

quotas.<sup>22</sup> In the case of food rights, it has come to be used in restricting producers of raw dairy products. For example, a tiny Washington State producer of award-winning raw milk cheeses, Estrella Family Creamery, was barred by a federal judge in late 2012 from selling its cheeses outside the state because the FDA said it found evidence of listeria contamination (though no illnesses) in its production facilities; it wasn't even clear whether the cheese maker would be allowed to sell within the state if any of its ingredients came from outside Washington.

In recent years, several organizations have sprung up to help individuals organize and protect what they consider to be their right to privately access the food of their choice. One of the first was Right to Choose Healthy Food, which was set up in the early 2000s by a California nutritionist who advocated the benefits of raw food, Aajonus Vonderplanitz. Vonderplanitz organized several dozen food clubs around the country that established lease agreements with farmers giving the clubs exclusive access to the farms' meats, eggs, and dairy products. Hundreds of consumer members paid a twenty-five-dollar annual membership fee and signed an agreement that positioned the club as outside the conventional food system.

One such agreement stated in part: "I demand access to food that 1) is produced without exposure to chemical contaminants such as industrial pesticides, fertilizers, antibiotics, cleansers or their gases; 2) is not subjected to artificial temperatures above 99° Fahrenheit (F.), dairy not above 104° or below 40° F., and meats not below 38° F. ; 3) is complete with its natural unadulterated enzymes intact; 4) may contain microbes, including but not limited to salmonella, E.coli, campylobacter, listeria, gangrene and parasites; 5) the cows and goats are grazed and grass-fed; 6) fowl are pastured and/or free-range outdoors and not fed soy products; and 7) the eggs are unwashed and may have bacteria and poultry feces on them. I fully understand that these features represent a different paradigm for food preparation, storage and safety than those that are currently enforced by all local, state and federal government agencies."<sup>23</sup>

The Farm-to-Consumer Legal Defense Fund sprang up on July 4, 2007, to protect the rights of farmers and consumers being prosecuted for dispensing foods privately. One of its first cases involved defending Meadowsweet Dairy, which I described earlier in this chapter. In early 2010, it challenged the FDA in a federal court suit on behalf of ten plaintiffs, arguing that the

agency's ban on interstate shipments of raw milk interfered with individual rights to privacy and due process. The case was notable for prompting the FDA, in a motion to dismiss the case, to declare that Americans have "no absolute right to consume or feed children any particular food."<sup>24</sup> Its rationale? "Comprehensive federal regulation of the food supply has been in effect at least since Congress enacted the Pure Food and Drugs Act of 1906, and was strengthened by the passage of the FDCA [Food, Drug and Cosmetics Act] in 1938. Thus, plaintiffs' claim to a fundamental privacy interest in obtaining 'foods of their own choice' for themselves and their families is without merit."<sup>25</sup>

Government control went even beyond food, though, according to the FDA: "There Is No Generalized Right to Bodily and Physical Health," it headlined the second section of its brief. "Plaintiffs' assertion of a 'fundamental right to their own bodily and physical health, which includes what foods they do and do not choose to consume for themselves and their families' is similarly unavailing because plaintiffs do not have a fundamental right to obtain any food they wish."<sup>26</sup>

A Wisconsin judge put an exclamation point on the FDA's argument in late 2011, when he ruled against two farmers who challenged the state's Department of Agriculture, Trade, and Consumer Protection (DATCP) efforts to restrict their private distribution of raw milk to members of their food clubs. Wisconsin prohibits most sales of raw milk, except on an "incidental" basis.

When the Farm-to-Consumer Legal Defense Fund asked the judge for a "clarification" on his ruling as to whether the cow owners could milk their own cows, the judge became irritated. He said his decision translated further that "no, Plaintiffs do not have a fundamental right to own and use a dairy cow or a dairy herd . . . no, Plaintiffs do not have a fundamental right to consume the milk from their own cow."<sup>27</sup> And in a verbal banging of his gavel, he added: "no, Plaintiffs do not have a fundamental right to produce and consume the foods of their choice."<sup>28</sup>

The legal uncertainty over private food rights, and the FDA's stance, quickly became apparent to Daniel Allgyer, the Amish farmer. The day after FDA agents searched his farm, he received a "warning letter" from the agency threatening him with "seizure and/or injunction" if he didn't