

MEDIA MENTION

Wiley Rein Receives "Brief of the Week" Honors for Work on High-Profile Supreme Court Case

The National Law Journal
April 20, 2011

The National Law Journal's Supreme Court Insider granted "Brief of the Week" honors to the *amicus curiae* brief filed by Wiley Rein senior partner Bert W. Rein in the pending Supreme Court case *Sorrell v. IMS Health Inc.* Food & Drug and Product Safety Practice chair James N. Czaban and partner Karyn K. Ablin joined in the drafting of the brief. The firm represents the patient advocacy groups Genetic Alliance and the National Organization for Rare Disorders (NORD) in the high-profile First Amendment case.

At issue in *Sorrell* is a challenge to a Vermont law that prohibits drug companies from marketing their products using data collected, analyzed, and distributed by IMS Health and other companies, showing which drugs individual doctors have prescribed, and the volume of such prescriptions, but without revealing any private patient information. Drug companies use this information to identify doctors who may not be aware of new breakthrough treatments for serious, life-threatening, and rare diseases, and to direct educational marketing efforts toward such doctors. In the *amicus* brief, Mr. Rein argues that "patients have a critical interest in ensuring that their doctors are fully informed about all current treatment options that could save or meaningfully improve their lives," and that the Vermont law violates the First Amendment by seeking to limit the free flow of truthful and non-deceptive information about new medicines to prescribers and patients.

Related Professionals

Bert W. Rein
Founder
202.719.7080
brein@wiley.law

Practice Areas

Food & Drug
Issues and Appeals

Vermont claims that its law is a public health measure that does not infringe First Amendment free speech rights, but in an interview for the NLJ article, Mr. Rein explains the First Amendment issue using a "tangible hypothetical: Suppose a state decides that shoes with six-inch heels are dangerous for women to wear. To combat the problem, the state bans 'all those glossy ads' in magazines advertising the shoes ... That would be a First Amendment problem, to be sure."

The brief further argues that Vermont cannot identify a state interest that is sufficient to justify limiting the flow of information to prescribers and their patients, and that the state's alleged interest in prescriber and patient privacy is neither based on meaningful privacy interests nor linked to any meaningful advancement of such interests. Moreover, the brief argues, the Vermont law will have a chilling effect on future development of breakthrough therapies. However, Mr. Rein said in the NLJ interview, "de-emphasizing R&D is not a good idea. This is a case people really care about."

Oral arguments in *Sorrell v. IMS Health* will be heard at the Supreme Court on April 26, with a decision likely in late Spring.

For more information, please contact Bert W. Rein at 202.719.7080 or brein@wiley.law.