



INSTITUTE FOR JUSTICE

**Testimony of Meagan Forbes in Support of Senate File 1867  
Minnesota Senate Committee Agriculture, Broadband, and Rural Development**

March 10, 2023

Dear Chairman Putnam and Members of the Committee:

Thank you for the opportunity to submit testimony in support of Senate File 1867, which will ensure that Minnesota’s consumers are receiving the true benefits of an uncaptured competitive marketplace when buying essential goods. My name is Meagan Forbes, and I am Senior Legislative Counsel at the Institute for Justice. We are a nonprofit, public interest law firm that works to protect civil liberties. For more than 30 years, we have worked to protect the rights of small business owners and others striving to make their lives, and the lives of those around them, better. We have also studied the burdens of economic protectionism and the dangers that come from protecting special interests at the public’s expense.

Economic protectionism imposes immense costs on consumers, entrepreneurs, and the U.S. economy. It raises prices, lowers the quality of goods and services, and discourages innovation, all to the detriment of consumers. Even worse, crony policies erode social trust and diminish the legitimacy of both public and private institutions.

Unfortunately, that is exactly what is at play when it comes to Minnesota’s prohibition on below-cost sales for dairy products. Below-cost prohibition statutes are the result of outsized influence from special interests with a direct stake in keeping these laws in place, regardless of the negative impact they have on consumers. As the Federal Trade Commission (FTC) has recognized, the existence of these laws “protects individual competitors, not competition, and discourages pro-competitive price cutting.”<sup>1</sup> Not only do “[t]he negative consequences of below-cost prohibition statutes outweigh the benefits by far,” these costs are “increased by the fact that they are routinely found to be unconstitutional.”<sup>2</sup>

Legislatures often adopt these laws with the best of intentions, to prevent predatory pricing and protect mom-and-pop retailers. But empirical research on the results of these laws paints a very different picture. After examining data from all 50 states, researchers found no causal relationship between below-cost prohibition statutes and the number of small businesses. Mom-and-pop retailers are doing fine in states without these laws.<sup>3</sup> This

---

<sup>1</sup> Federal Trade Commission, *FTC Staff: Wisconsin’s Unfair Sales Act Likely Raises Gas Prices* (Oct. 16, 2003), <https://www.ftc.gov/news-events/news/press-releases/2003/10/ftc-staff-wisconsins-unfair-sales-act-likely-raises-gas-prices>.

<sup>2</sup> Offei-Danso, K., *The Case Against Below-Cost Prohibition Statutes*, *Journal of Consumer & Commercial Law* (Spring 2011).

<sup>3</sup> Sza fir, C. & Gleason, P., *These Prices Are a Steal—and in Some States, That’s Illegal*, *Wall Street Journal* (Jan. 26, 2018), <https://www.wsj.com/articles/these-prices-are-a-stealand-in-some-states-thats-illegal-1517007867>.



INSTITUTE FOR JUSTICE

is unsurprising, as empirical examples of successful predatory pricing schemes “are rare—so rare, in fact, that observing real-life anticompetitive price predation has become the holy grail of industrial organization economists.”<sup>4</sup> Even more, these laws are “unnecessary,” as both Minnesota state law and “federal antitrust laws already prohibit anticompetitive below-cost pricing.”<sup>5</sup>

But while these laws do not deliver the benefits that they promise, they “do hurt consumers, since they act as a hidden tax that disproportionately harms poor and middle-income households.”<sup>6</sup> SF 1867 addresses these problems by repealing Minnesota’s existing below-cost pricing prohibition on dairy products. Enacting this reform would combat economic protectionism and help consumers at a time when many families are struggling with rising food prices. I encourage the committee to support this bill. Thank you.

Sincerely,

Meagan Forbes  
Senior Legislative Counsel  
Institute for Justice  
520 Nicollet Mall, Suite 550  
Minneapolis, MN 55402  
(612) 435-3451  
[mforbes@ij.org](mailto:mforbes@ij.org)

---

<sup>4</sup> Wright, J. & Stone II, J., *Still Rare Like a Unicorn? The Case of Behavioral Predatory Pricing*, Journal of Law, Economics & Policy (2012).

<sup>5</sup> *Id.*; Minnesota Statutes 2022, section 325D.04.

<sup>6</sup> Szaifir, C. & Gleason, P., *These Prices Are a Steal—and in Some States, That’s Illegal*, Wall Street Journal (Jan. 26, 2018), <https://www.wsj.com/articles/these-prices-are-a-steal-and-in-some-states-thats-illegal-1517007867>.