care to patients.

4. Cardinal Health serves pharmacies, hospitals, and other healthcare providers in Connecticut. But Cardinal Health does not have a distribution center in Connecticut. Instead, products we distribute in Connecticut are shipped from distribution centers outside Connecticut.

5. Wholesale distributors do not set or control the Wholesale Acquisition Cost ("WAC") for drug products. Instead, manufacturers set the WAC for drug products on a national basis, and those decisions occur outside Connecticut. Wholesale distributors also operate on a national (rather than a state-by-state) basis, under contracts with manufacturers that are not tailored to individual states. Given the integrated nature of the pharmaceutical supply chain, wholesale distributors structure their contractual relationships with manufacturers and downstream customers with multistate operations through national agreements that apply uniformly across states.

6. Cardinal Health faces imminent and irreparable injury from the Drug Price Cap. When manufacturers inevitably increase prices for one or more covered products above the 2025 WAC (adjusted by the CPI), wholesale distributors (and their officers and employees) will face severe potential liability (including criminal sanctions) under the statute even though they do not set or control the WAC.

I declare under penalty of perjury that the foregoing is true and correct.

Date: October 17, 2025

Martin Igel
Martin Igel (Oct 17, 2025 14:03:12 EDT)

Martin Igel
Vice President
Strategic Sourcing and Manufacturer Services
Cardinal Health, Inc.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Healthcare Distribution Alliance, *Plaintiff*, 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, *Defendants*.	**DECLARATION** **Case No. 3:25-cv-1724 (OAW)**

DECLARATION OF CHRISTOPHER REED IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

I, Christopher Reed, am over 18 years of age and hereby declare as follows:

1. I oversee distribution operations at Cencora, Inc. and provide this declaration based on my own personal knowledge.

2. Wholesale distributors in the pharmaceutical industry play a critical role in ensuring the safe, efficient, and reliable delivery of millions of healthcare products every day from manufacturers to pharmacies, hospitals, and other healthcare providers. Distributors provide sophisticated services, including thermally controlled packaging and transport, electronic data reporting, advanced analytics, administrative third-party contract management, exception management systems, quality controls, and inventory logistics.

3. Distributors efficiently and securely serve tens of thousands of U.S.-based pharmacies, hospitals, clinics, long-term care facilities, and other patient-facing organizations. They do this through a network of distribution centers

geographically dispersed across the nation. These distribution centers and the systems they support provide consistent just-in-time delivery to their service areas so that providers can reliably deliver high quality care to patients.

4. My company serves pharmacies, hospitals, and other healthcare providers in Connecticut. But my company has no distribution center in Connecticut. Instead, medical products we distribute in Connecticut are shipped from distribution centers outside Connecticut.

5. Wholesale distributors do not set or control the Wholesale Acquisition Cost ("WAC") for drug products. Instead, manufacturers set the WAC for drug products on a national basis. Wholesale distributors also operate on a national (rather than a state-by-state) basis, under contracts with manufacturers that are not tailored to individual states. Given the integrated nature of the pharmaceutical supply chain, wholesale distributors structure their contractual relationships with manufacturers and with downstream customers through national agreements that apply uniformly across states.

6. My company faces imminent and irreparable injury from the Drug Price Cap. When manufacturers inevitably increase prices for one or more covered drugs or products above the 2025 WAC (adjusted by the CPI), wholesale distributors (and their officers and employees) will face severe potential liability (including criminal sanctions) under the statute even though they do not set or control the WAC.

Further affiant sayeth not.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on October 19, 2025.

Reed, Christopher (a107264) Digitally signed by Reed, Christopher (a107264) Date: 2025.10.19 13:59:24 04 00

Christopher Reed, Vice President

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Healthcare Distribution Alliance, *Plaintiff*, 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, *Defendants*.	**DECLARATION** **Case No. 3:25-cv-1724 (OAW)**

DECLARATION OF CHRIS VAN NORMAN IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

I, Chris Van Norman, am over 18 years of age and hereby declare as follows:

1. I am the Senior Vice President, Supply Chain Operations at McKesson Corp. and provide this declaration based on my own personal knowledge.

2. Wholesale distributors in the pharmaceutical industry play a critical role in ensuring the safe, efficient, and reliable delivery of healthcare products from manufacturers to pharmacies, hospitals, and other healthcare providers. Distributors provide sophisticated services, including thermally controlled packaging and transport, electronic data reporting, advanced analytics, administrative third-party contract management, exception management systems, quality controls, and inventory logistics.

3. Distributors serve pharmacies, hospitals, clinics, long-term care facilities, and other patient-facing organizations through a network of distribution centers geographically dispersed across the nation. These distribution centers and the

systems they support provide consistent just-in-time delivery to their service areas so that providers can reliably deliver high quality care to patients.

4. McKesson serves pharmacies, hospitals, and other healthcare providers in Connecticut. But my company has no distribution center in Connecticut. Instead, medical products we distribute in Connecticut are shipped from distribution centers outside Connecticut.

5. Wholesale distributors do not set or control the Wholesale Acquisition Cost ("WAC") for drug products. Instead, manufacturers set the WAC for drug products on a national basis, and those decisions occur outside Connecticut. Wholesale distributors also operate on a national (rather than a state-by-state) basis, under contracts with manufacturers that are not tailored to individual states. Given the integrated nature of the pharmaceutical supply chain, wholesale distributors structure their contractual relationships with manufacturers and with downstream customers through national agreements that apply uniformly across states.

6. McKesson faces imminent and irreparable injury from the Drug Price Cap. When manufacturers inevitably increase prices for one or more covered drugs or products above the January 1, 2025 WAC (adjusted by the CPI), we will face the choice of whether (1) to buy the covered product at the manufacturer's price ***above*** the January 1, 2025 WAC and sell to Connecticut customers at the statutory reference price (i.e., the ***lower*** price of January 1, 2025 WAC), or (2) to sell to Connecticut customers at a price above the January 1, 2025 WAC and face severe

civil penalties under the Drug Price Cap. We will face this dilemma even though we do not set or control the WAC.

Further affiant sayeth not.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on 10/20/2025.

Signed by:
Christopher Van Norman
56C38E81542F4E0...
Chris Van Norman

Date: 10/20/2025

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Healthcare Distribution Alliance, *Plaintiff*, 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, *Defendants*.	**DECLARATION** **Case No. 3:25-cv-1724 (OAW)**

DECLARATION OF NICOLETTE LOUISSAINT IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

I, Nicolette Louissaint, PhD, am over 18 years of age and hereby declare as follows:

1. I am the Chief Policy Officer at Healthcare Distribution Alliance and provide this declaration based on my own personal knowledge.
2. I understand that Connecticut's Drug Price Cap of Public Act No. 25-168 ("the Drug Price Cap") applies to branded drugs that have been off-patent for at least 24 months, generic drugs, and interchangeable biologic products (the "covered products").
3. Wholesale distributors do not set or control the WAC for drug products. Instead, manufacturers set the WAC for drug products on a national basis.
4. Several states require manufacturers to report when they increase the WAC of their products, subject to specific conditions or limitations, and this data is often made publicly available. For example, the State of California requires pharmaceutical manufacturers to report when they increase the WAC on a given

product by more than 16%—including the immediate increase and cumulative increases within the two previous calendar years—where the course of therapy costs more than $40. *See* Cal. Health & Safety Code § 127677; 22 Cal. Code Regs. § 96065, available at https://hcai.ca.gov/wp-content/uploads/2024/03/CTRx-Regulations-Text.pdf. The California Health and Human Services Agency ("CalHHS") currently makes reporting data from 2019 through October 8, 2025 publicly available. *See Prescription Drug Wholesale Acquisition Cost (WAC) Increases*, CalHHS, https://data.chhs.ca.gov/dataset/prescription-drug-wholesale-acquisition-cost-wac-increases (Oct. 8, 2025);[1] *October Monthly Update – Prescription Drug WAC Increases (Excel)*, CalHHS, https://data.chhs.ca.gov/dataset/prescription-drug-

[1] I analyzed CalHHS's data on WAC increases from 2019 through 2024 using the following datasets:

- *Q1-Q4 2024 Prescription Drug WAC Increases*, CalHHS (Sept. 11, 2025), https://data.chhs.ca.gov/dataset/prescription-drug-wholesale-acquisition-cost-wac-increases/resource/882bb30d-44ed-48c9-b722-beb5aedc2c1b;
- *Q1-Q4 2023 Prescription Drug WAC Increases*, CalHHS (Sept. 11, 2025), https://data.chhs.ca.gov/dataset/prescription-drug-wholesale-acquisition-cost-wac-increases/resource/aca55cd5-a1a7-49cb-a490-997df1e27480;
- *Q1-Q4 2022 Prescription Drug WAC Increases*, CalHHS (Sept. 11, 2025), https://data.chhs.ca.gov/dataset/prescription-drug-wholesale-acquisition-cost-wac-increases/resource/dbed46b3-e823-487a-8a96-c0b2381af2c9;
- *Q1-Q4 2021 Prescription Drug WAC Increases*, CalHHS (Sept. 11, 2025), https://data.chhs.ca.gov/dataset/prescription-drug-wholesale-acquisition-cost-wac-increases/resource/34c373bb-cf9a-463e-93bf-6ae4ff3afad8;
- *Q1-Q4 2020 Prescription Drug WAC Increases*, CalHHS (Sept. 11, 2025), https://data.chhs.ca.gov/dataset/prescription-drug-wholesale-acquisition-cost-wac-increases/resource/f3e4ba62-3df4-40dd-9876-f7aea7384c1b;
- *Q1-Q4 2019 Prescription Drug WAC Increases*, CalHHS (Sept. 11, 2025), https://data.chhs.ca.gov/dataset/prescription-drug-wholesale-acquisition-cost-wac-increases/resource/9b8e12dc-1b3c-4c36-9ba9-adba6b921a6c;

(collectively, "CalHHS 2019–2024 Data").

wholesale-acquisition-cost-wac-increases/resource/b4554543-fec7-46c7-a518-b7d07bd1c1f3 (Oct. 8, 2025) ("CalHHS Oct. 2025 Update").

5. Although the limitations on California's reporting requirements mean that not every WAC increase is reported, CalHHS's data demonstrates that manufacturers frequently and consistently raise the WAC on a variety of products covered under the Drug Price Cap. After filtering CalHHS's data to exclude drugs that are reported to be off-patent for less than 24 months, the data shows manufacturer-reported WAC increases on thousands of covered products, primarily consisting of branded and generic drugs. *See generally* CalHHS 2019–2024 Data (reporting "Patent Expiration Date" in column G);[2] CalHHS Oct. 2025 Update (reporting "Drug Category" in column G as either "Brand" or "Generic," and reporting "Patent Expiration Date" in column K).

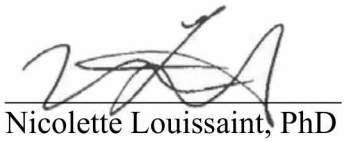
6. WAC prices for numerous covered products have ***already*** increased during calendar year 2025 or are set to increase before the end of 2025. California's reporting data shows that, since January 1, 2025, manufacturers have raised the WAC of over 500 covered products. *See generally* CalHHS Oct. 2025 Update. Appendix A to this Declaration provides a representative sample of just some of the covered products that have experienced a WAC increase—or sometimes two WAC increases—so far in 2025.

[2] Unlike the CalHHS Oct. 2025 Update, the CalHHS 2019–2024 Data does not report "Brand" or "Generic" categorization, *see generally* CalHHS 2019–2024 Data, but it does report "Drug Source Type" as "single source," "innovator multiple source," or "noninnovator multiple source," *see generally id.* (column H). Branded drugs are often classified in the CalHHS 2019–2024 Data as "single source," but there are some instances of single source generic or biosimilar products. Generic or biosimilar products are often classified as "innovator multiple source" or "noninnovator multiple source" in the CalHHS 2019–2024 data.

7. Historical data on WAC increases further indicates that, in the future, manufacturers will inevitably increase prices for additional covered drug products above the January 1, 2025 WAC (adjusted by the CPI). As summarized in Appendix B to this Declaration, California's reporting data shows that manufacturers increased the WAC on an average of about 1,300 covered products each year between 2019 and 2024. *See generally* CalHHS 2019–2024 Data; Appendix B. In other words, manufacturers consistently raise WAC on a variety of covered products and have increased the WAC on many of the same products every year.

Further affiant sayeth not.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on _10/22/2025___.



Nicolette Louissaint, PhD

APPENDIX A:

Representative Sample of Reported WAC Increases on Covered Products in 2025

1. "BSS Plus Intraocular Solution 500ml per package"
    - Manufacturer: Alcon Labs
    - WAC Increase Reported on: 04/29/2025
    - WAC Increase Effective Date: 02/08/2025
    - Source: CalHHS Oct. 2025 Update, Row 18

2. "ACETYLCYSTEINE SOLUTION 10%, 100MG/ML, 4ML Vial, PKG OF 25"
    - Manufacturer: American Regent
    - WAC Increase Reported on: 04/28/2025
    - WAC Increase Effective Date: 02/01/2025
    - Source: CalHHS Oct. 2025 Update, Row 35

3. "HYDROXYZINE HCL, 25MG/ML, 1ML SDV, PKG. OF 25"
    - Manufacturer: American Regent
    - WAC Increase Reported on: 4/29/2025
    - WAC Increase Effective Date: 02/01/2025
    - Source: CalHHS Oct. 2025 Update, Row 38

4. "Opicapone 25 MG Capsule 30 EA"
    - Manufacturer: Amneal Pharmaceuticals
    - WAC Increase Reported on: 4/11/2025
    - WAC Increase Effective Date: 01/20/2025
    - Source: CalHHS Oct. 2025 Update, Row 46

5. "Silver sulfadiazine cream 1% 20gm tube"
    - Manufacturer: Ascend Laboratories, LLC
    - WAC Increase Reported on: 04/23/2025
    - WAC Increase Effective Date: 03/24/2025
    - Source: CalHHS Oct. 2025 Update, Row 71

6. "NAGLAZYME 1MG/ML INJ, (5 mL vial)"
    - Manufacturer: BioMarin Pharmaceutical Inc
    - WAC Increase Reported on: 04/25/2025, 07/28/2025 (respectively)
    - WAC Increase Effective Date: 01/01/2025, 06/01/2025
    - Source: CalHHS Oct. 2025 Update, Rows 150–51

7. "VOXZOGO .56MG/VIAL, Ten .56mg vial"
    - Manufacturer: BioMarin Pharmaceutical Inc
    - WAC Increase Reported on: 04/25/2025, 07/28/2025 (respectively)
    - WAC Increase Effective Date: 01/01/2025, 06/01/2025
    - Source: CalHHS Oct. 2025 Update, Rows 162–63

8. "CALDOLOR 800MG RTU BAGS/CASE OF 20"
    - Manufacturer: Cumberland Pharmaceuticals
    - WAC Increase Reported on: 07/23/2025
    - WAC Increase Effective Date: 07/01/2025
    - Source: CalHHS Oct. 2025 Update, Row 259

9. "Acetylcysteine Solution, USP 10% 100mg/mL 10mL Package Quantity 3"
    - Manufacturer: Fresenius Kabi USA LLC
    - WAC Increase Reported on: 04/24/2025
    - WAC Increase Effective Date: 02/19/2025
    - Source: CalHHS Oct. 2025 Update, Row 332

10. "Glucagon HCl (Diagnostic) Injection Solution Reconstituted 1 MG Package Quantity 10"
    - Manufacturer: Fresenius Kabi USA LLC
    - WAC Increase Reported on: 04/24/2025
    - WAC Increase Effective Date: 02/19/2025
    - Source: CalHHS Oct. 2025 Update, Row 339

11. "HydrOXYzine HCl, 10 mg/5 mL Solution, 473 mL bottle"
    - Manufacturer: Lannett Company, Inc.
    - WAC Increase Reported on: 4/25/25
    - WAC Increase Effective Date: 1/21/25
    - Source: CalHHS Oct. 2025 Update, Row 416

12. "Ketorolac Tromethamine Ophthalmic Solution 0.4% 5mL"
    - Manufacturer: Mylan Pharmaceuticals Inc.
    - WAC Increase Reported on: 07/31/2025
    - WAC Increase Effective Date: 06/17/2025
    - Source: CalHHS Oct. 2025 Update, Row 460

13. "AFINITOR DISPERZ TABLET FOR SUSPENSION 2 mg 28"
    - Manufacturer: Novartis
    - WAC Increase Reported on: 04/29/2025
    - WAC Increase Effective Date: 01/14/2025
    - Source: CalHHS Oct. 2025 Update, Row 491

14. "Erythrocin™ (lactobionate) IV Rx, 500 mg, Single Dose Glass Fliptop Vial, 10"
    - Manufacturer: Pfizer
    - WAC Increase Reported on: 4/30/2025, 7/31/2025 (respectively)
    - WAC Increase Effective Date: 1/01/2025, 5/15/2025
    - Source: CalHHS Oct. 2025 Update, Rows 672–73

15. "MAGNESIUM SULFATE (magnesium sulfate), 4 mEq/mL (50 %), SYRINGE (ML), 1"
    - Manufacturer: Pfizer
    - Type: generic
    - WAC Increase Reported on: 4/30/2025, 7/31/2025 (respectively)
    - WAC Increase Effective Date: 1/1/2025, 5/15/2025
    - Source: CalHHS Oct. 2025 Update, Rows 720–21

16. "AMANTADINE HYDROCHLORIDE (AMANTADINE HYDROCHLORIDE) 50mg/5mL Oral Solution, 10mL Cup [Qty: 100]"
    - Manufacturer: Pharmaceutical Associates, Inc.
    - WAC Increase Reported on: 01/06/2025
    - WAC Increase Effective Date: 01/02/2025
    - Source: CalHHS Oct. 2025 Update, Row 804

17. "Flotrex 0.5mg, Vitamin A, Vitamin C, Vitamin D3, Vitamin E, Thiamin, Vitamin E, Thiamin, Riboflavin, Niacin, Vitamin B6, Folate, Vitamin B12, Fluoride, chewable tablets (30ct)"
    - Manufacturer: PureTek Corporation
    - WAC Increase Reported on: 04/02/2025
    - WAC Increase Effective Date: 04/01/2025
    - Source: CalHHS Oct. 2025 Update, Row 858

18. "Lidotral 5% Gel, Lidocaine HCI 5%, (3oz)"
    - Manf: PureTek Corporation
    - WAC Increase Reported on: 04/02/2025
    - WAC Increase Effective Date: 04/01/2025
    - Source: CalHHS Oct. 2025 Update, Row 860

19. "MORPHINE SULFATE ER 100MG TAB 100 tablet in 1 blister pack"
    - Manufacturer: SpecGx
    - WAC Increase Reported on: 06/18/2025
    - WAC Increase Effective Date: 06/02/2025
    - Source: CalHHS Oct. 2025 Update, Row 929

20. "NYSTATIN 100MU/ML SUSP UD -100x5mL"
    - Manufacturer: The Harvard Drug Group, L.L.C. dba Major Pharmaceuticals
    - WAC Increase Reported on: 07/23/2025
    - WAC Increase Effective Date: 05/12/2025
    - Source: CalHHS Oct. 2025 Update, Row 1019

APPENDIX B:

Year	Reported WAC Increases on Covered Products
2019	1,369
2020	1,189
2021	979
2022	1,223
2023	1,484
2024	1,584
AVERAGE	1,304.7

Source: CalHHS 2019–2024 Data

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Healthcare Distribution Alliance, *Plaintiff*, 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, *Defendants*.	**Case No. 3:25-cv-1724 (OAW)**

SUPPLEMENTAL DECLARATION OF MICHELLE BRITT IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

I, Michell Britt, am over 18 years of age and hereby declare as follows:

1. I am the Senior Vice President, Retail Independent Sales in Pharmaceutical & Specialty Distribution at Cardinal Health, Inc. ("Cardinal Health") and provide this declaration based on my own personal knowledge.

2. Cardinal Health distributes pharmaceutical products to licensed pharmacies, hospitals, clinics, long-term care facilities, and other healthcare providers in Connecticut. But Cardinal Health does not have a distribution center in Connecticut. Instead, products we distribute in Connecticut are shipped from distribution centers outside Connecticut.

3. Per Cardinal Health's customer contracts, Cardinal Health sells pharmaceutical products "Free On Board (FOB) Destination,"[1] meaning that title to the products transfers from Cardinal Health to its customer at the time and place of delivery to the customer. Therefore, Cardinal Health bears the risk of any damage, loss and theft until the goods reach Cardinal Health's customer.[2] To my knowledge, none of Cardinal Health's customer contracts provide for a transfer of title at a different time and place.

4. The FOB Destination term in Cardinal Health's customer contracts is a fundamental part of our relationship with our customers. Because Cardinal Health bears the risk of loss, damage and theft until physical delivery, Cardinal Health (and not the customer) pays for insurance to mitigate those risks. Additionally, Cardinal Health is subject to record maintenance and reporting obligations to the U.S. Drug Enforcement

[1] "Free on Board (insert named port of loading)" is a common "incoterm" associated with shipping contracts. *Know Your Incoterms*, Int'l Trade Admin., https://www.trade.gov/know-your-incoterms (last visited Dec. 11, 2025). "Incoterms" are "widely-used terms of sale . . . which define the responsibilities of sellers and buyers. Incoterms specify who is responsible for paying for and managing the shipment, insurance, documentation, customs clearance, and other logistical activities." *Id.*

[2] *See also Free on Board (FOB) Explained: Who's Liable for What in Shipping?*, Investopedia (Sept. 17, 2025) ("FOB Destination means the seller retains the risk of loss until the goods reach the buyer."), https://www.investopedia.com/terms/f/fob.asp#:~:text=Free%20on%20Board%20(FOB)%20indicates,the%20seller%20ships%20the%20product.

Administration ("DEA") for certain drug products (such as controlled substances) before and through delivery to the customer.[3]

5. Cardinal Health's customers would almost certainly be unwilling to change the FOB Destination term in their contracts, which would result in them taking title to covered products outside of Connecticut and before physical delivery. Such a change would require in-state Connecticut retailers, hospitals, clinics, long-term care facilities, medical practices, and other healthcare providers to assume the risk of loss or damage to, or theft of, pharmaceutical products before they physically receive them. Each of those customers would likely need to obtain insurance on their own to mitigate those risks. The collective cost for our customers would likely be greater (and in some cases, substantially greater) than what Cardinal Health itself currently bears with respect to its insurance and risk-mitigation measures, because Cardinal Health is able to achieve efficiencies that individual customers are not. Therefore, changing the FOB Destination term would increase business costs for Connecticut retailers, hospitals, and medical practices, likely resulting in greater passed-down costs to Connecticut patients.

[3] *See* 21 U.S.C. § 822, 827; 21 C.F.R. §§ 1304.04, 1304.33; *see also* 21 C.F.R. §§ 1304.33(d) u7j(covering Schedule I–V controlled substances) and 1301.74(c) (covering theft and loss of controlled substances).

6. Changing the FOB Destination term would also likely require Cardinal Health and its Connecticut retailers, hospitals, and medical practice customers to incur additional costs in assessing any potential changes to their documentation and reporting obligations under DEA regulations.[4]

7. Cardinal Health's customer contracts are typically multi-year, and many of our contracts are multi-state rather than state-specific. For our customers with multi-state operations, we structure our contractual relationships through national agreements that apply uniformly across states. Accordingly, renegotiating existing contracts to provide that Cardinal Health's customers take title to covered products outside of Connecticut and before physical delivery to retailers, hospitals, and medical practices in Connecticut, would be commercially unreasonable, severely disrupting national agreements and imposing substantial time and cost burdens to Cardinal Health as well as its customers in and outside of the state. Certainly, no contractual changes to change the situs of title transfer could take place before January 1, 2026.

[4] *E.g.*, 21 C.F.R. § 1304.33 (requiring "[a]cquisition/distribution reports [to] provide data on each acquisition to inventory . . . and each reduction from inventory").

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 15, 2025.

Michelle Britt (Dec 15, 2025 14:42:56 EST)

Michelle Britt
Senior Vice President, Retail Independent Sales
Pharmaceutical & Specialty Distribution
Cardinal Health, Inc.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Healthcare Distribution Alliance, *Plaintiff*, 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, *Defendants*.	**DECLARATION** **Case No. 3:25-cv-1724 (OAW)**

SUPPLEMENTAL DECLARATION OF CHRISTOPHER REED IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

I, Christopher Reed, am over 18 years of age and hereby declare as follows:

1. I oversee distribution operations at Cencora, Inc. and provide this declaration based on my own personal knowledge.

2. As I explained in my declaration in this case dated October 19, 2025,[1] Cencora distributes pharmaceutical products to licensed pharmacies, hospitals, and other healthcare providers in Connecticut. But Cencora does not have a distribution center in Connecticut; rather, products we distribute in Connecticut are shipped from distribution centers outside the state.

3. Our contracts with our Connecticut customers do not provide that title is taken outside of Connecticut. Rather, our customer contracts provide that Cencora sells pharmaceutical products "FOB Destination," meaning that title does not pass until

[1] *See* ECF No. 27-3.

the customer receives it. Until delivery occurs, Cencora retains title, bears all risk of damage or loss (against which Cencora generally carries insurance), and is subject to record maintenance and reporting obligations to the U.S. Drug Enforcement Administration ("DEA") for certain drug products (including controlled substances) before and through delivery to the customer. I am not aware of any contracts with Connecticut customers that are not FOB Destination.

4. FOB Destination provides our customers with important benefits. Because Cencora bears the risk of loss or damage until physical delivery, we pay for insurance to mitigate that risk. We also handle the DEA recordkeeping and reporting requirements.

5. Cencora would likely face immense resistance from our Connecticut retailer, hospital, and other healthcare provider customers if we attempted to amend or renegotiate the FOB Destination term in their contracts. Such a change would require the customers to assume the risk of damage or loss prior to delivery and would likely force them to arrange their own insurance, which would increase their costs. Changing the FOB Destination term would also impose greater DEA record-retention and reporting burdens on Connecticut retailers, hospitals, and medical practices, which will further increase their business costs.[2]

6. For these reasons, I do not believe that many of our customers would be willing to agree to change the FOB Destination term voluntarily. Cencora would need to

[2] *See e.g.*, 21 C.F.R. § 1304.33 (requiring "[a]cquisition/distribution reports [to] provide data on each acquisition to inventory . . . and each reduction from inventory").

make significant concessions in the negotiation process to persuade our customers to accept that change, causing Cencora financial harm.

7. Moreover, our customer contracts are typically multi-year, and many of our contracts apply to customers spanning several states. Accordingly, it would take at least a few years to amend our contracts to change the FOB Destination term (even if agreement could be reached), given the number of Connecticut customers we have and the length of time remaining on many of their existing contracts. Certainly, no contractual changes regarding the situs of title transfer could occur before the Drug Price Cap takes effect on January 1, 2026.

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 11, 2025.

Reed, Christopher (a107264)
Digitally signed by Reed, Christopher (a107264)
Date: 2025.12.11 16:06:05 -04'00'

Christopher Reed, Vice President

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

Healthcare Distribution Alliance, *Plaintiff*, 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, *Defendants*.	**DECLARATION** **Case No. 3:25-cv-1724 (OAW)**

SUPPLEMENTAL DECLARATION OF CHRISTOPHER VAN NORMAN IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

I, Christopher Van Norman, am over 18 years of age and hereby declare as follows:

1. I am the Senior Vice President, Supply Chain Operations at McKesson Corporation ("McKesson") and provide this declaration based on my own personal knowledge.

2. As I explained in my declaration in this case dated October 20, 2025,[1] McKesson distributes pharmaceutical products to licensed pharmacies, hospitals, clinics, long-term care facilities, and other patient-facing organizations in Connecticut. But McKesson does not have a distribution center in Connecticut. Instead, products we distribute in Connecticut are shipped from distribution centers outside Connecticut.

[1] *See* ECF No. 27-4.

3. Under its agreements with sell-side customers (such as licensed pharmacies, hospitals, clinics, long-term care facilities, and other patient-facing organizations), McKesson generally delivers pharmaceutical products "F.O.B. Destination," meaning that title and risk of loss stay with McKesson until the products are delivered to the customer, even if the customer pays shipping and handling charges. To my knowledge, McKesson has no customer agreements with any sell-side Connecticut customers specifying a different delivery term or otherwise providing for a transfer of title at a different time and place.

4. F.O.B. Destination is consistent with a long course of dealing between McKesson and its sell-side customers, as well as the reasonable commercial expectations of customers. By delivering F.O.B. Destination, McKesson bears the risk of loss or damage until physical delivery. McKesson pays for insurance to mitigate that risk, while its sell-side customers do not. Additionally, McKesson is subject to regulatory and compliance obligations under the Controlled Substances Act and the Drug Supply Chain Security Act. These laws, and extensive regulations promulgated under them, prescribe detailed rules for the distribution of pharmaceutical products.

5. McKesson would likely face immense resistance from its Connecticut sell-side customers if it attempted to persuade them to change the F.O.B. Destination term in their contracts with McKesson. Such a change would require McKesson's Connecticut customers to assume the risk of damage or loss prior to delivery and would likely force them to purchase insurance to mitigate that newfound risk. It could also increase the regulatory burden to them under the Controlled Substances

Act and the Drug Supply Chain Security Act. All of these changes would increase burdens and costs for McKesson's sell-side customers.

6. Further, it would be extremely difficult as a practical matter to change the existing F.O.B. Destination arrangement. Many of McKesson's customer contracts cover multiple years and multiple states at a time. A single customer may have multiple locations in different states. McKesson does not have a distribution facility in Connecticut and thus would face very substantial administrative burdens if it sought to deliver products under a special arrangement to Connecticut sell-side customers and deliver F.O.B. Destination to everyone else. McKesson's various facilities outside Connecticut would have to operate under a special exception every time they fulfilled an order for a covered product through delivery to a customer's location in Connecticut.

7. To make matters worse, the Connecticut Drug Price Cap applies to only a small subset of the healthcare products that McKesson distributes: off-patent brand-name prescription and generic drugs, and interchangeable biological products. An on-patent brand-name prescription drug or biological product is currently exempt from the Drug Price Cap, but it would become subject to the Cap once its patent expires. A generic drug that becomes commercially available after January 1, 2025, would also become subject to the Cap. Keeping track of which products could be shipped F.O.B. Destination to Connecticut (and which could not) would be a major administrative challenge for any distributor.

8. The multi-year nature of many sell-side customer contracts would also limit the ability of McKesson to effect prompt changes in the F.O.B. Destination term. While McKesson could in theory seek renegotiation of the F.O.B. Destination term before the contractual

term expired, customers otherwise in compliance with the contracts would be within their contractual rights to refuse. Hence, there would likely be substantial delay before McKesson would even be in a realistic negotiating position to seek departures from the F.O.B. Destination term in multi-year contracts. Certainly, no contractual changes would be feasible before January 1, 2026.

I declare under penalty of perjury that the foregoing is true and correct. Executed on 12/15/2025.

Signed by:
Christopher Van Norman
CC08473C37E840E
Christopher Van Norman

House Bill No. 7287

Public Act No. 25-168

AN ACT CONCERNING THE STATE BUDGET FOR THE BIENNIUM ENDING JUNE 30, 2027, AND MAKING APPROPRIATIONS THEREFOR, AND PROVISIONS RELATED TO REVENUE AND OTHER ITEMS IMPLEMENTING THE STATE BUDGET.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (*Effective July 1, 2025*) The following sums are appropriated from the GENERAL FUND for the annual periods indicated for the purposes described.

	2025-2026	2026-2027
LEGISLATIVE		
LEGISLATIVE MANAGEMENT		
Personal Services	60,694,802	64,296,079
Other Expenses	22,660,836	24,954,131
Equipment	3,295,000	3,295,000
Flag Restoration	65,000	65,000
Minor Capital Improvements	4,000,000	4,000,000
Interim Salary/Caucus Offices	750,556	591,748
Connecticut Academy of Science and Engineering	219,000	226,000
Old State House	850,000	900,000
Translators	150,000	150,000
Wall of Fame	10,000	10,000

Section 501(c)(3) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as amended from time to time. Such disregard shall be applied for the length of time the family member participates in such program, not to exceed thirty-six cumulative months.

Sec. 343. (NEW) (*Effective July 1, 2025*) To the extent permissible under federal and state law, the Commissioner of Social Services shall disregard from income eligibility determinations any direct rental assistance received under a pilot program by an applicant for state and federal assistance programs administered by the Department of Social Services, including, but not limited to, the temporary family assistance program established pursuant to section 17b-112 of the general statutes. The Commissioner of Social Services may seek any waiver from federal law deemed necessary or amend the Medicaid state plan to implement the provisions of this section.

Sec. 344. (*Effective from passage*) Not later than September 1, 2026, the Transforming Children's Behavioral Health Policy and Planning Committee, in collaboration with the Departments of Education and Social Services, shall develop a framework and operational guidelines to streamline Medicaid billing by municipalities for Medicaid-eligible school-based behavioral health services. Not later than October 1, 2026, the committee shall file a report, in accordance with the provisions of section 11-4a of the general statutes, on the framework and operational guidelines with the joint standing committees of the General Assembly having cognizance of matters relating to appropriations and the budgets of state agencies, education and human services.

Sec. 345. (NEW) (*Effective July 1, 2025*) For the purposes of this section and sections 346 and 347 of this act:

(1) "Biological product" has the same meaning as provided in section 20-619 of the general statutes;

(2) "Brand-name drug" means a drug that is produced or distributed in accordance with an original new drug application approved under 21 USC 355, as amended from time to time, but does not include an authorized generic drug as defined in 42 CFR 447.502, as amended from time to time;

(3) "Commissioner" means the Commissioner of Revenue Services;

(4) "Consumer price index" means the consumer price index, annual average, for all urban consumers: United States city average, all items, published by the United States Department of Labor, Bureau of Labor Statistics, or its successor, or, if the index is discontinued, an equivalent index published by a federal authority, or, if no such index is published, a comparable index published by the United States Department of Labor, Bureau of Labor Statistics;

(5) "Generic drug" means (A) a prescription drug product that is marketed or distributed in accordance with an abbreviated new drug application approved under 21 USC 355, as amended from time to time, (B) an authorized generic drug as defined in 42 CFR 447.502, as amended from time to time, or (C) a drug that entered the market before calendar year 1962 that was not originally marketed under a new prescription drug product application;

(6) "Identified prescription drug" means (A) a brand-name drug or biological product to which all exclusive marketing rights granted under the federal Food, Drug and Cosmetic Act, Section 351 of the federal Public Health Service Act and federal patent law have expired for at least twenty-four months, including any drug-device combination product for the delivery of the brand-name drug or biological product, or (B) a generic drug or interchangeable biological product;

(7) "Interchangeable biological product" has the same meaning as provided in section 20-619 of the general statutes;

(8) "Person" has the same meaning as provided in section 12-1 of the general statutes;

(9) "Pharmaceutical manufacturer" means a person that manufactures a prescription drug and sells, directly or through another person, the prescription drug for distribution in this state;

(10) "Prescription drug" means a legend drug, as defined in section 20-571 of the general statutes, approved by the federal Food and Drug Administration, or any successor agency, and prescribed by a health care provider to an individual in this state;

(11) "Reference price" means the wholesale acquisition cost, as defined in 42 USC 1395w-3a, as amended from time to time, of (A) a brand-name drug or biological product (i) on January 1, 2025, if the patent for the brand-name drug or biological product expired on or before said date, or (ii) if the patent for the brand-name drug or biological product expires after January 1, 2025, on the date the patent for such brand-name drug or biological product expires, or (B) a generic drug or interchangeable biological product (i) on January 1, 2025, or (ii) if the generic drug or interchangeable biological product is first commercially marketed in the United States after January 1, 2025, on the date such generic drug or interchangeable biological product is first commercially marketed in the United States; and

(12) "Wholesale distributor" means a person, including, but not limited to, a repacker, own-label distributor, private-label distributor or independent wholesale drug trader, engaged in the wholesale distribution of prescription drugs.

Sec. 346. (NEW) (*Effective July 1, 2025*) (a) (1) Notwithstanding any provision of the general statutes and except as provided in subdivision (2) of this subsection, no pharmaceutical manufacturer or wholesale distributor shall, on or after January 1, 2026, sell an identified

prescription 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.

(2) A pharmaceutical manufacturer or wholesale distributor may, on or after January 1, 2026, sell an identified prescription 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, if the federal Secretary of Health and Human Services determines, pursuant to 21 USC 356e, as amended from time to time, that such identified prescription drug is in shortage in the United States.

(b) (1) Except as provided in subdivision (2) of this subsection, any pharmaceutical manufacturer or wholesale distributor that violates the provisions of subsection (a) of this section shall be liable to this state for a civil penalty. Such civil penalty shall be imposed, calculated and collected on a calendar year basis by the Commissioner of Revenue Services, and the amount of such civil penalty for a calendar year shall be equal to eighty per cent of the difference between:

(A) The revenue that the pharmaceutical manufacturer or wholesale distributor earned from all sales of the identified prescription drug in this state during the calendar year; and

(B) The revenue that the pharmaceutical manufacturer or wholesale distributor would have earned from all sales of the identified prescription drug in this state during the calendar year if the pharmaceutical manufacturer or wholesale distributor had sold such identified prescription drug at a price that did not exceed the reference price for such identified prescription drug, as such reference price is adjusted for any increase in the consumer price index.

(2) No pharmaceutical manufacturer or wholesale distributor of an identified prescription drug shall be liable to this state for the civil

penalty imposed under subdivision (1) of this subsection unless the pharmaceutical manufacturer or wholesale distributor made at least two hundred fifty thousand dollars in total annual sales in this state for the calendar year for which such civil penalty would otherwise be imposed.

(c) (1) (A) For calendar years commencing on or after January 1, 2026, each pharmaceutical manufacturer or wholesale distributor that violated the provisions of subsection (a) of this section during any calendar year shall, not later than the first day of March immediately following the end of such calendar year:

(i) Pay to the commissioner the civil penalty imposed under subsection (b) of this section for such calendar year; and

(ii) File with the commissioner a statement for such calendar year in a form and manner, and containing all information, prescribed by the commissioner.

(B) A pharmaceutical manufacturer or wholesale distributor that is required to file the statement and pay the civil penalty pursuant to subparagraph (A) of this subdivision shall electronically file such statement and make such payment by electronic funds transfer in the manner provided by chapter 228g of the general statutes, irrespective of whether the pharmaceutical manufacturer or wholesale distributor would have otherwise been required to electronically file such statement or make such payment by electronic funds transfer under chapter 228g of the general statutes.

(2) If no statement is filed pursuant to subdivision (1) of this subsection, the commissioner may make such statement at any time thereafter, according to the best obtainable information and the prescribed form.

(d) The commissioner may examine the records of any

pharmaceutical manufacturer or wholesale distributor that is subject to the civil penalty imposed under subsection (b) of this section as the commissioner deems necessary. If the commissioner determines from such examination that the pharmaceutical manufacturer or wholesale distributor failed to pay the full amount of such civil penalty, the commissioner shall bill such pharmaceutical manufacturer or wholesale distributor for the full amount of such civil penalty.

(e) (1) The commissioner may require each pharmaceutical manufacturer or wholesale distributor that is subject to the civil penalty imposed under subsection (b) of this section to keep such records as the commissioner may prescribe, and produce books, papers, documents and other data to provide or secure information pertinent to the enforcement and collection of such civil penalty.

(2) The commissioner, or the commissioner's authorized representative, may examine the books, papers, records and equipment of any person who is subject to the provisions of this section and may investigate the character of the business of such person to verify the accuracy of any statement made or, if no statement is made by such person, to ascertain and determine the amount of the civil penalty due under subsection (b) of this section.

(f) Any pharmaceutical manufacturer or wholesale distributor that is subject to the civil penalty imposed under subsection (b) of this section and aggrieved by any action of the commissioner under subdivision (2) of subsection (c) of this section or subsection (d) of this section may apply to the commissioner, in writing and not later than sixty days after the notice of such action is delivered or mailed to such pharmaceutical manufacturer or wholesale distributor, for a hearing, setting forth the reasons why such hearing should be granted and if such pharmaceutical manufacturer or wholesale distributor believes that such pharmaceutical manufacturer or wholesale distributor is not liable for such civil penalty or the full amount of such civil penalty, the grounds

for such belief and the amount by which such pharmaceutical manufacturer or wholesale distributor believes such civil penalty should be reduced. The commissioner shall promptly consider each such application and may grant or deny the hearing requested. If the hearing request is denied, the commissioner shall immediately notify the pharmaceutical manufacturer or wholesale distributor. If the hearing request is granted, the commissioner shall notify the pharmaceutical manufacturer or wholesale distributor of the date, time and place for such hearing. After such hearing, the commissioner may make such order as appears just and lawful to the commissioner and shall furnish a copy of such order to the pharmaceutical manufacturer or wholesale distributor. The commissioner may, by notice in writing, order a hearing on the commissioner's own initiative and require a pharmaceutical manufacturer or wholesale distributor, or any other person who the commissioner believes to be in possession of relevant information concerning such pharmaceutical manufacturer or wholesale distributor, to appear before the commissioner or the commissioner's authorized agent with any specified books of account, papers or other documents for examination under oath.

(g) Any pharmaceutical manufacturer or wholesale distributor that is aggrieved by any order, decision, determination or disallowance of the commissioner made under subsection (f) of this section may, not later than thirty days after service of notice of such order, decision, determination or disallowance, take an appeal therefrom to the superior court for the judicial district of New Britain, which appeal shall be accompanied by a citation to the commissioner to appear before said court. Such citation shall be signed by the same authority and such appeal shall be returnable at the same time and served and returned in the same manner as is required in case of a summons in a civil action. The authority issuing the citation shall take from the appellant a bond or recognizance to this state, with surety, to prosecute the appeal to effect and to comply with the orders and decrees of the court. Such

appeals shall be preferred cases, to be heard, unless cause appears to the contrary, at the first session, by the court or by a committee appointed by the court. Said court may grant such relief as may be equitable and, if the civil penalty was paid prior to the granting of such relief, may order the Treasurer to pay the amount of such relief. If the appeal was taken without probable cause, the court may tax double or triple costs, as the case demands and, upon all such appeals that are denied, costs may be taxed against such pharmaceutical manufacturer or wholesale distributor at the discretion of the court but no costs shall be taxed against this state.

(h) The commissioner, and any agent of the commissioner duly authorized to conduct any inquiry, investigation or hearing pursuant to this section, shall have power to administer oaths and take testimony under oath relative to the matter of inquiry or investigation. At any hearing ordered by the commissioner, the commissioner, or the commissioner's agent authorized to conduct such hearing and having authority by law to issue such process, may subpoena witnesses and require the production of books, papers and documents pertinent to such inquiry or investigation. No witness under any subpoena authorized to be issued under the provisions of this section shall be excused from testifying or from producing books, papers or documentary evidence on the ground that such testimony or the production of such books, papers or documentary evidence would tend to incriminate such witness, but such books, papers or documentary evidence so produced shall not be used in any criminal proceeding against such witness. If any person disobeys such process or, having appeared in obedience thereto, refuses to answer any pertinent question put to such person by the commissioner, or the commissioner's authorized agent, or to produce any books, papers or other documentary evidence pursuant thereto, the commissioner, or such agent, may apply to the superior court of the judicial district wherein the pharmaceutical manufacturer or wholesale distributor resides or

wherein the business was conducted, or to any judge of such court if the same is not in session, setting forth such disobedience to process or refusal to answer, and such court or such judge shall cite such person to appear before such court or such judge to answer such question or to produce such books, papers or other documentary evidence and, upon such person's refusal to do so, shall commit such person to a community correctional center until such person testifies, but not for a period longer than sixty days. Notwithstanding the serving of the term of such commitment by any person, the commissioner may proceed in all respects with such inquiry and examination as if the witness had not previously been called upon to testify. Officers who serve subpoenas issued by the commissioner or under the commissioner's authority and witnesses attending hearings conducted by the commissioner pursuant to this section shall receive fees and compensation at the same rates as officers and witnesses in the courts of this state, to be paid on vouchers of the commissioner on order of the Comptroller from the proper appropriation for the administration of this section.

(i) The amount of any civil penalty unpaid under the provisions of this section may be collected under the provisions of section 12-35 of the general statutes. The warrant provided under section 12-35 of the general statutes shall be signed by the commissioner or the commissioner's authorized agent. The amount of any such civil penalty shall be a lien on the real property of the pharmaceutical manufacturer or wholesale distributor from the last day of the month next preceding the due date of such civil penalty until such civil penalty is paid. The commissioner may record such lien in the records of any town in which the real property of such pharmaceutical manufacturer or wholesale distributor is situated, but no such lien shall be enforceable against a bona fide purchaser or qualified encumbrancer of such real property. When any civil penalty with respect to which a lien was recorded under the provisions of this subsection is satisfied, the commissioner shall, upon request of any interested party, issue a certificate discharging such

lien, which certificate shall be recorded in the same office in which such lien was recorded. Any action for the foreclosure of such lien shall be brought by the Attorney General in the name of this state in the superior court for the judicial district in which the real property subject to such lien is situated, or, if such property is located in two or more judicial districts, in the superior court for any one such judicial district, and the court may limit the time for redemption or order the sale of such real property or make such other or further decree as the court judges equitable. The provisions of section 12-39g of the general statutes shall apply to all civil penalties imposed under this section.

(j) (1) Any officer or employee of a pharmaceutical manufacturer or wholesale distributor, who owes a duty to the pharmaceutical manufacturer or wholesale distributor to pay the civil penalty imposed under subsection (b) of this section on behalf of such pharmaceutical manufacturer or wholesale distributor, shall file a statement with the commissioner pursuant to subsection (c) of this section on behalf of such pharmaceutical manufacturer or wholesale distributor and keep records or supply information to the commissioner on behalf of such pharmaceutical manufacturer or wholesale distributor pursuant to this section. Any such officer or employee who wilfully fails, at the time required under this section, to pay such civil penalty, file such statement, keep such records or supply such information on behalf of such pharmaceutical manufacturer or wholesale distributor shall, in addition to any other penalty provided by law, be fined not more than one thousand dollars or imprisoned not more than one year, or both. Notwithstanding the provisions of section 54-193 of the general statutes, no such officer or employee shall be prosecuted for a violation of the provisions of this subdivision committed on or after January 1, 2026, except within three years next after such violation is committed.

(2) Any officer or employee of a pharmaceutical manufacturer or wholesale distributor, who owes a duty to the pharmaceutical

manufacturer or wholesale distributor to deliver or disclose to the commissioner, or the commissioner's authorized agent, any list, statement, return, account statement or other document on behalf of such pharmaceutical manufacturer or wholesale distributor, and who wilfully delivers or discloses to the commissioner, or the commissioner's authorized agent, any such list, statement, return, account statement or other document that such officer or employee knows to be fraudulent or false in any material matter shall, in addition to any other penalty provided by law, be guilty of a class D felony.

(3) No officer or employee of a pharmaceutical manufacturer or wholesale distributor shall be charged with an offense under both subdivisions (1) and (2) of this subsection in relation to the same civil penalty, but such officer or employee may be charged and prosecuted for both such offenses upon the same information.

(k) Each civil penalty imposed under subsection (b) of this section shall be deemed to constitute a civil fine or penalty within the meaning of 42 USC 1396b(w), as amended from time to time. No portion of any civil penalty imposed under subsection (b) of this section shall be waived under section 12-3a of the general statutes or any other applicable law. No tax credit shall be allowable against any civil penalty imposed under subsection (b) of this section.

(l) Not later than July 1, 2027, and annually thereafter, the commissioner shall prepare a list containing the name of each pharmaceutical manufacturer or wholesale distributor that violated subsection (a) of this section during the preceding calendar year. The commissioner shall make each such list publicly available.

(m) The commissioner may adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, to implement the provisions of this section.

Sec. 347. (NEW) (*Effective July 1, 2025*) (a) No pharmaceutical manufacturer or wholesale distributor of an identified prescription drug shall withdraw the identified prescription drug from sale in this state for the purpose of avoiding the civil penalty established in subsection (b) of section 346 of this act.

(b) Any pharmaceutical manufacturer or wholesale distributor that intends to withdraw an identified prescription drug from sale in this state shall, at least one hundred eighty days before such withdrawal, send advance written notice to the Office of Health Strategy disclosing such pharmaceutical manufacturer's or wholesale distributor's intention.

(c) Any pharmaceutical manufacturer or wholesale distributor that violates the provisions of subsection (a) or (b) of this section shall be liable to this state for a civil penalty in the amount of five hundred thousand dollars.

Sec. 348. Subsection (b) of section 17b-238 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective January 1, 2027*):

(b) Any institution or agency to which payments are to be made under sections 17b-239 to 17b-246, inclusive, and sections 17b-340 and 17b-343 which is aggrieved by any decision of said commissioner may, within ten days after written notice thereof from the commissioner, obtain, by written request to the commissioner, a rehearing on all items of aggrievement. On and after July 1, 1996, a rehearing shall be held by the commissioner or his designee, provided a detailed written description of all such items is filed within ninety days of written notice of the commissioner's decision. The rehearing shall be held within thirty days of the filing of the detailed written description of each specific item of aggrievement. The commissioner shall issue a final decision within sixty days of the close of evidence or the date on which final briefs are

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

HEALTHCARE DISTRIBUTION ALLIANCE, *Plaintiff*, *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, *Defendants*.	:	Civil Action No.: 3:25-cv-01724-OAW DECEMBER 26, 2025

PLAINTIFF'S MOTION FOR INJUNCTION PENDING APPEAL

Pursuant to Rule 62(d) of the Federal Rules of Civil Procedure and Rule 8(a)(1)(C) of the Federal Rules of Appellate Procedure, Plaintiff Healthcare Distribution Alliance ("Plaintiff" or "HDA") hereby moves for an injunction pending the appeal of the Court's December 24, 2025 Order (ECF No. 45) before the United States Court of Appeals for the Second Circuit. Plaintiff respectfully requests an injunction against 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, from implementing or enforcing against any of HDA's members, the Connecticut Drug Price Cap of Public Act No. 25-168, §§ 345-47 ("the Drug Price Cap"), which is effective on January 1, 2026.

In light of Plaintiff's position that it will suffer irreparable harm in the absence of preliminary injunctive relief from the Drug Price Cap that goes into effect January 1, 2026, as well as for all the reasons stated in prior briefing and at the December 9, 2025 hearing, Plaintiff is filing an immediate appeal to the Second Circuit.

Plaintiff respectfully asks this Court to enter an expedited ruling on this Motion based on the parties' prior submissions regarding Plaintiff's Motion for Preliminary Injunction (ECF No. 27). Substantially the same four-factor test applies to motions for a preliminary injunction and motions for an injunction pending appeal: Plaintiff must generally show that "(1) [it is] likely to succeed on the merits; (2) [it is] likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in their favor; and (4) an injunction is in the public interest." *Agudath Israel of Am. v. Cuomo*, 980 F.3d 222, 225-26 (2d Cir. 2020). Plaintiff recognizes that the Court evaluated its Motion for Preliminary Injunction (ECF No. 27) on these factors. ECF No. 45. Yet Plaintiff files this Motion because it must first move in this Court for an injunction pending appeal before seeking such relief in the Second Circuit. *See* Fed. R. Civ. P. 62(d); Fed. R. App. P. 8(a)(1); *see Agudath*, 980 F.3d at 225.

Plaintiff maintains that (1) HDA is likely to succeed on its claim that the Drug Price Cap is unconstitutional; (2) HDA's members will suffer irreparable harm absent an injunction; and (3) the balance of hardships and public interest militate in favor of an injunction. Together with its prior submissions in support of its Motion for Preliminary Injunction (ECF No. 27), and the arguments made at the December 9, 2025 hearing, HDA respectfully requests that the Court grant this Motion through entry of an injunction pending appeal.

Plaintiff has met and conferred with counsel for the State, who have informed us that the State opposes the request for an injunction pending appeal.

Dated: December 26, 2025
Hartford, Connecticut

Respectfully submitted,

/s/ Thomas J. Finn

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

HEALTHCARE DISTRIBUTION ALLIANCE, *Plaintiff*, *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, *Defendants*.	: : : : : : : : : : : :	Civil Action No.: 3:25-cv-01724-OAW DECEMBER 26, 2025

NOTICE OF APPEAL

Pursuant to 28 U.S.C. §§ 1291 and 1292(a)(1) and Rule 3 of the Federal Rules of Appellate Procedure, Plaintiff Healthcare Distribution Alliance hereby gives notice that it appeals to the United States Court of Appeals for the Second Circuit from the Order entered in the above-captioned case on December 24, 2025 (ECF No. 45), denying Plaintiff's Motion for Preliminary Injunction (ECF No. 27).

Dated: December 26, 2025
Hartford, Connecticut

Respectfully submitted,

/s/ Thomas J. Finn

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Attorneys for Healthcare Distribution Alliance

APPEAL,EFILE

U.S. District Court
District of Connecticut (New Haven)
CIVIL DOCKET FOR CASE #: 3:25-cv-01724-OAW

Healthcare Distribution Alliance v. Boughton et al
Assigned to: Judge Omar A. Williams
Cause: 42:1983 Civil Rights Act

Date Filed: 10/14/2025
Jury Demand: None
Nature of Suit: 950 Constitutional - State Statute
Jurisdiction: Federal Question

Plaintiff

Healthcare Distribution Alliance

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V.

Defendant

Mark D. Boughton
in his official capacity as Commissioner of the Connecticut Department of Revenue Services

represented by

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Defendant

William Tong
in his official capacity as Attorney General for the State of Connecticut

represented by

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Victoria Field
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text

10/14/2025	1	COMPLAINT against All Defendants (Filing fee $405 receipt number ACTDC-8367721.), filed by Healthcare Distribution Alliance. (Attachments: # 1 Civil Cover Sheet) (Finn, Thomas) (Entered: 10/14/2025)
10/14/2025		Request for Clerk to issue summons as to All Defendants. (Finn, Thomas) (Entered: 10/14/2025)
10/14/2025	2	Disclosure Statement *Corporate Rule 7.1* by Healthcare Distribution Alliance. (Finn, Thomas) (Entered: 10/14/2025)
10/14/2025		CASE ASSIGNMENT: District Judge Omar A. Williams assigned to the case. If the District Judge issues an Order of Referral to a Magistrate Judge for any matter other than settlement, the matter will be referred to Magistrate Judge Robert A. Richardson. (Oliver, T.) (Entered: 10/14/2025)
10/14/2025	3	Notice: Pursuant to Federal Rule of Civil Procedure 7.1(b), a disclosure statement required under Rule 7.1(a) must be filed with a party's first appearance, pleading, petition, motion, response, or other request addressed to the Court and must be supplemented if any required information changes during the case. Signed by Clerk on 10/14/25.(Hushin, Z.) (Entered: 10/14/2025)
10/14/2025	4	Order on Pretrial Deadlines: Amended Pleadings due by 12/15/2025; Discovery due by 4/15/2026; Dispositive Motions due by 5/20/2026 Signed by Clerk on 10/14/2025. (Kelsey, N) (Entered: 10/15/2025)
10/14/2025	5	ELECTRONIC FILING ORDER FOR COUNSEL - PLEASE ENSURE COMPLIANCE WITH COURTESY COPY REQUIREMENTS IN THIS ORDER Signed by Judge Omar A. Williams on 10/14/2025. (Kelsey, N) (Entered: 10/15/2025)
10/14/2025	6	Standing Protective Order Signed by Judge Omar A. Williams on 10/14/2025. (Kelsey, N) (Entered: 10/15/2025)
10/14/2025	7	**Notice to Counsel and Litigants Regarding AI-Assisted Research**: Attorneys and *pro se* litigants alike should exercise great caution in submitting any AI-generated language in filings before the Court. Use of AI without verification of the accuracy of the information it generates like any other shoddy research method from other sources or tools implicates Federal Rule of Civil Procedure 11, the central purpose of which is to deter baseless filings in district court and thus to streamline the administration and procedure of the federal courts. Rule 11 applies fully to actions filed by *pro se* litigants. Therefore, all parties are on notice that the Court has a no-tolerance policy for any briefing (AI-assisted or not) that hallucinates legal propositions or otherwise severely misstates the law. Such filings will often result in sanctions absent reasonable excuse. *See generally Willis v. U.S. Bank Nat'l Ass'n et al*, No. 3:25-CV-516-BN, 2025 WL 1408897 (N.D. Tex. May 15, 2025). Signed by Clerk on 10/14/2025. (Kelsey, N) (Entered: 10/15/2025)
10/14/2025	8	Notice of Option to Consent to Magistrate Judge Jurisdiction. (Kelsey, N) (Entered: 10/15/2025)
10/14/2025	9	Standing Order re: Letters. Signed by Judge Omar A. Williams on 10/14/2025. (Kelsey, N) (Entered: 10/15/2025)
10/15/2025	10	NOTICE TO COUNSEL/SELF-REPRESENTED PARTIES : Counsel or self-represented parties initiating or removing this action are responsible for serving all parties with attached documents and copies of 8 Notice of Option to Consent to Magistrate Judge Jurisdiction, 6 Standing Protective Order, 4 Order on Pretrial Deadlines, 5 Electronic Filing Order, 2 Disclosure Statement filed by Healthcare Distribution Alliance, 7 Notice re: AI-

		Assisted Research, 9 Standing Order re: Letters, 3 Notice re: Disclosure Statement, 1 Complaint filed by Healthcare Distribution Alliance Signed by Clerk on 10/15/2025. (Kelsey, N) (Entered: 10/15/2025)
10/15/2025	11	ELECTRONIC SUMMONS ISSUED in accordance with Fed. R. Civ. P. 4 and LR 4 as to *Mark D. Boughton, William Tong* with answer to complaint due within *21* days. Attorney *Thomas J. Finn* *McCarter & English, LLP* *CityPlace 1, 185 Asylum Street* *Hartford, CT 06103*. (Kelsey, N) (Entered: 10/15/2025)
10/15/2025	12	NOTICE of Appearance by Snigdha Mamillapalli on behalf of Healthcare Distribution Alliance (Mamillapalli, Snigdha) (Entered: 10/15/2025)
10/16/2025	13	MOTION for Attorney(s) Jonathan S. Massey to be Admitted Pro Hac Vice (paid $200 PHV fee; receipt number ACTDC-8371075) by Healthcare Distribution Alliance. (Attachments: # 1 Affidavit of Jonathan S. Massey, # 2 Certificate of Good Standing)(Finn, Thomas) (Entered: 10/16/2025)
10/16/2025	14	MOTION for Attorney(s) Bret R. Vallacher to be Admitted Pro Hac Vice (paid $200 PHV fee; receipt number ACTDC-8371106) by Healthcare Distribution Alliance. (Attachments: # 1 Affidavit of Bret R. Vallacher, # 2 Certificate of Good Standing)(Finn, Thomas) (Entered: 10/16/2025)
10/16/2025	15	MOTION for Attorney(s) Austin S. Martin to be Admitted Pro Hac Vice (paid $200 PHV fee; receipt number ACTDC-8371121) by Healthcare Distribution Alliance. (Attachments: # 1 Affidavit of Austin S. Martin, # 2 Certificate of Good Standing)(Finn, Thomas) (Entered: 10/16/2025)
10/17/2025	16	ORDER denying without prejudice 13 Motion to appear pro hac vice; denying 14 Motion to appear pro hac vice; denying 15 Motion to appear pro hac vice for Attorneys Jonathan S. Massey, Bret R. Vallacher, and Austin S. Martin. Movant has cited to the wrong subparagraph of the local rules, and therefore the motions cannot be granted as filed, but movant may refile the motions with the error corrected. It is so ordered.Signed by Judge Omar A. Williams on 10/17/2025. (Kelsey, N) (Entered: 10/17/2025)
10/17/2025	17	MOTION for Attorney(s) Jonathan S. Massey to be Admitted Pro Hac Vice (paid $200 PHV fee; receipt number ACTDC-8372596) by Healthcare Distribution Alliance. (Attachments: # 1 Affidavit of Jonathan S. Massey, # 2 Exhibit Certificate of Good Standing - Jonthan S. Massey)(Finn, Thomas) (Entered: 10/17/2025)
10/17/2025	18	MOTION for Attorney(s) Bret R. Vallacher to be Admitted Pro Hac Vice (paid $200 PHV fee; receipt number ACTDC-8372625) by Healthcare Distribution Alliance. (Attachments: # 1 Affidavit of Bret R. Vallacher, # 2 Certificate of Good Standing - Bret R. Vallacher) (Finn, Thomas) (Entered: 10/17/2025)
10/17/2025	19	MOTION for Attorney(s) Austin S. Martin to be Admitted Pro Hac Vice (paid $200 PHV fee; receipt number ACTDC-8372644) by Healthcare Distribution Alliance. (Attachments: # 1 Affidavit of Austin S. Martin, # 2 Certificate of Good Standing - Austin S. Martin) (Finn, Thomas) (Entered: 10/17/2025)
10/20/2025	20	ORDER granting 17 Motion to Appear Pro Hac Vice for Attorney Jonathan S. Massey. Signed by Clerk on 10/20/2025. (Kelsey, N) (Entered: 10/20/2025)
10/20/2025	21	ORDER granting 18 Motion to Appear Pro Hac Vice for Attorney Bret R. Vallacher. Signed by Clerk on 10/20/2025. (Kelsey, N) (Entered: 10/20/2025)
10/20/2025	22	ORDER granting 19 Motion to Appear Pro Hac Vice for Attorney Austin S. Martin. Signed by Clerk on 10/20/2025. (Kelsey, N) (Entered: 10/20/2025)

10/21/2025	23	NOTICE of Related Case by Healthcare Distribution Alliance (Finn, Thomas) (Entered: 10/21/2025)
10/21/2025	24	NOTICE of Appearance by Jonathan S. Massey on behalf of Healthcare Distribution Alliance (Massey, Jonathan) (Entered: 10/21/2025)
10/21/2025	25	NOTICE of Appearance by Bret Vallacher on behalf of Healthcare Distribution Alliance (Vallacher, Bret) (Entered: 10/21/2025)
10/21/2025	26	NOTICE of Appearance by Austin Scott Martin on behalf of Healthcare Distribution Alliance (Martin, Austin) (Entered: 10/21/2025)
10/23/2025	27	MOTION for Preliminary Injunction by Healthcare Distribution Alliance.Responses due by 11/13/2025 (Attachments: # 1 Memorandum in Support, # 2 Affidavit of Martin Igel, # 3 Affidavit of Christopher Reed, # 4 Affidavit of Chris Van Norman, # 5 Affidavit of Nicolette Louissaint)(Finn, Thomas) (Entered: 10/23/2025)
10/23/2025	28	SUMMONS Returned Executed by Healthcare Distribution Alliance. Mark D. Boughton served on 10/15/2025, answer due 11/5/2025. (Finn, Thomas) (Entered: 10/23/2025)
10/23/2025	29	SUMMONS Returned Executed by Healthcare Distribution Alliance. William Tong served on 10/15/2025, answer due 11/5/2025. (Finn, Thomas) (Entered: 10/23/2025)
10/23/2025	30	NOTICE of Appearance by Patrick Thomas Ring on behalf of Mark D. Boughton, William Tong (Ring, Patrick) (Entered: 10/23/2025)
10/29/2025	31	Emergency MOTION to Expedite re 27 MOTION for Preliminary Injunction by Healthcare Distribution Alliance. (Finn, Thomas) (Entered: 10/29/2025)
10/30/2025	32	ORDER. The court **GRANTS** the unopposed 31 Emergency Motion to Expedite and hereby **ADOPTS** the briefing schedule proposed therein. Defendants shall file a response to the 27 Motion for Preliminary Injunction by **November 17, 2025.** Plaintiff shall file a reply, if it so chooses, by **November 25, 2025.** A consolidated hearing on the Motion and a similar Motion for Preliminary Injunction in the related case *Association for Accessible Medicines v. Boughton et al,* Civil No. 3:25-cv-01757 (OAW), is set for **December 9, 2025,** at **10:00 a.m.,** before United States District Judge Omar A. Williams. Defendants shall respond to the 1 Complaint within twenty-one days of the court's decision on the Motion. It is so ordered. Signed by Judge Omar A. Williams on 10/30/2025. (Karamanakis, K) (Entered: 10/30/2025)
10/30/2025	33	Set/Reset Deadlines as to 27 MOTION for Preliminary Injunction. Responses due by 11/17/2025, Plaintiff's reply, if it so chooses, by November 25, 2025. NOTICE OF E-FILED CALENDAR: THIS IS THE ONLY NOTICE COUNSEL/THE PARTIES WILL RECEIVE. ALL PERSONS ENTERING THE COURTHOUSE MUST PRESENT PHOTO IDENTIFICATION. A Consolidated Hearing on the Motion and a similar Motion for Preliminary Injunction set for 12/9/2025 at 10:00 AM in Courtroom Two, 450 Main St., Hartford, CT before Judge Omar A. Williams (Peterson, M) (Entered: 11/04/2025)
11/17/2025	34	Memorandum in Opposition re 27 MOTION for Preliminary Injunction filed by Mark D. Boughton, William Tong. (Ring, Patrick) (Entered: 11/17/2025)

11/25/2025	35	REPLY to Response to 27 MOTION for Preliminary Injunction filed by Healthcare Distribution Alliance. (Finn, Thomas) (Entered: 11/25/2025)
12/04/2025	36	Consent MOTION for Permission to Use Courtroom Technology *at Consolidated Hearing on 12/9/2025* by Healthcare Distribution Alliance.Responses due by 12/26/2025 (Finn, Thomas) (Entered: 12/04/2025)
12/05/2025	37	ORDER granting 36 Consent Motion for Permission to Use Courtroom Technology. Signed by Judge Omar A. Williams on 12/5/2025. (Karamanakis, K) (Entered: 12/05/2025)
12/05/2025	38	NOTICE. Should any party wish to test any necessary courtroom technology prior to the consolidated hearing on December 9, 2025, they may schedule a time to do so by directly contacting the Courtroom Deputy, at 860-240-3495. Signed by Judge Omar A. Williams on 12/5/2025. (Karamanakis, K) (Entered: 12/05/2025)
12/09/2025	39	NOTICE of Appearance by Victoria Field on behalf of Mark D. Boughton, William Tong (Denault, S) (Entered: 12/09/2025)
12/09/2025	40	Minute Entry. Proceedings held before Judge Omar A. Williams: taking under advisement 27 Motion for Preliminary Injunction; Motion Hearing held on 12/9/2025, re 27 MOTION for Preliminary Injunction filed by Healthcare Distribution Alliance. Total Time: 1 hour and 29 minutes(Court Reporter C. Cullen.) (Wood, R.) (Entered: 12/09/2025)
12/09/2025	41	ORDER requiring Supplemental Briefing. At today's consolidated hearing on the pending Motions for Preliminary Injunction in this case and the related case *Association for Accessible Medicines v. Boughton et al,* Civil No. 3:25-cv-01757 (OAW), Defendants clarified, *for the first time,* that it is their position that Sections 345 through 347 of Connecticut Public Act No. 25-168 (hereinafter, the "Act") do *not* apply to non-Connecticut manufacturers transacting with non-Connecticut distributors outside of Connecticut; *nor* to non-Connecticut distributors transacting with Connecticut retailers outside of Connecticut. Specifically, Plaintiff Healthcare Distribution Alliance (hereinafter, "HDA") received assurances from Defendants that, when a Connecticut hospital purchases *and takes title* of a covered product from a non-Connecticut distributor *outside of Connecticut,* such transaction is *not* considered a sale "in this state" under the Act, and thus does not expose the distributor to liability under the Act. While HDA and Plaintiff Association for Accessible Medicines (hereinafter, "AAM") appeared relieved by Defendants' assurances at the hearing, they understandably expressed a preference for written confirmation of the same, if even by way of a court ruling which could have the effect of judicial estoppel. Plaintiffs' concern is even more reasonable given that the Act's price cap goes into effect on January 1, 2026, which is quickly approaching. Further, AAM reiterated at the hearing that it previously asked Defendants for such assurances, but had not received a response this helpful prior to initiating litigation. *See also* Civil No. 3:25-cv-01757 (OAW), ECF No. 20-1, at 12-13. Because the parties' memoranda of law contemplated a more broad application of the Act than Defendants represented at the hearing, *see* ECF Nos. 27-1, 34, 35, the court hereby **ORDERS** limited supplemental briefing. The court acknowledges that Plaintiffs carry the burden of demonstrating that they are entitled to injunctive relief; nevertheless, based on their representations at the hearing, the court believes that it would be most efficient for Defendants to submit their brief first, on or before **Friday, December 12, 2025.** Defendants' brief should explain how their position on the Act's applicability to Plaintiffs' members, as articulated at the hearing, affects the

		merits of the 27 Motion for Preliminary Injunction. Plaintiffs shall file their respective briefs, doing the same, on or before **Tuesday, December 16, 2025.** No brief shall exceed **ten double-spaced pages.** To the extent that there now may be areas of agreement regarding any issues in this case, the parties are *strongly encouraged* to meet, confer, and inform the court by filing a notice on or before **Friday, December 12, 2025.** The court believes these deadlines to be reasonable based on the record before it, the significance of the January 1 date, and the fact that the parties requested an expedited briefing schedule. *See* ECF Nos. 31, 32. It is so ordered. Signed by Judge Omar A. Williams on 12/9/2025. (Karamanakis, K) (Entered: 12/09/2025)
12/12/2025	42	TRANSCRIPT of Proceedings: Type of Hearing: Consolidation Hearing. Held on 12/09/2025 before Judge OAW. Court Reporter: Catherine Cullen. **IMPORTANT NOTICE - REDACTION OF TRANSCRIPTS:** To remove personal identifier information from the transcript, a party must electronically file a Notice of Intent to Request Redaction with the Clerk's Office within seven (7) calendar days of this date. If no such Notice is filed, the court will assume redaction of personal identifiers is not necessary and the transcript will be made available through PACER without redaction 90 days from today's date. The transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. The policy governing the redaction of personal information is located on the court website at www.ctd.uscourts.gov. Redaction Request due 1/2/2026. Redacted Transcript Deadline set for 1/12/2026. Release of Transcript Restriction set for 3/12/2026. (Cullen, Catherine) (Entered: 12/12/2025)
12/12/2025	43	Supplemental Memorandum in Opposition re 27 MOTION for Preliminary Injunction filed by Mark D. Boughton, William Tong. (Ring, Patrick) (Entered: 12/12/2025)
12/16/2025	44	Supplemental RESPONSE re 41 Order,,,,,,,,,,,,, filed by Healthcare Distribution Alliance. (Attachments: # 1 Supplemental Declaration of Michelle Britt, # 2 Supplemental Declaration of Christopher Reed, # 3 Supplemental Declaration of Christopher Van Norman)(Finn, Thomas) (Entered: 12/16/2025)
12/24/2025	45	ORDER. For the reasons articulated in the attached order, Plaintiff's 27 Motion for Preliminary Injunction is **DENIED.** The parties shall comply with the deadlines therein. It is so ordered. Signed by Judge Omar A. Williams on 12/24/2025. (Karamanakis, K) (Entered: 12/24/2025)
12/26/2025	46	NOTICE OF APPEAL as to 45 Order on Motion for Preliminary Injunction, by Healthcare Distribution Alliance. Filing fee $ 605, receipt number ACTDC-8446516. (Finn, Thomas) (Entered: 12/26/2025)
12/26/2025	47	MOTION for Injunction Pending Appeal by Healthcare Distribution Alliance.Responses due by 1/16/2026 (Finn, Thomas) (Entered: 12/26/2025)
12/28/2025	48	ORDER. Plaintiff has appealed the court's 45 Order denying its Motion for a Preliminary Injunction, *see* ECF No. 46, and seeks to enjoin Defendants from enforcing against its members Sections 345 through 347 of Public Act No. 25-168 pending such appeal before the United States Court of Appeals for the Second Circuit, *see* ECF No. 47, at 1 (citing

Fed. R. Civ. P. 62(d); Fed. R. App. P. 8(a)(1)(C)).

Because granting the instant Motion for an Injunction Pending Appeal would "'affect government action taken in the public interest pursuant to a statutory or regulatory scheme,'" *see Cnty. of Nassau, N.Y. v. Leavitt,* 524 F.3d 408, 414 (2d Cir. 2008) (quoting *Wright v. Giuliani,* 230 F.3d 543, 547 (2d Cir. 2000)), the court cannot do so absent a showing that **(i)** Plaintiff is "likely to succeed on the merits" of its claims, **(ii)** its members are "likely to suffer irreparable harm" absent an injunction, **(iii)** the "balance of equities tips" in its favor, and **(iv)** a preliminary injunction "would be in the public interest," *see Mahmoud v. Taylor,* 606 U.S. 522, 546 (2025); *see also Salinger v. Colting,* 607 F.3d 68, 79-80 (2d Cir. 2010).

In support of its Motion, Plaintiff points the court to its "prior submissions" and its "arguments" at the hearing on December 9, 2025. ECF No. 47, at 2. The court "carefully has reviewed" such submissions and arguments already, and found them to be insufficient grounds for granting injunctive relief. ECF No. 45, at 1; *see also id.* at 11-18 (explaining that Plaintiff failed to show that it is likely to succeed on the merits of its claims).

Accordingly, the court **DENIES** the 47 Motion for an Injunction Pending Appeal for the reasons articulated in the 45 Order.

It is so ordered. Signed by Judge Omar A. Williams on 12/28/2025. (Karamanakis, K) (Entered: 12/28/2025)

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