**25-2960**

# In the United States Court of Appeals for the Seventh Circuit

ASSOCIATION FOR ACCESSIBLE MEDICINES,
*Plaintiff-Appellant*,

v.

KWAME RAOUL,
*Defendant-Appellee*.

On Appeal from the United States District Court
for the Northern District of Illinois
No. 24-cv-544 (Hon. Virginia M. Kendall)

**MOTION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF APPELLANT AND REVERSAL**

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*Counsel for Amicus Curiae the Chamber of Commerce of the United States of America*

The Chamber of Commerce of the United States of America respectfully moves this Court to grant leave to file an amicus curiae brief, in support of Plaintiff-Appellant Association for Accessible Medicines. The proposed brief is attached to this motion.

The Chamber is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus briefs in cases of concern to the nation's business community.

This is such a case. The Chamber's members operate in markets that are exposed to laws like the Illinois extraterritorial price-control law at issue here, where a state law regulates transactions that occur entirely outside the State's borders, among parties that often have no connection to the State. Thus, the Chamber has a strong interest in ensuring that, consistent with Supreme Court precedent and fundamental constitutional principles, the

Commerce Clause's extraterritoriality principle is properly applied to invalidate the Illinois law.

Adherence to the extraterritoriality principle is particularly important here. Should the Illinois law be allowed to stand, damaging impacts will arise not only for generic drug manufacturers but for patients, whose access to critical, affordable medications will be jeopardized. More generally, the law would upset the carefully constructed balance of sovereignty among the States that constitutes a core feature of our constitutional system.

The Chamber's proposed brief "will assist the judges," *Voices for Choices* v. *Ill. Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003), by providing them with "unique information [and] perspective" in considering Plaintiff-Appellant's appeal, *Ryan* v. *CFTC*, 125 F.3d 1062, 1063 (7th Cir. 1997). The Chamber's proposed brief seeks to provide this Court with broader insights into the continued viability of the extraterritoriality principle and the significant consequences of discarding it. *See Prairie Rivers Network* v. *Dynegy Midwest Generation, LLC*, 976 F.3d 761, 763 (7th Cir. 2020) (explaining that an amicus brief can assist a panel by "highlighting . . . historical[] or legal nuance glossed over by the parties" and providing it with "practical perspectives on the consequences of potential outcomes").

Amicus's counsel has conferred with counsel for both parties. Plaintiff-Appellant has consented to the filing of the Chamber's amicus brief. Defendant-Appellee takes no position as to this motion.

Respectfully submitted,

/s/ Morgan L. Ratner

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February 17, 2026

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**APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT**

Appellate Court No: 25-2960

Short Caption: Association for Accessible Medicines v. Raoul

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

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Chamber of Commerce of the United States of America

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:
Sullivan & Cromwell LLP

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

N/A

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

N/A

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

N/A

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Attorney's Signature: /s/ Morgan L. Ratner Date: 2/17/26

Attorney's Printed Name: Morgan L. Ratner

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☑ **No** ☐

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Attorney's Signature: /s/ Yaira Dubin Date: 2/17/26

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Attorney's Signature: /s/ Zachary D. Huffman Date: 2/17/26

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Attorney's Signature: /s/ Andrew R. Varcoe Date: February 9, 2026

Attorney's Printed Name: Andrew R. Varcoe

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Attorney's Signature: /s/ Jonathan D. Urick Date: February 9, 2026

Attorney's Printed Name: Jonathan D. Urick

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

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## INTEREST OF AMICUS CURIAE[1]

Amicus curiae the Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus briefs in cases of concern to the nation's business community.

This is such a case. Illinois's price-control law, 410 Ill. Comp. Stat. 725/10, restricts the price of generic and off-patent drugs in transactions that occur entirely outside Illinois's borders between manufacturers and distributors that often have no connection to the State, and does so just because there is a possibility that a manufacturer's product will eventually enter Illinois markets. If the law is allowed to stand, damaging impacts will

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[1] No counsel for any party authored this brief in whole or in part and no entity or person, aside from amicus curiae, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

arise not only for generic drug manufacturers but for patients, whose access to critical, affordable medications will be jeopardized.

More broadly, the District Court's decision upholding Illinois's price-control law misconstrues important constitutional principles. The Commerce Clause, consistent with the structure of the Constitution and fundamental principles of representative governance, restricts the ability of States to impose their own laws and policies outside their borders, on citizens of other States. The Chamber submits this brief to explain why that extraterritoriality principle remains a critical constitutional constraint on state regulation after the Supreme Court's decision in *National Pork Producers Council* v. *Ross*, 598 U.S. 356 (2023), and why that principle renders invalid the Illinois law challenged here.

## INTRODUCTION

Illinois passed its price-control law, 410 Ill. Comp. Stat. 725/10 (the Price-Control Act) to try to address rising prices in the generic and off-patent drug markets. Illinois did not choose to regulate sales along any point of the supply chain that occurs within the state—say, when distributors sell to Illinois retailers, or retailers sell to Illinois purchasers. Instead, Illinois directly targeted out-of-state conduct, choosing to regulate the transactions between out-of-state manufacturers and distributors, so long as their products eventually make it into Illinois markets for sale in downstream transactions. The law intentionally and explicitly sweeps in commercial conduct that occurs beyond Illinois's borders. As a result, entities with no connection to Illinois, that enter into a transaction completely outside the state, face significant potential liability for fines and disgorgement.

The Price-Control Act is unconstitutional. The Commerce Clause prevents States from promulgating laws that restrict interstate commerce. Beyond discrimination, the Commerce Clause also contains a longstanding extraterritoriality principle prohibiting States from directly regulating out-of-state transactions between entities that have no connection to the regulating State. The Price-Control Act squarely violates that extraterritoriality principle.

The District Court thus wrongly held that the Association for Accessible Medicines (AAM) is unlikely to succeed on the merits of its Commerce Clause challenge. The court rested that holding on its misunderstanding that the Supreme Court had essentially discarded the extraterritoriality principle in *National Pork Producers Council* v. *Ross*, 598 U.S. 356 (2023). The Supreme Court did not do so. That decision rejected a challenge to a California law regulating the *in-state* price of pork products based on the law's mere practical effects outside of California. The California law, in other words, targeted exclusively in-state sales. By contrast, the Supreme Court specifically acknowledged that it was not addressing state laws, like Illinois's Price-Control Act, that directly regulate wholly out-of-state conduct. Indeed, far from eliminating the extraterritoriality strand of the Commerce Clause, the Supreme Court affirmed the continued vitality of the longstanding constitutional prohibition on such pure out-of-state regulation.

The Supreme Court affirmed the extraterritoriality principle for good reason: It is a fundamental building block of our constitutional structure. Limits on out-of-state regulation protect state sovereignty and the careful distribution of power in a system of co-equal States. Such limits also prevent States from imposing competing regulatory regimes that create inconsistent requirements for market participants and undermine our national economic union. In addition, the extraterritoriality principle buttresses the Commerce Clause's "core" antidiscrimination rule. *National Pork Producers*, 598 U.S. at 369 (internal quotation marks and citation omitted). The principle ensures that each State remains accountable for its actions, by regulating only citizens who have consented to being governed by the State.

This Court should reaffirm the continued vitality of the Commerce Clause's extraterritoriality principle and reverse the District Court's order denying a preliminary injunction.

## ARGUMENT

### I. THE COMMERCE CLAUSE CONTAINS A FUNDAMENTAL EXTRATERRITORIALITY PRINCIPLE.

The Commerce Clause provides that "Congress shall have Power . . . [t]o regulate Commerce with foreign Nations, and among the several States." U.S. Const., art. I, § 8, cl. 3. "Although the Clause is framed as a positive grant of power," the Supreme Court has "long held that this Clause also prohibits laws that unduly restrict interstate commerce." *Tenn. Wine & Spirits Retailers Ass'n* v. *Thomas*, 588 U.S. 504, 514 (2019) (internal quotation marks and citation omitted). This "negative command" is "known as the dormant Commerce Clause." *Comptroller of Treasury of Md.* v. *Wynne*, 575 U.S. 542, 549 (2015).

The Commerce Clause accordingly protects against impermissible state regulation of interstate commerce in multiple ways. It prevents discriminatory laws "driven by economic protectionism—that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." *National Pork Producers*, 598 U.S. at 369 (alteration adopted) (internal quotation marks and citation omitted). It invalidates laws that burden interstate commerce in ways that are "clearly excessive in relation to the putative local benefits." *Pike* v. *Bruce Church, Inc.*, 397 U.S. 137, 142 (1970). And it contains a longstanding extraterritoriality principle, which prohibits States from regulating commerce that occurs completely outside its own borders. *See Edgar* v. *MITE Corp.*, 457 U.S 624, 640-643 (1982) (plurality).

The District Court wrongly held that AAM is unlikely to succeed on its claim that Illinois's Price-Control Act violates the Commerce Clause's prohibition against extraterritorial state regulation. *See Ass'n for Accessible Meds.* v. *Raoul*, 805 F. Supp. 3d 854 (N.D. Ill. 2025). The court concluded that the Supreme Court in *National Pork Producers* had "severely undercut[] the [extraterritoriality principle's] continuing viability," essentially eliminating it. *Id.* at 862. That is wrong. *National Pork Producers* reaffirmed that the extraterritoriality principle prohibits States from regulating conduct that occurs completely beyond their borders. And since *National Pork Producers* was decided, most of the federal courts that have confronted the issue have continued to recognize this foundational principle. The extraterritoriality principle remains alive and well.

### A. The Supreme Court Has Long Recognized The Extraterritoriality Principle.

The Supreme Court long ago recognized that "every state possesses exclusive jurisdiction and sovereignty over persons and property within its territory," and accordingly that "no state can exercise direct jurisdiction and authority over persons or property without its territory." *Brown* v. *Fletcher's Est.*, 210 U.S. 82, 89 (1908). This is "obviously the necessary result of the Constitution." *N.Y. Life Ins. Co.* v. *Head*, 234 U.S. 149, 161 (1914). The best exposition of the contours of the extraterritoriality principle comes from the plurality opinion in *Edgar* v. *MITE Corp.*, 457 U.S 624 (1982). Under that decision, a law is unconstitutional if it directly regulates (1) transactions that occur "wholly outside the State," (2) involving entities "having no connection" to the State. *Id.* at 642; *see Mallory* v. *Norfolk S. Ry. Co.*, 600 U.S. 122, 163 (2023) (Alito, J., concurring) ("[A] State generally does *not* have a legitimate local interest in vindicating the rights of non-residents harmed by out-of-state actors through conduct outside the State") (citing *Edgar*, 457 U.S. at 644).

1. *Edgar* involved an Illinois securities law that required all tender offers for a "target company" to be registered in advance with the Illinois Secretary of State, who could then hold a hearing to determine the fairness of the offer. *Edgar*, 457 U.S. at 626-627. The law defined "target company" as

one that had at least 10% Illinois shareholders or met two of the following conditions: The company (i) was headquartered in Illinois, (ii) was incorporated in Illinois, and (iii) had at least 10% of its stated capital and paid-in surplus in Illinois. *Id.* at 627.

Although the majority decided *Edgar* on *Pike* balancing grounds, *id.* at 643-646, the plurality focused on extraterritoriality as well, *id.* at 641-643. It concluded that the Illinois law violated the Commerce Clause because it "sought to prevent [out-of-state companies] from making [their] offers and concluding interstate transactions not only with [Illinois citizens], but also with those living in other States and having no connection with Illinois." *Id.* at 642. Indeed, the plurality emphasized that the law would apply even if "not a single one of [the target company's] shareholders" were residents. *Id.*

The *Edgar* plurality decision illustrates what types of connections are *not* enough to save a law from an extraterritoriality challenge. The challenger there, MITE Corp., was a Delaware corporation with its principal place of business in Connecticut. It submitted a tender offer for the outstanding shares of Chicago Rivet & Machine Co., an Illinois corporation with 10% of its shareholders in Illinois. So the target company was an Illinois corporation, and its Illinois shareholders could have participated in the tender offer.

Nevertheless, the plurality determined that these connections were insufficient because the law directly regulated out-of-state transactions among entities without any Illinois connections. *Edgar*, 457 U.S. at 642. In other words, a State cannot regulate extraterritorially merely because an out-of-state transaction will have some predictable downstream consequences in that State. *See id.* at 642-643 ("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."). In order for the State to exercise its regulatory power over a transaction, either the regulated transaction must take place within the state or the regulated party itself must have a sufficient connection with the State (citizenship, for example, may sometimes be enough).

2. The *Edgar* test is a natural offshoot of our nation's federalist constitutional structure. Our Constitution rests on the "fundamental principle" that States are "equal sovereign[s]." *Shelby Cnty.* v. *Holder*, 570 U.S. 529, 544 (2013); *see Coyle* v. *Smith*, 221 U.S. 559, 580 (1911) ("[T]he constitutional equality of the states is essential to the harmonious operation of the scheme upon which the Republic was organized."). As co-equal sovereigns, each State has "exclusive jurisdiction and authority over persons and property

within its territory." *Fletcher's Est.*, 210 U.S. at 89. Equal sovereignty by definition also necessarily implies that States are "without power to exercise 'extra territorial jurisdiction,' that is, to regulate and control activities wholly beyond [their] borders." *Watson* v. *Emp. Liab. Assurance Corp.*, 348 U.S. 66, 70 (1954); *see Bonaparte* v. *Appeal Tax Ct. of Balt.*, 104 U.S. 592, 594 (1882) ("No state can legislate except with reference to its own jurisdiction."). As a result, laws generally have "no force of themselves beyond the jurisdiction of the state which enacts them." *Huntington* v. *Attrill*, 146 U.S. 657, 669 (1892). When a state law purports to assert such an extraterritorial effect, that overextension disrupts the careful balance of sovereign power in our federal system.

Put differently, each State's sovereignty serves as an important, inherent "limitation" on the power of "all of its sister States." *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 293 (1980); *see Franchise Tax Bd. of California v. Hyatt*, 587 U.S. 230, 245 (2019). Territorial limits ensure that a State can make "its own reasoned judgment about what conduct is permitted or proscribed within its borders." *State Farm Mut. Auto. Ins. Co.* v. *Campbell*, 538 U.S. 408, 422 (2003). And they guarantee that one State's judgments are respected by other States, which are constrained in their ability to interfere with the territorial State's decisions. *See BMW of N.A., Inc.* v. *Gore*, 517 U.S. 559, 571 (1996) (explaining that each State's authority is "constrained by the need to respect the interests of other States"). Indeed, "it would be impossible to permit the statutes of [one State] to operate beyond the jurisdiction of that State . . . without throwing down the constitutional barriers by which all the States are restricted within the orbits of their lawful authority and upon the preservation of which the government under the Constitution depends." *Head*, 234 U.S. at 161.

The Commerce Clause's rule against extraterritorial state regulation reinforces, and stands as a bulwark against encroachment upon, the limits inherent in co-equal sovereignty. As the Supreme Court recently recognized, when there are disputes about where the sovereignty of one State ends and another begins, the Commerce Clause helps to "mediate [those] competing claims." *National Pork Producers*, 598 U.S. at 376. Other constitutional provisions supply complementary safeguards preventing a State from encroaching on the sovereignty of other States. *See, e.g.*, Privileges and Immunities Clause, U.S. Const., art. IV, § 2, cl. 1; Import-Export Clause, U.S. Const., art. I, § 10, cl. 2; Full Faith and Credit, U.S. Const., art. IV, § 1; Due Process Clause, U.S. Const., amend. XIV, § 1. But the Commerce Clause has long been a crucial doctrinal home for the Constitution's robust protection of state sovereignty from out-of-state interference. *See Healy* v. *Beer Institute, Inc.*, 491 U.S. 324, 336-337 (1989) (explaining that "the Commerce Clause protects against inconsistent legislation arising from the projection of one state regulatory regime into the jurisdiction of another State").

### B. *National Pork Producers* Reaffirms The Extraterritoriality Principle.

The Supreme Court in *National Pork Producers* reaffirmed the continuing viability of the Commerce Clause's extraterritoriality principle as understood by the *Edgar* plurality. In *National Pork Producers*, the Court considered a challenge to California's Proposition 12, which, among other things, prohibits the sale of pork in California that comes from pigs confined or gestated under certain conditions. Because Proposition 12 would require out-of-state farmers who wished to sell their pork in California to change the way they raised pigs, "impos[ing] substantial new costs" on them, the challengers contended that the regulation violated the Commerce Clause's "almost *per se* rule forbidding enforcement of state laws that have the practical effect of controlling commerce outside the State." *National Pork Producers*, 598 U.S. at 371 (internal quotation marks omitted). The Court rejected the challengers' expansive conception of the extraterritoriality principle—one prohibiting regulations of in-state conduct that merely have upstream consequences for commerce beyond a State's borders.

In reaching its decision, the Supreme Court rejected the challengers' reliance on a trio of its precedents—*Healy*, 491 U.S. 324; *Brown-Forman Distillers Corp.* v. *New York State Liquor Authority*, 476 U.S. 573 (1986); and *Baldwin* v. *G.A.F. Seelig, Inc.*, 294 U.S. 511 (1935)—because those decisions involved protectionist state laws that discriminated against out-of-state commerce, unlike California's Proposition 12. In *Baldwin*, the Court "refused to enforce New York laws that barred out-of-state dairy farmers from selling their milk in the State unless the price paid to them matched the minimum price New York law guaranteed in-state producers." *National Pork Producers*, 598 U.S. at 371-372 (internal quotation markets and citation omitted). Similarly, in *Healy* and *Brown-Forman*, the Court invalidated Connecticut and New York laws that required merchants to affirm that "their in-state prices were no higher than their out-of-state prices." *Id.* at 372. In *National Pork Producers*, the Court explained that, although these laws had some impact on out-of-state prices, they violated the Commerce Clause, in part, because of their discriminatory purpose. Each "plainly discriminated against out-of-staters" by tying the "price of in-state products to out-of-state prices," which amounted to "economic protectionism." *Id.* at 372, 374 (alteration adopted; internal quotation marks and citation omitted).

The Supreme Court in *National Pork Producers* did not, however, hold that the Commerce Clause prohibits only discriminatory state laws. Instead, the Court emphasized that Proposition 12 was consistent with California's territorial limits: It regulated only "the in-state *sale* of certain pork products." *National Pork Producers*, 598 U.S. at 363 (emphasis added). By contrast, the Court explained, it had in *Edgar* struck down an Illinois law that "*directly* regulated out-of-state transactions by those with *no* connection to the State." *Id.* at 376 n.1. Indeed, the Court underscored that "no one should think" that its decision allows "one State [to] prosecute the citizen[s] of another State for acts committed outside the first State's jurisdiction." *Id.* at 375 (alterations adopted) (internal quotation marks and citation omitted).

The *National Pork Producers* Court also appeared to embrace the reasoning of the *Edgar* plurality, reciting its holding without suggesting any doubt about its correctness. 598 U.S. at 376 n.1. The Court specifically repeated the two "conditions" that made *Edgar*'s Illinois tender-offer law impermissibly extraterritorial: it "*directly* regulated out-of-state transactions" and did so for "those with *no* connection to the State." *Id.*

Consistent with *Edgar*, the *National Pork Producers* Court also emphasized that its decision should not be misread to "trivialize the role territory and sovereign boundaries play in our federal system"; the Court instead "recogniz[ed] the usual 'legislative power of a State to act upon persons and property within the limits of its own territory.'" *Id.* at 375 (quoting *Hoyt* v. *Sprague*, 103 U.S. 613, 630 (1880)).

At bottom, *National Pork Producers* addressed only whether the Commerce Clause prohibits a state law that (i) applies to in-state transactions merely because (ii) the law has *practical effects* out-of-state. Neither that decision's holding nor its reasoning suggests that a State may directly regulate out-of-state commercial transactions between entities with no connection to the state. To the contrary, the Supreme Court reaffirmed that the Constitution prohibits such extraterritorial state regulation. And since *National Pork Producers*, the overwhelming majority of federal courts to have considered the question have continued to recognize that the Commerce

Clause prohibits state laws that directly regulate out-of-state conduct involving parties with no connection to the state.[2]

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[2] *See, e.g.*, *Ass'n for Accessible Meds.* v. *Ellison*, 140 F.4th 957, 961 (8th Cir. 2025) (determining that a state law that "*directly* regulates the transactions which take place wholly outside the State" violates the Commerce Clause) (alterations adopted; internal quotation marks and citation omitted); *Flynt* v. *Bonta*, 131 F.4th 918, 924 (9th Cir. 2025) ("The [Supreme] Court left open the possibility that a law that *directly* regulated out-of-state transactions by those with *no* connection to the State could violate the dormant Commer Clause.") (internal quotation marks and citation omitted); *Nat'l Shooting Sports Found., Inc.* v. *James*, 144 F.4th 98, 113 (2d Cir. 2025) ("A state statute violates the dormant Commerce Clause if it . . . has the practical effect of extraterritorial control of commerce occurring entirely outside the boundaries of the state.") (internal quotation marks and citation omitted); *Ass'n for Accessible Meds*. v. *Bonta*, 766 F. Supp. 3d 1020, 1032 (E.D. Cal. 2025) (concluding that a state law violated the Commerce Clause because it could "directly regulate out-of-state transactions by those with no connection to California"); *Mosaic Fin. Ltd.* v. *Mutual S'holders Servs. LLC*, 767 F. Supp. 3d 619, 658 (N.D. Ohio 2025) ("A State statute has invalid extraterritorial effect where it controls commerce occurring wholly outside the boundaries of a State and exceeds the inherent limits of the enacting State's authority."); *NetChoice, LLC* v. *Bonta*, 770 F. Supp. 3d 1164, 1214 (N.D. Cal. 2025) ("When a state law completely bans—or even just directly affects—commercial transactions that take place entirely outside of the state's borders, it plainly contravenes the dormant Commerce Clause.") (alteration adopted; internal quotation marks and citation omitted); *Nat'l Shooting Sports Found.* v. *Bonta*, 718 F. Supp. 3d 1244, 1256 n.1 (S.D. Cal. 2024) ("[*National Pork Producers*] did not disturb the constitutional bar on state laws that *directly* regulate out-of-state transactions by those with *no* connection to the state.") (alteration adopted; internal quotation marks and citation omitted); *but see N.J. Staffing Alliance* v. *Fais*, 749 F. Supp. 3d 511, 524 (D.N.J. 2023) ("[T]he *National Pork* Court has rendered the 'extraterritoriality doctrine' a dead letter."), *aff'd on other*

### C. At A Minimum, The Commerce Clause Prohibits Extraterritorial State Price Controls.

The constitutional constraints on extraterritorial state regulation reach their zenith when it comes to out-of-state price controls, which raise inherent risks of protectionism and discrimination. After all, the Commerce Clause's extraterritoriality and antidiscrimination principles do not reflect hermetically sealed doctrinal categories. In the context of out-of-state price controls, those principles are mutually reinforcing.

The impermissibility of out-of-state price controls follows *a fortiori* from the Supreme Court's holdings in *Baldwin*, *Brown-Forman*, and *Healy*—which the Court reaffirmed in *National Pork Producers*—that *in-state* price-control regulations violate the Commerce Clause when they restrict the price at which out-of-state merchants can sell their goods. As *National Pork Producers* explained, where "price control or price affirmation statutes [tie] the price of in-state products to out-of-state prices," States may be engaging in discriminatory and protectionist regulation, in violation of the Commerce

*grounds by* 110 F.4th 201 (3d Cir. 2024); *Novartis Pharm. Corp.* v. *Frey*, 2025 WL2813787, at *13 (D. Me. 2025) ("The Supreme Court . . . has arguably limited the concerns about extraterritorial price impacts identified in [*Healy*].").

Clause. 598 U.S. at 374 (alteration adopted) (internal quotation marks and citation omitted). Those risks are magnified when States directly regulate *out-of-state* pricing.

The Supreme Court's holdings in *Baldwin*, *Brown-Forman*, and *Healy* were animated by a number of concerns. In particular, the Court cautioned that price-control laws that fix out-of-state prices would create "inconsistent legislation arising from the projection of one state's regulatory regime into the jurisdiction of another," if other States adopted their own differing regulations. *Healy*, 491 U.S. at 337. The Court also worried that competing regulations would open the door to "rivalries and reprisals" among the States, *Baldwin*, 294 U.S. at 522, as they raced to protect their citizens or retaliated against other States for setting prices that undercut their citizens' competitive advantages, *see Brown-Forman*, 476 U.S. at 580. Taken together, the Court was concerned this protectionist behavior would undermine our "national economic union." *Healy*, 491 U.S. at 336.

Just as the Commerce Clause prohibits the state price-tying laws in *Baldwin*, *Brown-Forman*, and *Healy*, it similarly prohibits state regulation of out-of-state prices without any ties to in-state prices. After all, the same concerns are present, but amplified, when state law regulates only out-of-state prices, rather than tying in-state and out-of-state prices together. For example, by acting wholly extraterritorially, States can promulgate regulations to undercut any competitive advantage other States have established for their citizens. *See National Pork Producers*, 598 U.S. at 374 (explaining that out-of-state price control laws "deprive businesses and consumers in other States of whatever competitive advantages they may possess") (internal quotation marks and citations omitted). And out-of-state price controls open the same door to "rivalries and reprisals," *Baldwin*, 294 U.S. at 522, and create the same risk of a patchwork of inconsistent regulatory regimes for market participants, *Healy*, 491 U.S. at 337.

True, *National Pork Producers* emphasized that the price-control regulations in *Healy*, *Brown-Forman*, and *Baldwin* violated the Commerce Clause because they were protectionist. But so too are purely extraterritorial price-control laws, in one way or another. In enacting such laws, States strategically choose to increase affordability for their citizens (*e.g.*, ultimate in-state purchasers) by limiting profits at a point in the supply chain that minimizes—or, in this case, removes through the Price-Control Act's exemption for retailers—the impact on the State's citizens, shifting it to those of other States (*e.g.*, out-of-state manufacturers). Extraterritorial price-control laws likewise prevent out-of-state citizens from taking advantage of any more favorable markets than the State's own. Viewed in either light, extraterritorial price controls provide one State's citizens with preferential treatment in interstate commerce by skewing pricing conditions in their favor. They are thus often, if not always, a species of "regulatory measures designed to benefit in-state economic interests." *National Pork Producers*, 598 U.S. at 369 (internal quotation marks and citation omitted).

## II. DISCARDING THE EXTRATERRITORIALITY PRINCIPLE WOULD CREATE SERIOUS PRACTICAL PROBLEMS WEAKENING OUR FEDERAL UNION.

Important practical considerations support a robust application of the Commerce Clause's extraterritoriality principle. First, the extraterritoriality principle ensures that States remain politically accountable for their actions. When a State regulates extraterritorially, it imposes regulations on citizens to whom the State is not democratically accountable. Second, the extraterritoriality principle prevents economic balkanization among the States by limiting a State's ability to target, or retaliate against, out-of-state industries. Finally, the principle protects against harmful outcomes that will occur if States can regulate out-of-state commerce, including adverse impacts on what has traditionally been understood as purely local activity.

### A. Extraterritorial Regulations Undermine Democratic Accountability.

"[G]overnments are instituted" by citizens and "deriv[e] their just powers from the consent of the governed." *Kennett* v. *Chambers*, 55 U.S. 38, 41 (1852). In a democratic system, individuals authorize the State to exercise regulatory authority, and thus consent to the imposition and enforcement of rules and regulations through the electoral process. These rules ultimately reflect the "reasoned judgment" of the electorate "about what conduct is permitted or proscribed within [the] borders" of a State. *Campbell*, 538 U.S. at 422. When legislators exceed their political mandate by imposing too-onerous regulations, citizens can use the political processes to prevent further abuse and, if necessary, effect change. Voting is a powerful check on the legislature.

Not so when States regulate extraterritorially. In those circumstances, they "impose [their] own policy choice[s] on neighboring States," without authorization by the target State to do so.[3] *BMW*, 517 U.S. at 571; *see Midwest*

[3] To be sure, in some circumstances, a State can regulate extraterritorially if the target State provides authorization through an agreement or compact to do so that is approved by Congress. *See* U.S. Const.,

*Title Loans, Inc.* v. *Mills*, 593 F.3d 660, 667-668 (7th Cir. 2010) (to allow States to regulate extraterritorially would be to "arbitrarily [] exalt the public policy of one state over that of another"). The target State's citizens did not consent to be governed by a different State's rules. And more to the point, they are powerless to hold the encroaching State's legislature accountable for unpopular or unwise laws. The Supreme Court has accordingly warned that, "to the extent that the burden of state regulation falls on interests outside the state, it is unlikely to be alleviated by the operation of those political restraints normally exerted when interests within the state are affected." *S. Pac. Co.* v. *Ariz. ex rel. Sullivan*, 325 U.S. 761, 767 n.2 (1945); *see also United Haulers Ass'n, Inc.* v. *Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 345 (2007). If the target State's citizens are to push back, it is only through their

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art. I, § 10, cl. 3. But the fact that the Constitution provides a mechanism for States to regulate extraterritorially *with such mutual state and federal consent* confirms that *unilateral* extraterritorial regulation by a State conflicts with our constitutional scheme. *Cf. Franchise Tax Board*, 587 U.S. at 245-246 (explaining that the Compact Clause, among other provisions, confirms "that the Constitution affirmatively altered the relationships between the States," preventing any state from "apply[ing] its own law to interstate disputes over borders" and other similar issues implicating their conflicting sovereign rights).

own retaliatory laws—an independent problem for our Union. *See* pp. 24-26, *infra*.

Laws like Illinois's Price-Control Act raise these exact political-accountability concerns. Instead of regulating drug prices within its own borders, Illinois chose to impose its own judgments about pricing on entities that have no connection with Illinois, and thus have no ability to hold the State accountable for these laws. These entities simply must either ignore Illinois law and risk significant liability, or conform the prices of their products to Illinois's requirements because there is a chance that their products will end up in Illinois retail markets. In essence, the Price-Control Act allows Illinois to regulate the national market for generic drugs without suffering any of the political consequences that would normally accompany imposing such a burdensome regulation on an in-state industry.

### B. The Extraterritoriality Principle Prevents Destructive Competition Among States.

Discarding the Commerce Clause's extraterritoriality principle would also jumpstart a punitive war of "rivalries and reprisals" that would undermine our national economic union. *Baldwin*, 294 U.S. at 522. Such rivalries plagued the pre-Constitution era. Under both British rule and the Articles of Confederation, competing state commercial policies inhibited "any harmony

[or] cooperation" necessary for a national economy, and instead created "a perpetual source of irritation and jealousy that threatened at once the peace and safety of the Union." 1 Joseph Story, *Commentaries on the Constitution of the United States* §§ 259-260, at 179-180 (1873). Individual States "legislate[d] according to [their] estimate of [their] own interests" and "a drift toward anarchy and commercial warfare between states began." *H.P. Hood & Sons, Inc.* v. *Du Mond*, 336 U.S. 525, 533 (1949) (internal quotation marks and citation omitted).

The Founders recognized the dangers that this competitive environment created. Alexander Hamilton observed that, if "not restrained," "[t]he interfering and unneighborly regulations of some States" would become "serious sources of animosity and discord." The Federalist No. 22. James Monroe agreed, writing that competing commercial policies would "establish[] deep-rooted jealousies [and] enmities between [the States]," and would "become instrumental in their hands to impede [and] defeat those of each other." Letter from James Monroe to James Madison (July 26, 1785).

As a result, "a central concern of the Framers that was an immediate reason for calling the Constitutional Convention" was "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." *Hughes* v. *Oklahoma*, 441 U.S. 332, 325 (1979). The Founders' solution to this problem was, in part, the Commerce Clause, which was "primarily intended to prevent" economic competition among the States. *C&A Carbone, Inc.* v. *Town of Clarkstown*, 511 U.S. 383, 406 (1994) (O'Connor, J., concurring). That Clause "vindicates a fundamental aim of the Constitution: fostering the creation of a national economy." *Mallory*, 600 U.S. at 157 (Alito, J., concurring).

The extraterritoriality principle epitomizes those concerns. It prevents one State from reaching out to penalize another State's citizens or industries. It also prevents competing state regulatory regimes from reaching beyond their borders and creating a "patchwork of rules representing the diverse policy judgments of lawmakers in 50 States." *BMW*, 517 U.S. at 570. Such a patchwork would inevitably include clashing regulations that would undermine the Founders' goal of establishing a "national economic union unfettered by state-imposed limitations on interstate commerce." *Healy*, 491 U.S. at 336.

These are not hypothetical concerns. Again, Illinois's Price-Control Act is illustrative. Illinois is not alone in attempting to control the prices of generic drugs sold out-of-state; Minnesota and Connecticut have tried and failed to do the same.[4] Although the regulations in all three States limit prices of generic drugs, each does so in materially different ways. Minnesota's law regulates manufacturers, whereas Illinois's and Connecticut's laws regulate distributors and manufacturers. *Compare* Minn. Stat. § 62J.842, *with* 410 Ill. Comp. Stat. 725/10 *and* Conn. Pub. L. § 346. Illinois and Minnesota measure price increases, in part, based on a regulated party's sales from previous years, while Connecticut measures increases based on a federally set reference price. *Compare* 410 Ill. Comp. Stat. 725/10 *and* Minn. Stat. § 62J.842, *with* Conn. Pub. L. § 346. And all three regimes define impermissible price gouging using unique price-increase schedules. *Compare* Minn. Stat. § 62J.842, *with* 410 Ill. Comp. Stat. 725/5, *with* Conn. Pub. L. § 346.

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[4] Neither the Minnesota nor the Connecticut law has survived a Commerce Clause challenge. The Eighth Circuit in *Association for Accessible Medicines* v. *Ellison*, 140 F.4th 957 (2025), held that Minnesota's law likely impermissibly regulated extraterritorial commerce, and the parties then stipulated that the law was "invalid and unenforceable as applied to the sale of generic or off-patent drugs occurring outside Minnesota." *Ass'n for Accessible Meds.* v. *Ellison*, No. 23-cv-2024 (D. Minn. July 5, 2023), ECF No. 63. Faced with its own extraterritoriality challenge, Connecticut stipulated that its law "do[es] not apply to sales of 'identified prescription drugs' . . . in which title transfers outside of Connecticut." *Ass'n for Accessible Meds.* v. *Boughton*, No. 25-cv-1757 (D. Conn. Oct. 17, 2025), ECF No. 39.

The impact of such conflicting regulatory regimes on interstate commerce would be severe. In the generic-drug industry, where manufacturers and distributors cannot control the markets in which their products are ultimately sold, companies would face the significant challenge of setting prices that satisfy each regulatory regime, or risk suffering sanctions. This would make transacting more difficult and would significantly disrupt important national markets. The Commerce Clause prevents just such disruption.

### C. The Extraterritoriality Principle Respects Local Control.

Finally, without the Commerce Clause's extraterritoriality principle, States would have license to directly regulate out-of-state conduct that has not been traditionally viewed as part of interstate commerce. All manner of "[i]nspection laws, quarantine laws, [and] health laws," *Gibbons* v. *Ogden*, 22 U.S. 1, 203 (1824), have "long [been] understood to represent valid exercises of States' constitutionally reserved power," *National Pork Producers*, 598 U.S. at 375. But exercising such power is valid only when it is done to regulate "persons and property within the limits of [a State's] own territory." *Hoyt*, 103 U.S. at 630.

If a State could regulate out-of-state commercial activity based merely on a link to an eventual in-state sale, all of those local activities would become national. States could impose on out-of-state companies rules regulating purely local concerns, such as licensing requirements, contractual terms and provisions, wage and hour requirements, workplace safety standards, and manufacturing processes—so long as a company makes a product that eventually travels to the regulating State. *See, e.g.*, *Legato Vapors, LLC* v. *Cook*, 847 F.3d 825, 833, 834 (7th Cir. 2017) (holding that provisions of an Indiana law violated the Commerce Clause because they "operate[d] as extraterritorial legislation, governing the services and commercial relationships between out-of-state manufacturers and their employees and contractors" and "the manufacturing process and facilities of out-of-state manufacturers"). Indeed, absent a constitutional rule against extraterritorial state regulation, there would have been little stopping California from directly imposing breeding conditions on pig farmers in Iowa, instead of merely setting conditions for California pork sales.

## III. ILLINOIS'S PRICE-CONTROL ACT IS AN UNCONSTITUTIONAL EXTRATERRITORIAL REGULATION.

Under fundamental extraterritoriality principles, Illinois's Price-Control Act is an unconstitutional regulation of out-of-state commerce. The statute directly restricts the terms of an out-of-state transaction—a sale from a non-Illinois drug manufacturer to a non-Illinois distributor—based solely on the possibility of eventual resale into Illinois. It closely mirrors the law struck down in *Edgar*, where the plurality found that Illinois's attempt at extraterritorial securities regulation violated the Commerce Clause despite the likely effects in Illinois. 457 U.S. at 640-643. The Eighth Circuit thus had little difficulty disapproving as likely unconstitutional, under the Commerce Clause's extraterritoriality principle, a Minnesota price-control statute that is virtually identical to the Illinois law at issue in this case. *See Ass'n for Accessible Meds.* v. *Ellison*, 140 F.4th 957 (8th Cir. 2025).

Illinois's Price-Control Act also reflects economic protectionism. The law targets sales from manufacturers to distributors but not any other segment of the generic-drug market, including sales at Illinois-based pharmacies. It is no mystery why: according to the District Court, "[t]hree companies control over 90% of the wholesale distribution market, and none of them are based in Illinois." *Raoul*, 805 F. Supp. 3d at 857. That means that product sales with profits capped by the Illinois law "will almost always involve two non-resident entities and occur entirely outside of Illinois." *Id.*[5] By regulating transactions between out-of-state manufacturers and distributors, Illinois attempts to keep generic drug prices low for its own citizens, while shifting any downside to citizens of other States. Illinois *could* have capped profits at other points along the supply chain, such as transactions between in-state retailers and customers. But doing that would have put costs squarely on (at least some) Illinoisans. Instead, the State targeted out-of-state transactions between entities that are rarely at home in Illinois, and lack the attendant political power of Illinois citizenship or residence. The Commerce Clause's strong rule against extraterritorial state regulation protects against exactly such manipulation.

[5] In its amended complaint, AAM notes that "two of its members are located in Illinois." Appellant Appx. A77. But this fact is of little constitutional significance. In *Edgar*, the plurality determined that the Illinois regulation there impermissibly regulated out-of-state conduct because a regulated sale could involve "not a single . . . resident of Illinois." 457 U.S. at 642. In any event, in-state sales are not subject to this as-applied challenge.

## CONCLUSION

For the foregoing reasons, this Court should reverse the District Court's order denying a preliminary injunction.

Respectfully submitted,


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February 17, 2026

## CERTIFICATE OF COMPLIANCE

This brief complies with Seventh Circuit Rule 29, because it contains 6,150 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

This brief also complies with the requirements of Federal Rule of Appellate Procedure 32(a) and Seventh Circuit Rule 32(b) because it was prepared in 14-point font using a proportionally spaced typeface.

/*s*/ Morgan L. Ratner
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February 17, 2026

## CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2026, I filed the foregoing motion and brief with the Clerk of Court for the U.S. Court of Appeals for the Seventh Circuit through the Court's CM/ECF system. I certify that all participants in this are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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