IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

ASSOCIATION FOR ACCESSIBLE MEDICINES,	*	
	*	
Plaintiff,		
	*	Civil Action No. 17-1860-MJG
v.		
	*	
BRIAN E. FROSH *et al.*,		
	*	
Defendants.		
	*	

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DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Dated: August 14, 2017

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INTRODUCTION

Plaintiff Association for Accessible Medicines ("AAM") has brought a facial, pre-enforcement challenge to Maryland's newly-enacted law prohibiting price gouging in the sale of certain off-patent and generic drugs ("HB 631" or "the Act") based on inaccurate and exaggerated claims about the scope of the statute and two novel theories of constitutional law. AAM's dormant commerce clause theory invites this Court to unmoor dormant Commerce Clause jurisprudence from its core function as a prohibition on discrimination against interstate commerce and a check on economic protectionism and, though the courts have overwhelmingly declined to do so far, to apply the dormant Commerce Clause to strike down state laws based solely on their extraterritorial impact. AAM's vagueness theory requires the Court to interpret the Fourteenth Amendment's Due Process Clause as somehow displacing and invalidating the centuries-old common law doctrine of unconscionability, though the void-for-vagueness doctrine has never previously been so interpreted.

Moreover, in seeking a preliminary injunction to prevent HB 631 from ever taking effect, AAM has set an exceedingly high bar for itself: the Supreme Court has cautioned that preliminary injunctive relief is an "extraordinary remedy never awarded as of right," *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008), and has likewise made clear that a facial challenge to a statute can only succeed if "the law is unconstitutional in *all* of its applications," *Wash. State Grange v. Wash. State Republican Pty.*, 552 U.S. 442, 449 (2008) (emphasis added). AAM has fallen well short of its burden to show a strong

likelihood of succeeding on the merits of its constitutional claims—indeed, it has failed to state a claim upon which relief can be granted at all. It has likewise failed to show that it would suffer irreparable harm if the Act goes into effect. The majority of AAM's claimed harms are alleged in a conclusory manner without any concrete factual support. At best, AAM has shown that its members may have to expend resources to comply with the Act, which are nothing more than economic costs that have long been held not to be irreparable. AAM makes almost no attempt to show that the balance of equities weighs in its favor, and it does not. Finally, AAM fails to demonstrate that the public interest favors an injunction. The Act represents a targeted effort to protect Maryland citizens from harms associated with egregious instances of price gouging by certain pharmaceutical manufacturers in certain well-defined instances of market dysfunction or failure. The public interest strongly favors allowing the Act to go into effect. For all of these reasons, as explained further below, AAM's motion for a preliminary injunction should be denied.

STATEMENT OF FACTS

Defendants have filed a motion to dismiss AAM's Complaint and a memorandum of law in support thereof (ECF Nos. 29 and 29-1). Defendants hereby incorporate the Background section of that legal memorandum as if fully set forth herein.

STANDARD OF REVIEW

To obtain preliminary injunctive relief, AAM "must demonstrate that (1) [it is] likely to succeed on the merits; (2) [it] will likely suffer irreparable harm absent an injunction; (3) the balance of hardships weighs in [its] favor; and (4) the injunction is in

the public interest." *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 236 (4th Cir. 2014). A plaintiff must demonstrate that all four factors weigh in favor of an injunction to be entitled to relief. *Winter*, 555 U.S. at 20. And, because a preliminary injunction constitutes an extraordinary exercise of judicial power, it may "be granted only if the moving party *clearly* establishes entitlement to the relief sought." *Manning v. Hunt*, 119 F.3d 254, 263 (4th Cir. 1997) (brackets and internal quotation marks omitted) (emphasis added); *see Centro Tepeyac v. Montgomery County*, 722 F.3d 184, 188 (4th Cir. 2013) (en banc) (recognizing that the grant of a preliminary injunction involves "the exercise of a very far-reaching power, which is to be applied only in the limited circumstances which clearly demand it" (citations and internal quotation marks omitted)).

ARGUMENT

I. AAM HAS FAILED TO ESTABLISH A LIKELIHOOD OF SUCCESS ON THE MERITS OF ITS CLAIMS.

AAM is not entitled to a preliminary injunction because it has not established a clear likelihood of success on the merits of its claims. To the contrary, for reasons set forth in detail in Defendants' memorandum in support of their motion to dismiss (ECF No. 29-1), AAM has failed to state a claim. As discussed in that memorandum, AAM's dormant Commerce Clause theory invites this Court to embark on what Justice (then-Judge) Gorsuch recently called a "novel lawmaking project" of applying the Commerce Clause to prohibit state laws based solely on their extraterritorial impact, without regard to whether they discriminate against interstate commerce, as HB 631 does not, or advance any form of economic protectionism, as HB 631 also does not. *See Energy & Environment Legal*

Institute v. Epel, 793 F.3d 1169, 1172-75 (10th Cir. 2015). Indeed, in claiming that the dormant Commerce Clause prohibits states from enacting commercial and public health regulations that have an impact on "upstream" pricing decisions, AAM's theory contradicts controlling Fourth Circuit precedent. *Star Scientific Inc. v. Beales*, 278 F.3d 339, 356 (4th Cir. 2001). With regard to vagueness, HB 631 closely tracks both the "procedural" and "substantive" components of the common law doctrine of unconscionability, *see, e.g.*, *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445, 448-50 (D.C. Cir. 1965); *Shih Ping Li v. Tzu Lee*, 210 Md. App. 73, 112 (2013), and its constitutional claim requires this Court, in effect, to declare that centuries-old doctrine to be unconstitutionally vague, a step that no court has taken. For these same reasons, Plaintiffs cannot meet the much higher bar of demonstrating a clear likelihood of success on the merits for purposes of its motion for a preliminary injunction. Defendants hereby incorporate their memorandum in support of their motion to dismiss as if fully set forth herein.

AAM's failure to demonstrate a likelihood of success on the merits is dispositive and requires denial of its motion for a preliminary injunction.

II. AAM HAS FAILED TO IDENTIFY ANY HARM, LET ALONE IRREPARABLE HARM, THAT IT WOULD SUFFER IN THE ABSENCE OF AN INJUNCTION.

AAM also cannot satisfy the second *Winter* requirement, which requires that it "make a clear showing of irreparable harm." *Scotts Co. v. United Industries Corp.*, 315 F.3d 264, 283 (4th Cir. 2002). That harm "must be neither remote nor speculative, but actual and imminent." *Id.* (citation and internal quotation marks omitted). It is not enough for AAM to show a mere possibility of irreparable harm. Rather, a plaintiff must come

forward with sufficient evidence to demonstrate that irreparable harm is "*likely* in the absence of an injunction." *Winter*, 555 U.S. at 22 (emphasis in original).

AAM identifies three types of harm that it claims would be irreparable if the Act goes into effect: (1) the harm associated with members of AAM having to take steps to conform their conduct to the Act; (2) monetary and reputational injuries; and (3) injury resulting from a deprivation of constitutional rights. Pls.' Br. in Support of Mot. for Preliminary Injunction ("Pls. PI Br.") (ECF No. 9-1) at 32-37. None of these allegations is sufficient to establish a clear showing of irreparable harm.

First, AAM claims that if the Act goes into effect, its members will face a "Hobson's choice" of "tak[ing] multiple, costly steps to restructure their pricing, distribution, and other business practices" to conform to the Act's requirements "or else face incessant investigations and all-but-inevitable lawsuits from the Attorney General." Pls' PI Br. at 32. In other words, AAM contends that its members will be required to take unidentified, but nonetheless multiple and costly, steps to avoid imposing unconscionable price increases on its products intended for sale in Maryland. But AAM has failed to provide any concrete facts supporting the notion that avoiding unconscionable—literally, conscience-shocking—price increases in Maryland will in fact be costly, nor has it shown that the risk of lawsuits or investigations is sufficiently imminent to establish irreparable harm. Indeed, despite providing declarations from AAM's CEO and business executives of its member organizations, the record contains nothing more than broad, conclusory statements suggesting that Association members will have to take "nontrivial steps" to comply with the Act and that such compliance efforts will be "unnecessary." Ex. 1 to Pls.'

PI Br. ¶ 9 (suggesting that members will have to take "nontrivial steps to modify" their business practices but acknowledging that each member will "have to conduct its own analysis and make its own business decisions regarding" compliance with the Act); Ex. 2 to Pls.' PI Br. ¶ 10 (alleging that company "will be forced to expend unnecessary resources attempting to achieve compliance . . . ."); Ex. 3 to Pls.' PI Br. ¶ 9 (same). AAM makes absolutely no effort to explain what such steps might entail, much less to explain why its members might need to so tie their hands to prevent themselves from imposing unconscionable price increases on Maryland consumers. In any event, as explained further below, any monetary damages associated with complying with the Act are insufficient to establish irreparable harm.

The inapposite case from which AAM takes the Hobson's choice metaphor, *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 381 (1992), is the only case it cites in support of this nebulous claim of irreparable harm. In *Morales*, the attorneys general of several states had taken affirmative steps to bring suits against airlines for deceptive advertising, including serving formal "intent to sue" notices on several of the plaintiff airlines. *Id.* at 380. Faced with imminent enforcement actions, the airlines filed suit in federal court to enjoin Texas from regulating the airlines' "rates, routes, or services, or their advertising and marketing of the same." *Id.* In evaluating whether the requirements of *Ex Parte Young*, 209 U.S. 123 (1908), had been established, the Court restated the general principle under that doctrine that "[w]hen enforcement actions are imminent—and at least when repetitive penalties attach to continuing or repeated violations and the moving party lacks the realistic option of violating the law once and raising its federal defenses—

there is no adequate remedy at law." *Morales*, 504 U.S. at 380. Although the Court agreed that some injunctive relief would be appropriate, the Court reversed the lower court's imposition of a sweeping injunction prohibiting the states from regulating the airlines under state law. *See id.* at 381. As the Court explained, "[i]n suits such as this one, which the plaintiff intends as a 'first strike' to prevent a State from initiating a suit of its own, the prospect of state suit must be imminent, *for it is the prospect of that suit which supplies the necessary irreparable injury*." *Id.* at 382 (emphasis added). Any other rule, the Court emphasized, "would require federal courts to determine the constitutionality of state laws in hypothetical situations where it is not even clear the State itself would consider its law applicable." *Id.*

In light of its focus on the necessity of an imminent threat of an enforcement action to provide the predicate for a facial challenge, the Court's decision in *Morales* substantially undermines AAM's claim of irreparable harm. Unlike in that case, where several state attorneys general had evinced an intent to bring enforcement actions against specific airlines, here there is no "imminent" prospect of a particular suit to "suppl[y] the necessary irreparable injury." *See id.* To the contrary, because the law has not yet taken effect, the Attorney General has taken *no* steps to bring an enforcement action under the Act, to threaten such an enforcement action, or even to exercise the limited authority granted under the Act to investigate possible violations of the Act. *See* Md. Code Ann., Health-Gen. § 2-803(c).

AAM's second claim of irreparable harm is that its members will suffer both reputational and economic injuries as a result of the changes they will have to make to their

business practices in order to comply with the Act. Once again, however, AAM has not even identified the changes, much less why changes are necessary to avoid imposing unconscionable price increases on Maryland customers. These alleged injuries are insufficient to establish irreparable harm. AAM submits a number of declarations from its members speculating that changing their business practices will cause reputational injury, but none of them explain why such an injury would result or even what form such a reputational injury might take. Although an actual risk of reputational injury *can* be sufficient to establish irreparable harm, such abstract and conjectural claims are not. *See Sorensen v. Wolfe*, No. CV PWG-15-1198, 2016 WL 4761927, at *5 (D. Md. Sept. 12, 2016) (finding no irreparable harm where plaintiff's "conclusory claims" that he feared for his safety were "presented without any supporting facts"), *aff'd in part, appeal dismissed in part*, 681 F. App'x 297 (4th Cir. 2017).

As with its allegations regarding reputational harm, AAM fails to put forth any concrete evidence regarding the actual economic harms that its members may suffer to comply with the Act. But even if it had submitted such evidence, AAM cannot rely on any claimed economic damages to establish irreparable harm. *See, e.g., Va. Carolina Tools, Inc. v. Int'l Tool Supply, Inc.*, 984 F.2d 113, 120 (4th Cir. 1993) (upholding finding that "expenses incurred in relocation, injury to reputation, loss of profits" and other "highly speculative and largely economic injuries" were not irreparable harm); *Montgomery Cty. Ass'n of Realtors, Inc. v. Realty Photo Master Corp.*, 783 F. Supp. 952, 958 (D. Md. 1992) ("Ordinarily, economic injury is insufficient to establish irreparable harm because such injuries can be compensated for monetarily."), *aff'd*, 993 F.2d 1538 (4th Cir. 1993).

Indeed, AAM concedes that "economic harm is ordinarily not irreparable," Pls' PI Br. at 35, but nevertheless claims that the so-called "extraordinary circumstance" of not being able to collect money damages due to the State's sovereign immunity protections is sufficient to transform whatever compliance costs its members might incur into irreparable harm. Pls' PI Br. at 36. AAM has not explained why an entirely speculative claim of economic harm unsupported by any factual support that such harm is actual or imminent, should qualify as an extraordinary circumstance. For all of these reasons, AAM's attempt to show irreparable harm by pointing to conjectural economic harms that its members might suffer must be rejected.

Finally, AAM claims that "simply being subject to unconstitutional state action constitutes irreparable injury for purposes of obtaining a preliminary injunction." Pls' PI Br. at 37. It is telling, however, that AAM cites no binding precedent holding that such a proposition holds true in the context of the particular constitutional claims AAM has brought here. Although the Fourth Circuit has recognized that a deprivation of First Amendment rights suffices to establish irreparable harm for purposes of obtaining preliminary injunctive relief, *see Int'l Refugee Assistance Project v. Trump*, 857 F.3d 554, 602-03 (4th Cir. 2017), it has not extended that principle to constitutional claims outside of the First Amendment, *see A Helping Hand, LLC v. Baltimore Cty.*, 355 F. App'x 773, 777 (4th Cir. 2009) (rejecting the argument that prevailing on a substantive due process claim was sufficient in and of itself to establish irreparable harm for purposes of a permanent injunction). Indeed, if accepted, that proposition would render meaningless the irreparable harm prong of the *Winter* test in every case that alleges unconstitutional state

action. But the requirement to establish irreparable harm independent of likelihood of success is well established, and AAM has failed to demonstrate it.

In sum, AAM has failed to make a clear showing that it will suffer irreparable harm in the absence of a preliminary injunction, and its motion should therefore be denied.

III. AAM HAS MADE NO MEANINGFUL ATTEMPT TO ADDRESS THE BALANCE OF EQUITIES, WHICH WEIGHS HEAVILY AGAINST AN INJUNCTION.

AAM's only argument relating to the balance of equities is that Maryland and its public officials will not be harmed by an injunction preventing the enforcement of unconstitutional restrictions. *See* PI Br. at 38. As explained in Defendants' motion to dismiss and memorandum in support thereof, however, the Act does not violate the Constitution. Thus, even if AAM's effort to piggyback the balance-of-the-equities factor on the likelihood-of-success factor were appropriate, it would fail. Moreover, AAM cannot satisfy the balance-of-the-equities prong merely by alluding, without specificity, to speculative harms.

Meanwhile, Defendants—the State's chief law enforcement officer and its chief public health official—*would* be harmed by an injunction preventing them from enforcing a lawful enactment by the General Assembly that seeks to protect the health and safety of Marylanders. HB 631 was enacted by overwhelming bipartisan majorities in both houses of the Maryland General Assembly. It seeks to protect Marylanders from conduct that the U.S. Senate's Special Committee on Aging has described as "price gouging" and "indefensible," that restricts patient's access to life-saving and life-sustaining medicines, and for which AAM has supplied no explanation or justification. The standard of conduct

imposed by HB 631 – unconscionability – should have *de minimis* impact on commercial actors: if pharmaceutical manufacturers and distributors wish to sell particular items in Maryland, they must avoid imposing conscience-shocking price increases for those items. No prosecutions under the law have been threatened; indeed, no investigation has yet been initiated. Under these circumstances, it would be profoundly inequitable to prohibit the State from taking even initial steps to implement the law.

IV. A PRELIMINARY INJUNCTION WOULD DISSERVE THE PUBLIC INTEREST.

As to the final *Winter* factor, AAM claims that the public interest favors granting an injunction because doing so would uphold AAM's constitutional rights, which is always in the public interest. This argument is deficient in at least two fundamental respects. First, as discussed above and more fully in the memorandum in support of Defendants' motion to dismiss, AAM's legal theories are incorrect. Its claims are premature, and its "rights" are not threatened with violation in any respect. Imposing an injunction here would do nothing to uphold or advance its constitutional rights.

Second, and equally fundamentally, AAM has ignored multiple other dimensions of the "public interest" that are at issue here. AAM has not given, and it cannot give, any coherent account of why it would serve the public interest to prevent implementation of a state law that does no more than prohibit *unconscionable* price increases for certain essential medicines under circumstances of market dysfunction or failure, and when there is ample evidence that such conduct, *today*, is both impeding the ability of suffering patients and their families to gain access to life-saving and life-sustaining drugs and likely imposing tens of millions of dollars in unjustified costs on Maryland's health care system.

In December 2016, the U.S. Senate's Special Committee on Aging, led by Senators Susan Collins and Claire McCaskill, published a comprehensive report detailing the results of a year-longinvestigation of "abrupt and dramatic price increases in prescription drugs whose patents had expired long ago." *See* Special Committee on Aging, U.S. Senate, *Sudden Price Spikes in Off-Patent Prescription Drugs: The Monopoly Business Model that Harms Patients, Taxpayers, and the U.S. Health Care System* at 3 (Dec. 2016), attached to Defs.' Mot. to Dismiss as Ex. A.[1] The Committee focused its attention on four companies that "acquired decades-old, off-patent affordable drugs and then raised the prices suddenly and astronomically." *Id.* As the Committee explained, its "investigation uncovered a business model that these four companies used (with some variation) to exploit market failures at the expense of patients." *Id.* at 4. The report calls the tactics used by these companies "price gouging" and describes them as both "disturbing" and "indefensible." *E.g.*, *id.* at 13, 73. In addition, the report points out that "during the course of the Committee's investigation, other companies raised their prices sharply." *Id.* at 11.

The types of extraordinary price increases investigated by the Special Committee on Aging can and do have dire consequences for individuals and communities. As the report explains, "[s]taggering increases in the price of some prescription drugs threaten not only the economic stability of American households, but also the health of individuals who discover that drugs they need are unaffordable and difficult to access." *Id.* at 3; *see generally id.* at 98-110 (cataloging the negative impacts of sudden drug price increases on

[1] https://www.collins.senate.gov/sites/default/files/DP%20Report.pdf.

patients, their families, physicians, hospitals, government budgets, and private insurers). The Special Committee's report also describes the impact of price gouging on three patients, including a 35-year-old father, Patrick Melvin, who was diagnosed with Wilson disease in July 2014. *Id.* at 101. Mr. Melvin was initially able to lead a normal life as a result of the drug Syprine, but was forced to go without the drug for several weeks after its manufacturer, Valeant, imposed a series of extraordinary price increases in 2014 and 2015 that resulted in Mr. Melvin having to make a $20,000 co-pay for a one-month supply of the drug. *Id*. at 100-01. Lacking the medicine, Mr. Melvin suffered a stroke and died in September 2015. *Id*. at 101. AAM speculates, without factual support, that enforcement of HB 631 might make generic drugs more expensive or less available. Pls' PI Br. at 39-41. The reality, amply supported by facts, is to the contrary.

Other evidence indicates that the problem of extraordinary increases in the price of generic and off-patent drugs is becoming increasingly common. In August 2016, for example, the U.S. Government Accountability Office ("GAO") reported that more than 300 of the 1,441 established generic drugs analyzed "had at least one extraordinary price increase of 100 percent or more between first quarter 2010 and first quarter 2015. . . . Additionally, the extraordinary price increases generally persisted for at least one year and most had no downward movement after the extraordinary price increase." U.S. Gov't Accountability Office, "Generic Drugs Under Medicare: Part D Generic Drug Prices Declined Overall, but Some Had Extraordinary Price Increases, GAO-16-706, at 1 (Aug.

2016), attached to Defs.' Mot. to Dismiss as Ex. B;[2] *see, e.g.*, Jeremy A. Greene, M.D., Ph.D. & William V. Padula, Ph.D., Perspective, *Targeting Unconscionable Prescription Drug Prices—Maryland's Anti-Price-Gouging Law*, 377 New Eng. J. Med. 101, 101 (July 13, 2017)[3] ("The past few years have seen a series of dramatic price hikes on essential off-patent medications, from albendazole to albuterol, digoxin to naloxone, Daraprim to EpiPen."); Heather Long, *Here's what happened to AIDS drug that spiked 5,000%*, CNN Money (Aug. 25, 2016)[4] (noting that even a year after the shock and outrage caused when Daraprim went from $13.50 to $750 a pill overnight, one pill costs $350 "for many patients"—"2,500% more than before the hike"); Andrew Pollack, *Drug Goes From $13.50 a Tablet to $750, Overnight*, N.Y. Times (Sept. 20, 2015)[5] (reporting on the Daraprim price spike, in addition to huge increases in other drugs such as Doxycycline, an antibiotic, which "went from $20 a bottle in October 2013 to $1,849 by April 2014"). According to the GAO, the federal Medicare program alone spent approximately $4.5 billion in 2014 on the 315 drugs that had experienced an "extraordinary price increase" during the period of study. Defs.' Mot. to Dismiss, Ex. B at 21 n.28.

Moreover, consistent with the analysis of the Special Committee on Aging, there is mounting evidence that market failures have caused or contributed to rising prices for off-patent and generic drugs, that such drugs are increasingly manufactured by only one or two

[2] https://www.gao.gov/assets/680/679022.pdf.
[3] http://www.nejm.org/doi/full/10.1056/NEJMp1704907#t=article.
[4] http://money.cnn.com/2016/08/25/news/economy/daraprim-aids-drug-high-price/index.html.
[5] https://www.nytimes.com/2015/09/21/business/a-huge-overnight-increase-in-a-drugs-price-raises-protests.html.

manufacturers, and that, as a result, there are ample and increasing opportunities in for bad actors to engage in the type of price gouging that HB 631 prohibits. For example, the *Washington Post* ran a report earlier this month in which University of Chicago health economist Rena Conti explained that "[m]ore than 50 percent of generic drugs are supplied by one to two manufacturers; that really turns on its head the idea this is a competitive, commodity-like market." Carolyn Y. Johnson, *The generic drug industry has brought huge cost savings. That may be changing.*, Wash. Post (Aug. 1, 2017);[6] *see also id.* ("Recent studies of the generic drug industry show that low levels of competition may be far more normal than the public appreciates."). The *Post* article documented the pricing history for the drug Cerebyx, an life-saving treatment for epilepsy that went off patent in 2007. Initially, according the article, thirteen manufacturers obtained approval to produce generic versions of the drug, and the price for a 10-milliter vial dropped to $3.45 by 2011. As manufacturers exited the market, however, prices increased. Today, according to the *Post*, there are two active generic manufacturers of the drug, and the price is $48 per vial. The price for the off-patent, brand-name version is $100 per vial. *See id.*

The public interest would be profoundly disserved by preventing the State from attempting to protect its citizens from the unconscionable conduct that HB 631 proscribes, and from the profound harms—to patients, to their families, and to the public fisc through the State's Medicaid program and other public health insurance programs—that flow from

[6] https://www.washingtonpost.com/business/economy/the-generic-drug-industry-has-brought-huge-cost-savings-that-may-be-changing/2017/08/01/ee128d0a-68cf-11e7-8eb5-cbccc2e7bfbf_story.html?utm_term=.c1160d6566ca.

this conduct. The *New York Times* recently reported that, at a recent investor conference, the CEO of a generic drug manufacturer, when asked whether legislative reforms would bring an end to the "price-hike business model" in the drug industry, "chuckled and said no, adding that he had tripled the price of one of [his company's] drugs that very morning." Gretchen Morgenson, *Defiant, Generic Drug Maker Continues to Raise Prices*, N.Y. Times (Apr. 14, 2017).[7] Disempowering the State of Maryland, on the basis of a pre-enforcement challenge, from implementing HB 631 would signal to the pharmaceutical industry that state governments lack the authority to protect their citizens from even unconscionable increases in the prices of essential medicines and, in so doing, could give significant encouragement to further abuses. There is no discernible "public interest" in doing so.

[7] https://www.nytimes.com/2017/04/14/business/lannett-drug-price-hike-bedrosian.html.

CONCLUSION

Plaintiff's motion for preliminary injunction should be denied.

Respectfully submitted,

Dated: August 14, 2017

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