SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

U.S. PUBLIC INTEREST RESEARCH GROUP, **Plaintiff,** **v.** **HAIER U.S. APPLIANCE SOLUTIONS, INC., D/B/A GE APPLIANCES,** **Defendant.**	**Case No. 2024-CAB-003220** **Judge Darlene M. Soltys**

ORDER

Before the Court is Defendant Haier U.S. Appliance Solutions, Inc., d/b/a GE Appliances' ("GE Appliances") *Motion for Summary Judgment* filed December 2, 2025. An opposition and reply were also filed. The Court heard argument on the motion on April 15, 2026, and took the matter under advisement. Defendant moves for summary judgment on two grounds: (1) that Plaintiff United States Public Interest Research Group Education Fund, Inc. ("PIRG") cannot establish the elements of its Consumer Protection Procedures Act ("CPPA") omission claim under D.C. Code § 28-3904(f), and (2) that the First Amendment independently bars the injunctive relief PIRG seeks under a compelled speech analysis. PIRG alleges that GE Appliances violates § 28-3904(f) by failing to warn District of Columbia consumers that its gas stoves produce nitrogen dioxide ("NO_2"), that NO_2 poses respiratory health risks, and that consumers should ventilate when cooking on a gas stove. PIRG seeks only injunctive relief—a mandatory warning label on gas stoves sold in the District of Columbia.

For the reasons stated below, the Motion is denied.

I. BACKGROUND

PIRG is a nonprofit consumer group that has worked on consumer product safety issues for decades. GE Appliances manufactures gas stoves that are available for purchase by District of Columbia residents.

PIRG filed this one count complaint alleging that GE Appliances violates the CPPA by failing to warn D.C. consumers that its gas stoves produce nitrogen dioxide ("NO_2"), that NO_2 poses a health risk particularly to children and asthmatics, and that consumers should use an exhaust fan or open a window when cooking on a gas stove.[1] The claim is straight forward – PIRG asserts this statement about harmfulness is a "fact' and that by failing to state this material 'fact' (i.e., information a reasonable person would consider important when deciding whether to use and/or purchase a gas stove), such omission would tend to mislead the reasonable consumer, thus violating the CPPA. PIRG claims it seeks only injunctive relief under D.C. Code § 28-3905(k)(1)(D) and (k)(2)(D)—specifically, a mandatory warning label affixed to gas stoves sold in the District. No damages are sought. The proposed warning reads: "Using this gas stove produces nitrogen dioxide, which might harm you. People and children with asthma or other respiratory diseases are at higher risk. Use an exhaust fan or open a window every time you use this stove to reduce the risks of nitrogen dioxide." PIRG has reserved its right to modify this language, and the Court retains authority to fashion its own disclosure language under the CPPA's broad remedial provisions. D.C. Code § 28-3901(c).

The parties agree that cooking with a gas stove produces NO_2—a toxic gas formed when the flame superheats nitrogen and oxygen molecules in the surrounding air. The higher the stove

[1] Nitrogen dioxide is a byproduct of fossil fuel combustion from traffic, industrial activity and power generation.

heat or the longer the stove is used, the more NO_2 is formed. Induction and electric stoves do not generate NO_2. The parties sharply disagree, however, about whether the NO_2 concentrations produced by GE Appliances gas stoves pose a health risk and even whether the science on that question is settled. GE Appliances does not warn consumers that its gas stoves generate NO_2 that may be harmful to the respiratory system, nor does it recommend ventilation while cooking. (And GE Appliances does not make any affirmative representations, which could be the predicate for a misrepresentation claim, by advertising that the product is safe and/ or does not pose any risks.)

GE Appliances thus moves for summary judgment asserting it is undisputed that there is presently an ongoing robust legitimate scientific debate as to the question of harmfulness of NO_2. From GE Appliances' view, no genuine dispute of material fact exists: because the science on harmfulness remains unsettled, the failure to warn consumers about potential NO_2 harm cannot constitute a material omission that tends to mislead, and GE Appliances is entitled to judgment as a matter of law.

GE Appliances puts forth 47 numbered paragraphs which it alleges are its statements of undisputed material facts in support of its motion. They can be grouped accordingly: (1) PIRG has no evidence to support a consumer deception claim because it has not identified a D.C. consumer who was affected by the omission nor conducted any surveys to gather public opinion about the omission; (2) PIRG has presented shifting claims about the purported health risks as there is no existing emissions regulations which GE does not meet, PIRG's testing has been sporadic and produced levels of NO_2 comparable to that found in ambient (outdoor) air and its expert claims any level of emission is unsafe and requires a warning; (3) there is legitimate scientific debate on the purported adverse health effects from using gas stoves; and (4) consumer safety regulators have rejected the claim PIRG advances.

Meanwhile, PIRG disputes the various GE Appliances statements, namely: (1) there is ample evidence to support a consumer deception claim while acknowledging it did not research whether the proposed warning would change consumer behavior; (2) GE Appliances' characterization of PIRG's claims about health effects from NO_2 is inaccurate because PIRG has consistently claimed that low levels of NO_2 pose health risks; (3) PIRG asserts there is no legitimate scientific debate on this issue; and (4) GE Appliances' characterization of the regulatory landscape is misleading as CPSC only decided it would not ban gas stoves or limit choice and PIRG is seeking a warning label, not a ban.

The bulk of the parties' evidence addresses the third issue: namely, whether there is an ongoing robust legitimate scientific debate on the issue of harmfulness and whether that answer is outcome-determinative for this case.

A. PIRG's Evidence

PIRG responds to GE Appliances' assertion that the purported harm of gas stove emissions is hotly debated in the scientific community by presenting a declaration from PIRG's expert, Dr. Gould, who opines that NO_2 emissions from gas stoves are undoubtedly harmful and there is **no** legitimate scientific debate. From this, PIRG argues the defense is manufacturing doubt and engaging in science denialism; moreover, if the existence of whether there even is a legitimate scientific debate is contested, that in and of itself means there is a genuine dispute of material facts and summary judgment is not appropriate.

PIRG's testing expert, Dr. Eric Lebel, tested two GE Appliances gas stove models in a single-family residence. Under the scenarios tested, peak NO_2 concentration reached 345 parts per billion, the highest one-hour average was 150 ppb—exceeding EPA's one-hour outdoor National Ambient Air Quality Standard, Canadian standards, and World Health Organization guidance—

and NO_2 exceeded 100 ppb in as little as six minutes. NO_2 was not limited to the kitchen; it reached 48 ppb in the living room and 39 ppb in an upstairs bedroom. Concentrations would be even higher in a smaller or less ventilated kitchen, or with more burners used for longer. Dr. Lebel concludes that other GE Appliances gas stove models would generate a similar range of NO_2 concentrations. GE Appliances has not moved to exclude Dr. Lebel's opinions or report.

PIRG's health effects expert, Dr. Carlos Gould, is an environmental health scientist with peer-reviewed publications on gas stove health impacts who built his declaration on Dr. Lebel's testing. Dr. Gould's affidavit explains the biological mechanisms by which NO_2 harms the respiratory system: short-term exposure can exacerbate asthma symptoms, long-term exposure is a likely cause of asthma development, and NO_2 irritates the eyes, nose, throat, and respiratory tract. Children and asthmatics are particularly vulnerable. Dr. Gould opines that the NO_2 levels measured in the tested stoves are sufficiently high to cause adverse respiratory effects and pose a serious threat to individuals and families, particularly children and asthmatics. He also estimated the additional deaths, emergency department visits, and hospitalizations in the District each year that he attributes to gas stove use, based on extrapolations from broader epidemiological literature rather than D.C.-specific health data. GE Appliances has not moved to exclude Dr. Gould's opinions or report.

Dr. Gould explains that the harm of NO_2 from gas stoves is an established fact supported by scientific consensus, that there is no legitimate scientific debate on this point, and that leading scientific, medical, and regulatory communities share his opinion. To sustain his position, he cites to the EPA's nitrogen dioxide fact sheet, which recommends installing and using an exhaust fan vented to the outside over a gas stove—without caveats about cooking duration, number of burners, or heat level and to the American Medical Association and the American Public Health

Association which also recognize the harm of NO_2 from gas stoves and make the same ventilation recommendation.[2] In a supplemental declaration, Dr. Gould systematically addresses the seven studies GE Appliances cites and explains why they do not support the premise that there is a genuine scientific controversy—noting, among other things, that Jarvis (1998) actually recommends minimizing exposure through good kitchen ventilation for health purposes, and that Willers (2006) found an association between gas cooking and nasal symptoms in young children.

PIRG also points to a broad base of regulatory and institutional authority supporting the proposed warning and consensus. EPA's nitrogen dioxide fact sheet recommends installing and using an exhaust fan vented to the outside over a gas stove to remove NO_2—a recommendation that contains no caveats regarding cooking duration, number of burners, or heat setting. The AMA and APHA both recognize the harm of NO_2 from gas stoves and make the same ventilation recommendation. The WHO has issued guidelines on indoor NO_2 exposure levels. The GAO's own report (which GE Appliances cites) acknowledges that gas stoves "pose certain health and safety risks, due in part to potentially harmful emissions, including nitrogen dioxide," expressly recognizes that ventilation improves gas stove safety, notes that the industry is working on improving ventilation technology, and references EPA's and HUD's recommendations for exhaust fans that vent outdoors. Dr. Gould opines that a warning to ventilate during gas stove cooking would be consistent with the recommendations of these leading scientific, medical, and regulatory bodies, and that his opinion reflects the position of the broader scientific and public health community rather than a minority or novel view.

[2] PIRG points out the only reason to ventilate to the outside is to reduce harm from poor air quality created by the emissions.

The summary judgment record also contains survey evidence indicating that 23% of gas stove users are less likely to prefer gas stoves after learning of adverse health effects, and that 57% of parents would consider replacing their gas stoves after learning about the link to childhood asthma. PIRG points out that GE Appliances' expert Dr. Rauschenberger was questioned at his deposition about this survey and agrees it was relevant even while trying to minimize the findings. Dr. Gould opines that a warning which instructs consumers to increase ventilation during gas stove cooking would meaningfully influence consumer behavior away from purchasing gas stoves.

B. GE Appliances' Evidence

To prove it is undisputed that there is an ongoing legitimate scientific debate, GE Appliances' primary expert, Dr. Dennis Paustenbach, submitted a declaration opining that there is no consensus in the scientific literature that gas stoves release NO_2 at concentrations that can, or are likely to, cause harm. He stated that the weight of evidence shows airborne NO_2 concentrations found in kitchens with gas stoves are insufficient to cause adverse health effects, even for sensitive populations. Dr. Paustenbach points to seven published epidemiological studies that span decades of research across multiple countries and involve substantial sample sizes: Jarvis (1998); Eisner & Blanc (2003); Willers (2006); Casas (2012); Wong (2013); Li (2023); and Puzzolo (2024). These studies appear in peer-reviewed journals including the European Respiratory Journal, the Lancet Respiratory Medicine, Indoor Air, and Global Epidemiology.

GE Appliances' warnings expert, Dr. Robert Rauschenberger, submitted a declaration addressing the adequacy of warnings and its effect on consumer behavior. Dr. Rauschenberger references Home Depot and HGTV webpages that describe NO_2 as harmful and recommend ventilation and opined that such information already helps consumers choose between gas and non-gas stoves. He also cited studies showing that people change their behavior in response to air

pollution warnings and testified that a consumer survey on gas stove preferences which documented a decrease in interest after learning about their harmful effects was relevant.

GE Appliances also emphasizes that PIRG's claims shifted during discovery. In its Complaint, PIRG identified various numerical benchmarks for NO_2 and claimed it's testing showed that "normal" cooking with a GE Appliances gas stove exceeds those values. GE Appliances argues that discovery revealed problems with PIRG's testing and that PIRG has since pivoted to the broader claim that any level of NO_2 from gas stoves is unsafe and requires a warning—a position GE Appliances characterizes as untenable given that NO_2 is present in ambient outdoor air, with concentrations in the air over the District of Columbia reaching between 40 and 80 ppb over the past two decades.

GE Appliances highlights what it characterizes as pervasive evidentiary gaps in PIRG's case. PIRG did not conduct consumer surveys of D.C. residents regarding their awareness of the alleged NO_2 risk, the influence of a warning label on their purchasing decisions, or likely responses to the proposed warning label. PIRG has likewise not produced D.C.-specific health data or identified a D.C. consumer who claims to have been misled by the absence of a warning or harmed by gas stove NO_2 emissions. Dr. Gould's estimates of District-level health impacts are derived from modeling based on broader studies rather than any examination of actual D.C. health records. GE Appliances argues that this absence of D.C.-specific consumer and health evidence is fatal to PIRG's CPPA claim—particularly on materiality and tendency to mislead, where cases like *Sloan*, *Salvador*, and *Cannon* require the plaintiff to produce evidence of how consumers respond to the alleged omission, not merely assert that the omission matters.

GE Appliances further points to the regulatory record from regulatory agencies which have not taken the type of consumer protection actions which PIRG has sought. The U.S. Consumer

Product Safety Commission concluded a years-long review in February 2025 without mandating warnings on gas stoves. In a letter to the Government Accountability Office, the CPSC's Acting Chairman stated that "there is ongoing disagreement about the extent of the linkage between the emissions produced by gas stoves and certain health issues" and that the agency's attention was "better focused on the agency's core safety mission, not backdoor climate regulation." The GAO independently found "no consensus on the health effects of nitrogen dioxide emissions directly attributable to gas stove cooking." GE Appliances also confirmed that PIRG cannot identify any emissions regulation that GE Appliances' gas stoves do not meet.

The record also reflects certain concessions by GE Appliances' own experts. Dr. Paustenbach testified that a recommendation to use an outdoor-venting exhaust fan during gas cooking is a "reasonable recommendation." Dr. Rauschenberger opined that information about possible NO_2 harm and ventilation helps consumers choose between gas and non-gas stoves.

C. The AHAM Ruling and the Benson Declarations

In addition to its own expert declarations and the published literature, GE Appliances submitted to this Court the declarations of Dr. Stacey Benson, an epidemiologist who served as the plaintiff's expert in *Ass'n of Home Appliance Manufacturers v. Weiser*, 1:25-cv-02417 (D. Colo. Dec. 19, 2025). In that case, Dr. Benson opined that epidemiological evidence does not support a causal association between cooking with natural gas and respiratory endpoints. The trial court in the District of Colorado, evaluating AHAM's motion for a preliminary injunction against a Colorado state gas stove labeling law, credited Dr. Benson's testimony—which the State of Colorado declined to challenge—and found that, on the record before it, the label was "objectively controversial because there is robust disagreement by scientific sources concerning the validity of the statements" about gas stove health effects. The AHAM trial court granted the preliminary

injunction, finding that the plaintiff manufacturer had demonstrated a likelihood of success on its First Amendment compelled speech claim.

GE Appliances does not submit the Benson declarations or the AHAM ruling for the truth of Dr. Benson's scientific conclusions. Rather, GE Appliances relies on them for the proposition that a federal trial court judge recently evaluated the landscape of scientific evidence concerning gas stove NO_2 emission and health outcomes—including the same body of epidemiological literature at issue here—and concluded that the evidence is sufficient to establish the existence of a legitimate scientific debate such that a compelled warning about gas stove health effects fails the *Zauderer* noncontroversial prong. And indeed, a pronouncement from a federal district court judge in December 2025 that there is an ongoing legitimate scientific debate between scientific sources whether gas stoves even cause a risk to health outcomes does seem to be compelling proof.[3]

II. STANDARD OF REVIEW

Summary judgment is appropriate only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. D.C. Super. Ct. R. Civ. Proc. 56(a)(1); *Saucier v. Countrywide Home Loans*, 64 A.3d 428, 437 (D.C. 2013). The record is construed in the light most favorable to the nonmoving party, and all reasonable inferences are drawn in the nonmovant's favor. *Greene v. Dist. of Columbia Child. & Fam. Servs. Agency*, 322 A.3d 542, 551

[3] PIRG objects to the Benson declarations on procedural grounds, arguing that they were submitted nearly three weeks after the summary judgment motion, that Dr. Benson was not designated as a testifying expert in this case, and that the declarations are therefore inadmissible hearsay. PIRG further argues that the AHAM ruling is a preliminary injunction decision with no precedential value on the merits, and that the record in that case is fundamentally different from the record here—the State of Colorado did not provide expert testimony, take depositions, challenge Dr. Benson's opinions, or claim that gas stoves cause health impacts. PIRG contends it has built precisely the record that was absent in AHAM: two testifying experts, deposition testimony from GE Appliances' lay and expert witnesses, a supplemental declaration rebutting GE Appliances' cited studies, and survey and regulatory evidence supporting its claim to negate the trial court's pronouncement.

(D.C. 2024). While the movant bears the initial burden of demonstrating the absence of a genuine issue, the burden then shifts to the nonmovant to come forward with specific facts showing a genuine issue for trial. *Sloan v. Urb. Title Servs., Inc.*, 689 F. Supp. 2d 123, 130 (D.D.C. 2010); *LaPrade v. Rosinsky*, 882 A.2d 192, 196 (D.C. 2005). The nonmovant may not rely on pleadings alone but must produce "significant probative evidence" supporting each element of its claim. *Tucci v. District of Columbia*, 956 A.2d 684, 690 (D.C. 2008).

III. THE CPPA CLAIM

Under § 28-3904(f), it is unlawful to "fail to state a material fact if such failure tends to mislead." To prevail at trial, PIRG must show that GE Appliances omitted a (1) fact, (2) that the omitted fact was material, and (3) that the omission tends to mislead. GE Appliances contests all three elements. The standard of proof for unintentional CPPA violations is preponderance of the evidence. *District of Columbia v. Facebook, Inc.*, 340 A.3d 1, 9-10 (D.C. 2025). The CPPA is a "broad remedial statute" to be "applied liberally." D.C. Code § 28-3901(c). Drawing all reasonable inferences in PIRG's favor, the Court finds that PIRG has introduced sufficient evidence to create genuine disputes of material fact on all three elements of its § 28-3904(f) claim such that GE Appliances is not entitled to summary judgment as a matter of law.

A. "Fact"

The most contested element is whether GE Appliances, as merchant, omitted a "fact" from the consumer. GE Appliances argues that the idea that there is a health risk from gas stove produced NO_2 is not a fact, but rather a disputed scientific opinion, and that it cannot have omitted a "fact" where no scientific consensus exists. In support, GE Appliances cites a line of cases holding that scientific debates are more akin to nonactionable opinions that should be resolved through science rather than litigation. *See Jacobson v. Clack*, 309 A.3d 571, 584 (D.C. 2024)

("Scientific debates over methodology and conclusions, 'even with pointed language,' enjoy First Amendment protection."); *Underwager v. Salter*, 22 F.3d 730, 736 (7th Cir. 1994) ("Scientific controversies must be settled by the methods of science rather than by the methods of litigation."); *U.S. ex rel. Milam v. Regents of the Univ. of Cal.*, 912 F. Supp. 868, 886 (D. Md. 1995) ("At most, the Court is presented with a legitimate scientific dispute, not a fraud case."); *ONY, Inc. v. Cornerstone Therapeutics, Inc.*, 720 F.3d 490, 498 (2d Cir. 2013) (statements of scientific conclusions about unsettled matters of scientific debate cannot give rise to liability in defamation cases); *Pacira BioSciences, Inc. v. Am. Soc'y of Anesthesiologists, Inc.*, 63 F.4th 240, 248 (3d Cir. 2023).

The Court has reviewed these authorities and finds them distinguishable. As PIRG observes, nearly all of GE Appliances' cited cases involve defamation, trade libel, or fraud claims arising from scientific criticisms published in academic journals or other media. In those cases, courts declined to adjudicate the merits of scientific disagreements expressed in scholarly discourse—a context in which judicial intervention could chill legitimate academic debate. *See Jacobson*, 309 A.3d at 584 (defamation claim based on statements in a scientific journal); *ONY*, 720 F.3d at 496 (defamation arising from a scientific article); *Pacira*, 63 F.4th at 243 (trade libel based on journal publications); *Underwager*, 22 F.3d at 736 (defamation based on a book review); *Milam*, 912 F. Supp. at 886 (qui tam claim based on a grant application). The posture here is fundamentally different. This is a consumer protection "omission" case in which PIRG alleges that a manufacturer failed to disclose health and safety information to consumers at the point of sale. The CPPA serves a different statutory purpose than defamation or fraud law—it is a broad remedial statute designed to ensure that consumers receive truthful information about the goods and services they seek to purchase. D.C. Code § 28-3901(c). The concern animating GE Appliances' cited

cases—that courts should not referee academic scientific disputes—does not map cleanly onto a statutory scheme that requires merchants to disclose material facts to consumers.

The Court also declines to import the *Zauderer* "noncontroversial" framework wholesale into the CPPA's "fact" element. GE Appliances effectively asks this Court to hold that any proposition about which published scientific disagreement exists cannot be a "fact" under § 28-3904(f). If that were the standard, a defendant could defeat a CPPA omission claim merely by introducing contrary scientific opinions casting doubt on the proposition at issue, regardless of the weight of authority on the other side. That approach would undermine the statute's protective purpose and, in practice, insulate manufacturers from disclosure obligations whenever a contested body of scientific literature could be found to exist or expert hired to give the desired opinion. The Court does not read the statute to require that level of scientific certainty before an omission can be actionable.

Whether gas stove NO_2 poses a health risk is an empirical question that can be proven or disproven through evidence—it is not an unfalsifiable opinion like "this movie stinks" or an inherently unknowable prediction. Courts routinely consider expert testimony to resolve factual questions of this exact kind. *See Motorola v. Murray*, 147 A.3d 751, 752 & 756 (D.C. 2016) (adopting Fed. R. Evid. 702 to allow expert testimony "to help the trier of fact . . . determine a fact in issue" in the context of whether heavy, long-term use of cell phones causes brain cancers); *Lewis v. United States*, 263 A.3d 1049, 1064-1065 (D.C. 2021) (expert's experiments helped trier of fact). The fact that the parties' experts disagree about the answer does not transform the question from one of fact into one of opinion—it means there is a factual dispute.

Here, PIRG has introduced expert testimony from Dr. Gould, a qualified environmental health scientist with peer-reviewed publications on gas stove health impacts, who will testify that

the harm of NO_2 from gas stoves is an established fact supported by scientific consensus, that there is no legitimate scientific debate on this point, and who systematically addressed the seven studies GE Appliances cites and explained why they do not support the claim that there is a genuine scientific controversy. GE Appliances has not moved to exclude Dr. Gould's testimony. At the summary judgment stage, the Court does not weigh competing evidence or make credibility determinations. The Court finds Dr. Gould's credentials sufficient and his testimony adequate to support genuine disputes of material fact both as to the harmfulness of gas stove NO_2 emissions and as to the legitimacy of the scientific debate GE Appliances has asserted.

B. "Materiality"

GE Appliances argues that PIRG has produced no consumer surveys of District residents, identified no District consumer who was actually misled, conducted no research on how consumers would respond to the proposed warning, and cannot identify a single District consumer who would have acted differently. It further argues that information about the risks from gas stoves has been publicly available for decades and that widespread media coverage of the gas stove "debate" forecloses any finding of materiality, citing *Dahlgren v. Audiovox Communs. Corp.*, 2010 D.C. Super. LEXIS 9, at *61. (Widespread media attention, including debate on CNN Larry King Live as to whether exposure to the radio frequency emissions from first-generation cell phones caused brain cancers.) The arguments have force, and the Court takes them seriously. They do not, however, entitle GE Appliances to judgment as a matter of law on this element. For the reasons that follow, the record permits a reasonable factfinder to find that the omitted information is material to a reasonable consumer.

Materiality under the CPPA is ordinarily a question for the trier of fact. An omission is material if a reasonable consumer "would attach importance to its existence or nonexistence in

determining his or her course of action," and how a practice "would be viewed by a reasonable consumer is generally a question for the jury." *Mann v. Bahi*, 251 F. Supp. 3d 112, 126 (D.D.C. 2017); *see also District of Columbia v. SmileDirectClub, Inc.*, 2023 D.C. Super. LEXIS 27, at *7-8; *Saucier*, 64 A.3d at 442. The question on this motion is therefore not whether PIRG has proven materiality, but whether the record would permit a reasonable factfinder to find it.

On a motion for summary judgment, the Court considers the entire record and views the pleadings, discovery materials, and affidavits in the light most favorable to the nonmovant, drawing all reasonable inferences in that party's favor. *Wash. Inv. Partners of Del., LLC v. Sec. House, K.S.C.C.*, 28 A.3d 566, 573 (D.C. 2011); *Osbourne v. Capital City Mortg. Corp.*, 667 A.2d 1321, 1324 (D.C. 1995); *Holland v. Hannan*, 456 A.2d 807, 814-15 (D.C. 1983). Superior Court Rule of Civil Procedure 56(c)(1) permits a party to support or genuinely dispute a fact by "citing to particular parts of materials in the record," and Rule 56(c)(3) authorizes the Court to consider any material in the record, whether or not cited by the parties. Neither provision restricts a party only to the evidence it introduced; a nonmovant may defeat summary judgment by relying on evidence in the movant's own submissions, and Rule 56 places no source restriction on the materials the Court may consider. To the extent GE Appliances argues that PIRG "has no evidence" because PIRG did not itself introduce proof on a given point, that framing conflates the burden of persuasion at trial with a supposed obligation, at summary judgment, to be the source of one's own favorable evidence. No such rule exists.

The question before the Court is whether the omitted information is of a kind a reasonable consumer would find material. Much of GE Appliances' materiality argument is directed at the wrong question. GE Appliances argues that PIRG cannot show what consumers "would do" in response to a warning, that PIRG has no survey of behavioral response, and that PIRG's warnings

expert disclaimed expertise in warning efficacy. Those points address warning efficacy—whether a compelled label would change consumer behavior. But the CPPA does not condition liability on behavioral response; it reaches an unlawful trade practice "whether or not any consumer is in fact misled, deceived or damaged thereby." D.C. Code § 28-3904. The materiality element asks a different question: whether the omitted information itself, if known, would be the kind of consideration a reasonable consumer would attach importance to in deciding how to proceed. *Saucier*, 64 A.3d at 442; *SmileDirectClub*, 2023 D.C. Super. LEXIS 27, at *7-8 (CPPA practices assessed "in terms of how the practice would be viewed and understood by a reasonable consumer"). Here, that question is whether the fact that gas stove operation can produce nitrogen dioxide concentrations capable of causing respiratory harm, and that ventilation mitigates that harm, is information a reasonable consumer would want to know.

Measured against the proper question, the record contains direct evidence from which a reasonable factfinder could find materiality. The most probative evidence on this point comes from GE Appliances' own warnings expert, Dr. Robert Rauschenberger. Two strands of his testimony are particularly significant. First, Dr. Rauschenberger testified that information of the kind PIRG identifies—that gas stoves emit nitrogen dioxide and that consumers should ventilate to mitigate the associated risk—is information that bears on a consumer's choice between a gas stove and a non-gas alternative. He further acknowledged that disclosure of such information would tend to constrain consumer decision-making and could deter at least some consumers from choosing a gas stove. That testimony is offered by GE Appliances' own designated expert in warnings and consumer behavior; it is therefore squarely within his disciplinary expertise; and it goes directly to the materiality question as framed above. A statement by the defense's warnings expert that the omitted information would constrain purchasing decisions and deter at least some consumers is,

on its face, evidence that the information is of a kind a reasonable consumer would attach importance to in deciding how to proceed.

Second, Dr. Rauschenberger testified that, according to a study he himself cited, approximately one-third of consumers changed their behavior in response to an air-quality warning. GE Appliances characterizes that figure as evidence that warnings are ineffective; PIRG characterizes it as evidence that warnings produce a non-trivial behavioral response. Both characterizations are within the range of reasonable inferences the evidence supports, and the Court is required at this stage to draw the inference in PIRG's favor. *Wash. Inv. Partners*, 28 A.3d at 573. Two further points bear on how the Court treats this evidence. First, GE Appliances has not moved to (strike) exclude any of its own witness Dr. Rauschenberger's testimony, and the testimony is admissible in its present form. Second, that the testimony was elicited by GE Appliances and appears in the record through GE Appliances' own submissions does not diminish its availability to PIRG. The Court is mindful that this evidence does not, by itself, prove materiality. It does not need to. The question on summary judgment is whether a reasonable factfinder, considering the record as a whole and drawing reasonable inferences in PIRG's favor, could find materiality. Direct testimony from the defense's designated warnings expert that the omitted information would constrain consumer decision-making and could deter some consumers from purchasing the product is, at a minimum, evidence sufficient to permit that finding.

PIRG also relies on Compendium Exhibit 4, which is a survey used to depose Dr. Rauschenberger, reportedly of approximately 1,198 respondents, addressing how consumers report they would alter their purchasing behavior (i.e., whether they would want to replace their gas stoves) upon learning of an asthma link (as high as one in eight cases of asthma in children) to gas stove emissions. GE Appliances objects to the survey on the grounds that PIRG cannot

authenticate it, does not know its provenance or methodology, and that the survey constitutes hearsay within hearsay. *See* D.C. Super. Ct. R. Civ. P. 43, 43-I. GE Appliances raises these objections in opposition briefing but has not moved separately to exclude the survey, and the Court does not resolve the admissibility question at this stage. Evidence offered in opposition to summary judgment need not be in a form that would be admissible at trial; it must be capable of being presented in admissible form at trial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986) ("We do not mean that the nonmoving party must produce evidence in a form that would be admissible at trial in order to avoid summary judgment."); Fed. R. Civ. P. 56(c)(2) advisory committee's note to 2010 amendment (the objection "functions much as an objection at trial," and "[t]he burden is on the proponent to show that the material is admissible as presented or to explain the admissible form that is anticipated"); *Gleklen v. Democratic Cong. Campaign Comm.*, 199 F.3d 1365, 1369 (D.C. Cir. 2000). Whether PIRG can lay foundation for the survey at trial—by identifying its source, calling a sponsoring or methodology witness, establishing the conditions under which it was conducted, and addressing the hearsay objections—involves factual questions that cannot be resolved on the present record. GE Appliances' objections are accordingly deferred for resolution at trial or on a properly filed motion in limine, without prejudice and without any present ruling on admissibility.

Finally, GE Appliances separately argues that because information about gas stove risks has been publicly available for decades and the gas stove "debate" has received widespread media attention, the omission cannot be material under *Dahlgren*, 2010 D.C. Super. LEXIS 9, at *61 ("If a person who is the alleged victim of an omission already knows the information omitted, there cannot be, as a matter of law, a material omission."). The Court does not quarrel with that principle.

Its application, however, depends on a precise identification of the omitted information and on whether consumers in fact possess it.

In *Dahlgren*, the alleged omission was the existence of a safety debate about first-generation cell phones, and the court found that media coverage, an FDA consumer update, a published book, and a GAO report had made the existence of that debate widely known. The court expressly cabined its holding to "whether defendant violated the CPPA by failing to disclose the existence of the safety debate, not whether there are other violations." *Id.* at *67-68. PIRG's claim is not the same. PIRG does not allege that GE Appliances failed to disclose the existence of a debate. Rather, it alleges that GE Appliances failed to disclose specific substantive facts: that its gas stoves produce NO_2, that NO_2 at the concentrations produced poses respiratory health risks particularly to children and asthmatics, and that consumers should use an exhaust fan or open a window each time they cook. A consumer's general awareness that gas stoves have been the subject of media attention and political controversy is not the equivalent of knowing those specific facts.

GE Appliances also frames the point as one of burden, arguing that PIRG must prove District consumers are unaware of the omitted information and has not done so. PIRG does bear the burden on the elements of its claim. But at summary judgment that burden is one of production from the entire record, not of authorship. Whether District consumers in fact possess the specific information PIRG identifies—as opposed to a general awareness that gas stoves are "controversial"—is a disputed question of fact that the record does not resolve in GE Appliances' favor. *See District of Columbia v. Exxon Mobil Corp.*, 2025 D.C. Super. LEXIS 13 (a reasonable consumer "can be aware of, or even be concerned about, climate change and still be deceived by oil companies' clever omissions"). GE Appliances' reliance on *Athridge v. Aetna Cas. & Sur. Co.*,

604 F.3d 625, 631 (D.C. Cir. 2010), for the proposition that speculation cannot defeat summary judgment does not change the analysis: GE Appliances, as the movant, bears the burden of showing the absence of a dispute, and on this record it has not shown that District consumers already possess the specific health information at issue.

Accordingly, *Dahlgren* does not compel summary judgment. Drawing all reasonable inferences in PIRG's favor and resting on the direct evidence of informational significance supplied by GE Appliances' own warnings expert, the Court finds a genuine dispute of material fact as to materiality. The Court does not reach the parties' arguments concerning the FTC health presumption or the common-sense doctrine, as it resolves the materiality element on the record evidence and not on any inference from the gravity of the hazard or on common sense as a substitute for proof. *Cf. Ross v. United States*, 331 A.3d 220, 225 (D.C. 2025). GE Appliances is not entitled to summary judgment on this element.

C. "Tendency to Mislead"

GE Appliances argues PIRG has no evidence that any consumer was actually misled, but the CPPA does not require proof that any consumer was in fact misled. D.C. Code § 28-3904 (actionable "whether or not any consumer is in fact misled, deceived, or damaged thereby"); *Frankeny v. Dist. Hosp. Partners, LP*, 225 A.3d 999, 1004 (D.C. 2020). The "tendency to mislead" standard is an objective one, measured by the effect of the omission on the reasonable consumer; it does not turn on proof that a particular consumer was in fact deceived. *See District of Columbia v. SmileDirectClub, Inc.*, 2023 D.C. Super. LEXIS 27, at *7-8 (assessing the practice "in terms of how the practice would be viewed and understood by a reasonable consumer"). The question is whether the omission would tend to create a misleading impression in the mind of a reasonable consumer.

Failure to disclose a hidden product hazard is itself a deceptive practice, because consumers assume products placed in commerce are safe for normal use; this principle applies even where the seller has made no affirmative safety claim. *In re Int'l Harvester Co.*, 104 F.T.C. 949 (1984); *see also Herne v. Cooper Indus.*, 2005 U.S. Dist. LEXIS 24371, at *8-9 (D.N.H. Oct. 19, 2005) (adopting this principle and rejecting the argument that the consumer protection statute reaches only affirmative misrepresentations). GE Appliances seeks to distinguish *Herne* on the ground that it involved a defective swing-set component and a completed physical injury—i.e., an injury that has already occurred and produced damages, as opposed to a prospective or future risk of injury. The distinction does not defeat the rule. *Herne* draws the principle from the FTC's decision in *International Harvester*, an adjudicative action predicated on prospective risk rather than past harm; the rule does not depend on a completed injury but on whether the hazard is one consumers would not independently expect. Whether a reasonable District consumer would expect an ordinary kitchen stove to emit a respiratory irritant at the concentrations reflected in this record is the disputed question, and it cannot be resolved against PIRG on this motion.

GE Appliances also argues that consumers who have heard of the gas stove "debate" through media coverage cannot be misled by the omission. For the reasons stated in connection with materiality, general awareness of a controversy is not equivalent to possession of the specific information PIRG alleges was omitted, and whether consumers possess that information is disputed. The Court does not decide that the omission does mislead consumers. It decides only that, on the entire record and drawing all reasonable inferences in PIRG's favor, a reasonable factfinder could find that the omission tends to mislead. GE Appliances is not entitled to summary judgment on this element.

IV. THE FIRST AMENDMENT DEFENSE

GE Appliances asserts that the First Amendment bars the compelled warning PIRG seeks. GE Appliances does not want a court to force it to criticize its own products by telling consumers its gas stoves may cause health problems. Under *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985), a compelled commercial disclosure is permissible if it is (1) purely factual, (2) noncontroversial, and (3) not unjustified or unduly burdensome. (In *Zauderer*, the challenged compelled speech required an attorney to include in his advertisements that clients might be liable for court costs if they lost, to avoid misleading the public). *Am. Beverage Ass'n v. City & Cty. of S.F.*, 916 F.3d 749, 756 (9th Cir. 2019); *United States v. Philip Morris USA Inc.*, 855 F.3d 321, 327 (D.C. Cir. 2017). As the party asserting this affirmative defense, GE Appliances bears the burden of demonstrating that no genuine dispute of material fact exists on these prongs and that it is entitled to judgment as a matter of law. Because the First Amendment defense is GE Appliances' affirmative defense, PIRG is the nonmovant on this issue, and the Court draws all reasonable inferences in PIRG's favor.

The Court addresses only the *Zauderer* standard. GE Appliances expressly declined to argue strict scrutiny (Def. Br. 13 n.18). The Court agrees with PIRG that *Central Hudson* applies to restrictions on speech rather than compelled disclosures. *Spirit Airlines, Inc. v. United States DOT*, 687 F.3d 403, 412 (D.C. Cir. 2012). Even if *Central Hudson* applied, the same factual disputes that preclude summary judgment under *Zauderer* would preclude summary judgment under *Central Hudson*.

A. Purely Factual

GE Appliances argues that the proposed warning cannot be "purely factual" because the underlying science is debated, citing *Nat'l Ass'n of Wheat Growers v. Bonta*, 85 F.4th 1263, 1279 (9th Cir. 2023) (significant dispute in scientific community whether glyphosate-based products like Roundup have a carcinogenic effect), and *Kimberly-Clark Corp. v. District of Columbia*, 286 F. Supp. 3d 128, 140 (D.D.C. 2017) (preliminary injunction granted as to D.C. law requiring labeling wipes that were not flushable). PIRG responds that accuracy goes to the "noncontroversial" prong, not the "purely factual" prong. *RJ Reynolds Tobacco Co. v. FDA*, 96 F.4th 863, 879 (5th Cir. 2024); *Nat'l Ass'n of Mfrs. v. SEC*, 800 F.3d 518, 528 (D.C. Cir. 2015) ("purely factual" "must mean something different from uncontroversial"). Under D.C. Circuit precedent, factual accuracy disputes go to the controversy prong; the factual prong asks whether the statements are verifiable and factual in nature, as opposed to ideological, opinion-based, or value-laden.

The framework comes from *American Meat Institute v. USDA*, 760 F.3d 18 (D.C. Cir. 2014) (en banc) (compelling labeling as to 'country of origin' on meat products to serve vital public interest interests), and *National Association of Manufacturers v. SEC*, 800 F.3d 518 (D.C. Cir. 2015) (compelling factual disclosures such as 'conflict minerals' within product supply chain may pass muster if it provides clear, uncontroversial consumer information). *AMI* acknowledged that the two requirements are separate: a disclosure may be factual yet "so one-sided or incomplete" as to fail the controversy prong, but the controversy inquiry concerns disagreement "for some reason other than dispute about simple factual accuracy." 760 F.3d at 27. That formulation reserves the factual prong for a different question: not whether the statement is *true*, but whether it is descriptive in nature or instead conveys, explicitly or implicitly, an opinion,

ideological position, or moral judgment. *NAM v. SEC* applied that test to the "not conflict free" disclosure required by the SEC's 'conflict minerals' rule and held it was not purely factual because "[p]roducts and minerals do not fight conflicts. The label '[not] conflict free' is a metaphor that conveys moral responsibility for the Congo war." 800 F.3d at 530. The label was grammatically descriptive but functionally ideological, because it implicitly attributed complicity in armed conflict to the purchaser of minerals by which the war was funded. The factual prong, in short, polices the line between description and ideology. The controversy prong polices accuracy. If "purely factual" were read to require that the underlying proposition be scientifically settled, it would collapse into the "noncontroversial" inquiry and render the two prongs duplicative.

None of the three proposed warning statements at issue here implicitly carry a moral, political, or ideological judgment of the kind *NAM v. SEC* found disqualifying. The first statement, "using this gas stove produces nitrogen dioxide," is a descriptive chemical proposition. GE Appliances does not dispute that gas combustion produces NO_2. Whether or not the concentrations produced cause harm, the bare statement that the stove emits NO_2 is verifiable and descriptive.

The second statement, that NO_2 "might harm you" and that "people and children with asthma or other respiratory diseases are at higher risk," conveys a probabilistic health risk to identified populations—descriptive content, not ideological judgment. On one reading, "might harm you" describes a differential risk across a heterogeneous population—harm is possible depending on the reader's susceptibility, with the second sentence identifying which populations face elevated risk. On another reading, "might" is epistemic hedging, conveying that the science cannot yet say with certainty that harm will occur. Under either reading, the statement is descriptive rather than ideological. Under the first reading, the warning identifies a recognized risk and the population most likely to experience it. Under the second reading, the hedging itself is

what distinguishes the proposed warning from labels held controversial elsewhere—the Proposition 65 "known to cause cancer" label invalidated in *NAWG*, 85 F.4th at 1278-79, conveyed certainty about a contested causal claim, and the warning here makes no such assertion. The Court need not choose between the two readings to resolve the factual prong; what matters is that, under either, the statement describes a risk rather than expresses an ideological position of the kind *NAM v. SEC* found disqualifying. Whether the underlying claim is accurate goes to the controversy prong, not this one. *See AMI*, 760 F.3d at 27.

The third statement, "use an exhaust fan or open a window every time you use this stove to reduce the risks of nitrogen dioxide," tells consumers how to reduce a known risk—a descriptive instruction, not a moral or ideological judgment about what consumers should or should not do. *Kimberly-Clark*, 286 F. Supp. 3d at 140-41, illustrates the distinction. There, a printed statement that the wipes product "should not be flushed" was deemed opinion rather than fact because it expressed a normative judgment about consumer conduct. The ventilation recommendation here is different in kind: it is conditional and instructional, telling the consumer how to reduce a specific concentration if the consumer *wishes to do so*, rather than commanding what the consumer ought to do. The underlying premise—that ventilation reduces indoor concentrations of combustion byproducts—is itself a descriptive proposition about physical processes, undisputed in this record. *Kimberly-Clark*'s concern, that the speaker was being compelled to render an opinion about how consumers "should" act, is not present where the disclosure offers a means to a self-selected end.

Taken together, the three statements in the proposed warning are descriptive rather than ideological under *NAM v. SEC*. They identify a chemical, describe its potential effects on identified populations using calibrated probabilistic language, and offer a conditional instruction derivable from an undisputed physical premise. None requires GE Appliances to take a moral, political, or

ideological position. Whether the statements are accurate is the controversy inquiry. GE Appliances has not carried its burden of showing as a matter of law that the proposed warning fails the purely-factual prong.

B. Noncontroversial

GE Appliances argues that the proposed warning is controversial because there is no scientific consensus that gas stove NO_2 emissions cause health impacts, pointing to the seven published studies cited by Dr. Paustenbach, the CPSC's decision not to act, the GAO's finding of "no consensus," and the Paustenbach Declaration. GE Appliances also argues that the warning is subjectively controversial because it forces GE Appliances to take a position in a politically charged debate. GE Appliances relies principally on *Nat'l Ass'n of Wheat Growers v. Bonta*, 85 F.4th 1263, 1278 (9th Cir. 2023); *Cal. Chamber of Com. v. Council for Educ. & Rsch. on Toxics*, 29 F.4th 468, 478 (9th Cir. 2022); *Hedrick v. BSH Home Appliances Corp.*, 2025 U.S. Dist. LEXIS 80236 (C.D. Cal. Apr. 28, 2025); and *AHAM v. Weiser*, No. 1:25-cv-02417 (D. Colo. Dec. 19, 2025).

PIRG responds with the expert testimony of Dr. Gould, who opines that there is no legitimate scientific debate on the proposition the warning conveys, that the studies GE Appliances cites do not support the conclusions drawn from them, and that the consensus of the scientific, medical, and regulatory communities supports the warning. The controlling standard asks whether there is "robust disagreement by reputable scientific sources" about the proposition the warning conveys. *Cal. Chamber of Com.*, 29 F.4th at 478. A disclosure is controversial if it "elevates one side of a legitimately unresolved scientific debate." *Id.*; *NAWG*, 85 F.4th at 1278.

The proposition the warning conveys is critical to this inquiry, because the controversy analysis turns on the disagreement between what the warning says and what the scientific

community has established. The proposed warning is not one undifferentiated assertion; it contains three propositions, and the scientific landscape is not the same as to each. The Court considers them in turn.

First, the statement that GE Appliances gas stoves produce NO_2 is uncontested. GE Appliances has stipulated to this proposition. A reasonable factfinder could find no robust scientific disagreement about a fact for which the parties have stipulated.

Second, the recommendation that consumers use an exhaust fan or open a window during gas cooking is supported by broad institutional consensus in this record. EPA recommends exhaust ventilation over gas stoves. The American Medical Association and the American Public Health Association make the same recommendation. The GAO report on which GE Appliances itself relies acknowledges that ventilation "improves gas stove safety" and references EPA's and HUD's recommendations for exhaust fans that vent outdoors. Dr. Paustenbach—GE Appliances' own expert—testified that the recommendation to use an outdoor-venting exhaust fan during gas cooking is a "reasonable recommendation." On this record, a factfinder could reasonably find that there is no unresolved scientific debate on the ventilation recommendation.

Third, the statement that NO_2 "might harm you" and that asthmatics and children face higher risk is the proposition on which the parties most directly disagree. The Court takes that disagreement seriously, but it does not resolve summary judgment in GE Appliances' favor for two reasons. The first reason concerns what proposition the warning actually conveys. The Ninth Circuit in *NAWG* held a Proposition 65 label controversial because it stated that glyphosate "is known" to cause cancer—a definite causal assertion the court found unsupported by scientific consensus. 85 F.4th at 1278. The acrylamide warning at issue in *Cal. Chamber of Com.* (another Proposition 65 label challenge) was controversial on the same ground: it elevated one side of an

unresolved debate by asserting causation as established. 29 F.4th at 478. The warning here makes a more limited claim. "Might harm you," coupled with identification of populations at elevated risk, conveys a hedged probability rather than a categorical causal assertion. PIRG must still show no robust scientific disagreement on that hedged proposition, but that is a different and narrower showing than *NAWG* and *Cal. Chamber* required.

The second reason is that, even as to the hedged proposition, the record contains evidence on both sides sufficient to create a triable issue. GE Appliances has Dr. Paustenbach's declaration, seven published studies, the CPSC letter, and the GAO's acknowledgment of ongoing disagreement about the extent of any linkage. PIRG has Dr. Gould's opinion and testimony that no legitimate debate exists on the hedged proposition his warning conveys, his supplemental declaration systematically addressing the seven studies and identifying ways in which they do not support GE Appliances' position (including that Jarvis (1998) recommends minimizing exposure through ventilation and Willers (2006) found an association between gas cooking and nasal symptoms in children), EPA's NO_2 fact sheet, the AMA and APHA position statements, the WHO guidelines, and the same GAO report that on its face acknowledges that gas stoves "pose certain health and safety risks, due in part to potentially harmful emissions, including nitrogen dioxide." The institutional and expert landscape is genuinely mixed. Whether the hedged proposition the warning conveys is subject to robust scientific disagreement is itself a question of fact that turns on weighing this evidence. *Saucier*, 64 A.3d at 437; *Greene*, 322 A.3d at 551.

GE Appliances' reliance on *Hedrick v. BSH Home Appliances Corp.*, 2025 U.S. Dist. LEXIS 80236 (C.D. Cal. Apr. 28, 2025), is misplaced. *Hedrick* resolved the First Amendment question at the motion-to-dismiss stage based on the plaintiffs' own cited articles acknowledging lack of a consensus on the harm of gas stoves' emissions, which the court found did not establish

a scientific consensus supporting their proposed warning. *Id.* at *16. On the developed summary judgment record before this Court, the question of scientific consensus is contested by competent evidence on both sides and is not susceptible to resolution as a matter of law. *Hedrick*'s pleading-bounded analysis does not control.

GE Appliances also argues subjective controversy—that requiring it to display a warning conflicts with its position on gas stoves and entangles it in a politically charged debate. The Court does not minimize that concern. But *AMI* makes clear that controversy in the *Zauderer* sense is not established by political controversy surrounding the subject matter; the inquiry is whether the disclosure is "controversial for some reason other than dispute about simple factual accuracy." 760 F.3d at 27. A warning identifying a chemical, describing a risk distribution across identified populations, and recommending ventilation does not, on its face, take a side in the broader political debate over natural gas use or appliance policy. To the extent the warning has political valence because some readers will perceive it that way, *AMI* and *NIFLA* preserve compelled health and safety disclosures from precisely that kind of indirect attack.

Drawing all reasonable inferences in PIRG's favor as the nonmovant on GE Appliances' affirmative defense, the Court finds genuine disputes of material fact on the uncontroversial prong. GE Appliances is not entitled to summary judgment on this prong.

C. Unjustified or Unduly Burdensome

The third *Zauderer* inquiry asks whether the compelled disclosure is "unjustified or unduly burdensome." *Zauderer*, 471 U.S. at 651. The disclosure must "remed[y] a harm that is 'potentially real, not purely hypothetical,'" and "extend[] no broader than reasonably necessary." *NIFLA v. Becerra*, 585 U.S. 755, 776 (2018). The D.C. Circuit has emphasized that the prong polices against disclosures "so burdensome that [they] essentially operate[] as a restriction on constitutionally

protected speech," not against every cost a disclosure imposes. *Am. Meat Inst. v. USDA*, 760 F.3d 18, 27 (D.C. Cir. 2014) (en banc). The inquiry is reasonableness review.

GE Appliances argues (1) that the harm is hypothetical, (2) that PIRG lacks evidence the warning would change conduct, (3) that less burdensome alternatives exist, and (4) that compelling the warning against GE Appliances alone imposes an unreasonable competitive burden. None entitles GE Appliances to judgment as a matter of law.

The harm is not hypothetical in the sense *NIFLA* contemplated. The harm there was redundant of California's existing criminal prohibition on unlicensed practice. 585 U.S. at 776. The harm here—that consumers buy and use gas stoves without awareness of NO_2 emissions or the recommended mitigation—is not addressed by any existing regulatory scheme. PIRG's testing measured NO_2 concentrations exceeding EPA outdoor standards in residential use; EPA, AMA, and APHA all recommend ventilation; and the GAO report on which GE Appliances itself relies acknowledges that gas stoves "pose certain health and safety risks, due in part to potentially harmful emissions." That the CPSC declined to regulate does not establish the absence of harm. *Cf. Massachusetts v. EPA*, 549 U.S. 497, 533-34 (2007).

GE Appliances' demand for empirical proof that the warning will change behavior asks more than *Zauderer* requires. The Supreme Court upheld *Zauderer*'s contingent-fee disclosure without behavioral-response evidence, observing only that the disclosure was "reasonable enough." 471 U.S. at 651; *accord AMI*, 760 F.3d at 26-27. In any event, Dr. Rauschenberger's testimony—that this category of information bears on a consumer's choice between gas and non-gas stoves, and that approximately one-third of consumers change behavior in response to air-quality warnings—supplies record evidence sufficient to make this question one for trial.

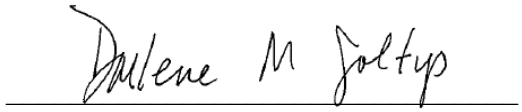
GE Appliances' less-burdensome-alternatives argument confuses *Zauderer* review with strict scrutiny. The proposed warning is targeted: it appears at the point of sale and use of the product whose emissions create the risk, identifies the specific chemical and the populations at heightened risk, recommends a single mitigation step, and would be affixed only to gas stoves—not, as in *NIFLA*, required across all of the speaker's advertising. 585 U.S. at 776. Suggesting that PIRG could disseminate this information through its own channels misframes the inquiry; *Zauderer* does not require PIRG to accept a less effective channel because one exists.

Finally, that the warning would apply to GE Appliances alone, while other gas stove manufacturers remain unregulated, does not render it unduly burdensome. The First Amendment polices compelled speech, not the speaker's competitive position relative to parties not subject to the order. The single-defendant posture is a feature of the CPPA's enforcement structure: D.C. Code § 28-3905(k) authorizes private suits against individual merchants, and nothing in this Order forecloses subsequent identical actions against other manufacturers. The warning itself, moreover, makes no comparative claim: it states that *this* gas stove produces NO_2 and recommends ventilation—content describing the product's properties, not implying that competing products are safer or preferable.

The Court does not hold that the proposed warning satisfies this prong as a matter of law; a factfinder may yet resolve any of these questions in GE Appliances' favor on a developed trial record. Rather, the Court holds that GE Appliances has not shown the warning is unjustified or unduly burdensome as a matter of law. Because GE Appliances has not carried its burden on any *Zauderer* prong, the First Amendment defense does not entitle it to summary judgment.

Accordingly, it is this 1st day of June, 2026, hereby:

ORDERED that the Defendant's *Motion for Summary Judgment* is **DENIED**.



Judge Darlene M. Soltys

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