

# Court Rules That the Truth about Milk Can Finally be Told

In a unanimous [decision](#) yesterday, the U.S. Court of Appeals for the Eleventh Circuit vindicated Ocheesee Creamery's free speech rights when it reversed a district court's decision that prevented the creamery from telling its customers the truth about the products it sells.

Ocheesee Creamery is a small, all-natural dairy farm located in rural Florida that prides itself on selling organic products to its customers. This mission requires that they not add ingredients to the food they sell. One such product the creamery offered was "skim milk"—which is simply milk that has had the cream removed. For a number of years, Ocheesee sold its milk and accurately labeled it as pure pasteurized skim milk—nothing more, nothing less.

In 2012, however, the Florida Department of Agriculture and Consumer Services (FDACS) told the small business that it had to inject its all-natural milk with artificial vitamins or quit telling its customers that what they were offering was skim milk, and instead call it "imitation milk product." FDACS regulations define skim milk as milk that is not just milk, but as milk injected with vitamins A and D. Now, you might ask yourself how injecting artificial ingredients into all-natural product transforms it into something that is considered "imitation". Yet that's precisely what the FDACS requires under its regulations.

This left Ocheesee with a Hobson's choice: it could mislead its customers by labeling its milk as "imitation"; it could pump the milk full of artificial ingredients and thus violate its mission to sell all-natural products; or it could quit

selling skim milk and lose substantial profits. Faced with this dilemma, the creamery offered to put a disclaimer on its labels that would tell customers that its milk doesn't include added vitamins. But this wasn't good enough, so, aided by the Institute for Justice, the creamery sued the Florida bureaucrats in federal court.

Ocheesee lost its opening battle when a district court granted the government's Motion for Summary Judgment, but the Eleventh Circuit reversed the decision. The court found that the First Amendment protects the creamery's labeling of its skim milk because the labeling did not relate to an illegal activity and it is not false or inherently misleading speech. The court pointed to Webster's Dictionary, which defines "skim milk" as "milk from which the cream has been taken"—which is exactly what the creamery was offering its customers. The court elaborated that while "[i]t is undoubtedly true that a state can propose a definition for a given term ... it does not follow that once a state has done so, any use of the term inconsistent with the state's preferred definition is inherently misleading." Because if the government were allowed to do so, "[a]ll a state would need to do in order to regulate speech would be to redefine the pertinent language in accordance with its regulatory goals... . Such reasoning is self-evidently circular."

Moreover, the court noted there were other ways Florida could have sought to regulate the creamery's labeling to protect its regulatory goals. It pointed to a proposal—which Ocheesee had already offered years before—to simply require the creamery's label include an "additional disclosure" that some vitamins in the milk are removed during the skimming process.

The circuit court's decision should be applauded as a win for free speech and economic liberty, and shows that states may not take the cream out of the First Amendment or give us "[skim milk](#)" constitutional protections.

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