

STATE OF WISCONSIN

CIRCUIT COURT

LAFAYETTE COUNTY

For Official Use

**FINAL ORDER
AND JUDGMENT**

Lisa Kivirist, Kriss Marion, and Dela Ends,

Plaintiffs,

Case No. 16-CV-06

v.

Wisconsin Department of Agriculture, Trade and
Consumer Protection, and Ben Brancel, in his official
Capacity as Secretary of the Wisconsin
Department of Agriculture, Trade and Consumer Protection,

Defendants.

FILED

SEP 29 2017

LAFAYETTE COUNTY
CIRCUIT COURT

Before the Court are the parties' cross motions for summary judgment and Plaintiffs' Motion to Strike or Exclude.

The Court, having reviewed the motions, including all materials filed in support of them, and having heard oral argument on April 27, 2017, hereby orders and adjudges as follows:

For the reasons stated in the Court's oral decision on May 31, 2017, and the Court's Supplemental Written Decision, Plaintiff 's motion for summary judgment is granted, Defendants' motion for summary judgment is denied, and Plaintiffs' motion to strike or exclude is denied as moot.

The Court declares that Wisconsin's food processing plant and retail food establishment licensing requirements set forth at Wis. Stat. § 97.29(2)(a), Wis. Stats. § 97.30(2)(a), Wis. Admin. Code § ATCP 70.03(1), and Wis. Admin. Code § ATCP 75.03(1), as well as the statutes and regulations governing such licensees set forth at Wis. Stat. § 97.29, Wis. Stat. § 97.30, Wis. Admin. Code § ATCP 70, and Wis. Admin. Code § ATCP 75, are unconstitutional as applied to Plaintiffs and all other similarly situated individuals.

The application of these provisions to Plaintiffs and others like them violates Article I, section 1, of the Wisconsin Constitution, specifically: (1) its substantive due process guarantees,


because, as applied, the provisions have no rational, substantial, or reasonable connection to the state's purported interests in public health and safety; and (2) its equal protection guarantees, because the state exempts, with no rational, substantial, or reasonable basis, similarly-situated persons engaged in selling, directly to consumers, high-acid canned goods, pasteurized and unpasteurized apple cider, popcorn, maple syrup, sorghum syrup, honey, eggs, and produce. Even if Wisconsin's substantive due process and equal protection guarantees are interpreted concomitantly with their federal counterparts, the challenged provisions, as applied, fail the federal rational-basis test.

Accordingly, this Court hereby enjoins Defendants from enforcing the above-listed licensing requirements and associated statutes and regulations against the Plaintiffs and all other similarly-situated individuals.

This is a final order and judgment for purposes of appeal.

Dated: September 29, 2017

BY THE COURT:



Duane M. Jorgenson
Circuit Court Judge