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Supreme Court hints that Vermont's prescription data laws violate free speech

Several Supreme Court justices strongly suggested recently during oral arguments that Vermont's attempt to restrict the use of drug prescription records for marketing purposes violates corporate free-speech rights. Vermont's law is aimed at so-called data miners, companies that buy prescription records from pharmacies — minus patient identifying information — and sell them to drug makers.

The drug companies use the information to target doctors to try to persuade them to order the companies' products. Vermont Assistant Attorney General Bridget C. Asay told the court that the

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state's interest is to "allow doctors to decide whether this information that they're compelled to provide to pharmacies may be used in marketing that is directed at them."

But skeptical justices hurled a barrage of questions in return, asking whether the state's goal was simply to make it harder for drug manufacturers to convince doctors that their drugs should be prescribed instead of cheaper generic drugs.

"The state is interested in promoting the sale of generic drugs and correspondingly to reduce the sale of brand-name drugs," Justice Ruth Bader Ginsburg said. "And if that's the purpose, why doesn't that run up against what this court has said — that you can't lower the decibel level of one speaker so that another speaker, in this case the generics, can be heard better?"

Asay insisted that drug manufacturers are still free to pitch any message they want, but that doctors don't want their histories of prescriptions to be used to target them. The Vermont law lets individual doctors "opt out" of having their prescription histories sent to the drug manufacturers.

There's no doubt that pharmaceutical companies have an easier time if they have such information, she said, but "they have no First Amendment right to demand it, just as they have no right to demand access to the doctor's tax returns, his patient files, or to their competitors' business records."

The federal government and 35 states are siding with Vermont in the fight, which has split lower federal courts.

The case is Sorrell v. IMS.

Source: [The New York Times](#)

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