

Big Pharma versus Alameda County: A U.S. Supreme Court Case



In April 2015, the United States Supreme Court is expected to decide whether to hear a case brought by the pharmaceutical industry against an Alameda County, California drug disposal law. The ordinance, the first of its kind in the nation, requires pharmaceutical manufacturers to fund and manage the safe collection and disposal of unwanted medications. The industry lawsuit is based on the dormant Commerce Clause.

How the case began: a timeline

June 2012: The Alameda County Board of Supervisors passes the Safe Drug Disposal Ordinance (SDD).

Dec 2012: Alameda County is sued by three industry trade groups, representing both drug-makers and biotechs. The industry cites the Commerce Clause of the U.S. Constitution as the basis for their case.

Aug 2013: U.S. District Judge Richard Seeborg finds the SDD ordinance to be constitutional.

Sept 2013: The three trade groups appeal the decision to the Federal Court of Appeals.

Sept 2014: The Ninth Circuit Court of Appeals rules in favor of Alameda County, stating that the ordinance does not violate the Commerce Clause.

Dec 2014: The three trade groups ask the Supreme Court to consider the case via a Petition for Writ of Certiorari.

April 2015: The Supreme Court is expected to decide whether it will hear this challenge.

What is the Commerce Clause?

The dormant Commerce Clause of the U.S. Constitution states that local and state governments may not enact regulations that unduly interfere with interstate commerce. This clause has three prongs to consider:

- 1) that the ordinance directly regulates interstate commerce;
- 2) that the ordinance discriminates against interstate commerce; or
- 3) that the ordinance favors in-state economic interests over out-of-state interests.

In this case, the plaintiffs argue that the Alameda County Ordinance creates a discriminatory effect on out-of-state producers (the pharmaceutical companies), who incur the cost of an in-state benefit (disposal in Alameda County).

What are the implications?

If the Supreme Court hears the case

This decision could lead additional industry groups to challenge extended producer responsibility (EPR) legislation. It would take some time, however, before the Supreme Court would issue a ruling on the case. In the interim, the current pharmaceutical EPR laws in Alameda County, King County, WA and San Francisco, CA will continue to be implemented.

If the Supreme Court declines to hear the case

The Ninth Circuit pro-EPR decision will be upheld, paving the way for future EPR legislation around the country for a variety of products, including pharmaceuticals, batteries, tires, carpet, mattresses, and electronics.

If the Supreme Court hears the case, arguments would most likely take place in fall of 2015.

Want to learn more? Visit [PSI's Go-To Guide to Safe Drug Take-Back](#).

PSI will move forward with support for those interested in passing similar legislation.

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