

MAHA Pushback – Court Temporarily Blocks West Virginia’s Dye Ban

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In March 2025, West Virginia passed one of the most aggressive Make America Healthy Again (MAHA)-inspired statutes in the country banning a number of FDA-approved food dyes. But its future is now uncertain after a federal court [temporarily enjoined the law](#) as unconstitutionally vague.

West Virginia’s [House Bill 2354](#) revises an existing food safety law prohibiting the sale of any added substance or ingredients deemed “poisonous or injurious” to the health by specifying that such prohibited substances “include[e] Red Dye 3, Red Dye 40, Yellow Dye 5, Yellow Dye 6, Blue Dye 1, Blue Dye 2, and Green Dye 3.” The law does not further define “poisonous or injurious” or provide additional guidance as to how the West Virginia’s Department of Health should determine if other substances are “poisonous or injurious” to health.

The ban was scheduled to take effect on January 1, 2028, which, [according to the state](#), would give companies “time to adjust” without causing “price increases” for consumers.

But in October, the International Association of Color Manufacturers (IACM) filed a [lawsuit](#) challenging the law under the U.S. and West Virginia constitutions. The suit alleges that the ban has no scientific basis, ignores the safety determinations that were made when FDA granted the respective color additive petitions, offers no new evidence that brings into question the safety of the color additives, and is unconstitutionally vague due to the undefined term “poisonous or injurious.”

And last week, the Southern District of West Virginia granted a motion for preliminary injunction, pausing enforcement of the law while the case proceeds. The court agreed that IACM was likely to succeed on their claim that the legislation was unconstitutionally vague and likely to lead to arbitrary enforcement as to what is considered “poisonous or injurious.” The court also highlighted that many banned additives are FDA approved, which “muddies the water and creates confusion” about what substances are harmful.

According to the court, because the new law adds the specified color additives as non-exhaustive examples of substances deemed “poisonous or injurious” to health without additional criteria, it “provides no notice as to the inclusion of additional color additives, leaving the door open for arbitrary enforcement.” The decision does not apply to a different portion of West Virginia’s law that took effect in August 2025 which bans certain additives and dyes in schools.

In a [statement on X](#), West Virginia Governor Patrick Morrisey said, “West Virginia will continue to defend its authority to protect the health and well-being of our citizens, especially children. We are reviewing our legal options but will continue to press forward with our efforts to get harmful crap out of our food supply.”

Companies that manufacture or sell products in West Virginia should not assume this issue is resolved. While the injunction delays enforcement, the underlying legal and regulatory uncertainty remains. Businesses should monitor the litigation closely and prepare for potential outcomes, including a reinstated ban or revised legislation. They should also evaluate product formulations for compliance with both current and anticipated state-level restrictions as we discussed in a previous client advisory [here](#).

This case reinforces a broader trend that we expect to continue into 2026 and beyond: state-driven food safety and advertising laws may outpace federal standards, creating a patchwork of requirements. Businesses that act early and closely follow legislative and regulatory enforcement trends will be better positioned to navigate these changes.