



INSTITUTE FOR JUSTICE

**Testimony in support of SB 2386  
House Agriculture Committee  
March 6<sup>th</sup>, 2025**

Dear Chairman Beltz and Members of the Committee,

Thank you for the opportunity to submit written testimony in favor of SB 2386.

**Introduction**

Selling cottage foods is a great way for entrepreneurs with big dreams but little capital to get started small in their own homes. They are able to start selling these items without having to spend hundreds or thousands of hard-earned dollars on commercial kitchen space.

North Dakota has embraced these businesses as job creators, but SB 2386 allows even greater opportunities for these entrepreneurs.

Consumers and producers alike benefit from the sale of cottage foods: Consumers love buying local, homemade foods, and producers can earn income while supporting the local economy. As members of the community, cottage food entrepreneurs can identify and meet specific needs, such as providing much-needed food options in isolated communities, in a way that traditional food retailers cannot.

At the Institute for Justice, we have studied the effects of cottage food businesses on local economies and communities and researched food safety. We have consulted experts, reviewed CDC data, and followed up with health departments in states that have expanded their cottage food laws in ways that are similar to the approach this bill takes. Our research confirms that homemade food does not pose a greater health risk for consumers<sup>i</sup> and that cottage food businesses help stimulate economic growth in their communities.<sup>ii</sup>

SB 2386 seeks to allow interstate commerce and allow the sale of homemade food over the internet or phone, through the mail, or by consignment. These changes will allow for even more opportunities for homemade food producers, especially given that research finds that cottage food producers are primarily women who live in rural areas.<sup>iii</sup>

**The FDA Does Not Regulate the Interstate Sales of Cottage Foods**

The U.S. Food and Drug Administration (FDA) does not regulate cottage foods, nor does it prohibit them from being sold interstate. In fact, the FDA has provided written confirmation that selling cottage foods interstate is entirely permissible under federal law:

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*“[S]ince home-based food businesses are not required to register with FDA, they can legally sell across state lines via the internet.”*

Of course, there are federal regulations for certain foods, such as meat products, poultry products, and pickled foods, that apply to all interstate sales, and all cottage food operations must comply with the FDA’s labeling laws when selling interstate.

### **Constitutionality of Interstate Sales of Cottage Foods**

The current law may be exposing itself to a constitutional violation by prohibiting interstate sales in contravention of the Commerce Clause. Interstate commerce connects the states and makes goods cheaper and more accessible to Americans nationwide. This national market is protected by the U.S. Constitution’s Commerce Clause, which grants Congress the power “to regulate commerce ... among the several states.” U.S. Const. art. 1, § 8, cl. 3. Because this power belongs to the U.S. Congress, not state governments, states may not impose regulations that burden interstate commerce outside of exceptional circumstances.

If a state seeks to prohibit interstate transactions, which necessarily discriminates against out-of-state consumers who wish to access intrastate goods, the state must show a legitimate, important reason for doing so, and it must show that there was no other way to accomplish its goal.

### **Safety of Homemade Foods**

The Institute for Justice (IJ) has conducted extensive research demonstrating that homemade food is safe for consumer sale. In a study involving seven states with comprehensive homemade food laws—California, Iowa, Montana, North Dakota, Oklahoma, Utah, and Wyoming—IJ found no confirmed cases of foodborne illnesses linked to foods sold under these laws. This was true even in Wyoming, which has permitted the sale of homemade perishable foods since 2015.<sup>iv</sup>

### **About the Institute for Justice**

The Institute for Justice, a national nonprofit organization, is one of the nation’s leading policy advisors and legal experts on cottage food laws. Through strategic research of the country’s varied laws, IJ has published several reports on cottage food producers and the health and safety of their foods. IJ has helped pass reforms in over 25 states and brought 4 successful lawsuits to both protect and expand cottage food laws.

### **Conclusion**

SB 2386 will expand opportunities for cottage food entrepreneurs and bring economic benefits for local communities. With little to no documented health risks associated with homemade foods and

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strong consumer demand for locally produced goods, SB 2386 supports economic growth, food accessibility, and entrepreneurship. The Institute for Justice urges the committee to support this bill and continue fostering a thriving cottage food industry in North Dakota.

Thank you for your consideration,

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<sup>i</sup> Erica Smith Ewing, Jennifer McDonald, New Data Show Homemade Food For Sale Is Incredibly Safe, Sept. 6, 2023, <https://ij.org/report/new-data-show-homemade-food-for-sale-is-incredibly-safe/#:~:text=New%20data%20from%20the%20Institute%20for%20Justice%20show%20that%20buying,ma de%20in%20a%20home%20kitchen>

<sup>ii</sup> Jeffrey K. O'Hara, Marcelo Castillo, Dawn Thilmany McFadden, Do Cottage Food Laws Reduce Barriers to Entry for Food Manufacturers?, Applied Economic Perspectives and Policy (2020), volume 00, number 00, pp. 1-17, <https://foodsystems.colostate.edu/wp-content/uploads/2020/07/aapp.13047.pdf>.

<sup>iii</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>.

<sup>iv</sup> See Ewing and McDonald

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