

**IN THE
SUPREME COURT OF THE UNITED STATES**

No. ____

PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA,
Applicant,

v.

LIZ MURRILL, in her official capacity as Attorney General of Louisiana; LOUISIANA
PRIMARY CARE ASSOCIATION,
Respondents.

**APPLICATION TO THE HON. SAMUEL A. ALITO
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**

Pursuant to Supreme Court Rule 13(5), Pharmaceutical Research and Manufacturers of America (“PhRMA” or “Applicant”) hereby moves for an extension of time of 30 days, to and including November 3, 2026, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be October 4, 2026.

In support of this request, Applicant states as follows:

1. The Fifth Circuit rendered its initial opinion on February 9, 2026 (Exhibit A), and issued a substituted amended opinion upon rehearing on July 6, 2026 (Exhibit B). This Court has jurisdiction under 28 U.S.C. §1254(1).
2. This case involves one of many recent state efforts to reshape a federal spending-power program as to which Congress gave states no role. In 1992, Congress created the 340B Drug Pricing Program (“340B” or the “Program”) to provide certain

non-profit healthcare providers with access to reduced-priced medicines. The 340B Program is federal from top to bottom. Congress created it using its spending power, enticing pharmaceutical manufacturers to sign up by making participation in 340B a condition of having the federal government reimburse their drugs under Medicare and Medicaid. Congress carefully defined the scope—and limits—of manufacturers’ obligations under the Program and the universe of providers entitled to reduced pricing under it (known as “covered entities”). Congress gave a federal agency (the Department of Health and Human Services) exclusive power to administer and enforce the Program. And, in stark contrast to cooperative-federalism programs like Medicaid, Congress assigned no role to the states.

3. For years, the Program worked as Congress intended. But things started to change around 2010, when covered entities began contracting with for-profit pharmacy chains at skyrocketing rates and extending to them benefits that Congress confined to a carefully circumscribed group of non-profit healthcare providers—drastically increasing the risk of fraud and abuse. Many manufacturers individually responded to those alarming developments by requiring covered entities who want to purchase their drugs at sharply reduced 340B prices to agree to contract with only one outside pharmacy, and to share information about transactions for which 340B pricing is sought so manufacturers could verify they were eligible for that pricing.

4. Both federal courts of appeals to consider these contract-pharmacy and claims-data conditions held that the federal 340B statute permits manufacturers to

impose those reasonable conditions on their offers to sell drugs to covered entities at 340B prices. *Novartis Pharms. Corp. v. Johnson*, 102 F.4th 452, 460 (D.C. Cir. 2024); *Sanofi Aventis U.S. LLC v. HHS*, 58 F.4th 696, 703-04 (3d Cir. 2023). But a host of states, spurred by contract pharmacies and their allies in state legislatures, responded by enacting laws that attempt to prohibit under state law what federal law permits.

5. Louisiana’s Act 358 is one such effort. Act 358 compels manufacturers to sell their drugs at 340B prices where federal law does not. More troubling still, Act 358 imposes obligations only on manufacturers that participate in the 340B Program, and directly regulates how they carry out their federal obligations under that federal program. Indeed, Act 358 depends entirely on the 340B Program. It instructs that “[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.” La. Stat. Ann. §40:2884(A). And it defines each of those key terms (namely, “340B drug” and “340B entity”) entirely by reference to “42 U.S.C. 256b,” *i.e.*, the federal 340B statute. *Id.* §40:2882(1)-(2). It is no exaggeration to say that if Congress repealed the federal 340B Program tomorrow, Act 358 would cease to have any effect.

6. PhRMA filed this lawsuit in July 2023 to prevent Louisiana’s unconstitutional law from harming its members. D.Ct.Dkt.1. The parties cross-moved for summary judgment, and the district court granted judgment to Louisiana. D.Ct.Dkt.82. The Fifth Circuit affirmed, holding that the federal 340B statute

regulates “neither the distribution of drugs to patients nor the role of pharmacies in this distribution,” so states are free to fill that supposed gap. Ex. A at 13. The panel later granted rehearing, withdrew its initial opinion, and substituted the initial opinion with an amended opinion that addressed (albeit in cursory fashion) the arguments from PhRMA and the federal government, which filed a brief in support of PhRMA’s rehearing petition. *See* Ex. B at 12-13 n.38, 20 n.68.

7. Because the decision below implicates crucial constitutional questions being litigated across the Nation and cannot be reconciled with this Court’s precedents, PhRMA is considering whether to file a petition for writ of certiorari.

8. The 30 days afforded by the requested extension will allow PhRMA to assess further developments in this nationwide litigation and their implications for whether, and on what grounds, to seek this Court’s review.

9. Applicant’s counsel, Erin E. Murphy, has substantial briefing and argument obligations between now and October 4, including a motion for summary judgment in *Ocean State Tactical, LLC v. Rhode Island*, No. 22-cv-00246 (D.R.I.), due on September 21, 2026; a joint reply brief in *PhRMA v. Raoul*, No. 26-cv-09522 (N.D. Ill.), due September 23, 2026; a reply in support of certiorari in *BMG Rights Management v. Vetter*, No. 25-1391 (U.S.), on September 30, 2026; and a reply in support of certiorari in *GEO Group v. Ferguson*, No. 26-71 (U.S.), on September 30, 2026.

10. Applicant’s counsel thus requests a modest extension to consider whether to prepare and file a petition with this Court.

WHEREFORE, for the foregoing reasons, Applicant requests that an extension of time to and including November 3, 2026, be granted within which Applicant may file a petition for a writ of certiorari.

Respectfully submitted,



ERIN E. MURPHY

Counsel of Record

CLEMENT & MURPHY, PLLC

706 Duke Street

Alexandria, VA 22314

(202) 742-8900

erin.murphy@clementmurphy.com

Counsel for Applicant

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