

Court Document: Amos Miller's Preliminary Objections

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Plaintiffs are hereby notified to file a
written response to the
enclosed Preliminary Objections within
twenty (20) days from service hereof or a
judgment may be entered against you.

IN THE COURT OF COMMON PLEAS OF
LANCASTER COUNTY, PENNSYLVANIA

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PENNSYLVANIA DEPARTMENT OF
AGRICULTURE, by Secretary Russell C.
Redding, and OFFICE OF ATTORNEY
GENERAL, by Attorney General Michelle
A. Henry
Assigned Judge: Sponaugle
CIVIL ACTION

Plaintiffs Case No. 24-00528

v.
AMOS MILLER and REBECCA MILLER,
husband and wife, d/b/a/ Mill Creek Buffalo
and Bird-in-Hand Meats; MILLER'S
ORGANIC FARM (an unincorporated
association; MILLERS CAMEL FARM
LLC; MILLER ORGANIC FARM LLC; A-
B FARM (an unincorporated association);
A-B FARM, LLC; and BIRD-IN-HAND
GRASS FED MEATS, LLC.
Defendants.

DEFENDANTS' PRELIMINARY OBJECTIONS TO
PLAINTIFFS' COMPLAINT

This is an unprecedented case. The government seeks the authority to shut down a family farm, search and seize food in his own freezers and fridge, detain and destroy his food without a hearing, dictate what he is allowed to feed himself and his family and even his own animals, and destroy the long-held liberty of informed consent to consume traditional foods of dairy, meat and poultry directly procured from the family farmer himself of food medically needed, religiously important, and deeply personal to thousands of Americans. The sole basis for this incredible action? The state claims only state-permitted food can exist. Defendants file this preliminary objection to Plaintiff's Complaint, on the basis that Defendants neither mislabeled nor sold any adulterated product that is unfit for human consumption or un-amenable thereto. Shutting down Defendants would cause inequitable harm, exceed the authority of the agency, constitute an excessive fine as well as disparate, discriminatory punishment, and contravene every essential Constitutional protection and powers reserved to the people of Pennsylvania.

Defendants further state:

- 1. Plaintiff commenced this case on January 23, 2024, by filing a Complaint seeking to permanently enjoin and restrain Defendants' food production and operations.
2. Defendants bring five counts alleging violations of the Pennsylvania Milk Sanitation Law, 31 P.S. §§645-660g and other raw milk regulations; the Pennsylvania Food Safety Act, 3 Pa. C.S.A. §§5721-5737; the Pennsylvania Retail Food Facility Safety Act, 3 Pa.C.S.A. §§5701-5714; and the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. §201-1, et seq. against all Defendants.
3. Prior to the filing of the complaint, on January 4, 2024, Plaintiff conducted a raid on Defendant Amos Miller's property, searched, seized and sampled various items on the farm while excluding the defendant from observing their conduct.
4. On January 24, 2024, Plaintiff filed a motion for an ex parte injunction against all Defendants.
5. On January 24, 2024, the Court granted Plaintiff's ex parte motion and ordered that Defendants immediately halt all production of raw milk and raw dairy products. A hearing is scheduled for February 29, 2024 on whether to extend the injunction.
6. Plaintiff sought the warrant based on contradictory claims that defendants were a retail food facility, food establishment or required to be permitted milk producer, operating without registration or a license. Pennsylvania law does not authorize Plaintiff to seek a search warrant on those grounds, particularly of a person's farm where they reside.
7. Plaintiff misled the court in its search warrant solicitation by making material omissions of fact essential to the findings of the magistrate. During counsel Barnes' representation of Defendants, the Plaintiff was afforded the opportunity to object to any of the ongoing negotiations with the United States regulatory agencies concerning defendant's operation, and never once objected. In addition, during counsel Barnes' representation of Defendants for the better part of the last two years, the Plaintiff never once reached out and requested the Defendants take any action of any kind, either seeking registration, licensure or permitting, or a reasonable sampling inspection of defendant food products. During this time, Defendants never objected to any request by the Plaintiff. Plaintiff omitted this information from its search warrant affidavit because it was material to the magistrate's findings providing probable cause for a search warrant to issue. At the execution of the warrant, Plaintiff excluded any observer from monitoring whether it conducted its warrant within the scope of the warrant, excluded observers from its process of sampling, excluded observers from detecting any contamination of the site by the many agents meandering through the farm and failed to provide an inspection report at its conclusion or the results of its sampling in a timely manner. While this matter has been pending, the Plaintiff engaged in more unannounced searches of Defendant Amos Miller's family farm, attempted to interrogate Defendant Amos Miller, an Amish farmer with an 8th grade education, outside the presence of counsel, and ordered more detention and destruction of food in the Defendant's freezer, while also dictating the limits of what Defendants could feed himself, his family, other owners of the food, or even his own animals.
8. Contrary to the misleading claims of the Plaintiff, upon notice of any safety concern with any food ever produced by Defendants, Defendants immediately stopped the sale and distribution of that food prior to Plaintiff seeking an emergency ex parte court order. Plaintiff omitted material facts from its submissions to this court to mislead this court into issuing its initial ex parte order, a pattern of misrepresentations of the Plaintiff.
9. The Plaintiff has never found any food of the Defendants to be unfit for human consumption or adulterated in any way. Defendants never mislabeled any of their food within the meaning of the law. The only basis for the injunction sought concerns permits, licensures, and registrations, not any allegation that fits the definition of unsanitary farming or unsafe food. Contrary to Plaintiff's claims, those who consume the food produced by defendant do not consider any of the food mislabeled, as they want, demand and need food that is made in the traditional way Amish farmers produced that food, and are informed consumers who know the food made in the Amish homes and family farms are not licensed, permitted or inspected by the Plaintiff or any other agency.
10. The current injunction has caused substantial harm to the defendant, the local Amish community, and thousands of Americans unable to produce or procure the food they need to survive. If extended, the injunction will bankrupt the defendant, severely damage the local Amish farming economy, and prevent thousands of Americans from obtaining food they need for medical, religious, politically associational and expressive, and deeply personal purposes, all of which are Constitutionally protected individual choices.
11. Defendants object to the Complaint pursuant to Pa.R.Civ.P. 1028(a)(2) and (4). Because the Complaint suffers from a defect that cannot be cured, it must be dismissed.
12. The defects of the Complaint are as follows: a) the law cannot Constitutionally authorize the actions of the Plaintiff, or it violates the Pennsylvania Constitution, including the following sections of Article 1: Section 1, Section 2, Section 3, Section 7, Section 8, Section 9, Section 11, Section 13, Section 21, Section 25, Section 26, and Section 27, as well as Article 2, Article 3, Article 4, Article 5, and Article 6 concerning the separation of powers established thereby and oaths of offices related thereto; b) the law cannot Constitutionally authorize the actions of the Plaintiff, or it violates the United States Constitution, under the Fourteenth Amendment, by taking property without due process of law, depriving fundamental liberties without narrowly tailored laws to compelling public purposes, infringing on the religiously expressive rights of the Amish community and the religiously motivated decisions of the food from Defendants' family farm, the politically expressive decisions to procure the food from defendants' family farm, and the right to anonymity, privacy and bodily autonomy in deciding what goes in one's own body, especially as related to traditional foods of dairy, meat and poultry from a family farmer; c) the laws governing the Plaintiff do not authorize seeking either a search warrant, seizure or injunction that can shut down an entire farming community merely due to lack of registration, licensure or permitting, and exceeds the authority under section 5724, 5725 and 5726 of Title 3; d) Defendants do not engage in "commercial" agriculture, but only produces food from the family farm for the informed use by consumers of that food who directly purchased from the farm, knowing the food was not produced by a permitted, licensed or registered food facility, and e) even were a family farmer producing food for himself, neighbors and members considered "commercial" agriculture, the law specifically exempts food made by a family farm at their own farm when the consumer of that food knows the food was not made by a permitted or licensed facility, under section 5712 of Title 3, and this is true of all of the members of defendant;
13. In support of the above, Defendants specially plead as follows: a) Plaintiff's action exceeds its Constitutional and statutory authority, violates both procedural and substantive due process, offends the rights of religious expression, political expression, privacy, bodily autonomy, property, and the fundamental right due-process protected liberty to procure traditional foods, such as dairy, meat and poultry, directly from a family farmer, known to be made in a traditional Amish way, and known to the informed consumer the food is produced by an unregulated, unpermitted, unlicensed, uninspected, and unapproved-by-the-government family farmer, and as such, cannot be prohibited by the state as statutorily unauthorized punishment, an excessive fine, and not necessary nor strictly tailored to a compelling state interest; b) Defendants are not a retail food facility, food establishment or a permit required milk producer, nor can be all three when inclusion in one definition excludes the other, within the meaning of the permitting requirements; c) an injunction contravenes the principles and public policy of the state, as reflected in the right to farm laws, codified at 3 P.S. § 951-957; d) compelled disclosure of the members of the Defendants' associations would invade their privacy, burden their religious and politically expressive rights, and be unnecessary for any permitted purpose; and e) the scope of the injunction cannot reach food made by the owners of that food for their own personal use or the use of their own animals, without offending the same Constitutional protections as forestated and without exceeding the statutory authority, which excludes from the definition of food any food meant for non-human consumption, and which purposely and repeatedly excludes personal use from its laws intended to reach only retail establishments open without restriction to the public.
14. Cases, statutes and Constitutional provisions in support and of relevance to the objections stated above include, but are not limited to the following: Pa. Const. art. I, § 1, 2, 3, 7, 8, 9, 11, 13, 21, 25, 26, and 27; United States Const. Amendment XIV; Title 3 of the Pennsylvania Code, especially sections 5703, 5704, 5712, 5714, 5722, 5724, 5725, 5726, 5728, and 5729, as well as sections 951 through 957; and the following cases - Appeal of Ervine, 16 Pa. 256, 263 (Pa. 1851); Titusville Iron Works v. Keystone Oil Co., 15 A. 917 (Pa. 1888); Annenberg v. Roberts, 2 A.2d 612, 617 (Pa. 1938); Murdock v. Pennsylvania, 319 U.S. 104 (1943); Commonwealth v. Murray, 223 A.2d 102 (Pa. 1966); Stander v. Kelley, 250 A.2d 474 (Pa. 1969); Wisconsin v. Yoder, 406 U.S. 205 (1972); Adler v. Montefiore Hosp. Ass'n of W. Pa., 311 A.2d 634, 640 (Pa. 1973); Commonwealth v. Sutley, 378 A.2d 780 (Pa. 1977); Commonwealth v. DeJohn, 403 A.2d 1283, 1289 (Pa. 1979); Commonwealth v. Sell, 470 A.2d 457 (Pa. 1983); James v. SEPTA, 477 A.2d 1302 (Pa. 1984); Fischer v. Dep't of Pub. Welfare, 502 A.2d 114, 122 (Pa. 1985); Commonwealth v. Sessoms, 523 A.2d 775 (Pa. 1987); Commonwealth v. Melilli, 555 A.2d 1254 (Pa. 1989); Commonwealth v. Edmunds, 586 A.2d 897 (Pa. 1991); Commonwealth v. Martin, 626 A.2d 556 (Pa. 1993); Aetna Casualty and Surety Company v. Insurance Department, 638 A.2d 194 (Pa. 1994); Commonwealth v. Tharp, 754 A.2d 1251 (Pa. 2000); Commonwealth v. Duncan, 817 A.2d 455 (Pa. 2003); Commonwealth v. Real Prop. & Improvement Known as 5444 Spruce St., Philadelphia, 832 A.2d 396 (Pa. 2003); Khan v. State Bd. of Auctioneer Examiners, 842 A.2d 936, 946 (Pa. 2004); Hiller v. Fausey, 904 A.2d 875 (Pa. 2006); Commonwealth v. Real Prop. & Improvement Known as 2314 Tasker St. Philadelphia, PA 19145, 67 A.3d 202 (Pa. Common. Ct. 2013); Driscoll v. Corbett, 69 A.3d 197 (Pa. 2013); Sunrise Energy, LLC v. First Energy Corp., 148 A.3d 894 (Pa. Cmwlth. Ct. 2016); Shoul v. Commonwealth, Dep't of Transp., Bureau of Driver Licensing, 173 A.3d 669, 677 (Pa. 2017); Commonwealth v. 1997 Chevrolet, 160 A.3d 153 (Pa. 2017); League of Women Voters v. Commonwealth, 178 A.3d 737, 803 (Pa. 2018); Ladd v. Real Estate Comm'n, 230 A.3d 1096, 1108 (Pa. 2020);

WHEREFORE, Defendants respectfully request that the Court sustain these preliminary objections and dismiss Plaintiff's Complaint in its entirety.

Dated: February 13, 2024 BARNES LAW, LLP

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Assigned Judge: Sponaugle
CIVIL ACTION

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ORGANIC FARM (an unincorporated
association; MILLERS CAMEL FARM
LLC; MILLER ORGANIC FARM LLC; A-
B FARM (an unincorporated association);
A-B FARM, LLC; and BIRD-IN-HAND
GRASS FED MEATS, LLC.
Defendants.

VERIFICATION