

## **The Supreme Court Should Tackle the Federal Government’s “Naked Economic Favoritism”**

By Damon W. Root – 11/26/12

---

Hein Hettinga and his wife Ellen are Arizona-based dairy farmers currently fighting an uphill legal battle against a federal price-fixing scheme for milk that dates back to the New Deal. As I explained in my recent column on their case, the Hettingas have asked the Supreme Court to decide whether the lower court that ruled against them erred by simply taking the federal government at its word when it said the milk regulation in question was rationally related to a legitimate government interest. The Hettingas are asking the High Court for the opportunity to present their own evidence to rebut the government’s assertion and demonstrate that the price-fixing law is little more than a protectionist scheme designed to benefit special interests.

Will the Supreme Court agree to take the case? It’s still too soon to say, though the pressure is mounting. Last week, the Cato Institute and the Institute for Justice filed a joint friend of the court brief urging the justices to take a closer look at the government’s “illegitimate economic protectionism” against the Hettingas. Here’s a portion of that brief:

Wary of the problems of judicial imperialism, this Court has deferred to the policy judgments of the political branches and upheld economic regulation against constitutional challenge as long as it has some rational relationship to a legitimate government interest. But it has never abdicated its responsibility to guard against naked economic favoritism. The Constitution’s guarantee of equal protection necessarily means that the courts should not allow the actions of the political branches to escape scrutiny when they extend special favors to one group to the detriment of another. ...

The D.C. Circuit's decision is not only out-of-step with decisions from other courts of appeals, but it is also a dangerous abdication of the judiciary's obligation to ensure that our democratic institutions produce policies that reflect legitimate democratic choices and are not the result of a factional takeover. Illegitimate economic protectionism is a serious problem in a whole host of areas where democratic processes have not worked as they should and government regulation is being used by powerful and entrenched interests to impose disproportionate burdens on the underprivileged and politically disfavored. The Court should grant review to ensure that the judiciary remains an essential bulwark against this form of illegitimate government action.

Download the Cato/IJ brief [here](#). Read more about *Hettinga v. U.S.* [here](#).