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January 22, 2025

Molly Dwyer
Clerk of the Court
United States Court of Appeals
for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: *Pharmaceutical Research and Manufacturers of America v. Andrew Stolfi*, No. 24-1570

Ms. Dwyer:

The following newly-decided case is relevant to this appeal: *TikTok Inc. v. Garland*, 24-656, 2025 WL 222571 (U.S. Jan. 17, 2025).

Although *TikTok* involved regulations more closely connected to expression than the regulations challenged here—which involve merely the reporting of factual information, (*see* Rep. Br. 1, 4)—the thrust of its analysis undermines PhRMA's arguments in at least three ways.

First, *TikTok* disagreed that an "underinclusive" law can raise "doubts" that a legislature "is actually pursuing" its stated purpose when it "single[s] out" one group. 2025 WL 222571, at *7. Instead, "'the First Amendment imposes no

freestanding underinclusiveness limitation,' and the Government 'need not address all aspects of a problem in one fell swoop.'" *Id*. PhRMA is thus wrong that the challenged law is impermissible for "singling out" one participant in the pharmaceutical market. (*Compare* Ans. Br. 24, 26, 39–40, *with* Op. Br. 25–26, 40–41).

Second, the justification for the law here is analogous to the justification held to be content-neutral in *TikTok*: there, the purpose was a content-agnostic barrier to a foreign adversary's collection of information to the detriment of national security, 2025 WL 222571, at *6; here, the purpose is the content-agnostic gathering of information for the benefit of market transparency. Contrary to PhRMA's arguments, (Ans. Br. 37–38), regulatory approaches to such goals warrant judicial "'latitude'"; not a search for "'complete empirical support'" or a showing that they are the "best or 'most appropriate.'" *See* at *7–*8.

Third, Justice Gorsuch's concurrence confirms that litigation over the appropriate tier of scrutiny "can sometimes take on a life of its own and do more to obscure than to clarify the ultimate constitutional questions." 2025 WL 222571, at *11 (Gorsuch, J., concurring). Here, the overarching question is whether the challenged law has prohibited or compelled expressive conduct without adequate justification. *Compare id*. ("[W]hatever the appropriate tier of scrutiny, I am persuaded that the law before us seeks to serve a compelling interest[.]"). That

analysis is consistent with DCBS's argument that regulatory reporting requirements are permissible under "myriad related rationales." (Rep. Br. 14).

Sincerely,

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