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## WLF Asks Supreme Court to Stop Unconstitutional Government Shakedown of Drug Companies

*(Janssen v. Kennedy/Bristol Myers Squibb v. Kennedy)*

**“This so-called negotiation violates the First, Fifth, and Eighth Amendments. The federal government can’t violate the Constitution once—let alone three different ways at the same time.”**

— Zac Morgan, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today asked the United States Supreme Court to grant review so it can strike down the so-called Medicare Prescription Drug Negotiation Program, which forces the manufacturers of successful drugs to take a government-set price for their products.

The case arises from a Third Circuit Court of Appeals case upholding the portions of the Inflation Reduction Act containing this innocuous-sounding provision. But the Act does not provide for a free and fair give-and-take between corporate targets and the federal government. The government sets the terms and can compel acceptance of its preferred price by offering a company the “choice” of either ceasing all participation in Medicare and Medicaid—which together constitute half the U.S. market for prescription drugs—or paying what Judge Hardiman, writing in dissent in the Third Circuit, called an “enterprise-crippling” sanction that can total over a billion dollars a day. Once a company complies, it must sign a statement stating that the government’s price is the “maximum fair price.” Any deviation from that price is met with excessive fines.

WLF’s amicus brief explains why the Court should take the case. The forced sale of drugs on these “negotiated” terms constitutes an uncompensated taking under the Fifth Amendment—since the government isn’t paying the actual market rate for the product. The coerced statement of assent to the government’s price violates the First Amendment’s guarantee against compelled speech. And backing the scheme with astounding penalties runs afoul of the Eighth Amendment’s prohibition on excessive fines.

*Celebrating its 49th 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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