IN THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT
No. 21-30331

LOUISIANA INDEPENDENT PHARMACIES, Plaintiff- Appellee, v. EXPRESS SCRIPTS INCORPORATED Defendant- Appellant.	)	On appeal from an Interlocutory Order of the United States District Court for the Western District of Louisiana

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UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* NATIONAL COMMUNITY PHARMACISTS ASSOCIATION, AMERICAN PHARMACIES, TEXAS PHARMACY ASSOCIATION, AND PHARMACIES UNITED FOR TRUTH AND TRANSPARANCY IN SUPPORT OF PLAINTIFF-APPELLEE AND AFFIRMANCE

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Counsel for Amici Curiae

SUPPLEMENTAL STATEMENT OF INTERESTED PERSONS

The undersigned counsel of record submits this supplemental statement of interested persons as required by Fifth Circuit Rule 29.2. Counsel hereby certifies that the following additional persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal:

Plaintiff-Appellee

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Respectfully submitted,

By: */s/ John Ben Blanchard*

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Pursuant to Rule 29 of the Federal Rules of Appellate Procedure, the proposed *amici* hereby move the Court for leave to file the attached brief *amici curiae* in support of Plaintiff-Appellee and affirmance.

Prospective *amici* respectfully submit that their brief will assist the Court because *amici* have substantial experience with pharmacies and the Medicare Prescription Drug, Improvement, and Modernization Act ("MMA").

Amici include the following national and state trade and advocacy organizations that represent independent, community pharmacists and pharmacies nationwide: the National Community Pharmacists Association ("NCPA"), American Pharmacies ("APRx"), The Texas Pharmacy Association ("TPA"), and Pharmacies United for Truth and Transparency ("PUTT"). Each of these groups advocate for pharmacists and pharmacies, specifically regarding issues such as the preemptive effect of the MMA, which could vastly negatively impact pharmacies across the nation. Thus, the proposed *amici* believe their views would assist the Court in resolving this important issue.

This Court enjoys "broad discretion to grant or deny *amici* under rule 29." *Lefebure v. D'Aquilla,* No. 19-30989, 2021 U.S. App. Lexis 29916, at *6 (5th Cir. Oct. 5, 2021). This *amicus* brief is desirable because the proposed *amici* have substantial expertise with the MMA, pharmacies, and the negotiation process

between pharmacy benefit managers, like Appellant Express Scripts, Inc., and pharmacies.

In accordance with Fifth Circuit Rule 27.4, proposed *amici* have contacted counsel for both parties regarding this motion. Counsel for the plaintiff-appellee and the defendant-appellant have both consented to the filing of this brief.

Accordingly, for the reasons stated herein, proposed *amici* respectfully request that this motion be granted and that they be permitted to file the accompanying brief as *amici curiae*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I further certify that all participants in the case are registered CM/ECF users, and that service will be accomplished by the appellate CM/ECF System.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 3,481 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5)(A) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman font size 14.

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CERTIFICATE OF CONFERENCE

We hereby certify under 5th Cir. R. 27.4 and Fed. R. App. P. 29(a)(2) that we contacted both Appellant's and Appellee's counsel by electronic mail. Both the Appellee and the Appellant have consented to the filing of the Brief of *Amici Curiae*.

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NO. 21-30331

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LOUISIANA INDEPENDENT PHARMACIES ASSOCIATION

Plaintiff-Appellee,

v.

EXPRESS SCRIPTS, INC.,

Defendant-Appellant.

On Appeal from an interlocutory order of the
United States District Court for the Western District of Louisiana
Case No. 2:20-cv-647

BRIEF OF *AMICI CURIAE*
NATIONAL COMMUNITY PHARMACISTS ASSOCIATION, AMERICAN PHARMACIES, TEXAS PHARMACY ASSOCIATION, PHARMACISTS UNITED FOR TRUTH AND TRANSPARENCY
IN SUPPORT OF PLANTIFF-APPELLEE AND AFFIRMANCE

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I. INTERESTS OF *AMICI CURIAE*[1]

Amici Curiae are trade and advocacy organizations that represent independent, community pharmacists and pharmacies. The National Community Pharmacists Association ("NCPA") was founded in 1898 and represents the interests of independent pharmacies nationwide. The NCPA represents 21,000 pharmacies that employ more than 250,000 individuals nationwide. American Pharmacies ("APRx") is a 100% member-owned independent pharmacy group with industry leading economics and advocacy leadership with hundreds of members across the country including Louisiana. As the nation's fastest-growing independent group, APRx is committed to advancing and defending the business of independent pharmacies. The Texas Pharmacy Association ("TPA"), formed in May 1879 by 18 pharmacists, serves and advocates for members practicing in all areas of pharmacy including community, hospitals, long-term care facilities, education, manufacturing, and distribution. Pharmacies United for Truth and Transparency ("PUTT") is a non-profit advocacy organization founded by independent pharmacists and pharmacy owners to act as an industry watch dog.

As advocates for independent pharmacies, *amici* have a significant interest in

[1] This brief is submitted under Federal Rule of Appellate Procedure 29(a) with the consent of all parties. Undersigned counsel for *Amici Curiae* certifies that this brief was not authored in whole or part by counsel for any of the parties; no party or party's counsel contributed money for the brief; and no one other than amici and their counsel have contributed money for this brief.

the outcome of this appeal, which focuses on whether two Louisiana laws[2] that require pharmacy benefit mangers ("PBMs") to reimburse pharmacies for a ten-cent provider fee are preempted by the Medicare Prescription Drug, Improvement, and Modernization Act ("MMA"). *Amici* can provide insight into the proper interpretation of the preemptive force of the MMA and how Express Scripts, Inc's ("Express Scripts") interpretation has no basis in the jurisprudence of the MMA.

II. ARGUMENT

A. 42 U.S.C. § 1395w-26(b)(3) and 42 U.S.C.S. § 1395w-112 Require Both the Existence of Part D "Standards" and Overlap with the Louisiana Laws to Trigger Preemption

Medicare Part D ("Part D") is a public-private partnership under which private companies sponsor Medicare-funded prescription drug benefits, subject to Medicare Part D standards. Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, 117 Stat. 2066. 42 U.S.C., Ch. 7, Pt. D. The federal government then reimburses Part D plan sponsors consistent with the standards established under Part D.

Part D incorporates by reference an express preemption clause from Part C. As applied to Part D, the clause provides that "[t]he standards established under this part shall supersede any State law or regulation (other than State licensing laws or

[2] La. R.S. §§ 46.2625 and 22.1860.1 (collectively "the Louisiana Laws.")

State laws relating to plan solvency) with respect to [Part D plans] which are offered by [Part D sponsors] under this part." 42 U.S.C. §§ 1395w-26(b)(3), 1395w-112(g).

1. Part D preempts state law only when Congress or CMS has established "standards" in the area regulated by the state law and the state law acts with respect to those standards.

Part D's preemption clause supersedes state laws only where Congress or the Centers for Medicare and Medicaid Services ("CMS") has established a standard for Part D plans that governs the same place as the state law. The text supports that construction; it is consistent with the view of every court to address this issue; and it tracks the interpretation given to it by CMS.

Start with Part D's text. It provides that "the *standards* established under this part shall *supersede* any State law or regulation (other than State licensing laws or State laws relating to plan solvency) with respect to [Part D plans] offered by [Part D plan sponsors]." 42 U.S.C. §§ 1395w-26(b)(3), 1395w-112(g) (emphasis added); *see also* 42 C.F.R. § 423.440(a) (2005). The subject of the sentence, "standards" works on the object, "State law," through the verb, "supersedes," which means to "displace." *Merriam-Webster's Collegiate Dictionary* 1255 (11th ed. 2005). Thus, under ordinary principles of sentence construction, there must be a Part D "standard" to displace a "State law" or regulation that acts with respect to a Part D plan offered by a Part D sponsor. In the absence of a Part D standard, there is nothing to displace.

For that reason, the Eighth Circuit recently held that "§ 1395w-26(b)(3) does

not preempt *all* state laws as applied to Medicare Part D." *Pharm. Care Mgmt. Ass'n v. Wehbi*, No. 18-2926, 2021 U.S. App. LEXIS 34064, at *21 (8th Cir. Nov. 17, 2021) (Gruender, J.). "[R]ather, it preempts only those [state laws] that occupy the same 'place'—that is, that regulate the same subject matter" as Medicare Part D standards. *Id.*; *accord Pharm. Care Mgmt. Ass'n v. Rutledge*, 891 F.3d 1109, 1113 (8th Cir. 2018) (holding that Part D preempts state laws as applied to Part D plans only when (1) Congress or [CMS] has established 'standards' in the area regulated by the state law; and (2) the state law acts 'with respect to' those standards"), *rev'd on other grounds*,141 S. Ct. 474 (2020).

Indeed, every other court of appeals to address the Part D preemption clause has held that it displaces state law only to the extent that it overlaps with an existing Part D standard. In *Do Sung Uhm v. Humana, Inc.*, for example, the Ninth Circuit concluded the statute "provided that CMS 'standards' supersede 'any State law or regulation … with respect to' a 'prescription drug plan' offered by a [Part D] sponsor." 620 F.3d 1134, 1148-49 (9th Cir. 2010); *accord Haaland v. Presbyterian Health Plan, Inc.*, 292 F. Supp. 3d 1222, 1230 (D.N.M. 2018); *Snyder v. Prompt Med. Transp., Inc.*, 131 N.E.3d 640, 652 (Ind. Ct. App. 2019); *Morrison v. Health Plan of Nev.*, 130 Nev. 517, 328 P.3d 1165, 1169 (2014).

Importantly, CMS has published its view that the text of the statute and principles of federalism confirm that Congress did not intend to preempt all state

laws as applied to Part D plans:

> [I]n the proposed rule for Part D, we did not believe that the Congress intended for each and every State requirement applying to PDP sponsors to become null and void...In areas where we have neither the expertise nor the authority to regulate, we do not believe that State laws would be superseded or preempted. For example, State environmental laws, *laws governing private contracting relationships*, tort law, labor law, civil rights laws, and similar areas of law would, we believe, continue in effect and PDP sponsors in such States would continue to be subject to such State laws. Rather, our Federal standards would merely preempt the State laws in the areas where the Congress intended us to regulate – such as the rules governing pharmacy access, formulary requirements for prescription drug plans, and marketing standards governing the information disseminated to beneficiaries by PDP sponsors. We believe this interpretation of our preemption authority is in keeping with principles of Federalism, and Executive Order 13132 on Federalism, which requires us to construe preemption statutes narrowly.

CMS, Medicare Program; Medicare Prescription Drug Benefit, 70 Fed. Reg. 4194, 4319 (Jan. 28, 2005) (emphasis added). And in replying to a comment, CMS clarified that there is no preemption in the absence of a Part D standards:

> We do not believe that either the principles of Federalism or the statute justify such a broad preemption interpretation…. The preemption in … the Act is a preemption that operates only when CMS *actually creates standards* in the area regulated. To the extent we do not create any standards whatsoever in a particular area, we do not believe preemption would be warranted.

Id. at 4319-20 (emphasis added).

Thus, to trigger preemption, Express Scripts must show that Congress or CMS established "standards" and that the Louisiana Laws displace those standards.

2. Courts have continuously applied a narrow definition to the term "standard," requiring a "published regulation or statutory provision."

Because the term "standard" is not defined in the Medicare Act, courts must interpret the term's definition in the context of the act. In *Uhm*, Humana relied on Black's Law Dictionary's definition of the term that a "standard" was a "criterion for measuring acceptability, quality or accuracy." 620 F.3d 1134, 1148 n. 2 (9th Cir. 2010). The *Uhm* court explicitly rejected such an expansive definition and instead defined the term as "a statutory provision or regulation promulgated under the Act and published in the Code of Federal Regulations." *Id*. at 1148.

More recently, the Eighth Circuit explained that, "[a]lthough the statute does not define the term 'standard,' … it does empower the Secretary of Health and Human Services to 'establish by regulation other standards' in addition to those established by the statute itself, 42 U.S.C. § 1395w-26(b)(1)." *Wehbi*, No. 18-2926, 2021 U.S. App. LEXIS 34064, at *20-21 (8th Cir. Nov. 17, 2021) . As a result, the Eighth Circuit held "that a 'standard' for purposes of Medicare Part D preemption 'is a [Part D] statutory provision or a regulation promulgated under [Part D] and published in the Code of Federal Regulations.'" *Id.* (quoting *Pharm. Care Mgmt. Ass'n v. Tufte*, 297 F. Supp. 3d 964, 985 (D.N.D. 2017)).

Other courts have taken the same approach. *See*, *e.g*., *Pharm. Care Mgmt. Ass'n v. Rutledge*, 240 F. Supp. 3d 951, 959 (E.D. Ark. 2017), *aff'd*, 891 F.3d 1109

(8th Cir. 2018) , *rev'd on other grounds*,141 S. Ct. 474 (2020) ; *N.Y.C. Health & Hosps. Corp. v. Wellcare of N.Y., Inc.*, 801 F. Supp. 2d 126, 140 (S.D.N.Y. 2011); *Morrison*, 328 P.3d at 1169; *Trezza v. Trezza*, 957 N.Y.S.2d 380, 387 (N.Y. App. Div. 2012); *see also Inchauspe v. SCAN Health Plan*, 2018 U.S. Dist. LEXIS 23056, at *27-28 (C.D. Cal. Jan. 23, 2018) (finding no preemption where the Plan failed to point to a prior determination by CMS under any federal standard).

Thus, Express Scripts must identify a Part D statutory provision or regulation that "occup[ies] the same 'place'" as the Louisiana Laws. *Wehbi*, No. 18-2926, 2021 U.S. App. LEXIS 34064, at *21. No such provision or regulation exists.

B. Because the Part D 'Standards' Express Scripts Points to Do Not Overlap with the Louisiana Laws, They Are Not Preempted.

The District Court correctly held that the Louisiana Laws are not preempted by Part D's preemption clause because Express Scripts failed to point to a "published regulation or statutory provision" that the Louisiana Laws act "with respect to." Express Scripts points to two separate statutory provisions: (1) the noninterference provision in conjunction with (2) the negotiated price provision. ESI Br. at 26. But neither of these provisions displaces the Louisiana Laws because they do not "occupy the same 'place'" as the Part D standards. *Wehbi*, No. 18-2926, 2021 U.S. App. LEXIS 34064, at *20-21.

Instead, the Louisiana Laws create a generally applicable, broad-based, price-

neutral fee used to partially fund the Louisiana Medicaid Program. Indeed, as explained below, CMS contemplated the existence of fees like Louisiana's. In contrast, Express Scripts' argument assumes that CMS invited states to enact Medicaid fees that are simultaneously preempted by Medicare Part D. This irreconcilable conflict cannot be right.

1. The negotiated price and noninterference provisions do not occupy the same place as the Louisiana Laws.

The negotiated price and noninterference provisions do not overlap with the Louisiana Laws. Louisiana has enacted a broad-based fee that is assessed on a per claim basis. The federal provisions, in contrast, simply identify whatever amount that a Part D sponsor has negotiated to pay a pharmacy for a particular drug.

Under Part D, beneficiaries are entitled to "access to negotiated prices used for payment for covered part D drugs." 42 U.S.C. § 1395w-102(d)(1)(A). CMS has defined "negotiated prices" to mean the prices that the "Part D sponsor (or other intermediary contracting organization) and the network dispensing pharmacy . . . have negotiated as the amount such network entity will receive, in total, for a particular drug." 42 C.F.R. § 423.100 (2021). Critically, under that definition, "negotiated prices" are the prices that a pharmacy receives from a Part D sponsor for dispensing a particular drug to a Part D beneficiary. However, "negotiated prices" are not a "standard" because the compensation mechanism is ultimately

chosen by the parties, not CMS. As a result, state laws that do "govern[] private contracting relationships" would "continue in effect and PDP sponsors in such States would continue to be subject to such State laws." CMS, Medicare Program; Medicare Prescription Drug Benefit, 70 Fed. Reg. 4194, 4319 (Jan. 28, 2005).

The Louisiana Laws have nothing to do with the negotiated price between a Part D sponsor and a pharmacy. Rather, the Louisiana Laws require a pharmacy to assess, and a PBM to ultimately pay, a fee of ten cents on each outpatient prescription irrespective of the negotiated price. La. R.S. §§ 2625(A)(1)(c); 46:2625(A)(2). Thus, in Louisiana, Medicare beneficiaries continue to have access to drugs at whatever amount Part D sponsors have negotiated with pharmacies for a given drug. Although a PBM must ultimately reimburse the ten-cent fee to Louisiana's Medicaid program, it has no impact on the negotiated price between a pharmacy and a Part D sponsor.

The noninterference clause does not alter this conclusion. It simply provides that the federal government may not interfere in negotiations over drug prices:

> In order to promote competition under this part [42 U.S.C.S. §§ 1395w-101 et seq.] and in carrying out this part [42 U.S.C.S. §§ 1395w-101 et seq.] the Secretary: (1) may not interfere with the negotiations between drug manufacturers and pharmacies and PDP sponsors; and (2) may not require a particular formulary or institute a price structure for the reimbursement of covered Part D drugs."

42 U.S.C §1395w-111(i).

Once again, The Louisiana Laws have nothing to do with the negotiations

between Part D sponsors and pharmacies. Notwithstanding the ten-cent fee, a Part D sponsor will continue to "shop for the best deal it can get." *Rutledge v. Pharm. Care Mgmt. Ass'n*, 141 S. Ct. 474, 480 (2020) (quoting *N.Y. State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 660 (1995)). Nothing in the Louisiana Laws require a Part D sponsor to adopt "a particular formulary" (a list of covered drugs) or "institute a price structure for the reimbursement of covered Part D drugs." 42 U.S.C §1395w-111(i).

2. The Louisiana Laws enact a generally applicable fee that is expressly authorized by the Medicaid Act.

The second reason the Louisiana Laws do not trigger preemption under Part D is that Congress and CMS expressly allow states to help finance the state's share of Medicaid expenditures using a health-care related fee, assessment, or other mandatory payment. 42 U.S.C.S. § 1396b(w)(1)(A)(ii) (authorizing "health care related taxes" and fees). And yet, under Express Scripts' *non sequitur* argument, Congress would have authorized the Louisiana Laws under the Medicaid Act only to concomitantly preempt them under the Medicare Act.

The requirements for health-care related fee assessments are (1) the fee must fund the Medicaid program, and (2) the fee must be a broad-based, generally applicable assessment for the dispensing of health care items or services. 42 C.F.R § 433.68 (2009); *see also* 42 C.F.R. § 433.53 (1993); 42 C.F.R. § 433.55 (1992).

According to the Congressional Research Service, in 2016 a total of forty-nine states and the District of Columbia were using at least one provider fee/assessment to help finance Medicaid, because the financing strategy allows states to fund increases to Medicaid without the use of state funds. [3]

CMS specifically enumerated 19 classes a health-care fee could be imposed upon, including "outpatient prescription drugs." 42 C.F.R. § 433.56(a)(7) (2009). When defining the term "broad based," CMS requires the assessments to be imposed on all providers of a class of items or services. 42 C.F.R. § 433.68 (c)(1) (2009). Further, there is no requirement that the fees must exclude either Medicaid or Medicare revenues. 42 C.F.R. § 433.68(d) (2009). States may, but are not required, to exclude them. *Id*. A fee is struck down if it has an impermissible "hold harmless" provision. *See Gardens Reg'l Hosp. & Med. Ctr. Liquidating Tr. v. Cal.*, 975 F.3d 926, 930 (9th Cir. 2020). The Ninth Circuit stated a "hold harmless" provision occurs when "Medicaid payments to a provider vary based only upon the amount of the total [fee] paid; the provider receives a waiver or offset of the [fee]; or the provider receives payments that positively correlate to the amount of the [fee]." *Id*. (citing 42 U.S.C.S. § 1396b(w)(4)(A)-(C)).

Here, the Louisiana Laws meet all the requirements. Louisiana enacted the

[3] CONGRESSIONAL RESEARCH SERVICE, MEDICAID TAXES: SPECIALIST IN HEALTH CARE FINANCING (2016).

provisions to fund the Medicaid program by adding an estimated $7.9 million dollars to the budget.[4] The Louisiana Laws expressly apply to outpatient prescription drugs, which is an enumerated class of providers to whom the fee applies. La. R.S. §§ 46:2625(A)(1)(c)-(e). The Louisiana Laws are broad based in that they apply to the entire class of out-patient prescription drugs, whether in state, out-of-state or dispensed by dispensing physicians. *Id*.

As noted above, Express Scripts' argument, if adopted, would create an irreconcilable conflict in which CMS allows states to assess fees on outpatient prescription drugs, allows for the fee to apply to Medicare payments, but then negates them through the Part D preemption clause. Because the Louisiana Laws create a generally applicable, broad-based fee, it is not a price negotiation on a standalone drug and, therefore, is not subject to preemption.

C. The Express Language of the Medicare Part D Preemption Clause Is Incompatible with Express Scripts' Vision of "Field" Preemption.

Eschewing the statutory text, Express Scripts offers its own preemption standard: Part D preempts any state law applied to a Part D plan. ESI Br. 18-19. But as explained above, that is not the "standards"-based language that Congress selected. And for that reason, no court has adopted Express Scripts' faulty argument.

[4] LOUISIANA LEGISLATIVE FISCAL OFFICE, FISCAL NOTE: HB436 (2015).

When Congress includes an express preemption clause in a statute, and that provision is a "reliable indicum" of congressional intent, there is no need to employ inferences. *Cipollone v. Liggett Grp.*, 505 U.S. 504, 517 (1992). Justice Stevens, for the majority, noted that this reasoning is a variant of the "principle of *expression unius est exclusion alterius:* Congress' enactment of a provision defining the pre-emptive reach of a statute implies that matters beyond that reach are not pre-empted." *Id.* The concept of field preemption is only implied by the courts in the absence of an express congressional command and when the "federal law so thoroughly occupies a legislative *field* 'as to make a reasonable *inference* that Congress left no room for the States to supplement it.'" *Id.* at 516 (emphasis added).

In its Opening Brief, Express Scripts rests its argument for preemption on the proposition that field preemption is the appropriate standard. ESI Br. at 21. It then conflates the distinction between express preemption and field preemption, the latter being inferred in the absence of an express preemption clause.

Taken together, the Part C and Part D preemption clauses expressly limit the reach of federal preemption to standards imposed on PDP sponsors and prescription drug plans. *See* 42 U.S.C. §§ 1395w-26(b)(3), 1395w-112(g). There are no standards in the Medicare statute or regulations relating to the imposition of price-neutral fees imposed on prescriptions, and Express Scripts is not a PDP sponsor. Because Congress clearly defined the reach of preemption, its intent is clear and the

need to imply preemption to the entire Medicare field never arises. Indeed, the statutory language clearly negates such a sweeping inference.

In the presence of an express preemption clause, courts must identify the domain expressly preempted. To ascertain the domain preempted by the Part D preemption clause, one must read it in light of the Part C preemption clause, 42 U.S.C. § 1395w-26(b)(3), which is incorporated by reference. Read together, the *standards* set forth in 42 U.S.C. §§ 1395w-101, et seq., supersede any state law or regulation other than state licensing laws or state laws relating to plan solvency, with respect to PDP sponsors and prescription drug plans. This defines the domain to which preemption applies – federal standards applying to PDP sponsors and prescription drug plans. Any state enactment not relating to those standards falls outside the domain to be preempted.

In *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251 (2013), the Supreme Court was tasked with determining whether a New Hampshire consumer protection statute relating to the storage and disposal of a towed vehicle was preempted by the Federal Aviation Administration Authorization Act of 1994 ("FAAAA"). Contained within the FAAAA was an express preemption clause that preempted state law relating to the price, route, or service of a motor carrier. The Court noted that where Congress has superseded state legislation by statute, "our task is to 'identify the domain expressly preempted.'" *Id.* at 259. To do so, the Court must

"focus first on the statutory language, 'which necessarily contains the best evidence of Congress' pre-emptive intent.'" *Id.* at 260. The Court rejected preemption, concluding that the domain preempted related to "neither the 'transportation of property' nor the 'service' of a motor carrier." *Id.* at 261. Here, the Louisiana Laws imposing the price-neutral fee are unrelated to any standard imposed on PDP sponsors or prescription drug plans. If there is no nexus between any Part D standard and the state law, the state law falls outside the domain Congress intended to supersede, and preemption is not applicable.

III. CONCLUSION

This Court should affirm the district court's judgment below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I further certify that all participants in the case are registered CM/ECF users, and that service will be accomplished by the appellate CM/ECF System.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 3,481 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

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