

Court Blocks New Mexico's PFAS Label Rule Over First Amendment Concerns

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On September 16, 2026, the US District Court for the District of New Mexico granted a preliminary injunction barring the State of New Mexico (New Mexico or the State) from enforcing its PFAS product-labeling regulation while litigation proceeds.¹ The American Chemistry Council and allied trade groups sued the Secretary of the New Mexico Environment Department (NMED) and the Attorney General, arguing that the mandate compels speech in violation of the First Amendment. What makes *American Chemistry Council v. Kenney* notable is not that the court found a constitutional violation, but where it found one. The court held that the required label conveyed only “purely factual” and “uncontroversial” information (ordinarily the hallmarks of a permissible disclosure) yet the rule still failed because the State could not show a reasonable fit between the label it demanded and the interests it claimed to serve.² The ruling leaves the State's phased sales bans and reporting obligations intact, but it is a careful application of the compelled commercial speech doctrine to one of the broadest product labeling rules yet adopted by any State.³

Background

New Mexico's 2025 PFAS Protection Act imposes a phased ban on products with intentionally added PFAS, a reporting requirement, and authority to adopt implementing rules, including labeling.⁴ Plaintiffs challenged only the labeling rule. Adopted in May 2026, the labeling regulation requires manufacturers to affix “an outline of an Erlenmeyer flask with the word ‘PFAS’ inside the flask.”⁵ The Act defines PFAS as “a substance in a class of fluorinated organic chemicals containing at least one fully fluorinated carbon atom”—a definition shared, in substance, by California, Colorado, and Connecticut.⁶ Those States, however, require PFAS labeling only for narrow product categories, whereas New Mexico's rule reaches *any* product with intentionally added PFAS.⁷

The Legal Framework

Commercial speech receives a “limited measure of protection,”⁸ and mandatory commercial disclosures are generally reviewed under *Zauderer v. Office of Disciplinary Counsel*. A government may compel disclosure of “purely factual and uncontroversial information” so long as the requirement is reasonably related to a substantial state interest and is not “unjustified or unduly burdensome.”⁹ Where a disclosure is *not* purely factual and uncontroversial, courts instead apply the intermediate scrutiny of *Central Hudson*.¹⁰ Although *Zauderer* itself concerned consumer deception, courts including the en banc D.C. Circuit in *American Meat Institute v. USDA* have extended the standard to other substantial interests.¹¹ They have refused, however, to treat mere “consumer curiosity” as adequate. As the Second Circuit held in *International Dairy Foods Ass'n v. Amestoy*, “consumer curiosity alone is not a strong enough state interest to sustain the compulsion of even an accurate, factual statement.”¹²

Purely Factual and Uncontroversial

The court cleared the first two prongs quickly. The label was purely factual, it held, because it does not speak to the qualities of PFAS but merely identifies that a product contains a substance meeting the statutory definition; competing definitions do not convert a fact into an opinion, and manufacturers remain free to supplement the label.¹³ The court rejected the argument that the Erlenmeyer-flask pictograph was inherently a “warning,” distinguishing graphic tobacco images struck down elsewhere as “unabashed attempts to evoke emotion.”¹⁴ The court also found the proposed label uncontroversial.¹⁵ Although it requires manufacturers to state that a product contains PFAS, it does not

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mandate information concerning any alleged risk of harm associated with any PFAS-containing product.¹⁶

No Reasonable Fit

Ultimately, the rule foundered on the third prong, and the State's own framing proved decisive. New Mexico asserted interests in protecting consumer and environmental health, yet NMED repeatedly defended the rule as a mere “consumer awareness label”—not a warning—insisting it conveyed nothing about health risks, environmental impact, or manufacturing.¹⁷ Defendants even proclaimed that this “lack of characterization” was “a feature, not a bug.”¹⁸ That characterization severed the link between means and ends. A label conveying no substantive information, the court reasoned, cannot be inextricably intertwined with the goal of protecting health or the environment.¹⁹ The record deepened the problem, given that the State's own expert called the label a “single, uniform warning,” and NMED's website urged consumers to “[l]ook for warnings about PFAS in products.” “[T]he [r]egulation cannot simultaneously, as Schrödinger would have it, be merely a consumer awareness label and not a warning label”²⁰ With a likely First Amendment violation established, the remaining factors followed. Loss of First Amendment freedoms, even briefly, is irreparable injury, and the equities favored the plaintiffs because New Mexico may still enforce the unchallenged product ban and promote its health messaging elsewhere.²¹

Takeaways

Kenney is a preliminary ruling, not a final judgment, and it leaves the bulk of New Mexico's PFAS regulatory regime intact, including the phased sales prohibitions and manufacturer reporting. Its lesson, however, is durable and practical. How a government characterizes its own disclosure can decide the disclosure's fate. Had New Mexico defended the flask mark as a genuine health and safety warning, the court suggested the means-ends analysis might have come out differently, though it expressly declined to decide whether such a warning would be purely factual and uncontroversial given the unsettled science on many PFAS subclasses.²²

That reservation matters for the next wave of state PFAS rules. California, Colorado, and Connecticut already cabin labeling to defined product categories. *Kenney* implies two further drafting choices. First, a class wide identifier is more likely to survive *Zauderer* if it is tied to a concrete instruction, such as how to dispose of the product, which exposure pathway is at issue, or what the consumer can do. Second, an agency that wants the communicative punch of a warning should say so in the rule, the administrative record, and public facing guidance. Marketing the flask image as a warning to consumers while litigating it as value-neutral “awareness” created the Schrödinger problem the court refused to ignore.

The decision also leaves questions for later stages or other courts. Whether a redesigned warning could satisfy *Zauderer*; whether the labeling rule independently violates the dormant Commerce Clause, a claim the preliminary injunction motion did not present;²³ and how the parallel state court appeal in *Diamond Vogel, Inc. v. New Mexico Environmental Improvement Board* will treat the same mandate under state administrative law.²⁴ For now, enforcement of N.M. Code R. § 20.13.2.13 is stayed for the life of the federal suit. States writing the next PFAS label should treat *Kenney* less as a veto of disclosure and more as a demand that the speech they compel actually do the work they say it does.

¹*Am. Chemistry Council v. Kenney*, No. 1:26-cv-02130-MIS-SCY, slip op. at 24 (D.N.M. Sept. 16, 2026).

²*Kenney*, slip op. at 11, 15–17 (quoting *Zauderer v. Off. of Disciplinary Couns. of Sup. Ct. of Ohio*, 471 U.S. 626, 651 (1985)).

³The injunction reaches only N.M. Code R. § 20.13.2.13. *Kenney*, slip op. at 24. The Act's sales prohibitions and

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reporting duties were not before the court, as Plaintiffs did not contest those provisions of New Mexico's PFAS Protection Act. *See* N.M. Stat. Ann. §§ 74-15-3, -5 (2025).

⁴N.M. Stat. Ann. §§ 74-15-1 to -7 (2025); *Kenney*, slip op. at 1–2.

⁵N.M. Code R. § 20.13.2.13(C); *Kenney*, slip op. at 4.

⁶N.M. Stat. Ann. § 74-15-2(S); *accord* Colo. Rev. Stat. § 25-5-1302(7); Cal. Health & Safety Code § 109000(a)(2); Conn. Gen. Stat. § 22a-903c(a)(20).

⁷Cal. Health & Safety Code § 109011(a); Colo. Rev. Stat. § 25-15-604(2)(a); Conn. Gen. Stat. § 22a-903c(c)(1); *Kenney*, slip op. at 5.

⁸*Bd. of Trs. of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 477 (1989) (quoting *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 456 (1978)); *Kenney*, slip op. at 7.

⁹*Zauderer*, 471 U.S. at 651; *see also Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 768 (2018).

¹⁰*Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557, 562–66 (1980); *Kenney*, slip op. at 7 & n.5.

¹¹*Am. Meat Inst. v. U.S. Dep't of Agric.*, 760 F.3d 18, 22–23 (D.C. Cir. 2014) (en banc); *see also CTIA—The Wireless Ass'n v. City of Berkeley*, 928 F.3d 832, 844 (9th Cir. 2019); *Nat'l Elec. Mfrs. Ass'n v. Sorrell*, 272 F.3d 104, 115 (2d Cir. 2001).

¹²*Int'l Dairy Foods Ass'n v. Amestoy*, 92 F.3d 67, 74 (2d Cir. 1996); *accord Kenney*, slip op. at 9.

¹³*Kenney*, slip op. at 13–14.

¹⁴*R.J. Reynolds Tobacco Co. v. FDA*, 696 F.3d 1205, 1216–17 (D.C. Cir. 2012), *overruled on other grounds by AMI*, 760 F.3d 18; *Kenney*, slip op. at 14–15.

¹⁵*Kenney*, slip op. at 16–17

¹⁶*Id.*

¹⁷*Kenney*, slip op. at 17, 20.

¹⁸*Kenney*, slip op. at 19 (quoting Defendants' briefing).

¹⁹*Sorrell*, 272 F.3d at 115; *Kenney*, slip op. at 18–19.

²⁰*Kenney*, slip op. at 22 (quoting DeWitt Decl. ¶ 15 and NMED public materials).

²¹*Elrod v. Burns*, 427 U.S. 347, 373 (1976); *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1145 (10th Cir. 2013), *aff'd sub nom. Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014); *Kenney*, slip op. at 23–24.

²²*Kenney*, slip op. at 21 n.9.

²³The complaint also pleaded a dormant Commerce Clause claim, which the preliminary-injunction motion did not present. *See Kenney*, slip op. at 1; Complaint at 2–3, *Kenney*, No. 1:26-cv-02130 (D.N.M. July 1, 2026).

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²⁴*Diamond Vogel, Inc. v. N.M. Env't Improvement Bd.*, No. A-1-CA-43483 (N.M. Ct. App. filed May 22, 2026).