

How to Improve Your Cottage Food Law with Erica Smith

David Crabill: Welcome to the Forrager podcast where I talk with cottage food businesses about their strategies for running a food business from home. I'm David Crabill and today I'm talking to [Erica Smith](#), who is with the [Institute for justice](#).

This will be a different episode in that Erica does not run a cottage food business herself, but she has worked with dozens of them since Erica and her team have been behind many of the recent cottage food and [food freedom law improvements](#) across the country.

A big part of the reason why I am having Erica on now is due to the pressing nature of this coronavirus pandemic and how it's affecting cottage food businesses. The fact is that many States restrictions are actually preventing cottage food producers from adapting their businesses in a safe way right now, and Erica came to me with the idea that this current situation could actually help spawn some improvements in many states laws.

Now, although that's the main reason I asked her to come on the podcast this week, the fact is that there are a lot of big changes happening in the laws right now. Wyoming just majorly improved their law. North Dakota just had a big regression in their law, which they're trying to address that. They are still working on improving the laws in New Jersey, not to mention all of the laws they've already helped to improve.

So we have a lot to get into today, but rest assured that Erica is a major advocate for the cottage food industry and she's one of the best people I know who can shed some light on how this pandemic is affecting cottage food businesses and what steps people can potentially take to improve their situation.

And with that, welcome to the show, Erica, and nice to have you here.

Erica Smith: [00:01:39] Thanks for having me, David.

David Crabill: [00:01:41] I just wanted to start out by going over what you've already accomplished. How many States have you helped improve to date?

Erica Smith: [00:01:50] Oh, wow. Uh, maybe eight or nine directly, and then others indirectly. Uh, we've brought several lawsuits, uh, successful lawsuits to expand cottage food laws as well as lift bands against cottage foods, and we've also gone into legislatures to get them to just pass bills, to expand cottage food laws.

We've done that in Wisconsin, Minnesota, Kentucky, District of Columbia just last month, Wyoming, the list goes on. And we're currently, we're working in North Dakota and New Jersey to get their laws changed. There's always going to be work to be done, but it is very, very satisfying because the public is receptive.

And every year we see more and more positive change.

David Crabill: [00:02:35] Yeah. And when you talk about eight or nine, just to be clear, you have not just changed the law. It's oftentimes an overhaul of the laws, the law ends up looking totally different. It's not a minor amendment we're talking about. So it seems like every year you're doing another few states and tackling something else. So I continue to be impressed. But I wanted to ask to start this episode out just by understanding why you are so passionate about this industry.

Erica Smith: [00:03:06] Oh that's a great question. I never expected to get into this. This kind of fell into my lap five years ago when one of my colleagues left IJ to start a different career, and I took over one of her cases in Minnesota and I was immediately hooked because I saw that every time you win one of these battles, people are immediately and very practically affected.

IJ is a constitutional law firm, and sometimes it seems like the battles that we take on take decades, and some of them seem a little abstract, at least in my eyes, but the cottage food laws, the day that the law changes, people's lives change. And we've gotten so many emails from people.

We've, [we've done surveys](#) about how these laws affect people's lives. We get people saying things like, because of my cottage food business, I am now off of antidepressants because of my cottage food business. I was able to support my family after my husband was laid off. Or I was able to quit my job that I absolutely hated and do something that I love. I was able to pay for my daughter's dance lessons. So this is such a practical change that you could bring about, and I love that.

David Crabill: [00:04:18] Are there any stories or is there one story in particular that stands out to you that's really touched you and how you've seen this impact a certain individual?

Erica Smith: [00:04:27] Yeah. I have a couple of stories. There was one woman in Wisconsin who was living, her name was Hannah, and she was living in this very rural area, living in a trailer. She didn't have a lot of money. She was initially working, I think in a nail salon and had to stop working because she gave birth to twins who were both developmentally challenged and she couldn't afford daycare for them, so she stayed home with them.

But she still really wanted to support her family. She had this incredible talent with decorating cakes. She was making these very elaborate cakes and her business took off and she started making a lot of money with this, but she was advertising on Facebook and her local health officer actually did a sting operation on her, on Facebook. They pretended to be a customer and got her to admit that she was selling this stuff, and then they sent her a cease and desist order that threatened her with a \$10,000 fine if she kept selling her cakes. Because at that time Wisconsin was one of the only States that banned the sale of home baked goods.

So we got that law changed and now people are no longer going to be in the situation where they have to worry about, you know, facing fines if they're just trying to support their family.

Another story that sticks out to me is in New Jersey where, and that that fight is ongoing. New Jersey is a very, very stubborn state, but fortunately, we're also very stubborn and we're not gonna stop until we win.

But there is a woman in New Jersey, Heather, who had a lot of setbacks in her life. She was for a very long time in a relationship with a very bad man. He was abusive with her and it really took so much of her courage to leave him, and she had a child with him, so she had to raise her child on her own and she had nothing.

But she is. Heather makes the best cake pops that I have ever tasted. And cake pops are my favorite thing. And she used her cake pop business to raise enough money to get her son's last name changed from the father's last name to her last name because that's what her son wanted, and it cost like a couple of thousand dollars to do that.

And she was able to do that with the sales from her cake tops, and she realized, wow, like this is an incredible business. I can use this business to send my child to college, cause now he's about 15 or 16 years old. But New Jersey is the last state where it is illegal to sell any homemade food at all.

And that's why we're still fighting them. And like every time it gets tough, I think about people like Hannah and Heather and how much this means to them.

David Crabill: [00:07:04] Yeah. Those are great stories.

So I did want to talk to you about this whole Coronavirus pandemic today and just get your perspective on how this is impacting our industry.

Erica Smith: [00:07:18] I think that this can be a very positive impact on the industry, everything that's going on with COVID-19, it's terrible and it's scary, but there are going to be positive things that come out of this. Positive cultural changes, legal changes, and one of the things I think that's going to come out of this is going to be good for cottage food.

People right now are afraid to go to the grocery stores, sometimes with good reasons, depending on where you live. There's so many people that go into the grocery store every day. Some, some municipalities and States are actively discouraging people from going to grocery stores, but if you have a cottage food business, someone can just come up to your house and pick it up. They don't even have to come to their, your door. You can leave it right in your driveway and they can come get it. And there is a huge demand for that kind of business. For instance, we're seeing that with alcohol right now. There's these alcohol food trucks that are going around.

They've, they're perfectly legal in some places and they are bringing wine and beer to your door. And people want the same thing for, for food, whether they're talking about a meal, or a snack like cookies. I know people are doing a lot of comfort eating during COVID-19 because they're anxious. So I think if you're willing to market your business to the COVID-19 new scenario, you could actually do very well for yourself.

David Crabill: [00:08:34] Yeah, and this is something that you brought up to me and I totally agree with that. The reality though, is that a lot of people are struggling and it's not necessarily because of the loss of their business, but just the restrictions, right? So can you talk a little bit about that?

Erica Smith: [00:08:50] Sure. So, fortunately, a lot of States do allow pickups and delivery from your homes. I think there's only maybe Illinois might be the only state that doesn't allow that right now. Maybe there's one or two others. When you're talking about online sales and mail delivery, it gets trickier because there's only, I, I don't even know the exact number. Maybe 15 or 20 States that allow online sales and mail delivery. So if you don't have that in your particular state, first you should, and you're, and you're worried about that and it's affecting you, you first, you should reach out to us at the Institute for justice, and we may be able to help.

But for the time being, I think you should, well, one, your state should change that. That's ridiculous. I think a lot of state legislatures and health departments don't like the idea of mail delivery because they think, Oh, if it's in the mail, it's somehow less safe, but that is going to have to change, especially now with COVID-19 because people are getting everything delivered to them. They're getting their wine delivered, their groceries. Everyone's, I mean, Amazon stock is going through the roof because they're delivery based. Deliveries right now, are safer in many instances than doing in-person sales. And I think that that can help immediately when state legislatures and municipalities are changing laws to expand cottage foods during COVID-19 but it's also going to be a cultural change in the long run where lawmakers will be more comfortable allowing delivery, including cottage foods, just because that's what everyone's been doing during COVID-19.

David Crabill: [00:10:21] So what about somebody who is currently restricted or currently can't do this under their law? Do you think they should ignore their law or just sort of wait it out? What, what would be your recommendation for them as to steps to take, aside from contacting you?

Erica Smith: [00:10:40] So I think if you can do pickup and delivery, you should do that. It's up to you whether you want to ignore the law and try to do mail delivery, even if that is illegal in your state. And in some instances, depending on the lockdown order in your, in your state, it may even be illegal to do pickup or delivery.

I would argue though that if your lockdown order allows you to pick up groceries, then picking up cottage foods is under the same umbrella. And if you do get in trouble for doing something like that, having pickups and deliveries, please contact us. But I mean, to really answer your question, stick with what's legal, and after that, it's kind of your own decision whether or not you want to go under the radar and take a risk.

David Crabill: [00:11:23] you're talking about changing the laws, but we're probably not going to see a change within this cycle of the pandemic, right?

Erica Smith: [00:11:32] Well, I mean, there are a lot of emergency orders going out, so it's certainly, and I know that we're planning to send letters to, to certain places, to certain

lawmakers to encourage them to lift some restrictions on cottage foods during COVID-19. So that's certainly a possibility. But putting that aside, you probably can in your state legally do pickups and deliveries.

So if you want to stay within legal bounds, then you should try that route.

David Crabill: [00:12:00] I know that there's a concern about the shipping, and you touched on that, but there's also States that don't allow the online sales, which you mentioned, but why do you think States have been hesitant to allow the online sales in the first place?

Erica Smith: [00:12:14] Well, there's, there's two reasons. One is that, I think lawmakers and bureaucrats, especially in these departments of health, who are always the biggest opponents of cottage food laws, they have this idea that once you put something in the box and put it in the mail, it's somehow makes the food less safe.

But it's kind of, it's a ridiculous concept because when you're talking about shelf stable foods, the worst thing that can happen is your food gets smooshed or it goes stale. There's nothing that's going to happen in the mail that's going to result in foodborne illness. Um, so I think that's just a myth or just a subconscious reaction that bureaucrats have. I think that's going to, we're going to see that change in the next five years.

But the other reason is that bureaucrats are afraid of having interstate sales. Because they have this idea in their heads that once things are shipped over state lines, that somehow the FDA's going to get involved and they're going to have to figure out what the federal restrictions are, and it's just too messy and they don't want to touch it.

But it's silly because one, they can just, if they really were concerned about it, they could restrict it to sales within the state, and two, the FDA really does not restrict cottage foods. There's very few restrictions that would come into play. So that's some, that's another area that we're actively trying to push back on, this idea that you can't have interstate sales.

David Crabill: [00:13:27] And to clarify, there are a number of States that do allow in-state shipping already.

Erica Smith: [00:13:33] That's right.

David Crabill: [00:13:34] So that's good. There's also, I think the argument that there's an accountability piece here and the in-person sales provide this level of accountability that shipping can't because you could potentially ship something to somebody who you don't even know. What's your take on that?

Erica Smith: [00:13:52] Oh, that that's true. Sometimes we do hear that. I don't hear that come up quite as much. I think it's becoming less and less a concern in our modern era because you have websites like Yelp and other online reviews. You have reviews on Facebook. So this idea that, Oh, you're buying something from a stranger is outdated.

Think about how many things we buy from strangers online every single day. And I think that is an outdated concept that we're just going to hear less and less of as the years go by.

David Crabill: [00:14:21] Well, let's shift a little bit and talk about what you've been involved in already, and just go over some of the States that you have worked on or improved or been the most involved in.

Erica Smith: [00:14:33] Sure. So the first one that I did was in [Minnesota](#). Minnesota used to have a \$5,000 sales cap and a restriction that you could only sell at farmer's markets. And we challenged them and we, because of our lawsuit, the legislature changed the law. So Minnesota, Minnesota's law is much better now.

And the second law that we challenged was, some may remember, some of your listeners may remember that five years ago, there were still some States that banned the sale of cottage foods. Uh, that was Wisconsin and New Jersey. We sued both of them and [we won in Wisconsin](#). And the court there said that people actually have a constitutional right to sell shelf stable cottage foods.

And because of that change in that state, we've actually surveyed the new businesses that arose in Wisconsin. And it just had such a tremendous impact on people's personal lives, especially when you're talking about women in rural areas. And there's a lot of those people in Wisconsin. The New Jersey case is still ongoing, and the other things that we have done just in the last couple of years is a lot of legislative changes. So us just going to legislators, getting sponsors for bills and saying, Hey, hey, please look at what's happening in this country. There is a clear trend to allow more food freedom. People want to be able to buy food from their neighbors and their community members. Please make your law better. And we've been targeting the States that had the worst laws. And because of that, we were able to change, uh, West Virginia, Kentucky, DC's laws, Maryland's, uh, Wyoming's, we, well Wyoming was already pretty good, but we got involved with them a couple of times and just systematically go through the States that have the worst laws and get them expanded and fixed.

So I think right now, I think there's only one state that only restrict sales just at farmer's markets, and I think that's Illinois. So they're our next target. Most recently, just on March 26, just a couple of weeks ago, [we sued North Dakota](#). And that was a different kind of lawsuit because typically when we bring a lawsuit where we're bringing just a very clear constitutional challenge that, Hey, people have a right under the constitution to earn an honest living, the government can't come in with these arbitrary and unfair and unreasonable restrictions that violates people's constitutional rights.

But in North Dakota, we had a different situation. Some of your listeners may know, North Dakota had a fantastic law, one of the best in the country, but the administrative agency, the department of health did not like the law and fought with them for years as they tried to do all these loopholes to undermine the law and gut the law.

And finally they just went ahead and passed these rules that takes their law from one of the best in the country to just mediocre at best. And we just sued them a couple of weeks ago arguing not just that what they did was unconstitutional, but that it was also, they also exceeded their authority because they were contradicting the will of the legislature.

So I expect that we'll win that one as well. And I very much hope so because of the department of health really deserves to lose this. They have been real jerks in this whole thing, and they have just shown complete disregard for people who have been legally selling these foods for years, and suddenly they're saying, shut down your business. It's absolutely terrible.

David Crabill: [00:17:56] Yeah. I think that's the first instance that I've seen where the health department used their rule making powers to damage a law. But then we also see the other side of it where it could potentially be used to improve the law.

Erica Smith: [00:18:10] and that's a really good point because sometimes the administrative rules can be used in a positive way to advance freedom. So what, what was happening in New Jersey is, it was actually the same thing as what happened in Wisconsin. The entire legislature supports a cottage food law except for one legislator, and he's the chairman of the relevant committee, and he's just been blocking the bill, I think maybe seven or eight, eight years.

He's blocked these bills that would allow the sale of homemade foods, and we heard about this, we fought for a couple of years in the legislature, and we finally, we said, that's it, and [we're going to sue you](#). And the judge has been strongly encouraging, uh, the department of health just settle this lawsuit because it's looking at their law, it's looking at the fact that New Jersey is the only state left that has a total ban on selling homemade foods. And it's telling the government, Hey, you gotta fix this. I don't even, I shouldn't even have to rule on this. You should just be fixing this on your own. So the department of health has come up with rules that would change the law and allow the sale of cottage foods for the first time. And we've worked with them very closely on that.

And that's an instance where administrative rules can be used in a good way to further freedom. What's, what's terrible is when an administrative agency comes in after the legislature has already decided to give people freedom, and it's deciding to take these freedoms away, that absolutely is exceeding their authority. And that's why we had to sue him about it.

David Crabill: [00:19:36] Can you talk a little bit about the difference between cottage food and food freedom?

Erica Smith: [00:19:42] Oh, that that is an excellent question. And that comes up so much. And my thinking has changed on this too, because the word cottage food has different meanings to different people. But essentially it just means food made at home, right? That's what cottage is, it's referring to the fact that you're making it in your own cottage, in your own home.

But sometimes people will use the word cottage food to specifically talk about a certain types of food. And they use it in different ways. Sometimes they mean it to talk about snacks and desserts. Other times they mean it to talk about food that's shelf stable as opposed to needing refrigeration.

And then you heard the term [food freedom](#) tossed around. And when people talk about food freedom, usually they're talking about all foods, foods that are meals, foods that require refrigeration, but it really does depend on who you're talking to because I think increasingly there is a trend to use the word cottage food to talk about any food that's made at home, regardless of whether it's a meal or snack or a shelf stable or, or it needs to be refrigerated. And I think that that's technically the right way to use that term.

David Crabill: [00:20:48] And to clarify, there are now two food freedom laws. We talked about North Dakota, which had a food freedom law that's been kind of redacted in some ways. So we've got Wyoming and Utah and I wanted to talk about Wyoming because there's just a major improvement in that law. Talk about what that law was before and what it is, I think coming up on July 1st is when that law goes into effect. Talk a little bit about that law cause it's pretty amazing.

Erica Smith: [00:21:16] Oh, I love Wyoming. They are, their legislature there is just so impressive and so pro freedom and they're always trying to do the right thing by their constituents. And I'm just always so impressed by how efficient they are, even though they have such a short legislative cycle. They're only in session a couple of months a year, and you're able to just get so much done.

So back, I think it was in 2015 when Wyoming first passed their law, and they passed a law that said that pretty much you can sell any snack or any meal except just certain meals that had like beef and seafood. So you could sell chicken meat, you know, you could sell chicken noodle soup or, cooked chicken or baked chicken. You can sell pasta, lasagna, anything that you wanted as, along with all the other foods that you typically see, like baked goods and, you know, pretzels and popcorn.

And as long as it's face to face directly to consumers. And I don't even think they had labeling restrictions. So it was just very much, let the consumers decide, let them pick what they want. It should be up to them. They're informed adults and every, I think almost every year they have expanded that law and made it better.

Most recently I worked with the Wyoming legislature just in the last couple of months to improve the law because it was a little strange. In some ways, the law was so good, but in other ways it was still kind of backwards because it didn't, it only allowed face to face sales. And back in 2015 that was kind of cutting edge. But now in 2020 there's 15 States that allow sales at retail shops and coffee shops and sometimes even restaurants.

So we got them to change the law and allow the sale of cottage foods if they're shelf stable to retail shops. And so that was a really nice improvement. And I think it also allows online sales and sales to restaurants too, just for shelf stable foods. And I expect, as every year goes by, they'll just keep improving that.

I bet you, they're going to find ways to start selling meals and things that need to be refrigerated at retail because that's what people want. People love buying freshly baked and freshly cooked foods from their neighbors. It doesn't have preservatives, a lot of times they know who made it. That person has a reputation and it's so much better than getting

something that's been sitting on a grocery store shelf for days at a time, or sometimes cooking yourself if you're not a very good cook.

David Crabill: [00:23:35] In Wyoming's law, there was this odd addition to their food freedom law, which required home consumption, which basically means that people had to buy the food and then consume it in a home, and that's, that's something that was just removed .

But they added another odd restriction, which is that the foods can't be on the same shelf if these non perishable foods are sold in a retail store, they can't be on the same shelf as a commercial food item. Do you have any sense for what that's gonna look like or how that's gonna play out?

Erica Smith: [00:24:09] Sure. That's an excellent question. So that was the bill that I worked on, and I had approached the legislature about the bill and I was able to suggest to them that they remove the home consumption requirement, actually because of your website, David. Because I was doing research about their law and the problems, the current problems with their law, and your website had said this silly idea that you have to have home consumption was getting in a lot of people's way cause you couldn't have wedding cakes, you couldn't even have picnics. You couldn't eat something on the go at a farmer's market. So that's why I suggested that. So thank you David.

But the, this idea that you have to, if you're selling at a grocery store, that you have to have your items, your homemade food items on a separate shelf was a compromise amendment because there were some legislators that were concerned that if somebody went to a grocery store and they were buying something off the shelf, they might not look at it and see that it was homemade and they would just assume that it was commercially produced and inspected and not be a fully Informed consumer. And I have some sympathy to that idea because the big concept behind the whole food freedom movement is that you're talking about consenting adults and people being informed and choosing what they want to buy. And if they don't realize it was homemade, then they're not informed. So if you have it on a separate shelf, I don't think that's going to him make someone less likely to buy it, but they'll know what they're buying.

And the separate shelf might actually attract them over there because they, they'll wanna get it homemade. Practically, I don't know how it will work. I kind of have this idea in my head of what it would look like. You know, you might have like this, like three or four shelves or display stands, and it would very loudly advertise that this food was homemade and locally produced, and I think it could be really good advertising for the food. Um, but I don't know, it just passed last month. And I don't, I'm not sure if it's in effect yet, so I guess we'll see how that works out.

David Crabill: [00:25:58] Yeah, I did look at the bill recently and it said that July 1st is when it goes into effect. And you know, I, I've heard from a lot of retail shops that really like supporting home food businesses. And so I could see it playing out where they would have a separate section for those items in their store, and, and I agree with you, it could be something where people actually go over there and check that section out first and see what

their community is producing and, and support those buyers. So it'll just be interesting to see how that plays out.

Erica Smith: [00:26:28] Yeah, and I think Wyoming is so good that if it doesn't work out for some reason, that they're such a good legislature that I think they would just take it out in the future.

David Crabill: [00:26:37] what Wyoming is doing, it's not like this is a new concept, right? I mean, they're just letting people sell the food that they make for their own families at home and feed their kids.

And I think that can kind of get lost in understanding that it's not like Wyoming's doing anything truly revolutionary, right? People have been doing this for millennia.

Erica Smith: [00:26:56] No, I love that argument. I, I love reminding people that this is how it always used to be. And it's funny that it's happening in a place like Wyoming when really the true demand for that kind of service is in the cities. There's so many families right now, where both parents are working and, or maybe they don't even have kids. They're just by themselves and they don't have time or the desire to be cooking and they would love, love to be buying into some sort of delivery service or a pickup service where one of their neighbors is cooking, you know, four or five meals for them a week. There's such a huge demand for that. And there's professional services like that, but sometimes they're just very expensive or you don't like the food, you can't customize it, or you know, all sorts of problems.

And the demand is there. And I think that in the next five years, we're going to start to see that in the cities.

David Crabill: [00:27:48] Let's talk about why there's so much resistance to this. I mean, we have a law like Wyoming and it's gone pretty well for them. I know it took them a long time to get to the point in 2015, they worked for many years to get to that point. But this is a kind of law that a lot of States just wouldn't even consider. Where's the resistance coming from?

Erica Smith: [00:28:10] Yeah, so a lot of times the legislature or individually, the legislators are completely willing to pass these laws. And the person that we're battling with is the department of health. All too often the department of health just has this knee jerk reaction that, Oh my gosh, if you pass this law, people are going to die.

It's silly because a lot of times they're operating in a vacuum and they have no idea of what other States are doing. And the fact that some States have been doing this for years, or most States have been doing this for years and nobody has had any problems. I have literally testified in front of committees and then right after I testified, high ranking officials from these agencies come in and actually talk about if you allow the sale of cupcakes or cookies that are made in someone's home, that people might actually die.

And it's so silly and it has no basis in evidence. And I think part of it is kind of a conscious thing and part of it is a subconscious thing. I think consciously they're thinking I'm a regulator and it's my job to regulate, and also on a subconscious level, I think there's this

idea that if you loosen up these regulations and allow people to just kind of have their own businesses and let the consumer decide, that suddenly the regulator becomes irrelevant, and People want to be relevant and they want to have power, and they don't want to do anything sometimes, unfortunately, that makes them less relevant. But I think we're going to be seeing less and less of that as the years go on.

And fortunately, every legislature that we've gone to with one of these bills has ultimately passed a good law, so I think there is tremendous potential in this area.

David Crabill: [00:29:48] And to play a little devil's advocate and think, you know, the health departments sometimes are seeing a lot of food safety concerns come through, where these larger establishments maybe have, I don't know, food complaints about them and that's what they're dealing with.

And so that might be part of the concern. Do you think that that's relevant to a small operation, like a cottage food business?

Erica Smith: [00:30:09] No, I don't. Because a lot of the health concerns that the department of health will be seeing is actually in the places that are inspected and are regulated. And I think like the restaurants and the grocery stores, and there's all these horror stories. And of course your listeners probably know that thousands and thousands of cases of foodborne illness happen every year from grocery stores and commercial establishments.

And I think the idea that if a health department comes in and inspects you once a year, that somehow you're going to be so much safer. If there is a legitimate concern about safety, the solution to that would be to educate people, because that is the most valuable part of the inspection when they come every year.

It's not the stuff that they're finding. It's the stuff that they're educating you about. And there's so many ways that departments can educate, educate people without regulating them out of existence. But I think that home businesses are some of the safest food businesses out there because it's their name, it's their reputation. And they know that if they get someone sick or there's a hair on their cupcake, people are never going to come to them again. And I think they have a lot more accountability than some big name brands.

David Crabill: [00:31:24] Let's talk about the process. You, you go two routes. Sometimes there's the legislative route of course, and passing bills. And then there's the judicial route in which you've sued States before.

For an individual that would like to see their state's law improved, what is it like? Cause I think it can be a little bit of a, of an overwhelming thing, like who am I to help change the law? And it just, they don't even know where to start, right? I certainly felt that way before I got involved in all of this. So can you talk about that process of what it looks like for somebody to actually join the movement and get these kinds of things to be changed either in the legislature or through the judicial side?

Erica Smith: [00:32:06] Sure, sure. I think it largely depends on whether you're trying to do it by yourself or if you're pairing up with an organization like us, the Institute for Justice. If

you're pairing up with us, then if, if you're doing a lawsuit with us, then the big thing that we ask of you is that you just be willing to tell your story and that you're okay with us telling your story. Just for us to be able to tell reporters and the judge, like, Hey, there's this person with this great business and they can't have this business because of this very silly law. And you know, we love when our clients talk to reporters and we have a really great PR team that trains our clients to talk to reporters. So we're really holding your hand throughout the whole process. And we, we understand that people have busy lives, so we try to minimize any inconvenience upon you. So it's really us doing all the work and really having you let us tell your story.

For the legislature, there's all different ways that you can be involved, and that's true, whether you're doing it with us or you're doing it on your own. It can be very as simple as you just contacting your legislator, getting your friends to contact your legislature. Or it can be showing up at your legislators office and talking to them and just kind of Yeah, you don't want to be long winded and kind of going off on this whole thing, but just have two or three concise talking points about why this matters to you and other people in the community and why this is a good thing, and how this is what other States are doing.

If you want to change the law in your state, please contact us because we can help you whether we're going into the legislature with you and organizing the whole thing, or we have guidebooks and packets that we can give you if you want to do it on your own. So there's so many different routes to take, but fortunately, so many of these laws have been changed by now that there's kind of like a set blueprint about how to do it. So there's not really any unknowns. There's just kind of like these tried and true ways of, if you want to change a law, this is how you do it. I find it's really fun, actually.

David Crabill: [00:34:05] And why do you think the Institute for justice has taken such a strong stand on these issues in the last few years?

Erica Smith: [00:34:13] So we've been around for over 20 years, or over 30 years at this point. And it ties into a lot of the work that we've always done. So we believe very much in economic Liberty and property rights that people should be able to earn a living without having to deal with unreasonable and arbitrary government restrictions.

And that people should also be able to kind of do what they want on their own property, especially if it's starting a business and doing good works. And when we decided in 2013 to start a [national food freedom initiative](#), and that encompassed everything from cottage food to alcohol sales to advertising, to even having a front yard vegetable garden. Believe it or not, that is illegal in some places.

It really took off because I think we tapped into something that resonated with so many people and was just practically affecting so many people. And we had victory after victory, and I got hooked on the cottage food stuff, especially just because of the people I was working with.

I saw how much it affected their lives and how just one victory would affect hundreds and sometimes thousands of people. I also just wanted to keep going and we're determined to

keep going until, and keep fighting, until we can really be happy with the state of things in all 50 States.

David Crabill: [00:35:30] Was there anything else that you would like to share you that you think that listeners should know about?

Erica Smith: [00:35:37] Uh just, If you have a question or if you want to get a law changed or you're just interested in, in standing up and trying to bring some good in the world, please contact us. We help people all the time with cottage foods, not just litigation and legislation. Sometimes it just takes a nasty letter from us to somebody who's giving you a hard time, so please reach out.

David Crabill: [00:35:59] And how can people contact you?

Erica Smith: [00:36:01] You can contact me at my email address, which is esmith. That's for [Erica Smith](mailto:esmith@ij.org). So it's esmith@ij.org, and IJ is for Institute for Justice.

David Crabill: [00:36:13] Great. Well, thank you so much for jumping on here and talking a little bit about how the legal environment is changing amidst the craziness of the world right now. You, you shared a lot about the changes in the laws that are happening aside from the pandemic, and I think it'll give people a good amount of hope that we'll see good changes in the future.

So thanks so much, Erica, for coming on today.

Erica Smith: [00:36:38] Thanks so much for having me, David, and thank you for all the good work you do. I know I use your website every week. It's a tremendous resource, so I'm very grateful for that.

David Crabill: [00:36:47] Oh, thank you so much.

That wraps up the sixth episode of the Forrager podcast. Erica has helped push this industry forward in ways we didn't even dream of five years ago, and she's quick to take a stand against any opposition.

If you would like to see your state's laws improve or if your cottage food business has been negatively impacted by your state's laws, Erica would love to hear from you. You can reach her at esmith@ij.org.

And if you want to see what the laws look like in your state, head on over to forrager.com to see the map and how your state compares to the rest.

For more information about this episode, go to forrager.com/podcast/6. Thanks for listening and I'll see you in the next episode.