IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA TALLAHASSEE DIVISION

OCHEESEE CREAMERY, LLC,

Plaintiff,

v. CASE NO. 4:14cv621-RH/CAS

ADAM H. PUTNAM, in his official capacity as Florida Commissioner of Agriculture; and
GARY NEWTON, in his official capacity as Chief of the Florida Bureau of Dairy Industry,

Defendants.
_____/

ORDER DENYING THE MOTION TO DISMISS

The plaintiff Ocheesee Creamery asserts the State of Florida violated its First Amendment right to freedom of speech. The Creamery seeks declaratory and injunctive relief. The defendants have moved to dismiss, asserting that the Creamery lacks standing and has failed to join an essential party. This order denies the motion.

I

Ocheesee Creamery sells a variety of dairy products. The Creamery sold what it labeled as "skim milk" until agents with the Florida Department of Agriculture and Consumer Services issued a stop-sale order on October 9, 2012. The cited reason for the order was the Creamery's failure to add vitamin A to its milk.

Florida law requires a product sold as skim milk to contain the same amount of vitamin A as whole milk. Fla. Stat. § 502.012(10). Because skimming the cream from milk eliminates much of the fat-soluble vitamin A, skim milk must be injected with vitamin A to restore its vitamin content to parity with whole milk. The Creamery refuses to add anything to its skim milk. Florida law requires milk in such a state to be labeled "imitation milk product." The Creamery seeks to sell the milk as "skim milk" and claims that the Florida law violates the Creamery's First Amendment rights. The Creamery brought suit.

II

The defendants—the Florida Commissioner of Agriculture Adam Putnam and the Chief of the Florida Bureau of Dairy Industry, Gary Newton—seek to dismiss for lack of standing and for failure to join a required party.

Standing requires (1) an injury in fact; (2) a causal connection between the injury and the complained of conduct; and (3) likelihood that the injury will be

redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). The defendants claim that, because federal law also mandates the milk labeling requirements the Creamery complains of, any declaratory or injunctive order against the defendants would not redress the Creamery's First Amendment injury.

Federal law regulates milk in ways similar to Florida law, but those federal requirements apply only to milk introduced into interstate commerce. *See* 21 U.S.C. § 331(a). The Creamery claims it sells only locally in Florida and thus is bound only by Florida law. While it is true that federal law requires similar labeling in milk introduced into interstate commerce, and that Florida has largely adopted those federal standards as its own, that does not negate the fact that the Creamery is subject solely to Florida labeling law.

If it prevails in showing a constitutional violation, it is likely the Creamery's injury will be redressed. The Creamery has standing to maintain this suit.

III

The defendants also argue that the suit should be dismissed under Federal Rules of Civil Procedure 19. That rule requires joinder of a party if joinder is feasible and, in the party's absence, the court cannot accord complete relief.

The defendants argue that the federal Department of Health and Human Services must be made a party for the Creamery to prevail on its claim for

injunctive relief. But again, while federal law regulates milk in interstate commerce, the Creamery sells only within Florida and is subject only to Florida law. The federal government need not be added to this suit. While the constitutionality of the Florida laws and similar federal laws likely reduces to the same question, here the Creamery seeks relief only from Florida labeling laws. The Department of Health and Human Services is not an indispensible party.

IV

For these reasons,

IT IS ORDERED:

The motion to dismiss, ECF No. 9, is DENIED.

SO ORDERED on February 7, 2015.

s/Robert L. Hinkle
United States District Judge