

**09-1273 ASTRA USA, INC. V. SANTA CLARA COUNTY, CA**

DECISION BELOW: 588 F.3d 1237

LOWER COURT CASE NUMBER: 06-16471

**QUESTION PRESENTED:**

Section 340B of the Public Health Service Act, 42 U.S.C. § 256b, imposes a ceiling price that limits the prices that drug manufacturers may charge for drugs sold to specified health care facilities and entities, known as 340B entities. Section 340B requires the Secretary of Health and Human Services to enter into contracts setting forth the Act's pricing restrictions, and drug manufacturers are required to enter into those contracts as a condition of participation in Medicaid. 42 U.S.C. §§ 1396b(1)(10), 1396r-8(a)(1) & (b)(1)(A).

In the decision below, the Ninth Circuit held that the more than 2,700 covered 340B entities within the territory covered by the circuit have a private right of action under "federal common law" to enforce the Act's pricing requirements, even though the Act itself contains no express or implied private right of action. In direct conflict with the decisions of the Second, Sixth, and Tenth Circuits, the Ninth Circuit held that, notwithstanding the absence of a private right of action under the Act, a plaintiff may circumvent congressional intent under a federal common law claim that the plaintiff is a third-party beneficiary of a contract that embodies statutory requirements.

The question presented is whether, in the absence of a private right of action to enforce a statute, federal courts have the federal common law authority to confer a private right of action simply because the statutory requirement sought to be enforced is embodied in a contract.

JUSTICE KAGAN TOOK NO PART

CERT. GRANTED 9/28/2010