

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

NOVARTIS PHARMACEUTICALS
CORPORATION,

Plaintiff,

v.

ANDREW BAILEY, in his official capacity as
ATTORNEY GENERAL OF THE STATE OF
MISSOURI, *et al.*,

Defendants.

Case No. 2:24-cv-04131-MDH

**AMERICAN HOSPITAL ASSOCIATION, 340B HEALTH, AND AMERICAN SOCIETY
OF HEALTH-SYSTEM PHARMACISTS’ MOTION FOR LEAVE TO FILE *AMICUS*
BRIEF IN SUPPORT OF DEFENDANTS’ MOTION TO DISMISS AND OPPOSITION
TO PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION AND
MOTION FOR LEAVE TO EXCEED PAGE LIMITATIONS**

The American Hospital Association, 340B Health, and the American Society of Health-System Pharmacists (collectively, the “Proposed *Amici*”) respectfully move this Court for leave to file the attached *amicus curiae* brief in support of Defendants Attorney General Andrew Bailey, President of the Missouri Board of Pharmacy James L. Gray, Vice President of the Missouri Board of Pharmacy Christian S. Tadrus, and Members of the Missouri Board of Pharmacy Douglas R. Lang, Colby Grove, Anita K. Parran, Tammy Thompson, and Darren Harris’s Motion to Dismiss and Opposition to Plaintiff Novartis Pharmaceuticals Corporation’s Motion for Preliminary Injunction (Exhibit A). In support of this Motion, and pursuant to Local Rule 15.1 and the Court’s inherent authority to accept amicus briefs, Proposed Amici state as follows:

1. Proposed *Amici* include two hospital associations with members in Missouri that receive 340B discounts for drugs that they purchase, many of which are dispensed through contract

pharmacies, and one organization that represents pharmacists who serve patients in hospitals, health systems, ambulatory clinics, and other healthcare settings many of which benefit from the 340B program. Proposed *Amici* and their members are committed to improving the health of the communities they serve through the delivery of high-quality, efficient, and accessible health care. The 340B program is essential to achieving this goal. Proposed *Amici* therefore have a strong interest in the success of Missouri's legislative efforts to protect the 340B program.

2. Because neither the Federal Rules of Civil Procedure nor this Court's Local Rules address *amicus* briefs in district court, Proposed *Amici* have looked to the Federal Rule of Appellate Procedure 29 for guidance concerning the standards for filing an *amicus* brief. Because Proposed *Amici* meet the requirements of Fed. R. App. P. 29 and would assist the Court in resolving the issues before it, we urge the Court to grant this motion.

3. Proposed *Amici*'s brief, which is filed within seven days of the filing of Defendants' motion to dismiss and opposition to Plaintiff's motion for preliminary injunction, *see* Fed. R. App. P. 29(a)(6), provides the Court with a unique perspective and specific information the parties cannot otherwise provide about 340B hospitals in Missouri and nationwide that can assist the Court's evaluation of the case, and it also addresses preemption and dormant Commerce Clause arguments made by Plaintiff in support of its motion for preliminary injunction. Additionally, the Court's ruling on Plaintiff's motions for preliminary injunction will directly affect Proposed *Amici*'s members, further supporting the filing of the *amicus* brief.

4. Proposed *Amici* also seek leave to file a brief 16 pages in length, which is less than half of the length of Defendants' combined motion to dismiss and opposition to Plaintiff's preliminary injunction motion. *See* Fed. R. App. P. 29(a)(5) (providing that an *amicus* brief "may be no more than one-half the maximum length authorized by these rules for a party's principal

brief”); ECF No. 22 (Aug. 14, 2024) (granting Defendants leave to file a 35-page response to Plaintiff’s preliminary injunction motion). Proposed *Amici*’s brief exceeds the page limitation set forth in Local Rule 7.0(d)(1) by one page.

5. Proposed *Amici* consulted with counsel for Plaintiff and Defendants and represent that Plaintiff’s counsel does not consent to this Motion, and Defendants’ counsel does not oppose this Motion.

Accordingly, Proposed *Amici* respectfully request the Court to grant their motion to file an *amicus* brief in the form attached as Exhibit A.

Dated: August 29, 2024

Respectfully submitted,

/s/ Jerina D. Phillips

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**pro hac vice motion forthcoming
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CERTIFICATE OF SERVICE

I certify that on August 29, 2024, I caused a true and correct copy of American Hospital Association, 340B Health, and American Society of Health-System Pharmacists' Motion to File *Amicus* Brief in Support of Defendants' Motion to Dismiss and Opposition to Plaintiff's Motion for Preliminary Injunction and Motion for Leave to Exceed Page Limitations to be served electronically via the Court's CM/ECF system on all counsel registered to receive electronic notices.

/s/ Jerina D. Phillips
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