

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Type of Case: Other Civil
[Constitutional Claims]
[Declaratory Judgment]

JANIE “JANE” ASTRAMECKI; A WALK IN THE
CLOUDS, INC., doing business as JANE DOUGH
BAKERY; and MARA HECK,

Plaintiffs,

v.

Case No.

MINNESOTA DEPARTMENT OF AGRICULTURE;
DAVE FREDERICKSON, in his official capacity as
Commissioner of the Minnesota Department of
Agriculture; MINNESOTA DEPARTMENT OF
HEALTH; and EDWARD P. EHLINGER, in his official
capacity as Commissioner of the Minnesota
Department of Health,

Defendants.

CIVIL RIGHTS COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is a civil rights lawsuit to vindicate the right of Janie Astramecki and Mara Heck to earn an honest living by selling home-baked goods and home-canned goods. Minnesota allows Janie and Mara to sell such goods—which the state deems “not potentially hazardous”—but it imposes severe, arbitrary, and irrational restrictions on their sale. First, the state forbids home-bakers and home-canners from selling their goods anywhere other than farmers’ markets and community or social events. That means Janie’s and Mara’s goods cannot be sold, for example, in a store, at a job site, or in a restaurant, nor can Janie and Mara take orders over the phone or online for later delivery or pick-up. Second, the state limits home-bakers and home-canners to \$5,000 in sales annually—an average of just \$96 per week. This cap applies to gross receipts, not profits, which means a home-baker or home-canner will earn a far

lower amount than \$5,000, if anything, from selling home-baked or home-canned goods. These arbitrary restrictions abridge Janie and Mara's right to earn an honest living in violation of the Due Process and Equal Protection Clauses of the Minnesota Constitution.

JURISDICTION AND VENUE

2. Plaintiffs Janie Astramecki and Mara Heck bring this civil rights lawsuit pursuant to the Uniform Declaratory Judgment Act and Minn. Stat. § 555.01–.16, for violations of the Due Process and Equal Protection Clauses of the Minnesota Constitution.

3. Plaintiffs seek declaratory and injunctive relief against Minnesota's restrictions on sales of homemade baked goods and home-canned goods, which are set forth in Minn. Stat. § 28A.15, subdivs. 9, (10)(a), and (10)(a)(3). Plaintiffs also seek one dollar in nominal damages.

4. This Court has jurisdiction under Minn. Stat. §§ 484.01(1), 555.01, 555.02, and 555.08.

5. Pursuant to Minn. Stat. §§ 542.03(1) and 542.09, venue is proper in this Court because the causes of action arose in Ramsey County and one or more of the Defendants reside there.

THE PARTIES

6. Plaintiff Janie Astramecki, who goes by "Jane" and is referred to as such in this Complaint, is a resident of Dakota County, Minnesota. She is a home-baker and home-canner; a graduate of Le Cordon Bleu College of Culinary Arts with a certificate in pâtisserie and baking; and owner of Plaintiff A Walk in the Clouds, Inc., which does business as Jane Dough Bakery. Jane bakes all kinds of delicious items, from her signature cranberry and orange scones to French macaroons, as well as a variety of breads, including sourdough, banana streusel, and cranberry walnut pecan. Jane also makes an assortment of jams and jellies.

7. Plaintiff A Walk in the Clouds, Inc. is a Minnesota corporation doing business as Jane Dough Bakery.

8. Plaintiff Mara Heck is a resident of Hennepin County, Minnesota. She is a home-baker who has won multiple ribbons at the Minnesota State Fair and county fairs for her homemade goods. Mara creates unique concoctions like mini-pumpkin cheesecakes, chocolate-chip-cookie-Oreo-peanut-butter-cup-filled brownie cupcakes, Nutella and berry croissant French toast, and banana bread with sweeTango apples.

9. Defendant Minnesota Department of Agriculture is a governmental department of the state of Minnesota created and empowered under Minn. Stat. § 17.01 and .03. It is charged with enforcing and implementing laws, regulations, and policies to carry out the licensing scheme set forth at Minn. Stat. §§ 28A *et seq.*

10. Defendant Dave Frederickson is the Commissioner of the Minnesota Department of Agriculture. Mr. Frederickson has direct authority over Department of Agriculture personnel and the responsibility and practical ability to ensure that laws, regulations, and policies that the Department of Agriculture is charged with enforcing and implementing are enforced and implemented in accordance with the Minnesota Constitution. Mr. Frederickson is sued in his official capacity.

11. Defendant Minnesota Department of Health is a governmental department of the state of Minnesota created and empowered under Minn. Stat. § 144.011 and .07. It is charged with enforcing the Minnesota Food Code, Minn. R. 4626.0010–4626.1870.

12. Defendant Edward P. Ehlinger is the Commissioner of the Minnesota Department of Health. Mr. Ehlinger has direct authority over Department of Health personnel and the responsibility and practical ability to ensure that laws, regulations, and policies that the

Department of Health is charged with enforcing and implementing are enforced and implemented in accordance with the Minnesota Constitution. Mr. Ehlinger is sued in his official capacity.

STATEMENT OF FACTS

THE SALE OF HOME-BAKED GOODS IN MINNESOTA

13. Like the overwhelming majority of states, Minnesota allows the sale of “not potentially hazardous foods” prepared in a home kitchen. Minn. Stat. § 28A.15, subdiv. 9; Minn. R. 4626.0130 3-201.11(B).

14. Although Minnesota does not define the term “not potentially hazardous food,” the term “potentially hazardous food” is defined, in relevant part, as “a food that is natural or synthetic and is in a form capable of supporting . . . the rapid and progressive growth of infectious or toxigenic microorganisms . . . [or] the growth and toxic production of *Clostridium botulinum*.” Minn. R. 4626.0020 1-201.10, subp. 62(A)(1), (2).

15. Exempted from the definition of “potentially hazardous food”—and thus, a “not potentially hazardous food”—is “food for which laboratory evidence demonstrates that the rapid and progressive growth of infectious and toxigenic microorganisms or the growth of . . . *Clostridium botulinum* cannot occur.” *Id.* subp. 62(C)(5).

16. In layman’s terms, “not potentially hazardous food” is food that can be kept safely at room temperature.

17. The Department of Agriculture has interpreted the term “not potentially hazardous food” to include, among other things, bakery products such as bread, cakes, cookies, bars, fruit pies, and rolls.

18. Subject to conditions set forth in Minn. Stat. § 28A.15, subdiv. 9, persons selling such foods need not obtain a license under the Minnesota Consolidated Food Licensing Law, Minn. Stat. § 28A.01–.16, or the Minnesota Food Code, Minn. R. 4626.0010–1870. *See* Minn. Stat. § 28A.15, subdiv. 9; Minn. R. 4626.0020 1-201.10, subp. 35(C)(1). Nor must they operate from a commercially-equipped kitchen that meets the requirements set forth in the Minnesota Food Code. *See generally* Minn. R. 4626.0450 4-101.11–4626.1585 6-501.115.

19. In short, Minnesota recognizes that not potentially hazardous goods baked in the home, including cookies, breads, fruit pies, and cakes, are so safe they can be sold to the public without the home-baker or home-canner obtaining a specific license or undergoing supervision.

THE SALE OF HOME-CANNED GOODS IN MINNESOTA

20. Again like the overwhelming majority of states, Minnesota allows the sale of certain “home-processed and home-canned foods”—specifically, “pickles, vegetables, or fruits having an equilibrium pH value of 4.6 or lower.” Minn. Stat. § 28A.15, subdiv. 10; Minn. R. 4626.0130 3-201.11(B).

21. The Department of Agriculture interprets this category to include jams and jellies, among other things.

22. A pH value of 4.6 is the point at which a food is deemed acidified, and acidification is a limiting factor for the growth of the microorganism, *Clostridium botulinum*.

23. A food “with a pH level of 4.6 or below when measured at 24 degrees C (75 degrees F)” is not considered a “potentially hazardous food.” Minn. R. 4626.0020 1-201.10, subp. 62(C)(3).

24. Subject to conditions set forth in Minn. Stat. § 28A.15, subdiv. 10, persons selling home-canned foods, such as jams and jellies, with an equilibrium pH value of 4.6 or lower need

not obtain a license under the Minnesota Consolidated Food Licensing Law, Minn. Stat. § 28A.01–.16, or the Minnesota Food Code, Minn. R. 4626.0010–.1870. *See* Minn. Stat. § 28A.15, subdiv. 10; Minn. R. 4626.0020 1-201.10, subp. 35(C)(1). Nor must they operate from a commercially-equipped kitchen that meets the requirements set forth in the Minnesota Food Code. *See generally* Minn. R. 4626.0450 4-101.11–4626.1585 6-501.115.

25. In short, Minnesota recognizes that home-processed and home-canned (together, “home-canned”) goods, including jams and jellies, with a pH value of 4.6 or lower are so safe that they can be sold to the public without the home-canner obtaining a specific license or undergoing supervision.

MINNESOTA’S RESTRICTIONS ON THE SALE OF HOME-BAKED AND HOME-CANNED GOODS

26. Despite allowing the sale of these home-baked and home-canned goods, Minnesota imposes severe restrictions on their sale that undermine or defeat the ability of persons to earn an honest living as a home-baker or home-canner.

27. For example, Minnesota imposes a venue restriction on the sale of not potentially hazardous home-baked goods. They may only be sold “at a community event or farmers’ market.” Minn. Stat. § 28A.15, subdiv. 9.

28. Minnesota also imposes a venue restriction on home-canned goods, including jams and jellies, with an equilibrium pH value of 4.6 or lower. They may similarly only be “sold or offered for sale at a community event or social event or a farmers’ market in Minnesota.” Minn. Stat. § 28A.15, subdiv. 10(a)(3).

29. The Department of Agriculture interprets a “community event” or “social event” as “[a] public gathering sponsored or hosted by a town, county, city, or municipality or religious,

charitable, or educational organization where food is sold,” provided the event (1) is “open to the public” and (2) “is not intended for profit,” but rather “to promote the community as a whole.”

30. Consequently, home-baked and home-canned goods may not be sold from a shop, at a job site, or in a restaurant, nor may home-bakers and home-canners take orders over the phone or online for later delivery or pick-up.

31. In addition to the venue restrictions, Minnesota imposes sales caps on home-baked and home-canned goods.

32. Minnesota caps sales of not potentially hazardous home-baked foods at “gross receipts of \$5,000 or less in a calendar year.” Minn. Stat. § 28A.15, subdiv. 9.

33. Minnesota also caps sales of home-canned goods, including jams and jellies, with an equilibrium pH value of 4.6 or lower. They are capped at “less than \$5,000 in gross receipts in a calendar year.” Minn. Stat. § 28A.15, subdiv. 10.

34. These caps are on gross receipts, rather than profits. Minn. Stat. § 28A.15, subdiv. 10. They do not account for the cost of ingredients, the cost of a stall at a farmers’ market, or any other business-related expenses.

35. Failure to comply with the venue restrictions and sales caps subjects home-bakers and home-canners to a misdemeanor conviction punishable by up to 90 days in jail and a \$1,000 fine, or by \$7,500 in civil penalties. *See* Minn. Stat. § 34A.04, subdiv. 1(c); *id.* § 34A.09, subdiv. 1; *id.* § 34A.10, subdiv. 1; *id.* § 609.03, subdiv. 3.

36. To avoid the venue restrictions and sales caps, persons making baked goods that are not potentially hazardous, or jams and jellies with an equilibrium pH value of 4.6 or lower, would have to obtain applicable licenses under the Minnesota Consolidated Food Licensing Law, Minn. Stat. § 28A.01–.16, and/or Minnesota Food Code, Minn. R. 4626.0010–.1870, and would

have to operate out of a licensed, commercially-equipped kitchen that meets the rigorous and expensive requirements of the Minnesota Food Code. Minn. R. 4626.1755 8-301.11; *see also* Minn. R. 4626.0450 4-101.11–4626.1585 6-501.115.

37. Such a kitchen would cost tens of thousands of dollars to build and could not be built inside a private home. Minn. R. 4626.1425 6-202.111.

38. Alternatively, a baker or canner could rent existing commercial kitchen space, but she would then incur hefty lease payments and other related expenses.

JANE ASTRAMECKI AND JANE DOUGH BAKERY

39. Plaintiff Jane Astramecki is a Minnesota home-baker and home-canner. She is a graduate of Le Cordon Bleu College of Culinary Arts, Minneapolis/St. Paul campus, from which she earned a certificate in pâtisserie and baking, and is also ServSafe certified. ServSafe is a food and beverage safety training and certificate program administered by the National Restaurant Association and accredited by the American National Standards Institute and the Conference for Food Protection.

40. For two reasons, working in a bakery or commercial kitchen was not an option for Jane. First, she wanted to be home with her children. Second, she had previously suffered a serious accident that required three back surgeries and resulted in considerable nerve damage in her leg. Consequently, standing for long periods of time is extremely difficult and she needs to lie down several times a day to alleviate the pain.

41. But Jane wanted to create a successful business despite her injuries. Accordingly, in 2010, she launched Jane Dough Bakery, selling homemade-baked goods, as well as home-canned jams and jellies, at the Eagan and Farmington farmers' markets.

42. Jane operates Jane Dough Bakery from a custom-built kitchen in her basement. It is separate from the kitchen on the main level of her house, which she uses to cook her family's meals.

43. Jane produces a wide variety of baked goods, including an assortment of cakes, cookies, scones, and breads in her kitchen.

44. Jane also makes a variety of jams and jellies in her kitchen and cans them.

45. Jane sells her baked goods, jams, and jellies at the Eagan and Farmington farmers' markets, which run from June through September. In addition, Jane plans to begin selling her baked goods, jams, and jellies at Eagan's new winter farmers' market.

46. Jane also teaches a cake-decorating class at a Michaels Arts and Crafts Store in Eagan.

47. Jane receives frequent requests from farmers' market customers, students in her cake-decorating class, family, friends, and those who hear about her through word-of-mouth wanting her to fill custom baked goods, jam, or jelly orders for themselves or, often, for special family occasions or work events. In fact, in a typical week, Jane receives two such requests from farmers' market customers alone. Jane also recently received a request to provide baked goods for a City of Eagan function.

48. Jane has to say "no" to these requests because fulfilling them would mean running afoul of Minnesota's venue restrictions and would trigger jail time, fines, and/or penalties. In 2013 alone, Jane had to decline approximately 20 large orders because filling them would have violated Minnesota's venue restrictions. Jane lost approximately \$2,000 in earnings by declining these orders. She expects to receive a comparable number of requests and to lose a comparable amount in earnings in future years.

49. Jane anticipates receiving similar requests from customers at the Eagan winter farmers' market once she begins selling there. Based on her experience during the summer markets, Jane anticipates receiving at least one request per market event.

50. Jane will have to say "no" to requests from customers at the Eagan winter farmers' market because fulfilling them would mean running afoul of Minnesota's venue restrictions and would trigger jail time, fines, and/or penalties. Jane estimates she will have to decline at least 10 such orders each market season. Jane estimates that she will lose approximately \$1,000 in earnings annually by declining these orders.

51. But for Minnesota's venue restrictions, Jane would inform customers at the summer and winter farmers' markets in Eagan and Farmington, and announce at her cake-decorating class, that Jane Dough Bakery takes custom orders. Doing so, she estimates, would lead to at least 30 orders and \$3,000 in additional earnings annually.

52. Jane also receives numerous requests from shops that would like to carry her products. Jane has to say "no" to filling these requests because filling them would again cause her to run afoul of Minnesota's venue restrictions and would trigger jail time, fines, and/or penalties. Jane estimates that she has lost an additional \$2,000 in earnings by declining these orders. But for Minnesota's venue restrictions, Jane would sell her baked goods, jams, and jellies to shops interested in carrying them. Doing so, she estimates, would earn her an additional \$2,000 annually.

53. In addition to being cognizant of where she sells, Jane must keep a watchful eye on how much she sells. If she reaches \$5,000 in sales of baked goods at some point during the year, which she did by selling at farmers' markets in 2013, she must either cease selling baked

goods until the following January or risk jail time, fines, and/or penalties. She must do the same with respect to sales of jams and jellies.

54. But for Minnesota's venue restrictions and sales caps, Jane would immediately begin selling both home-baked goods and home-canned jams and jellies from venues other than farmers' markets, community events, and social events.

55. But for Minnesota's venue restrictions and sales caps, Jane would attempt to sell—and is capable of selling—more than \$5,000 of baked goods and of jams and jellies in a calendar year.

56. Jane wants the freedom to sell her home-baked goods and home-canned jams and jellies from venues other than farmers' markets, community events, and social events, as well as the freedom to sell more than \$5,000 of baked goods and of jams and jellies in a calendar year.

57. Jane does not want to and cannot afford to endure the expense of building a separate commercial kitchen outside of her home. Nor can she rent commercial kitchen space.

58. Because of the nerve damage resulting from her accident, as well as the rheumatoid arthritis she suffers in her knees, ankles, and hips, Jane experiences pain at sudden and unknowable times, requiring her to lie down immediately. She often needs to lie down several times a day to alleviate the pain and cannot work in a situation or environment that requires her to stand all day without the ability to lie down when necessary.

59. Although Jane's injuries prevent her from holding a conventional job or working out of a commercial kitchen, she would like to contribute to her family's income in the way she is best able: making baked goods and jams and jellies in her home.

PLAINTIFF MARA HECK

60. Plaintiff Mara Heck is a thirty-one-year-old with a day job, but her passion is for baking.

61. Mara's passion has paid off: Each year for the past four, she has won a ribbon for at least one of her entries at the Minnesota State Fair.

62. The confections Mara concocts in her home kitchen are as delicious as they are exotic: mini-pumpkin cheesecakes; Nutella and berry croissant French toast; banana bread with SweeTango apples; and chocolate-chip-cookie-Oreo-peanut-butter-cup-filled brownie cupcakes—a mouthful in name and taste. But she also does traditional cakes, pies, and cookies.

63. Mara receives numerous requests from potential customers interested in purchasing her creations. Some people just want to buy a few cookies, while others want large, custom orders for events. She has received requests for everything from political fundraisers to a monthly ladies' night at a vintage clothing store. Mara would like to be able to legally fill the requests she receives.

64. Because of Minnesota's venue restriction on sales of home-baked goods, however, Mara can only fill these orders upon pain of jail time, fines, and/or penalties. Minnesota would instead have her haul her confections to a farmers' market or community event and sell them there—something Mara cannot do given her day job.

65. Mara works a traditional 9-to-5 job, and Minnesota farmers' markets typically take place in the middle of the weekday when Mara is working or on weekends when Mara wants to rest from the work week.

66. But for Minnesota's venue restriction, Mara would sell her home-baked goods from a variety of venues, including shops and by phone or internet order for pick-up or delivery.

67. But for Minnesota's venue restriction, Mara would advertise that she sells home-baked goods online and build a webpage specifically for that purpose.

68. But for Minnesota's cap on the sale of home-baked goods, Mara would attempt to sell—and is capable of selling—more than \$5,000 in gross receipts of baked goods per calendar year.

69. Mara wants the freedom to sell her baked goods from venues other than farmers' markets and community events, as well as the freedom to sell more than \$5,000 of baked goods in a calendar year.

70. Mara does not want and cannot afford to endure the expense of building a separate commercial kitchen outside of her home.

71. Mara does not want and cannot afford to endure the expense of renting a commercial kitchen space.

72. Mara has considered parlaying her passion for baking into a fulltime business. But Minnesota's venue restriction and sales cap on home-baked goods make that an impossibility. In fact, currently, Mara cannot earn any money from her home baking without breaking the law.

CONSTITUTIONAL VIOLATIONS

CLAIM I: DUE PROCESS

73. Plaintiffs re-allege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.

74. The Due Process Clause of Article I, section 7, of the Minnesota Constitution provides in relevant part that “[n]o person shall be . . . deprived of life, liberty or property without due process of law.”

75. The Due Process Clause has a substantive component that protects, among other things, the right to pursue a chosen livelihood and operate a lawful business without arbitrary and unreasonable governmental interference.

76. The venue restrictions and sales caps Minnesota imposes on home-baked and home-canned foods are arbitrary and unreasonable.

77. The venue restrictions contained in Minn. Stat. § 28A.15, subdivs. 9 and 10(a)(3), allow home-baked and home-canned foods that are not potentially hazardous to be sold at farmers’ markets, community events, and/or social events, but nowhere else. The health and safety of such foods do not turn on the venue in which they are sold.

78. By forbidding sales of such foods in other venues (*e.g.*, shops, job-sites, restaurants, online, over the phone), the venue restrictions contained in Minn. Stat. § 28A.15, subdivs. 9 and 10(a)(3), restrict or defeat the ability of Jane, A Walk in the Clouds, Inc., Mara, and other Minnesota entrepreneurs to earn an honest living.

79. The sales caps contained in Minn. Stat. § 28A.15, subdivs. 9 and 10(a), only allow up to \$5,000 in gross receipts annually from the sale of home-baked and home-canned foods that are not potentially hazardous. The health and safety of such foods do not turn on gross receipts received by the seller.

80. By forbidding sales of such foods in amounts greater than \$5,000, the sales caps contained in Minn. Stat. § 28A.15, subdivs. 9 and 10(a)(3), restrict or defeat the ability of Jane, A Walk in the Clouds, Inc., Mara, and other Minnesota entrepreneurs to earn an honest living.

81. Defendants have no compelling, substantial, or even legitimate interest for the venue restrictions and sales caps contained in Minn. Stat. § 28A.15, subdivs. 9, 10(a), and 10(a)(3).

82. The venue restrictions and sales caps contained in Minn. Stat. § 28A.15, subdivs. 9, 10(a), and 10(a)(3), are not necessary to achieve, narrowly tailored to achieve, or rationally related to any compelling, substantial, or legitimate governmental interest.

83. On their face and as applied, the venue restrictions and sales caps contained in Minn. Stat. § 28A.15, subdivs. 9, 10(a), and 10(a)(3), violate the Due Process Clause of Article I, section 7, of the Minnesota Constitution.

84. Jane, A Walk in the Clouds, Inc., and Mara have no other legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights.

85. Unless the venue restrictions and sales cap contained in Minn. Stat. § 28A.15, subdivs. 9, 10(a), and 10(a)(3), are declared unconstitutional and permanently enjoined, Jane, A Walk in the Clouds, Inc., and Mara will continue to suffer great and irreparable harm.

CLAIM II: EQUAL PROTECTION

86. Plaintiffs re-allege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.

87. The Equal Protection Clause of Article I, Section 2, of the Minnesota Constitution provides in relevant part that “[n]o member of this state shall be . . . deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers.”

88. The Equal Protection Clause protects the right of similarly-situated individuals to be treated the same.

89. Minnesota's statutory distinction between home-bakers and home-canners selling their not potentially hazardous foods at a farmers' market, community event, and/or social event, on one hand, and some other venue (*e.g.*, shop, job-site, restaurant, online, over the phone) is not genuine and substantial, but rather manifestly arbitrary and fanciful. There is no natural and reasonable basis to make this statutory distinction as applied to the peculiar conditions and needs that the statute addresses.

90. Minnesota's statutory distinction between home-bakers and home-canners selling their not potentially hazardous foods at a farmers' market, community event, and/or social event, on one hand, and some other venue is not genuine or relevant to the purpose of the statute because there is no connection between the venue from which not potentially hazardous foods are sold and the public health, public safety, or any other permissible governmental interest.

91. Minnesota's statutory distinction between home-bakers and home-canners selling their not potentially hazardous foods at a farmers' market, community event, and/or social event, on one hand, and some other venue lacks any real and substantial connection to any legitimate public purpose actually meant to be served by the statute.

92. The State of Minnesota cannot hope to achieve any legitimate public purpose by forbidding home-bakers and home-canners like Jane and Mara from selling their goods in all venues other than farmers' markets, community events, and social events. Requiring them to bring their goods to an arbitrary location for sale has absolutely no effect on their ability to produce safe goods for consumers.

93. Minnesota's statutory distinction between home-bakers and home-canners selling above and those selling below the \$5,000 sales caps is not genuine and substantial, but rather manifestly arbitrary and fanciful. There is no natural and reasonable basis to make this statutory distinction as applied to the peculiar conditions and needs that the statute addresses.

94. Minnesota's statutory distinction between home-bakers and home-canners selling above and those selling below the \$5,000 sales caps is not genuine or relevant to the purpose of the statute because there is no connection between the gross receipts realized from the sale of not potentially hazardous foods and the public health, public safety, or any other permissible governmental interest.

95. Minnesota's statutory distinction between home-bakers and home-canners selling above and those selling below the \$5,000 sales caps lacks any real and substantial connection to any legitimate public purpose actually meant to be served by the statute.

96. The State of Minnesota cannot hope to achieve any legitimate public purpose limiting home-bakers and home-canners like Jane and Mara to \$5,000 in gross receipts annually; a \$5,000 annual cap on gross receipts has absolutely no effect on their ability to produce safe goods for consumers.

97. The actual purpose of the venue restrictions and sales caps contained in Minn. Stat. § 28A.15, subdivs. 9, 10(a), and 10(a)(3), appears to be to protect licensed food establishments from competition.

98. The effect of the venue restrictions and sales caps contained in Minn. Stat. § 28A.15, subdivs. 9, 10(a), and 10(a)(3), is to prevent home-bakers, home-canners, and home-based businesses like Jane, A Walk in the Clouds, Inc., and Mara from building thriving home-baking and home-canning businesses.

99. Protecting licensed food establishments from competition and preventing home-bakers, home-canners, and home-based businesses like Jane, A Walk in the Clouds, Inc., and Mara from building and becoming thriving home-baking and home-canning businesses are not legitimate government purposes.

100. On their face and as applied, the venue restrictions and sales caps contained in Minn. Stat. § 28A.15, subdivs. 9, 10(a), and 10(a)(3), violate the Equal Protection Clause of Article I, section 2, of the Minnesota Constitution.

101. Jane, A Walk in the Clouds, Inc., and Mara have no other legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights.

102. Unless the venue restrictions and sales caps contained in Minn. Stat. § 28A.15, subdivs. 9, 10(a), and 10(a)(3), are declared unconstitutional and permanently enjoined, Jane, A Walk in the Clouds, Inc., and Mara will continue to suffer great and irreparable harm.

REQUEST FOR RELIEF

Plaintiffs respectfully request that the Court grant the following relief:

A. A declaratory judgment that the venue restrictions and sales caps contained in Minn. Stat. § 28A.15, subdivs. 9, 10(a), and 10(a)(3), facially and as applied, violate the Due Process and Equal Protection Clauses of the Minnesota Constitution;

B. A preliminary and permanent injunction prohibiting Defendants from enforcing the venue restrictions and sales caps contained in Minn. Stat. § 28A.15, subdivs. 9, 10(a), and 10(a)(3);

C. One dollar in nominal damages;

D. Reasonable costs and attorneys' fees; and

E. Such other legal or equitable relief as this Court may deem appropriate and just.

Dated: November 19, 2013

Respectfully submitted,

/s/ Katelynn McBride

Lee U. McGrath (MN Bar No. 0341502)
Katelynn McBride (MN Bar No. 0392637)
Anthony Sanders (MN Bar No. 0387307)
INSTITUTE FOR JUSTICE
1600 Rand Tower
527 Marquette Avenue
Minneapolis, MN 55402-1330
Office: (612) 435-3451
Cell: (612) 207-4575
Fax: (612) 435-5875
Email: kmcbride@ij.org; asanders@ij.org

Michael E. Bindas* (WA Bar No. 31590)
INSTITUTE FOR JUSTICE
10500 N.E. 8th Street, Suite 1760
Bellevue, WA 98004
Office: (425) 646-9300
Email: mbindas@ij.org
www.ij.org

Attorneys for Plaintiffs

*Application for Admission *Pro Hac Vice*
to be filed

ACKNOWLEDGMENT

I acknowledge that I am familiar with the terms of Minn. Stat. § 549.211, and that costs, disbursements and reasonable attorney and witness fees may be awarded to the opposing party pursuant to subd. 2 thereof, in the event a party or an attorney acts in bad faith; asserts a claim or defense that is frivolous and that is costly to another party; asserts an unfounded position solely to delay the order and course of the proceedings or to harass; or commits a fraud upon the Court.

/s/ Katelynn McBride

Katelynn McBride (MN Bar No. 0392637)

INSTITUTE FOR JUSTICE

1600 Rand Tower

527 Marquette Avenue

Minneapolis MN 55402-1330

Office: (612) 435-3451

Cell: (612) 207-4575

Fax: (612) 435-5875

Email: kmcbride@ijorg

www.ij.org