



FDA Lawsuit: FTCLDF Answers FDA's Motion to Dismiss

June 15, 2010

On June 14, the Farm-to-Consumer Legal Defense Fund (FTCLDF) filed its brief in resistance to FDA's motion to dismiss. "FDA made some pretty incredible arguments in their motion to dismiss," said Fund President Pete Kennedy. "Our research shows that this nation has a long history of consuming raw dairy products and that FDA's prohibition against taking raw dairy for human consumption across state lines runs counter to that national history," stated Kennedy.

FTCLDF filed a lawsuit earlier this year to overturn the federal ban that prohibits raw milk for human consumption in interstate commerce. The lawsuit claims that the federal regulations (21 *CFR* 1240.61 and 21 *CFR* 131.110) are unconstitutional and outside of FDA's statutory authority as applied to FTCLDF's members and the individual plaintiffs named in the suit.

Contrary to FDA's claims, the Fund argues in its brief that everybody has the right to travel across state lines with raw dairy products in their possession, that everybody has the right to consume the foods of their choice, that parents have the right to feed their children the foods of their choice, and that everybody has the right to be responsible for their own health.

"We believe we are breaking new ground in this case," said the Fund's General Counsel Gary Cox, "yet in a way, we are really asking the Court to expressly recognize what our Founding Fathers implied in the *Declaration of Independence* and in the Constitution."

FDA has the option of filing a reply brief within seven days. [Click here for details on the lawsuit.](#)

The following documents were filed by the Fund on June 14, 2010 – see [June 15 press release](#)

Doc 15-1: [Plaintiffs' Brief in Support of Resistance to Defendant's Motion to Dismiss](#)

Doc 15-2: Exhibit A - [Affidavit of Eric Wagoner](#)

Doc 15-3: Exhibit B - [Affidavit of Pete Kennedy](#)

Doc 15-4: Exhibit C - [Affidavit of Steve Bemis](#)

Doc 15-5: Exhibit D - [Affidavit of Mark McAfee](#)

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HYPERLINKS for PDF version:

brief in resistance – "Plaintiffs' Brief in Support of Resistance to Defendant's Motion to Dismiss" = http://www.ftcldf.org/docs/fda_suit_resistance_061410

filed a lawsuit – press release 22 Feb. 2010, "FTCLDF Files Suit Againsts FDA over Raw Milk Ban" = <http://www.ftcldf.org/press/press-22feb2010.html>

FDA's claims – "FDA's Views on Freedom of Choice", posted 6 May 2010 = <http://www.ftcldf.org/news/news-06may2010.htm#5>



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Click here for details on the lawsuit =
<http://www.ftcldf.org/litigation-FDA.htm>

June 15 press release – "FTCLDF Answers FDA's Motion to Dismiss" =
<http://www.ftcldf.org/press/press-FTCLDF-answers-FDA.htm>

Plaintiffs' Brief in Support of Resistance to Defendant's Motion to Dismiss =
http://www.ftcldf.org/docs/fda_suit_resistance_061410

Affidavit of Eric Wagoner =
http://www.ftcldf.org/docs/fda_suit_wagoner_affidavit_060810

Affidavit of Pete Kennedy =
http://www.ftcldf.org/docs/fda_suit_kennedy_affidavit_061410

Affidavit of Steve Bemis =
http://www.ftcldf.org/docs/fda_suit_bemis_affidavit_060210

Affidavit of Mark McAfee =
http://www.ftcldf.org/docs/fda_suit_mcafee_affidavit_060710