



July 10, 2024

Chief Judge Debra Ann Livingston and Associate Judges  
United States Court of Appeals for the Second Circuit  
Thurgood Marshall U.S. Courthouse, 40 Foley Square  
New York, NY 10007

RE: *Council for Responsible Nutrition v. Letitia James, in her official capacity as  
New York Attorney General,*  
United States Court of Appeals for the Second Circuit, No. 24-1343-CV

Dear Chief Justice Livingston and Associate Justices:

Citizens for Health, Inc., a Washington, D.C.-based independent nonprofit consumer advocacy organization with over 3,200 active individual supporters in the State of New York, respectfully submits this amicus letter to urge the Court to grant review in the above-entitled matter, reverse the District Court's holding, and direct the entry of the injunctive relief requested by plaintiff Council for Responsible Nutrition. As set forth below, Citizens for Health believes its members who reside in New York, and the residents of the state in general, will lose the right to purchase lawful dietary supplements on which they rely for improving and maintaining their health, supplements which in some cases may have been prescribed for them by their physicians.

#### 1. Citizens for Health

Citizens for Health, founded in 1992, has approximately 100,000 supporters nationwide. Known as the "consumer voice of the natural health community," it has been in the forefront of advocacy promoting natural approaches to health, disclosing and combatting dangerous ingredients and additives in food, and ensuring informed consumer choice through better labeling and disclosure. Our organization has no financial relationship with the Council for Responsible Nutrition.

Citizens for Health has played a pivotal role in securing the passage, in 1994, of the Dietary Supplement Health and Education Act (DSHEA), setting out a federal framework for the regulation of dietary supplements; filed or co-sponsored Citizen Petitions to the U.S. Food and Drug Administration to reconsider the final rule for dental amalgam and to require labeling of products containing high fructose corn syrup and other sugars; joined efforts to support the labeling of products containing genetically modified ingredients; launched a campaign in support of The Dietary Supplement and Nonprescription Drug Consumer Protection Act; launched a campaign in support of improved language in the FDA Food Safety Modernization Act; generated over 12,000 signatures for a petition to revise the original NDI Draft Guidance; and more.

2. The Consumer Interest in Access to Legal and Federally Regulated Dietary Supplements.

With 74 percent of U.S. adults taking dietary supplements, and 55 percent qualifying as “regular users” — usage percentages that are considered comparable in New York, as well — we know that New Yorkers rely on a wide range of dietary supplements to complement their diets and meet their wellness goals.

This is why New Yorkers trust and rely on the nearly 1,000 health-food stores in New York and/or order dietary supplement products online.

Especially in today’s challenging economic times, more and more New Yorkers are turning to multi-ingredient formulas that address more than one wellness goal. As noted, many dietary supplements help several health areas at once, for example:

- Omega-3s help heart health, ease aches and pains, support healthy cognition and healthy weight
- Vitamin D supports bone health, healthy immunity and metabolic health, i.e., a healthy weight
- Magnesium helps with body weight, sleep and bone health
- Chromium supports healthy weight loss and healthy blood sugar already within a healthy range
- Vitamin B3 helps with body weight since it breaks down carbs for energy

While these are only a few examples of safe supplements that help the body in several ways, they’re also examples of the near-impossibility of designating and banning the sale of products labeled as supporting weight-loss without proof of age. The transaction costs of a proof-of-age requirement will disincentivize retailers from carrying these products even for adult sale and a nationwide industry may revise labels on a broad range of products in a way that deprives consumers of valuable, truthful, and legal, information.

In addition, this law is based on the faulty premise that dietary supplements, even weight-loss products, cause or contribute to eating disorders in young people, such as body dysmorphia, which denotes a psychological disorder that relates to a distorted self-image.

Studies have found that people with body dysmorphia have disorder-specific genes, meaning that not only is it a mental disorder but that it may have a strong genetic component, neither of which are amenable to a dietary solution.

Katharine Phillips, MD, of Weill Cornell Medicine in New York, recently said that people with body dysmorphic disorder also have deviations in visual processing. “The parts of the brain specialized to see detail are in overdrive, so tiny details in their appearance look very prominent to them,” she added.

Chief Judge and Associate Judges

July 10, 2024

Page 3 of 3

While all of us want to protect young people in any way that we can, this law will not and cannot possibly do that. It will only deprive all New Yorkers of many beneficial products; it will hurt New York retailers and supplement companies; and it will drive young people into bodegas and gas stations where they will purchase fly-by-night grey market products instead.

For all of these reasons, we respectfully ask the Court to overturn this well-intentioned but ultimately misguided law.

Sincerely,

*James J. Gormley*

James J. Gormley, President  
Citizens for Health, Inc.