



## Conflict over Interstate Raw Milk Ban Escalates

By Pete Kennedy, Esq. - December 8, 2011

The conflict over the interstate ban on raw milk for human consumption is ratcheting up. At the same time the FDA is getting more aggressive going after farmers and distributors it believes are transporting raw milk across state lines, open civil disobedience against the federal regulation prohibiting raw milk in interstate commerce is increasing.

After filing a complaint earlier this year in Philadelphia district court to enjoin Pennsylvania dairy farmer Dan Allgyer, the United States Department of Justice has convened a federal grand investigation in Detroit and has subpoenaed Indiana dairy farmer David Hochstetler of Forest Grove Dairy and Michigan farmer Richard Hebron of Family Farms Cooperative to produce business records and other documents. FDA initially investigated Hochstetler and Hebron in October 2006 for transporting raw milk and raw milk products across state lines. In 2010 the agency subsequently investigated Hochstetler and Hebron for causing a foodborne illness outbreak where people were sickened with campylobacter poisoning in Illinois, Indiana and Michigan. FDA conducted testing on milk produced by Forest Grove Dairy, with all samples tested being negative for campylobacter.

The Department of Justice gave Hochstetler and Hebron notice to either appear before the grand jury on December 8 or turn over the documents by the time the grand jury was to convene that day. As reported by David Gumpert in *Food Safety News* on November 28, the list of documents the grand jury asked each farmer to provide includes "[a]ny and all documents relating to or concerning the sale, purchase, delivery, receipt, production, packaging, transfer, disposal, marketing, promotion, furnishing, sharing, labeling, manufacturing, distribution, shipment, or transportation of milk... from 2007 to 2010" as well as documents relating to laboratory testing of milk and communications with Right to Choose Healthy Food or Aajonus Vonderplanitz.

In addition to being the owner of Right To Choose Healthy Food (RCHF), Vonderplanitz was the co-founder of the Rawesome Food Club. Rawesome's Venice, California store was raided by federal, state and local government agencies in June 2010 and again in August 2011 with FDA participating in both raids. According to Vonderplanitz, RCHF is currently leasing Hochstetler's herd of dairy cows, RCHF has leased dairy animals from other small farmers to provide raw milk and raw milk products for its members, including Allgyer. Vonderplanitz has been a long-time opponent of FDA and its attempts to ban or restrict access to raw milk.

While FDA is stepping up enforcement against raw milk producers, a group of activists calling themselves the Raw Milk Freedom Riders is staging publicized open displays of civil disobedience against the interstate raw milk ban, protesting against the criminalization of Americans who buy and sell raw milk. On November 1 a caravan of raw milk moms defied the ban on raw milk in interstate commerce by crossing into Maryland with raw milk obtained in Pennsylvania prior to a rally held outside FDA headquarters in Silver Spring. The day of the rally, FDA issued a press release stating that "with respect to the interstate sale and distribution of raw milk, the FDA has never taken nor does it intend to take, enforcement action against an individual who purchased and transported raw milk across state lines solely for his or her own personal consumption." Left unsaid in the press release was that FDA would take enforcement action against farmers selling raw milk to consumers crossing state lines and distributors or agents crossing state lines to deliver milk to groups of people such as buyers clubs.

The Raw Milk Freedom Riders have responded to FDA's narrow exception to enforcement of the interstate ban by scheduling a second rally in Chicago on December 8. In a November 28 press release titled, "Mothers Acting as 'Agents', To Defy FDA Warning", the group announced that "a group of mothers and others will defy the U.S. Food and Drug Administration's ban on "distributing" fresh milk across state lines



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by transporting 100 gallons of raw milk from Wisconsin to Chicago's Independence Park and distributing to customers waiting at the park."

In February 2010 the Farm-to-Consumer Legal Defense Fund filed a complaint challenging the ban in an Iowa federal district court; subsequently, Judge Mark W. Bennett asked FDA to answer the following question: whether the interstate ban applies to and proscribes the conduct of a principal and agent who agree that the agent will obtain raw milk out-of-state, where it is legal to do so, and deliver it to the principal in the principal's home state, where sales of raw milk are not permitted, where the principal then consumes the raw milk or gives it to the principal's friends or family members..."

The agency's response to the question was "whether FDA would consider an enforcement action against the hypothetical agent in this case would depend on the nature and extent of his or her actions. . . . To the extent . . . that the agent is engaged in the organized distribution of raw milk to multiple customers across state lines, this type of activity would be far more likely to attract regulatory scrutiny."

The best check on FDA aggression against raw milk producers and consumers exercising their freedom of choice would be the passage of HR 1830, a bill that would effectively overturn the interstate ban; support for the bill is growing. Representatives Tom McClintock (CA-4) and Tim Walhberg (MI-7) have joined Chellie Pingree (ME-1) as cosponsors; Pingree recently sent FDA Commissioner Margaret Hamburg a letter criticizing the agency's raw milk enforcement policy. Rep. Joe Pitts has told constituents that he supports the bill. Pitts is the chair of the Subcommittee on Health with the Committee on Energy and Commerce. HR 1830 has been assigned to his subcommittee which is where any hearing on the bill would take place. More politicians are recognizing it's time to do away with the law that thousands of otherwise law-abiding citizens violate each week in this country.

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### Hyperlinks for the PDF

**Food Safety News** – David Gumpert, "Have the Feds Finally Found Food Producers They Can Throw the Book At?", 30 November 2011 = <http://www.foodsafetynews.com/2011/11/have-the-feds-finally-found-food-producers-they-can-throw-the-book-at-on-onbreaks/>

**FDA headquarters** – John Moody, "FDA Throws a Bone", 4 November 2011 = <http://www.farmtoconsumer.org/FDA-throws-bone.htm>

**press release** – FDA, "Food Safety and Raw Milk", 1 November 2011 = <http://www.fda.gov/Food/FoodSafety/Product-SpecificInformation/MilkSafety/ucm277854.htm>

**Mothers Acting as 'Agents', To Defy FDA Warning** – Media Alert at Raw Milk Freedom Riders website, 28 November 2011 = <http://rawmilkfreedomriders.wordpress.com/press/mothers-acting-as-agents-to-defy-fda-warning/>

**FDA aggression** – action alert, "Support Food Freedom Now", 26 September 2011 = <http://www.farmtoconsumer.org/aa/aa-26sep-support-food-freedom-now.htm>