No. 25-5029

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MELVIA HARRIS; ROBERTA KNIGHTEN
Plaintiffs-Appellants,

v.

CITY OF LOS ANGELES,
Defendants-Appellee,

STRATEGIC ACTIONS FOR A JUST ECONOMY
Intervenor-Defendant-Appellee

On Appeal from the United States District Court
for the Central District of California, No. 5:24-cv-02679

BRIEF OF *AMICI CURIAE* MARGOT E. KAMINSKI AND GREGORY P. MAGARIAN IN SUPPORT OF APPELLEES AND AFFIRMANCE

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[2] Institutional affiliations are provided for identification purposes only. This brief reflects the signatories' personal views only and not the views, if any, of these institutions.

Amici submit this brief pursuant to Fed. Rule App. P. 29(a) and do not repeat arguments made by the parties. No party's counsel authored this brief, or any part of it. No party's counsel contributed money to fund any part of the preparation or filing of this brief. Amici file this brief with the consent of the parties.

INTRODUCTION

Appellee the City of Los Angeles established the Rent Stabilization Ordinance (RSO) to further legitimate and important public policy goals. While much of appellants' arguments focus on challenges unrelated to First Amendment doctrine, amici believe that appellants' First Amendment arguments warrant rebuttal. The trial court properly dismissed these arguments as not supported by Supreme Court precedent. Amici write to endorse the trial court's reasoning and rebut appellants' claims to the contrary. The First Amendment does not invalidate the RSO, and reversal by this court would not only imperil the RSO but many other similar statutory regimes that this court has appropriately upheld against First Amendment challenges.

ARGUMENT

I. The RSO Regulates Hosted — Not Compelled — Speech

The Rent Stabilization Ordinance ("RSO") regulates hosted speech rather than compelled expression and therefore does not violate the First Amendment.

Under *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.* ("*FAIR*"), 547 U.S. 47 (2006), and the Supreme Court's broader compelled speech doctrine, a regulation requiring an entity to host government-authored information is constitutionally permissible so long as it does not force the host to express, adopt, or endorse the government's message.

The Supreme Court's recent decision in *Moody v. NetChoice*, 603 U.S. 707 (2024), strongly reinforces this distinction. *Moody* clarified that the First Amendment protects an entity's compilation, curation, and arrangement of third-party content only when those activities are themselves expressive. *Id.* at 729–31. When an entity's hosting of speech is not part of an expressive product and does not alter its own message, regulations requiring it to carry or display information fall into the category of permissible hosted-speech obligations—not compelled speech. *Id.* at 730-32 (holding that First Amendment protection applies only when an entity's curation or arrangement of third-party content is itself expressive and distinguishing non-expressive hosting obligations that do not affect the entity's own message).

This principle re-establishes the holding in *FAIR*. There, the Court upheld a law requiring law schools to provide equal access to military recruiters. Because the schools were "not speaking when they host interviews and recruiting receptions," the requirement did not burden their First Amendment rights. 547 U.S.

at 64. The dispositive inquiry, *FAIR* explained, is whether the regulation "affect[s] the [complaining] speaker's own message." *Id*. at 63.

Here, as in *FAIR* and *Moody*, the RSO's notice requirement does not convert landlords into speakers nor force them to endorse the City's message. It merely requires them to host factual information in a commercial setting where no expressive association exists.

A. Residential Buildings Are Not Inherently Expressive Forums

The first factor under *FAIR* considers whether the regulated forum is inherently expressive such that compelled hosting would alter the speaker's own message. Cases like *Hurley* and *Turner* illustrate the narrowness of this category.

In *Hurley v. Irish-American Gay, Lesbian & Bisexual Group of Boston*, 515 U.S. 557 (1995), the Court found compelled-speech concerns because parades are highly expressive undertakings—every group included "affects the message conveyed." *Id.* at 572–73. Likewise, in *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622 (1994), cable operators' programming lineups were expressive because operators exercised editorial discretion over the content they curated. *Moody* later distilled *Turner's* core teaching: when an entity assembles third-party speech into a unified expressive product, intrusion upon that editorial selection triggers heightened scrutiny. *Moody v. NetChoice*, 603 U.S. 707, 729–30 (2024).

By contrast, residential properties are not expressive forums. Landlords do not engage in expressive curation of tenants' communications, nor do they compile messages into a unified expressive product. Under *Moody*, the absence of any editorial discretion is dispositive: the First Amendment is not implicated where hosting does not form part of an expressive enterprise. And under *FAIR*, the posting of factual information in a commercial lobby does not itself communicate any message attributable to the landlord.

Thus, the RSO does not burden expressive conduct because apartment buildings are not expressive channels like parades or cable-programming lineups. They are ordinary commercial premises used to deliver required consumer information—much like restaurants posting health grade signs or employers posting wage-and-hour notices — which have never been understood to raise compelled-speech concerns. To hold otherwise and treat any entity that merely hosts or transmits information as an expressive speaker would collapse the fundamental distinction the Court has repeatedly drawn between expressive speech (which the First Amendment protects) and non-expressive hosting obligations (which it does not). Such a rule would effectively constitutionalize routine commercial disclosure requirements and invalidate decades of precedent distinguishing expression from conduct.

B. The RSO Does Not Interfere with the Landlords' Own Message

The second *FAIR* factor examines whether hosting the required speech interferes with the host's ability to communicate its own message or creates a likelihood that observers will attribute the hosted speech to the host. *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47, 65 (2006).

In *PruneYard Shopping Center v. Robins*, 447 U.S. 74 (1980), the Court upheld a requirement that a shopping center allow third-party expressive activities on its property. The Court emphasized that the property owner was not being compelled "to affirm [a] belief in any governmentally prescribed position," *id.* at 88, and that the public was unlikely to identify the speakers' views with the owner of a large public-facing commercial center. *Id.* at 87–88. The owner also remained free to post disclaimers disavowing any connection to the speakers. *Id*.

Likewise, in *FAIR*, the Supreme Court held that the hosting of recruiters did not create a high likelihood that observers would attribute the hosted speech to the host. 547 U.S. at 66. The Court explained that "the point" of the recruiters' location is not "overwhelmingly apparent." *Id.* An observer watching recruiters conduct interviews off campus cannot know whether the law school disapproves of the military, whether rooms were unavailable, or whether the recruiters chose the location for their own reasons. *Id.*

Moody underscores the same principle: misattribution concerns arise only when the host is engaged in expressive curation such that the hosted content becomes part of its message. *Moody v. NetChoice*, 603 U.S. 707, 729 (2024) (emphasizing that when the government interferes in expressive activity, it alters the content of that activity and thus overrides a private party's expressive choices). Where no such expressive function exists, hosting obligations do not implicate First Amendment editorial rights.

That framework applies in this case. The RSO requires landlords to post a factual government notice in a non-expressive, commercial space. Tenants will understand the notice as a government communication, not a landlord commentary on housing policy. Nothing about the requirement alters the landlord's ability to express their own position—or to disclaim agreement with the City's policy. As in *PruneYard*, landlords remain fully free to communicate their own views, object to the RSO, or clarify that the notice is provided solely to comply with the law.

C. The RSO Easily Satisfies Intermediate Scrutiny

Because the RSO regulates conduct, the leasing of residential property, and imposes only an incidental requirement to provide factual information, the appropriate standard is the intermediate scrutiny applied in *Turner* to non-expressive hosting obligations. The RSO easily survives intermediate scrutiny. Regulations "unrelated to the content of speech" are subject to intermediate

scrutiny because they do not target ideas or viewpoints. *Clark v. Community for Creative Non–Violence*, 468 U.S. 288, 293 (1984). A content-neutral restriction is subjected to intermediate scrutiny to determine whether it (1) is narrowly tailored, (2) serves a significant government interest, and (3) leaves open ample alternative avenues of communication. *United Bd. of Carpenters & Joiners of Am. Loc. 586 v. N.L.R.B.*, 540 F.3d 957, 963 (9th Cir. 2008), *as corrected* (Oct. 28, 2008).

First, the notice requirement advances several significant governmental interests. The City adopted the provision to ensure that tenants receive accurate, uniform information about eviction procedures, rent-stabilization protections, and complaint mechanisms. Promoting informed participation in a regulated housing market, preventing housing instability, and safeguarding consumers in an area marked by substantial information asymmetries all fall squarely within the government's substantial interests.

Second, the requirement is narrowly tailored to those interests. The RSO obligates landlords only to provide tenants with a standardized, government-authored notice that conveys factual, non-ideological information about existing legal rights and procedures. The ordinance does not require landlords to adopt, endorse, or disseminate any governmental viewpoint, nor does it condition their speech or silence on their agreement with the City's policy goals.

Finally, the RSO leaves landlords entirely free to express their own views about rent stabilization, eviction protections, or housing policy more broadly. Nothing in the ordinance restricts, chills, or penalizes a landlord's ability to communicate their perspective in any forum or medium. The regulation therefore preserves ample alternative channels for communication.

Because the RSO is content neutral, promotes significant governmental interests, and employs narrow, non-expressive means that leave landlords' speech fully intact, it readily survives intermediate scrutiny.

II. If the RSO Compels Expression at All, then it Permissibly Compels Commercial Speech.

If the Notice Requirement compels speech, the Notice Requirement is classic compelled commercial speech. This Circuit has confirmed this for compelled disclosures virtually every time it has been confronted with this question. The Court routinely classifies retail product warnings, disclaimers on solicitations for financial services, requirements to report tenants' rights, and speech related to contract terms as commercial speech, routinely going beyond the *Bolger* factors for whether speech is commercial.[3] Indeed, such disclosures are one

[3] See *Bolger v. Young Drug Products Corp.*, 463 U.S. 60 (1983). This Circuit has classified compelled disclosures as commercial speech in all of the following cases: *Nationwide Biweekly Admin., Inc. v. Owen*, 873 F.3d 716 (9th Cir. 2017), *Small Business Finance Ass'n. v. Mohseni,* No. 24-50, 2025 WL 1111493 (9th Cir. Apr. 15, 2025), *Am. Bev. Ass'n. v. City and County of San Francisco*, 916 F.3d 749 (9th Cir. 2019), *San Francisco Apartment Ass'n. v. City and County of San Francisco,* 881

of the more favored forms of commercial speech regulation. As noted by the Supreme Court in *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, "all our discussions of restraints on commercial speech have recommended disclosure requirements as one of the acceptable less restrictive alternatives to actual suppression of speech. . . . The First Amendment interests implicated by disclosure requirements are substantially weaker than those at stake when speech is actually suppressed." *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626, 651 n.14 (1985).

This Court held in *CTIA II* that so long as the compelled speech "relate[s] to the product or service that is provided by an entity subject to the requirement," it is subject to commercial speech standards. *CTIA - The Wireless Ass'n. v. City of Berkeley*; *California*, 928 F.3d 832, 845 (9th Cir. 2019). Each of the disclosures required by the RSO, including of the Relocation Fee Requirement, the FMR Eviction Restriction, and the Four Percent Cap "communicates the terms of an actual or potential transaction." *Pharmaceutical Research and Manufacturers of America v. Stolfi*, 153 F.4th 795, 820 (9th Cir. 2025) (citing *X Corp. v. Bonta*, 116 F.4th 888, 901 (9th Cir. 2024)). The information disclosed is directly related to

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F.3d 1169 (9th Cir. 2018), *Pharmaceutical Research and Manufacturers of America v. Stolfi*, 153 F.4th 795 (9th Cir. 2025), *CTIA - The Wireless Ass'n. v. City of Berkeley*; *California*, 928 F.3d 832 (9th Cir. 2019), *Building Industry Ass'n. - Bay Area v. City of Oakland*, 775 Fed. App'x. 348 (9th Cir. 2019), and *National Ass'n. of Wheat Growers v. Bonta*, 85 F.4th 1263 (9th Cir. 2023).

commercial transactions between landlords and tenants. The Notice Requirement reports terms and conditions of potential transactions. That falls squarely within the commercial speech category under this Court's precedents. *CTIA - The Wireless Association v. City of Berkeley, California*, 928 F.3d 832, 845 (9th Cir. 2019). Moreover, the Notice Requirement facilitates the "free flow of commercial information," which this Court has considered a sufficient function for deeming the speech commercial. *Pharmaceutical Research*, 153 F.4th at 822 (citing *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council*, 425 U.S. 748, 764 (1976)).

To be clear, the speech need not actually propose a transaction to be deemed commercial. *Ariix, LLC v. NutriSearch Corp.,* 985 F.3d 1107, 1115 (9th Cir. 2021) (citing *Jordan v. Jewel Food Stores, Inc.,* 743 F.3d 509, 516 (7th Cir. 2014) ("Courts view "this definition [as] just a starting point," however, and instead try to give effect to "a 'common-sense distinction' between commercial speech and other varieties of speech.")). In fact, this Court has previously held that landlord disclosure requirements to provide tenants with a statement of their rights related to buyout negotiations and a list of tenants' rights organizations was a regulation of commercial speech despite not clearly fitting into one of the *Bolger* factors. *San Francisco Apartment Ass'n v. City and County of San Francisco*, 881 F.3d 1169, 1176-78 (9th Cir. 2018); *Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 67

n.14 (1983) ("Nor do we mean to suggest that each of the characteristics present in this case must necessarily be present in order for speech to be commercial.").

Therefore, communications with tenants fall squarely within the scope of commercial speech. Appellants incorrectly conclude that the Notice Requirement should be subject to strict scrutiny simply because it is a content-based regulation. Even on the assumption that this is content-based regulation of speech, the *Zauderer* standard applies rather than strict scrutiny. This Court has already rejected appellants' exact argument when it held that the Supreme Court's decision *Reed v. Town of Gilbert* did not alter the standards of review for commercial speech. *Nationwide Biweekly Admin. v. Owen*, 873 F.3d 716, 732 (9th Cir. 2017) (quoting *Retail Dig. Network, LLC v. Prieto*, 861 F.3d 839, 846 ("[T]he Supreme Court repeatedly has declined to...fundamentally alter *Central Hudson*'s intermediate scrutiny standard.")). *NIFLA* confirms this by explicitly preserving *Zauderer* review after *Reed*. *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 768 (2018) ("*NIFLA*") ("[O]ur precedents have applied more deferential review to some laws that require professionals to disclose factual, noncontroversial information in their []commercial speech."). Appellant's argument consequently ignores the relevant doctrine for commercial speech regulations.

The speech in *Reed* is also easily distinguished from commercial speech. *Reed* did not involve commercial speech or compelled disclosures. *Nationwide*,

873 F.3d at 732; *Reed v. Town of Gilbert*, 576 U.S. 155, 178 (2015) (Breyer, J., concurring) (assuming the Court applies "less strict standards" to commercial speech regulations). *Reed* and related cases that applied strict scrutiny to content-based regulations are inapposite to the present disclosure requirement. Commercial speech is different.

A. *Zauderer P*rovides the Appropriate Standard of Review for the Notice Requirement.

The relevant standard for assessing the Notice Requirement is *Zauderer*. A compelled commercial disclosure is assessed according to the *Zauderer* standard of review if it requires the disclosure of "purely factual and uncontroversial information about the terms under which . . . services will be available." *Zauderer*, 471 U.S. at 651. Under *Zauderer*, the regulation needs to be reasonably related to a substantial government interest, and not unjustified or unduly burdensome. *Id.*

The Notice Requirement meets both threshold requirements to apply *Zauderer* review because it is both factual and uncontroversial. The only compelled speech is an accurate recitation of existing statutory requirements governing plaintiffs' provision of services. In fact, this is the first case that has been presented to this Court in which there is not even a requirement to recite external facts or provide additional information about a product that might hurt business. This Court has analyzed similar compelled disclosures across a gamut of different areas and topics under the *Zauderer* standard. Importantly, this includes

cases decided after *NIFLA*, which only "required that the compelled speech relate to the product or service that is provided by an entity subject to the requirement" to apply *Zauderer* review. *CTIA — The Wireless Associaion v. City of Berkeley, California*, 928 F.3d, 832, 845 (9th Cir. 2019) (clarifying for this Circuit that the application of *Zauderer* was not limited by *NIFLA* to only compelled disclosures concerning *terms* under which services will be available).[4] If *Zauderer* applies to any case, it undoubtedly applies here.

1. The Notice Requirement is Purely Factual.

Compelled disclosures are purely factual if they are "literally true" when assessed "sentence-by-sentence" and if they are not misleading when considered in their totality. *Small Business Finance Ass'n. v. Mohseni*, No. 24-50, 2025 WL 1111493 at *2. To be misleading, a disclosure must create an important but false implication about the product offered. *Id*. Both requirements are easily satisfied here. Indeed, appellants unsurprisingly concede as much. The compelled disclosure is a mere repetition of existing statutory requirements. Each considered separately and in their totality is incontrovertibly true.

[4] *See also San Francisco Apartment Ass'n. v. City and County of San Francisco,* 881 F.3d 1169, 1177 (9th Cir. 2018), *Am. Bev. Ass'n. v. City and County of San Francisco*, 916 F.3d 749, 756 (9th Cir. 2019), *Small Business Finance Ass'n. v. Mohseni,* No. 24-50, 2025 WL 1111493 at *1, and *Building Industry Ass'n. - Bay Area v. City of Oakland*, 775 Fed. App'x. 348, 350 (9th Cir. 2019).

In *San Francisco Apartments Ass'n.*, the "Disclosure Provision" at issue there required landlords to provide tenants with a statement of their rights and the contact information for several tenants' rights organizations. *San Francisco Apartment Ass'n. v. City and County of San Francisco,* 881 F.3d 1169, 1174 (9th Cir. 2018). Even then, when the city ordinance required the disclosure of outside information, this Court applied *Zauderer* and upheld the statute's "Disclosure Provision." *Id.* at 1176–78. In contrast, in *NIFLA*, "the licensed notice [was] not limited to 'purely factual and uncontroversial information about the terms under which ... services w[ould] be available.' … The notice in no way relate[d] to the services that licensed clinics provide. Instead, it require[d] these clinics to disclose information about state-sponsored services—including abortion, anything but an "uncontroversial" topic." *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 768-69 (2018).

2. The Notice Requirement is Uncontroversial

Compelled disclosures are uncontroversial if the topic is objectively controversial or if its effect on the speaker is to force the speaker to "convey a message fundamentally at odds with its mission." *CTIA*, 928 F.3d at 845; *Mohseni*, No. 24-50, 2025 WL 1111493 at *3 (describing the assessment of whether compelled speech is controversial as having "both [a] subjective and objective" component). This Court has found cases involving robust scientific disagreement

or topics of "heated political controversy" to be objectively controversial. *CTIA*, 928 F.3d. at 845 (characterizing the requirement challenged in *NIFLA* that clinics provide abortion services information as controversial). Here, there is no topic of dispute; the required notices are all true. The *Mohseni* court frames the inquiry as to whether the required assertions are incompatible with a challenger's beliefs. *Mohseni*, No. 24-50, 2025 WL 1111493 at *3. But there is no plausible basis to disagree with the truth of the assertions contained in the Notice Requirement, given that it merely requires descriptions of statutory law.

In short, the RSO Notice Requirement concerns the terms under which rental housing is offered – classic commercial information that should be subject to *Zauderer* review. Appellants were not compelled to state a judgment, provide an opinion, or state any external fact about the world that could be disputed. All that was required was for appellants to post the statute. To hold that this requirement cannot be considered "purely factual and uncontroversial" would be in direct tension with this Circuit's previous applications of *Zauderer* and reduce the compelled commercial speech cases that can be analyzed under *Zauderer* to a null set. Accordingly, the court should apply *Zauderer* in this case and uphold the statute.

3. The Notice Requirement Satisfies *Zauderer B*ecause it is Reasonably Related to a Substantial Government Interest and is Not Unduly Burdensome.

The Notice Requirement is reasonably related to a substantial government interest. The government's interest in protecting tenants and ensuring transparency in the housing market is substantially and directly advanced by the disclosure requirement. And the Notice Requirement falls far short of being unduly burdensome.

Under this court's precedents, compelled disclosures are deemed unduly burdensome when they "drown out" the other speech of the compelled speaker. *Am. Bev. Ass'n.*, 916 F.3d at 757 (quoting *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 778 (2018). In other words, this Court should ask whether the Notice Requirement effectively rules out the possibility of additional speech by property owners. *Id.* The answer is clearly no.

The Notice Requirement clearly identifies the City of Los Angeles as the speaker by including contact information, thus avoiding any potential misattribution. One notice on a property does not "crowd out" other speech in any meaningful sense. Appellants can speak their mind, in the manner of their choice, without restriction from the Notice Requirement.[5]

[5] As the trial court found, "the Notice prominently expresses that [it] is authored by the City, not the Plaintiffs" because it displays the Los Angeles Housing Department logo and City of Los Angeles seal at the top of the page. ER22.

Moreover, the Notice Requirement consists of a single disclosure in one setting. This limited compelled disclosure stands in stark contrast to commercial disclosures found unduly burdensome in cases such as *NIFLA*, where the challenged notice applied to all print and digital advertising materials by a covered facility and where facilities "must call attention to the notice, instead of its own message, by some method such as larger text or contrasting type or color." *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 778 (2018). Unlike the unlicensed notice in *NIFLA*, the Notice Requirement does not "drown[] out the facility's own message." *Id.* It merely mandates the display of factual, uncontroversial information in a single setting where consumers are likely to view it. Therefore, the Notice Requirement is not unduly burdensome.

III. Finding the RSO Notice to be Unconstitutional Compelled Speech Would Undermine a Wide Array of Established Mandatory Disclosures

A decision from this Court that holds the RSO's notice requirement unconstitutional would have broader implications for a panoply of government-mandated disclosures. Finding the notice requirement unconstitutional would undermine the institutional framework underpinning food package labels, warnings on batteries and electronics, and workers' compensation notices that have become staples of how our society strives to be fair and safe. Moreover, it would threaten consistency and predictability in First Amendment doctrine that businesses, consumers, and American society more broadly have come to rely on in commerce

and in daily life. Regulatory disclosures help buyers make informed decisions, help consumers avoid harmful products, and help employees understand their rights. They are critical tools of public health and societal well-being.

Government-mandated disclosures are critical to informing consumers about health risks in the marketplace. These include food packaging labels that help shoppers understand basic nutritional information about meals and ingredients they purchase and consume. These labels are instrumental to a healthy society, and they are vital to individuals with harmful allergies who must avoid certain foods. Mandatory disclosures are also critical to informing consumers about safety risks in the marketplace, including government-required warning labels on batteries, toys and products for children, and hazardous substances.

Just as tenants in Los Angeles are entitled to notice of their rights as renters, employees are entitled to notice of their rights in the workplace. This would be impossible without government-mandated notices covering important content about workers' compensation, employment discrimination, paid leave, workplace safety, and other topics. The U.S. Department of Labor requires federal, state, local, and private employers to post information about employees' rights under the Fair Labor Standards Act. 29 C.F.R. § 516.4 (2025). It requires private employers engaged in commerce to post Occupational Safety and Health Act-related notices for job safety and health. 29 U.S.C. § 657(c); 29 C.F.R. § 1903.2 (2025). And it

requires public agencies, public and private schools, and private businesses with over fifty employees to post employee rights and responsibilities under the Family and Medical Leave Act. 29 C.F.R. § 825.300, .402 (2025).

Finally, finding the RSO's notice requirement unconstitutional would jeopardize long-standing, settled First Amendment precedent regarding commercial disclosures. We all have a vested interest in maintaining a clear, consistent First Amendment doctrine. Preventing the government from compelling commercial entities to make factual disclosures would undermine settled doctrine and create uncertainty.

Last year, the Fifth Circuit declined to endorse tobacco industry plaintiffs' First Amendment challenge to an FDA rule requiring more aggressive health warnings on cigarette packaging, including color graphics and photorealistic images of harmful health effects from smoking. *See R J Reynolds Tobacco Co. v. Food & Drug Administration*, 96 F.4th 863 (5th Cir. 2024). The Fifth Circuit held that the graphic labels did not run afoul of the First Amendment, applying *Zauderer* to find that the health warnings they contained were "factual and uncontroversial." *R J Reynolds*, 96 F.4th at 868. The Fifth Circuit pointed to four other circuits applying *Zauderer's* principles to recognize an array of government interests beyond merely preventing deception, including promoting a "greater []understanding" of the risks of smoking and promoting the free flow of

commercial information. *R J Reynolds*, 96 F.4th at 871-82. Holding the RSO's notice requirement unconstitutional would overturn settled First Amendment doctrine and threaten the vast ecosystem of government-mandated disclosures that our society has come to rely on.

CONCLUSION

For the foregoing reasons, amici curiae respectfully urge this Court to uphold the trial court's decision in this case.

Dated: January 27, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 4,504 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and 11th Cir. R 32-4.

2. 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 in a proportionally spaced typeface using Microsoft Word for Mac in 14-point Times New Roman font.

Dated: January 27, 2026

/s/G.S. Hans
G.S. Hans

CERTIFICATE OF SERVICE

On January 27, 2026, this brief was served via CM/ECF on all registered counsel and transmitted to the clerk of the court.

/s/G.S. Hans
G.S. Hans