



US Supreme Court Invalidates Vermont's Prescription Restraint Law

The US Supreme Court recently rendered its decision invalidating Vermont's prescription restraint law, which prevented the sale of information about individual doctor's prescribing records without the doctor's permission. IMS Health Inc., SDI Health LLC and Source Healthcare Analytics, three companies that sell this type of information, challenged the Vermont law. The Pharmaceutical Research and Manufacturers of America, the pharmaceutical industry's trade group, also joined the lawsuit, as the Vermont law prohibits pharmaceutical companies from using this information for sales and marketing purposes.

The opinion holds that the law imposes a restraint on information held in the hands of a private speaker, and that even if the information were regarded as governmental, it discriminates on the basis of speakers in a manner that requires "heightened scrutiny." At the close of his opinion, Justice Kennedy anticipates future legislation that may attempt to regulate targeted use of data: "The capacity of technology to find and publish personal information, including records required by the government, presents serious and unresolved issues with respect to personal privacy and the dignity it seeks to secure. In considering how to protect those interests, however, the State cannot engage in content-based discrimination to advance its own side of a debate."

Blank Rome LLP prepared an amicus brief on behalf of fourteen biotechnology industry organizations and their

members on the grounds that Vermont's prohibition on the use of prescriber-identifiable information for the marketing and promotion of prescription drugs impairs not only the rights of the parties to the litigation guaranteed by the First Amendment, but also those of their members, and will harm – rather than protect – the patients whom their members serve. ("Amicus" briefs are submitted by a third party, not a party to a case, who volunteers to offer information to assist a court in deciding a matter before it.)

Pointing out that biotechnology is essentially a small company industry, with a significant majority of member companies employing 50 or fewer workers, those biotechnology organizations are well-situated to inform the Court of how restrictions on the use of prescriber data would detrimentally affect small, innovative biotechnology firms and, more significantly, the public health. Since many of the members are at the forefront of research and development trends that increasingly focus on personalized medicine for patient subpopulations and on rare or orphan diseases and conditions, biotechnology companies must be able to communicate vital information about their biopharmaceutical products to the doctors who treat these patients. The amicus brief argued that Vermont's statutory prohibition on such use is expressly intended to obstruct important communications by biotechnology companies to the medical community about their innovative, and often life-saving, drugs and biologics. The

amicus brief also argued that these restrictions are unconstitutionally overbroad in that they restrict biotechnology companies' right and ability to communicate important safety and effectiveness information regarding their innovative products to targeted physicians hinders quality of patient care and greatly increases the cost of physician identification and education.

Blank Rome prepared the brief in this matter to ensure the critical impact on the biotechnology industry would be brought to the Court's attention. Blank Rome has in-depth understanding of the unique business challenges and opportunities facing the life sciences industry. Blank Rome's Life Sciences Industry Team combines industry and legal experience in a number of sectors, including pharmaceutical, biotech, medical device, research institutions, health care services, health information technology, and venture capital.

Blank Rome's clients include drug and device manufacturers and distributors, pharmaceutical ingredient producers and importers, biotechnology innovators, academic medical centers, research institutions and laboratories, contract research organizations, hospitals and health systems, physician practice groups and financing companies.

Our team is equipped to provide full-service support to the life sciences industry, with its burgeoning marketplace, international regulation, leading technology, and increased competition. Our success in representing clients in the industry covers:

- strong intellectual property protection and defense including technology transfer
- all corporate and transactional matters, large and small
- securities offerings, public and private
- complex lending transactions with the nation's leading players in lending, leasing and specialty finance
- identifying venture capital opportunities
- regulatory advice and compliance matters
- representation of clients in any necessary litigation
- legislative monitoring, advocacy and government relations

Our life sciences team draws on a variety of practices, and members of the group with diverse backgrounds and one goal—we help life sciences companies succeed.

For further information, or for help and questions regarding the application process, please contact your relationship attorney at Blank Rome.

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