



INSTITUTE FOR JUSTICE

March 22, 2018

To whom it may concern,

I am a constitutional attorney at the Institute for Justice, a national nonprofit organization that fights against laws that irrationally burden people's right to pursue their chosen livelihood. One of my areas of expertise is cottage food law. Cottage food are foods made in a person's home kitchen for sale. I was the attorney who successfully sued Minnesota (*Astramecki v. Department of Agriculture*) and Wisconsin (*Kivirist v. Department of Agriculture, Trade, and Consumer Protection*) concerning their unconstitutionally restrictive cottage food laws, and I am currently litigating against New Jersey regarding its total ban on the sale of cottage foods.

The intention of this letter is to clarify that the sale of home-baked goods in Wisconsin is now legal. In 2017, a Wisconsin state court judge declared that the State's ban on the sale of these goods was unconstitutional. *Kivirist v. Department of Agriculture, Trade, and Consumer Protection*, No. 16-CV-06 (Lafayette Cty. Cir. Ct., May 31, 2017). As a result, the sale of not-potentially hazardous (not requiring refrigeration) baked goods made in a home kitchen is now permitted. As the Wisconsin Legislature has since declined to pass any law regulating the sale of home-baked goods, there is no license, registration, or certification required to sell these goods, and there is also no cap on the amount of sales from these goods.

Moreover, as the *Kivirist* case was decided on constitutional grounds, municipalities cannot prohibit the sale of these goods. While farmers markets are allowed to have their own private rules restricting the sale of these goods, these rules can no longer be justified by compliance with state or local law. Please note that the Court's ruling does not change Wisconsin's law and regulations regarding the sale of high-acid canned items (known as "the Pickle Bill").

Please see [www.wisconsinincottagefood.com](http://www.wisconsinincottagefood.com), facilitated by the Wisconsin Farmers Union, for more details. Feel free to contact me if you have any questions at (703) 682-9320 or [esmith@ij.org](mailto:esmith@ij.org).

Sincerely,

Erica Smith  
Attorney  
INSTITUTE FOR JUSTICE