



Announcement of Amicus Curiae Brief Filing
PLAC Files Amicus Brief Urging Maryland Supreme Court
to Reject Invitation to Expand Public Nuisance Law

Case Name: *Express Scripts, Inc., et al. v. Anne Arundel County, Maryland*, No. SCM-MISC-0001-2025.

Brief Writers Names: Phil Goldberg, Cary Silverman, and Jacob Bennett of Shook, Hardy & Bacon L.L.P. (with assistance from PLAC coordinator David R. Geiger of Foley Hoag LLP).

Date Brief Filed: May 29, 2025

Beneficial Parties for the Brief: Express Scripts, Inc.; Express Scripts Pharmacy, Inc.; Express Scripts Administrators, LLC; ESI Mail Pharmacy Service, Inc.; Medco Health Solutions, Inc.; Caremark PCS Health, LLC; Caremark, LLC; Maryland CVS Pharmacy, LLC; CVS Pharmacy, Inc.; and OptumRx., Inc.

The brief was filed in coordination with the Chamber of Commerce of the United States of America, the Maryland Chamber of Commerce, and the American Chemistry Council.

Issues or Questions Briefed: Under Maryland’s common law, can the licensed dispensing of, or administration of benefit plans for, a controlled substance constitute an actionable public nuisance?

Arguments Advanced by PLAC: PLAC argued that the Court’s should answer “no” to the certified question and urged the Court to maintain established principles of public nuisance law, which is a property-based, not product-based, tort. PLAC argued that public nuisance law provides governments with the ability to stop disruptive activities that unlawfully interfere with the public’s right to use communal property, such as blocking a public roadway or permitting criminal activity on a property that poses a danger to the public. PLAC argues that lawsuits

seeking to recover costs associated with societal harms associated with lawful products do not meet the longstanding elements of a public nuisance cause of action. Rather, governments have attempted to use public nuisance claims to circumvent product liability and other bodies of law. PLAC's brief demonstrates that courts across the county have repeatedly found that public nuisance law does not extend to manufacturing, selling, or otherwise providing products. Rather, product liability law governs risks associated with products after they are sold.

Argument Date: Not set yet.