



INSTITUTE FOR JUSTICE

## Testimony in opposition to SB 2269, North Dakota House Agriculture Committee

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Good morning, Chairman Johnson and members of the committee. Thank you for the opportunity to testify before you this morning.

My name is Jennifer McDonald and I am a senior research analyst at the Institute for Justice. I hold a master of public administration from the London School of Economics and Political Science. I have also published multiple studies on the cottage food industry and have testified in favor of expanding cottage foods to state legislatures across the country.

We are opposed to SB 2269 in its current form because it will needlessly restrict the ability of North Dakotans to operate their homebased food businesses.

IJ is the public interest law firm that represented a group of home bakers in their recent successful challenge to Wisconsin's unconstitutional ban on the sale of home-baked goods and is currently representing New Jersey home bakers in a similar lawsuit. When North Dakota passed its food freedom law, you became a national leader in the movement for food freedom. We now urge the Legislature not to hamstring these newly legal home-based businesses with unnecessarily restrictive regulations, for two reasons:

1. Homemade foods are just as safe as commercially-produced foods.
2. Homemade food businesses provide their owners with crucial income, particularly to women living in rural areas.

First, homemade foods are extremely safe. Cottage food producers take immense pride in the quality of their products, and the direct producer-to-consumer relationship ensures that producers are accountable to their customers. No cook or baker wants someone to get sick from their products. Furthermore, there is no reason why homemade food items are a greater risk to public health than those produced commercially. The individual attention that cottage food producers give to each item they make ensures quality and safety—certainly more than commercially produced products received.

The experts agree. Thomas Montville is a microbiologist, professor of food science at Rutgers University, and expert on food safety. He has testified in court multiple times that cottage foods are scientifically just as safe as commercially produced food. Tiffany Greenlee, epidemiologist with the North Dakota Department of Health, has even publicly stated that there have been no

reports of foodborne illnesses as a result of your food freedom law.<sup>1</sup> To restrict food freedom at this point in time would be to give in to fear mongering and anecdotes, rather than to make informed policy decisions based on evidence.

Second, homemade food businesses are invaluable to their owners. In 2017, I authored the nation's first comprehensive study on cottage food businesses.<sup>2</sup> I surveyed 775 cottage food producers across 22 states in order to glean insight that will help guide policy decisions around how this industry should be governed. My research shows that cottage food businesses provide an important path to entrepreneurship and financial independence for their owners, who are often lower-income women living in rural areas.

Eighty-three percent of the cottage food producers surveyed were women and 81 percent lived in rural areas. Half earned less than \$36,000 a year, which is considerably lower than the national average of around \$59,000. Extra income from a cottage food business can be particularly helpful to lower-income households like these.

Unfortunately, my research also suggests that restrictive cottage food laws likely stifle business creation and expansion in rural communities. And when I surveyed newly-legal cottage food businesses in Wisconsin last year, many respondents confirmed those findings. They also told us how important the income from their cottage food businesses is to them: Many said the income allows them to provide for their children and get out of debt, while one even said her business allowed her to stay in her home and gave her the ability to afford to purchase health insurance.<sup>3</sup>

Understanding how vital cottage food businesses are for so many North Dakotans, I urge you to vote no on SB 2269. This bill is a solution in search of a problem. It will have no effect on public health, but it could mean the difference between just getting by and financial freedom for lower-income farmers, retirees and homemakers.

Thank you for your time. I am happy to answer any questions you might have.

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<sup>1</sup> Mercer, M. (2019, Mar. 19). As home-cooked cottage-food industry grows, states work to keep up. *Pew Charitable Trusts*. <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/03/19/as-home-cooked-cottage-food-industry-grows-states-work-to-keep-up>

<sup>2</sup> McDonald, J. (2017). *Flour power: How cottage food entrepreneurs are using their home kitchens to become their own bosses*. Arlington, VA: Institute for Justice. <https://ij.org/wp-content/uploads/2017/12/Cottage-Foods-Report-Sep-2018.pdf>; McDonald, J. (*in press*). The relationship between cottage food laws and business outcomes: A quantitative study of cottage food producers in the United States. *Food Policy*. <https://doi.org/10.1016/j.foodpol.2019.01.012>

<sup>3</sup> McDonald, J. (2018). *Ready to roll: Nine lessons from ending Wisconsin's home-baking ban*. Arlington, VA: Institute for Justice. <https://ij.org/wp-content/uploads/2018/10/Wisconsin-Home-Bakers-FINAL.pdf>

