

Constitutional law: pam v. state x

Law



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Constitutional Law:

PAM v. State X

PAM is an association of 50 drug manufacturers all of whom are incorporated and reside outside of State X but do business in State X. Each manufacturer has refused to enter into the Drug Act rebate agreements, most drugs being sold over state lines.

PAM claims that a prior authorization severely curtails access to the drugs for Medicaid patients, sharply reducing the drug's market share and sales as the process causes patients to use competing drugs from manufacturers that participate in the rebate and are not subject to prior approval. On behalf of its members, PAM brought an action in the appropriate United States District Court against State X claiming that the Drug Act requiring rebates from drug manufacturers is unconstitutional.

There was a similar suit as PAM's which went before the Supreme Court for a writ of certiorari, in the case PhRMA v. Maine. According to Ranjan (2002), "The Pharmaceutical Research and Manufacturers of America ('PhRMA')... filed suit in the District Court of Maine."

Ranjan (2002) states that PhRMA argued that: "(1) the prior authorization provision was preempted by federal Medicaid law; and (2) the mandatory rebate provision was an extraterritorial regulation in violation of the dormant commerce clause of the Constitution."

PAM's claim that the Drug Act is unconstitutional seems basically correct.

The crux of the argument is that basically prior authorization would seem to limit, at least in part or in full, access to drugs for Medicaid patients and even deny Medicaid patients the safest and most efficacious drug therapy.

Additionally, another factor to consider is that the dormant commerce clause
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of the Constitution. This basically states that there can be no interference of the states in interstate commerce.

Therefore, it seems like the court would decide in PAM's favor.

However, the heart of the issue must not center around the legality or relative validity of State X's Rx program which would basically subsidize the costs of medications for people not on Medicaid.

What issue truly needs to be addressed here is if prior authorization is indeed somehow restricting access to drugs for Medicaid and non-Medicaid patients.

One problem is that PAM really has no foundational basis for their claims. From a purely procedural context of the case, the court should not base whether the prior authorization of these drugs—a function of part of State X's program—is legal or not.

This seems like an absurdity, but truly, this is done in order to protect the interests of State X. State X may not be able to legislate the interference of commerce between states.

The strict liability, however, remains with State X to ensure that patients receive their medications at a reduced cost. This is irregardless of the fact that the Drug Act mandates these rebates.

Again, what is at issue is not the legality of State X's subsidized drug program. What is at stake is the constitutionality of such a program.

In the view of the court, PAM's case would most likely either be thrown out of court, or the defendant (State X) would win the case.

REFERENCES

Ranjan, J. N. (2002). Medicaid and the unconstitutional dimensions of prior

authorization.

Available: <http://www.encyclopedia.com/doc/1G1-99555197.html>.