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COURT AGREES TO REVIEW PRESCRIPTION DRUG PRICE CONTROLS

(Pharmaceutical Research and Mfrs. of America v. Concannon)

The U.S. Supreme Court this week agreed to review a Maine law that imposes strict controls on the price of all prescription drugs sold in the State.

The decision was a victory for the Washington Legal Foundation (WLF), which filed a brief urging the Court to review the case, *PhRMA v. Concannon*, and ultimately strike down the price-control law. The Supreme Court has requested the parties to file additional briefs this summer and will hear oral arguments in the case early next year. WLF has pledged to continue its involvement in the case and to file an additional brief challenging the law.

WLF's brief urging the Supreme Court to hear the case argued that the Maine price control scheme violates the Constitution's Commerce Clause because it imposes an unreasonable burden on interstate commerce. WLF also argued that the Maine law is void because it conflicts with federal laws regulating the sale of prescription drugs.

WLF also filed a brief in the U.S. Court of Appeals for the First Circuit in Boston when the case was before that court. In a decision issued in May 2001, the First Circuit rejected both of WLF's arguments. The court agreed with WLF that Maine could not claim an exemption from Commerce Clause limitations by virtue of its alleged status as a "market participant" in the prescription drug market. But the court held that Maine is not violating the Commerce Clause because its law should not be deemed an effort to regulate commerce occurring in other states.

WLF filed both its brief on behalf of itself and a coalition of groups that support expanded research toward development of new, life-saving drugs, including the Kidney Cancer Foundation, The Seniors Coalition, The 60 Plus Association, the International Patient Advocacy Association, and the Allied Educational Foundation. WLF explained that the coalition opposes 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 learning of the Supreme Court's decision to hear the case. "Health-care policy 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.

WLF argued in its brief that the Maine law violates the Commerce Clause by attempting to control the wholesale price of prescription drugs. WLF noted that no drug manufacturers are located in Maine and that virtually all drugs sold at the retail level in Maine were previously sold by drug manufacturers to distributors in wholesale transactions that took place outside the State. WLF argued that Maine's effort to give extraterritorial effect to its laws by regulating sales taking place outside of the State constitutes a *per se* violation of the Commerce Clause.

Maine administers the sale of prescription drugs to Medicaid recipients within the State. Maine is attempting to enforce its controls on wholesale drug prices by threatening Medicaid sanctions against any drug manufacturer that fails to abide by the State's wholesale drug price controls. WLF 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.

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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