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WLF Urges Third Circuit To Strike Down Inflation Reduction Act's Drug Price Negotiation Program

(Bristol Myers Squibb Co. v. Becerra; Janssen v. Becerra)

“The government cannot take companies’ property without just compensation.”

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the Third Circuit to reverse a decision permitting the federal government to take property without just compensation. In an amicus brief supporting the plaintiffs, WLF argues that pharmaceutical manufacturers’ participation in the Inflation Reduction Act’s “Drug Price Negotiation Program” is involuntary or, at a minimum, an unconstitutional condition.

The case arises from a challenge to the IRA’s Drug Price Negotiation Program. Under the Program, the Centers for Medicare & Medicaid Services sets the prices for the top-selling drugs. If pharmaceutical manufacturers do not agree to the prices CMS sets, they must pay an astronomical penalty or completely exit Medicare and Medicaid. The District Court found the Program constitutional because, in its view, pharmaceutical manufacturers’ participation in the Program is voluntary.

WLF’s brief argues that the District Court erred in holding that pharmaceutical manufacturers may withdraw from Medicare and Medicaid with only 30 days’ notice. The statute’s plain language requires between 11 and 23 months’ notice. Thus, participation in the Program during that interval is involuntary. But even if pharmaceutical manufacturers could withdraw from Medicare and Medicaid overnight, participation in the Program is still involuntary. Withdrawing from Medicare and Medicaid is not economically feasible because pharmaceutical manufacturers rely on Medicaid and Medicare for almost half of their revenue.

WLF’s brief also explains that the IRA imposes unconstitutional conditions on pharmaceutical manufacturers’ participation in Medicare and Medicaid. It essentially forces the manufacturers to forfeit their right to be free from uncompensated takings in return for participating in Medicare and Medicaid. Finally, WLF’s brief explains how forcing manufacturers to participate in the Program would reduce innovation and lead to fewer life-saving and life-enhancing drugs on the market.

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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