

FORBES &gt; BUSINESS &gt; POLICY

# Homemade Food Producers Take On Bureaucrats Who Shut Them Down

Andrew Wimer Contributor  
Institute For Justice Contributor Group ©

[Follow](#)

May 6, 2020, 02:02pm EDT

[Listen to article 6 minutes](#)

 This article is more than 2 years old.



GETTY

Lydia Gessele is a single mother of three who raises chickens on her farm in North Dakota. She uses those chickens to make a

homemade chicken noodle soup that she donates to local charities. Last year she would have been able to sell that chicken soup, and any of her other delicious meals she made like lasagna or the Midwest favorite tater tot hot dish. But on January 1, 2020, selling her homemade meals was made illegal, not because the law changed, but because of new regulations created by the North Dakota Department of Health.

For nearly three years, North Dakotans had broad freedom to sell homemade foods. The new opportunity created hundreds of jobs across the state. And while many across the state started selling their products for the first time, there was never a single food illness complaint lodged against a home producer.

The new freedom was sparked by the passage of the Cottage Food Act, a law passed with the overwhelming support of the North Dakota Legislature and signed by the Governor in April 2017. The law was one of the most expansive bills to free cottage food producers in the nation. Other than certain meat products spelled out in the law, North Dakotans were free to sell a wide variety of products: pizza, soups, ethnic food, canned vegetables, and more.

But right from the start, the North Dakota Department of Health tried to starkly limit what foods could be sold. Less than one year after the law was signed, the Department proposed regulations to limit the sale of most perishable foods. When that effort was met with a public outcry, the Department pushed legislators to pass a new bill that would write these restrictions into law.

When that bill failed to pass in the 2019 legislative session, the unelected and unaccountable Department simply acted on its own to pass the regulations that went into effect in January. Now, home producers can only sell shelf stable foods and only a

handful of perishable products. The regulations also severely limit what canned foods can be sold, only allowing the sale of high-acid or acidified home-canned foods, like jams, jellies, and pickles. Failure to comply with the regulations is a misdemeanor which can result in fines and even jail time.

---

MORE FOR YOU

**Tucker Carlson Made As Much As \$20 Million A Year At Fox News**

**WWE Raw Results: Winners And Grades As Triple H Unveils New World Heavyweight Title**

**New Apple Leak Reveals Disappointing MacBook Decision**

---

Although the Department's move is cloaked in messages about food safety, a closer look calls that red herring into question. For instance, a home baker can sell you a cheesecake, but not a cheese pizza. Most canned or jarred vegetables are not allowed, but raw, uninspected poultry is allowed. And again, in the years after the law was passed, there was no outbreak related to a homemade food or meal. In fact, there has been no outbreak in any of the other states with similarly expansive cottage food laws either.

---

**Forbes Daily: Our best stories, exclusive reporting and Forbes perspectives on the day's top news, plus the inside scoop on the world's most important entrepreneurs.**

Email address

**Sign Up**

You may opt out any time. By signing up for this newsletter, you agree to the [Terms and Conditions](#) and [Privacy Policy](#)

---



Danielle Mickelson is suing North Dakota for her right to sell her homemade pizza. INSTITUTE FOR JUSTICE

The new regulations also continue to allow these products and meals to be donated to charity or sold at “public spirited” events, such as baseball games and parades. But selling something at a baseball game or giving it to a needy neighbor doesn’t somehow magically make it safer than transferring it in any other context. The Health Department’s primary concern is clearly people supporting themselves by selling their homemade products for a profit.

Now, with many Americans out of work because of the pandemic, additional income would make a huge difference in many lives. When the Institute for Justice surveyed cottage food producers a few years ago, it found that rural Americans made up a clear majority of the sector even though only 1 in 5 live in rural areas. The producers are also a lifeline for their communities, offering healthy and affordable food in areas that may not have a convenient grocery store.

Lydia and four other North Dakotans are taking on the Health Department's half-baked restrictions. The Department announced these regulations in a year in which the North Dakota Legislature doesn't meet, meaning it could be another year before lawmakers can weigh in on the meaning of the Cottage Food Act. The cottage food creators have teamed up with the Institute for Justice to sue the Department in court.

Bureaucrats do not get to unilaterally rewrite the law. The role of those in the executive branch is to enforce the laws passed by the Legislature. When legislators refused to change the law to their liking, the Department may not simply go around them. Not only are the regulations illegal, but they are so poorly written that they violate the North Dakota state constitution; the regulators can't, for example, treat similar foods differently. The cheesecake makers and the cheese pizza makers must be treated the same.

Soon, farms across North Dakota will be harvesting crops and farmers who last year were preparing farm-to-table meals and canned goods aren't allowed to sell them. The wheels of justice often move slowly, but hopefully an entire growing season won't go to waste before North Dakota's cottage food producers can again provide for their communities and support their families.

*Follow me on [Twitter](#).*



**Andrew Wimer**

**Follow**

I am an Director of Media Relations at the Institute for Justice (IJ), a public interest law firm. Follow me on Twitter [@andrewwimer](#). As a member of IJ's communications team,... **Read More**

[Editorial Standards](#)

[Reprints & Permissions](#)

ADVERTISEMENT