No. 26-50192

IN THE

United States Court of Appeals for the Fifth Circuit

AMERICAN BEVERAGE ASSOCIATION; CONSUMER BRANDS ASSOCIATION; NATIONAL CONFECTIONERS ASSOCIATION; and FOOD MARKETPLACE, INCORPORATED d/b/a 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,
Case No. 6:25-CV-566

BRIEF OF NATIONAL ASSOCIATION OF MANUFACTURERS AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLEES AND AFFIRMANCE

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SUPPLEMENTAL STATEMENT OF INTERESTED PARTIES

Pursuant to Fifth Circuit Rule 29.2, the undersigned counsel of record certifies that the following listed persons and entities, in addition to those already listed in the parties' briefs, 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.

1. *Amicus curiae on this brief*: The National Association of Manufacturers has no parent corporation and has issued no stock.
2. *Counsel for amicus curiae on this brief*: Sean Marotta of Hogan Lovells Cadwalader US LLP.

/s/ Sean Marotta
Sean Marotta

August 10, 2026

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INTEREST OF *AMICUS CURIAE*

The National Association of Manufacturers submits this brief as *amicus curiae* in support of Plaintiffs in this matter.[1]

The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in all fifty States and in every industrial sector. Manufacturing employs nearly 13 million people, contributes $2.9 trillion to the economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the nation, fostering the innovation that is vital for this economic ecosystem to thrive. The NAM is the voice of the manufacturing community and leading advocate for policies that promote economic growth and innovation in the manufacturing sector.

The NAM writes in this case because Texas's S.B. 25 and laws like it infringe on manufacturers' free-speech rights by forcing them to print scientifically unsupported "warnings" on their product labels that have no corresponding public-health benefit. Texas's S.B. 25 and laws like it also threaten to undermine confidence in the United States' best-in-the-world food-safety regulatory regime,

[1] No counsel for a party authored this brief in whole or in part, and no person other than NAM, its members, or its counsel made a monetary contribution to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

which gives consumers access to safe, innovative, and affordable food products. The NAM therefore writes to give the Court additional perspective on Texas's inherently contradictory—and still unconstitutional—interpretation of S.B. 25's mandated warning and to explain why S.B. 25 is unnecessary and harmful to manufacturers and consumers alike.

SUMMARY OF ARGUMENT

I. Texas's defense of S.B. 25's mandatory warning label is inherently contradictory. If S.B. 25's warning is read as stating that food-safety regulators in Australia, Canada, the European Union, or the United Kingdom believe that an ingredient in the labeled product is potentially harmful, the warning flunks First Amendment scrutiny because the State cannot compel manufacturers to speak statements that even the State doesn't contend are true. So the State contends that S.B. 25's warning is much-less-potent than it appears, claiming that the warning means only that at least one of the food-safety regulators in Australia, Canada, the European Union, or the United Kingdom is indifferent towards an ingredient in the product.

If Texas is right—and that is highly unlikely given the content and context of S.B. 25's warning—then S.B. 25's warning cannot possibly further the state interests that Texas claims. Texas says that the warning label will cause consumers to think twice before buying a labeled product and cause manufacturers

to reformulate their products with non-S.B. 25 ingredients, leading to better-informed, healthier Texas consumers. Yet none of those benefits follows from the anemic warning that Texas believes S.B. 25 mandates; if consumers understand the warning to only mean that some foreign safety regulators are indifferent, consumers will not change their buying behaviors and manufacturers will not re-formulate their products, meaning that S.B. 25's mandated warning does not further any state interest. Under even Texas's skewed reading of its statute, S.B. 25's mandatory warning violates the First Amendment.

II. S.B. 25's mandated warning label not only violates manufacturers' free-speech rights; it is also unnecessary and harms both manufacturers and consumers. Before the Food and Drug Administration's creation, food safety was governed by a patchwork of poorly enforced state laws. Hazardous ingredients and adulterated food were common and sickened and even killed consumers. Congress passed the Food, Drug, and Cosmetic Act (FDCA) in response to public outcry and has amended it in the decades since as food-safety science has evolved.

Under the FDCA, ingredients can be authorized for use in food products by either submitting the ingredient to FDA for approval before it enters the market or by the manufacturer certifying that the ingredient is generally recognized as safe (GRAS) in the scientific community. Both paths require proof of the same degree of safety; that there is reasonable certainty in the minds of competent scientists that

the substance is not harmful under the conditions of its intended use. The only difference is that the GRAS pathway allows qualifying scientists outside the government to make the required finding after surveying the published scientific data. And GRAS determinations always remain subject to FDA challenge and enforcement. FDA's risk-based, multi-layered, efficient, and predictable pathway allows manufacturers to bring innovative ingredients and foods to market and has made food manufacturing an engine of American economic activity.

Laws like S.B. 25 threaten to replace FDA's predictable system of food-safety regulation with a patchwork of state laws once more. State laws like S.B. 25—either banning certain ingredients or requiring warnings on the packaging of products that contain certain ingredients—are not risk-based like FDA's approach, but rather rely on hazard and precautionary principles like the European Union, whose food-safety regime stifles innovation and investment. S.B. 25 and laws like it will require manufacturers to either produce bespoke versions of their products for each State—driving up costs and making it harder to apply state-of-the-art food-safety techniques consistently—or pull products from store shelves, denying consumers products that best serve their needs. There is no reason for S.B. 25 to inflict these harms on Texans, particularly when the law has no offsetting benefits to recommend it.

ARGUMENT

I. TEXAS'S DEFENSE OF S.B. 25 IS INHERENTLY CONTRADICTORY.

Texas and Plaintiffs debate the appropriate standard to judge S.B. 25's constitutionality under the First Amendment. *Compare* Texas Br. 18-30, *with* Plaintiffs' Br. 23-38. As Plaintiffs explain, S.B. 25's mandatory warning label is subject to strict scrutiny as compelled speech, and it also fails ordinary intermediate scrutiny under *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980) and the relaxed scrutiny given to disclosures of "purely factual and uncontroversial" information under *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626, 651 (1985). Plaintiffs' Br. 23-38. But *whatever* level of scrutiny the Court applies, S.B. 25 is unconstitutional because Texas offers inherently contradictory arguments about the disclosures that S.B. 25 compels and the interests that S.B. 25 supposedly furthers.

1. Under any First Amendment analysis, a compelled disclosure must further—to some extent—some governmental interest. Under strict scrutiny, "the government must show that its action is 'narrowly tailored' to 'further compelling governmental interests.' " *McDonald v. Longley*, 4 F.4th 229, 246 (5th Cir. 2021) (quoting *Johnson v. California*, 543 U.S. 499, 505 (2005)). Under *Central Hudson* intermediate scrutiny, a restriction on commercial speech "survives First

Amendment scrutiny if: (1) 'the asserted governmental interest is substantial,' (2) the regulation 'directly advances' that interest, and (3) the regulation 'is not more extensive than is necessary to serve that interest.' " *Public Citizen Inc. v. Louisiana Att'y Disciplinary Bd.*, 632 F.3d 212, 219 (5th Cir. 2011) (quoting *Thompson v. Western States Med. Ctr.*, 535 U.S. 357, 367 (2002)). And under *Zauderer*'s relaxed standard, the compelled disclosure must "be justified by a legitimate state interest and . . . not unduly burdensome." *R.J. Reynolds Tobacco Co. v. Food & Drug Admin.*, 96 F.4th 863, 877 (5th Cir. 2024).

All three of these tests leave Texas in a bind. Texas admitted below—and does not deny on appeal—that the State does not know whether the ingredients that S.B. 25 requires warnings about are dangerous or whether all of the jurisdictions that S.B. 25 references prohibit all the ingredients. *See* ROA.202-205. Even the forgiving *Zauderer* standard prohibits mandated warnings whose truth "is not settled or is overwhelmingly disproven," a standard that Texas tacitly concedes S.B. 25 flunks through its admission that it cannot confirm that the warnings the law requires are true. *R.J. Reynolds*, 96 F.4th at 881.

Texas instead offers a strained interpretation of what S.B. 25's warning means. Texas contends that the warning means only one of the relevant regulators in Australia, Canada, the European Union, or the United Kingdom does not *affirmatively endorse* human consumption of the listed ingredient. Texas Br. 25-

26. It is enough, in Texas's view, for one of the four jurisdictions to be "agnostic" or "indifferen[t]" with respect to the ingredient. *Id.*

Texas's attempt to neuter S.B. 25's warning to save it is not particularly plausible. The Texas Supreme Court, like its federal counterpart, warns that "[g]iven the enormous power of context to transform the meaning of language, courts should resist rulings anchored in hyper-technical readings of isolated words or phrases." *In re Office of the Att'y Gen. of Tex.*, 456 S.W.3d 153, 155 (Tex. 2015); *see also Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 809 (1989) (rejecting State's "hypertechnical" reading of statute that was admittedly "not inconsistent with the language of that provision examined in isolation"). Yet Texas focuses narrowly on dictionary definitions of "not recommended" and ignores the warning in context and as a whole.

Start with the fact that the warning is a warning; manufacturers must put that word—in all caps—on their covered products' labels when the product contains one of S.B. 25's listed ingredients. *See* Tex. Health & Safety Code § 431.0815(b)(1). If all Texas means for the statement to convey is that at least

one of the four jurisdictions[2] takes no position on whether some ingredient in the product should be consumed by humans, why would a consumer need a "WARNING" about that? Warnings are for dangers, not indifference. Texas consumers are particularly likely to view a package's "WARNING" as implying some ingredient in the product is potentially dangerous because, under Texas law, "a manufacturer is required to provide an adequate warning to the end users of its product if it knows or should know of any potential harm that may result from the use of its product." *Centocor, Inc. v. Hamilton*, 372 S.W.3d 140, 153-154 (Tex. 2012); *accord In re DePuy Orthopaedics, Inc., Pinnacle Hip Implant Prod. Liab. Litig.*, 888 F.3d 753, 774 (5th Cir. 2018).

That impression is confirmed by the rest of the label. A great many governmental bodies presumably do not have a view on whether the ingredients listed in S.B. 25 should be consumed by humans—the United States's Federal Energy Regulatory Commission; Australia's Department of Infrastructure,

[2] Even Texas's contention that the warning conveys that only one of the four jurisdictions is indifferent about the listed ingredients is dubious. Although "as a general rule the use of a disjunctive in a statute indicates that alternatives were intended, where a strict grammatical construction of the word 'or' would frustrate legislative intent, 'or' has been read to mean 'and.' " *United States v. Scrimgeour*, 636 F.2d 1019, 1024 (5th Cir. Unit B 1981) (citations omitted). In the S.B. 25 context, a Texas consumer will likely conclude that a warning that an ingredient has not been recommended for human consumption by the appropriate authority "in Australia, Canada, the European Union, or the United Kingdom" means that the ingredient has not been recommended in *all four* jurisdictions, not an unspecified one of the four.

Regional Development, Communications, Sport and the Arts; and the United Kingdom's Department for Culture, Media, & Sport to pick a few at random. A Texas consumer therefore will reasonably conclude the warning mentions the views of "the appropriate authorities"—itself a value-laden phrase—in Australia, Canada, the European Union, and the United Kingdom because these bodies' non-recommendation says something meaningful about the safety of the product the warning is attached to. Even the phrase "for human consumption" implies danger, suggesting that the ingredients are better suited for industrial use or animal consumption. Texas's myopic focus on the words "not recommended" cannot overcome the impression that S.B. 25's mandated warning leaves when read as a whole.

2. Suppose—against all logic and common sense—that Texans will understand S.B. 25's mandated warning label as conveying only that a food-safety regulator in at least one of the listed jurisdictions is indifferent about at least one of the product's ingredients. In that case, S.B. 25's warning label does not further any government interest to any extent under any level of scrutiny. Texas contends that S.B. 25's "warning will raise awareness regarding potential safety or quality concerns and likely will make consumers think twice before purchasing the product." Texas Br. 28. According to Texas, "[t]hat, in turn, may influence food manufacturers to consider using different ingredients in their products," which

therefore furthers Texas's "twin goals" of increasing public awareness of "potential concerns relating to consuming the listed ingredients and promoting the creation of better products." *Id.* (citations omitted).

But Texas never explains how its robust chain of inferences follows from the anemic warning label that the State postulates. The label—as Texas reads it—will not "raise awareness regarding potential safety or quality concerns" because the label says only that a food-safety regulator in one of Canada, Australia, the European Union, or the United Kingdom has no position on human consumption of some ingredient in the product; Texas's conception of the warning says nothing about the ingredient potentially being unsafe or of poor quality. For the same reason, the warning will not make consumers think twice before purchasing the product because the consumer—by Texas's hypothesis—will understand the label to convey only that an appropriate regulator in one of the four countries has no view on human consumption of some ingredient in the product. And because consumer behavior will not change, manufacturers will have no reason to reformulate their products using different ingredients. Nor would there be any impetus for manufacturers to reformulate their products using supposedly "better" ingredients—by which Texas apparently means ingredients whose inclusion will not trigger a warning under S.B. 25—because, as Texas claims to understand S.B. 25's warning, non-S.B. 25 ingredients are not inherently better than S.B. 25

ingredients. S.B. 25 ingredients are just ones that one of the four regulators has no position on. Texas therefore is wrong that S.B. 25's warning label, as its brief conceives of it, will further any state interest to any degree.

All of this gives lie to the fundamental contradiction in Texas's appellate position. For S.B. 25's warning to try to evade invalidation on the ground that it compels manufacturers to say patently untrue things, Texas must argue that the warning label is a milquetoast statement about foreign regulators' indifference towards certain ingredients. But if S.B. 25's warning is to have any chance of furthering the State's interests in Texans becoming better-informed and healthier by changing consumer and manufacturer behavior, the warning must be understood as implying that the products the warning applies to are unsafe—the very interpretation that Texas disclaims. Either way, S.B. 25's compelled warning flunks First Amendment review.

II. AMERICA'S FOOD-SAFETY REGULATION IS THE BEST IN THE WORLD, AND COMPELLED-WARNING LAWS LIKE S.B. 25 HARM BOTH MANUFACTURERS AND CONSUMERS.

S.B. 25 does not just unconstitutionally compel manufacturers' speech; its mandatory warning is unnecessary and harmful. America's food-safety regulation system is the best in the world, and Texas consumers do not need misleading information about other jurisdictions' regulations to decide what to purchase at the grocery store. Compelled-warning laws like S.B. 25 also harm manufacturers by

forcing them to either fragment their production and supply chain to create bespoke products for each State, label national products in accordance with the most-restrictive jurisdiction, or pull products from the shelves. Whichever path a manufacturer chooses, consumers are hurt by rising prices and less access to innovative, affordable, and safe food products.

A. American Food Is Safe And Innovative Thanks To A Uniform, Risk-Based Regulatory System.

1. Americans take for granted their ability to purchase safe food at any grocery store. But it wasn't always that way. As the country moved from the farm to the city, food safety was governed by a patchwork of state and local laws and adulterated and unsafe food was the norm. *See* Lauren Leffer, *What Was Food Like Before the FDA?*, Popular Science (May 1, 2025), https://perma.cc/KJP6-PH7Q. Borax—a pesticide—was added to milk and butter as a preservative. *Id.* Formaldehyde—better known for its use as embalming fluid—was added to milk to fight bacteria and cover the taste of rot. *Id.* Flour was regularly cut with Plaster of Paris and gypsum, and ground coffee was often 80-to-90% ground bone, lead, or charred seeds. *Id.* Adulteration did more than pad grocers' profits and scam consumers; "swill milk" killed 8,000 New York infants in a single year. Daniel Fernandez, *The Surprisingly Intolerant History of Milk*, Smithsonian Magazine (May 11, 2018), https://tinyurl.com/rvcjaww8.

In the face of increasing public concerns, Harvey Wiley—a medical doctor and chief chemist of the Agriculture Department's Bureau of Chemistry—carried out a series of studies with young volunteers that the papers labeled the "Poison Squad." Michelle Meadows, *A Century of Ensuring Safe Foods and Cosmetics*, FDA Consumer Magazine (Jan. 2006), https://tinyurl.com/5n73j9va. The Poison Squad ate meals containing known amounts of borax, formaldehyde, and other common-at-the-time preservatives; many of the volunteers became sick, forcing Wiley to stop his experiments out of fear for his testers' health. *Id.*; *see also* Sarah Reisert, *Harvey Wiley's Fierce Pursuit of Food Safety*, Distillations Magazine (Aug. 20, 2019), https://perma.cc/T3EP-PYS6.

Wiley's studies and Upton Sinclair's *The Jungle* chronicling the squalor in Chicago's meatpacking plants forced Congress to act. Congress passed the Meat Inspection Act and Food and Drug Act in 1906, and replaced the latter in 1938 with the Food, Drug, and Cosmetic Act. *Food Safety Before FDA*, *supra*. Today, the FDCA nationally prohibits "the adulteration or misbranding of any food" and "[t]he receipt in interstate commerce of any food . . . that is adulterated or misbranded." 21 U.S.C. § 331(a)-(c). And the FDCA has been amended over the decades by numerous laws, including the Food Additives Amendment of 1958, Pub. L. No. 85-929, 72 Stat. 1784 (1958); the Color Additive Amendments of 1960, Pub. L. No. 86-618, 74 Stat. 397 (1960); the Nutrition Labeling and

Education Act of 1990, Pub. L. No. 101-535, 104 Stat. 2353 (1990); and the FDA Food Safety Modernization Act, Pub. L. No. 111-353, 124 Stat. 3885 (2011) to ensure that the Nation's regulatory system keeps pace with the science.

2. Manufacturers' products and supply chains modernized alongside the federal regulatory system. During World War II and its immediate aftermath, "[m]anufacturers played a central role in building the supply chains, manufacturing capacity and transportation systems that could reliably deliver safe food at scale, while also advancing food production techniques and advancements in packaging to preserve and deliver nutritious food across the U.S." National Ass'n of Mfrs., *Manufacturers Feed America: Strengthening Communities, Fueling Innovation, Growing the Economy* 13 (Feb. 2026), https://perma.cc/DYW7-F5UP. Malnutrition spiked to such heights during the Great Depression that when the United States activated the draft in 1940, a quarter of all draftees flunked their physicals because of it. Megan E. Springate, *Nutrition on the Home Front in World War II*, National Park Service, https://perma.cc/TUX6-ZSAM (last visited Aug. 10, 2026). Manufacturers answered the government's call to produce nutritional foods, with commercial bakeries volunteering to fortify bread with essential B vitamins and other vitamins and minerals that were lost during the flour-refining process. *Id.*

World War II drove other innovations, too, ranging from dry yeast, which made it easier to bake bread at the front, to frozen orange-juice concentrate, which allowed troops to receive vitamin C while deployed. *See* Ute Eberle, *From the Front Line to the Freezer Aisle*, Distillations Magazine (Nov. 21, 2024), https://perma.cc/CJX8-VVCD. Many modern favorites, too, like television dinners, energy bars, and even M&M candies, had their genesis in wartime necessity. *Id.*

3. The FDA today uses a science-driven, risk-informed, multi-layer approach that ensures food safety. *See* U.S. Food & Drug Admin., *Risk Analysis at FDA: Food Safety, A Science-Based Approach to Policy Decisions* (Feb. 2011), https://tinyurl.com/4t9nyc2c. Ingredients can enter the market by undergoing FDA's premarket approval review or by being generally recognized as safe. *See* 21 C.F.R. pts. 73-74, 81-82, 101, 170-173, 180, 182, 184, and 186 (premarket approval); 21 C.F.R. pt. 190 (generally recognized as safe). Under both pathways, an ingredient can be used only if it is "safe," which FDA defines as there being a "reasonable certainty in the minds of competent scientists that the substance is not harmful under the conditions of its intended use." 21 C.F.R. § 170.3(i).

In its premarket review process, FDA considers what the food ingredient is, how it will be made, how much of the ingredient will be in the food, the types of food the ingredient is used in, how much of the food ingredients consumers will

eat, how the body metabolizes the ingredient, and the results of scientific studies on the ingredient's safety. U.S. Food & Drug Admin., *Understanding How the FDA Regulates Food Additives and GRAS Ingredients*, https://tinyurl.com/2dday9de (last updated June 6, 2024). Based on its review, FDA will set an "Acceptable Daily Intake" for the ingredient, which is "the amount of a substance considered safe to consume each day over the course of a person's lifetime." *Id.* FDA's Acceptable Daily Intake builds in a safety margin that accounts for scientific uncertainty as well as makes allowances for population variances and vulnerable populations, such as children and pregnant women. *Id.* The FDA's Acceptable Daily Intake also considers that some people eat much more of foods containing an additive than average. *Id.* These built-in safety margins ensure that FDA's Acceptable Daily Intake is a level "much lower than what would be expected to have any adverse effect." *Id.* For each approved food additive, FDA issues a regulation codifying the types of foods in which the additive can be used, the maximum amount that can be used, and how the additive should be identified on food labels. *Id.*

An ingredient can also be used in food if it is "generally recognized as safe" or GRAS. *See* 21 U.S.C. § 321(s) (exempting a "substance . . . generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures

. . . to be safe under the conditions of its intended use" from the definition of a "food additive" that is subject to FDA pre-market review). The GRAS safety determination is no different than when FDA conducts a premarket review; "[t]he difference between a GRAS determination and a premarket approval relates to who has access to the scientific data and information and who has reviewed the scientific data and information." Paulette Gaynor, *How U.S. FDA's GRAS Notification Program Works,* U.S. Food and Drug Administration, https://tinyurl.com/5n7yw5bc (last updated Feb. 9, 2018). In premarket review, "FDA determines the safety of the ingredient; whereas the determination that an ingredient is GRAS can be made by qualified experts outside of government." *Id.*

FDA allows manufacturers to submit notices stating that the manufacturer has determined that a substance is GRAS. *Id.* The GRAS notice explains the substance, how it is used, the scientific evidence supporting and weighing against a GRAS finding, and an explanation of why, based on the totality of the evidence, the manufacturer has concluded that the substance is GRAS under its intended conditions of use. *Id.*; *see also* 21 C.F.R. §§ 170.203-170.285 (FDA's GRAS program regulations). The key data the manufacturer relies on must be published—typically in peer-reviewed scientific journals—and unpublished data can only be used to corroborate published data. Laura Rich, *Let's Mow Down the GRAS Myths*, Consumer Brands Association (May 8, 2026),

https://perma.cc/8RJE-ULLH. FDA will assess the GRAS notice and either inform the manufacturer that FDA does not question the basis of the manufacturer's GRAS notice or that the agency has concluded that the notice "does not provide a sufficient basis for a GRAS determination." *How U.S. FDA's GRAS Notification Program Works*, *supra*.

FDA's safety assessments do not stop when it approves a food-additive petition or declines to challenge a GRAS notice. FDA monitors the food-safety literature and can act when it believes an ingredient is no longer GRAS, such as a public warning letter to manufacturers, a public alert, or enforcement action. *Understanding How the FDA Regulates Food Additives and GRAS Ingredients*, *supra*. FDA can also revoke a previously granted food-additive approval through notice-and-comment procedures. *Id.* And FDA has recently announced a robust systemic post-market assessment process where FDA will identify and prioritize chemical substances for rigorous post-marketing assessment of their safety. *See* U.S. Food & Drug Admin., Human Foods Program, *The Enhanced Systematic Process for FDA's Post-Market Assessment of Chemicals in Food* (May 2026), https://tinyurl.com/52yn3568; U.S. Food & Drug Admin., Human Foods Program, *Tool for the Prioritization of Food Chemicals for Post-Market Assessment* (May 2026), https://tinyurl.com/mtvazmxe.

4. FDA's uniform, predictable, and risk-sensitive approach allows American food manufacturers to bring safe, innovative, and affordable products to market. Stevia, monk-fruit extract, and other low- or no-calorie sweeteners have allowed consumers to obtain the sweetness they crave in their food and drinks while reducing added-sugar intake and glycemic load. *Manufacturers Feed America*, *supra*, at 32. Protein innovations—such as pea protein isolate and commercial-scale production of whey protein—provide diversified, efficient protein sources for health-conscious consumers and ensure allergy-friendly access to protein. *Id.* And innovations in gluten-free foods using ingredients like xanthan gum and psyllium husk—driven by medical necessity and consumer choices—have allowed manufacturers to develop breads, pastas, and baking mixes that replicate the texture and taste of wheat-based versions. *Id.*

FDA's approach to food-safety regulation has also made food manufacturing an engine of the American economy. Food sales at food-service and grocery stores have exploded from $80 billion in the early 1960s to $2.58 trillion in 2024. *Id.* at 13. Food manufacturers directly employ nearly 1.8 million people in the United States and indirectly support 47 million jobs, ranging from production and engineering to logistics, quality assurance, and retail and foodservice. *Id.* at 20. Food manufacturing's economic impact extends well beyond manufacturing plants, grocery stores, and restaurants. *Id.* The broader supply chain includes farms, crop

inputs and storage, ingredient suppliers, packaging manufacturers, transportation and logistics providers, cold storage operators, equipment makers and recycling services. *Id.* All told, food manufacturers support $2.8 trillion in wages and $9.5 trillion in economic output nationwide. *Id.* But Americans can enjoy the safety, innovation, and economic benefits that food manufacturers provide only if the U.S. retains its best-in-the-world regulatory environment.

B. Mandatory-Labeling Laws Like S.B. 25 Harm Both Manufacturers And Consumers.

1. S.B. 25 is part of a disturbing trend of state laws that threaten to return the United States to the patchwork of state laws that prevailed before 1906. Arkansas's Act 622 bans potassium bromate, a food additive used to improve flour, and propylparaben, a chemical used as an antimicrobial preservative, effective January 1, 2028. *See* Make Arkansas Healthy Again Act, Ark. S.B. 9, 95th Gen. Assembly (2025). Louisiana's S.B. 14 requires food products containing one of 44 different ingredients to have packaging with a QR code that points to a manufacturer website that, in turn, links to FDA's webpage regarding food-chemical safety. *See* La. S.B. 14, 2025 Regular Session § 3 (2025). West Virginia's H.B. 2354 bans two preservatives and seven different food colorings from food sold in the State starting in 2028. *See* W. Va. H.B. 2354, 2025 Regular

Session (2025).[3] In 2025 alone, over one hundred bills were introduced in state legislatures seeking to prohibit particular ingredients in schools, prohibit particular ingredients in food sold in the State generally, or require warnings on food labels or in restaurants serving food containing particular ingredients. *Manufacturers Feed America*, *supra*, at 21.

Unlike FDA's risk-based methods, which recognize that a substance's safety depends on the amount consumed, these new state laws operate on "hazard-based logic—treating the mere presence of a substance as grounds for prohibition, regardless of exposure level or scientific consensus." *Id.* These new state laws also reflect a distinctly European approach to food-safety regulation, operating on a version of the European Union's precautionary principle, under which regulators can restrict an ingredient even when "the available supporting information and data are not sufficiently complete to enable a comprehensive risk assessment to be made." European Commission, *Food Law General Principles*, https://perma.cc/V632-HR55 (last visited Aug. 10, 2026).

If European experience is any guide, then, S.B. 25 and state laws like it will reduce food innovation and drive away manufacturer research-and-development efforts. The zero-calorie sweetener stevia, for example, took a year to be approved

[3] The Southern District of West Virginia has preliminarily enjoined H.B. 2354 as applied to six of the seven food colorings. *See International Ass'n of Color Mfrs. v. Singh*, 814 F. Supp. 3d 652 (S.D. W. Va. 2025).

in the United States, but four to be approved in the European Union due to its overly cautious food-regulatory system. *Manufacturers Feed America*, *supra*, at 17. No new safety data was generated as part of Europe's review; just a longer, more-bureaucratic process that prevented stevia's manufacturer from planning the sweetener's rollout in Europe. *Id.* And given Europe's sclerotic approach to food-ingredient approvals, even "EU-based food companies and innovators have invested in U.S.-based manufacturing and R&D since the 1970s and continue to launch new products in the U.S., often years before those same foods are available to consumers in the European Union." *Id.* S.B. 25 and laws like it threaten to scare away both beneficial food products for in-state consumers and needed good-paying jobs in food manufacturing and development.

2. Manufacturers' attempts to comply with States' patchwork quilt of food-labeling laws will hurt food affordability, safety, and security. American food is affordable and safe, in large part, because it is produced at scale; state-of-the-art industrial food production and safety practices are expensive, and so are viable when the costs can be spread among many identical units. *See* National Ass'n of Mfrs., *Food Affordability: How Fragmented Food Policies Drive Up Grocery Prices*, https://perma.cc/VUM3-ZPGD (last visited Aug. 10, 2026); *see also* *Manufacturers Feed America*, *supra*, at 23. But if manufacturers must comply with different States' different labeling or formulation regimes, they will have to

create products in smaller batches, increasing costs and making it harder to consistently apply best food-safety practices. *Manufacturers Feed America*, *supra*, at 23. National food security is harmed, too, because manufacturers cannot ship a standardized product from one State to another during times of unexpected demand or supply-chain disruptions, such as natural disasters. *Id.*

But manufacturers often cannot create bespoke versions of their products for each State, leaving them to either comply with the most-restrictive State's regulations or pull products from the shelves and exit a State entirely. *See* Maria Kalaitzandonakes & William Ridley, *Food Manufacturers' Decision Making Under Varying State Regulation*, 56 J. Food Distribution Rsch., at 7-11 (2025), https://perma.cc/A35T-UNQH (outlining options for food manufacturers facing state-level ingredient laws); *see also Manufacturers Feed America*, *supra*, at 22. And even a manufacturer that attempts to leave a State's market may still find itself facing liability; national distribution systems mean that a product may still inadvertently find its way across the state line. *Manufacturers Feed America*, *supra*, at 22.

The bottom line: S.B. 25 and laws like it drive up costs for manufacturers and consumers, threaten food safety, impair innovation, and reduce consumer choice. And S.B. 25 is a particularly egregious example: It requires a warning for ingredients that even the State cannot say have any appreciable health risks. The

Court should not bless such a harmful law—especially one with no offsetting consumer benefits.

CONCLUSION

For the foregoing reasons and those in Plaintiffs' brief, the Court should affirm.

Respectfully submitted,

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August 10, 2026

CERTIFICATE OF SERVICE

I certify that on August 10, 2026, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Sean Marotta
Sean Marotta

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because it contains 5,240 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

This brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5)(A) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point sized font.

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August 10, 2026