



The Farm-to-Consumer Legal Defense Fund (the “Fund”) continued its work in 2012 to establish the rights of farmers to direct market the products of the farm and the rights of consumers to obtain the foods of their choice from the source of their choice. We achieved several successes, with the promise of more to follow.

The greatest opportunities for progress are at the state and local level, which is where the Fund is concentrating its efforts; at the federal level, our work is focused primarily on defeating proposed legislation and regulations that could be harmful to our members.

## HIGHLIGHTS

### **Jury Acquits Alvin Schlangen in Minnesota**

Fund member Alvin Schlangen is an organic egg farmer in Freeport, Minnesota, who serves as a volunteer manager for the private food buyers club, Freedom Farms Coop, delivering raw milk and other nutrient-dense foods to club members in the Twin Cities area. The Minnesota Department of Agriculture (MDA) raided Alvin’s operation several times in 2010 and 2011, seizing and embargoing thousands of dollars’ worth of food. MDA then had the Hennepin County District Attorney bring criminal charges against Alvin for alleged violations of the state food and dairy code.

On September 20, 2012 the jury found the courageous farmer not guilty on all three charges against him—a victory galvanizing the food rights movement with the jury’s refusal to convict someone helping others exercise their freedom of food choice. The court was packed throughout the three-day trial with club members attending in support of Alvin. Nathan Hansen, a member of the Fund’s growing attorney network, represented Alvin in the case.

The Fund continues to represent Alvin. The district attorney in Stearns County has filed six criminal charges against Alvin for alleged violations of the Minnesota food and dairy code, three of which are the same he faced in Hennepin County. In addition, MDA is seeking to shut down Alvin’s delivery of food to club members in an administrative proceeding. Nathan Hansen has been retained again to represent the farmer in the criminal case and is serving as co-counsel to Fund General Counsel Gary Cox in the administrative case.

### **Right to Farm Act Protects Shady Grove Farm**

Zoning barriers pose a challenge to farmers all over the country, but there are potential solutions. Randy and Libby Buchler of Shady Grove Farm raise poultry and livestock on land zoned “non-agricultural” in Forsyth Township, Michigan, selling their eggs and wool locally. The Township sued the Buchlers in Marquette County Circuit Court to prevent them from farming on their property.

The Fund retained local attorney Michelle Halley of Marquette to represent the Buchlers, and Fund Board Member and attorney Steve Bemis served as co-counsel in the case. The Michigan Right to Farm Act protects farming on land zoned non-agricultural unless the township obtains a waiver from the Michigan Department of Agriculture and Rural Affairs, which Forsyth Township had not.

On December 18, 2012, Judge Thomas L. Solka ruled in favor of the Buchlers, holding that “because defendant’s farm...is protected from nuisance suits under the Right to Farm Act plaintiffs’ request for an injunction closing the farm is denied.”

One Fund member summed up the importance of the victory

by saying,

The Buchler story is extremely heartening. Small, clean, diversified, essentially “neighborhood” farms are THE proper solution to the food crises in America and elsewhere. Such farms are good for people (they produce healthful food, guard against shortages, stabilize local economies, and instill neighborliness), and for the environment (by helping maintain micro- and macro-biologic diversity).

The Fund is also currently representing members Christian and Lena Zook in a Right to Farm case in Pennsylvania. Each state’s Right to Farm law is different, and the Fund is working to make sure that every available protection is respected.

### **Missouri State Milk Board Settles with Bechards**

Armand and Teddi Bechard produce raw milk on their farm in Missouri; state statute legalizes the unlicensed sale on the farm and through delivery. On two occasions in the spring of 2009, undercover agents from the Springfield-Greene County Health Department purchased raw milk produced by the farm at one of the Bechards’ delivery points, a health food store parking lot in Springfield.

The Missouri State Milk Board and State Attorney General then filed suit against the Bechards to enjoin them from delivering raw milk to a central distribution point in Springfield, seeking to limit them to making deliveries only to the residences of individual customers. Granting the injunction would have hurt the Bechards’ business because many of the farm’s customers only wanted to pick up the milk at a central distribution point. It would have also set a precedent that could reduce consumers’ access to raw milk from other farms in Missouri.

Nearly three years after the start of the case, Fund General Counsel Gary Cox was able to negotiate a successful resolution. On July 31, 2012, the Bechards entered into a settlement agreement with the Missouri State Milk Board under which the Bechards can deliver to a central distribution point and are able to carry on their business as they have in the past. For a perspective on the case as told by the Bechards’ daughter, Katie, read “Raw Milk Right of Passage” at [www.farmtoconsumer.org/news\\_wp/?p=2373](http://www.farmtoconsumer.org/news_wp/?p=2373).

### **Herdshares Prevail in Wyoming**

Fund members, State Representative Sue Wallis and her brother, rancher Frank Wallis, were successful in getting the legality of herdshares codified by regulation in Wyoming. Last spring the Wyoming Department of Agriculture (WDA) initially tried to institute a ban on shared ownership of dairy animals by issuing a proposed regulation stating that the state law prohibiting the sale of raw milk “does not apply to individuals who obtain milk from animals *solely* owned by them, members of their family or their employer and who furnish raw milk or products made from raw milk only to members of their family or nonpaying guests” [*italics added*].

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Opponents of the proposed regulations fought for the removal of the word "solely" and, after a comment period and several hearings around the state, the WDA issued a press release in September notifying the public that the final rule had the word "solely" removed. The rule went into effect in December 2012. The efforts of the Wallises and others turned a potential crisis into an affirmation of Wyoming citizens' rights.

## SIGNIFICANT CASES

There were a number of other significant cases with which the Fund has been involved over the past year. Next is a brief review of some of them.

### Vernon Hershberger's Pre-Trial Hearings

In July, Wisconsin dairy farmer, Vernon Hershberger of Loganville, retained the Fund to represent him in his upcoming criminal trial for alleged violations of the Wisconsin food and dairy code. Fund vice president and attorney, Elizabeth Rich, is representing Vernon along with veteran trial lawyer Glenn Reynolds of Madison, Wisconsin. The trial has been postponed twice and is now scheduled to begin May 20, 2013 and run for five days. The pretrial hearings in the case have been contentious; the state of Wisconsin has spent a considerable amount of time and resources on the case given that only misdemeanor charges have been filed. The court's ruling in the case could have a huge impact on the availability of raw milk for consumers in Wisconsin.

In addition to the Hershberger case, the Fund is litigating two civil cases in Wisconsin for Grassway Organic Farm and Zinniker Farm that could also affect the future of raw milk sales and distribution in the state; these cases are currently in the court of appeals.

### Mark Baker's Lawsuit over Michigan Swine ISO

The Fund provided financial support for the lawsuit filed by heritage breed hog farmer Mark Baker against the Michigan Department of Natural Resources (DNR) to overturn an Invasive Species Order (ISO) issued by the department. Under DNR's interpretation of the ISO, the agency could require almost any farmers of heritage breeds to destroy their own pigs. The ISO is a threat to small farms and genetic diversity. The case's resolution will have a nationwide impact with other states either considering or being in position to issue similar orders.

### Challenging FDA's Interstate Ban

The Fund's suit challenging the legality of the interstate ban on raw milk for human consumption was dismissed in 2012, but the fight to overturn the ban continues. Even though Judge Mark W. Bennett ruled in favor of the FDA (Food and Drug Administration), the lawsuit accomplished several things:

- Ø it established, as a matter of public record, that FDA will not take action against individual consumers crossing state lines to obtain raw milk;

it alerted the public to the draconian views of the agency on food (e.g., "there is no absolute right to consume or feed children any particular food" and there is no fundamental right to one's "own bodily or physical health"); and

- Ø it exposed the lack of enforcement of the regulation (i.e., Judge Bennett noted that the regulation had never been enforced against agents for consumers crossing state lines to obtain raw milk nor against a farmer knowingly selling to out-of-state consumers and their agents).

In December, the Fund filed suit against FDA to obtain a court order requiring the agency respond to a citizen's petition filed by Organic Pastures Dairy Company (OPDC) seeking to partially lift the interstate raw milk ban. OPDC filed the petition over four years ago. Federal law requires FDA to answer the petition within six months. The Fund will also continue working to reverse the ban through federal legislation.

### Dan Brown and Food Sovereignty in Maine

The Fund continues to represent Maine dairy farmer Dan Brown, along with local attorney Sandy Collier. In a challenge to the town of Blue Hill's food sovereignty ordinance, the Maine Department of Agriculture, Food and Rural Resources filed suit against Brown in 2011 to enjoin him from selling raw milk and other farm products at his farm stand without state-issued permits. The Blue Hill ordinance allows the sale directly to consumers of food produced without licensing or inspection. The case continues to draw national interest as a number of food sovereignty bills and ordinances have been introduced at the state and local levels around the country in following Maine's example (thus far, eight Maine towns have passed food sovereignty ordinances).

### Farmstead Cheesemakers Shut Down

The Fund's representation of farmstead cheesemakers Morningland Dairy and Estrella Family Creamery also continued in 2012. Both farms have had their cheese businesses shut down for over two years with each having had hundreds of thousands of dollars in cheese embargoed and lost due to enforcement actions by the Missouri State Milk Board (working with FDA) in the Morningland case and by FDA in the Estrella case. In December, the Missouri Supreme Court declined to hear the appeal of Morningland's destruction order issued by a lower court; over 36,000 pounds of cheese never proven to be harmful were destroyed on January 25, 2013. In the Estrella case, negotiations with the U.S. Attorney's office and FDA over terms to resume operations as an intrastate business continued until February 2013 when the Estrellas put their farm up for sale. Financially strapped and unable to get definite answers about the limits of FDA's jurisdiction over their business, the couple decided it was time to move on.

### Drakes Bay Oyster Company Litigation Fund

In December, the Fund agreed to set up and administer a litigation fund for Drakes Bay Oyster Company (DBOC) to accept contributions to support DBOC's lawsuit against the National Park Service (NPS). NPS refused to renew the agreement that let DBOC farm the waters off of Point Reyes, California--an agreement that DBOC had been operating under safely and responsibly. The agency's action threatens to put DBOC, which is responsible for 30% or more of California's oyster production, out of business. Claiming a mandate to rewild the area in which DBOC operates, NPS is effectively forcing the state to rely on imports instead of a local source.

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Beyond pursuing remedies in the courts and at the administrative level, the Fund also seeks to improve the political and regulatory climate for local food producers and consumers.

## Legislation and Public Policy

The Fund provides consultation and serves as an information clearinghouse for those working on changes to their state and local laws, such as passing raw milk legislation or changing regulations governing food production. In addition to our direct work on such issues, the Fund also sends action alerts to its email subscribers letting them know how they can help pass (or fight) state and federal bills that affect them. Our active email list is an important resource for grassroots efforts for change.

### State Level Activity

Some of the matters worked on in 2012 include consulting on a proposed Florida regulation regarding sales of eggs and on-farm processed poultry, a successful effort in Indiana to pass legislation expanding sales of on-farm processed poultry, and a raw milk bill in Montana. Other action on the state level included support for Proposition 37 in California, a ballot initiative requiring labeling of genetically-engineered food. Even though "Prop 37" failed to pass, it had significant support and has been a catalyst for similar measures across the country.

The policy work is ongoing and increasing. Fund General Counsel Gary Cox is part of a working group in California that is developing recommendations for the state legislature on an exemption from the California dairy code for "family cow" dairies selling raw milk. The Fund is also getting more requests for advice on the passage of food sovereignty laws at the state and local levels. Fund member Patti Chelseth recently led a successful effort to pass a food sovereignty ordinance in El Dorado County, California. The food sovereignty laws are a needed counterweight to the expanding federal jurisdiction over food regulation brought on by the FDA Food Safety Modernization Act (FSMA).

### Federal Level Activity

At the federal level, the Fund continues to work for legislation overturning the ban on raw milk for human consumption in interstate commerce. During the past two congressional sessions, a bill has been introduced by Congressman Ron Paul that would effectively repeal the ban; Fund attorneys had worked on crafting the language in the bill. Thousands of supporters of the bill have signed on to a petition on the Fund's website, generating faxes to supporters' U.S. representatives and senators. In the 2011-2012 Congressional session, five representatives signed on to the bill as co-sponsors and Senator Rand Paul introduced a Senate companion bill. Congressman Ron Paul has now retired, but the Fund will work to have the bill re-introduced by another legislator this session.

Also at the federal agency level in the rulemaking process, the Fund was an active member of a coalition that succeeded in removing a number of onerous provisions from the USDA's proposed animal ID regulations. The final rule was published January 9, 2013; the Fund will continue to monitor implementation of the new regulations. The Fund will also continue to monitor and submit comments on FDA's

implementation of the FSMA, which remains a threat to the local food system.

## Fundraising

Fundraising Director Cathy Raymond successfully organized several major fundraising events that generated a lot of goodwill for the Fund. On July 7, the Fund celebrated its 5<sup>th</sup> Anniversary at the Maryland farm of Geoffrey Morrell and Fund board member Sally Fallon Morrell. It was fitting that this milestone was celebrated at their farm since Sally was the individual most responsible for its founding.

On September 8, the Fund held its fourth annual Benefactor Appreciation Event at Polyface Farm in Swoope, Virginia for those making donations during the annual fundraising drive. Each year, the Weston A. Price Foundation (WAPF) generously sends an appeal letter to its members on behalf of the Fund. The 2012 Appeal raised more funds than ever. We thank WAPF president, Sally Fallon Morell, for the many ways she continues to help the Fund. As always, it was a great opportunity for Fund board and staff to talk in person with some of the people whose generosity enables the Fund to carry out its work; we thank the Salatin family for their hospitality and an enjoyable event.

From November 8-11, the Fund held several FundRAISER breakfasts and a FundRAISER dinner during the WAPF's Annual International Wise Traditions Conference in Santa Clara, California. The dinner featured delicious traditional foods, with an inspiring keynote by Mark Baker. The attendees also got to hear from Alvin Schlangen and some of the leaders of the effort to pass California's Proposition 37--Pam Larry, Ronnie Cummings of the Organic Consumers Association, Steve Rye of Mercola.com, and Dave Murphy and Lisa Stokke of Food Democracy Now. These "Yes on Prop 37" leaders confirmed that the narrow defeat of the measure was not the end of the battle to make labeling of genetically modified food mandatory, but only the beginning.

## Outreach & New Projects

Thanks to the work of Cathy Raymond, the Fund was represented at nearly ninety conferences last year by volunteers helping to spread the word about the Fund and its work. A highlight of the conference schedule was the Mother Earth News Fair at Seven Springs, Pennsylvania, which took place September 20-22 and had 15,000 attendees. Together with WAPF, the Fund co-sponsored a speakers stage featuring Joel Salatin, Elizabeth Rich, John Moody and David Gumpert, who spoke to packed crowds.

In the past year, the Fund revamped its website by integrating the "Food Rights News website", a WordPress platform that enables the Fund to post content on food rights developments around the country in a simplified format. The Fund continues to send out its electronic digest to its email subscribers. In 2012 the Fund also started a podcast, the Food Rights Hour; in addition to listening online at the website, the podcast episodes are also available for download at iTunes.

The Fund continues to meet the needs of its growing membership which includes not only family farms but also the consumers and buyers club members who

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obtain foods from these farms as well as homesteaders and artisan food producers, many of whom source ingredients directly from the farm.

## Membership

In 2012 the Fund added a membership category for Artisan Food Producers to support off-farm food producers selling their products direct to consumers. This is a fourth membership category after the Farmer, Consumer, and Affiliate Community (e.g., food buyers clubs and cooperatives) memberships. The Fund continues to have Non-Member Consulting Agreements for farmers and consumers who have a philosophical or religious objection to membership in an organization that engages in litigation, such as persons from the Mennonite, Amish or other Anabaptist faiths.

The Fund added a number of additional member benefits to the core services it has provided to members in the past year. The core benefits remain:

- Ø Unlimited consultation with attorneys on matters within the Fund's mission statement. Legal services include interpretation of federal and state laws and resolving disputes on the administrative level with government agencies.
- Ø Drafting contracts and other documents, including herdshare agreements and buyers club contracts.
- Ø 24/7 access to toll-free hotline.
- Ø Possible representation on matters within the Fund's mission statement.
- Ø Consultations for best farm management practices with Tim Wightman. Tim, who operated shareholder dairies in Wisconsin and Ohio for several years, is one of the leading agricultural consultants in the country. He is also President of the Fund's sister organization, the Farm-to-Consumer Foundation [a 501(c)(3) nonprofit].

### Benefits added in 2012 include:

- Ø Consultation on administrative setup and operation of food buyers clubs with Fund board member John Moody. John is the administrator for a successful buyers club in Kentucky.
- Ø Expansion of free educational handbooks for members. Previously, Farmer members received a copy of Tim Wightman's *Raw Milk Production Handbook*, and Consumer members received a copy of *Safe Handling - Consumer's Guide: Preserving the Quality of Fresh, Unprocessed Whole Milk* by Peggy Beals, RN. Starting in 2012, Affiliate Community members received a copy of the *Food Club and Co-op Handbook* by John Moody. Artisan Food Producer members have their choice of either the *Safe Handling - Consumer's Guide* or the *Raw Milk Production Handbook*.
- Ø A 15% discount on all items purchased through the Fund's online store.
- Ø Access to conference recordings. These recordings are posted on the Members Only website and include both the 2010 and 2011 Raw Milk Symposium audio recordings and the three-hour Activist Workshop video

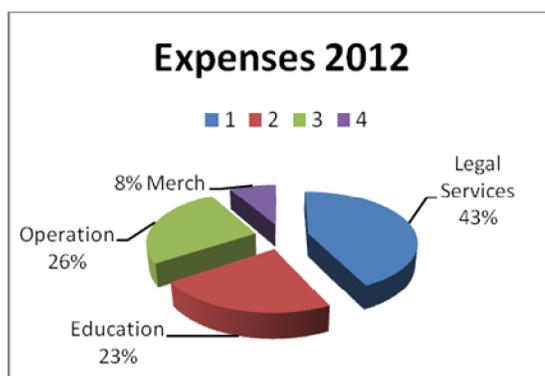
recording by Fund board member Judith McGeary taped at the 2011 WAPF annual international conference.

## Finances

The Fund is a true grassroots organization and receives the bulk of its revenue from membership fees and private individual donations. "Corporate" donations come from small businesses that support local food production; but the Fund receives no funding from any government agency.

Donations to the Fund's sister organization, the Farm-to-Consumer Foundation [a 501(c)(3) nonprofit] are tax deductible and may be dispersed to the Fund as grants for public interest litigation (PIL) .

Expenses have gone up significantly in the past year, due mostly to increased legal expenses as we take on more cases. Legal costs accounted for 43% of total expenses, 26% for operations, 23% for education and 8% for merchandising.



## About FTCLDF

The mission of the Farm-to-Consumer Legal Defense Fund (FTCLDF) is to protect the rights of farmers and artisan food producers to market the products of the farm direct to consumers, whether or not the farmer has a permit. The Fund also protects the rights of consumers to obtain the foods of their choice from the sources of their choice. We face a tough battle, as FDA, state agencies, and even local health departments continue to expand their powers and seek to impose their views on what foods should be consumed.

The Fund protects farmers from government harassment and levels the playing field, making it more difficult for the government to win wars of attrition by depleting the farmer's resources through court proceedings. Farmers are now able to spend their money on farming instead of lawyers.

With your help, the Fund can build on the successes of the past year. Thanks for your support and your belief in our mission.



Farm-to-Consumer  
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