

No. 26-50192

IN THE
**United States Court of Appeals
for the Fifth Circuit**

AMERICAN BEVERAGE ASSOCIATION;
CONSUMER BRANDS ASSOCIATION; NATIONAL CONFECTIONERS
ASSOCIATION; FOOD MARKETPLACE, INCORPORATED,
doing business as FMI—The Food Industry Association,
Plaintiffs-Appellees,

v.

KEN PAXTON, Attorney General, State of Texas,
Defendant-Appellant.

On Appeal from the United States District Court
for the Western District of Texas, No. 6:25-cv-566

**BRIEF OF THE CHAMBER OF COMMERCE OF
THE UNITED STATES OF AMERICA AS *AMICUS CURIAE*
SUPPORTING PLAINTIFFS-APPELLEES**

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Certificate of Interested Persons

The undersigned counsel of record for *amicus curiae* certifies that the following listed persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1, in addition to those listed in the parties' Certificates of Interested Persons, have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

Amicus: The Chamber of Commerce of the United States of America ("Chamber") is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber.

Counsel for Amicus: Jeffrey S. Bucholtz and Matthew V.H. Noller of King & Spalding LLP and Andrew R. Varcoe and Jonathan D. Urick of the Chamber of Commerce of the United States of America.

Date: August 10, 2026

/s/ Jeffrey S. Bucholtz
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Interest of *Amicus Curiae*¹

The Chamber of Commerce of the United States of America (“Chamber”) is the world’s largest business organization. As the nation’s leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation’s business community.

Chamber members speak on many issues and promote their products and services using all manner of communications. The Chamber supports the First Amendment rights of its members to participate fully in the marketplace of ideas free from improper government regulation, including unwarranted compelled-speech mandates. That gives the Chamber a strong interest in this case, in which the district court

¹ No counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amicus curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

correctly held that section 9 of Texas Senate Bill 25 compels speech in violation of the First Amendment. This Court's review of the district court's decision is important not only for Chamber members that are directly or indirectly affected by section 9, but could have important consequences for First Amendment cases affecting other sectors of the business community, including many Chamber members.

Introduction and Summary of Argument

The district court correctly enjoined enforcement of section 9 of Texas Senate Bill 25, which unconstitutionally compels private companies to repeat a government-scripted warning if their food product contains any one of forty-four specified ingredients. The warning is as follows:

WARNING: This product contains an ingredient that is not recommended for human consumption by the appropriate authority in Australia, Canada, the European Union, or the United Kingdom.

Tex. Health & Safety Code § 431.0815(a) & (b); *see also id.* §§ 431.0816, 431.0817.

This unusual government-compelled warning (the Chamber is not aware of another remotely like it) is presumably intended to steer consumers away from food products containing one or more of the forty-

four specified ingredients. But the warning is notable for how little information it provides to consumers. The warning generically calls out only “an ingredient,” without informing the consumer *which* ingredient or ingredients in the food product are among the forty-four specified ingredients. Likewise, the warning does not tell the consumer in which of the four foreign jurisdictions the (unidentified) ingredient is “not recommended.” Nor does it define “not recommended,” which could connote, among other things, the absence of an affirmative recommendation in favor of consumption, the existence of a negative recommendation against consumption, or a ban. And the warning tells the consumer nothing at all about *the reason why* the (unidentified) ingredient is “not recommended” by the (unidentified) foreign jurisdiction. What’s more, the law is internally inconsistent (*e.g.*, it says it doesn’t apply to ingredients expressly permitted in the U.S. food supply, but the list of forty-four ingredients includes many such ingredients) and contains significant errors (*e.g.*, it includes ingredients that are not even permitted in food in the United States).

Despite the lawfulness of almost all the ingredients in Texas and the United States, section 9 privileges the views (or perceived views) of a

few *foreign* authorities. That puts Texas in the dubiously unique First Amendment position of compelling food companies to convey a highly questionable message to consumers that does not even reflect the view of Texas.

The mandatory warning is also confusing as to what “not recommended for human consumption” means, and whether all four of the listed foreign authorities purportedly agree on the ingredient’s status. The confusion is manifested in the Texas legislature’s explanation of the law. Two months after Senate Bill 25 was signed by the Governor and more than two months after it was passed in the House and Senate, the Senate’s Bill Analysis declared that the law “[i]ncludes a set list of ingredients *banned* in Australia, the UK, the EU, *and* Canada to be used for labeling purposes.” Senate Rsch. Ctr., No. SRC-CES S.B. 25 89(R), Bill Analysis 1-2 (Aug. 20, 2025), <https://capitol.texas.gov/tlodocs/89R/analysis/pdf/SB00025F.pdf> (emphasis added). That is incorrect. Whatever the legislature’s belief or intent may have been, very few listed ingredients are banned in all four of these foreign jurisdictions, and there is little consensus among the four foreign authorities as to most of them. *See* Plaintiffs’ Br. 9.

Texas defends section 9 on the ground “that the government may sometimes ‘requir[e] the dissemination of purely factual and uncontroversial information’ . . . in the context of ‘commercial advertising.’” *303 Creative LLC v. Elenis*, 600 U.S. 570, 596 (2023) (quoting *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp.*, 515 U.S. 557, 573 (1995)). But section 9’s mandated warning is not “purely factual and uncontroversial,” and it compels content- and speaker-based speech that is *not* directed at unlawful, false, or misleading advertising. The required warning is thus subject to heightened First Amendment scrutiny. And as the district court held, section 9 cannot survive that scrutiny. If Texas believes consumers should pay more heed to what Texas thinks a foreign government has said about food safety than to our own Food and Drug Administration, Texas is free to communicate that view at its own expense. But Texas is not free to force companies to devote their own resources to communicating that non-self-evident (and obviously controversial) view, much less to convey a confusing and misleading message that mischaracterizes what foreign governments have done.

For these and other reasons, as detailed below and in the other briefs filed by Plaintiffs and their *amici*, this Court should affirm the

district court’s order preliminarily enjoining section 9.

Argument

I. Section 9 is subject to heightened First Amendment scrutiny.

The district court correctly held that section 9 is subject to heightened scrutiny under the First Amendment. The “freedom of speech includes both the right to speak freely and the right to refrain from speaking at all.” *Janus v. Am. Fed’n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 892 (2018) (cleaned up). By compelling companies “to speak . . . when [they] would prefer to remain silent,” section 9 violates that cardinal constitutional command. *303 Creative*, 600 U.S. at 586-87.

Indeed, laws compelling speech are “*presumptively* unconstitutional.” *Nat’l Inst. of Fam. & Life Advocates v. Becerra (NIFLA)*, 585 U.S. 755, 766 (2018) (emphasis added) (quoting *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015)). That is because “government-compelled speech inherently regulates speech on the basis of its content.” *RJ Reynolds Tobacco Co. v. FDA*, 96 F.4th 863, 876 (5th Cir. 2024); *see also X Corp. v. Bonta*, 116 F.4th 888, 900 (9th Cir. 2024) (“When a state ‘compel[s] individuals to speak a particular message,’ the state ‘alter[s] the content

of their speech,’ and engages in content-based regulation.” (quoting *NIFLA*, 585 U.S. at 766)). Any “government regulation compelling individuals to speak a particular message,” therefore, “is a content-based regulation that is subject to strict scrutiny.” *Green v. Miss U.S. of Am., LLC*, 52 F.4th 773, 791 (9th Cir. 2022) (cleaned up).

Section 9 is no different. It requires companies to speak on a particular topic—foreign regulation of food ingredients—in a way that no manufacturer would do absent government compulsion. And section 9 does so precisely to advance Texas’s paternalistic view that its citizens cannot make informed decisions about what they eat without being told what a small set of foreign governments think (or, in many cases, what Texas mistakenly *thinks* these governments think) about food ingredients. Such a content-based regulation of companies’ speech is subject to strict scrutiny.

Texas argues that strict scrutiny does not apply because section 9 regulates commercial speech, but “regulation of commercial speech that is not content-neutral is still subject to strict scrutiny.” *Int’l Outdoor, Inc. v. City of Troy*, 974 F.3d 690, 703 (6th Cir. 2020); *see also Sorrell v. IMS Health Inc.*, 564 U.S. 552, 571 (2011) (holding that “content-based

burden[s] on protected expression” are subject to “heightened scrutiny” even if they regulate only commercial speech). Without heightened scrutiny, States could compel companies to endorse any number of highly political statements about their products as a condition of selling those products in the State, and “basically any compelled disclosure by any business about its activities would be commercial and subject to a lower tier of scrutiny.” *X Corp.*, 116 F.4th at 902. Texas could require book publishers to declare that certain books are “offensive,” “deviate,” or “[in]decen[t].” *Book People, Inc. v. Wong*, 91 F.4th 318, 325-26, 339-40 (5th Cir. 2024) (quotation marks omitted) (enjoining a similar Texas law). Or California could require social media companies to state that the speech on their platforms is harmful to children. *See NetChoice, LLC v. Bonta*, 113 F.4th 1101, 1119-22, 1125 (9th Cir. 2024) (enjoining a California law doing that). Permitting such laws would expose the marketplace for ideas to rampant government distortion and would all but eliminate the prohibition on compelled speech for private companies.

Strict scrutiny thus applies to section 9, and Texas correctly does not contend that it can satisfy strict scrutiny. The Court should affirm the district court’s decision for that reason alone.

Moreover, even if section 9 were not subject to strict scrutiny for the reasons explained above, section 9 would at least be subject to heightened “intermediate” scrutiny under *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557, 561 (1980). That standard requires Texas to demonstrate that: (1) its asserted interest is substantial, (2) the statute directly advances the substantial interest, and (3) the compelled-speech solution is not more extensive than necessary. *Id.* at 564-66; *accord NIFLA*, 585 U.S. at 766, 773; *Free Speech Coal., Inc. v. Paxton*, 95 F.4th 263, 283 (5th Cir. 2024), *aff’d on other grounds*, 606 U.S. 461 (2025). Texas has the burden to satisfy all three of those requirements, and it must do so with actual *evidence* rather than “mere speculation or conjecture.” *Edenfield v. Fane*, 507 U.S. 761, 770-71 (1993); *accord Rubin v. Coors Brewing Co.*, 514 U.S. 476, 487 (1995). “[A] governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree.” *Edenfield*, 514 U.S. at 770-71.

II. *Zauderer* does not apply to section 9.

As the district court correctly held, section 9 is *not* in the narrow

category of speech assessed under the more deferential test announced in *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985), governing corrective disclosures of affirmative solicitations for professional engagements.²

Zauderer represents a narrow “exception for compelled speech” that is “only available in certain circumstances.” *Nat’l Ass’n of Wheat Growers v. Bonta*, 85 F.4th 1263, 1275 (9th Cir. 2023) (quotation marks omitted). The Supreme Court in *Zauderer* held that “a State may seek to prevent potential deception of the public by requiring attorneys to disclose in their advertising certain information regarding fee arrangements.” 471 U.S. at 629. The Court thus upheld a State’s “requirement that an attorney advertising his availability on a contingent-fee basis disclose that clients will have to pay costs even if their lawsuits are unsuccessful.” *Id.* at 652. That disclosure, the Court held, was permissible because it reflected “purely *factual* and *uncontroversial* information about the terms under which [an attorney’s] services will be available.” *Id.* at 651 (emphasis added).

² In fact, Texas waived any argument that *Zauderer* applies by not sufficiently raising it below. *See* Plaintiffs’ Br. 35.

Zauderer's standard for compelled speech thus applies only when the government regulates "commercial advertising" by requiring the advertiser to disclose "purely factual and uncontroversial information about the terms under which his services will be available." *Id.* at 650-51. "[O]utside that context," *Zauderer* does not apply. *Book People*, 91 F.4th at 340 (quoting *Hurley*, 515 U.S. at 573); accord *NIFLA*, 585 U.S. at 771 (explaining the statements at issue in *Zauderer* "would have been 'fully protected' if they were made in a context other than advertising" (quoting 471 U.S. at 637 n.7)).

Nothing about section 9 fits *Zauderer*'s unique and limited circumstances. **First**, section 9 does not advance any interest in preventing consumer deception. Texas does not contend that any company subject to section 9 has made false or misleading statements about the ingredients in its food products, and section 9 does not seek to clarify any potentially incomplete or confusing statement on food labels. Rather, the law targets the ingredient lists mandated by federal law, and Texas does not suggest that such lists are anything other than neutral and accurate.³

³ An on-label ingredient list is required for packaged food sold in the

Second, section 9 does not regulate “commercial advertising.” 471 U.S. at 651. The federally mandated ingredient list on food products is not an advertisement, and nothing in section 9 limits its requirements to companies that advertise the ingredients of their products. Nor does the warning required by section 9 relate to “the terms under which” companies’ food products “will be available.” *Id.* *Zauderer* does not apply to such compelled speech “in a context other than advertising.” *NIFLA*, 585 U.S. at 771; *see also United States v. United Foods, Inc.*, 533 U.S. 405, 416 (2001) (rejecting application of *Zauderer* to state law not regulating “voluntary advertisements”).

Third, the warning required by section 9 is neither “purely factual” nor “uncontroversial.” *Zauderer*, 471 U.S. at 650-51. To the contrary, the warning is garbled and inaccurate. It states that “an ingredient” is “not recommended” by a foreign jurisdiction, but it does not tell consumers *which* ingredient or *which* jurisdiction. It does not even explain what “not recommended” means. Does “not recommended” mean only that the

United States. 21 U.S.C. § 343(i); 21 C.F.R. § 101.4. The form and format of the ingredient list is detailed under federal law, which does not permit any characterization of the ingredients as positive, neutral, or negative to nutrition. 21 U.S.C. § 343(i); 21 C.F.R. § 101.4.

foreign jurisdiction has not affirmatively *promoted* the ingredient? That the jurisdiction has advised consumers *not* to eat the ingredient? That the jurisdiction has *banned* the ingredient? If “not recommended” means “banned,” as the Texas Senate seemed to think, then the warning is misleading, as very few of the covered ingredients are prohibited in all four of the foreign jurisdictions. *See* Plaintiffs’ Br. 9. Even under other possible interpretations of “not recommended,” the four foreign authorities are not in alignment on most of the ingredients. *See id.* And the United States and Texas, of course, have not found that the vast majority of the covered ingredients pose any risk to consumers. Such “scientific debate” confirms that section 9’s warning is neither purely factual nor uncontroversial. *Wheat Growers*, 85 F.4th at 1279; *California Chamber of Com. v. Council for Educ. & Rsch. on Toxics*, 29 F.4th 468, 478 (9th Cir. 2022); *see also Free Speech Coal.*, 95 F.4th at 282 (concluding “scientific debate” meant *Zauderer* did not apply).

Moreover, no matter what “not recommended” is supposed to mean, the warning does not explain *why* the (unidentified) ingredient is “not recommended” by the (unidentified) foreign jurisdiction, or why the consumer should be swayed by that (unexplained) fact when our own

government has found the ingredient to be safe. Section 9, in short, has the predictable (and thus presumed) effect of scaring consumers away from certain food products, based on the controversial premise that foreign jurisdictions are a more reliable guide to food safety than the U.S. government or consumers' own decisionmaking. That premise, whatever else might be said about it, is surely subject to "widespread, good-faith dispute." *Free Speech Coal.*, 95 F.4th at 282.⁴

But *Zauderer* is not an authorization for governments to reshape the marketplace of ideas. Appellate courts have repeatedly rejected efforts to use *Zauderer* in this way. The Supreme Court and the Ninth Circuit have repeatedly invalidated efforts by California to promote its political views in the guise of commercial-speech regulations. *E.g.*, *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595 (2021); *NIFLA*, 585 U.S. 755; *X Corp.*, 116 F.4th 888; *NetChoice*, 113 F.4th 1101; *Wheat Growers*, 85 F.4th 1263. The Second Circuit reversed when a district

⁴ See, e.g., Press Release, U.S. Dep't of State & HHS, *Joint Statement on the Preeminence of the U.S. Government Regulating Health Risks for Americans* (June 8, 2025), <https://tinyurl.com/yvayr47b> ("American regulatory decisions should be made by American institutions accountable to the American people," not "by organizations whose findings may not fully align with U.S. law, policy, or scientific review practices.").

court erroneously invoked *Zauderer* to uphold a law requiring businesses to “promote the product of a competitor.” *Safelite Grp., Inc. v. Jepsen*, 764 F.3d 258, 263-64 (2d Cir. 2014) (reversing district court). In Florida, the appellate court reversed when a state trial court erroneously invoked *Zauderer* to uphold an ordinance compelling companies to report their customers to law enforcement for civil infractions. *Mgmt. Props., LLC v. Town of Redington Shores*, 352 So. 3d 909, 913-14 (Fla. Dist. Ct. App. 2022) (reversing trial court). This Court, too, has had occasion to reject the invocation of *Zauderer* beyond its limited bounds. *E.g.*, *Free Speech Coal.*, 95 F.4th at 281-82; *Book People*, 91 F.4th at 326-27.

In all of these cases, legislators sought to force businesses to speak as a means of advancing what amounted, at the end of the day, to a controversial policy agenda. There is every reason to think that such efforts will proliferate absent judicial intervention. After all, “consumers might want to know the political affiliation of a business’s owners,” or “whether their U.S.-made product was made by U.S. citizens.” *American Meat Inst. v. U.S. Dep’t of Agric.*, 760 F.3d 18, 32 (D.C. Cir. 2014) (en banc) (Kavanaugh, J., concurring in the judgment). “These are not far-fetched hypotheticals,” *id.*, and this Court should not invite them by

adopting the watered-down legal standard offered by Texas here.

III. Section 9 does not satisfy heightened scrutiny.

Because *Zauderer* does not apply to section 9, its warning requirement is subject to at least intermediate scrutiny. *Free Speech Coal.*, 95 F.4th at 283.⁵ The district court correctly held that section 9 fails that scrutiny. Texas cannot meet its burden to satisfy *any* of *Central Hudson*’s three requirements for permissible regulation of commercial speech. First, Texas’s asserted interest is not substantial. Second, section 9 does not directly advance Texas’s asserted interest. Third, section 9 restricts speech more extensively than is necessary. 447 U.S. at 564-65.

A. Texas lacks a substantial interest in compelling section 9’s warning.

Texas claims an interest in “supporting the health and well-being of its citizens,” Texas Br. 31 (quotation marks omitted), but that interest has no relevance here. Texas has not attempted to ban the forty-four ingredients, declare them unsafe in food, or link them to negative health outcomes. Indeed, it cites no evidence whatsoever to substantiate any

⁵ As explained above, section 9 is in fact subject to (and obviously cannot satisfy) strict scrutiny. To avoid duplication with Plaintiffs’ Brief, this brief focuses on why section 9 fails even intermediate scrutiny.

concern that the covered ingredients that are legal in Texas pose any health risks to Texas residents.

Nor can Texas show a compelling interest in requiring companies to give a vague and confusing description of foreign authorities' purported assessments of those ingredients. The warning implies that determinations (real or perceived) by four foreign authorities matter to Texas consumers. Even assuming that is true (a rather generous assumption), "consumer curiosity alone" cannot sustain a compelled disclosure requirement. *Int'l Dairy Foods Ass'n v. Amestoy*, 92 F.3d 67, 74 (2d Cir. 1996) (collecting authorities); *see also CTIA—The Wireless Ass'n v. City of Berkeley*, 928 F.3d 832, 844 (9th Cir. 2019) ("the interest at stake must be more than the satisfaction of mere 'consumer curiosity'" (quoting *Nat'l Elec. Mfrs. Ass'n v. Sorrell*, 272 F.3d 104, 115 n.6 (2d Cir. 2001))); *American Meat Inst.*, 760 F.3d at 32 (Kavanaugh, J., concurring in the judgment) ("consumer curiosity alone is not a strong enough state interest to sustain a compelled commercial disclosure" (cleaned up)).

Section 9's warning, moreover, runs counter to any assumption that consumers are interested in foreign authorities' opinions. Among other things, many of the targeted ingredients are permitted by some of the

foreign authorities, and several of the ingredients are permitted by *all* of them—a fact that Texas consumers, if they cared about what these authorities think, would find to *favor* consuming food products containing the ingredients. And, of course, the vast majority of the ingredients are entirely lawful in food in Texas and the United States.⁶ The required warning provides none of that information, implies exactly the opposite, and is otherwise confusing and misleading. Such a warning cannot be justified as serving legitimate interests regarding the health and safety of Texas consumers.

B. The warning does not directly advance Texas’s supposed interest.

Even if Texas’s interest in health and safety were relevant here, section 9 does not sufficiently advance that interest. To “sustain a restriction on commercial speech,” Texas must submit evidence “demonstrat[ing] that its restrictions will in fact alleviate the harms to a material degree.” *Free Speech Coal.*, 95 F.4th at 283-84 (cleaned up).

⁶ Five of the ingredients are not permitted in food in the United States. Plaintiffs’ Br. 6-7 & n.2. As to these ingredients, it does not obviously benefit consumers for Texas to require a warning about foreign authorities’ views of the presence of an ingredient that U.S. law prohibits being in food in the first place.

As an initial matter, to the extent the warning serves the apparent goal of making products with certain ingredients less appealing to consumers, that is not permissible: Disparaging a lawful commercial product is not a legitimate purpose for government-compelled speech. *E.g., Int’l Dairy Foods Ass’n*, 92 F.3d at 73-74. When “divergent views” exist on an issue of public debate, “the general rule is that the speaker and the audience, not the government, assess the value of the information.” *IMS Health*, 564 U.S. at 578-79 (quotation marks omitted).

As for Texas’s supposed public-health interest, Texas has not substantiated that the ingredients subject to section 9 pose a risk to consumers. Even under *Zauderer*, “a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real.” *Edenfield*, 507 U.S. at 770-71. Texas, however, *concedes* that it “has not . . . established the dangerousness of each listed ingredient.” Texas Br. 32. As this Court held in *Free Speech Coalition*, “[c]ompelling sellers to warn consumers of a potential risk” that Texas cannot establish even exists “does not directly advance the government’s interest.” 95 F.4th at 284 (cleaned up) (quoting *Wheat Growers*, 85 F.4th at 1283); *cf. FEC v. Cruz*, 596 U.S. 289, 307 (2022) (government “must do

more than ‘simply posit the existence of the disease sought to be cured’” (quoting *Colorado Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 618 (1996))).

Even if Texas had shown that persuading consumers not to eat foods containing the forty-four covered ingredients would alleviate health risks, Texas has not shown that section 9’s warning will persuade anyone to do anything. In *Free Speech Coalition*, for example, this Court held that Texas could not satisfy intermediate scrutiny with respect to mandated health warnings on pornographic websites because it submitted no “studies” or other evidence “finding the warnings caused minors not to watch pornography.” *Id.* at 283-84 & n.67. Likewise here, Texas offers no evidence that section 9’s warning will discourage consumers from eating food containing the forty-four covered ingredients—or even help consumers make more informed choices about what to eat. Texas simply speculates that the warning *might* “influence consumers to think twice before purchasing and consuming unrecommended products, which, in turn, will force manufacturers to use better ingredients.” Texas Br. 32. “But Texas must meet a higher standard than ‘might.’” *Free Speech Coal.*, 95 F.4th at 283. Without any

evidence that section 9 “will *in fact*” influence consumers’ decisions—and do so “to a material degree”—Texas cannot satisfy intermediate scrutiny. *Id.* at 283-84 (emphasis added) (quotation marks omitted).

Indeed, the warning’s vagueness and inaccuracy make it particularly *unlikely* to accomplish Texas’s purported goals. *See id.* at 284 (finding health “warnings are too broad reasonably to fit [Texas’s] interest”). At best for Texas, the warning will have an indirect, remote, and unclear effect. That is not sufficient to satisfy the First Amendment. *Id.* at 283-84.

C. The warning is not narrowly tailored.

In all events, section 9 burdens speech more extensively than is necessary because Texas could advance its claimed interest through “numerous and obvious less-burdensome alternatives’ to the health warning[].” *Id.* at 284 (quoting *Florida Bar v. Went for It, Inc.*, 515 U.S. 618, 633 (1995)). For example, as the district court recognized, Texas “could reasonably post information about [the forty-four ingredients] on its own website or conduct an advertising campaign.” *Wheat Growers*, 85 F.4th at 1283. But “Texas has not made any showing that it tried a government-funded public information campaign or that such a

campaign would be ineffective.” *Free Speech Coal.*, 95 F.4th at 284. That confirms that “Texas fails . . . *Central Hudson*, making the health warning[] unconstitutionally compelled commercial speech.” *Id.*

Texas asserts that “that a warning label placed directly on a food product would be more likely to reach and affect consumers than would a separate State advertising campaign,” but it has no evidence for that claim, which is hardly “self-evident.” Texas Br. 33. More fundamentally, Supreme Court and Fifth Circuit precedent forecloses Texas’s argument. In *NIFLA*, the Supreme Court held that “a public-information campaign” is a “sufficient alternative” to compelled speech.” 585 U.S. at 775. In *Free Speech Coalition*, this Court likewise held that Texas must “tr[y] a government-funded public information campaign” before requiring a state-compelled warning. 95 F.4th at 284. And *NIFLA* expressly rejected the argument, pressed by Texas here, that compelling private speech is permissible simply because it may be more effective than government speech. 585 U.S. at 775. “The First Amendment does not permit the State to sacrifice speech for efficiency.” *Id.* (cleaned up).

If Texas wishes to criticize ingredients in food, it is welcome to speak for itself. Texas is also free, if it chooses, to advocate for the view

that the European Union’s (or Australia’s, or Canada’s, or the United Kingdom’s) food-safety determinations are more reliable than those of our own government. What Texas may not do is compel others to convey this controversial message through an inaccurate, and arguably incoherent, warning. Texas had to explore “less-burdensome alternatives” before imposing such a compelled-speech mandate. *Free Speech Coal.*, 95 F.4th at 284 (quoting *Went for It*, 515 U.S. at 633). Instead, Texas improperly jumped straight to “burdening [companies] with unwanted speech.” *NIFLA*, 585 U.S. at 775 (quotation marks omitted). The district court correctly enjoined Texas from doing so.

Conclusion

The Court should affirm the district court's preliminary injunction.

Respectfully submitted,

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August 10, 2026

Certificate of Service

I certify that on August 10, 2026, I caused the foregoing amicus brief to be filed with the Court electronically using the CM/ECF system. All counsel will receive service through the CM/ECF system.

/s/ Jeffrey S. Bucholtz
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Certificate of Compliance

I certify that this brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(b)(4), because it contains 4,531 words, as counted by Microsoft Word, excluding the parts of the brief excluded by Fed. R. App. P. 32(f). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6), because it has been prepared using Microsoft Word in Century Schoolbook 14-point font.

I further certify that (1) required privacy redactions have been made, 5th Cir. R. 25.2.13; (2) the electronic submission is an exact copy of the paper document, 5th Cir. R. 25.2.1; and (3) the document has been scanned with the most recent version of Microsoft Defender and is free of viruses.

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