

# 25-3216

---

**IN THE  
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, WILLIAM TONG, ATTORNEY  
GENERAL, IN HIS OFFICIAL CAPACITY AT ATTORNEY GENERAL FOR THE STATE OF  
CONNECTICUT,  
*Defendants-Appellees.*

---

On Appeal from the United States District Court  
for the District Court of Connecticut

---

**REPLY BRIEF OF APPELLANT  
HEALTHCARE DISTRIBUTION ALLIANCE**

---

Thomas J. Finn  
Snigdha Mamillapalli  
McCarter & English, LLP  
CityPlace 1  
185 Asylum Street  
Hartford, Ct 06103  
Tel. (860) 275-6700  
Fax: (860) 724-3397  
Email: tfinn@mccarter.com  
Email: smamillapalli@mccarter.com

Jonathan S. Massey  
Austin S. Martin  
MASSEY & GAIL LLP  
1000 Maine Ave SW, Suite 450  
Washington, D.C. 20024  
Tel.: (202) 652-4511  
Fax: (312) 379-0467  
Email: jmassey@masseygail.com  
Email: amartin@masseygail.com

*Counsel for Plaintiff-Appellant*  
HEALTHCARE DISTRIBUTION  
ALLIANCE

**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

## TABLE OF CONTENTS

INTRODUCTION .....	1
ARGUMENT .....	4
I. HDA IS LIKELY TO SUCCEED ON ITS CLAIM THAT THE DRUG PRICE CAP IS UNCONSTITUTIONAL.....	4
A. The Drug Price Cap Is Protectionist.....	5
1. The Cap is Protectionist on the Consumer Level. ....	5
2. The Cap Is Protectionist on the Commercial Level.....	8
B. The Drug Price Cap Is Impermissibly Extraterritorial.....	12
C. The State’s Reinterpretation of the Drug Price Cap Compounds the Constitutional Violations.....	17
II. HDA’S MEMBERS WILL SUFFER IRREPARABLE HARM ABSENT AN INJUNCTION.....	22
III. THE BALANCE OF HARDSHIPS AND PUBLIC INTEREST MILITATE IN FAVOR OF AN INJUNCTION.....	27
CONCLUSION.....	29

## TABLE OF AUTHORITIES

### Cases

<i>A.H. ex rel. Hester v. French</i> , 985 F.3d 165 (2d Cir. 2021).....	25
<i>Ass’n for Accessible Meds. v. Boughton</i> , No. 3:25-cv-1757-OAW (D. Conn. Dec. 15, 2025).....	9
<i>Ass’n for Accessible Meds. v. Ellison</i> , 140 F.4th 957 (8th Cir. 2025).....	3, 5, 15
<i>Ass’n for Accessible Meds. v. Frosh</i> , 887 F.3d 664 (4th Cir. 2018).....	3, 14, 15, 19
<i>Ass’n for Accessible Meds. v. James</i> , 974 F.3d 216 (2d Cir. 2020).....	7
<i>Baldwin v. G.A.F. Seelig, Inc.</i> , 294 U.S. 511 (1935).....	passim
<i>Biden v. Nebraska</i> , 600 U.S. 477 (2023).....	19
<i>Brown &amp; Williamson Tobacco Corp. v. Pataki</i> , 320 F.3d 200 (2d Cir. 2003).....	6
<i>Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.</i> , 476 U.S. 573 (1986).....	passim
<i>C&amp;A Carbone, Inc. v. Town of Clarkstown</i> , 511 U.S. 383 (1994).....	10
<i>Camps Newfound/Owatonna, Inc. v. Town of Harrison</i> , 520 U.S. 564 (1997).....	6, 8, 10
<i>Citibank, N.A. v. Citytrust</i> , 756 F.2d 273 (2d Cir. 1985).....	24
<i>Conn. Dep’t of Env’t Prot. v. OSHA</i> , 356 F.3d 226 (2d Cir. 2004).....	22

<i>Dean Milk Co. v. Madison</i> , 340 U.S. 349 (1951).....	10
<i>Edgar v. MITE Corp.</i> , 457 U.S. 624 (1982).....	13
<i>Energy &amp; Env't Legal Inst. v. Epel</i> , 793 F.3d 1169 (10th Cir. 2015).....	16
<i>Energy Mich., Inc. v. Mich. Pub. Serv. Comm'n</i> , 126 F.4th 476 (6th Cir. 2025).....	10
<i>FTC v. Qualcomm Inc.</i> , 935 F.3d 752 (9th Cir. 2019).....	25
<i>Gen. Motors Corp. v. Tracy</i> , 519 U.S. 278 (1997).....	11
<i>GenBioPro, Inc. v. Raynes</i> , 144 F.4th 258 (4th Cir. 2025).....	16
<i>GenBioPro, Inc. v. Sorsaia</i> , No. CV 3:23-0058, 2023 WL 5490179 (S.D.W. Va. Aug. 24, 2023), .....	16
<i>Healthcare Distrib. All. v. Zucker</i> , 353 F. Supp. 3d 235 (S.D.N.Y. 2018) .....	7
<i>Healy v. Beer Inst., Inc.</i> , 491 U.S. 324 (1989).....	passim
<i>Hughes v. Oklahoma</i> , 441 U.S. 322 (1979).....	8
<i>Hunt v. Wash. State Apple Advert. Comm'n</i> , 432 U.S. 333 (1977).....	27
<i>Miller v. Egan</i> , 828 A.2d 549 (Conn. 2003) .....	26
<i>Morales v. Trans World Airlines, Inc.</i> , 504 U.S. 374 (1992).....	23

<i>N.J. Staffing All. v. Fais</i> , 110 F.4th 201 (3d Cir. 2024).....	16
<i>N.J. Staffing All. v. Fais</i> , 749 F. Supp. 3d 511 (D.N.J. 2023) .....	15
<i>N.Y. Progress &amp; Prot. PAC v. Walsh</i> , 733 F.3d 483 (2d Cir. 2013).....	27
<i>Nat’l Elec. Mfrs. Ass’n v. Sorrell</i> , 272 F.3d 104 (2d Cir. 2001).....	6
<i>Nat’l Fuel Gas Distrib. Corp. v. Christian</i> , 798 F. Supp. 3d 267 (N.D.N.Y. 2025) .....	26
<i>Nat’l Pork Producers Council v. Ross</i> , 598 U.S. 356 (2023).....	passim
<i>Nemer Jeep-Eagle, Inc. v. Jeep-Eagle Sales Corp.</i> , 992 F.2d 430 (2d Cir. 1993).....	26
<i>Petereit v. S.B. Thomas, Inc.</i> , 63 F.3d 1169, 1186 (2d Cir. 1995).....	25
<i>Pharm. Rsch. &amp; Mfrs. of Am. v. Concannon</i> , 249 F.3d 66 (1st Cir. 2001) .....	16, 17
<i>Pharm. Rsch. and Mfrs. of Am. v. Walsh</i> , 538 U.S. 644 (2003).....	3, 13
<i>Poor ex rel. NLRB v. Parking Sys. Plus, Inc.</i> , 162 F.4th 335 (2d Cir. 2025).....	4
<i>Rest. L. Ctr. v. City of New York</i> , 90 F.4th 101 (2d Cir. 2024).....	11
<i>Tom Doherty Assocs., Inc. v. Saban Ent., Inc.</i> , 60 F.3d 27 (2d Cir. 1995).....	24
<i>United States v. New York</i> , 708 F.2d 92 (2d Cir. 1983).....	26
<i>Univ. of Tex. v. Camenisch</i> , 451 U.S. 390 (1981).....	28

<i>Variscite NY Four, LLC v. N.Y. State Cannabis Control Bd.</i> , 152 F.4th 47 (2d Cir. 2025).....	22, 25
<i>Vizio, Inc. v. Klee</i> , 886 F.3d 249 (2d Cir. 2018).....	17
<i>Weight Watchers Int’l, Inc. v. Luigino’s, Inc.</i> , 423 F.3d 137 (2d Cir. 2005).....	24
<b>Statutes</b>	
Conn. Gen. Stat. § 4-160(a) .....	26
Conn. Pub. Act 25-168, § 346(b) .....	23
Conn. Pub. Act No. 25-168 § 347 .....	12, 23
<b>Rules</b>	
Fed. R. App. P. 10(e) .....	23
<b>Other Sources</b>	
Andrew Pollack, <i>Drug Goes from \$13.50 a Tablet to \$750, Overnight</i> , N.Y. Times, Sept. 20, 2015, <a href="https://www.nytimes.com/2015/09/21/business/a-huge-overnight-increase-in-a-drugs-price-raises-protests.html">https://www.nytimes.com/2015/09/21/business/a-huge-overnight-increase-in-a-drugs-price-raises-protests.html</a> .....	18
H.B. 483, 2026 Gen. Assemb., Reg. Sess. (Va. 2026), <a href="https://lis.virginia.gov/bill-details/20261/HB483">https://lis.virginia.gov/bill-details/20261/HB483</a> .....	2, 7
Kaiser Family Foundation, <i>Follow the Pill: Understanding the U.S. Commercial Supply Chain</i> 17 (Mar. 2005), <a href="https://www.kff.org/wp-content/uploads/2013/01/follow-the-pill-understanding-the-u-s-commercial-pharmaceutical-supply-chain-report.pdf">https://www.kff.org/wp-content/uploads/2013/01/follow-the-pill-understanding-the-u-s-commercial-pharmaceutical-supply-chain-report.pdf</a> ...	18
Neeraj Sood, Ph.D. et al., <i>The Flow of Money Through the Pharmaceutical Distribution System</i> 4–6 (June 2017), <a href="https://schaeffer.usc.edu/wp-content/uploads/2024/10/The-Flow-of-Money-Through-the-Pharmaceutical-Distribution-System_Final_Spreadsheet.pdf">https://schaeffer.usc.edu/wp-content/uploads/2024/10/The-Flow-of-Money-Through-the-Pharmaceutical-Distribution-System_Final_Spreadsheet.pdf</a> .....	18
S.B. 271, 2026 Gen. Assemb., Reg. Sess. (Va. 2026), <a href="https://lis.virginia.gov/bill-details/20261/SB271">https://lis.virginia.gov/bill-details/20261/SB271</a> .....	2, 7

U.S. Senate Special Committee on Aging, Sudden Price Spikes in Off-Patent  
Prescription Drugs 29–30 (Dec. 2016),  
[https://www.aging.senate.gov/imo/media/doc/Drug%20  
Pricing%20Report.pdf](https://www.aging.senate.gov/imo/media/doc/Drug%20Pricing%20Report.pdf) .....18

## INTRODUCTION

No appellate court has ever upheld a law like the Connecticut Drug Price Cap, and affirming the District Court would create a circuit split. The Cap violates the Commerce Clause’s prohibition on extraterritorial state price controls on interstate goods. It is undisputed that drug manufacturers (not distributors) set Wholesale Acquisition Cost (“WAC”), and they do so on a national, not state-by-state, basis. Distributors are subject to the Cap even though they do not set or control WAC for drug products. In fact, it is undisputed that no member of HDA even has a distribution facility in Connecticut.

The Cap is protectionist and discriminatory because it mandates a lower reference price for drugs in Connecticut than the prevailing price in every other state. No matter how much WAC increases in the rest of the nation, Connecticut prices will be frozen at the reference price, adjusted for inflation. Under the State’s theory, it is free to adopt similar price caps for any other good in interstate commerce, whether milk, coffee, gasoline, household appliances, automobiles, or anything else, to ensure that Connecticut buyers pay less than all other purchasers in the United States. But “[t]his kind of potential regional and even national regulation of the pricing mechanism for goods is reserved by the Commerce Clause to the Federal Government.” *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 340 (1989). “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 v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 523 (1935).

The State’s unapologetic response is that out-of-state buyers are free to travel to Connecticut to make their purchases. State Appellees’ Brief (“State Br.”) 36. But this response highlights the Commerce Clause violation. Allowing Connecticut to legislate lower in-state prices will either siphon off business from other states or force buyers in other states to absorb the costs pushed onto them by the Connecticut Cap. Alternatively, other states may respond to the Cap by adopting their own price control statutes, unleashing the kind of interstate retaliation (and race to the bottom) that the Commerce Clause was meant to preclude. This concern is not hypothetical. The Virginia legislature is already considering a bill following Connecticut’s example.<sup>1</sup>

The State largely focuses on cases involving state laws having nothing to do with price. The State ignores the special Commerce Clause issues presented by *price control* laws for interstate goods. The State labors mightily to argue that the Supreme Court did not mean what it said when it reaffirmed decades of precedent invalidating laws that “tie[] ‘the price of . . . in-state products to out-of-state prices.’” *Nat’l Pork Producers Council v. Ross*, 598 U.S. 356, 374 (2023) (quoting *Pharm. Rsch. and*

---

<sup>1</sup> S.B. 271, 2026 Gen. Assemb., Reg. Sess. (Va. 2026), <https://lis.virginia.gov/bill-details/20261/SB271>; H.B. 483, 2026 Gen. Assemb., Reg. Sess. (Va. 2026), <https://lis.virginia.gov/bill-details/20261/HB483>.

*Mfrs. of Am. v. Walsh*, 538 U.S. 644, 669 (2003)). The State’s position would require this Court to create a circuit conflict with the Fourth Circuit (*Ass’n for Accessible Meds. v. Frosh*, 887 F.3d 664 (4th Cir. 2018)), and the Eighth Circuit (*Ass’n for Accessible Meds. v. Ellison*, 140 F.4th 957 (8th Cir. 2025)), even though the Supreme Court cited the Fourth Circuit’s decision in *Frosh* with approval in *Pork Producers*. 598 U.S. at 374.

Remarkably, the State offers nothing to defend the bizarre mismatch created by its eleventh-hour reinterpretation of the Drug Price Cap at the preliminary injunction hearing in the District Court. The Cap never applied to the sale of a drug by a pharmacy or hospital to a consumer. Under the State’s new view, the Cap *also* no longer applies to the sale of a drug by manufacturer to a distributor. Instead, the Cap targets only sales by the entities (distributors) that have no control over either WAC or the prices ultimately charged to consumers. The result is an arbitrary law that serves no purpose. The State attempts to side-step the mismatch by mischaracterizing it as a “non-Commerce Clause argument[.]” that HDA supposedly did not raise below. State Br. 55. The State is wrong on both counts. The mismatch *is* a Commerce Clause argument; indeed, the Fourth Circuit cited a similar mismatch in invalidating a state price control law under the Commerce Clause. *See Frosh*, 887 F.3d at 671. Moreover, there was no waiver: HDA raised the mismatch at length in the District Court in the only manner it could (orally at the preliminary injunction

hearing and in supplemental briefing), given that the state announced its new interpretation of the Cap “for the first time” at the preliminary injunction hearing. A131.

Additionally, the State fails to rebut HDA’s showing of the remaining preliminary injunction factors: (1) immediate (indeed, ongoing) irreparable harm, (2) the equities favoring relief from the Hobson’s choice that the Drug Price Cap imposes on HDA’s members, and (3) the Cap’s impairment of the public interest in patient access to important medicines delivered safely and efficiently. This Court should reverse the District Court’s order with instructions to enter a preliminary injunction against the Drug Price Cap with respect to HDA and its members. *See Poor ex rel. NLRB v. Parking Sys. Plus, Inc.*, 162 F.4th 335, 346 (2d Cir. 2025). The State does not dispute this Court’s authority to direct such a remedy.

## ARGUMENT

### **I. HDA IS LIKELY TO SUCCEED ON ITS CLAIM THAT THE DRUG PRICE CAP IS UNCONSTITUTIONAL.**

The State spills much ink arguing about the proper interpretation of *Pork Producers* (State Br. 19–34), but it ultimately acknowledges that state laws are unconstitutional under the Commerce Clause if they exhibit “protectionism and discrimination.” State Br. 31. That is precisely the vice of the Drug Price Cap. Moreover, the State’s view of *Pork Producers* is wrong. The Supreme Court clearly preserved (and reaffirmed) prior precedents striking down extraterritorial state price

control laws, as the Eighth Circuit properly concluded in *Ellison*, 140 F.4th at 960–61.

**A. The Drug Price Cap Is Protectionist.**

**1. *The Cap is Protectionist on the Consumer Level.***

The State devotes barely three pages (State Br. 34–36) to defending the Cap’s protectionist aim of legislating lower prices for Connecticut drug purchasers than for those anywhere else in the country. The State admits that “one state’s law” may not “discriminate against another’s . . . consumers.” State Br. 35 (quoting *Pork Producers*, 598 U.S. at 393 (Barrett, J., concurring in part)). The State rests on the notion that the Cap does not prevent out-of-state purchasers from traveling to Connecticut to fill their prescriptions—a fanciful suggestion given the cost and inconvenience of doing so. State Br. 36.

The State’s argument hardly saves the Cap. The laws in *Healy* or *Brown-Forman*<sup>2</sup> did not prevent interstate travel, either. The Drug Price Cap will either coerce buyers in other states into traveling to Connecticut to purchase drugs or force them to absorb the costs not borne by Connecticut buyers. Regardless, out-of-state buyers will be burdened in a way that their Connecticut counterparts are not. The State has no answer to this argument.

---

<sup>2</sup> *Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*, 476 U.S. 573 (1986).

The very cases cited by the State confirm the constitutional defect in the Cap. In *Camps Newfound/Owatonna, Inc. v. Town of Harrison*, for example, the Supreme Court opined that the Commerce Clause forbids “attempts to give local consumers an advantage over consumers in other States.” 520 U.S. 564, 577–78 (1997) (quoting *Brown-Forman*, 476 U.S. at 580). The Court looked to the economic effect of the tax exemption, holding that the burden “falls by design in a predictably disproportionate way on out-of-staters.” *Id.* at 579. The Court made clear that the Commerce Clause protects “out-of-state consumers” as well as “out-of-state competitors,” *id.* at 578 n.11, and opined that “[a]s a practical matter, the statute . . . penalizes the principally nonresident customers of businesses catering to a primarily interstate market.” *Id.* at 576.

In the same way, the Cap exports the costs of Connecticut’s drug price policy to out-of-state drug purchasers. *See Brown & Williamson Tobacco Corp. v. Pataki*, 320 F.3d 200, 208 (2d Cir. 2003) (“Discrimination against commerce itself occurs when a statute . . . shifts the costs of regulation onto other states, permitting in-state lawmakers to avoid the costs of their political decisions.”); *Nat’l Elec. Mfrs. Ass’n v. Sorrell*, 272 F.3d 104, 109 (2d Cir. 2001) (Commerce Clause meant to preclude laws whose “costs will fall in some measure on the residents of other political jurisdictions”).

The State barely responds to the decision of the Southern District of New York striking down an opioid tax cost-pass-through prohibition on the ground 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.” *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 State of New York did not even appeal that aspect of the Southern District’s order.

The State notes that the Southern District’s decision was pre-*Pork Producers* (State Br. 49), but that hardly matters. As the State concedes, *Pork Producers* does not validate protectionist or discriminatory state laws. Indeed, *Pork Producers* condemned state price-control laws for depriving “consumers in other States of whatever competitive advantages they may possess.” 598 U.S. at 374 (internal citations and quotation marks omitted). The Drug Price Cap similarly deprives buyers in other states of the competitive advantages they would otherwise enjoy; instead, it forces them to absorb the costs not borne by Connecticut buyers.

Nor does the State have any answer to the argument that the Drug Price Cap will lead other states to respond by enacting their own price caps mandating even lower prices (as the Virginia bill confirms, *see n. 1, supra*), setting off a race to the

bottom. 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)). *Pork Producers* similarly recognized the risk of economic retaliation inherent in state price-control laws, warning that, if a state enacted a price control law, “‘each of the border States’ could ‘enac[t] statutes essentially identical . . . ’ 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). The State has no response.

## **2. *The Cap Is Protectionist on the Commercial Level.***

The State fails to come to grips with the point that the Drug Price Cap impairs interstate competition among distributors. A distributor that does a larger volume 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. The Cap 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.

The State does not dispute that these effects will occur. Indeed, it concedes that the Cap’s “provisions might apply to one entity instead of another based on

where those entities transact their business.” State Br. 39. The State’s only attempt at justifying this disparate impact is to observe that “none of HDA’s distributor members are in Connecticut.” State Br. 38. But that is just the point. They all participate in interstate commerce, and the Cap’s disruption of that commerce is the sort of impact that *Pork Producers* confirmed is a Commerce Clause violation. The Cap hinders distributors from undertaking competitive pricing outside Connecticut, which is precisely the kind of “impermissible ‘extraterritorial effect’” that the Supreme Court specifically condemned. *See Pork Producers*, 598 U.S. at 374 (condemning price control laws that “prevent[] [out-of-state firms] from undertaking competitive pricing’ or ‘deprive[] businesses . . . in other States of ‘whatever competitive advantages they may possess’” (citations omitted)).

The State offers cold comfort by noting that the Cap theoretically “also applies to manufacturers.” State Br. at 39, 55 n.21. The State has reinterpreted the Cap’s terms to *exempt* manufacturers, even though they are the entities that set and control WAC, as the State ultimately acknowledges. State Br. 44; *see also Ass’n for Accessible Meds. v. Boughton*, No. 3:25-cv-1757-OAW (D. Conn. Dec. 15, 2025), ECF No. 40 (stipulated voluntary dismissal in related case based on State’s reinterpretation).

The State argues that the text of the Cap makes “no distinction between in-state and out-of-state entities.” State Br. 3. But the same could have been said in

the Supreme Court’s prior cases striking down state price controls in *Healy, Baldwin*, and *Brown-Forman*. A law is not automatically deemed non-discriminatory merely “because its language does not mention any state boundaries.” *Energy Mich., Inc. v. Mich. Pub. Serv. Comm’n*, 126 F.4th 476, 490 (6th Cir. 2025). Thus, the laws in *C&A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383, 390–91 (1994), and *Dean Milk Co. v. Madison*, 340 U.S. 349, 350 n. 1 (1951), were discriminatory even though they made no distinction between in-state and out-of-state entities.

Moreover, the Drug Price Cap *does draw* an impermissible distinction between in-state and out-of-state entities: it forces out-of-state distributors, alone, to bear the cost of Connecticut’s program, while exempting in-state retailers and other in-state patient-facing entities. The Supreme Court has explained that economic protectionism includes “attempts to convey advantages on local merchants.” *Camps Newfound/Owatonna*, 520 U.S. at 577–78 (quoting *Brown-Forman*, 476 U.S. at 580). *Pork Producers* described protectionism as laws seeking to benefit “in-state interests” or “advantage in-state firms.” 598 U.S. at 370, 379 n.2. The Cap does just that by exempting local retailers from the price control.

The State errs in contending that retailers are not “appropriate comparators” for purposes of Commerce Clause analysis. State Br. 37. In the context of a state price control statute, the in-state retailers that actually sell covered drug products to Connecticut consumers are *exactly the right* comparators. That is especially true in

this case, where (given the mismatch between the Cap and its stated purpose) any savings in price reduction will simply be passed to in-state retailers for their economic advantage. The Cap operates to increase the margin in-state retailers enjoy on the sale of covered products.

Forcing distributors (which do not set or control WAC for drug products) rather than in-state retailers to bear the burden of the Drug Price Cap is an obvious attempt to favor local merchants. *Rest. L. Ctr. v. City of New York*, 90 F.4th 101 (2d Cir. 2024) (cited at State Br. 37, 39), supports HDA’s position, not the State’s. There, the wrongful discharge law applied only to individual restaurants operating in New York City, not to “out-of-state franchisors or any other out-of-state entity.” *Id.* at 107. The situation here is the reverse; the Drug Price Cap applies only to out-state entities, while favoring in-state ones—a clearly protectionist purpose.

The State argues that the dormant Commerce Clause “does not protect particular business models.” State Br. 46 (quoting heading). But HDA has already shown that this argument undermines rather than justifies the Drug Price Cap (HDA Br. 25–26), and the State never responds to that showing. The “structure” and “model” (State Br. 46) (citation omitted) that the dormant Commerce Clause protects is a “a national market” “undisturbed by preferential advantages conferred by a State upon its residents.” *Gen. Motors Corp. v. Tracy*, 519 U.S. 278, 299 (1997). The Cap disrupts and impairs the interstate, national market for drug products.

**B. The Drug Price Cap Is Impermissibly Extraterritorial.**

The State’s defense of the Drug Price Cap rests on a mischaracterization of HDA’s position. HDA does not argue that any state law (such as a health and safety, consumer protection, or employment law) with an economic effect outside the state violates the dormant Commerce Clause. Rather, the point (as made clear by binding precedent) is that *price control* laws tying in-state prices to out-of-state prices are unconstitutional. Thus, the State’s blinkered focus on laws with extraterritorial “effects” (State Br. 15, 21–23, 25–27, 33) is misplaced. This is not an “effects” case. By targeting prices set at the national level, the Cap directly and impermissibly regulates beyond the boundaries of Connecticut.

In addition, the State entirely ignores HDA’s argument that Section 347 of the Drug Price Cap is impermissibly extraterritorial. That section prohibits distributors from “withdraw[ing] [an] identified prescription drug from sale” in Connecticut “for purpose of avoiding the” Cap, subject to a \$500,000 civil penalty applied per every “identified prescription drug” sold. Conn. Pub. Act No. 25-168 § 347 (A021). As HDA showed in its opening brief (HDA Br. 17–18), this provision effectively requires distributors to perform an extraterritorial act: it compels out-of-state distributors to send drugs located in out-of-state distribution centers across the border into Connecticut, subject to a severe penalty if they refuse. Thus, Section 347 independently violates the principle that the Commerce Clause “precludes the

application of a state statute to commerce that takes place wholly outside of the State’s borders, whether or not the commerce has effects within the State.” *Edgar v. MITE Corp.*, 457 U.S. 624, 642–43 (1982) (plurality opinion). Section 347 violates this fundamental limit on Connecticut’s power, and the State has offered no response.

The State contends that *Pork Producers* worked a “revolution” in Commerce Clause doctrine eliminating extraterritoriality as a constitutional concern absent a showing of protectionism or discrimination. State Br. 26–32. The State’s argument is beside the point because, as shown in Part I-A, *supra*, the Cap *is* protectionist and discriminatory. But the State’s reading of *Pork Producers* is wrong.

*Pork Producers* carefully explained that it “sa[id] nothing new” about its precedents in *Healy*, *Baldwin*, and *Brown-Forman*, which applied to “a particular context.” 598 U.S. at 374. That context is apparent from those three cases themselves—all three “address[ed] ‘price control or price affirmation statutes’ that tied ‘the price of . . . in-state products to out-of-state prices.’” *Id.* (quoting *Walsh*, 538 U.S. at 669). The same is true of the Drug Price Cap.

The State argues the Drug Price Cap does not operate in the exact same way as the three different price-control laws at issue in *Healy*, *Brown-Forman*, and *Baldwin*. State Br. at 30–31. But that does not matter. The laws in those three cases were different even from each other, as the State itself describes. *Id.* The point is

that the Cap shares the same constitutional defect (regardless of the details of how the different state laws operated) because it ties Connecticut prices to the January 1, 2025, out-of-state price (adjusted for inflation)—thereby mandating an artificially lower, fixed price for Connecticut than the WAC prevailing in other states.

The State notes that the Cap “sets in-state prices relative to the WAC, a price that manufacturers set *nationwide*,” *id.* at 31 n.14 (emphasis in original), whereas *Healy*, *Brown-Forman*, and *Baldwin* involved laws that tied in-state prices to those in neighboring states. But that makes the Cap *more* obviously unconstitutional. The Cap seeks to give Connecticut purchasers a discount, not just compared to buyers in New York, Massachusetts, or Rhode Island, but to those anywhere in the country. Moreover, the nationally prevailing WAC is *no longer* the same for hundreds of covered products. *See* A050–51; HDA Appellant’s Brief (“HDA Br.”) 39–40. Therefore, the Cap creates two prices: an out-of-state price equal to the nationally prevailing WAC set by manufacturers, and an in-state Connecticut price equal to the reference price.

This Court should decline the State’s invitation to create a circuit split. The Fourth Circuit, in a decision that *Pork Producers* cited with approval (*see* 598 U.S. at 374), invalidated a state drug price cap that applied to sales by distributors, “*none of which are based in Maryland.*” *Ass’n for Accessible Meds. v. Frosh*, 887 F.3d 664, 667 (4th Cir. 2018) (emphasis in original). Similarly, in this case, no HDA

member has a distribution facility in Connecticut. A040, A042, A046. The Fourth Circuit opined that “[e]ven if the [drug price control] 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 State’s attempt to minimize *Frosh*’s applicability here falls flat. *Pork Producers* commented that *Frosh* read prior Supreme Court cases involving state price regulations “in exactly the same way” as the Supreme Court did. 598 U.S. at 374.

The Eighth Circuit has also cogently explained why the State’s reading of *Pork Producers* is wrong. *See Ass’n for Accessible Meds. v. Ellison*, 140 F.4th 957, 960–61 (8th Cir. 2025). The State’s attempt to distinguish *Ellison* (State Br. 53) fails. Although the Minnesota law applied only to manufacturers (which were located outside Minnesota), the distributors in this case are also located outside the relevant state. None has a distribution facility in Connecticut. Just as the Commerce Clause forbade Minnesota from taking aim at prices set outside the state, it prevents Connecticut from doing so as well. WAC is set outside Connecticut on a national basis (and by manufacturers rather than distributors).

Other cases cited by the State (State Br. 26–27) undermine the State’s request to create a circuit split. These cases recognize the key distinction (for Commerce Clause purposes) between state *price control* laws and other forms of state legislation. *See N.J. Staffing All. v. Fais*, 749 F. Supp. 3d 511, 525 (D.N.J. 2023)

(noting that the price control cases of *Healy*, *Brown-Forman*, and *Baldwin* “clearly survived the *National Pork* revolution”), *aff’d*, 110 F.4th 201, 206 (3d Cir. 2024) (noting that those cases involved “price-control laws”); *GenBioPro, Inc. v. Sorsaia*, No. CV 3:23-0058, 2023 WL 5490179, at \*11 n.5 (S.D. W. Va. Aug. 24, 2023) (*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.”), *aff’d sub nom., GenBioPro, Inc. v. Raynes*, 144 F.4th 258 (4th Cir. 2025). The author of *Pork Producers* has also recognized the special concerns raised by price control laws. *See Energy & Env’t Legal Inst. v. Epel*, 793 F.3d 1169, 1172–73 (10th Cir. 2015) (Gorsuch, J.).

The State’s remaining arguments lack merit. The State contends that the Cap is triggered only by sales in Connecticut. State Br. 40–41. But the Supreme Court found it “irrelevant” that statute in *Brown-Forman* was triggered only by sales within New York. 476 U.S. at 583. The Court added that “[t]he mere fact that the effects of New York’s ABC Law are triggered only by sales of liquor within the State of New York . . . does not validate the law.” *Id.* at 580. Nor was the price control law in *Healy* saved by the fact that it governed only prices posted in Connecticut. 491 U.S. at 326–30.

The State relies heavily on *Pharm. Rsch. & Mfrs. of Am. v. Concannon*, 249 F.3d 66 (1st Cir. 2001), but fails to mention that the district court enjoined the price

control provision, and Maine did not appeal that ruling. *Id.* at 72 n.2. Moreover, 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,” *id.* at 81, which is exactly what the Drug Price Cap seeks to do in Connecticut.

The State emphasizes the word “reference” in “reference price” (State Br. 42–43) in a misguided attempt to suggest that a price cap is no different than the fee that Connecticut imposed on electronics manufacturers in *Vizio, Inc. v. Klee*, 886 F.3d 249 (2d Cir. 2018). But *Vizio* was not a price control case at all. While the state law in *Vizio* indeed “referenced” a manufacturers’ national market share as part of the calculation to determine the applicable fee, *see id.* at 253, the Drug Price Cap is completely different: it caps the “reference price” at January 1, 2025 WAC, plus inflation. *Vizio* provides no support for the State’s argument.

In sum, the State fails to distinguish the Drug Price Cap’s impermissible extraterritorial features from those identified in *Pork Producers, Healy, Brown-Forman*, and *Baldwin*, not to mention those in decisions where the Fourth and Eighth Circuits invalidated drug price control statutes as extraterritorial. This Court should not create a circuit split by upholding the Cap.

**C. The State’s Reinterpretation of the Drug Price Cap Compounds the Constitutional Violations.**

The State does not attempt to defend the new version of the Drug Price Cap created by its last-minute reinterpretation to exclude manufacturers at the

preliminary injunction hearing in the District Court. The Cap, which is ostensibly intended to control prices, does not cover the manufacturers that set WAC or the retailers that establish the ultimate price offered and paid by the consumer. The State cannot offer even a rational basis for this transmogrified statute. It ceases to serve any purpose at all, except an unconstitutional one: to put distributors in the untenable and punitive position where they face potentially endless increases in WAC from manufacturers, while they are stuck selling at a fixed benchmark price. The State does not deny that nothing in the legislative record or the statements by the Governor and legislature supports the reinterpreted version of the Drug Price Cap. HDA Br. 36–37. In fact, secondary sources cited by the State (State Br. 5–8 nn.3–9) refer to the role of manufacturers, not distributors, in raising drug prices.<sup>3</sup> The State’s own

---

<sup>3</sup> Andrew Pollack, *Drug Goes from \$13.50 a Tablet to \$750, Overnight*, N.Y. Times, Sept. 20, 2015, <https://www.nytimes.com/2015/09/21/business/a-huge-overnight-increase-in-a-drugs-price-raises-protests.html>; U.S. Senate Special Committee on Aging, *Sudden Price Spikes in Off-Patent Prescription Drugs* 29–30 (Dec. 2016) (noting “manufacturer consolidation through acquisition has contributed to higher prices” for generic drugs and that certain companies “followed a business model that enabled them to identify and acquire off-patent drugs over which they could exercise de facto monopoly pricing power due to a market failure” and then “imposed (and protected) astronomical price increases”), <https://www.aging.senate.gov/imo/media/doc/Drug%20Pricing%20Report.pdf>; Kaiser Family Foundation, *Follow the Pill: Understanding the U.S. Commercial Supply Chain* 17 (Mar. 2005) (“Pharmaceutical manufacturers have the most influence over pharmaceutical prices.”), <https://www.kff.org/wp-content/uploads/2013/01/follow-the-pill-understanding-the-u-s-commercial-pharmaceutical-supply-chain-report.pdf>; Neeraj Sood, Ph.D. et al., *The Flow of Money Through the Pharmaceutical Distribution System* 4–6 (June 2017) (reporting net profit margins for all drugs of 26.3% for manufacturers, 4% for pharmacies, and

authorities fail to support its new interpretation applying the Cap only to distributors. In effect, the Attorney General, acting on behalf of the Department of Revenue, rewrote the Cap in the court, producing a new version of the law with major economic consequences unintended by the legislature. But an agency and its lawyers lack the power to effect “a fundamental revision of [a] statute.” *Biden v. Nebraska*, 600 U.S. 477, 502 (2023) (internal quotation marks and citation omitted).

HDA has shown that the reinterpreted version of the Cap violates Equal Protection and Due Process because it is an unconstitutionally arbitrary classification with no connection between its rationale and its actual operation, and because it penalizes distributors for manufacturer-driven pricing decisions beyond their control. HDA Br. 35–36. The mismatch between the Cap’s ostensible rationale and actual operation is also relevant to the Commerce Clause violation. The Fourth Circuit cited the Maryland price control law’s failure to cover retailers and other in-state entities that actually set consumer prices when invalidating that law under the Commerce Clause. *See Frosh*, 887 F.3d at 671.

Further, as HDA noted in its opening brief, the reinterpreted version of the Cap creates a new Commerce Clause violation. HDA Br. 34–35. Under the State’s

---

only 0.5% for wholesalers, and concluding that “[d]rug manufacturers and pharmacies had higher margins than most comparator industries”), [https://schaeffer.usc.edu/wp-content/uploads/2024/10/The-Flow-of-Money-Through-the-Pharmaceutical-Distribution-System\\_Final\\_Spreadsheet.pdf](https://schaeffer.usc.edu/wp-content/uploads/2024/10/The-Flow-of-Money-Through-the-Pharmaceutical-Distribution-System_Final_Spreadsheet.pdf).

new approach based on the situs of title transfer (State Br. 11–12; A131–32), the State instructs distributors that they are able to avoid the Cap only by taking additional out-of-state actions to avoid the irreparable harm the Cap would otherwise impose, such as by arranging for title to transfer at distribution centers outside Connecticut. Compelling an extraterritorial act as the price of avoiding liability under the Cap is another impermissible impairment of interstate commerce, to which the State offers no response.

The State contends the non-Commerce Clause arguments are waived because they supposedly were not presented to the District Court. State Br. 54–56. Not so. HDA has raised the same constitutional concerns from the outset of litigation in support of its motion for preliminary injunction through appeal. HDA’s complaint expressly cited the Due Process and Equal Protection Clauses as guarantees “against arbitrary action.” A033. The complaint alleged that “[t]he Drug Price Cap exposes wholesale distributors to penalties for activities beyond their control,” because they “do not set or control the WAC for drug products.” A034. “Imposing penalties on wholesale distributors (and their officers and employees) for activities beyond their control violates the Due Process Clause of the Fourteenth Amendment.” *Id.* HDA’s members submitted declarations attesting that distributors do not control WAC. A040, A043, A046; *see also* ECF No. 28 at 7, 11–12; Dkt. 6 at 18–19 (explaining the Cap rests on an “arbitrary classification” unintended by the legislature).

When the State announced “for the first time” at the preliminary injunction hearing its new theory that the Cap applies only to sales where title transfers in Connecticut (A131), HDA immediately responded that the State’s new position put distributors in an impossible position:

“[T]he state’s position this morning highlights the whole constitutional problem with the statute because distributors are caught in the middle. The distributors don’t set or control WAC, the wholesale acquisition cost. . . . 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.” A077:9–24.

“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.” A109:24–110:6.

In a post-hearing supplemental brief in the District Court, HDA further explained that the Cap “will apply neither to entities that set WAC (out-of-state generic manufacturers) nor to the entities that actually sell drug products to consumers (in-state pharmacies, hospitals, medical practices, and other patient-facing organizations). 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.” ECF No. 44 at 2–3; *see* HDA Br. at 5, 13, 36.

The District Court understood HDA to be making the same arguments it is raising now. The District Court explained:

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 manufacturers 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. *Id.* at 3–5; *see also* ECF No. 27-1, at 9–11.

A138.

There was no waiver of the non-Commerce Clause arguments.

## **II. HDA’S MEMBERS WILL SUFFER IRREPARABLE HARM ABSENT AN INJUNCTION.**

Distributors are already facing two forms of irreparable harm. First, this Court has recognized that “the alleged violation of a constitutional right triggers a finding of irreparable injury.” *Conn. Dep’t of Env’t Prot. v. OSHA*, 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, since January 1, 2025, manufacturers have already raised WAC for over 650 covered products by more than the rate of inflation. A048–54; *see also* ECF No. 44, at 2 n.3. The undisputed evidence showed that WAC would continue to increase. A048–54. Thus, as of January 1, 2026, HDA members purchasing covered products at WAC face a Hobson’s choice: (1) buy the 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. *See* Conn. Pub. Act 25-168, § 346(b) (imposing penalty of 80% of the difference between the reference price and the noncompliant sale price). And if distributors attempt to avoid this dilemma by withdrawing a covered product from Connecticut, they will face a separate \$500,000 civil penalty. *Id.* § 347. This series of Hobson's choices plainly results in irreparable harm, *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 381 (1992), and the State has no answer.

The State's responses on the irreparable harm issue lack merit. The State faults HDA for not submitting extra-record evidence to confirm the monetary loss suffered by its members. State Br. 60. But there was no need to supplement the record; the undisputed evidence before the District Court proves irreparable injury. Moreover, as this Court well knows, supplementing the record on appeal under Fed. R. App. P. 10(e) is hardly required; in fact, it is not encouraged.<sup>4</sup>

The State contends that HDA delayed in seeking relief. State Br. 58–59. Not so. Indeed, the State's own brief narrates HDA's efforts to pursue expedient resolution in the district court and in this Court. *Id.* at 59. HDA filed suit in October and sought expedited consideration (which the Court granted) so that a pre-enforcement injunction could be issued before the Drug Price Cap took effect on

---

<sup>4</sup> The State contends that HDA cited new factual material on appeal (State Br. 60 (citing HDA Br. 50–51 n.13)), but that factual material is price data that is a matter of public record.

January 1, 2026. *See* ECF Nos. 1, 31–32. After the District Court denied HDA’s motion for preliminary injunction on Christmas Eve (A144), HDA filed a notice of appeal and motion for injunction pending appeal within two days (A145; ECF No. 47) and an emergency motion for stay pending appeal and expedited consideration just another three days later (Dkt. 6). When this Court on New Year’s Eve established a 45-day deadline to file the appellant’s brief, HDA filed it in two weeks. Dkt. 16; HDA Br. at 44. HDA has expeditiously pursued relief at every turn.

The cases the State cites in support of its delay argument are inapposite because they involve plaintiffs tolerating ongoing injury for a significant period of time before seeking judicial relief. “The cases in which [this Court has] found that a delay rebutted the presumption of irreparable harm are trademark and copyright cases” having nothing to do with the harms HDA alleges here. *Tom Doherty Assocs., Inc. v. Saban Ent., Inc.*, 60 F.3d 27, 39 (2d Cir. 1995) (citations omitted); *see also Weight Watchers Int’l, Inc. v. Luigino’s, Inc.*, 423 F.3d 137 (2d Cir. 2005) (trademark); *Citibank, N.A. v. Citytrust*, 756 F.2d 273, 273 (2d Cir. 1985) (trademark); Moreover, “a short delay does not rebut the presumption [of irreparable harm] where there is a good reason for it.” *Weight Watchers*, 423 F.3d at 144.

The State argues at length that the violation of constitutional rights creates irreparable harm only under the First Amendment. State Br. 61–64. But this Court has instructed in the Commerce Clause context that, when “a plaintiff alleges

constitutional injury, ‘a strong showing of a constitutional deprivation that results in noncompensable damages ordinarily warrants a finding of irreparable harm.’” *Variscite*, 152 F.4th at 60 (quoting *A.H. ex rel. Hester v. French*, 985 F.3d 165, 176 (2d Cir. 2021)). The State suggests that this Court in *Variscite* did not mean what it said because the Court did not apply this rule to the facts before it. State Br. 63. But it is absurd to suggest that this Court would articulate a rule in a context where the rule would never apply. And here, the injury to HDA’s members is indeed “noncompensable,” *Variscite*, 152 F.4th at 60, because the State continues to assert sovereign immunity against damages actions. State Br. 65.

The State suggests that HDA’s members could avoid the Cap by taking title to drugs outside Connecticut. State Br. 65–66. But the State ignores the uncontroverted evidence that shifting the situs of title transfer outside Connecticut by changing the well-settled F.O.B. destination shipping practice is a non-starter. A057–59, A062–63, A065–67. Customers would not agree to it, and it would completely upend distributors’ business models. *Id.* “Major disruption of a business can . . . constitute irreparable injury,” *Petereit v. S.B. Thomas, Inc.*, 63 F.3d 1169, 1186 (2d Cir. 1995), as can the loss of customer goodwill by being forced to renegotiate or abandon existing contracts, *see FTC v. Qualcomm Inc.*, 935 F.3d 752, 756 (9th Cir. 2019). Even a “threat to the continued existence of a business can constitute irreparable injury.” *Nemer Jeep-Eagle, Inc. v. Jeep-Eagle Sales Corp.*,

992 F.2d 430, 435 (2d Cir. 1993). HDA has shown irreparable injury here. *See also Nat'l Fuel Gas Distrib. Corp. v. Christian*, 798 F. Supp. 3d 267, 287 (N.D.N.Y. 2025) (finding plaintiffs “showed irreparable harm in the form of having to either pay Draconian penalties . . . or disrupt their existing customer-assistance business practices”).

The State makes a passing suggestion that HDA members could seek monetary relief through Chapter 53 of the Connecticut General Statutes. State Br. 55. This suggestion “simply misses the mark; in deciding whether a federal plaintiff has an available remedy at law that would make injunctive relief unavailable, federal courts may consider only the available *federal* legal remedies.” *United States v. New York*, 708 F.2d 92, 93 (2d Cir. 1983). The State’s invocation of sovereign immunity precludes an after-the-fact damages action in federal court to recover losses from the unconstitutional Cap.

Even on its own terms, Chapter 53 is an inadequate remedy. Chapter 53 provides that plaintiffs may *not* pursue a money damages claim against the State unless they receive a waiver from the Claims Commissioner. *Miller v. Egan*, 828 A.2d 549, 561 (Conn. 2003). The State cites no example where a waiver has ever been granted in a case like this. Indeed, the Claims Commissioner may authorize a suit only after deeming it “just and equitable” and only if “the state, were it a private person, could be liable.” Conn. Gen. Stat. § 4-160(a). The State makes no effort to

explain how a private person could be held liable for a dormant Commerce Clause violation and thus how the Claims Commissioner would even have the authority to consider a waiver here.

### **III. THE BALANCE OF HARDSHIPS AND PUBLIC INTEREST MILITATE IN FAVOR OF AN INJUNCTION.**

The State contends that the public interest in lowering drug prices outweighs the irreparable harm HDA faces. State Br. 67–68. But consumer protection cannot justify a Commerce Clause violation. *See Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 353 (1977) (state law that violates Commerce Clause cannot be saved “even if enacted for the declared purpose of protecting consumers”). The State lacks an “interest in the enforcement of an unconstitutional law.” *N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013) (citation and internal quotation marks omitted).

The State does not deny that multiple provisions of federal law (including Medicare, the Inflation Reduction Act’s Drug Price Negotiation Program, Section 340B of the Public Health Service Act, and the federal drug price MFN program) already address the issue of drug prices. And the State fails to explain how the legislative record justifies the Statute after its new interpretation as of the preliminary injunction hearing.

A preliminary injunction will simply preserve the status quo in Connecticut that has always existed before the Drug Price Cap’s enactment. *See Univ. of Tex. v.*

*Camenisch*, 451 U.S. 390, 395 (1981) (“The purpose of a preliminary injunction is . . . to preserve the relative positions of the parties.”). Without preserving the status quo, the Drug Price Cap will continue to disrupt the national pharmaceutical market, which is not in the public interest. The Drug Price Cap disturbs the essential logistical function performed by wholesale distributors and will ultimately imperil patient access to important medicines, as shown by numerous submissions to the General Assembly, which the State does not deny. *See* ECF No. 27-1 at 21–22 & n.8. 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 and balance of the equities weigh decidedly in HDA’s favor.

## CONCLUSION

This Court should reverse the District Court's order and direct the entry of a preliminary injunction against the Drug Price Cap with respect to HDA and its members.

Dated: March 20, 2026

Respectfully submitted,

By: /s/ Jonathan S. Massey

Jonathan S. Massey  
Austin S. Martin  
**MASSEY & GAIL LLP**  
1000 Maine Ave SW, Suite 450  
Washington, D.C. 20024  
Tel.: (202) 652-4511  
Fax: (312) 379-0467  
jmassey@masseygail.com  
amartin@masseygail.com

Thomas J. Finn (ct20929)  
Snigdha Mamillapalli (ct31142)  
**MCCARTER & ENGLISH, LLP**  
185 Asylum Street, 36th Floor  
Hartford, CT 06103  
Tel.: (860) 275-6700  
Fax: (860) 724-3397  
tfinn@mccarter.com  
smamillapalli@mccarter.com

*Attorneys for Healthcare Distribution  
Alliance*

## CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2026, a copy of the foregoing document was filed electronically through the Court's CM/ECF System. 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. 32(a)(7)(B) and Local Rule 32.1(4) because it contains 6,927 words, excluding the exempted portions of this document.

2. This document complies with the typeface and typestyle requirements of Fed. R. App. P. 32(a)(6) because it was prepared in 14-point Times Roman font in Word.

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