STATE OF WISCONSIN CIRCUIT COURT BRANCH 3 OZAUKEE COUNTY

JEAN SMITH, et al.,

Plaintiffs,

v. Case No. 17-CV-120

BEN BRANCEL, Secretary, Wisconsin Department Of Agriculture, Trade, and Consumer Protection,

Defendant.

DEFENDANT'S BRIEF IN SUPPORT OF MOTION TO DISMISS CLAIMS ONE AND TWO OF THE COMPLAINT

Plaintiffs ask this Court to declare unconstitutional Wisconsin's longstanding law requiring butter to be graded by either state or federal officials and labeled with the grade before it may be offered for sale. Because the law is rationally related to the legitimate government objective of providing consumers with information about the quality of the product for sale, Plaintiffs cannot meet their burden of establishing beyond a reasonable doubt that the law facially violates either the Due Process Clause or the Equal Protection Clause of the Wisconsin Constitution. This Court should therefore dismiss the first two claims for relief.

FACTUAL BACKGROUND

This case is a challenge to Wisconsin's butter grading law, Wis. Stat. § 97.176 (the "butter grading law"), a 1953 statute that makes it unlawful to sell, offer or expose for sale, or have in possession with intent to sell any butter at retail unless it has been graded. Wis. Stat. § 97.176(1); Complaint, ¶¶ 15, 17. The restriction does not apply to any butter that bears a label bearing a federal grade. (Compl., ¶¶ 17-18.) The law also requires that both butter produced in Wisconsin and butter produced out of state to be labeled with the grade in not less than 10-point type. (*Id.*, ¶¶ 19-20.) Plaintiffs allege that the grading of butter does not ensure public health or safety. (*Id.*, ¶¶ 21, 32-33.) Wisconsin's administrative code sets out the process by which licensed Wisconsin butter graders grade butter to be sold in the state. (*Id.*, ¶¶ 22-26.) The code lists thirty-five characteristics to be considered. (*Id.*, ¶¶ 26-31.) A person who is convicted of selling unlabeled or ungraded butter may be fined or imprisoned, or required to forfeit money in lieu of a criminal penalty. (*Id.*, ¶¶ 34-35.) Additionally, the Department of Agriculture, Trade, and Consumer Protection may apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating the butter grading law. (*Id.*, ¶ 36.)

Plaintiffs are four Wisconsin citizens who wish to purchase ungraded butter that they consider to be superior in taste and texture to butter

produced or sold in Wisconsin. (Compl., ¶¶ 9-12.) These individuals prefer Kerrygold brand Irish butter, which is not offered for legal sale in Wisconsin, to all other alternatives available in the state and either themselves make out-of-state trips to purchase the butter or have friends and family make such out-of-state trips for them. (*Id.*, ¶¶ 58, 60, 62, 64.) These Plaintiffs believe that Kerrygold's composition and flavor are unique. (*Id.*, ¶ 52.)

The final Plaintiff, Ozslo Foods, is a Wisconsin corporation operating a single store in Grafton known as Slow Pokes Local Foods. (*Id.*, ¶ 8.) The store partners with local farmers to sell various foods, and also wishes to sell Kerrygold butter. (*Id.*, ¶¶ 53-54, 57.) Ozslo wishes to offer certain imported butters that are not graded according to Wisconsin's requirements. (*Id.*, ¶ 8.)

The Plaintiffs have sued Ben Brancel, the Secretary of the Wisconsin Department of Agriculture, Trade, and Consumer Protection, in his official capacity seeking a declaration that Wisconsin's butter grading law, Wis. Stat. § 97.176, violates the Wisconsin Constitution. Plaintiffs allege that the butter grading law violates the Substantive Due Process and Equal Protection Clauses of the Wisconsin Constitution, as well as Article I, Section 3's guarantee of free speech.

ARGUMENT

I. STANDARD OF REVIEW

"A motion to dismiss for failure to state a claim tests the legal sufficiency of the complaint." *John Doe 1 v. Archdiocese of Milwaukee*, 2007 WI 95, ¶ 12, 303 Wis. 2d 34, 734 N.W.2d 827 (quoting *BBB Doe v. Archdiocese of Milwaukee*, 211 Wis. 2d 312, 331, 565 N.W.2d 94 (1997)). When considering a motion to dismiss, the court accepts as true all facts that are well-pleaded in the complaint and the reasonable inferences therefrom. *Kaloti Enters., Inc. v. Kellogg Sales Co.*, 2005 WI 111, ¶ 11, 283 Wis. 2d 555, 699 N.W.2d 205. However, a court cannot add facts in the process of construing a complaint. *John Doe 67C v. Archdiocese of Milwaukee*, 2005 WI 123, ¶ 19, 284 Wis. 2d 307, 700 N.W.2d 180. Furthermore, legal conclusions stated in the complaint are not accepted as true, and they are insufficient to enable a complaint to survive a motion to dismiss. *Id.* To satisfy Wis. Stat. § 802.02(1)(a), the complaint must plead facts which, if true, would entitle the plaintiff to relief. *Strid v. Converse*, 111 Wis. 2d 418, 422-23, 331 N.W.2d 350 (1983).

When courts are confronted with equal protection or due process challenges to economic regulations, they consistently defer to legislative determinations about the proper scope of such regulation. *See City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976). As long as there is some conceivable, legitimate basis for the law, courts will not invalidate the law.

See FCC v. Beach Commc'ns, Inc., 508 U.S. 307, 315 (1993). Indeed, the Legislature's enactment "may be based on rational speculation unsupported by evidence or empirical data," *id.*, and courts need not evaluate any explicit statement of purpose or legislative findings in support of the law, *see State v. Radke*, 2003 WI 7, ¶ 27, 259 Wis. 2d 13, 657 N.W.2d 66.

In evaluating whether a legislative enactment rationally advances a legislative objective, courts "are obligated to locate or, in the alternative, construct a rationale that might have influenced the legislative determination." *Madison Teachers, Inc.*, 2014 WI 99, ¶ 77, 358 Wis. 2d 1, 851 N.W.2d 337 (quoting *Ferdon ex rel. Pertucelli v. Wis. Patients Comp. Fund*, 2005 WI 125, ¶ 74, 284 Wis. 2d 573, 701 N.W.2d 440). Once a court identifies some rational basis that would sustain the law, "the court must assume the legislature passed the act on that basis." *Blake v. Jossart*, 2016 WI 57, ¶ 32, 370 Wis. 2d 1, 884 N.W.2d 484, *cert. denied*, 137 S. Ct. 669, No. 16-615, 2017 WL 69276 (U.S. Jan. 9, 2017). Once the court identifies such a basis, all facts necessary to sustain the law must be taken as conclusively found by the legislature, "if any such facts may be reasonably conceived in the mind of the court." *Ferdon ex rel. Petrucelli v. Wis. Patients Compensation Fund*, 2005 WI 125, ¶ 75, 284 Wis. 2d 573, 701 N.W.2d 440 (quoting citation omitted). The Legislature "need not have actually based its decision on the reason conceived by a reviewing court." *In re Commitment of Alger*, 2015 WI 3, ¶ 50,

360 Wis. 2d 193, 858 N.W.2d 346. It is the challenger's "burden to negate every conceivable basis which might support" the law. *Beach Commc'ns, Inc.*, 508 U.S. at 315 (citation omitted).

Given this leeway, the Legislature will not be penalized if its chosen law is not "the best or wisest means to achieve its goals." *Griffin v. Milwaukee Transp. Servs., Inc.*, 2001 WI App 125, ¶ 12, 246 Wis. 2d 433, 630 N.W.2d 536. Thus, even if a court or party can conceive of a better approach, the Legislature's chosen method will be upheld unless it is wholly irrational or arbitrary. *Ferdon*, 284 Wis. 2d 573, ¶ 76.

Further, legislatures are free to operate incrementally, and to adopt laws "that only partially ameliorate a perceived evil [while] deferring complete elimination of the evil to future regulations." *Dukes*, 427 U.S. at 303 (citing *Williamson v. Lee Optical Co.*, 348 U.S. 483, 488–89 (1955)). The Legislature "may select one phase of one field and apply a remedy there, neglecting the others." *Lands' End, Inc. v. City of Dodgeville*, 2016 WI 64, ¶ 180, 370 Wis. 2d 500, 881 N.W.2d 702 (Ziegler, J., concurring) (quoting *Lee Optical Co.*, 348 U.S. at 489.

And when reviewing such laws, a court "does not evaluate the merits of the legislature's economic, social, or political policy choices," *State v. Dennis H.*, 2002 WI 104, ¶ 12, 255 Wis. 2d 359, 647 N.W.2d 851, and should not "judge the wisdom or desirability of legislative policy determinations."

Dukes, 427 U.S. at 303. Instead courts are "limited to considering whether the statute violates some specific constitutional provision." *Dennis H.*, 255 Wis. 2d 359, ¶ 12. When undertaking this review, courts "accord[ ] a strong presumption of validity" to laws that do not involve fundamental rights or proceed along suspect lines. *Heller v. Doe*, 509 U.S. 312, 319 (1993).

Plaintiffs have alleged that the butter grading law, on its face, violates several provisions of the Wisconsin Constitution, including the Due Process and Equal Protection Clauses. In order to prevail on such a claim, Plaintiffs must establish that the law in question cannot be enforced under any circumstances. *League of Women Voters of Wis. Educ. Network, Inc. v. Walker*, 2014 WI 97, ¶ 15, 357 Wis. 2d 360, 851 N.W.2d 302 (citations omitted). Courts generally presume that statutes are constitutional. *Tammy W-G v. Jacob T.*, 2011 WI 30, ¶ 46, 333 Wis. 2d 273, 797 N.W.2d 854. The challenger "must prove that the statute is unconstitutional beyond a reasonable doubt." *League of Women Voters*, 357 Wis. 2d 360, ¶ 17 (citation omitted). If any doubt exists about a statute's constitutionality, the court must resolve the doubt in favor of constitutionality. *Aicher v. Wis. Patients Comp. Fund*, 2000 WI 98, ¶ 18, 237 Wis. 2d 99, 613 N.W.2d 849.

II. THE BUTTER GRADING LAW DOES NOT VIOLATE THE DUE PROCESS CLAUSE ON ITS FACE.

Plaintiffs allege that the butter grading law violates their substantive due process rights. The Due Process Clause of the Wisconsin Constitution protects both substantive due process, the right to be free from "arbitrary and wrong" governmental action, and procedural due process, which protects citizens from deprivation of life, liberty, or property without procedural fairness. *Thorp v. Town of Lebanon*, 2000 WI 60, ¶¶ 45, 53, 235 Wis. 2d 610, 612 N.W.2d 59 (citations omitted). Only the substantive due process clause is at issue in Plaintiffs' complaint. The Due Process Clause of the Wisconsin Constitution "is the substantial equivalent" of its federal counterpart. *In re Commitment of Alger*, 360 Wis. 2d 193, ¶ 2 n.10 (citing *State v. West*, 2011 WI 83, ¶ 5 n.2, 336 Wis. 2d 578, 800 N.W.2d 929).

The substantive component of the Fourteenth Amendment's Due Process Clause "addresses 'the content of what government may do to people under the guise of law.'" *Blake v. Jossart*, 2016 WI 57, ¶ 47, 370 Wis. 2d 1, 884 N.W.2d 484 (citations omitted). "It forbids a government from exercising power without any reasonable justification in the service of a legitimate governmental objective." *State v. Smith*, 2010 WI 16, ¶ 14, 323 Wis. 2d 377, 780 N.W.2d 90 (quoting *State v. Quintana*, 2008 WI 33, ¶ 80, 308 Wis. 2d 615, 748 N.W.2d 447). The substantive due process clause protects citizens from

government action that "shocks the conscience" or that interferes with "rights implicit in the concept of ordered liberty." *Dane Cty. DHS v. P.P.*, 2005 WI 32, ¶ 19, 279 Wis. 2d 169, 694 N.W.2d 344 (quoting *State v. Jorgensen*, 2003 WI 105, ¶ 33, 264 Wis. 2d 157, 667 N.W.2d 318).

When analyzing a substantive due process challenge, courts examine the protected constitutional interest and identify the conditions under which competing state interests might outweigh it. *Blake*, 370 Wis. 2d 1, ¶ 47 (citation omitted). The threshold question when reviewing such a claim is whether a fundamental right is implicated or whether a suspect class is disadvantaged by the challenged legislation. *Id.*, ¶ 48 (quoting *Smith*, 323 Wis. 2d 377, ¶ 12,). Where there is no fundamental right at stake, the court conducts a rational basis review to evaluate whether the statute is rationally related to achieving a legitimate governmental interest. *State v. Radke*, 2002 WI App 146, ¶ 7, 256 Wis. 2d 448, 647 N.W.2d 873 (citing *Washington v. Glucksberg*, 521 U.S. 702, 728 (1997)). The court determines "whether the statute is a reasonable and rational means to the legislative end." *State v. Luedtke*, 2015 WI 42, ¶ 76, 362 Wis. 2d 1, 863 N.W.2d 592 (quoting *State v. Smet*, 2005 WI App 263, ¶ 11, 288 Wis. 2d 525, 709 N.W.2d 474).

"The United States Supreme Court has cautioned against expanding substantive due process rights." *In re Jeremy P.*, 2005 WI App 13, ¶ 20, 278 Wis. 2d 366, 692 N.W.2d 311 (citing *Reno v. Flores*, 507 U.S. 292, 302 (1993)).

Substantive due process protection "has been traditionally afforded to fundamental liberty interests, such as marriage, family, procreation, and bodily integrity." *In re Zachary B.*, 2004 WI 48, ¶ 19, 271 Wis. 2d 51, 678 N.W.2d 831 (citing *Penterman v. Wis. Elec. Power Co.*, 211 Wis. 2d 458, 480, 565 N.W.2d 521 (1987)). To recognize a new fundamental liberty interest, the court must be convinced that the interest "is so rooted in the traditions and conscience of our people as to be ranked as fundamental." *State v. Smith*, 2009 WI App 16, ¶ 7, 316 Wis. 2d 165, 762 N.W.2d 856 (citing *Jeremy P.*, 278 Wis. 2d 366, ¶ 20). By way of example, Wisconsin has rejected the expansion of such "fundamental" rights to "the rights of children to have their best interest considered in any action by the state," *Jeremy P.*, 278 Wis. 2d 366, ¶ 21, the right of grandparents to care and custody of grandchildren, *Marriage of Arnold v. Arnold*, 2004 WI App 62, ¶ 10, 270 Wis. 2d 705, 679 N.W.2d 296, and the "right to be free from deprivations of liberty as a result of arbitrary distinctions" *State v. Smart*, 2002 WI App 240, ¶ 5, 257 Wis. 2d 713, 652 N.W.2d 429 (citation omitted). In light of such decisions, the right to buy a particular brand of unregulated butter of one's choosing is not a privilege so central to the concept of ordered liberty in the State of Wisconsin that it constitutes a fundamental right for the purposes of the substantive due process analysis.

Nor does the law implicate a suspect class that would require this Court to analyze the butter grading law under a more rigorous analysis than the rational basis standard. *See State v. Post*, 197 Wis. 2d 279, 319, 541 N.W.2d 115 (1995) (citing *Graham v. Richardson*, 403 U.S. 365, 376 (1971)) (alienage and race classifications subject to strict scrutiny); *State ex rel. Strykowski v. Wilkie*, 81 Wis. 2d 491, 507, 261 N.W.2d 434 (1978) (citation omitted) (only classifications involving "immutable personal characteristics or historical patterns of discrimination and political powerlessness" are traditionally considered suspect). In the absence of such a classification, the legislation must be upheld "unless it is 'patently arbitrary' and bears no rational relationship to a legitimate government interest." *State v. McManus*, 152 Wis. 2d 113, 131, 447 N.W.2d 654 (1989) (citing *Frontiero v. Richardson*, 411 U.S. 677, 683 (1973)). Defendant can locate no case law identifying Irish butter aficionados (or stores that wish to sell ungraded butter) as a suspect class that would raise the scrutiny provided to the statute.

Because the challenged legislation involves neither a fundamental right central to the concept of ordered liberty nor a suspect classification, the statute passes substantive due process scrutiny if it is rationally related to a legitimate governmental objective. The butter grading law exists to "ascertain[] the quality of butter" in the state of Wisconsin. Wis. Stat. § 97.176(3). The definitions and standards for quality of food products in

Wisconsin, including but not limited to butter, in turn exist to "promote honesty and fair dealing in the interest of consumers." Wis. Stat. § 97.09(1). The statutes and rules governing production and processing, including the butter grading law, also "protect the public from the sale of adulterated or misbranded foods." Wis. Stat. § 97.09(4). By grading butter according to flavor, aroma, texture, and other factors, Wisconsin provides consumers with information to ascertain the quality of their butter relative to the cost that would not be available absent the grading system.

Public awareness of the quality and composition of the foods consumers purchase is a legitimate government interest. For example, the United States Department of Agriculture mandates a quality grading system for beef (prime, choice, select, and standard or commercial, sometimes referred to as "ungraded") pursuant to federal law. 7 U.S.C. §§ 1622 *et seq*. These grades arm purchasers with information pertaining to the amount of marbling in the meat, juiciness, and flavor. Courts have recognized that the government has an interest in providing information to customers to inform their product purchasing choices. *See*, *e.g.*, *American Meat Institute v. U.S. Dep't of Agriculture*, 760 F.3d 18, 22 (D.C. Cir. 2014) (upholding required country of origin labeling for meat products); *Philip Morris Inc. v. Harshberger*, 122 F.3d 58 (1st Cir. 1997) (upholding state law requiring additional disclosures of additives and nicotine-yield ratings in cigarettes).

Because the butter grading law is rationally related to providing customers with information about the quality of butter and promoting honesty and fair dealing in the marketing of food, Plaintiffs' claim that the butter grading law is a violation of substantive due process fails. Plaintiffs cannot prove beyond a reasonable doubt that the law lacks a rational relationship to this interest, and therefore cannot sustain their burden. The due process claim should be dismissed.

III. THE BUTTER GRADING LAW DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE ON ITS FACE.

Plaintiffs also assert that the butter grading law violates the Equal Protection Clause of the Wisconsin Constitution. (Compl., ¶¶ 78-81.) They identify the class as businesses that sell butter, as compared with businesses that sell other dairy products. (*Id.*, ¶ 80.) Only Oszlo Foods is a member of the purported class; the allegations do not establish that any of the remaining three individual Plaintiffs can be fairly classified as businesses that sell butter. Because Oszlo cannot establish beyond a reasonable doubt that the classification bears no rational relationship to a legitimate government interest, this Court should also dismiss the second claim.

"Although substantive due process and equal protection may have different implications, '[t]he analysis under both the due process and equal protection clause is largely the same.'" *Smith,* 323 Wis. 2d 377, ¶ 16 (quoting

Quintana, 308 Wis. 2d 615, ¶ 78) (alteration in original*)*. The rational basis analysis applicable to the "substantive due process challenge is also relevant to [the] equal protection challenge." *Smith*, 323 Wis. 2d 377, ¶ 16. Like the Due Process Clause, the Equal Protection Clause of the Wisconsin Constitution is the substantial equivalent of the federal Equal Protection Clause. *In re Joseph E.G.*, 2001 WI App 29, ¶5 n.4, 240 Wis. 2d 481, 623 N.W.2d 137 (citing *State ex rel. Cresci v. Schmidt*, 62 Wis. 2d 400, 414, 215 N.W.2d 361 (1974)).

To attack a statute on the grounds that it denies equal protection of the law, the plaintiff must demonstrate that the statute unconstitutionally treats members of similarly situated classes differently. *Castellani v. Bailey*, 218 Wis. 2d 245, 261, 578 N.W.2d 166 (1998) (citing *State v. Post*, 197 Wis. 2d 279, 318, 541 N.W.2d 115 (1995)). Only if the legislature's classification "impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class" is strict scrutiny required. *Castellani*, 218 Wis. 2d at 261-262 (quoting *State v. Annala*, 168 Wis. 2d 453, 468, 484 N.W.2d 138 (1992) (citation omitted)). Otherwise, a statute that creates a classification that is rationally related to a valid legislative objective will not be found to violate equal protection guarantees. *State v. Smart*, 2002 WI App 240, ¶ 5, 257 Wis. 2d 713, 652 N.W.2d 429 (citing *Joseph E.G.*, 240 Wis. 2d 481, ¶ 8).

"To apply the rational basis test in an equal protection analysis, the court should first set forth the legislative classification at issue, then identify the legislative objectives, and finally determine whether the legislative classification is rationally related to the achievement of an appropriate legislative purpose." *Doering v. WEA Ins. Group*, 193 Wis. 2d 118, 137-38, 532 N.W.2d 432 (1995). A legislative enactment involving classifications will pass the rational basis test if it satisfies the following criteria: 1) the classification is based on substantial distinctions which make one class really different from another; 2) the classification is germane to the purpose of the law; 3) the classification is not constituted to preclude addition to the numbers included in a class; 4) the law must apply equally to each member of the class; and 5) the characteristics of the class should be different enough to reasonably suggest at least the propriety, having regard to the public good, of substantially different legislation. *Kohn v. Darlington Cmty. Schools*, 2005 WI 99, ¶ 48, 283 Wis. 2d 1, 698 N.W.2d 794 (citations omitted).

Only when a classification is arbitrary or irrational will a court hold that there is no reasonable basis upon which to justify it. *State v. Martin*, 191 Wis. 2d 646, 657, 530 N.W.2d 420 (Ct. App. 1995) (citing *Omernik v. State*, 64 Wis. 2d 6, 18-19, 218 N.W.2d 734 (1974)). The fact that a statutory classification results in some inequity does not provide sufficient grounds to invalidate a statute. *McManus*, 152 Wis. 2d at 131 (citing *Lalli v. Lalli*, 439

U.S. 259, 273 (1978)). The court does not examine whether inequality results, but whether any reasonable basis exists justifying the classification. *State v. Hanson*, 182 Wis. 2d 481, 485, 513 N.W.2d 700 (Ct. App. 1994) (citing *State v. McKenzie*, 151 Wis. 2d 775, 779, 446 N.W.2d 77 (Ct. App. 1989)).

A state does not violate the Equal Protection Clause merely because the classifications in its laws are imperfect. *Szarzynski v. YMCA, Camp Minikani*, 184 Wis. 2d 875, 888-89, 517 N.W.2d 135 (1994) (quoting *Dandridge v. Williams*, 397 U.S. 471, 485 (1970)). "The task of drawing lines between different classifications is a legislative one in which perfection 'is neither possible nor necessary.'" *Brown v. State Dep't of Children & Families*, 2012 WI App 61, ¶ 37, 341 Wis. 2d 449, 819 N.W.2d 827 (citation omitted). "Moreover, a state 'has no obligation to produce evidence to sustain the rationality of a statutory classification.'" *Id.*, ¶ 38 (quoting *Heller v. Doe by Doe*, 509 U.S. 312, 320 (1993)).

As was the case in the due process analysis, the butter grading statute implicates neither a fundamental right nor a suspect class. In such a situation, "an argument based on equal protection essentially duplicates an argument based on due process." *State v. Jorgensen*, 2003 WI 105, ¶ 31, 264 Wis. 2d 157, 667 N.W.2d 318 (quoting *Chapman v. United States*, 500 U.S. 453, 464-65 (1991)). The butter grading law provides consumers with purchasing power. The grading and labeling requirement ensures that

customers have information about the quality of butter available for purchase relative to the price they pay. There is a government interest in customers having this information, as is evident by laws such as those requiring food to be labeled with the ingredients in it. 21 U.S.C. § 343-1 *et seq*.

Taking Plaintiffs' classification of stores that sell butter versus stores that sell other dairy products, the law passes rational basis scrutiny based on this stated purpose and therefore Plaintiffs cannot establish beyond a reasonable doubt that the law violates the Equal Protection Clause. The law regulates stores that sell butter in a manner that does not apply to stores that do not. The classification is related to the purpose of the law—to provide customers with information pertaining to the quality of the butter available for purchase—and the statute does not preclude the addition of additional members to the class. Any store that opens or decides to sell butter where it did not previously do so would become part of the class. The law applies equally to all stores that sell butter. Finally, requiring stores that sell butter to offer butter for sale that complies with the labeling requirement reasonably suggests the propriety of substantially different legislation; there would be no point in requiring a store that does not sell butter to comply with a butter grading law that only pertains to a product it does not sell.

The requirement that businesses that sell butter comply with the butter grading law while businesses selling other dairy products need not do

so is rationally related to the law's purpose of providing consumers with information about the quality of the product offered for sale. This Court should dismiss the second claim.

CONCLUSION

Wisconsin's butter grading law is a legitimate exercise of the Legislature's power to regulate food safety and information available to consumers. Any doubt about the statute's constitutionality must be resolved in favor of finding the law constitutional. Because Plaintiffs cannot establish beyond a reasonable doubt that the law violates the Due Process or Equal Protection Clauses of the Wisconsin Constitution as a matter of law, this Court should DISMISS these claims with prejudice.

Dated this 12th day of May, 2017.

Respectfully submitted,

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