Rutledge v. PCMA, No. 18-540 (U.S.):
One Pager on Unanimous Decision Reversing Eighth Circuit

The Supreme Court of the United States on Dec. 10, 2020 issued a unanimous decision in *Rutledge v. PCMA*, No. 18-540 (https://www.supremecourt.gov/opinions/20pdf/18-540_m64o.pdf), holding that a federal law, the Employee Retirement Income Security Act of 1974 (ERISA), does not prevent states from enacting laws regulating the abusive payment practices of pharmacy benefit managers, the controversial middlemen that manage prescription drug benefits for health insurers, Medicare Part D drug plans, and large employers.

The 8-0 decision (Justice Barrett did not participate) is a resounding victory for patients and community pharmacies, which have been fighting for years to regulate PBMs. The Pharmaceutical Care Management Association, the lobbying arm of the PBM industry, had argued that ERISA preempts Act 900, an Arkansas law that includes rate regulation and enforcement provisions to ensure that PBMs compensate pharmacists fairly for the medications they dispense to patients.

In her opinion for the Court, Justice Sotomayor explained that nothing in ERISA prevents states from enacting laws that regulate the rates that PBMs pay pharmacies: "Act 900 is merely a form of cost regulation. It requires PBMs to reimburse pharmacies for prescription drugs at a rate equal to or higher than the pharmacy's acquisition cost. PBMs may well pass those increased costs on to plans . . . . But 'cost uniformity was almost certainly not an object of [ERISA] pre-emption.'" Op. at 6.

The Court also rejected PCMA's arguments that Act 900's enforcement mechanisms were impermissible because they affect how PBMs administer benefits on behalf of ERISA plans. As Justice Sotomayor explained, Act 900's enforcement mechanisms "do not require [ERISA] plan administrators to structure their benefit plans in any particular manner, nor do they lead to anything more than potential operational inefficiencies" for PBMs. Op. at 7-8. Moreover, if Arkansas's enforcement mechanisms were deemed preempted, the state would have no way to ensure "compliance with Act 900's cost regulation." Op. at 8 n.3.

The Supreme Court's decision is the culmination of a years-long effort led by the Arkansas Pharmacists Association and the National Community Pharmacists Association to hold PBMs accountable for their abusive practices, which have needlessly restricted patient access to life-saving medications and added billions of dollars annually in unnecessary costs that are ultimately borne by hard-working Americans.

APA helped secure passage of the Arkansas law that the Supreme Court reviewed, and APA and NCPA provided support to the state throughout the litigation — at the trial court, the intermediate appellate court, and then the Supreme Court. APA and NCPA also filed an *amici curiae* ("friends of the Court") brief — along with the American Pharmacists Association, the National Alliance of State Pharmacy Associations, and all state pharmacist associations — educating the Court on abusive PBM practices. And APA and NCPA were joined by a diverse coalition of other *amici curiae* filing their own briefs defending Arkansas's law, including the United States government, forty-five other states, the American Medical Association, and the AARP.

For all these reasons, it is no surprise that nearly every state — red and blue — has enacted laws regulating PBMs. It is also why the federal government and nearly every state — from Texas to California — argued in defense of Arkansas' law in the Supreme Court.

PBMs are middlemen who have secretly put their own interests and record-breaking profits above the patients and plans that they are supposed to serve. The Supreme Court just cleared the way for state laws like Arkansas to police PBMs' abusive behavior and protect patient access to affordable medications. This is a historic victory for pharmacists and their patients.