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## WLF Urges Eighth Circuit to Prevent States From Wreaking Havoc in the Pharmaceutical Industry

*(PhRMA v. McClain)*

**“The panel’s decision allows States to nullify federal law. The full Eighth Circuit should correct this grievous error.”**

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—Today Washington Legal Foundation (WLF) urged the U.S. Court of Appeals for the Eighth Circuit to rehear an appeal from a decision allowing Arkansas to regulate pharmaceutical companies’ participation in the federal 340B Program. WLF argues that amending the 340B Program must be left to Congress, not the States.

The case challenges an Arkansas statute that requires all pharmaceutical companies participating in the federal 340B Program to provide heavily discounted drugs to contract pharmacies. Recently, the federal Health Resources and Services Administration tried to impose this requirement on drug companies nationwide. But courts have rejected that attempt at amending the statute as exceeding HRSA’s authority. Seeing the writing on the wall, Arkansas passed its own statute requiring drug companies to give away their products at a deep discount to all contract pharmacies.

In its brief supporting PhRMA, WLF explains the scope of the federal 340B Program. In 2020, drug companies sold over \$38 billion in products under the 340B Program. This is 27% more than just one year prior. The pharmacies that receive drugs under the 340B Program are making money by reselling the drugs at a higher price. In total, they make over \$11 billion per year when reselling the drugs. The scope of the program shows why Congress should be deciding on the program’s details, not States.

WLF’s brief also explains the dire consequences that will result if the panel’s decision is left in place. Other States will rush to pass laws copying Arkansas’s statute. This will greatly increase the cost of doing business for pharmaceutical companies. They will therefore reduce their research and development expenditures, leading to fewer life-saving drugs. And if States do not copy Arkansas’s statute, it will cause a regulatory nightmare for drug companies. The differing regulations will increase costs, leading to increased prices for consumers. The Eighth Circuit should prevent this from happening by granting the rehearing petition.

*Celebrating its 47th 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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