

Enforcement of West Virginia's Food Dye Ban Temporarily Halted

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PRACTICES FDA Regulatory and Compliance, Food, Beverage and Restaurant

To the relief of food manufacturers rushing to find natural substitutes for synthetic food dyes, a federal court has temporarily halted the enforcement of West Virginia's House Bill 2354 (HB 2354).² HB 2354 [banned several synthetic food dyes](#) along with butylated hydroxyanisole and propylparaben from school meals beginning in the 2025-26 school year and effective in 2028, from any food, drink, confectionery, or condiment distributed in West Virginia.

The International Association of Color Manufacturers (IACM) filed a lawsuit challenging HB 2354 as unconstitutional.³ The complaint sought declarative and injunctive relief on three counts:⁴

- First, IACM argued that HB 2354 arbitrarily treats color additives differently from other food ingredients.⁵ IACM stated that having to reformulate products and replace any banned color additives in them with naturally derived ones would likely be unduly burdensome for manufacturers and sellers, depriving them of the equal protections afforded to other food ingredient manufacturers under the Fourteenth Amendment.⁶
- Second, IACM argued that HB 2354 "singles out" color additive manufacturers and sellers for punishment.⁷ IACM asserted that a manufacturer or seller would automatically be deemed to be in violation of HB 2354 if the state receives positive test results for the presence of one or more of the banned color additives without being afforded the chance to rebut the state's findings with data showing a color additive's safety.⁸
- Third, IACM argued that HB 2354 violates the Due Process Clause of the Fourteenth Amendment because its use of the term "poisonous and injurious to health" does not provide "fair warning" of what additives are prohibited since the term is not defined in West Virginia law.⁹ IACM proffered that this "disincentivizes the use of many ingredients that are and have been deemed safe by the FDA" and therefore makes it difficult for those affected to be certain of what is prohibited and what is not.¹⁰

In response to these assertions, the state argued that HB 2354 applies to whoever adulterates food or manufactures or sells adulterated food containing the named color additives and explicitly provides for a trial for alleged violators.¹¹ The State also stated that its goal of protecting the health and safety of West Virginia residents and children provides a rational basis for HB 2354 requirements.¹²

The court determined that the prohibitions in HB 2354 further the state's goal of protecting public health and safety by restricting access to color additives deemed to be harmful and that the plaintiff did not demonstrate a likelihood of success on the merits of its equal protection argument.¹³ The court also did not agree with the plaintiff that HB 2354 singled out color additive manufacturers and sellers or that it imposed legislative punishment without due process, since HB 2354 provides for a judicial trial for alleged violators.¹⁴

Still, IACM successfully secured an injunction against enforcement because the court agreed that HB 2354 is unconstitutionally vague, as it “fails to provide sufficient notice and invites arbitrary enforcement” reasoning that, since the prohibited color additives are FDA-approved, HB 2354 creates confusion as to what substances are considered poisonous and injurious.¹⁵ In addition, the court determined that Section 16-7-2(b)(7) of HB 2354 allows the West Virginia Department of Health to seek enforcement against manufacturers and sellers for other color additives that are not listed in HB 2354 if it deems such additional, unnamed color additives to be poisonous and injurious.¹⁶ For this reason, the court determined that West Virginia “must provide clear guidance for determining what substances are ‘poisonous and injurious’” and granted the plaintiff’s request for a preliminary injunction from HB 2354 enforcement.¹⁷

[1] Prepared by Suzie Trigg and Kristi Weisner as of January 8, 2025, based on the October 3, 2025 International Association of Color Manufacturers’ original complaint (available at <https://iacmcolor.org/wp-content/uploads/2025/10/1.-Complaint-and-Summons.pdf>), the December 23, 2025, U.S. District Court for the Southern District of West Virginia memorandum opinion and order (available at <https://wvpublic.org/wp-content/uploads/2025/12/122325-International-Association-of-Color-Manufacturers-v-WVDOH-201111960502.pdf>) and West Virginia HB 2354 (available at https://www.wvlegislature.gov/Bill_Text_HTML/2025_SESSIONS/RS/bills/hb2354%20sub%20enr.pdf). Please refer to the full text of each for more detailed information.

[2] *Int’l Ass’n. of Color Mfrs. v. Singh, et al.*, No. 2:25-CV-00588, slip op. at 29 (S.D.W.V. Dec. 23, 2025) (mem. op.).

[3] *Int’l Ass’n. of Color Mfrs. v. Singh, et al.*, No. 2:25-CV-00588 (S.D.W.V. Oct. 6, 2025).

[4] *Id.*

[5] *Id.* at 101.

[6] *Id.* at 101-106.

[7] *Id.* at 112-114.

[8] *Id.* at 84-85, 112-114.

[9] *Id.* at 120-123.

[10] *Id.* at 125-127.

[11] *Int’l Ass’n. of Color Mfrs. v. Singh, et al.*, No. 2:25-CV-00588, slip op. at 14 (S.D.W.V. Dec. 23, 2025) (mem. op.).

[12] *Id.* at 6-7.

[13] *Id.* at 10, 13.

[14] *Id.* at 15-16.

[15] *Id.* at 20-21.

[16] *Id.* at 22.

[17] *Id.* at 22.