

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION**

PHARMACEUTICAL RESEARCH AND  
MANUFACTURERS OF AMERICA,

Plaintiff,

v.

ALAN MCCLAIN, in his official capacity as  
Commissioner of the Arkansas Insurance  
Department; and LESLIE RUTLEDGE, in  
her official capacity as Attorney General of  
Arkansas,

Defendants.

Case No. 4:21-cv-864-BRW

**PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT  
ON ITS PREEMPTION CLAIM (CLAIM I)**

Plaintiff Pharmaceutical Research and Manufacturers of America (“PhRMA”) respectfully moves for summary judgment on its preemption claim (Claim I) and in support states:

1. This case challenges part of Arkansas Act 1103, the “340B Drug Pricing Nondiscrimination Act,” which the Arkansas legislature enacted in May 2021. The Act—specifically, Ark. Code § 23-92-604(c)—seeks to regulate pharmaceutical manufacturers’ participation in and obligations under the federal 340B Drug Pricing Program.

2. As explained in the brief in support and Local Rule 56.1 Statement of Undisputed Material Facts filed herewith, Ark. Code § 23-92-604(c) impermissibly intrudes into the comprehensive federal 340B Drug Pricing Program and causes direct conflicts with that Program. Ark. Code § 23-92-604(c) also conflicts with other federal laws governing the distribution of drugs, such as the Federal Food, Drug, and Cosmetic Act and the Risk Evaluation and Mitigation Strategies program authorized under that statute. Section 23-92-604(c) is thus preempted by

federal law and invalid under the Supremacy Clause.

3. This motion is supported by all filings of record, a contemporaneously filed memorandum brief, and exhibits.

Accordingly, PhRMA respectfully moves for summary judgment on its preemption claim (Claim I of its Complaint), *see* Fed. R. Civ. P. 56(a), and requests that the Court enter a judgment (1) declaring that Ark. Code § 23-92-604(c) violates the Supremacy Clause of the U.S. Constitution, and (2) enjoining its application and enforcement.

Dated: August 6, 2022

Respectfully submitted,

/s/ Philip J. Perry

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