

Supreme Court could weigh local mandates on drug makers | WashingtonExaminer.com

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Photo - Drug makers aren't contesting the value of disposal programs -- they just don't want to pay for them.
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Drug makers aren't contesting the value of disposal programs -- they just don't want to pay for...

San Francisco has become the first U.S. city to require drug companies to pay for the disposal of their products, even as the issue simmers before the Supreme Court.

The city is now the third locality with such a law, which went into effect Friday, and other counties are eyeing similar steps. The new measures irk drug makers, but they're also arguing they could lead to requiring all sorts of manufacturers — like makers of tires or batteries— to pay for safe disposal programs.

"These statutes are taking off, we see there's a movement in California to expand beyond the pharmaceutical industry," said Mit Spears, general counsel for Pharmaceutical Research and Manufacturers of America.

"This is the first time where a county or local government has reached out and forced companies in another state to provide a service to their local residents," Spears said. Last fall, PhRMA and two other drug associations lost a lawsuit in the U.S. Court of Appeals for the Ninth Circuit against the first of such laws, this one in Alameda County, California, and the Supreme Court is expected to say next month whether it will hear the case.

Drug disposal programs aren't new — many localities run them — but until now, drug makers haven't had to pay for them.

Advocates for the new laws say they're important for combatting the rising problem of prescription drug abuse and ensuring drugs don't end up in the water supply when people flush them. Since drug companies profit from selling drugs, they should also shoulder corresponding safety costs, they say.

"Why is it fair to privatize 100 percent of the profits and socialize 100 percent of the costs?" said Heidi Sanborn, director of the California Product Stewardship Council. "These are the same companies that don't like taxes, don't want fees, don't like big government, and we're offering them a program where they get to write their own regulations."

The laws require drug makers to set up drop-off sites around the county or city where local residents may bring unused and expired medications, although companies can hammer out the details on how to accomplish that.

Drug makers aren't contesting the value of disposal programs — they just don't want to pay for them and they're arguing that requirement is unconstitutional. One thing is clear: the measures forge new ground by shifting the cost of drug disposal from taxpayers to manufacturers.

Business groups, including the U.S. Chamber of Commerce, have filed briefs supporting the drugmakers' case. They say the new disposal programs create a new precedent whereby localities could require manufacturers of other products like tires, batteries or mattresses to do the same.

"There are so many different products that have potential to be regulated the same way," said Mark Chenoweth, general counsel for the conservative Washington Legal Foundation.

But that would be a good thing, says Nate Miley, the Alameda County Board of Supervisors member who guided the law to passage.

"I think any product that is difficult or challenging for the consumer to dispose of or that would create a public health or environmental issue needs to be disposed of," he said. "And the manufacturers need to take on that responsibility to ensure it's happening."

The laws are just starting to take off in the U.S., although they already exist in Canada, Mexico and several European countries. Besides Alameda County and San Francisco, King County in Washington State — which includes Seattle — has also passed a mandatory disposal program.

This week, the board of supervisors in Marin County, California asked the county's health department to draft a measure similar to the one in Alameda. Public health officer Matt Willis said there has been lots of talk among health officials around the state about following suit.

"I think there's a lot of momentum behind this," Willis said.

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