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Pharmaceutical Industry Must Pay for Drug Take-Back Programs

By Ed Silverman

US Supreme Court lets stand a California county law for disposing of unwanted meds, but PhRMA says 'don't flush.'

In a setback to drug makers, the U.S. Supreme Court denied an industry [request](#) to review a lawsuit filed over a drug take-back program in Alameda County, California. The pharmaceutical industry had been fighting a three-year-old ordinance that requires drug makers to underwrite the costs of a program in which consumers can drop off unwanted medicines.



Agence France-Presse/Getty Images

Fearing still more local governments would pass such ordinances and create added expenses, three industry trade groups filed a [lawsuit](#) and argued the local law was unconstitutional. In their view, the Alameda ordinance violates interstate commerce and also discriminates against out-of-state companies by unfairly shifting costs to drug makers. The trade groups had [lost](#) two previous rounds in court.

Experts say [the decision](#) by the U.S. Supreme Court to let the Alameda ordinance stand may mean that other counties and cities are more likely to consider establishing take-back programs that require drug makers to pick up the tab. Since Alameda passed its ordinance, in fact, three other counties – two in California and one in Washington – have adopted similar laws.

“I think we’ll see a groundswell of both local and state governments” consider ordinances, says Scott Cassel, chief executive at the Product Stewardship Institute, a nonprofit that supports drug take-back programs. He recently calculated that at least a dozen other local governments around the country are considering similar legislation, including nine other California counties.

To what extent this will quickly become a national movement is unclear, though.

The federal appeals court that upheld the Alameda County ordinance has jurisdiction for California and Washington, notes Jayni Foley Hein, policy director at the Institute for Policy Integrity at the New York University School of Law. As a result, “if a city or county outside that jurisdiction writes a similar ordinance, it could be challenged in court and a different appeals court could rule differently,” she says.

A spokeswoman for the Pharmaceutical Research & Manufacturers of America, which sought a Supreme Court review, wrote us that “we will continue to actively work with all relevant stakeholders to educate consumers on the appropriate use of medicines, including providing information about safeguarding medicines [in the home](#) and promoting safe, secure and effective methods for disposal.”

In crafting their ordinance, Alameda County officials sought to reduce contaminants in drinking water and lower the threat of drug abuse stemming from drugs that linger in household medicine chests. But local officials complained that, in the absence of state action, the costs threatened to overwhelm their budgets. The county estimated annual operational costs at about \$300,000.

The county argued that drug makers are capable of underwriting the program, since the companies generate substantial revenue doing business in the county. Sales of prescription medicines in Alameda County amounted to approximately \$960 million in 2010, according to Arthur Shartsis, an attorney who represented the county in the legal battle with the pharmaceutical industry.

For its part, the industry trade groups – which also represented biotechs and generic drug makers – had maintained there was no reason to mandate that drug makers pay for take-back programs since consumers can dispose of unwanted medicines at home. In court documents, the trade groups argued the annual cost of the Alameda program may cost up to \$1 million.

To date, several bills have been introduced in state legislatures in recent years – including in New York and California – to adopt similar bills requiring drug makers to pay expenses. However, those bills never gained traction, although the New York bill remains active, Cassel notes.