THE HONORABLE MICHAEL SIMON

Samantha K. Pitsch, OSB No. 230755
samantha.pitsch@stokeslaw.com
STOKES LAWRENCE, P.S.
1420 Fifth Avenue, Suite 3000
Seattle, WA 98101
Telephone: (206) 626-6000

Nancy Sims (*pro hac vice* admission pending)
nancy.sims@bakermckenzie.com
Benjamin W. Turner (*pro hac vice* admission pending)
ben.turner@bakermckenzie.com
10250 Constellation Blvd., Suite 1850
Los Angeles, California 90067
Telephone: (310) 201-4728

Attorneys for *Amicus Curiae*
International Franchise Association and
Restaurant Law Center

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

NATIONAL ASSOCIATION OF WHOLESALER-DISTRIBUTORS,

Plaintiff,

v.

LEAH FELDON, DIRECTOR, OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY, in her official capacity; MATT DONEGAN, KAREN MOYNAHAN, MARK WEBB, AND SILVIA TANNER, in their official capacities as members of the Oregon Environmental Quality Commission,

Defendants.

Case No.: 3:25-cv-01334-SI

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF INTERNATIONAL FRANCHISE ASSOCIATION AND RESTAURANT LAW CENTER

International Franchise Association and Restaurant Law Center respectfully request leave to file an amicus brief in support of National Association of Wholesaler-Distributors in the above-captioned matter.

INTEREST OF AMICUS CURIAE

The **International Franchise Association** ("IFA") is the world's oldest and largest trade association devoted to representing the interests of franchising. Founded in 1960, IFA's membership includes franchisors, franchisees, and suppliers, and IFA serves as a voice for both franchisors and franchisees throughout the United States. Through its public policy work, IFA protects, enhances, and promotes franchising on behalf of more than 1,400 brands in more than 300 business categories, including systems in quick-service restaurants, retail, convenience, and hospitality—sectors in which packaging, food serviceware, service packaging, branded amenities, and printed materials are integral to ordinary operations.

Franchising is a substantial channel of interstate commerce in Oregon and nationally. Oregon has approximately 9,854 franchise locations, employing 104,273 people and generating approximately $10.3 billion in annual franchise revenue. Nationally, IFA's 2026 Franchising Economic Outlook projects approximately 845,000 franchised establishments, nearly 8.9 million jobs, and $921.4 billion in economic output. The franchise model is also predominantly local in ownership: IFA reports that 81 percent of franchisees own and operate only one unit.[1]

The **Restaurant Law Center** (RLC) is a public policy organization affiliated with the National Restaurant Association (NRA), the largest foodservice trade association in the world. RLC members include corporate-owned foodservice establishments, franchisees, and independent operators. Relevant here, the RLC routinely advocates on matters of environmental policy and represents the interests of its members in environmental and supply chain matters before courts and regulatory agencies.

The Plastic Pollution and Recycling Modernization Act reaches IFA and NRA members in several recurring capacities. In branded packaged goods contexts, Oregon treats a brand owner that directs manufacturing—including by setting packaging specifications—as the producer. In

[1] https://www.franchise.org/multitab-map/or-economic-data/; https://www.franchise.org/franchising-economic-outlook/; https://www.franchise.org/2025/10/ifa-launches-5-million-franchise-means-local-campaign-to-spotlight-local-franchise-business-owners/.

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

hospitality systems, that rule can reach franchisors for branded amenities, keycard sleeves, stationery, and other guest-facing materials supplied through approved-supplier networks. In restaurants, that rule can reach franchisors for branded packaging, food serviceware, and other guest-facing materials supplied through approved-supplier networks. For food serviceware and service packaging, ORS 459A.866(3) and OAR 340-090-0860(4) place producer responsibility on the person that first sells the item in or into Oregon, which may be an approved supplier or distributor even when cups, bowls, clamshells, lids, bags, or similar items are manufactured to franchisor specifications and bear franchisor branding. And ORS 459A.863(32)(g) denies one path to small-producer status to a single retail sales establishment if it is supplied or operated as part of a franchise or chain. These features of the Act intersect directly with the legal and operational structure of franchise systems.

The Act treats producer identity as a proxy for practical power: the ability to redesign packaging, obtain Oregon-specific data, respond to eco-modulated fees, implement packaging changes and absorb or recover the resulting costs. Franchise systems show why that premise fails in recurring applications. In trademark-licensed networks, those functions are divided among independent actors—the franchisor, franchisee, approved supplier, distributor, purchasing cooperative, and packaging manufacturer. When Oregon assigns the fee to one actor while packaging authority, shipment data, cost-recovery capacity, or the practical ability to implement a packaging change rests with another, the Act imposes burdens on interstate franchise commerce while substantially attenuating the redesign benefit Oregon invokes under *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970). The cumulative effect results in substantial financial and compliance burdens that are disproportionate to the franchisee's influence over packaging design. In the case of foodservice, packaging decisions are primarily driven by food safety, quality, and freshness requirements that cannot be altered to meet EPR criteria.

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

CONCLUSION

IFA and RLC respectfully request that the Court grant leave to file an amicus brief; and direct the Clerk of Court to accept as filed the amicus brief that IFA and RLC have lodged along with this motion.

DATED this 15th day of June, 2026.

STOKES LAWRENCE, P.S.

By: */s/Samantha K. Pitsch*

Samantha K. Pitsch (OSB #230755)
1420 Fifth Avenue, Suite 3000
Seattle, WA 98101-2393
Telephone: (206) 626-6000
Fax: (206) 464-1496
E-mail: samantha.pitsch@stokeslaw.com

BAKER & McKENZIE LLP

By: /s/ *Nancy Sims*

Nancy Sims (*pro hac vice* admission pending)
nancy.sims@bakermckenzie.com
Benjamin W. Turner (*pro hac vice* admission pending)
ben.turner@bakermckenzie.com
10250 Constellation Blvd., Suite 1850
Los Angeles, California 90067
(310) 201-4728

Attorneys for *Amicus Curiae*
International Franchise Association and
Restaurant Law Center

CERTIFICATE OF COMPLIANCE

This brief complies with the applicable word-count limitation under LR 7-2(b) because it contains 644 words, including headings, footnotes, and quotations, but excluding the caption, table of contents, table of cases and authorities, signature block, exhibits, and any certificates of counsel.

DATED this 15th day of June, 2026.

STOKES LAWRENCE, P.S.

By: */s/ Samantha K. Pitsch*

Samantha K. Pitsch (OSB #230755)
1420 Fifth Avenue, Suite 3000
Seattle, WA 98101-2393
Telephone: (206) 626-6000
Fax: (206) 464-1496
E-mail: samantha.pitsch@stokeslaw.com

Attorney for Amicus Curiae
International Franchise Association and
Restaurant Law Center

CERTIFICATE OF SERVICE

I certify that on June 15, 2026, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorneys of record and all registered participants.

DATED this 15th day of June, 2026.

/s/ Nico Schulz
Nico Schulz, Practice Assistant

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

THE HONORABLE MICHAEL SIMON

Samantha K. Pitsch, OSB No. 230755
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BRIEF OF *AMICUS CURIAE* INTERNATIONAL FRANCHISE ASSOCIATION AND RESTAURANT LAW CENTER IN SUPPORT OF PLAINTIFF'S MOTION FOR PERMANENT INJUNCTION

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1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

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STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
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1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

hospitality systems, that rule can reach franchisors for branded amenities, keycard sleeves, stationery, and other guest-facing materials supplied through approved-supplier networks. In restaurants, that rule can reach franchisors for branded packaging, food serviceware, and other guest-facing materials supplied through approved-supplier networks. For food serviceware and service packaging, ORS 459A.866(3) and OAR 340-090-0860(4) place producer responsibility on the person that first sells the item in or into Oregon, which may be an approved supplier or distributor even when cups, bowls, clamshells, lids, bags, or similar items are manufactured to franchisor specifications and bear franchisor branding. And ORS 459A.863(32)(g) denies one path to small-producer status to a single retail sales establishment if it is supplied or operated as part of a franchise or chain. These features of the Act intersect directly with the legal and operational structure of franchise systems.

The Act treats producer identity as a proxy for practical power: the ability to redesign packaging, obtain Oregon-specific data, respond to eco-modulated fees, implement packaging changes and absorb or recover the resulting costs. Franchise systems show why that premise fails in recurring applications. In trademark-licensed networks, those functions are divided among independent actors—the franchisor, franchisee, approved supplier, distributor, purchasing cooperative, and packaging manufacturer. When Oregon assigns the fee to one actor while packaging authority, shipment data, cost-recovery capacity, or the practical ability to implement a packaging change rests with another, the Act imposes burdens on interstate franchise commerce while substantially attenuating the redesign benefit Oregon invokes under *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970). The cumulative effect results in substantial financial and compliance burdens that are disproportionate to the franchisee's influence over packaging design. In the case of foodservice, packaging decisions are primarily driven by food safety, quality, and freshness requirements that cannot be altered to meet EPR criteria.

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The Plastic Pollution and Recycling Modernization Act assumes that the designated "producer" has the practical ability to redesign packaging, obtain Oregon-specific shipment data, respond to eco-modulated fees, implement packaging changes and absorb or recover the resulting costs. Perhaps that proxy works in vertically integrated industries where one entity holds those functions. But it certainly fails in trademark-licensed franchise systems, where the same functions are divided across legally independent actors by the trademark license and the contractual relationships that organize the franchise model.

Federal trademark law requires the owner of a licensed mark to exercise meaningful control over the nature and quality of goods and services offered under that mark. Franchise agreements implement that obligation through brand standards, approved-supplier programs, packaging specifications, trade-dress controls over packaging appearance and brand presentation, operating manuals, and inspection rights. Those controls explain why packaging may be specified or approved through brand-level channels, but they do not make the franchise system vertically integrated or place all Oregon compliance information in one entity's hands. In franchise systems, the relevant functions are commonly divided: brand-level standards may reside with the franchisor; material and SKU data with suppliers; shipment information with distributors or purchasing cooperatives; and local use and customer facing sales with franchisees. Oregon's fee may therefore be assigned to one actor even though other actors control the practical steps needed to respond: redesigning packaging, verifying material data, identifying Oregon-bound units, implementing local changes, and absorbing or recovering the resulting costs.

Of course, franchise systems already accommodate state-specific compliance—warning labels, deposit legends, certification marks, language requirements. But those examples do not require the same kind of systemwide packaging redesign. Warning labels, deposit legends, certification marks, and language requirements ordinarily change the printing or labeling layer of an existing product. Oregon's Act operates differently. Its material-based fees pressure changes in the packaging itself—resin, weight, coating, dimensions, and recyclability classification—for

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

items that otherwise move through national approved-supplier systems. For a franchise system, this can require new material testing, supplier qualification, SKU creation, Oregon-specific inventory segregation, and updates to the approved-supplier process across a trademark-controlled network.

Oregon's Act creates this disconnect through statutory and regulatory choices that separate fee responsibility from practical control. ORS 459A.866(3) and OAR 340-090-0860(4) assign producer responsibility for food serviceware and service packaging to the person that first sells the item in or into Oregon, even when the item is manufactured to franchisor specifications and bears franchisor trade dress. The first seller may therefore bear the fee without being positioned to approve or implement the packaging change the fee is supposed to encourage. At the same time, Oregon's implementing rules treat a person that "directs the manufacturing" of a packaged item, including by setting packaging specifications, as the manufacturer for purposes of the Act's producer hierarchy for packaged goods sold at physical retail. OAR 340-090-0860(1)(a); *see also* ORS 459A.866(1)(a) (assigning producer responsibility for certain packaging sold at physical retail to the person that manufactures the packaged item).

Nor does the "directs the manufacturing" rule make franchisors the proper fee bearing producer across franchise systems. Those systems vary in how they allocate packaging authority, shipment data, implementation control, and cost recovery, and Oregon's producer rules do not reliably identify the actor that actually holds those functions for a given covered product. That rule can point toward the franchisor for branded packaged goods, printed materials, or hotel guest-facing amenities, even where the operational records needed to calculate, verify, or respond to the fee are maintained elsewhere in the supply chain. The Act therefore produces the same defect from opposite directions: the first-seller rule may place responsibility on suppliers or distributors that are not positioned to redesign approved packaging, while the "directs the manufacturing" rule may point toward franchisors based on brand-level approval rights without giving them the operational records needed to calculate, verify, or respond to the fee.

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1420 FIFTH AVENUE, SUITE 3000
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(206) 626-6000

The Act compounds the disconnect in a provision where Oregon's choice of proxy departs from Oregon's own regulatory practice. ORS 459A.863(32)(g) closes one of seven paths to small-producer status to a producer that operates a single retail sales establishment and has no online sales if that establishment is "supplied or operated as part of a franchise or a chain"—even where the franchise-affiliated retailer is identical in revenue, packaging volume, and Oregon footprint to a non-franchise competitor who qualifies. Oregon's implementing regulations, OAR 340-090-0860(6), define "associated producers" for related-entity aggregation through six common ownership or control tests, none of which a typical arm's-length franchise relationship satisfies. Oregon's own rules therefore show that the State can distinguish common control from ordinary franchise affiliation when it chooses to do so. That available, less burdensome criterion is relevant tailoring evidence under *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970).

Hunt v. Washington State Apple Advertising Commission, 432 U.S. 333 (1977), invalidated a North Carolina statute requiring apple containers shipped into or sold within the State to bear no grade other than the applicable USDA grade or an ungraded designation. That state-specific labeling rule forced Washington producers to reconfigure established packaging and distribution practices, including relabeling shipments, repacking apples, or using North Carolina-specific containers. Here, Oregon-specific eco-modulation pressure on franchise packaging creates the same structural problem. A franchise system that adopts Oregon-only specifications must maintain parallel supplier approvals, SKUs, inventory segregation, and audit procedures for a single state; if the system instead adopts Oregon-calibrated packaging nationwide, one state's requirements drive packaging choices for a national network.

These franchise-system burdens support NAW's challenge because they go to the core *Pike* inquiry: Oregon's producer rules impose substantial burdens on interstate commerce while weakening the Act's asserted local benefit. The statute's fee mechanism is supposed to encourage packaging redesign, but, in franchise systems, Oregon often assigns responsibility to an actor that lacks one or more of the functions needed to respond to that incentive: packaging authority, Oregon-specific data, implementation control, or a practical ability to bear or recover the fee.

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1420 FIFTH AVENUE, SUITE 3000
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(206) 626-6000

Under *Pike*, the threshold question after *National Pork Producers Council v. Ross*, 598 U.S. 356 (2023), is whether the challenged law imposes a substantial burden on interstate commerce, not merely ordinary compliance costs or disruption of a preferred business model. That threshold is met here because the burden is not simply the payment of a fee. Oregon's producer assignment requires actors in interstate franchise systems to renegotiate supply arrangements, create new data-sharing mechanisms, and coordinate packaging across independent companies in other states so that the fee can function as a redesign incentive. The charged actor cannot simply absorb the cost and move on, because the Act's eco-modulation structure assumes the producer will change packaging in response to the fee. The overly complex law imposes substantial burdens on internal company resources, often in states far outside of Oregon's borders, to engage teams across procurement, legal, IT and sustainability to implement the regulation, and often without visibility into Oregon-specific packaging data.

ARGUMENT

I. FRANCHISING SPLITS OWNERSHIP, BRAND CONTROL, PACKAGING CONTROL, DATA, AND COST-BEARING ACROSS DIFFERENT INDEPENDENT ACTORS

Franchising is a trademark licensing structure in which the franchisor grants the franchisee the right to operate a business under the franchisor's brand, subject to brand standards the franchisor establishes and enforces. The franchisee owns and operates the business as an independent legal entity, purchases or receives goods through approved sources or approved specifications, and bears the economic risk of the local operation. The franchisor licenses the trademark, develops and updates the brand standards, and enforces compliance through inspections, audits, and contractual remedies. Federal franchise regulation defines a franchise in similar terms, covering a relationship in which the franchisee operates a business associated with the franchisor's mark and the franchisor exercises, or has authority to exercise, significant control over the franchisee's method of operation. 16 C.F.R. § 436.1(h)(1)–(2). Thus, two businesses operating across the street from each other—one independent, one franchised—may sell similar

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

products to the same Oregon customers while operating through materially different legal and operational structures. Federal trademark law requires the owner of a licensed mark to maintain meaningful control over the nature and quality of goods and services offered under the mark; failure to maintain that control can result in trademark abandonment or loss under the naked-licensing doctrine. *See* 15 U.S.C. §§ 1055, 1127; *FreecycleSunnyvale v. Freecycle Network*, 626 F.3d 509, 515-16 (9th Cir. 2010); *Barcamerica Int'l USA Tr. v. Tyfield Imps., Inc.*, 289 F.3d 589, 595–96 (9th Cir. 2002). Franchise agreements implement that requirement through enforceable standards governing approved suppliers, packaging specifications, trade dress, operating procedures, and inspection rights. Brand standards in franchise systems serve commercial purposes as well—consumer-experience consistency, operational reliability, and supply-chain coordination—and the legal and commercial functions reinforce each other. The franchisee accepts the constraints as a condition of receiving the brand license. The franchisor enforces them as part of preserving the mark.

The franchisor generally owns and enforces the brand standards while the franchisee conducts the local retail operation and serves customers under those standards. Approved suppliers and contract manufacturers produce the items the franchisee uses according to franchisor-approved specifications. Distributors and system purchasing cooperatives move products from suppliers to franchisees across regional and state lines, often consolidating volume across brands and markets. The result is a disparate network of legally independent businesses in which design authority, material data, shipment records, and retail sales often reside with different actors.

The details vary across franchise systems. Some systems require purchases from designated suppliers; others permit franchisees to purchase from qualified suppliers that meet brand standards; still others rely on franchisee-owned purchasing cooperatives to aggregate demand and coordinate procurement. But the relevant point is the same across those models: Oregon's producer rules can separate fee responsibility from the functions needed to respond to the Act's incentives, including packaging authority, material data, Oregon shipment information, and the ability to determine what packaging Oregon franchisees may order and use.

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1420 FIFTH AVENUE, SUITE 3000
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(206) 626-6000

Each actor in a franchise supply chain holds only part of the information that an EPR program would require for compliant reporting. Such supply chains are often decentralized and contain multiple data sources, which makes tracking for EPR purposes a burdensome exercise. The franchisor knows the brand standards and approved packaging specifications, but may have limited visibility into which units of branded packaging reach a particular Oregon franchisee. The approved supplier or contract manufacturer knows packaging weights, material composition, and SKU-level data but may lack reliable visibility into state-level shipment patterns. The distributor or purchasing cooperative knows warehouse-level and shipment-level volume but may not know whether goods stored in Oregon will be delivered to an Oregon franchisee, rerouted across state lines, resold, or transferred through another distribution channel. The franchisee knows local sales and customer-facing operations, but likely has no visibility into the packaging specifications and composition. No single actor in the chain reliably holds the full information needed to know where a given item of packaging is ultimately discarded, whether another actor has reported it, or whether Oregon's fee actually corresponds to Oregon waste.

The division of functions across actors is set out below:

Function	Actor commonly holding it
Local retail operation	Franchisee
Trademark and brand standards	Franchisor
Packaging specifications	Franchisor and/or approved supplier
SKU-level material data	Supplier or contract manufacturer
Oregon shipment data	Distributor or purchasing cooperative
Local sales information	Franchisee
Disposal-location knowledge	Often no single actor
Producer-fee invoice	Franchisor, supplier, distributor, or other actor depending on category (in some cases, numerous actors may receive an invoice)

The party that is legally assigned producer responsibility may therefore be only one participant in a divided commercial chain. Producer status may point toward a franchisor for some branded materials or toward a first seller for food serviceware, even though neither designation

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

necessarily captures the full set of information, authority and commercial tools needed to respond to the fee.

The Act assumes that the producer can redesign packaging, collect Oregon-specific data, respond to eco-modulated fees, and absorb or recover the resulting costs through the relevant commercial relationship. Franchise systems show why that assumption fails in recurring applications: Oregon may place fee responsibility on one entity while design authority, shipment data, and cost-bearing capacity sit with others.

II. OREGON EXPRESSLY USES FRANCHISE AFFILIATION AS A PROXY FOR SCALE AND CONTROL, BUT THE PROXY IS INCORRECT

A. ORS 459A.863(32)(g) Disqualifies Single-Unit Franchisees Based on Brand Affiliation

One of the seven paths to "small producer" status under the Act is closed to a retailer supplied or operated as part of a franchise or chain. ORS 459A.863(32)(g) applies only to a producer that "operates a single retail sales establishment, has no online sales and is not supplied or operated as part of a franchise or a chain." Franchise or chain affiliation alone disqualifies a retailer from that path, even where the franchise-affiliated business is identical in revenue, packaging volume, Oregon footprint, single-establishment status, and absence of online sales to a non-franchise comparator that qualifies under the same provision.

B. Oregon Uses Ownership and Control Criteria Elsewhere in the Same Scheme

Oregon's implementing regulations later adopted a more precise common ownership and control standard for related-producer aggregation within the same statutory scheme. OAR 340-090-0860(6) defines "associated producers" through six common-ownership or control tests: family ownership in the same business activity; more-than-50-percent ownership or control; controlled-group membership under Section 1563(a) of the Internal Revenue Code; trust-corporation relationships involving more-than-50-percent ownership; corporation-partnership or LLC overlapping ownership above 50 percent; and overlapping ownership or control of S corporations or C corporations. A typical arm's-length franchisor-franchisee relationship satisfies

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
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none of those tests. The franchisor and franchisee are legally separate businesses connected by a trademark license and franchise agreement, not by overlapping equity, controlled-group status, or common ownership.

Of course, small-producer eligibility and related-entity aggregation serve different formal functions, and Oregon may use different criteria for different statutory tasks. But both provisions classify producers for size-based regulatory treatment, and both require Oregon to decide when one entity's affiliation with another should affect that classification. ORS 459A.863(32)(g) uses franchise or chain affiliation as a ***categorical disqualifier*** from one small-producer path. OAR 340-090-0860(6) uses common ownership and control for the closely related task of aggregating associated producers. That regulatory choice shows that Oregon can distinguish common ownership or control from ordinary franchise affiliation when it chooses to do so. ORS 459A.863(32)(g) uses the broader proxy, disqualifying single-establishment franchisees that Oregon's own aggregation rule would not treat as commonly owned or controlled with the franchisor.

C. ORS 459A.863(32)(g) Targets Franchise-Affiliated Retailers That Otherwise Look Like Small Producers

The small-producer definition in the Act provides seven independent paths to qualification. Subsection (g) is available to a producer that operates a single retail sales establishment and has no online sales—but only if the retailer is not "supplied or operated as part of a franchise or a chain." That single condition does all the work: two retailers identical in revenue, covered-product volume, Oregon footprint, and single-establishment operation receive different treatment based solely on whether one of them is affiliated with a franchise brand.

The result is a categorical penalty for brand affiliation, untethered from ownership, control, or operational scale. A franchisee that independently owns and operates one location, employs a handful of people, and generates modest packaging volume is denied subsection (g) status—not because of anything about the franchisee's business, but because the franchisee is associated with

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1420 FIFTH AVENUE, SUITE 3000
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a national trademark. The independent retailer next door, with the same revenue, the same packaging output, and the same Oregon footprint, qualifies.

Oregon knows how to draw finer lines. Its implementing regulations use common ownership and control criteria—not brand affiliation—for the closely related task of aggregating associated producers within the same regulatory scheme. OAR 340-090-0860(6) defines "associated producers" through six tests based on family ownership, majority equity or control, controlled-group status under Section 1563(a) of the Internal Revenue Code, and overlapping corporate or partnership ownership. A typical arm's-length franchise relationship satisfies none of them. Oregon therefore had an available, less burdensome tool—actual ownership and control—and chose instead to use franchise affiliation as a blanket disqualifier.

To be sure, franchise-affiliated producers can still qualify as small producers through other paths, including the revenue threshold in subsection (c) or the tonnage threshold in subsection (d). But that does not cure the problem in subsection (g). For the population of single-establishment, no-online-sales franchise retailers that exceed those other thresholds, Oregon singles out franchised small businesses for less favorable treatment than otherwise identical independent businesses based on nothing more than their association with a national brand. That choice bears directly on *Pike*. Oregon uses franchise affiliation as a proxy for scale and control even though its own regulations use actual ownership and control for related-producer aggregation. The State therefore had a more precise tool available and chose the broader, more burdensome one.

III. OREGON'S PRODUCER RULES DO NOT WORK AS INTENDED IN FRANCHISE SYSTEMS BECAUSE THE ACTOR CHARGED THE FEE IS NOT THE ACTOR THAT CONTROLS THE PACKAGING

Oregon's producer rules assign fee responsibility by product category, but franchise systems allocate the functions needed to respond to those fees by trademark license, contract, and supply chain role. For food serviceware and service packaging, producer responsibility often lands on the supplier or first seller into Oregon even when the item is made to franchisor specifications and may be used in the system only if it conforms to brand standards. For branded packaged goods, printed guest-facing materials, and hotel amenities, Oregon's "directs the manufacturing" rule can

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

instead point toward the franchisor when the franchisor sets or approves packaging specifications, even though approved suppliers, purchasing cooperatives, and distributors often hold the item-level material data and Oregon shipment information needed to verify the fee. Both outcomes share the same feature: the actor responsible for the fee is separated from one or more functions the Act's eco-modulation premise requires—packaging authority, Oregon volume data, ability to trace discard location, cost recovery capacity and capacity to change packaging without disrupting the network.

A. The First-Seller Rule Charges Suppliers and Distributors for Branded Packaging They Cannot Redesign

ORS 459A.866(3) provides that the producer of food serviceware is "the person that first sells the food serviceware in or into this state," and OAR 340-090-0860(4) applies the same first-seller rule to service packaging sold or provided to a consumer at a physical retail location. The Circular Action Alliance's ("CAA")[2] Business Relationship Scenarios apply that rule even when the item is brand-facing, customized, and used by the retailer or restaurant in serving consumers.[3] For service packaging, CAA guidance identifies branded paper grocery bags to the packaging company that first sells the bags in or into Oregon, even though the bags bear the retailer's brand and are used by the retailer to bag consumers' groceries. For food serviceware, CAA treats a single-use bowl bearing a restaurant's logo to the packaging company or outside-Oregon distributor that first sells the bowl in or into Oregon. CAA applies the same rule to a take-out cup manufactured to a restaurant's specifications and bearing the restaurant's logo, a beverage company's logo, and the packaging company's logo: the obligated producer is the packaging company or distributor that first sells the cups in or into Oregon, not the restaurant brand. And when a retailer applies its

[2] Oregon's approved Producer Responsibility Organization ("PRO") for the Plastic Pollution and Recycling Modernization Act.

[3] CAA, *Covered Materials & Producer Definitions in Oregon*, March 2026, available at https://static1.squarespace.com/static/64260ed078c36925b1cf3385/t/69bb3aba0877621552e56b5d/1773877948259/OREGON+2026+Updates_+Covered+Materials+%26+Producer+Definitions.pdf.

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

own label to unbranded bowls, trays, and clamshells used for deli or bakery items, CAA treats the supplier as the producer of the food serviceware and the retailer as producer only of the label.[4]

A customer ordering a salad bowl at a national quick-service restaurant location in Portland sees one prepared meal handed across one counter. Under the Act and CAA guidance, that single transaction can generate separate covered product determinations for each component used to deliver the meal. The fiber bowl may be manufactured by an approved supplier in Wisconsin to approved specifications or brand standards, but producer responsibility turns on a different question: who first sells the food serviceware in or into Oregon. ORS 459A.866(3). The PET lid that fits the bowl is made by a different approved supplier to a different specification, with its own producer determination. The wooden fork sourced from a third supplier carries another producer designation. The paper carry-out bag printed with the franchisor's logo arrives from yet another approved supplier; under CAA's service-packaging scenarios, the obligated producer is the packaging company or distributor that first sells the bag in or into Oregon, even though the bag is manufactured to approved specifications or brand standards and may not be redesigned unilaterally by the supplier. The branded dressing cup, napkin pack, dressing and ingredient pouches inside the bowl, corrugated shipper that moved the bowls from the regional distribution warehouse, and identifying nutrition label applied at the location each carry their own covered product analysis. The franchisee operating the Portland store may be treated as producer only of the nutrition label—even though the franchisee bought the components, prepared the salad, and handed the meal to the customer.

The redesign response intended by the Act breaks down across the layers of the franchise transaction. The supplier that pays the bowl fee cannot change the bowl's dimensions, fiber composition, or coating without departing from the specification that makes the item approved for use in the franchise system; deviation could cost the supplier its approved status. The franchisor that sets the specification may not be the producer under the Act and thus should not be charged

[4] *See id.* at 26-30.

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

for the bowl fee and, in any case, often will not hold the Oregon-specific volume data maintained by the distributor. The franchisee that prepares the salad has no authority to substitute a non-approved bowl. A distributor that consolidates bowls, lids, forks, and bags from multiple suppliers across multiple brands through a regional warehouse in Sacramento may not be positioned to determine which units were destined for an Oregon franchisee, a Washington franchisee, or a northern California franchisee drawing from the same warehouse. The fee therefore lands on one point in the transaction while the practical steps needed to change the item remain distributed across several independent actors.

The redesign incentive Oregon invokes under *Pike* depends on charging a producer that can affect the packaging decision. The first-seller rule, applied to a branded multi-component meal, often assigns the fee based on entry into Oregon rather than practical authority to approve or implement a packaging change.

B. The "Directs the Manufacturing" Guidance Charges Franchisors for Brand Control Without Matching Data Control

CAA's "directs the manufacturing" guidance creates the opposite version of the same problem for branded packaged goods, printed materials, and hotel guest-facing items. Appendix A states that "directs the manufacturing" refers to the party that provides instructions through a supplier agreement setting packaging specifications, including brand quality control, packaging approval, application of intellectual property, logo use, color palettes and graphic design.[5] Under that guidance, a hotel franchisor may be treated as the producer of branded keycard sleeves, stationery, notepads, in-room printed materials, coffee pods or filters, and amenity packaging supplied through an approved network. The basis CAA gives for assigning responsibility to the brand owner is the same trademark-control structure that makes franchise systems work: the franchisor owns the mark and exercises quality control rights over brand presentation, trade dress and other elements of brand identity, even though packaging specifications, material data, shipment information, and cost recovery may reside elsewhere in the franchise supply chain.

[5] *See id.* at Appendix A.

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

Assigning the fee to the franchisor for those materials does not give the franchisor the operational information or execution-level control needed to respond to it. Nor would shifting responsibility to the franchisor necessarily align fee liability with the relevant data, control, or cost-recovery mechanisms. In many systems, the franchisor is not the seller, distributor, or local operator in the transaction that brings the packaging into Oregon; may not possess Oregon-specific shipment or use data; and may lack a practical mechanism to recover newly imposed PRO fees through the franchise relationship. Adding to the complexity, obtaining accurate packaging data is often not feasible because suppliers do not consistently track or share the level of detail needed for EPR reporting, particularly when multiple actors and suppliers are involved.

Oregon-specific redesign would not be a simple instruction to "use less packaging." It would require separate specifications, separate supplier approvals, separate SKUs, inventory segregation, instructions telling Oregon hotels which items to order and use, and monitoring to keep Oregon-only items out of other markets and non-Oregon items out of Oregon. The alternative is systemwide redesign, which allows one state's fee structure to drive packaging changes across a multi-state franchise network. That burden multiplies as other states adopt EPR regimes with different covered-product definitions, reporting rules, fee-modulation criteria, exemptions, and compliance timelines. A national franchise system cannot practically maintain separate packaging programs for each state—with separate specifications, supplier approvals, SKUs, ordering rules, and inventory controls—without eroding the efficiencies and centralized controls that make the franchise model function.

The same fragmentation affects reporting. The responsible producer may need material composition, SKU-level weights, Oregon shipment records, and information about whether another actor has already reported the same covered product. In a franchise system, those records may be maintained by different entities, and CAA's identification of a producer does not consolidate them.[6]

[6] The information needed to report and verify those fees is fragmented in the same way. A franchisor may know the approved specification but not how many units of a particular package

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

Oregon may answer that EPR fees need not be charged to the actor with direct redesign authority because the fee can be passed through the supply chain. But passing along a charge is not the same as redesigning packaging and, in some franchise systems, there may be no practical pass-through mechanism at all. A franchisor that is not the seller, distributor, or local operator in the covered-product transaction may have no ordinary commercial channel through which to recover a newly imposed PRO fee from franchisees. In any event, changing the package requires revised brand standards or specifications, supplier approval, SKU changes, inventory segregation, new pricing negotiations, and updated ordering procedures for affected locations, among other things. A supplier's price increase does not accomplish those changes, and retrospective fee pass-through does not tell the franchisor what Oregon-specific volume drove the charge or which packaging change would reduce it. The fee can move through commercial channels while the redesign function remains divided among separate legal entities. That is why the Act's producer assignment weakens the redesign incentive Oregon invokes: it transfers cost without reliably locating the actor able to change the package.

NAW has shown that interstate distributors face serious burdens tracing products through multi-state supply chains. IFA's distinct point is that franchise systems add a trademark-and-contract architecture that divides the relevant functions before ordinary distribution problems begin. The Act treats identification of a "producer" as though that designation consolidates the relevant functions. It does not.

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entered Oregon through each distributor. A supplier may know weight, resin, fiber content, coating, and material composition but not whether a shipment routed through an Oregon warehouse was ultimately used in Oregon, resold, rerouted, or transferred out of state. A distributor may know warehouse-level and shipment-level volume but not whether another actor has already reported the same covered product. A franchisee may know local sales but not the material composition or weight of each component. No single actor reliably holds the full set of facts needed to determine what entered Oregon, what was discarded in Oregon, who else reported it, and what design change would reduce the fee without breaking the franchise system's approved specifications.

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

C. The Safe Harbor in ORS 459A.869(3)-(4) Does Not Solve The Underlying Problem

ORS 459A.869(3)-(4) can shift registration and fee responsibility in some circumstances, but those provisions cannot make the responsible registrant the actor capable of redesigning the package or verifying the Oregon waste stream. Subsection (3) relieves a producer from paying fees for a particular covered product if another person has registered with a PRO as the producer responsible for that product. Subsection (4) relieves PRO membership if another person has registered as responsible for all covered products the producer sells, offers to sell, or distributes in or into Oregon. Those provisions shift responsibility only after another legally independent actor has registered as the responsible producer. They do not create a default allocation rule, require the participants in the franchise supply chain to agree on who should register, or transfer the information and authority needed to comply to the registrant. The coordination required here creates a situation where fees may be double or triple paid or potentially not paid at all which could create penalties for one or more of the actors involved in the supply chain. That risk follows from the structure of the safe harbor itself: responsibility shifts only if another actor has registered for the covered product, but the statute does not supply an initial allocation rule, a shared-data mechanism, or any way to prevent different actors from making inconsistent assumptions about who has registered, reported, and paid.

Nor do CAA's Business Relationship Scenarios change the analysis, because the guidance is expressly informational, disclaims legal advice,[7] has been revised repeatedly, and addresses simplified business relationships rather than the multi-tier franchise structures common in quick-service restaurant, retail, convenience, and hospitality systems. The scenarios are useful because they show how CAA applies the first-seller rule and the "directs manufacturing" guidance in basic supply-chain settings. They do not address the multi-actor franchise arrangements described

[7] *See* https://static1.squarespace.com/static/64260ed078c36925b1cf3385/t/69bb3aba0877621552e56b5d/1773877948259/OREGON+2026+Updates_+Covered+Materials+%26+Producer+Definitions.pdf at 5.

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1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

above, where responsibility for specifications, procurement, distribution, local use, and reporting data may be divided by contract. Even when CAA identifies a producer, that identification does not relocate the functions Oregon's incentive structure depends on: design authority, material data, Oregon shipment information, discard-location information, cost-recovery capacity and the practical ability to implement a redesign without disrupting the approved-supplier network.

Oregon justifies the Act's burdens in part by invoking eco-modulated fees that are supposed to induce producers to redesign packaging, reduce waste, and improve recyclability. That mechanism depends on a connection between the fee and the practical ability to respond to it. Franchise systems repeatedly break that connection. The Act therefore burdens interstate franchise commerce while weakening the redesign benefit Oregon invokes as the local justification under *Pike*.

IV. OREGON'S ECO-MODULATED FEES BURDEN INTERSTATE FRANCHISE SYSTEMS BY SEPARATING PAYMENT RESPONSIBILITY FROM PACKAGING CONTROL

Franchise systems routinely comply with state-specific rules. Warnings, deposit legends, certification marks, and language requirements are familiar features of interstate brand administration. Those examples show that franchisors can administer targeted state requirements through centralized brand systems; they do not show that every state-specific packaging rule imposes the same burden or produces the same benefit. Oregon's Act works through a different mechanism. It uses material-based producer fees to encourage changes in packaging design, sourcing, weight, recyclability, and distribution. In franchise systems, those decisions are rarely held in one place.

Trademark registrations are subject to cancellation "[a]t any time if the registered mark . . . has been abandoned." 15 U.S.C. § 1064(3). A mark is deemed abandoned "[w]hen any course of conduct of the owner, including acts of omission as well as commission, causes the mark to . . . lose its significance as a mark." *Id*. § 1127. A trademark registrant may abandon its mark by engaging in "naked licensing," which occurs when the registrant "fails to exercise adequate quality control over the licensee." *FreecycleSunnyvale*, 626 F.3d 509, 515–16. Franchise agreements

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

reflect the franchisors' obligation to maintain adequate quality control through brand standards, approved-supplier rules, packaging specifications, trade-dress controls, operating manuals, inspection rights, and default remedies. Because trademark law requires meaningful quality control, packaging changes in a franchise system ordinarily move through centralized brand standards and approved-supplier networks rather than *ad hoc* local choice by individual franchisees.

CAA's "directs the manufacturing" guidance reflects the same centralized control structure in branded-packaging contexts. CAA treats brand owners as producers where they control product and packaging specifications, approve packaging to maintain quality and public perception, direct the application of intellectual property, specify logo use, color palettes, and graphic design, impose facility and safety standards, or prescribe production timelines and shipping processes.[8] Those statements are guidance rather than binding adjudication, and producer identity in multi-tier franchise systems remains contested—especially where the Act or CAA guidance applies a first-seller rule to food serviceware or service packaging. Their relevance to *Pike* is narrower: CAA looks to centralized brand-owner control when applying the "directs the manufacturing" concept, while Oregon-specific packaging redesign in a franchise system would require that same centralized structure to change specifications, supplier approvals, and systemwide operating rules.

The burden becomes concrete when Oregon assigns payment responsibility to one entity while packaging control sits elsewhere. A franchisee may operate the local business and face customer demands, yet lack authority to substitute a cup, bag, clamshell, label, amenity, or printed item outside the approved system. A supplier may pay the fee on food serviceware, yet lack authority to approve a substitute. A franchisor may set or approve brand standards affecting packaging, yet still may not be the seller, distributor, or local operator in the covered-product

[8] *See* https://static1.squarespace.com/static/64260ed078c36925b1cf3385/t/69bb3aba0877621552e56b5d/1773877948259/OREGON+2026+Updates_+Covered+Materials+%26+Producer+Definitions.pdf at 36.

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1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

transaction, may lack Oregon-specific shipment or use data, and may have no practical mechanism to recover a newly imposed PRO fee through the franchise relationship. Multi-brand restaurant systems add another layer of complexity because takeout packaging may differ across concepts, requiring separate brand markings, tracking, data collection, and classification.

This burden fits within *Pike*. *National Pork* requires more than an objection that state regulation affects out-of-state firms or induces national operational change. 598 U.S. at 374-75, 383-84. That threshold is met here because Oregon's producer rules require interstate franchise systems to reorganize data, procurement, supplier approvals, packaging standards, fee allocation, and implementation across independent actors, while the asserted redesign benefit is weakened when the charged producer lacks the authority, data or cost recovery mechanism needed to change the package.

The Supreme Court addressed a comparable burden in *Hunt*, where a state-specific packaging-label requirement forced Washington producers to choose between North Carolina-specific packaging and broader changes to established packaging and distribution practices to conform to North Carolina's rule. 432 U.S. at 337-38. Oregon's Act creates the same kind of structural choice for franchise systems: maintain a separate scheme for Oregon-specific packaging specifications or standards, supplier approvals, inventory systems, pricing and compliance procedures, or conform systemwide operations to Oregon's requirements. In both settings, a single state's packaging rule propagates compliance obligations across an interstate distribution system. That burden multiplies as other states adopt EPR regimes with different producer definitions, covered-product categories, reporting rules, fee structures, exemptions, and compliance timelines, requiring national franchise systems to evaluate and administer compliance on a state-by-state basis.

Association to Preserve & Protect Local Livelihoods v. Sidman, 147 F.4th 40 (1st Cir. 2025), confirms that ordinary *Pike* review remains available where a non-discriminatory local rule imposes a substantial interstate burden and the asserted local benefit may be limited. The First Circuit vacated under *Pike* because the district court had to account for the magnitude of the

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

interstate burden, the potentially marginal nature of the local benefit, and possible less burdensome alternatives. *Id.* at 72.

Pharmaceutical Research & Manufacturers of America v. County of Alameda, 768 F.3d 1037 (9th Cir. 2014), involved a different business structure and a different regulatory mechanism. The ordinance there required manufacturers of covered drugs sold in Alameda County to operate and finance a post-consumer collection, transportation, and disposal program. *Id.* at 1040-41. The Ninth Circuit did not address a trademark-licensed franchise system in which packaging authority, supplier relationships, shipment data, local operations, payment responsibility and cost recovery mechanisms may be divided by contract among independent businesses.

Oregon justifies producer fees as a way to induce packaging redesign, reduce waste, and improve recyclability. That justification depends on a workable connection between the fee and the practical ability to respond to it. Franchise systems often divide that practical ability across independent businesses. Oregon-specific redesign then requires either parallel state-only systems for a single state or national changes driven by Oregon's fee structure—in the latter case allowing one state's EPR design to set packaging standards for an entire franchise network.

CONCLUSION

The Act treats producer identity as a proxy for the practical power to redesign packaging, collect Oregon-specific data, respond to eco-modulated fees, and absorb or recover costs through the relevant commercial relationship. Franchise systems show why the proxy fails in recurring applications. In franchise systems, the legal responsibility Oregon assigns often does not correspond to the actor with the information, authority, commercial position, or practical ability to respond. The Act compounds the disconnect by treating franchise affiliation as a proxy for scale and control in ORS 459A.863(32)(g), even though Oregon's own associated producer regulations look to actual ownership and control. The result is a regulatory mechanism that imposes concrete, substantial burdens on interstate franchise commerce—including burdens on the centralized trademark quality control structure federal law affirmatively encourages—while delivering reduced redesign benefit because the actor charged as producer often cannot change the package.

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000

Under *Pike*, that imbalance warrants the permanent injunctive relief NAW seeks. The Court should grant that relief and account for the franchise-system burdens described above in shaping its scope.

DATED this 15th day of June, 2026.

STOKES LAWRENCE, P.S.

By: */s/Samantha K. Pitsch*

Samantha K. Pitsch (OSB #230755)
1420 Fifth Avenue, Suite 3000
Seattle, WA 98101-2393
Telephone: (206) 626-6000
Fax: (206) 464-1496
E-mail: samantha.pitsch@stokeslaw.com

BAKER & McKENZIE LLP

By: /s/ *Nancy Sims*

Nancy Sims (*pro hac vice* admission pending)
nancy.sims@bakermckenzie.com
Benjamin W. Turner (*pro hac vice* admission pending)
ben.turner@bakermckenzie.com
10250 Constellation Blvd., Suite 1850
Los Angeles, California 90067
(310) 201-4728

Attorneys for *Amicus Curiae*
International Franchise Association and
Restaurant Law Center

CERTIFICATE OF COMPLIANCE

This brief complies with the applicable word-count limitation under LR 7-2(b) because it contains 6,793 words, including headings, footnotes, and quotations, but excluding the caption, table of contents, table of cases and authorities, signature block, exhibits, and any certificates of counsel.

DATED this 15th day of June, 2026.

STOKES LAWRENCE, P.S.

By: */s/ Samantha K. Pitsch*

Samantha K. Pitsch (OSB #230755)
1420 Fifth Avenue, Suite 3000
Seattle, WA 98101-2393
Telephone: (206) 626-6000
Fax: (206) 464-1496
E-mail: samantha.pitsch@stokeslaw.com

Attorneys for *Amicus Curiae*
International Franchise Association and
Restaurant Law Center

CERTIFICATE OF SERVICE

I certify that on June 15, 2026, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorneys of record and all registered participants.

DATED this 15th day of June, 2026.

/s/ Nico Schulz
Nico Schulz, Practice Assistant

STOKES LAWRENCE, P.S.
1420 FIFTH AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98101-2393
(206) 626-6000