



Cato Institute Tells Justices Butter Law Unfair To Dairy Co.

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April 5, 2019

Two Libertarian think tanks are backing an Ohio-based artisanal butter maker's bid to get the U.S. Supreme Court to take up a Wisconsin law requiring butter to be graded before hitting shelves, arguing the "arbitrary" system favors mass-produced butter and unduly burdens smaller businesses.

The law's "irrational butter-grading scheme" violates due process and equal protection rights and merely insulates large businesses from competition, the Cato Institute told the high court Thursday in an 18-page amicus brief supporting Minerva Dairy Inc. in the butter maker's two-year quest to nix the law.

Minerva wants the Supreme Court to review a Seventh Circuit ruling last fall that found the law constitutional and in the interest of consumers and businesses. The dairy had to pull its ungraded butter from Wisconsin shelves in 2017 after it got a warning from the state, according to court filings.

"Wisconsin's requirement that all butter sold in-state bear a state-specific grade is not simply a stupid law, but an arbitrary and discriminatory interference with interstate commerce that runs afoul of multiple cornerstones of our Constitution," the Cato Institute said in its brief.

Cato was joined by the Competitive Enterprise Institute, which also filed an amicus brief Thursday. And public interest law firm Southeastern Legal Foundation submitted a brief backing the dairy earlier in the week.

Wisconsin's grading system assigns four ratings for butter. Butter graders are licensed by the state after taking a written exam and grading butter in front of a professional, according to court filings. Minerva never submitted its products for testing, according to the filings.

Minerva sued Wisconsin's Department of Agriculture, Trade and Consumer Protection in 2017 after an anonymous tipster reported it was selling ungraded butter, according to court filings.

In February 2018, a Wisconsin federal court granted the state summary judgment, ruling the law was indeed constitutional and helped Wisconsin residents make informed butter-purchasing decisions, per the filings.

Minerva appealed, and the case landed in the Seventh Circuit. In October 2018, an appellate panel affirmed the district court's ruling, finding the law protects shoppers and promotes business.

Now Minerva wants the Supreme Court to consider the matter. The dairy has argued that Wisconsin's "arbitrary" grading system favors mass-produced brands over specialty brands, like Minerva.

The think tanks and public interest law firm agreed. The law infringes on liberty, and a voluntary grading system could advance the same state interest, the Competitive Enterprise Institute said in its 17-page brief.

"As a result of the law and practical realities of the food distribution system, Wisconsin's law substantially inhibits the marketability of artisan butters that can be produced by small businesses and farmers in other states," the institute said.

Joshua Thompson, counsel for Minerva Dairy, told Law360 on Friday that he and his client are grateful for the amicus briefs.

"They, like we, recognize that Wisconsin's butter grading law raises serious constitutional questions and we are hopeful that the court takes up the case," he said.

Representatives for Wisconsin didn't immediately return a request for comment Friday.

Minerva Dairy is represented by Joshua P. Thompson, Anastasia P. Boden and Wencong Fa of Pacific Legal Foundation.

Wisconsin is represented by Karla Z. Keckhaver of the attorney general's office.

The case is *Minerva Dairy Inc. et al. v. Sheila Harsdorf et al.*, case number 18-1145, in the U.S. Supreme Court.