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## **COURT STRIKES DOWN MAINE PRESCRIPTION DRUG PRICE CONTROLS**

*(Pharmaceutical Research and Mfrs. of America v. Thompson)*

The U.S. Court of Appeals for the District of Columbia Circuit this week struck down a Maine law that imposes strict controls on the price of prescription drugs sold in the State.

The decision was a victory for the Washington Legal Foundation (WLF), which filed a brief in the case, *PhRMA v. Thompson*. The court agreed with WLF that the Maine price control scheme is void because it conflicts with federal laws regulating the sale of prescription drugs. The court further agreed that the U.S. Department of Health and Human Services (HHS) acted improperly in approving the Maine program.

WLF filed the brief on behalf of itself and several senior citizen groups that support expanded research toward development of new, life-saving drugs, including The Seniors Coalition and The 60 Plus Association. WLF explained that both WLF and the senior citizen groups oppose price controls on drugs because such controls have been shown to lead to reduced research and development of new drugs and to product shortages.

"Regardless whether the government has a role to play in reducing society's overall drug expenditures, any government oversight should be at the federal level," said WLF Chief Counsel Richard Samp after reviewing the court's ruling. "Pricing decisions of this magnitude and complexity ought to be made at the national level, where the interests of consumers around the nation can be taken into account, not simply the parochial interests of one State's consumers," Samp said.

Maine administers the sale of prescription drugs to Medicaid recipients within the State. Maine was attempting to enforce price controls on drugs sold to low and moderate-income residents who are not eligible for the Medicaid program, by threatening Medicaid sanctions against manufacturers who fail to comply. WLF successfully argued that Maine's attempt to use its leverage within the Medicaid program to force manufacturers to comply with its separate drug price control scheme is a violation of federal Medicaid law.

Medicaid law allows a State that administers Medicaid to require pharmaceutical companies to rebate to the State a portion of the sales price, thus effectively imposing price controls on drug sales to Medicaid recipients. Maine was attempting to invoke that same rebate provision to lower prices on drug sales to hundreds of thousands of Maine residents whose income level renders them ineligible for Medicaid. The Court agreed with WLF that the Medicaid rebate provision can only be used where (unlike here) the State itself will be paying a sizeable portion of the cost of the drugs. The court noted that it had already struck down a similar program adopted by Vermont.

Following the court's disapproval of the Vermont plan, Maine attempted to distinguish that decision by initiating a 2% payment toward the costs of drug purchases; before the Vermont decision, Maine had imposed 100% of the cost of its price control program on pharmaceutical manufacturers. The D.C. Circuit held that it did not need to address whether a State program similar to Maine's would be compatible with federal law if it included some co-payment by the State because the Maine program as approved by HHS did *not* include the co-payment provision; that provision was added by Maine in response to the Vermont decision only *after* its program received HHS approval.

WLF is a public interest law and policy center with supporters in all 50 states, including many in Maine. WLF devotes a significant portion of its resources to defending the rights of businesses that have become the target of unwarranted government regulation.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is available at its web site, [www.wlf.org](http://www.wlf.org).