

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

FIRST JUDICIAL DISTRICT

Eric Rech, Patrick McClellan,
Edwin Engelmann, and Gregory Schiffler,Court File No. _____
Judicial Officer: _____

Plaintiffs

**DECLARATION OF
JEFFREY C. O'BRIEN**

v.

Charlene Briner, in her capacity as
Interim Director of the Minnesota
Office of Cannabis Management, and
Attorney General Keith Ellison,
in his official capacity,

Defendants.

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

I, Jeffrey C. O'Brien, affirm under penalties of perjury:

1. I am counsel for Plaintiffs, Eric Rech, Patrick McClellan, Edwin Engelmann, and Greg Schiffler in the above-entitled matter. This Declaration is being submitted in support of Plaintiffs' Complaint Filed in this district.

2. In this case, my office reached out to The Office of Cannabis Management (OCM) to request an advisory opinion regarding the statutory interpretation of the ability to sell under the farm exemption under the Minnesota Constitution Art. 13, Section 7, on December 20, 2023. The communications to OCM are attached hereto as **Exhibit A**.

3. OCM responded to my office's communication on January 2, 2024, and stated that the question implicated criminal law due to the discrepancies with the farming exemption in the Minnesota Constitution. OCM indicated that our office should reach out to the county attorney's office due to any criminal implications. The response from OCM is attached hereto as **Exhibit B**.

I declare under penalty of perjury that everything I have stated in this document is true and correct, pursuant to Minn. Stat. § 358.116.

Dated: May 7, 2024

/s/ Jeffrey C. O'Brien
Jeffrey C. O'Brien

MINNESOTA
JUDICIAL
BRANCH



EXHIBIT A

MINNESOTA
JUDICIAL
BRANCH

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MSBA Board Certified Real Property Specialist

December 20, 2023

VIA EMAIL ONLY

Minnesota Department of Health health.cannabis@state.mn.us
Office of Medical Cannabis
PO Box 64975
St. Paul, MN 55164-0975

Minnesota Office of Cannabis Management cannabis.info@state.mn.us

Re: Request for Opinion
Our Client: Marijuana for Minnesota

To Whom It May Concern:

Please be advised that our firm represents Marijuana for Minnesota, a Minnesota nonprofit corporation. The purpose of this correspondence is to follow-up on our prior request for an advisory opinion as to the application of Article 13, Section 7 of the Minnesota Constitution to certain provisions of Minnesota Statutes Chapter 342, Minnesota's recently enacted cannabis legalization and licensing law. Specifically, whether individuals who engage in the home cultivation of cannabis plants pursuant to Minnesota Statute Section 342.09, Subd. 2 are permitted to sell the products of such plants without a license and for remuneration, and if they are so permitted, what rules must they adhere to in such cultivation and sale. This letter is a follow-up to our September 18, 2023 letter requesting an opinion.

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Minnesota Constitution

Article 13, Section 7 of the Minnesota Constitution states that:

No license required to peddle. Any person may sell the products of the farm or garden occupied and cultivated by him without obtaining a license therefor.

Prior to the Minnesota Legislature's enactment of Chapter 342, the Minnesota Court of Appeals held that this provision did not extend to the cultivation and sale of cannabis plants, citing the fact that the state at the time classified cannabis as a Schedule I controlled substance. *See e.g., State v. Wright*, 588 N.W.2d 166 (Minn. Ct. App. 1998).

Rescheduling of Cannabis by 2023 Minnesota Legislature

As part of the cannabis legalization bill, the Minnesota Legislature rescheduled cannabis from Schedule I to Schedule III. Minn. Stat. Section 152.01, Subd. 2 (2023). In so doing, it is the opinion of the undersigned that such removal rendered the Court of Appeals' decision in *Wright* moot as to the application of Article 13, Section 7 as it pertains to the cultivation and sale of cannabis.

State v. Wright

In the 1998 case of *State v. Wright*, the Minnesota Court of appeals held that Minn. Stat. Section 152.023, Subd. 1(5) did not violate Article 13, Section 7 because:

"The classification of marijuana as a Schedule I controlled substance was within the proper police power of the state to provide for the health and welfare of its citizens. We do not have the prerogative to disregard the supreme court's analysis of marijuana laws."

The court went on to clarify that all the other reasonable restrictions placed on farmers bringing their crops to market still apply. Therefore, it would follow that

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the right to sell or peddle farm products that are otherwise compliant with the statute directly to a consumer may not require a license.

Minnesota Statutes Chapter 342 “Grow At Home” Provision

Minnesota Statute Section 342.09, Subd. 2, made effective as of July 1, 2023, states that:

“Up to eight cannabis plants, with no more than four being mature, flowering plants may be grown at a single residence, including the curtilage or yard, without a license to cultivate cannabis issued under this chapter provided that cultivation takes place at the primary residence of an individual 21 years of age or older and in an enclosed, locked space that is not open to public view.”

In making this request for advisory opinion, Marijuana for Minnesota understands that the right to sell without a peddler’s license is not without limits. Instead, the holding in the unpublished opinion of *In re Application for an Order for Inspection of Berglund* would seem to point to the logical conclusion that while a license to sell cannot be required for homegrown products, other regulations must be complied with.

In *Berglund*, the Minnesota Court of Appeals held that:

“[T]he protection provided by article XIII, section 7, against licensing requirements does not exempt farmers from substantive regulation related to the production or sale of their farm products,” *State v. Hartmann*, 700 N.W.2d 449, 456 (Minn. 2005). Even if *Berglund* is exempt from licensing requirements under article XIII, section 7, if he produces or sells farm products regulated by the state, he cannot “ignore regulations imposed on the production of those products.” *Id.* In addition, article XIII, section 7 does not grant him the right to sell products that he is otherwise legally prohibited from selling. See *id.*”

Minnesota Attorney General Advisory Opinion No. 396

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In 1918, the Office of the Minnesota Attorney General issued Advisory Opinion No. 396 regarding the requirements of licensing and selling of homegrown product by a producer in the context of Article 13, Section 7. Advisory Opinion No. 396 states:

“The statute is broad enough to require the producer who sells...to the distributor to obtain a license, but under the constitutional amendment adopted November 6, 1916, the producer is guaranteed the right to sell or peddle the products of the farm or garden occupied and cultivated by him without obtaining a license...the distributor who buys the [product] from the producer and then sells it to his customers is not within the protection of the constitutional provision and is required to have a license.”

Adopting the reasoning from Advisory Opinion No. 396, an individual grower of cannabis under Minnesota Statutes Chapter 342.09, Subd. 2 would not have to obtain a license to sell plant products that have been produced on their personal property to a *consumer*, pursuant to Article 13, Section 7. We submit that a grower/cultivator of cannabis selling to a *distributor*¹ they would have to obtain a license.²

Our client understands Article 13, Section 7 would not give the right to sell to minors, or without reference to other law or regulation. Our client further understands that the applicability of Article 13, Section 7 would be limited to the eight cannabis plants permitted to be grown at a person’s residence pursuant to Section 342.09, Subd. 2, and no more. However, Article 13, Section 7 and subsequent interpretations thereof seem to clearly state that license is a separate guideline from regulatory compliance.

Based upon the foregoing, we respectfully request that you confirm whether your office(s) agree or disagree with the position outlined within this correspondence.

¹ In OCM’s emailed response of November 7, 2023, OCM stated that “licensure” falls under the metric of statutory compliance.

² Note that a draft request to the Governor from The Minnesota Office of Management and Budget, entitled “Key Observations on Implementing Regulatory Mechanisms Necessary to Ensure the Equitable, Safe, and Effective Administration of Adult-Use Cannabis Laws in Minnesota” advised, that the license requirement “could be challenged under Article 13, Section 7.”

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Thank you in advance for your consideration of this matter.

Sincerely,

CHESTNUT CAMBRONNE PA



Jeffrey C. O'Brien

JCO/aec

Enclosure

cc: Minnesota Attorney General's Office

MINNESOTA
JUDICIAL
BRANCH

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September 18, 2023

VIA EMAIL ONLY

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Office of Medical Cannabis
PO Box 64975
St. Paul, MN 55164-0975

Minnesota Office of Cannabis Management cannabis.info@state.mn.us

Re: Request for Opinion
Our Client: Marijuana For Minnesota

To Whom It May Concern:

Please be advised that our firm represents Marijuana For Minnesota, a Minnesota nonprofit corporation. The purpose of this correspondence is to request an advisory opinion as to the application of Article 13, Section 7 of the Minnesota Constitution to certain provisions of Minnesota Statutes Chapter 342, Minnesota's recently enacted cannabis legalization and licensing law. Specifically, whether individuals who engage in the home cultivation of cannabis plants pursuant to Minnesota Statute Section 342.09, Subd. 2 are permitted to sell the products of such plants without a license and, if they are so permitted, what rules must they adhere to in such cultivation and sale.

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As part of the cannabis legalization bill, the Minnesota Legislature rescheduled cannabis from Schedule I to Schedule III. Minn. Stat. § 152.01, Subd. 2 (2023). In so doing, it is the opinion of the undersigned that such removal rendered the Court of Appeals' decision in the *Wright* case moot as to the application of Article 13, Section 7 as it pertains to the cultivation and sale of cannabis.

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In making this request for advisory opinion, Marijuana For Minnesota understands that the right to sell without a peddlers license is not without limits. Instead, the holding in the unpublished opinion of *In re Application for an Order for Inspection of Berglund* (copy attached for your reference) would seem to point to the logical conclusion that while a

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license to sell cannot be required for homegrown products, other regulations must be complied with.

In *Berglund*, the Minnesota Court of Appeals held that

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Obviously, our client understands that Article 13, Section 7 would not give a person the right to sell to minors, or without reference to other law or regulation. Our client further understands that the applicability of Article 13, Section 7 would be limited to the eight cannabis plants permitted to be grown at a person’s residence pursuant to Section 342.09, Subd. 2, and no more.

Based upon the foregoing, we respectfully request that you confirm whether your office(s) agree or disagree with the position outlined within this correspondence.

Thank you in advance for your consideration of this matter.

Sincerely,

CHESTNUT CAMBRONNE PA



Jeffrey C. O'Brien

Enclosure

cc: Marijuana For Minnesota (w/ encl.)

In re Application for an Order for Inspection of Berglund, Not Reported in N.W. Rptr. (2017)

2017 WL 474431

Only the Westlaw citation is currently available.

NOTICE: THIS OPINION IS DESIGNATED AS UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINN. ST. SEC. 480A.08(3).

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2016).

Court of Appeals of Minnesota.

IN RE: APPLICATION FOR AN ORDER FOR INSPECTION OF David BERGLUND and Lake View Natural Dairy, 140 County Road 56, Grand Marais, MN 55604

A16-0820

|
Filed February 6, 2017|
Review Denied April 26, 2017

Cook County District Court, File No. 16-CV-14-212

Attorneys and Law Firms

[Zenas Baer](#), Zenas Baer Law Office, Hawley, Minnesota (for appellants)

[Lori Swanson](#), Attorney General, [Max Kieley](#), Assistant Attorney General, St. Paul, Minnesota (for respondent Minnesota Department of Agriculture)

Considered and decided by [Reyes](#), Presiding Judge; [Johnson](#), Judge; and [T. Smith](#), Judge.

UNPUBLISHED OPINION[REYES](#), Judge

*1 Appellant argues that (1) the Minnesota Department of Agriculture (the MDA) has no statutory authority to regulate the sale of raw milk or to inspect his farm; (2) any regulation of the sale of raw milk to his customers or inspection of his

farm violates his state and federal fundamental constitutional rights; and (3) allowing inspection of his farm would violate his Fourth Amendment rights. The MDA has statutory authority to inspect appellant's farm, and there is no constitutional violation from the MDA's authority to regulate appellant's sale of raw milk and raw-milk products. Furthermore, an inspection of appellant's farm by the MDA supported by a validly issued warrant does not violate appellant's Fourth Amendment rights. We affirm.

FACTS

In January 2013, the MDA learned that appellant David Berglund was operating an on-site dairy retail store under the name of Lake View Natural Dairy (the dairy). After being contacted by a representative of Associated Milk Producers Inc. (AMPI), the MDA was concerned that Berglund was selling milk products from the dairy to consumers in violation of MDA regulations. The MDA confirmed that the dairy was advertising unpasteurized milk products on the internet and that it had an on-site retail store, which sold dairy products and various foods.

The MDA visited the dairy on February 26, 2013. Berglund refused to allow the MDA inspectors access to the dairy. Subsequently, the MDA sent Berglund several letters in an attempt to schedule a compliance meeting to discuss the dairy's potential non-compliance with Minnesota regulations relating to the sale of unpasteurized dairy products. After Berglund continued to delay attending a compliance meeting, the MDA issued a notice of warning letter (NOW letter) to Berglund. The NOW letter notified Berglund that he was in violation of numerous state and federal food-safety regulations, including: (1) operating without an appropriate dairy-producer permit or certification; (2) operating without an appropriate dairy-plant permit; and (3) manufacturing and selling to the public unpasteurized yogurt, butter, and buttermilk. The NOW letter ordered Berglund to cease manufacturing the prohibited items until he obtained the appropriate permits and came into compliance with health and food-safety laws.

On September 27, 2013, MDA inspectors again went to the dairy to inspect it. The dairy was open, but unattended. The MDA inspectors took numerous photographs of the dairy, its

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processing equipment, and the products that were marked for sale. These products included “unpasteurized whole milk, skim milk, chocolate milk, colostrum, cream, yogurt, buttermilk, cookies and eggs.” After taking photographs, the inspectors located Berglund and requested a full inspection. Berglund refused. The MDA inspectors then left a food establishment inspection report (the report) in Berglund's vehicle. The report directed Berglund to “[d]iscontinue the manufacturing of dairy products without the appropriate permits and approvals. Minn. Stat. [] 32.392. Comply immediately.” The report further stated that “[t]he refusal to permit entry or inspection is a prohibited act under [Minn. Stat. 31.02](#).” Finally, the report noted that Berglund had 20 days to appeal any orders in writing to the MDA Commissioner.

*2 The MDA then sent a “Notice of Amended Report,” that ordered Berglund to: (1) “[d]iscontinue the manufacture and sale of misbranded food”; (2) “[d]iscontinue the sale of food from an unapproved source, not in compliance with the laws and rules of Minnesota”; (3) “[d]iscontinue the manufacture and sale of unpasteurized dairy products”; and (4) “[o]btain licensure for the manufacture and sale of products not produced from the farm or garden.” Berglund was informed that he had 20 days to appeal the orders in writing to the commissioner.

Prior to the expiration of the appeal period, Berglund wrote to the MDA explaining that he did not agree with their procedures and that he believed his constitutional rights were being violated. The MDA informed Berglund that it was treating his letter as an appeal from the MDA order and it forwarded the matter to the Attorney General's Office. The Attorney General's Office sent Berglund a letter stating that no further review would occur because Berglund did not finalize his appeal, and the MDA orders were final. The MDA then filed an ex-parte application for an administrative inspection order (the AIO) with the district court, commencing the current case. The district court signed the AIO, allowing an inspection of the dairy. The MDA attempted an inspection on October 22, 2014, but Berglund continued to refuse inspection.

The MDA then filed an ex-parte motion for an order to show cause why Berglund should not be held in contempt of court for refusing the court-ordered inspection. The district court

issued an order to show cause and set a hearing date. Berglund retained counsel who submitted a response to the MDA's AIO request, raising numerous constitutional issues.

At the AIO hearing, Berglund argued, inter alia, that the MDA lacks the statutory authority to regulate and inspect the dairy due to Berglund's rights to sell and peddle the products of his farm under [article XIII, section 7 of the Minnesota Constitution](#). Berglund also raised numerous other constitutional arguments, including that his due-process and equal-protection rights have been violated. The district court issued an order determining that: (1) the MDA's regulation and inspection authority is not prohibited by [article XIII, section 7 of the Minnesota Constitution](#); (2) although the dairy is exempt from inspections under [Minn. Stat. § 32.392 \(2016\)](#) because it does not fall under the definition of a dairy plant, under [Minn. Stat. §§ 17.984, 31.04, subd. 1, 32.103 \(2016\)](#), it is subject to inspection; (3) [Minn. Stat. §§ 17.984, 31.04, subd. 1, 32.103](#) are constitutional and do not violate Berglund's Fourth Amendment rights; (4) because the MDA provided sufficient evidence of an existing violation, the AIO is constitutionally valid and enforceable; (5) the AIO and the regulatory scheme upon which it relies are rationally related to a legitimate governmental purpose; and (6) Berglund's other constitutional claims are without merit. The district court also denied Berglund's request for an evidentiary hearing on his constitutional challenges. This appeal follows.

DECISION

Berglund argues that the district court erred in determining that (1) the MDA has statutory authority to regulate and inspect the dairy; (2) the regulatory scheme does not violate his constitutional rights; and (3) inspection of his farm violates his Fourth Amendment rights. We address each in turn.

I. The MDA has the authority to regulate Berglund's sale of raw milk and inspect his farm.

*3 “[S]tatutory construction is a question of law, which we review de novo.” [Lee v. Lee, 775 N.W.2d 631, 637 \(Minn. 2009\)](#). Furthermore, “[t]he application of statutes,

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administrative regulations, and local ordinances to undisputed facts is a legal conclusion and is reviewed de novo.” *City of Morris v. Sax Invs., Inc.*, 749 N.W.2d 1, 5 (Minn. 2008). “The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2016). Absent ambiguity as to the legislature’s intent from a statute’s plain language, we interpret the statute according to its plain meaning. *Helmberger v. Johnson Controls, Inc.*, 839 N.W.2d 527, 531 (Minn. 2013).

A. Whether subject to licensing or not, Berglund is subject to the MDA’s regulation and inspection authority.

Berglund asserts, and the MDA does not dispute, that Berglund is exempt from licensing under [article XIII, section 7 of the Minnesota Constitution](#). Berglund argues that the licensing exemption means he is exempt from regulation as well. We disagree.

“[T]he protection provided by [article XIII, section 7](#), against licensing requirements does not exempt farmers from substantive regulation related to the production or sale of their farm products.” *State v. Hartmann*, 700 N.W.2d 449, 456 (Minn. 2005). Even if Berglund is exempt from licensing requirements under [article XIII, section 7](#), if he produces or sells farm products regulated by the state, he cannot “ignore regulations imposed on the production of those products.” *Id.* In addition, [article XIII, section 7](#) does not grant him the right to sell products that he is otherwise legally prohibited from selling. *See id.*

B. The MDA has authority to inspect Berglund’s farm under [Minn. Stat. § 17.984](#) and to enforce or regulate under Minnesota Statutes chapter 32.

Berglund further argues that the MDA’s power to inspect under [Minn. Stat. § 17.984](#) applies only to facilities that are subject to licensing. We disagree.

[Section 17.984, subdivision 1](#), provides the MDA with general inspection authority, in order to carry out its duties under chapter 32, “for reasons related to the commissioner’s enforcement and licensing authority.” Since the inspection

authority granted to the MDA under [section 17.984](#) is general in nature, it allows inspection of any place subject to chapter 32. If Berglund is subject to chapter 32 enforcement, he is also subject to inspection under [section 17.984](#). Thus, we must determine whether Berglund falls under the MDA’s enforcement duties under chapter 32.

Chapter 32 regulates the enforcement and licensing of dairy products. Minn. Stat. §§ 32.01–32.90 (2016). [Minn. Stat. § 32.01, subd. 10](#), defines dairy products to include, among other things, milk as defined in title 21 of the Code of Federal Regulations. Title 21 defines milk as “the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows.” [21 C.F.R. § 131.110](#) (2016). The sale of unpasteurized milk is banned with the exception of “milk occasionally secured or purchased for personal use by any consumer at the place or farm where the milk is produced.” [Minn. Stat. § 32.393, subd. 1](#). Because Berglund is engaged in the production and sale of dairy products, he is subject to regulation under chapter 32. Accordingly, he is subject to inspection under [section 17.984](#).

C. The MDA has authority to inspect Berglund’s farm under [Minn. Stat. § 32.103](#).

Berglund next contends that the district court erred in its determination that Berglund’s farm is subject to the MDA’s inspection authority under [section 32.103](#) because it only applies to dairies that introduce food products into commerce. We are not persuaded.

*4 [Minn. Stat. § 32.103\(a\)](#) allows inspections of “all places where dairy products are made, stored, or served as food for pay, and all places where cows are kept by persons engaged in the sale of milk, and shall require the correction of all insanitary conditions.” Contrary to Berglund’s assertions, the application of [section 32.103](#) is not limited to those who “introduce food products into commerce.” And, by his own admission, Berglund sells his dairy products to nearly 150 customers, maintains a retail store, and advertises his products online. Therefore, the MDA has authority to inspect Berglund’s farm under [section 32.103](#).

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D. The MDA has authority to inspect Berglund's farm under Minn. Stat. § 31.04.

Berglund next argues that the district court erred in determining that the MDA has authority to inspect his farm under Minn. Stat. § 31.04, subd. 1, because he does not introduce food into commerce. We disagree.

Section 31.04, subdivision 1, allows the MDA, “[f]or the purposes of enforcement of the Minnesota Food Law, ... to enter, ... any factory, warehouse, or establishment in which food is manufactured, processed, packed or held for introduction into commerce.” Commerce is not defined by the statutes governing Minnesota Food Laws. Black's Law Dictionary defines commerce as “[t]he exchange of goods and services, esp. on a large scale involving transportation between cities, states, and countries.” *Black's Law Dictionary*, 325 (10th ed. 2014). Berglund is involved in the sale of milk to nearly 150 individuals. Importantly, Berglund advertised his business online and opened himself up to sell his dairy products to any person. The district court did not err in determining that Berglund introduced his products into commerce.

Therefore, we conclude that the MDA has authority to regulate and inspect Berglund's farm under Minn. Stat. §§ 17.984, 32.103, and 31.04, subd. 1.

II. MDA's authority to regulate the dairy farm does not violate Berglund's constitutional rights.

Berglund next argues that the MDA's inspection statutes violate his constitutional due-process and equal-protection rights, including his right to contract, right of association, and right to privacy. We disagree.

Berglund asserts that his equal-protection rights would be violated because: (1) he has a fundamental right to “sell or peddle” the products of his farm under article XIII, section 7 of the state constitution; (2) the MDA regulation and inspection statutes are interfering with Berglund's voluntary decision to sell and his customers' rights to buy raw milk products; and (3) his right to contract and right of association are fundamental rights that are being limited by the exercise of the MDA's authority. Berglund also argues that his constitutional due-process rights are being violated.

Berglund therefore claims that the MDA's regulatory scheme is subject to strict scrutiny. We disagree.

“Strict scrutiny is required when a fundamental right is limited or a classification is based upon a suspect class.” *Essling v. Markman*, 335 N.W.2d 237, 239 (Minn. 1983). “Neither [the Minnesota supreme court] nor the United States Supreme Court has recognized freedom of ... contract as [a] fundamental right[] sufficient to invoke strict judicial scrutiny.” *Id.* Moreover, this court has rejected the notion that farmers have a fundamental liberty to sell their farm products. *See State v. Wright*, 588 N.W.2d 166, 168 (Minn. App. 1998) (citing Minnesota Statutes chapter 31, the Minnesota Food Law, which, inter alia, “prohibit[s] the sale of unwholesome, misbranded or adulterated food”), *review denied* (Minn. Feb. 24, 1999). Here, Berglund sells raw milk to consumers. The right to sell milk is not a fundamental liberty that has ever been recognized by Minnesota courts. We decline Berglund's request to recognize a new fundamental liberty.

*5 Rational-basis review applies where there is no showing that a law has impinged on a fundamental right or has affected a suspect class. *Id.* Since Berglund has no fundamental rights at issue here and has not demonstrated that he is part of a suspect class, the law “need only be rationally related to a legitimate governmental purpose in order to withstand” Berglund's constitutional challenges. *See Arcadia Dev. Corp. v. City of Bloomington*, 552 N.W.2d 281, 288 (Minn. App. 1996) *review denied* (Minn. Oct. 29, 1996). Furthermore, “[t]o survive a due process challenge using rational basis review, the statute must not be arbitrary and capricious.” *State v. Bernard*, 859 N.W.2d 762, 773 (Minn. 2015) (quotation omitted). The challenged statute will be upheld “as long as it is a reasonable means to a permissive object.” *Id.* (quotation omitted).

The district court noted that “[e]nsuring that food products offered for sale are safe for consumption is a legitimate governmental purpose.” The district court found that the “regulatory scheme that gives the MDA the authority to inspect dairy producers serves to ensure the integrity and safety of the state's food supply.” Minnesota courts have consistently recognized Minnesota's food laws as a constitutional exercise of the state's police power. *See Hartmann*, 700 N.W.2d 449. Minnesota has a substantial

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government interest in regulating the health and safety of its food supply, including the sale of raw milk. *See, e.g.*, [U.S. v. Jorgensen](#), 144 F.3d 550, 559 (8th Cir. 1998) (acknowledging substantial government interest in health and safety of food supply). Therefore, because the MDA enforcement and inspection statutes are rationally related to a legitimate government interest, the district court did not err in determining that the statutory scheme was constitutional and not in violation of Berglund's claimed constitutional rights.

III. Berglund's Fourth Amendment rights were not violated.

Berglund argues that his Fourth Amendment rights were violated because the district court erred in issuing an AIO to allow a search of his farm because the sale of raw milk is not a closely regulated industry. We disagree.²

“[A]dministrative searches are significant intrusions upon the interest protected by the Fourth Amendment and therefore are covered by the warrant requirement.” *In re Search Warrant of Columbia Heights v. Rozman*, 586 N.W.2d 273, 275 (Minn. App. 1998) (quotation omitted), *review denied* (Minn. Jan. 21, 1999). “For purposes of an administrative search ..., probable cause justifying the issuance of a warrant may be based not only on specific evidence of an existing violation but also on a showing that reasonable legislative or administrative standards for conducting an ... inspection are satisfied with respect to a particular [establishment].” [Marshall v. Barlow's, Inc.](#), 436 U.S. 307, 320, 98 S. Ct. 1816, 1824 (1978) (footnote omitted) (quoting [Camara v. Mun. Court](#), 387 U.S., 523, 538, 87 S. Ct. 1727, 1736 (1967)). In determining the validity of a search warrant, this court limits its “review to ensuring that the issuing judge had a substantial basis for concluding that probable cause existed.” *State v. McGrath*, 706 N.W.2d 532, 539 (Minn. App. 2005), *review denied* (Minn. Feb. 22, 2006).

Berglund asserts that the district court based its issuance of the AIO on his refusal to allow a warrantless inspection, but the record does not support such a conclusion. Here, the district court determined that the MDA provided sufficient information of existing violations on Berglund's property to support a probable cause determination and the issuance of

an AIO. First, the district court found that the MDA submitted evidence that Berglund refused the MDA's request to inspect the dairy on multiple occasions in violation of [Minn. Stat. §§ 17.984](#) (general inspection authority) and 32.103 (authority to inspect dairies). Second, the district court found that the MDA provided evidence that Berglund was in violation of [Minn. Stat. § 32.393](#) because he did not qualify for the exemption allowing for the occasional sale of unpasteurized milk products. Finally, the district court found that the fact that nearly 150 individuals claiming to purchase raw milk from Berglund signed a petition is sufficient for it to determine that Berglund does not engage in the occasional sale of milk.

*6 This evidence satisfies the requirement to show specific evidence of an existing violation. [Marshall](#), 436 U.S. at 320, 98 S. Ct. at 1824. The district court had a substantial basis for concluding that the MDA met its burden of showing that probable cause existed. Therefore, the issuance of the AIO did not violate Berglund's Fourth Amendment rights.

Affirmed.

All Citations

Not Reported in N.W. Rptr., 2017 WL 474431

In re Application for an Order for Inspection of Berglund, Not Reported in N.W. Rptr. (2017)

Footnotes

- ¹ The district court determined, and we agree, that [Minn. Stat. § 28A.15, subd. 2 \(2016\)](#), is not applicable because [Minn. Stat. § 28A.15](#) only provides licensing exceptions to the licensing provisions of [Minn. Stat. §§ 28A.01 to 28A.16](#). Therefore, we do not analyze it.
- ² The district court issued a search warrant in this case. As such, we do not need to address Berglund's argument that a warrantless search of his farm would have been unconstitutional.

End of Document

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EXHIBIT B

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Jeffrey O'Brien

From: MN_OCM_Cannabis Info <cannabis.info@state.mn.us>
Sent: Tuesday, January 02, 2024 10:30 AM
To: Justin Engelmann
Cc: Jeffrey O'Brien; Allison Cole
Subject: RE: Follow-up to Request for Opinion

Some people who received this message don't often get email from cannabis.info@state.mn.us. [Learn why this is important](#)

Thank you for reaching out.

The Office of Cannabis Management does not issue Advisory Opinions. We are aware of the discussion surrounding the product of the farm exemption and cannabis and are monitoring it closely. Given that your question may implicate matters of criminal law, we recommend reaching out to county attorneys in the relevant jurisdictions.

From: Justin Engelmann <jengelmann@chestnutcambronne.com>
Sent: Wednesday, December 20, 2023 2:31 PM
To: MN_MDH_cannabis <Health.cannabis@state.mn.us>; MN_OCM_Cannabis Info <cannabis.info@state.mn.us>
Cc: Jeffrey O'Brien <JO'Brien@chestnutcambronne.com>; Allison Cole <acole@chestnutcambronne.com>
Subject: Re: Follow-up to Request for Opinion

Some people who received this message don't often get email from jengelmann@chestnutcambronne.com. [Learn why this is important](#)

This message may be from an external email source.

Do not select links or open attachments unless verified. Report all suspicious emails to Minnesota IT Services Security Operations Center.

To whom it may concern:

Please find the attached correspondence from Attorney Jeffrey C. O'Brien in follow-up to the our request for opinion.

Respectfully,
Justin Engelmann



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(T) 612.336.1286 (F) 612.336.2940
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