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Media Contact: Glenn Lammi | glammi@wlf.org | 202-588-0302

WLF Asks Fifth Circuit to Keep Texas from Forcing Deceptive Warning Labels on Perfectly Safe Food (*ABA v. Paxton*)

“The Constitution generally prevents the government from compelling speech. It always prevents the government from outlawing a company’s refusal to parrot deceptive speech.”

— Zac Morgan, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the Fifth Circuit to uphold a district court decision striking down a Texas food-labeling law on First Amendment grounds.

The case centers on Texas’s new food labeling regime, which says that packaged food containing one of 44 disfavored ingredients must carry a warning that the “appropriate authority” in Australia, Canada, the European Union, or Great Britain deems the product “not recommend for human consumption.” But the State’s list includes perfectly safe ingredients. Texas admits that by “not recommended” it doesn’t mean a foreign authority considers the item to be poison or even bad for you. Rather, it just means one of those four jurisdictions literally doesn’t cheerlead for the ingredient.

As WLF’s brief explains, Texas’s effort to play cute as it compels speech violates the First Amendment. Texas claims its measure is subject to light-touch judicial review but makes that argument through caselaw premised on a Fifth Circuit decision set aside by the U.S. Supreme Court. Under proper constitutional scrutiny, even if you spot Texas an interest in hoodwinking the public into a preferred diet through deceptive argument, the State’s compelled-speech regime violates the First Amendment.

Celebrating its 49th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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