

Wisconsin Institute for Law and Liberty: Sues state of Wisconsin for its protectionist butter law

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Dairy State's unconstitutional law could send you to jail for selling Kerrygold butter

March 17, 2017 - Milwaukee, WI – On behalf of four consumers and Slow Pokes Local Foods, the Wisconsin Institute for Law & Liberty [has filed a lawsuit](#) against the State of Wisconsin to preserve the freedom to buy and sell whatever type of butter one wishes to. Wisconsin's current protectionist law prohibits the sale of any butter that hasn't been labeled by government taste testers. This archaic labeling regime prevents Wisconsin residents from enjoying very popular butters such as Kerrygold, a high-quality Irish import. Violators risk jail time or thousands of dollars in fines. Wisconsin is the only state in the country with specific and onerous labeling requirements that prevent the sale of Kerrygold and other similarly produced butters.

According to WILL President Rick Esenberg, "Because the Wisconsin butter law serves no adequate government purpose, it is one of those laws that violate the due process and equal protection guarantees of the Wisconsin Constitution. The requirement that sellers of butter engage in compelled speech – that they publicize the government's opinion of how a butter tastes – also violates the guarantee of free speech."

"Wisconsin is well known as the 'dairy state', so it is ironic that Wisconsin consumers and businesses don't have a full range of butter options like every other state in the union," added Associate Counsel Jake Curtis. "The protectionist labeling requirements of the butter law in no way relate to health or safety concerns and therefore the state of Wisconsin has no rational basis for impeding the economic

freedom of Wisconsin consumers and businesses. We have all the confidence in the world that Wisconsin's butter producers can compete with the likes of Kerrygold. But in order for the state of Wisconsin to continue its upward climb, we cannot remain in the business of erecting, or in this case preserving, artificial barriers to product entry."

A 1953 Wisconsin law requires all butter sold in the State be sampled by government-licensed "butter tasters." Once tasted, butter is issued a grade and then labeled during the packaging process. Wisconsin is the only state in the union to impose such a labeling requirement. Those who sell butter in Wisconsin without the proper label face up to one year in a county jail, up to \$5,000 in fines, and a permanent injunction against future butter sales.

As highlighted by recent media accounts - [locally](#), [nationally](#), and even [internationally](#) - the butter law has prevented Wisconsin grocery stores from legally selling certain brands of butter. One example is the incredibly popular Kerrygold butter, made in Ireland. Kerrygold claims to produce the "sweetest, richest milk in the world, which makes our grass-fed cow's milk Irish butter taste silky and creamy and glow a healthy, golden yellow."

Unfortunately Wisconsin consumers, such as WILL clients Jean Smith, Amber Marzahl, Nicole Batzel and Kathleen McGlone, and businesses such as WILL client Slow Pokes Local Foods in Grafton, are not free to legally test whether Kerrygold's butter is in fact the "silkiest" or "creamiest" butter in the world. WILL's clients, who in some cases have been able to get their hands on the creamy contraband by traveling to other states, wish to have the freedom to enjoy the butter of their choice without risking time in their local county jail, thousands of dollars in fines, and a permanent injunction against selling the butter.

Protectionist measures such as the Wisconsin butter labeling requirements are inconsistent with the competitive federalism championed by WILL's Center for Competitive Federalism. States are certainly free to set their own policies. However, as courts have long held, a state may not protect favored interests from the impact of those policies without a clearly defined rational basis. Wisconsin has no such basis in this case.

WILL President Rick Esenberg and Attorneys Jake Curtis and Clyde Taylor filed the lawsuit in Ozaukee County Circuit Court. The full complaint can be found [here](#). For additional information regarding WILL and its Center for Competitive Federalism,

including a full listing of its policy reports and model legislation, please visit the [CCF website](#).

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