



Andrew Wimer · April 4, 2019



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Harrisburg, Pa.—A federal judge in Pennsylvania denied the Food and Drug Administration's motion to dismiss a lawsuit about whether additive-free skim milk can be labeled and sold as "skim milk." Current FDA regulations require farmers to add synthetic vitamins into skim milk before sale. Maryland dairy farmer Randy Sowers wants to sell all-natural skim milk without additives. However, the FDA forces him to label his product as "imitation skim milk." Randy has partnered with the Institute for Justice (IJ) to protect his First Amendment right to accurately label his milk.

"Businesses have the right to tell the truth," said IJ senior attorney Justin Pearson, "and the government does not have the power to change the dictionary."

In her [decision](#), U.S. District Judge Yvette Kane agreed with Randy that his suit had merit and would prevent potential harm to his business: "A ruling in Plaintiff's favor would permit Plaintiff to proceed with its plan to sell additive-free skim milk in the Commonwealth of Pennsylvania without having to use the 'imitation' label to which it objects. Thus, the Court finds that the utility of a judgment on Plaintiff's claims would be substantial."

The Sowers family operates South Mountain Creamery on their dairy farm near Frederick, Md. The creamery produces delicious milk, yogurt and cheese. In 2017 Randy contacted the Pennsylvania Department of Agriculture to find out whether he could sell all-natural skim milk without added chemicals as "skim milk" in Pennsylvania. State officials have no objection to the commonsense use of the term, "skim milk," but because Randy wants to sell in multiple states, they are forced to follow federal regulations. To protect his right to accurately label his product, Randy and IJ filed suit in April 2018.

"The FDA has defined the product 'skim milk' as having three ingredients," explained IJ attorney Anya Bidwell. "The first ingredient is skim milk, and the other two are additives. Skim milk without the additives is safe to drink and legal to sell, but you are not allowed to call it what it is."