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WLF Opposes Hospital's Attempt to Use State Law to Enforce Federal 340B Drug-Pricing Requirements

(Mary Hitchcock Memorial Hospital v. Eli Lilly and Company)

“It doesn’t matter if these claims are dressed in state-law clothing: Congress never authorized hospitals to sue drug manufacturers in court to enforce 340B pricing.”

— Jay DeSanto, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today filed an amicus brief in the U.S. District Court for the District of New Hampshire opposing a request by Mary Hitchcock Memorial Hospital for a preliminary injunction against Eli Lilly and Company. In its brief, WLF argues that the hospital’s lawsuit is an impermissible attempt to privately enforce the federal 340B drug-pricing program through state-law causes of action, despite Congress’s refusal to create a private right of action under the statute.

The dispute arises from Lilly’s requirement that healthcare providers participating in the 340B program provide certain claims data to receive program discounts. Lilly adopted the condition to help verify compliance with federal program rules designed to prevent duplicate discounts and improper diversion of discounted drugs. After Mary Hitchcock Memorial Hospital declined to provide the requested data, Lilly suspended the hospital’s access to 340B pricing, prompting it to sue Lilly and seek injunctive relief under various state-law theories.

WLF argues that the Supreme Court’s 2011 decision in *Astra USA, Inc. v. Santa Clara County* forecloses the hospital’s claims because Congress vested exclusive enforcement authority over 340B pricing disputes in the Department of Health and Human Services rather than private litigants. WLF argues that allowing hospitals to pursue state-law claims based on alleged violations of 340B would undermine Congress’s enforcement scheme and risk inconsistent judicial rulings across the country. Apart from *Astra*, WLF argues that federal law permits the claims-data conditions disputed by the hospital and that claims data is essential to ensuring program integrity.

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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