UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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*.	:	No. 25-3216 December 31, 2025

OPPOSITION TO EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL

I. INTRODUCTION

The Court should deny the *Emergency Motion of Plaintiff-Appellant Healthcare Distribution Alliance for Injunction Pending Appeal* (Emergency Motion).[1] An injunction is an extraordinary and drastic

[1] Defendants-Appellees (Appellees) do not oppose the alternative request that the Court hear the merits of this appeal on an expedited basis, but do not agree to the briefing schedule that Healthcare Distribution Alliance (HDA) proposes. HDA asks that it file its brief on or before January 14, 2026 (which Appellees do not oppose), but would give Appellees thirty days, *i.e.*, to February 13, 2026, to file their brief. Appellees suggested a filing date of February 27, 2026, but HDA would not consent. Given that, under this Court's local rules, Appellees would ordinarily be permitted to request a deadline of up to ninety-one days after the filing of HDA's brief,

remedy that should not be granted unless the movant carries its burden of persuasion by a clear showing. *St. Joseph's Hosp. Health Ctr. v. Am. Anesthesiology of Syracuse, P.C.*, 131 F.4th 102, 106 (2d Cir. 2025). It is never awarded routinely or as a matter of right. *Upsolve, Inc. v. James*, 155 F.4th 133, 140 (2d Cir. 2025). That high hurdle is the typical standard applicable in cases before the district court.

A request for an appellate court to issue an injunction in the first instance, though, presents an even more drastic remedy requiring significantly higher justification. *Agudath Isr. of Am. v. Cuomo*, 980 F.3d 222, 226 (2d Cir. 2020). And when a party asks this Court to issue such an injunction on an *emergency* basis—without the benefit of full briefing or argument on the merits—it needs to demonstrate an actual emergency. *See* Local Rule 27.1(d)(3) ("A motion seeking emergency . . . relief must . . . state the nature of the emergency . . . ."); *cf. Nken v. Holder*, 556 U.S. 418, 427 (2009) (noting that even a non-emergency stay is an "intrusion into the ordinary processes of administration and judicial review" and "is not a matter of right, even if irreparable injury might otherwise result to the appellant.") (internal quotation marks omitted); *Washington v. Trump*,

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see Local Rule 31.2(a)(1)(B), Appellees consider it reasonable to request that, in an effort to accommodate HDA's concerns, Appellees' brief be due within forty-five days of the filing of HDA's brief.

No. 25-807, 2025 U.S. App. LEXIS 3983, at *6-7 (9th Cir. Feb. 19, 2025) (Forrest, J., concurring) ("Granting relief on an emergency basis is the exception, not the rule.").

HDA has not, and cannot, do that here. Connecticut passed Public Act 25-168 §§ 345 to 347 (Act) to combat unconscionable markups that Connecticut residents face when purchasing essential, life-saving medications. The Act, whose substantive provisions go into effect on January 1, 2026, caps the prices at which pharmaceutical manufacturers and wholesale distributors may sell certain prescription drugs *in Connecticut*. And it does so in a nondiscriminatory way for the purpose of protecting the well-being of Connecticut's residents.

That is, the Act represents Connecticut's attempt to help its people afford necessary medical care. While HDA clearly is displeased that the Act might hurt its members' bottom line, HDA's claims are about money, not life and limb. States pass laws all the time that affect the prices of goods and services sold within their borders. That does not mean those laws induce "emergencies" entitling challengers to immediate relief where the courts must act without a full understanding of the facts, arguments, and law. *See, e.g., Washington*, 2025 U.S. App. LEXIS 3983, at *10-11 (Forrest, J., concurring) ("There are cases where quick action is necessary. But they

are rare.").[2] And HDA has pointed to no authority providing that emergency consideration is warranted in a case seeking to invalidate a state statute regulating economic conditions within that state.[3]

In any event, HDA is not entitled to an injunction (emergency or otherwise) pending the appeal because it has not satisfied the requirements for such relief. The district court already concluded that HDA is unlikely to succeed on the merits of its dormant Commerce Clause claim because it has not shown that the Act is discriminatory or protectionist, impermissibly burdens interstate commerce, or violates any extraterritoriality principle.

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[2] *Washington* concerned a challenge to an executive order affecting birthright citizenship under the Fourteenth Amendment. The district court enjoined the executive order, and the Government appealed, filing an emergency motion to stay the district court's order. The Government asked the Ninth Circuit to decide the emergency motion within eight days, which Judge Forrest, sitting on the motions panel, noted "is not the way reviewing courts normally work" because their duty is to "act responsibly" and "not dole out justice on the fly." Washington, 2025 U.S. App. LEXIS 3983, at *10 (Forrest, J., concurring) (internal quotation marks omitted). HDA's motion is even more extreme: it filed an emergency motion on December 29, 2025, asking this Court to provide relief "on or before" January 1, 2026, *i.e.*, *within three days*.

[3] In fact, the district court's preliminary injunction proceeding *was* the speedy process to which HDA was entitled. And the district court expedited that already speedy process to accommodate HDA's request (to which the appellees consented) that the district court hear and decide HDA's preliminary injunction motion before the new year. But HDA lost. That loss does not give rise to an emergency where this Court must now act on HDA's timetable.

And although the district court did not rule on the remaining preliminary injunction factors, HDA also did not meet its burden with respect to irreparable harm, the public interest, or the equities. HDA's burden to obtain an injunction from this Court is even higher. Because HDA has not presented a significantly higher justification for its request, especially on an emergency basis, the Court should deny the Emergency Motion.

II. BACKGROUND

A. The Pharmaceutical Supply Chain

As Appellees noted before the district court, the parties largely agree on how the pharmaceutical supply chain works for those prescription drugs identified under the Act ("identified drugs"). Manufacturers make the identified drugs. Memo. of Law in Support of Pl.'s Mot. for a Preliminary Injunction, ECF # 27-1 (PI Memo), p. 4. Distributors (e.g., wholesalers) act as middlemen between the manufacturers and dispensers (e.g., pharmacies, hospitals), operating a network of drug distribution centers across the country. *Id.*[4] Dispensers provide patients with the identified drugs when prescribed. *Id.*

[4] HDA is a trade association for distributors. PI Memo, p. 1; Complaint, ECF # 1 ¶ 14. In its Emergency Motion, HDA claims that Appellees "affirmed HDA's statement that none of its members even has a distribution facility in Connecticut." Emergency Motion, p. 4. This is inaccurate. Appellees had simply noted HDA's *representation* that it had

The manufacturers' "list price" for drugs is also known as the "Wholesale Acquisition Cost" (WAC). *Id.*, pp. 1 & 4; *see* 42 U.S.C. § 1395w-3a(c)(6)(B) ("The term 'wholesale acquisition cost' means . . . the manufacturer's list price for the drug or biological to wholesalers . . ., not including prompt pay or other discounts, rebates or reductions in price, for the most recent month for which the information is available, as reported in wholesale price guides or other publications of drug or biological pricing data."). Manufacturers, not distributors, set the WAC. PI Memo, p. 1 & 4.

Distributors, such as HDA's members, often pay less than the WAC by leveraging their market share or sales volume to obtain discounts.[5] *See Mont. ex rel. Knudsen v. Eli Lilly & Co. (In re Insulin Pricing Litig.)*, No. 2:23-cv-04214, 2025 U.S. Dist. LEXIS 173773, at *83 (D.N.J. Sep. 5, 2025) (discussing how prescription drugs "move through a complex distribution

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no such facilities in Connecticut. *See* ECF # 34, p. 16 n. 16. Appellees do not have firsthand knowledge of where HDA's members maintain their facilities and therefore cannot "affirm" HDA's representation.

[5] *Follow the Pill: Understanding the U.S. Commercial Supply Chain*, The Kaiser Family Foundation (March 2005), p. 18, available at https://www.kff.org/wp-content/uploads/2013/01/follow-the-pill-understanding-the-u-s-commercial-pharmaceutical-supply-chain-report.pdf. The district court was permitted to take notice of this information, and other information presented here as background, to provide context. *Kravitz v. Tavlarios*, No. 20-2579-cv, 2021 U.S. App. LEXIS 34224, at *8-9 (2d Cir. Nov. 18, 2021).

chain where pharmaceutical manufacturers typically sell their products to wholesalers at a negotiated price."). When dispensers purchase identified drugs from distributors, they negotiate the price such that individual dispensers may pay different prices when purchasing from the same distributor.[6]

B. Connecticut Passes the Act to Combat Soaring In-State Drug Prices

It is undisputed that millions of Americans, including Connecticut residents, rely on prescription drugs.[7] And approximately 90% of prescriptions are filled with generic drugs,[8] which should cost 80-85% less than brand-name drugs.[9]

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[6] *Flow of Money through the Pharmaceutical Distribution System,* USC Leonard D. Schaeffer Institute for Public Policy & Government Service (June 2017), p. 2, *available at* https://schaeffer.usc.edu/wp-content/uploads/2024/10/The-Flow-of-Money-Through-the-Pharmaceutical-Distribution-System_Final_Spreadsheet.pdf.

[7] *See* Cost Growth Benchmark Initiative Report, Connecticut Office of Health Strategy (April 24, 2025) (OHS Report), p. 51, *available at* https://portal.ct.gov/ohs/-/media/ohs/cost-growth-benchmark/benchmark-reports-py2023/ohs-hcbi-cost-growth-benchmark-report-py2023-rev-04_24_2025.pdf.

[8] Andrew W. Mulcahy & Vishnupriya Kareddy, *Prescription Drug Supply Chains: An Overview of Stakeholders and Relationships*, RAND Corp. (Oct. 27, 2021), p. 2, *available at* https://www.rand.org/pubs/research_reports/RRA328-1.html).

[9] FTC, *How to Get Generic Drugs and Low-Cost Prescriptions*, October 2023 (available at https://consumer.ftc.gov/articles/generic-drugs-low-

Unfortunately, despite this potential for lower-cost prescriptions, patients face "skyrocketing drug prices, sometimes by more than 1,000%, and sometimes overnight." *Ass'n for Accessible Meds. v. Raoul*, No. 24 C 544, 2025 U.S. Dist. LEXIS 190215, at *1-2 (N.D. Ill. Sep. 26, 2025) (*Raoul*). This situation has been well documented across the country,[10] including Connecticut.[11]

To help its people, Connecticut enacted, among other things, a drug price cap.[12] Public Act 25-168 §§ 345 to 347. Starting on January 1, 2026,

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cost-prescriptions).

[10] *See, e.g.*, *Ass'n for Accessible Meds. v. Frosh*, 887 F.3d 664, 674 (4th Cir. 2018) (*Frosh*) (Wynn, J., dissenting); U.S. Senate Special Committee on Aging, *Sudden Price Spikes in Off-Patent Prescription Drugs* (Dec. 2016), *available at* https://www.aging.senate.gov/imo/media/doc/Drug%20Pricing%20Report.pdf; U.S. Government Accountability Office, Report to Congressional Requesters, Generic Drugs Under Medicare (Aug. 2016), *available at* https://www.gao.gov/assets/gao-16-706.pdf; Andrew Pollack, *Drug Goes from $13.50 a Tablet to $750, Overnight*, NY Times (Sept. 20, 2015), available at https://www.nytimes.com/2015/09/21/business/a-huge-overnight-increase-in-a-drugs-price-raises-protests.html.

[11] *See* OHS Report, *supra*, p. 51; Liese Klein, *New Connecticut laws aim to tame surging prescription drug prices for patients, hospitals*, CT Insider (July 27, 2025), *available at* https://www.ctinsider.com/business/article/new-laws-target-rising-prescription-drug-costs-20786384.php

[12] *Governor Lamont Announces 2025 Legislative Proposal: Reduce Prescription Drug Costs* (Feb. 2, 2025), *available at* https://portal.ct.gov/governor/news/press-releases/2025/02-2025/governor-lamont-announces-2025-legislative-proposal-reduce-

no manufacturer or distributor shall "sell an identified drug in this state at a price that exceeds the reference price for the identified prescription drug, adjusted for any increase in the consumer price index." *Id.* § 346(a)(1). The "reference price" is defined as the WAC on a particular date (depending on the status of the drug). *Id.* § 345(11). The "consumer price index" is defined as the consumer price index, annual average, for all urban consumers. *Id.* § 345(4). Put simply, the Act's drug price cap ties cost of identified drugs to their WAC, adjusted for inflation.

A manufacturer or distributor that violates the Act then becomes liable to the state for a civil penalty, which is imposed, calculated, and collected by the Commissioner of Revenue Services. *Id.* § 346(b)(1). However, the Act exempts from its requirements prescription drugs that the federal government has identified as being "in shortage" in the United States. *Id.* § 346(a)(2). It also provides manufacturers and distributors with administrative and judicial relief with respect to such penalties. *Id.* § 346(f) & (g). There is nothing in the Act's text that discriminates against out-of-state persons or entities or furthers any protectionist goals. *See generally id.* §§ 345 to 347.

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prescription-drug-costs?language=en_US; *New Connecticut laws*, CT Insider, *supra*; *Connecticut Is a National Leader*, CT News Junkie, *supra*.

C. HDA Asks the District Court to Invalidate the Act

On October 14, 2025, HDA filed suit in the district court seeking to invalidate the Act under the dormant Commerce Clause, the Due Process Clause, the Contracts Clause, the Supremacy Clause, and 42 U.S.C. § 1983. Complaint, ECF # 1. HDA brought the action on behalf of its member distributors, claiming that those members "face imminent and irreparable injury from the Drug Price Cap," which essentially boils down to making less money if they comply with the Act (or facing the Act's penalties if they do not). *Id.* ¶¶ 7, 14; *see* PI Memo, pp. 17-19.

HDA also asked the district court to preliminarily enjoin the defendants from implementing or enforcing the Act against any of HDA's members. *See generally* PI Memo. It did so primarily based on the contention that the Act violates the dormant Commerce Clause. Because the Act goes into effect at the beginning of 2026, HDA sought an accelerated briefing and hearing schedule (to which Appellees consented), and asked the district court to issue a decision on an expedited basis.

The district court heard argument on December 9, 2025. At that proceeding, Appellees' counsel contended that, from its plain language, the Act applies only to sales of identified drugs "in this state," and represented that it was Appellees' position that a sale occurs "in this state" when title

transfers in Connecticut. Based on that representation, the district court ordered Appellees to submit a supplemental brief on or before December 12, 2025, and HDA to submit a supplemental brief the following week.

On December 24, 2025, the district court (Williams, J.) issued its decision denying HDA's request for a preliminary injunction. *See* Emergency Motion, Appendix, p. A3-21. In its decision, the district court detailed the problems with the rising costs of prescription drugs across the country, including Connecticut; noted that Connecticut had empaneled a bipartisan task force to propose policies for lowering those costs; and stated that the Act was one of task force's proposals. *Id.*, p. A4-6. The district court also outlined the relevant provisions of the Act, particularly the drug price cap. *Id.*, p. A6-7.

Then turning to the request for a preliminary injunction itself, the district court discussed why HDA's dormant Commerce Clause claim failed. *Id.*, p. A10-20. In particular, the district court concluded that HDA is unlikely to succeed on the merits of its dormant Commerce Clause claim because it has not shown that the Act is discriminatory or protectionist, impermissibly burdens interstate commerce, or violates any extraterritoriality principle. *Id.* And because HDA had not made a clear

showing of likelihood of success on the merits, the district court did not reach the remaining preliminary injunction factors. *Id.* at A20.

HDA appealed on December 26, 2025. It subsequently filed the Emergency Motion on December 29, 2025, asking this Court to enjoin the Act "on or before" January 1, 2026, *i.e.*, within the next three days.

III. LEGAL STANDARD

As noted above, an injunction is an extraordinary remedy never awarded as of right. *Agudath*, 980 F.3d at 225; *see Winter v. NRDC, Inc.*, 555 U.S. 7, 24 (2008). To obtain an injunction from a district court, movants must show that they are likely to succeed on the merits; they are likely to suffer irreparable harm in the absence of preliminary relief; the balance of equities tips in their favor; and an injunction is in the public interest. *Agudath*, 980 F.3d at 226.

More is required on appeal, though. *See id.* To stay a district court's order pending appeal, the movant must make "a *strong* showing that [it] is likely to succeed on the merits." *Id.* (internal quotation marks omitted) (emphasis added). And a motion for an injunction pending appeal "seek[s] a remedy still more drastic than a stay: an injunction issued in the first instance by an appellate court." *Id.* "Such a request demands a significantly higher justification than a request for a stay because, unlike a

stay, an injunction does not simply suspend judicial alteration of the status quo but grants judicial intervention that has been withheld by lower courts." *Id.* (internal quotation marks omitted).

IV. ARGUMENT

Put simply, HDA is not entitled to emergency relief because it has not presented an "emergency" to the Court. And even if that were not the case, HDA's burden in obtaining from this Court an injunction pending appeal is significantly higher than it was at the district court, which did not find HDA's arguments convincing. This Court should do as the district court did and deny HDA's requested relief.

A. HDA's Request Is Not Entitled to Emergency Consideration

The Court has one straightforward reason whereby it can, and should, deny the Emergency Motion: HDA has not adequately stated the nature of the "emergency," as required under this Court's rules. *See* Local Rule 27.1(d)(3). To be sure, the Act goes into effect soon. And HDA claims its members will not be able to make as much money from drug sales in Connecticut as they would like because of that. But that really goes to HDA's argument in support of why an injunction should enter. It does not specify an "emergency."

First, by definition, an emergency means something unexpected or unforeseen. *See, e.g.*, https://www.merriam-webster.com/dictionary/emergency ("an unforeseen combination of circumstances or the resulting state that calls for immediate action"); https://www.dictionary.com/browse/emergency ("a sudden, urgent, usually unexpected occurrence or occasion requiring immediate action."). The relevant provisions of the Act were not sprung on HDA at the last minute, right before they went into effect. And Governor Lamont signed the Act on June 30, 2025, yet HDA did not file suit until October 14, 2025—approximately three and a half months later. In less time than that, HDA has been able to file suit, obtain a ruling on its preliminary injunction motion, and appeal to this Court. All of which is to say, to the extent that timing is now a problem, it is one caused by HDA's delay.

Second, HDA's purported "emergency" is not akin to those where the Court seems to have granted emergency relief in the past. *See, e.g., Bragg v. Pomerantz*, Nos. 23-615-L, 23-616-con, 2023 U.S. App. LEXIS 9691 (2d Cir. Apr. 19, 2023) (granting emergency motion for interim administrative stay of return date of House of Representatives Judiciary Committee subpoena); *Ross v. Rell*, 398 F.3d 203 (2d Cir. 2005) (granting emergency motion with respect to case concerning a death warrant); *cf. Hartford*

Courant Co., LLC v. Carroll, 986 F.3d 211 (2d Cir. 2021) (noting that the Court had granted an emergency motion for a stay with respect to a case concerning the sealing of judicial records). HDA's claims are instead about money. That is not the kind of case calling for emergency action, and HDA has provided no authority to the contrary.

B. HDA Has Not Made a Significantly Strong Showing that It Is Likely to Prevail on the Merits

1. HDA has not met its burden to show that the Act is discriminatory or protectionist

HDA first argues in the Emergency Motion that the Act violates the dormant Commerce Clause because it is protectionist. Emergency Motion, pp. 9-14. Unlike HDA's primary submission to the district court, *see* PI Memo, pp. 15-17, the Emergency Motion now seems to at least acknowledge what the Supreme Court recently made clear: that states may not use their laws to discriminate purposefully against out-of-state economic interests, and this antidiscrimination principle lies at the "very core" of dormant Commerce Clause jurisprudence. *See Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 364 & 369 (2023) (*Pork*).

HDA's protectionist arguments fail under that standard. First, HDA claims, without any support, that the Act is protectionist "on the consumer level." Emergency Motion, pp 9-12. It is unclear what standing HDA has to

advance an argument on behalf of these consumers against whom the Act purportedly discriminates. But in any event, the dormant Commerce Clause does not invalidate a state's laws simply because they might advantage (or disadvantage) the state's residents.[13] Rather, the law must "discriminate *purposefully* against out-of-state economic interests." *Pork*, 598 U.S. at 364 (emphasis added). And HDA has presented nothing to this Court to demonstrate that Connecticut passed the Act purposefully to discriminate against out-of-state consumers. Indeed, the Act itself does not say what other states may or may not do, or tie prices in Connecticut to prices in other states. There is nothing in the Act that is purposefully discriminatory, or that says out-of-state consumers may not take advantage of the Act's provisions.[14]

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[13] To conclude otherwise would be absurd, as every state law affecting the pocketbook of its residents would be subject to challenge. For example, a state with a lower sales tax rate than its neighbors (or no sales tax at all) is giving an advantage to local interests, but that is not a violation of the dormant Commerce Clause.

[14] As it did before the district court, HDA relies on cases that have limited value because they are pre-*Pork*. *See, e.g.*, Emergency Motion, pp. 10-11. For example, HDA again touts the fact that in *Healthcare Distribution All. v. Zucker*, 353 F. Supp. 3d 235 (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 state did not challenge on appeal the district court's order striking down the state law on Commerce Clause principles. But HDA has no idea what the state's argument would have been if it had the benefit of *Pork*, which came out in 2023.

HDA next argues that the Act is protectionist on a "commercial level." Emergency Motion, pp. 12-14. The district court correctly rejected this argument, noting that "the Act applies to covered distributors regardless of whether they are located or headquartered inside or outside of Connecticut." *Id.*, Appendix, p. A13. HDA tries to maneuver around the Act's plain language by saying that that it discriminates against out-of-state distributors in favor of in-state retailers.[15] But the Supreme Court has expressly said that, for the purposes the Commerce Clause, any notion of discrimination must assume a comparison of "substantially similar entities," *GMC v. Tracy*, 519 U.S. 278, 298 (1997), and HDA is trying to compare apples to bowling balls. Wholesale distributors and retailers—like pharmacies and hospitals—"provide different products" and "serve different markets," *id.* at 299, and are not sufficiently alike for Commerce Clause purposes.[16]

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[15] HDA claims that the Act discriminates by forcing wholesale distributors "alone to bear the cost of Connecticut's program." Emergency Motion, p. 12. The Act also applies to manufacturers, though, so HDA's statement is simply untrue. As a practical matter, because the Act applies to sales in Connecticut, its provisions might apply to one entity instead of another based on where those entities transact their business. But where a manufacturer or wholesale distributor sells identified drugs is outside of Connecticut's control.

[16] Indeed, the Act is silent as to retailers entirely, and therefore shows no favoritism to retailers, in-state or out-of-state, at all.

2. HDA Continues to Rely on an Extraterritorial Argument that *Pork* Rejected

HDA continues to rely on a theory *Pork* expressly rejected: that the dormant Commerce Clause embodies an "extraterritoriality doctrine" forbidding enforcement of state laws that "have the practical effect of controlling commerce outside the State, even when those laws do not purposely discriminate against out-of-state economic interests." *Pork*, 598 U.S. at 371 (internal quotation marks omitted). In fact, HDA claims that *Pork* somehow reaffirms such a principle, even though the Supreme Court said that "[t]his argument falters out of the gate." *Id.* Again, to the extent that the Supreme Court has invalidated state laws because of its extraterritorial effects, *Pork* made clear that those challenged statutes "had a *specific* impermissible extraterritorial effect" and the Supreme Court's decisions "typifie[d] the familiar concern with preventing purposeful discrimination against out-of-state economic interests." *Id.* at 371, 374.

3. HDA's Argument About the Appellees' "New" Interpretation of the Act Is Baseless and Meritless

HDA claims that the Appellees position—a sale occurs "in this state" when title passes in Connecticut—was an "eleventh-hour reinterpretation[17]

[17]The Act was passed during the Connecticut General Assembly's most recent regular session. Unless HDA can present an *official* original interpretation from the State (and there is none), there can be no

of the [Act]" that "makes it even more unconstitutional[.]" Emergency Motion, p. 17. This seems to be a complaint that the Appellees have read the Act's plain language in a way to best avoid constitutional problems. At the outset, the Appellees note that their interpretation of the Act conforms to Connecticut's general Uniform Commercial Code principles that a "sale" consists in the passing of title from the seller to the buyer for a price. *See* Conn. Gen. Stat. § 42a-2-106(1).

HDA nevertheless considers this interpretation unconstitutional, incorrectly stating that the district court called the Act "Kafkaesque."[18] But it is HDA that wants to put Connecticut in a no-win situation where the state is playing a game of gotcha in which it never could pass a law protecting its residents from outrageous drug prices. If Connecticut were to apply the Act to transactions that are not "in this state," HDA obviously would claim the Act is unconstitutional. But the Act applies to transactions "in this state." And HDA claims this is unconstitutionally "discriminatory" because the Act applies to out-of-state wholesale distributors who sell in

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"reinterpretation." As for the "eleventh hour," that is HDA's perspective. Although HDA pushed for its case to be heard on an extremely fast timeline, Appellees are not required to dance to HDA's tune.

[18] Once again, HDA puts its words in other people's mouths. The district court did not call the Act "Kafkaesque," but rather stated that "HDA . . . argues that the Act is "Kafkaesque.'" Emergency Motion, Appendix, p. A15.

Connecticut, but not to entities that do not sell in Connecticut. *See* Emergency Motion, p. 22. That is, HDA would also have the Court invalidate the Act because it does *not* apply to transactions outside the state.

This is simply an unreasonable and baseless interpretation of a state's authority to regulate the affairs within its boundaries. HDA's members have helped create the business model for the distribution of prescription drugs in this country that, undoubtedly, benefits them. But the Commerce Clause does not protect "the particular structure or methods of operation in a retail market," *Exxon Corp. v. Governor of Md.*, 437 U.S. 117, 127 (1978), and Connecticut is not required to hold back because doing otherwise might disrupt that method of operation, *see generally Pork*.

C. HDA Has Not Made a Significantly Strong Showing of Irreparable Harm

HDA argues that its members face two forms of irreparable harm sufficient to justify a preliminary injunction, one based on its allegation of a violation of a constitutional right and the other based monetary loss.

HDA's irreparable harm arguments fail. As discussed above, HDA has failed to make a significantly strong showing of likelihood of success on its constitutional claims, so there necessarily cannot be a presumption of irreparable harm on that basis. Regardless, HDA paints an incomplete

picture because this Court has not consistently presumed irreparable harm in cases involving allegations of the abridgement of constitutional rights. *Bronx Household of Faith v. Bd. of Educ.*, 331 F.3d 342, 349 (2d Cir. 2003) (collecting cases). And the dormant Commerce Clause violation that HDA alleges is not the type of personal constitutional right to which the presumption applies. *See Chan v. United States DOT*, No. 23-cv-10365 (LJL), 2024 U.S. Dist. LEXIS 231658, at *153-57 (S.D.N.Y. Dec. 23, 2024) (collecting cases).

Additionally, "even when 'personal' constitutional rights are violated and the harm that accompanies the violation is remediable or compensable, the damage is not irreparable." *Id.* at *157 (internal quotation marks omitted) (collecting cases). This addresses the second form of harm HDA alleges—a loss of money. But it "has always been true that irreparable injury means injury for which a monetary award cannot be adequate compensation and that where money damages is adequate compensation a preliminary injunction will not issue." *Jackson Dairy, Inc. v. H. P. Hood & Sons, Inc.*, 596 F.2d 70, 72 (2d Cir. 1979); *see generally* Chapter 53 of the Connecticut General Statutes (providing for a process for potential resolution of money claims against Connecticut via the Office of the Claims

Commissioner). So HDA's claim of monetary loss is insufficient to support a preliminary injunction.

D. HDA Has Not Made a Significantly Strong Showing that the Equities and Public Interest Favor HDA

Finally, the court must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief. *Winter*, 555 U.S. at 24. And HDA's interests are vastly outweighed by Connecticut's. Courts recognize the harm governments suffer when enjoined from effectuating statutes enacted by the people's representatives. *See Trump v. CASA, Inc.*, 606 U.S. 831, 861 (2025) ("[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury") (internal quotation marks omitted). In this scenario, HDA's purported interest is not just outweighed by the public's interest, it conflicts with the public's interest. That is, HDA is focused on the financial burdens its members may face if they are required to alter their current business practices. But as discussed above, those business practices have created a world in which people now face "skyrocketing" drug prices that put critical medications out of reach. The state's interest in the Act, on the other hand, is to improve the health and lives of Connecticut's residents by protecting them from oppressive drug price increases that have no purpose other than

the amassing of wealth at the expense of those residents. This is not a close call: the balance of equities and public interest weigh strongly in favor of the Act.

CONCLUSION

For the foregoing reasons, Appellees respectfully request that the Court deny HDA's Emergency Motion.

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CERTIFICATE OF SERVICE

I hereby certify that on December 31, 2025, a copy of the foregoing was filed electronically and served by email to counsel for the Plaintiff-Appellant. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

/s/ Patrick T. Ring
Assistant Attorney General

CERTIFICATE OF COMPLIANCE

This document complies with Fed. R. App. P. 27(d)(2)(A) and Local Rule 27.1(a)(3) because it contains 5,194 words.

This document complies with the typeface and typestyle requirements of Fed. R. App. P. 27(d) & 32(a)(5), (6) and Local Rule 27.1 because it was prepared in 14-point Georgia.

/s/ Patrick T. Ring
Assistant Attorney General