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Raw Milk Consumers Win Round One ***Judge Refuses to Dismiss Challenge to FDA's Interstate Ban on Raw Milk***

Falls Church, Virginia (August 20, 2010) - In a complex federal district court ruling, Judge Mark W. Bennett refused to grant a motion by the United States Food and Drug Administration (FDA) to dismiss a lawsuit filed against the agency by the Farm-to-Consumer Legal Defense Fund (FTCLDF) and eight other named plaintiffs. The lawsuit argues that federal regulations (21 *CFR* 1240.61 and 21 *CFR* 131.10) prohibiting raw milk for human consumption in interstate commerce are unconstitutional as applied to FTCLDF's members and the other plaintiffs named in the suit.

In his August 18 decision, Judge Bennett denied part of FDA's motion to dismiss while reserving judgment on the remainder. As part of his ruling, the judge ordered proceedings in the case to be stayed sixty days to allow plaintiffs time to decide whether to file a 'citizen petition' with FDA. The petition would ask FDA to clarify its interpretation of the authorizing statutes and regulations giving the agency power to ban raw milk for human consumption in interstate commerce. If plaintiffs choose to file the citizen petition, the court would continue to delay the suit until the administrative proceedings were completed or until FDA failed to take action within the time the law requires. If plaintiffs declined to pursue the citizen petition, Judge Bennett indicated the court would reconsider FDA's motion to dismiss.

In Judge Bennett's view, the main question FDA needs to answer in the petition process is "whether § 1240.61 applies to and proscribes the conduct of (1) persons who travel from one state, where it is not legal to purchase raw milk, to another state, where it is legal to purchase raw milk, legally purchase raw milk, then return to the original state where they consume the raw milk themselves or give it to their friends or family members; or (2) a principal and agent who agree that the agent will obtain raw milk out-of-state, where it is legal to do so, and to deliver it to the principal in the principal's home state, where sales of raw milk are not permitted; or (3) a producer of raw milk who sells raw milk in an intrastate transaction to persons that he knows are from out of state."

All of the individually named plaintiffs in the lawsuit fit into one of the three scenarios described above. Section 1240.61 provides in part, “No person shall cause to be delivered into interstate commerce or shall sell, or otherwise distribute, or hold for sale or other distribution after shipment in interstate commerce any milk or milk product in final package form for direct human consumption unless the product has been pasteurized....”

Judge Bennett sees the citizen petition as a way to resolve the question of “whether the plaintiff’s conduct involves or affects ‘interstate commerce’ sufficiently to fall within the proscriptions of § 1240.61, and, still more specifically, whether the plaintiffs’ conduct constitutes ‘delivery [of raw dairy products] into interstate commerce’ or ‘distribution’ of raw dairy products after shipment in interstate commerce.”

Plaintiffs have survived the first round in the case. They have until October 18 to determine what their next course of action will be.

The Farm-to-Consumer Legal Defense Fund defends the rights and broadens the freedoms of family farms and protects consumer access to raw milk and nutrient-dense foods.

Concerned consumers can support the Fund, a U.S. based 501(c)(4) nonprofit, by joining or donating online at www.farmtoconsumer.org or by calling 703-208-FARM(3276).

For more information call 703-208-3276 or email president@farmtoconsumer.org