

No. A-_____

IN THE
Supreme Court of the United States

ABBVIE, INC.; ALLERGAN, INC.; DURATA THERAPEUTICS, INC.; ABBVIE PRODUCTS, LLC;
APTALIS PHARMA US, INC.; ALLERGAN SALES, LLC; PHARMACYCLICS, LLC,

Applicants,

v.

LIZ MURRILL, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF LOUISIANA;
LOUISIANA PRIMARY CARE ASSOCIATION,

Respondents.

**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A
PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT**

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RULE 29.6 DISCLOSURE STATEMENT

Applicant AbbVie, Inc. is a publicly traded company (NYSE: ABBV). AbbVie, Inc. has no parent company, and no publicly held corporation owns 10% or more of its stock. Applicant Allergan, Inc. is 100% owned by Allergan Finance, LLC; Applicant Durata Therapeutics, Inc. is 100% owned by Allergan W.C. Holding Inc.; AbbVie Products LLC is 100% owned by AbbVie Inc.; Aptalis Pharma US, Inc. is 100% owned by Allergan Sales, LLC; Pharmacyclics LLC is 100% owned by AbbVie Inc.; Allergan Sales, LLC is 51.8% owned by Allergan Holdings, Inc. and 48.2% owned by Allergan Holdco US, Inc.; and AbbVie Inc. is the ultimate parent of each of the other aforementioned companies.

TO THE HONORABLE SAMUEL A. ALITO, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FIFTH CIRCUIT:

Pursuant to this Court's Rules 13.5 and 30.2, Applicants AbbVie, Inc., Allergan, Inc., Durata Therapeutics, Inc., AbbVie Products, LLC, Aptalis Pharma US, Inc., Allergan Sales, LLC, and Pharmacyclics, LLC (collectively, "AbbVie") respectfully apply for a 30-day extension of time, to and including November 4, 2026, within which to file a petition for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Fifth Circuit in this case. The Court of Appeals issued its original panel opinion on February 9, 2026, but then granted panel rehearing, entered judgment, and denied rehearing en banc on July 6, 2026. App., *infra*, 3a. Unless extended, the time within which to file a petition for a writ of certiorari will expire October 5, 2026. S. Ct. R. 13.1, 13.3, 30.1. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1). This application is timely because it has been filed at least ten days before the date on which the time for filing is due to expire. S. Ct. R. 13.5.

1. This case presents important constitutional questions regarding laws recently enacted by nearly half of the States. Those state laws regulate pharmaceutical manufacturers' drug sales within the federal 340B Program, a discount-drug program for certain safety-net healthcare providers. See 42 U.S.C. § 256b.

2. The 340B Program represents a typical use of Congress's spending power. To receive federal dollars for their drug sales to Medicare Part B and Medicaid patients, drug manufacturers must agree to participate in the 340B Program. That

program requires manufacturers to “offer” their drugs for purchase to federally enumerated “covered entities” at federally set prices. *Id.* § 256b(a). The average 340B discount on AbbVie’s drugs is around sixty percent, but the discounts on some of AbbVie’s drugs are so generous that they set the price at a penny per unit. Manufacturers satisfy their obligation to “offer” that 340B price so long as the terms they include alongside the 340B price constitute a “bona fide” offer—for example, “provisions that address customary business practice, request standard information” or are otherwise “appropriate.” *Novartis Pharms. Corp. v. Johnson*, 102 F.4th 452, 461-62 (D.C. Cir. 2024) (Katsas, J.); *Sanofi Aventis U.S. LLC v. U.S. Dep’t of Health & Hum. Servs.*, 58 F.4th 696, 703 (3d Cir. 2023) (Bibas, J.). Section 340B thus “preserves—rather than abrogates—the ability of sellers to impose at least some ... conditions” on their 340B offers. *Novartis*, 102 F.4th at 460.

Purchasing drugs at the 340B discount is extremely lucrative for covered entities because of the arbitrage profits they can realize. Covered entities usually purchase AbbVie’s drugs at the steep 340B discount, resell them to patients (or their insurers) at full price, and then direct the difference to their general operating budgets. To facilitate this arbitrage, covered entities have increasingly turned to middlemen—seeking out partnerships with commercial pharmacies (often called “contract pharmacies” due to the arms-length contractual nature of their relationship). Those partnerships allow the pharmacies to resell at full price drugs the covered entity purchased with the 340B discount. The pharmacies then take a slice of the “spread” before remitting the rest to their covered-entity partners. These

contract pharmacies may be anywhere in the United States. It is not uncommon for Louisiana covered entities to have relationships with pharmacies in more than a dozen states.

Concerned with the avenues for abuse paved by the explosion in these contract-pharmacy arrangements, manufacturers began to introduce non-price terms in their offers of sale to covered entities. For example, covered entities can still buy unlimited quantities of AbbVie's products with a 340B discount *if* they agree to dispense them through one pharmacy, near the covered entity. And if that pharmacy is not the covered entity's own in-house pharmacy, AbbVie requires the covered entity to provide certain data about the dispenses, like who prescribed them and when. Each requirement targets different types of non-compliance that contract pharmacies exacerbate—*e.g.*, selling to patients of non-covered entities or causing duplicative discounts. When required to support their 340B purchases with corroborating data or dispense the drugs in their own communities, covered entities purchase fewer 340B-priced drugs.

In 2021, States began enacting laws to prevent manufacturers from imposing these types of terms in their 340B offers on pain of significant penalties. In effect, that means manufacturers must sell federally discounted, 340B-priced drugs to entities that refuse to accept conditions allowed by federal law or else face billions in state liability. These state laws compel manufacturers to accept counteroffers at the 340B price that diverge from manufacturers' federally lawful 340B offers. Such laws increase the number of 340B discounted sales manufacturers must make. None of

these state laws require manufacturers that do not participate in the federal 340B Program to provide drug discounts upon similar counteroffers from their customers. Thus, almost half the states have now passed laws that seek to extract increased arbitrage profits from only those manufacturers that have partnered with the federal government to provide discounted medicines.

3. Louisiana’s Act 358 is one such law. *See* La. Stat. Ann. § 40:2884. That law states:

A manufacturer or distributor shall not deny, restrict, prohibit, or otherwise interfere with, either directly or indirectly, the ***acquisition*** of a 340B drug by, or delivery of a 340B drug to, a pharmacy that is under contract with a 340B entity and is authorized under such contract to receive and dispense 340B drugs on behalf of the covered entity unless such receipt is prohibited by the United States Department of Health and Human Services.

Id. § 40:2884(A) (emphasis added). AbbVie sought to enjoin enforcement of the law and argued that it violated the Supremacy and Takings Clauses of the United States Constitution. The district court granted summary judgment against AbbVie, and the Fifth Circuit affirmed.

4. The Fifth Circuit’s conclusion departs from established Supremacy Clause principles and conflicts with this Court’s precedents prohibiting States from targeting federal programs and contractors for adverse regulation. Since *McCulloch v. Maryland*, 17 U.S. 316 (1819), it has been settled that “[t]he States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the [federal] government.” *Id.* at 436. States thus cannot directly regulate or alter federal activities, creations, or relationships unless invited to do so.

The Court has applied that principle for hundreds of years. Recently, in *United States v. Washington*, 596 U.S. 832 (2022), the Court reaffirmed that the Supremacy Clause prohibits “state laws that ... discriminate against the Federal Government or those with whom it deals (*e.g.*, contractors).” *Id.* at 838-39 (quotation marks omitted). And the United States “deals” with private entities in a variety of ways—for example, contracting with them, *see id.*, creating them, *McCulloch*, 17 U.S. at 436, formerly employing them, *Dawson v. Steager*, 586 U.S. 171, 179 (2019), leasing them property, *Phillips Chem. Co. v. Dumas Indep. Sch. Dist.*, 361 U.S. 376, 387 (1960), or selling them securities. *Memphis Bank & Tr. Co. v. Garner*, 459 U.S. 392, 398-99 (1983). States accordingly may not turn a group of entities into a disfavored class because of their relationship with or connection to the federal government. *Dawson*, 586 U.S. at 179. Similarly, States may not target and obstruct a federal spending-power program by directly abrogating “incentives” Congress included for those who participate in the federal scheme. *Lawrence County v. Lead-Deadwood Sch. Dist. No. 40-1*, 469 U.S. 256, 270 (1985).

The Fifth Circuit’s decision conflicts with these principles by upholding Louisiana Act 358, even though the Act exists only to rewrite the terms of Congress’s spending-power bargain and impose additional obligations on pharmaceutical manufacturers that participate in the federal 340B Program. *See App., infra*, 3a-4a. If manufacturers cease their federal relationship (that is, withdraw from the 340B Program), they are immediately free from Louisiana Act 358’s compelled sales

requirement. That targeting of a federal relationship governed by federal contracts is unconstitutional.

The Fifth Circuit’s rationale also sanctions overlapping state-federal 340B enforcement in contravention of this Court’s decision in *Astra USA, Inc. v. Santa Clara County*, 563 U.S. 110 (2011). There, the Court instructed that only the Department of Health and Human Services has authority to adjudicate “overcharge” claims. *Id.* at 121-22. Overcharge claims include any allegation that “a manufacturer has limited the covered entity’s ability to purchase covered outpatient drugs at or below the 340B ceiling price.” 42 C.F.R. § 10.21(a). On its face, Louisiana Act 358 creates a state cause of action for the same allegations. It forbids manufacturer offers that “restrict ... the acquisition of a 340B drug by ... a pharmacy that ... dispense[s] 340B drugs on behalf of the covered entity.” La. Stat. Ann. § 40:2884(A). And Louisiana “340B drugs” are just drugs bought at the 340B price. *Id.* § 40:2882(1). Given that overlap, any action under Louisiana Act 358 would necessarily intrude on the exclusive federal authority to adjudicate overcharge allegations—*i.e.*, limits on 340B offers. “Such a system is markedly similar to that of the one *Astra* rejected.” *Pharm. Rsch. & Manufacturers of Am. v. Morrissey*, 760 F. Supp. 3d 439, 457 (S.D. W. Va. 2024). Yet here, the Fifth Circuit erroneously dispatched *Astra* and the overlap between these federal and state causes of action in a single footnote. App., *infra*, 18a n.60.

5. On the Takings Clause, AbbVie argued that Louisiana Act 358 effects per se physical takings by compelling sales that are not required by federal law.

Absent Act 358, AbbVie simply would not consummate a sale in those circumstances and would retain its property. Those compelled sales thus extinguish AbbVie’s “rights to possess, use and dispose of” the drugs. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982).

In reaching a contrary result, the Fifth Circuit applied a novel rule, holding that Louisiana Act 358 did not effect an unconstitutional taking because it was phrased negatively and only “prevent[ed] [AbbVie] from refusing to sell” 340B-priced drugs to entities that rejected AbbVie’s offer conditions. App., *infra*, 22a. But *preventing* a property owner from *refusing* to sell property means *forcing* the owner to sell property, which takes the core property right to “control [the] disposition” of the property. *Horne v. Dep’t of Agric.*, 576 U.S. 351, 364 (2015); *see generally Pung v. Isabella County*, 146 S. Ct. 1964 (2026) (analyzing the amount of compensation due *after* a forced sale).

States cannot avoid the Takings Clause by phrasing their takings in the double negative—that is, as “a negative obligation of non-interference” with a third party’s ability to “acquire” another’s property rights. App., *infra*, 22a. For example, in *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021), California’s choice to frame its law as forbidding “[i]nterference with organizers’ right of access” to private property did not stop the law from taking the farm owners’ right to exclude others from their land. *Id.* at 144. Whether the property right at issue is the right to exclude access to California farms or the right to control the sale or disposition of pharmaceuticals, States cannot

take such property rights by recasting the assertion of those rights as impermissible “interference” with a novel state law.

6. These and related questions are exceptionally important. As the United States explained below in support of manufacturers: “Turning these decisions over to the States—which are ill suited to consider the cumulative costs of Medicare and Medicaid participation—risks disrupting the availability of prescription drugs for the two largest federal healthcare programs.” Brief for the United States as Amicus Curiae in Support of Appellants and Rehearing En Banc at 13, *AbbVie, Inc. v. Murrill*, 180 F.4th 747 (5th Cir. 2026) (No. 24-30645). And these issues have split the federal courts. Lower courts disagree on whether States may target 340B-participating manufacturers for additional regulation, whether these laws operationally conflict with the 340B Program and intrude on an exclusively federal field, and whether compelling AbbVie to part with more property than the federal government contracted for constitutes a taking. *Compare Pharm. Rsch. & Mfrs. of Am. v. McCuskey*, 171 F.4th 675 (4th Cir.), *reh’g en banc granted*, 176 F.4th 830 (4th Cir. 2026), *and AbbVie Inc. v. Drummond*, 808 F. Supp. 3d 1266 (W.D. Okla. 2025), *and AbbVie Inc. v. Wrigley*, 832 F. Supp. 3d 920 (D.N.D. 2026), *with App., infra, and Novartis Pharms. Corp. v. Hanaway*, 180 F.4th 1097 (8th Cir. 2026).

7. Additional time is necessary for counsel to determine whether to file a petition and to prepare a petition that would be helpful to the Court. Counsel for AbbVie has significant professional obligations during the period in which the petition would otherwise be prepared if AbbVie elects to file, including oral

arguments in *Am. Hosp. Ass'n v. AbbVie*, No. 25-2237 (1st Cir.); *AbbVie v. Drummond*, No. 25-6184 (10th Cir.); *AbbVie Inc. v. Rayfield*, No. 6:25-cv-01332 (D. Or.), briefing and other responsibilities in other cases including *AbbVie v. Weiser*, 26-1244 (10th Cir.); *AbbVie Inc. v. Raoul*, No. 1:26-cv-09523 (N.D. Ill.); and trial preparation in *AbbVie Inc. v. Lopez*, No. 1:25-cv-00230 (D. Haw.). Moreover, the constitutional issues are important and complex and warrant additional time. AbbVie is not aware of any party that would be prejudiced by a 30-day extension.

Accordingly, AbbVie respectfully requests that the time to file a petition for a writ of certiorari be extended by 30 days, to and including November 4, 2026.

Respectfully submitted.

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