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WLF Asks Court to Reject State Law End-Run Around Congress's 340B Enforcement Scheme

(Tampa General Hospital v. Eli Lilly and Company)

“Hospitals can’t avoid Congress’s process for resolving 340B disputes by dressing their claims in state consumer-protection laws.”

— 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 Middle District of Florida supporting Eli Lilly’s motion to dismiss a lawsuit brought by Tampa General Hospital. In its brief, WLF argues that the hospital’s claims are an impermissible attempt to privately enforce the federal 340B drug-pricing program through Florida’s Deceptive and Unfair Trade Practices Act (FDUTPA), despite Congress’s refusal to create a private right of action under the statute.

Like *Mary Hitchcock Memorial Hospital v. Eli Lilly and Company* (D.N.H.), in which WLF filed a brief on September 17, this case arises from Lilly’s requirement that hospitals participating in the 340B program provide certain claims data to receive program discounts. Lilly adopted the requirement to help verify compliance with federal rules designed to prevent duplicate discounts and improper diversion of discounted drugs. After Tampa General declined to provide the requested data, Lilly suspended the hospital’s access to 340B pricing, prompting it to sue Lilly under FDUTPA.

WLF’s brief argues that the Supreme Court’s decision in *Astra USA, Inc. v. Santa Clara County* bars 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. WLF also contends that federal law permits the claims-data conditions disputed by the hospital and that claims data is needed to ensure the program’s integrity, which aims to benefit low-income patients.

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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