

Comment Of Senator Patrick Leahy (D-Vt.),
Chairman, Senate Judiciary Committee,
On Supreme Court Decision In Sorrell v. IMS Health Inc.
June 23, 2011

“Today the Supreme Court has overturned a sensible Vermont law that sought to protect the privacy of the doctor-patient relationship. This divided ruling is a win for data miners and large corporations and a loss for those of us who care about privacy not only in my home state of Vermont but across the nation. States like Vermont must be able to protect the privacy of sensitive information exchanged between a doctor and patient. This decision undermines that ability, and risks unduly influencing doctors in their future prescription choices.

“This decision is another example of this Court using the First Amendment as a tool to bolster the rights of big business at the expense of individual Americans. I am reminded of the Court’s decision in *Citizens United*, where this Court overturned a century of campaign finance law to give corporations more power in our elections.

“Vermonters value their privacy, but today’s decision will affect more than just Vermont. State legislatures should be allowed to protect their citizens’ privacy rights over corporate interests in profits.”

#####

BACKGROUND: The Supreme Court’s 6-3 decision today in Sorrell v. IMS Health Inc. overturned a Vermont statute which prevented data miners from selling prescription information to pharmaceutical companies. Justice Breyer wrote the dissent, which was joined by Justices Ginsburg and Kagan. Notably, Justice Breyer wrote, “Until today the Court has never found that the First Amendment prohibits the government from restricting the use of information gathered pursuant to a regulatory mandate.” He further warned, “At best the Court opens a Pandora’s Box of First Amendment challenges to many ordinary regulatory practices that may only incidentally affect a commercial message. See, e.g., supra, at 7–8, 9–11. At worst, it reawakens Lochner’s pre-New Deal threat of substituting judicial for democratic decision making where ordinary economic regulation is at issue.” (Citations omitted).