

No. 20-2402

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

UFCW Local 1500 Welfare Fund, et al.,
Plaintiffs-Appellants

v.

AbbVie Inc., et al.,
Defendants-Appellees

Appeal from the United States District Court
for the Northern District of Illinois
Case No. 19-cv-1873
The Honorable Judge Manish S. Shah

**BRIEF FOR AMICI CURIAE STATES OF WASHINGTON, CALIFORNIA,
COLORADO, CONNECTICUT, DELAWARE, IDAHO, ILLINOIS, MAINE,
MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, NEBRASKA,
NEW MEXICO, NEW YORK, NORTH CAROLINA, OREGON, RHODE
ISLAND, VIRGINIA, AND WISCONSIN
SUPPORTING PLAINTIFFS-APPELLANTS AND REVERSAL**

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INTEREST OF AMICI CURIAE

Amici are the States of Washington, California, Colorado, Connecticut, Delaware, Idaho, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Mexico, New York, North Carolina, Oregon, Rhode Island, Virginia, and Wisconsin. Amici States file this brief under Fed. R. App. P. 29(a)(2). The States have a strong interest in this case both as healthcare consumers and government antitrust enforcers. The States spend millions annually on prescription drugs by reimbursing patients' purchases through Medicaid and other programs. Patients, employers, and insurers within our jurisdictions spend billions of dollars on prescription drugs. Biologic drugs like Humira represent a large and growing share of that spending. Anticompetitive conduct that raises biologic drug prices and eliminates competitive choice substantially harms the States and their residents.

The States also enforce federal and state antitrust laws.¹ See 15 U.S.C. § 15c(a)(1). The States have a long history of actively challenging anticompetitive conduct in the pharmaceutical industry, and have a strong interest in the development and proper application of the antitrust laws to conduct in this

¹ Amici States note here that dismissal of federal antitrust claims does not automatically require dismissal of state antitrust claims challenging the same conduct. Not all state antitrust statutes mirror federal antitrust law and some have been explicitly recognized as broader than federal law. *E.g.*, *In re Cipro Cases I & II*, 348 P.3d 845, 872 (Cal. 2015) (“The Cartwright Act is broader in range and deeper in reach than the Sherman Act.”) (cleaned up). Further, some states have enacted laws specifically addressing certain forms of anticompetitive conduct. For example, a California statute that became effective January 1, 2020, creates a presumption that certain reverse-payment agreements are anticompetitive and, where that presumption is not rebutted, imposes a civil penalty. See *Ass’n for Accessible Med. v. Becerra*, No. 20-15014, 2020 WL 4251776, at *1 & n.1 (9th Cir. July 24, 2020) (describing the statute).

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