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## WLF Asks Ninth Circuit to Enjoin New California Law That Targets Pharmaceutical Settlements

(*Ass'n for Accessible Medicines v. Becerra*)

**“If California had deliberately set out to stifle drug innovation and constrict America’s vital supply of affordable drugs, it could have hardly enacted a more potent law to do so.”**

—Cory Andrews, WLF Vice President of Litigation

WASHINGTON, DC—Earlier today, Washington Legal Foundation (WLF) urged the U.S. Court of Appeals for the Ninth Circuit to enjoin a controversial new state law that imposes staggering liability on drug makers for merely carrying out federal policy. WLF’s *amicus curiae* brief was joined by the National Association of Manufacturers and the U.S. Chamber of Commerce.

For more than 35 years, patent-litigation settlement has been the chief market-entry vehicle for low-cost generic and biosimilar drugs. The U.S. Supreme Court largely blessed this practice in 2013 in *FTC v. Actavis*, refusing to condemn as presumptively anticompetitive patent settlements that include a so-called reverse payment.

But a new California law erects the very presumption that *Actavis* rejected. Under Assembly Bill 824 (AB 824), every pharmaceutical patent settlement is presumed unlawful if it gives a generic manufacturer “anything of value,” including an “exclusive license,” and postpones generic market entry for even a day. And every company that enters into such a settlement on terms found to violate the law is liable for three times “California’s share of the market for the brand drug at issue in the agreement.” Worse still, every person who merely “assists in” such a settlement must pay a civil penalty no less than \$20 million.

As WLF’s brief argues, by elevating state law over federal law, California’s AB 824 erects several major obstacles to the accomplishment of federal law, frustrates the policy aims of Congress, and is thus preempted under the Supremacy Clause. In particular, the law poses discrete roadblocks to Congress’s aims under federal food-and-drug law, federal patent law, and federal antitrust law.

*Celebrating its 43rd year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.*

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