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WLF Calls On Appeals Court To Toss Protectionist County Ordinance Under Dormant Commerce Clause

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

“If Alameda County is permitted to adopt legislation to evade the costs of collecting unused pharmaceuticals, then other jurisdictions can be expected to take similar steps to relieve their local residents of disposal costs for other items—such as old tires, wine bottles, or consumer electronics.”

—Cory Andrews, WLF Senior Litigation Counsel

SAN FRANCISCO, CA—The Washington Legal Foundation (WLF) this week asked the U.S. Court of Appeals for the Ninth Circuit to reverse a lower court decision that, if allowed to stand, could usher in a broad array of local ordinances designed to foist onto other jurisdictions costs and responsibilities that traditionally have been borne by local communities.

The case, *Pharmaceutical Research & Manufacturers of America v. Alameda County*, involves a dormant Commerce Clause challenge to Alameda County’s “Safe Drug Disposal Ordinance,” a law requiring producers of prescription drugs to establish programs to collect and safely dispose all unused prescription medicines within the county. The ordinance expressly prohibits producers from recouping the cost of the program from local consumers by adding a fee to the point of sale. At the same time, the ordinance expressly exempts local pharmacies that actually sell prescription drugs to Alameda residents from the need to comply with the ordinance.

In a brief filed in the U.S. Court of Appeals for the Ninth Circuit, WLF argued that the Alameda 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. WLF filed its brief on its own behalf and on behalf of its client, the California Healthcare Institute.

Upon filing its brief, WLF issued the following statement by Senior Litigation Counsel Cory Andrews:

“If Alameda County is permitted to adopt legislation to evade the costs of collecting unused pharmaceuticals, then other jurisdictions can be expected to take similar steps to relieve their local residents of disposal costs for other items—such as old tires, wine bottles, or consumer electronics. Under Alameda County’s theory, even the costs of local fire protection could be foisted onto interstate manufacturers of flammable products.”

WLF is a public interest law firm and policy center that regularly litigates in defense of free enterprise. A copy of its brief is posted on its website, www.wlf.org.

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