

**FOR IMMEDIATE RELEASE****September 5, 2001**

## **COURT URGED TO STRIKE DOWN PRESCRIPTION DRUG PRICE CONTROLS**

*(Pharmaceutical Research and Mfrs. of America v. Concannon, No. 01-188)*

The Washington Legal Foundation (WLF) this week asked the U.S. Supreme Court to hear a challenge to a Maine law that imposes strict controls on the price of all prescription drugs sold in the State.

In a brief filed in *PhRMA v. Concannon*, WLF 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 filed the 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, 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 filing WLF's brief. "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 is asking the Supreme Court to review a decision of the U.S. Court of Appeals for the First Circuit in Boston, which upheld the Maine law in May. WLF also filed a brief in the case when it was before the First Circuit.

WLF argued in its Supreme Court 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 noted that the First Circuit's decision upholding the Maine law appears to conflict with another federal appellate court decision, which struck down a similar Vermont price control scheme because it ran afoul of federal Medicaid laws.

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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