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## Ninth Circuit Upholds Misguided California Drug Take-Back Law

*(Pharmaceutical Research and Manufacturers of America v. County of Alameda)*

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WASHINGTON, DC—The U.S. Court of Appeals for the Ninth Circuit today upheld a municipal ordinance that requires drug companies to establish a program to collect and dispose of unwanted or leftover prescription drugs for local residents. The decision was a setback for the Washington Legal Foundation (WLF), which argued that the ordinance violated the Constitution’s prohibition against direct regulation of interstate commerce by state and local governments.

The challenged Alameda County, California ordinance requires every drug manufacturer whose products are shipped into the county to participate in the drug disposal program. To ensure that the costs of the program are not passed along to local residents, the ordinance expressly prohibits drug companies from charging higher wholesale costs to pharmacies located in the county.

The appeals court held that the ordinance passed constitutional muster because: (1) it does not discriminate in favor of local manufacturers; and (2) it only affects manufacturers that do business in Alameda County. The plaintiffs (three trade associations for drug companies) did not contest the county’s claim that the program provided at least *some* safety benefits, so the court determined that the program’s benefits counterbalance the burden it imposes on interstate commerce.

The court expressly stated that it was not evaluating the wisdom of the program. It did not respond to one of the major arguments raised by WLF: that a decision upholding the program will prompt other local governments to adopt similar programs, with each municipality seeking to foist its waste disposal costs onto the rest of the country.

In response to the court’s decision, WLF issued this statement by Chief Counsel Richard Samp: “Although the court rejected the constitutional challenge to the drug-disposal program, it went out of its way to note it was *not* deciding whether such programs—whereby local governments seek to foist their disposal costs onto those living elsewhere—are ‘a good idea.’ In fact, the program is a profoundly bad idea and serves no valid purpose. There is no evidence that disposal of unused drugs through regular waste streams poses any public health risks.”

*WLF is a public interest law firm and policy center that regularly litigates in support of individual and business civil liberties, a limited and accountable government, and the rule of law.*