

SUPREME COURT OF MARYLAND

Express Scripts, Inc., et al. v. Anne Arundel County, Maryland

Express Scripts, Inc. v. Anne Arundel County, Maryland, Misc. No. 1, Sept. Term, 2025 (Md. Mar. 23, 2026) ·
No. Misc. No. 1, September Term, 2025 · Decided March 23, 2026

SUMMARY

The Supreme Court of Maryland answered certified questions from the United States District Court for the District of Maryland concerning whether the licensed dispensing of opioids or administration of opioid-related pharmacy benefit plans can constitute an actionable public nuisance. The Court held that such conduct does not constitute an actionable public nuisance under Maryland common law, concluding that the County’s allegations did not show interference with a common public right and that Maryland has not recognized government recovery of damages for public nuisance. The Court also emphasized the extensive federal and state regulatory framework governing pharmacies, opioid distribution, and pharmacy benefit managers.

CASE DETAILS

COURT	Supreme Court of Maryland
WRITING FOR THE COURT	Booth, J.; Fader, C.J.; Watts, J.; Biran, J.; Gould, J.; Eaves, J.; Killough, J.
JURISDICTION	Supreme Court of Maryland
DECIDED	March 23, 2026
DOCKET	Misc. No. 1, September Term, 2025
DISPOSITION	other
PROCEDURAL POSTURE	The United States District Court for the District of Maryland certified two questions of Maryland law concerning whether the licensed dispensing of opioids or administration of opioid benefit plans can constitute an actionable public nuisance and, if so, the elements and available remedies.
STANDARD OF REVIEW	De novo review of certified questions of Maryland law; factual allegations in the certification order and operative complaint were accepted for purposes of answering the questions.
PRECEDENTIAL VALUE	Published and precedential opinion of the Supreme Court of Maryland answering certified questions of Maryland common law.

PARTIES

Express Scripts, Inc., Express Scripts Administrators, LLC, Medco Health Solutions, Inc., ESI Mail Pharmacy Service, Inc., Express Scripts Pharmacy, Inc., OptumRx, Inc., CaremarkPCS Health, L.L.C., Caremark, L.L.C., Maryland CVS Pharmacy, L.L.C., CVS Pharmacy, Inc. v. Anne Arundel County, Maryland

TOPICS

nuisance municipal law health law remedies appellate procedure

PRACTICE AREAS

torts municipal law health law remedies appellate procedure

QUESTIONS PRESENTED

1. Under Maryland common law, can the licensed dispensing of, or administration of benefit plans for, a controlled substance constitute an actionable public nuisance?
2. If such conduct could constitute a public nuisance, what are the elements of the claim and what relief may a local-government plaintiff seek?

HOLDINGS

1. No. The licensed dispensing of, or administration of benefit plans for, a controlled substance does not constitute an actionable public nuisance under Maryland common law.
2. Maryland has not recognized a government actor's ability to recover damages for a public nuisance affecting the public generally.
3. Even if the County could establish interference with a public right, the Court would decline to expand the common law of public nuisance to address the challenged opioid-related conduct.

KEY QUOTATIONS

“The Supreme Court held that the licensed dispensing of, or administration of benefit plans for, a controlled substance does not constitute an actionable public nuisance under Maryland common law.” (Opinion at 1-2)

“Common law public nuisance is an inapt vehicle to address complex societal problems, which are best left to the legislative branch.” (Opinion at 2)

FACTUAL BACKGROUND

Anne Arundel County sued pharmacy-benefit managers, mail-order pharmacies, and retail pharmacies, alleging that they collaborated with opioid manufacturers, promoted opioid use, placed opioids on formularies with preferred status, and filled opioid prescriptions in excessive quantities or in an unsafe manner. The County asserted that these activities caused or maintained a public nuisance and sought damages for past, present, and anticipated public-service costs associated with opioid misuse, as well as injunctive and abatement relief. The defendants operated within extensive federal and Maryland licensing and regulatory schemes governing

pharmacies, pharmacy-benefit managers, controlled substances, prescribing, dispensing, and prescription monitoring.

PROCEDURAL HISTORY

Anne Arundel County filed a single public-nuisance claim in the United States District Court for the District of Maryland against pharmacy-benefit managers, mail-order pharmacies, and retail pharmacies. The County alleged that the defendants promoted, facilitated, and dispensed opioids in a manner that caused or maintained a public nuisance and sought injunctive relief, abatement costs, compensatory damages, fees, and related relief. The District Court certified questions to the Supreme Court of Maryland, which accepted the facts alleged for purposes of answering the questions.

DISPOSITION

other

CASES CITED

- United Bank v. Buckingham, 472 Md. 407, 412-13 (2021)
- Rutledge v. Pharmaceutical Care Management Association, 592 U.S. 80, 83-84 (2020)
- Gonzales v. Raich, 545 U.S. 1, 10, 12-14 (2005)
- Adams v. Commissioners of Trappe, 204 Md. 165, 170-72 (1954)
- Caine v. Cantrell, 279 Md. 392, 399 (1977)
- Whitaker v. Prince George's County, 307 Md. 368, 372-79 (1986)
- Tadjer v. Montgomery County, 300 Md. 539, 551-54 (1984)
- Rosenblatt v. Exxon Co., U.S.A., 335 Md. 58, 79-80 (1994)
- State ex rel. Bohon v. Feldstein, 207 Md. 20, 34-35 (1955)
- Becker v. State, 363 Md. 77, 87-93 (2001)
- Wietzke v. Chesapeake Conference Ass'n, 421 Md. 355, 373-74 (2011)
- Houck v. Wachter, 34 Md. 265, 269 (1871)