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January 28, 2015

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WLF Asks Supreme Court to Toss Protectionist County Ordinance under Dormant Commerce Clause

(Pharmaceutical Research & Mfrs. of America v. Alameda County)

“If Alameda County is permitted to evade the cost of collecting unused pharmaceuticals, then other jurisdictions will take similar steps ... Local governments have little incentive to impose costs prudently on interstate commerce when their citizens will not bear those costs, but enforcing the dormant Commerce Clause prevents such mischief.”—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—Washington Legal Foundation today urged the U.S. Supreme Court to review (and ultimately overturn) an appeals court ruling from the Ninth Circuit. If allowed to stand, the decision below could usher in a broad array of local ordinances designed to foist onto other jurisdictions costs and responsibilities that local communities traditionally have borne.

In a brief filed in *Pharmaceutical Research & Mfrs. of America, et al. v. Alameda County*, WLF argues that an Alameda County, California, ordinance—requiring drug manufacturers to establish programs to collect from consumers and safely dispose of all unused medicines within the county—violates the U.S. Constitution’s Commerce Clause. The ordinance includes several provisions designed to ensure that local residents bear hardly any of the programs’ costs.

WLF’s brief encourages the High Court to find that the ordinance constitutes a *per se* violation of the dormant Commerce Clause by discriminating against interstate commerce and by favoring local economic interests over outside interests. The brief also asks the Court to consider whether the ordinance runs afoul of the test used to determine whether state taxes violate the Commerce Clause, because the ordinance possesses many of the same attributes as a tax. WLF filed its brief on behalf of itself and the Allied Educational Foundation.

After filing its brief, WLF issued the following statement by Chief Counsel Richard Samp: “If Alameda County is permitted to evade the cost of collecting unused pharmaceuticals, then other jurisdictions will take similar steps to relieve their residents of disposal costs for other items—such as old tires, wine bottles, or consumer electronics. Such economically inefficient cost-shifting efforts cause significant harm to the national economy. Local governments have little incentive to impose costs prudently on interstate commerce when their citizens will not bear those costs, but enforcing the dormant Commerce Clause prevents such mischief.”

WLF is a public interest law firm and policy center that regularly litigates in defense of free enterprise and against state and local laws that impede the free flow of interstate commerce.

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