
Amos Miller: Court Documents, Motion to Modify or Stay

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Bradford L. Geyer
Pa. Bar ID #: 62998 FormerFedsGroup.Com
[141 I Route 130](#) South, Suite 303 Cinnaminson, NJ 08007
Telephone:
Email:

Robert E. Barnes

Admitted Pro Hac Vice

CA. Bar ID #: 235919
Barnes Law, LLP
[700 S. Flower Street, Suite 1000](#)
[Los Angeles, CA 90017](#)
Telephone:
Fax:
Email:

Attorneys for Defendants

IN THE COURT OF COMMON PLEAS OF LANCASTER

COUNTY, PENNSYLVANIA

: PENNSYLVANIA DEPARTMENT OF : AGRICULTURE, by
Secretary Russell C. : Redding, and OFFICE OF ATTORNEY :
GENERAL, by Attorney General Michelle : A. Henry : : Plaintiffs
: : 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. :

Assigned Judge: Sponaule

CIVIL ACTION

Case No. 24-00528

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DEFENDANTS' MOTION TO MODIFY INJUNCTION OR, ALTERNATIVELY, FOR A PARTIAL STAY PENDING APPEAL AND BRIEF IN SUPPORT

On March 1, 2024, this Court issued an order enjoining Defendants Amos Miller, Rebecca Miller, Miller's Organic Farm, Millers Camel Farm LLC, Miller Organic Farm LLC, A- B Farm, A-B Farm, LLC, and Bird-In-Hand Grass Fed Meats, LLC (collectively, "Defendants") from marketing and selling raw milk and/or

products made with or from raw milk.

Defendants hereby request the Court modify its injunction entered on March 1, 2024, or, alternatively, grant a partial stay pending appeal. Defendants respectfully request this Court modify the injunction by limiting the ordered prohibitions on sale and production only to “within the Commonwealth”. Separately, Defendants request an additional paragraph enjoining the operations of a website that Defendants do not control, but continues to falsely claim marketing of Defendants’ products, including raw milk products. In the alternative, Defendants request a partial stay of the injunction to the extent the injunction applies to sales outside the Commonwealth.

I. Standard of Review

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“Any preliminary injunction is an extraordinary, interim remedy that should not be issued unless the moving party’s right to relief is clear and the wrong to be remedied is manifest.” *Ambrogi v. Reber*, 932 A.2d 969, 974 (Pa. Super. 2007). Whether there has been a violation of the Pennsylvania Constitution involves a pure question of law. *In re Milton Hershey School*, 911 A.2d 1258, 1261 (Pa. 2006). Excesses of the state in this area often concern courts. *Vaqueria Tres Monjitas, Inc., v. Irizarry*, 587 F.3d 464 (1st Cir. 2009).

An injunction exercises the equity powers of the court and must conform thereto. *Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc.*, 573 Pa. 637, 828 A.2d 995 (Pa. 2003). The

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state must also prove an injunction “will not substantially harm other interested parties”. *Id.* The state must prove the law makes “the right to relief is clear” and “likely to prevail on the merits.” *Id.* The state must prove the injunction is proportionate to the harm and “reasonably suited to abate the offending activity.” *Id.* The state must prove the injunction “will not adversely affect the public interest.” *Id.*

A motion for stay parallels the standards for modifying an injunction: the appeal presents a significant novel issue of law; the petitioner will suffer irreparable injury without relief; a stay avoids substantial harm to other interested parties; and a stay advances the public interest. *Witmer v. Dep’t of Transp.*, 889 A.2d 638, 640 (Pa. Cmwlth. 2005); *Pennsylvania Public Utility Commission v. Process Gas Consumers Group*, 467 A.2d 805 (Pa. 1983) (hereinafter “*PUC*”). This allows the court to grant a stay even where the court disagrees with the petitioner: a court may find an applicant presented a “substantial case on the merits, even though it disagrees with the applicant’s legal position and may not believe that it will succeed.” *Witmer v. Dep’t of Transp.*, 889 A.2d 638, 640 (Pa. Cmwlth. 2005). This is especially so whenever an appeal “presents a novel legal issue.” *Witmer v. Dep’t of Transp.*, 889 A.2d 638, 640 (Pa. Cmwlth. 2005). Moreover, the balancing standard for irreparable harm can be met in cases where there is only monetary harm. *PUC* at 809-10. In *PUC*, for example, the Court recognized that even where a court finds that the realities of a controversy or issue of statutory interpretation go to the disposition of money (i.e., are commercial in nature), a movant can demonstrate a sufficient

showing of irreparable harm likely to affect the regulated movant. *Id.*

A key issue presented in this appeal is a significant novel question of law for Pennsylvania: whether the state's raw milk laws can reach beyond the state of Pennsylvania. A novel question of law meets the first threshold for granting a stay pending appeal. The other key

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components are also met, given the irreparable injury to Defendants, the substantial harm to other interested parties can be avoided with this modest modification of the injunction which merely copies the words of the statute, and the public benefit in Constitutional protection is equally assured. As witnesses testified, the farm faces substantial irreparable injury without relief, out-of-state purchasers of raw milk products from the farm will suffer substantial harm if not afforded access to these products, and the public benefits from protection of Constitutional rights. By contrast, the state's interest in protecting in-state customers is still preserved by this modest modification.

II. Limiting the Injunction to Sales “Within the Commonwealth of Pennsylvania” Is Consistent with the Law & Constitution

Defendants principally request that only three words be added to the injunction as worded. Defendants request the words "within this Commonwealth" be added to the first paragraph after the words "marketing or sale of raw milk products" to read "marketing

or sale of raw milk products within this Commonwealth." While arguably this can be interpreted as the intention of the injunction and inherent to the limits of a state's jurisdiction, these words of clarity greatly assist avoiding substantial harm to other interested parties. These words also derive directly from the raw milk permitting statute. 31 P.S. Food § 646. The statute only authorizes an injunction of sales requiring a permit and the permit only governs sales "within this Commonwealth." 31 P.S. Food §§ 646; 660(f).

Critically, any interpretation of the statute to allow Pennsylvania to govern interstate sales would violate the Supremacy Clause, Commerce Clause, the Privileges and Immunities Clause and the Right to Travel Clause of the U.S. Constitution. The Supremacy Clause, the Commerce Clause, the Privileges and Immunities Clause and the Right to Travel limit the legal authority of states to govern sales to customers outside their own states, as the Supreme Court

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repeatedly held in the food law context. *City of Philadelphia v. New Jersey*, 437 U.S. 617 (1978); *West Lynn Creamery, Inc. v. Healy*, 512 U.S. 186 (1994); *Baldwin v. G.A.F. Seelig* 294 U.S. 511 (1935); *Minnesota v. Barber*, 136 U.S. 313 (1890); *Pike v. Bruce Church Inc.*, 397 U.S. 137 (1970). Pennsylvania law conforms with the Supreme Court's holdings. The raw milk laws repeatedly limit the scope of the law, including the injunction statute, to "sale within this Commonwealth." 31 P.S. Food § 646. The raw milk permit statute limits the scope to sales "within this Commonwealth." 31 P.S. Food § 646. The raw milk sales injunction statute equally limits it to those sales "without a permit as provided in this act." 31 P.S. Food §§ 646; 660(f). The only sales requiring a permit are those "within this Commonwealth." 31 P.S.

Food §§ 646; 660(f). At a minimum, this question of extraterritoriality of the raw milk permit statute is a sufficiently novel question of law that a stay of that part of the injunction is warranted pending appeal, given the irreparable injury to Defendants and substantial harm to other interested parties without that relief pending full appellate resolution of this critical Constitutional question.

III. Unauthorized Website Added to Injunction

Separately, as arose during the hearing, Defendants request an additional fourth paragraph to address a website that Defendants do not control, but continues to falsely claim marketing of Defendants' products, including raw milk products. Defendants request the inclusion of this added paragraph: "The owner of the website millersorganicfarm.com shall cease all marketing of Defendants' products."

IV. Applying The Correct Criteria Here, A Modification Is Warranted & The Commonwealth Court's Order Should Be Modified or The Partial Stay Granted

Applying the standards established by the Pennsylvania Supreme Court to the instant case, the issuance of a stay or modification is justified. As a threshold matter, Defendants have raised significant legal issues involving an interpretation of the Pennsylvania Code and

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Constitution and have made a substantial case on the

merits. *PUC*, 467 A.2d 805, 809-10 (Pa. 1983). Thus, under the balancing standards expressed in *PUC*, the Defendants have satisfied the standard—setting forth legal harms and irreparable harms for both the Defendants’ monetary realities as well as to the Amish, community-wide losses and third party-member health or monetary harms. *PUC*, 467 A.2d 805, 809-10 (Pa. 1983).

No harm would befall the PDA as a result of a stay of the Order here. Further, no harm to the public interest would result from the issuance of a modification or partial stay under the facts of this case. Finally, both the PDA and the public have an interest in having the substantial legal issues raised by Defendants’ appeal decided correctly on the merits.

WHEREFORE, Defendants respectfully request that the Lancaster County Court of Common Pleas modify the injunction issued on March 1, 2024, or alternatively grant a partial stay of the injunction pending appeal, consistent hereto.

Dated: March 4, 2024

By: /s/ Robert E. Barnes Robert E. Barnes
CA. Bar ID #: 235919 Barnes Law, LLP

[700 S. Flower Street, Suite 1000 Los Angeles, CA 90017](#)

Telephone: (310) 510-6211

Fax: (310) 510-6225

Email:

Bradford L. Geyer

Pa. Bar ID #: 62998 FormerFedsGroup.Com

[141 I Route 130](#) South, Suite 303 Cinnaminson, NJ 08007

Telephone: (888) 486-3337

Email:

Attorney for Defendants