

112TH CONGRESS
1ST SESSION

H. RES. 343

Expressing disapproval of the decision by the Supreme Court in *Sorrell v. IMS Health Inc.*

IN THE HOUSE OF REPRESENTATIVES

JULY 8, 2011

Mr. MARKEY submitted the following resolution; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

RESOLUTION

Expressing disapproval of the decision by the Supreme Court in *Sorrell v. IMS Health Inc.*

Whereas the majority opinion issued by the Supreme Court on June 23, 2011, in *Sorrell v. IMS Health Inc.*, incorrectly applied a heightened First Amendment standard of review to a Vermont statute that lawfully regulated purely economic activity;

Whereas the Vermont statute's only negative impact on expression is on the ability of pharmaceutical companies and data-mining companies to develop their sales and marketing strategies, a concern which is far outweighed by the law's intent to protect privacy, improve public

health, lower healthcare costs, and prevent doctors from being unduly influenced in their prescribing habits;

Whereas the Vermont statute restricted the sale of prescriber-identifying information for marketing or drug promotion purposes when the prescribing physician had not consented to the sale of the information;

Whereas the Vermont statute did not restrict the sale of prescriber-identifying information for safety related purposes, such as clinical trials and recalls, or health care research;

Whereas data-mining drives up health care costs, as pharmaceutical companies develop targeted advertising that encourages doctors to prescribe more expensive brand name drugs over alternative options that would be equally effective and more moderately priced;

Whereas the dissenting opinion in Sorrel stated that “The far stricter, specially ‘heightened’ First Amendment standards that the majority would apply to this instance of commercial regulation are out of place here.”;

Whereas the dissenting opinion in Sorrel stated that “The Court has also normally . . . taken account of the need in this area of law to defer significantly to legislative judgment”;

Whereas the dissenting opinion in Sorrel stated that “until today, this Court has never found that the First Amendment prohibits the government from restricting the use of information gathered pursuant to a regulatory mandate—whether the information rests in government files or has remained in the hands of the private firms that gathered it.”; and

Whereas the dissenting opinion in Sorrell stated that the Supreme Court has never “previously applied any form of ‘heightened’ scrutiny in any even roughly similar case.”: Now, therefore, be it

1 *Resolved*, That the House of Representatives—

2 (1) disapproves of the majority opinion in
3 Sorrell v. IMS Health Inc., because it puts pre-
4 scribers at risk of having their prescriber-identifying
5 information sold without their knowledge or consent;

6 (2) believes that the Supreme Court incorrectly
7 applied a “heightened” First Amendment standard
8 of review to an instance of commercial regulation;

9 (3) believes that the negative impact on a phar-
10 maceutical manufacturer’s ability to market their
11 products is outweighed by the interests of patient
12 safety, doctor privacy, and health care costs; and

13 (4) believes that the States have the right to
14 regulate the pharmaceutical industry based on what
15 they believe is best for the health and safety of their
16 residents.

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