

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: Sponauble  
 :  
 :  
 : **CIVIL ACTION**  
 :  
 :  
 : Case No. 24-00528  
 :  
 :  
 :  
 :  
 :  
 :  
 :  
 :  
 :  
 :

**DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S  
EXPEDITED MOTION FOR CLARIFICATION OF MARCH 19, 2024 INJUNCTION  
ORDER**

**TO THE HONORABLE JUDGE OF THE COURT AND TO PLAINTIFFS AND THEIR  
ATTORNEYS OF RECORD:**

Defendants hereby oppose Plaintiffs' *Expedited Motion for Clarification of March 19, 2024 Injunction Order* (the "Motion") as set forth herein.

**I. INTRODUCTION**

The PDA asks this court to do precisely what the court told all parties and the public the court would not do: usurp the legislature and amend the law. The PDA goes even further: it demands the court amend the United States Constitution as well. The court has already rejected this exact same argument made by the PDA in their opposition to Defendants' motion for modification, and they cite no new fact or argument to reverse the court's decision.

The PDA seeks this court's license to usurp Congress as well as the state legislature. The law is clear: it only applies to sales to Pennsylvania customers within the state. By contrast, the language the PDA wants to add—"from the Commonwealth" & "regardless of where customers reside"—does not exist in the statute. Nor could it exist Constitutionally. The food laws govern access to Pennsylvania customers because that is what the legislature chose to do and what the Constitution allows them to do; the laws do not regulate producers, processors, or possessors of food intended for export to out-of-state markets. Consider the absurd havoc created by the PDA's amendment of the law they ask this court to do—anyone traveling through Pennsylvania with food intended for sale outside the state is now subject to PDA jurisdiction and restrictions, such that someone traveling from West Virginia through Pennsylvania to another state with food intended for sale outside Pennsylvania can be stopped, searched, seized, fined, enjoined, penalized, and imprisoned. Food producing, processing, and transporting facilities for export outside Pennsylvania—of which there are thousands of people employed in Pennsylvania—would now be banned overnight and wake up criminals. This is not what the legislature authorized nor what the Constitution allows. Contrary to PDA's claims, food intended for export is already regulated by Congress, as the Defendants' half-decade of litigation reflects.

The PDA goes even further—it would redefine the word “sells” to include mere “exchange” or “delivery” regardless of intent to sell or actual sale. The PDA’s judicially engrafted amendment of the law would make every potluck meal, every Thanksgiving lunch, every Christmas dinner, and every Easter brunch illegal in the state of Pennsylvania. This is precisely why the legislature limited the scope of the law. Agriculture Secretary Redding may think the legislature gave him the power to be the Food Pope of Pennsylvania – no one can eat any food anywhere until and unless Pope Redding blesses it first—but the legislature did no such thing, nor could it Constitutionally.

The PDA asks this court to make up a new law that would also violate the Supremacy Clause, the Commerce Clause, the Right to Travel Clause, the Privileges and Immunities Clause, and the Due Process Clause of the United States Constitution. The Fourth and Fifth Amendments prohibit state seizure of property without due process of law, probable cause, or just compensation. The right to travel, privileges and immunities, and the due process clause assure access to traditional foods essential to health and consumed with the informed consent of a willing consumer. The PDA’s permitted scope of police power is to protect Pennsylvania consumers concerning Pennsylvania-made products, not Tennessee consumers from themselves.

The PDA would make criminals of all those who produce, process, or possess food intended exclusively for export to out-of-state markets. People produce, process, and possess food products unlicensed by PDA at farms, processors, shippers, transporters, and distributors in Pennsylvania for export every day. PDA would make them all criminals merely because the food product at some point is within Pennsylvania's borders. Congress governs interstate commerce, not the PDA. The Constitution says so. The FDA preempts the PDA, and the PDA does not get

to roleplay FDA or replace the FDA. If PDA does not like the law, appeal to Congress, not the courts.

## II. LEGAL STANDARD

“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.”

*Ambrogio v. Reber*, 932 A.2d 969, 974 (Pa. Super. 2007). It cannot be said that issuing the first-ever injunction in state history on a dairy farmer exporting his food to another state to a willing consumer of that food is an equitable or judicious use of emergency injunctive power. That is especially so when the law does not authorize it, and the Constitution does not allow it. At a minimum, it cannot be said that the “right to” enjoin exports “is clear” in the law, nor that the “wrong” of willing, informed, out-of-state consumers getting traditional foods they testified they need for their health is a “manifest wrong to be remedied.”

Of note—the PDA’s own testing showed no e-coli, and the leading raw milk safety expert in the nation testified that the raw milk products of defendants were safe for human consumption at the evidentiary hearing. Despite extensive testing, invasive surveillance, and access to a global database, the PDA could provide not a single witness who consumed the Defendants’ food products to testify otherwise. As every PDA official confessed under cross-examination, no customer of the defendants has ever complained about any food product of the defendants despite the millions of food products distributed to tens of thousands of Americans over decades. The only harm would come from people denied access to defendants’ products.

The PDA asks this court to use its injunctive powers to amend the law, add text that does not exist, and amend the United States Constitution as well, giving the PDA the power to govern the whole world whenever food touches inside its borders. The court is here to enforce the law,

not amend the law. The court’s current injunction should remain as it is written, needing no modification, as it merely mirrors the law as written, not as the PDA would wish the law was written.

### **III. ARGUMENT**

The law is clear in its limits: “No person shall sell milk, milk products or manufactured dairy products **WITHIN THIS COMMONWEALTH** without first having obtained a permit.” 31 P.S. 646 (caps added). The PDA would have this court remove that provision, redefine the word “sale” to apply to sales outside this commonwealth, and **effectively criminalize interstate commerce if a food product merely touches within the state’s borders at any point unless it is from a Pennsylvania-permitted food facility—when the legislature authorized no such thing, and the Constitution of the United States explicitly forbids it.** Indeed, the PDA would redefine the word sale to take out the word “sell” altogether, applying it to any effort to merely “distribute” food, criminalizing half the state whenever they make food for their family, friends, or neighbors, without any intent to sell ever. This is the biggest unlawful power grab in the history of the state.

#### **A. The PDA Asks This Court Usurp the Legislature & Amend the Law**

The laws relied upon for this court’s injunction are clear: they only apply to sales “**within this Commonwealth.**” 31 Pa. Stat. § 646. The laws governing milk other than raw milk state the same. The permit is only required to “sell milk, milk products or manufactured dairy products **within this Commonwealth.**” 7 Pa. Stat. 59a12. **The phrase the PDA demands this court add—“regardless of where Defendants’ customers reside” does not exist in the statute anywhere.** The PDA tries to add the word “from” to the law, but that doesn’t exist in the law either. The legislature could have banned sales “from” the Commonwealth, but it chose not to; instead, it

explicitly and expressly limited the law to sales “within this Commonwealth” only, exactly as this court’s order states. That alone is grounds for this court to deny the PDA’s request as the court already did.

The PDA goes even further: it asks the court to redefine the word selling to not only include what the legislature expressly and explicitly excluded – sales outside the commonwealth—but also to redefine the word sale to include “distribution” regardless of intent to sell. The PDA just made every potluck dinner in Pennsylvania a crime.

Significantly, the legislature only requires permits for selling, not for possessing, producing, or processing. The law only states no person “shall sell”; it does not say no person shall “possess,” “produce,” or “process.” The PDA would not only add words the law expressly and explicitly excludes—but would redefine the definition of the word sells to include not selling! The PDA would strip the words “intent to sell” to only mean “deliver” or “intent to deliver.” That would make the law ban potluck dinners without a permit, family Thanksgiving without a permit, and Easter Sunday dinners without a permit. That’s how insane the PDA’s power grab is. In this case, the PDA already asserted that authority, having ordered Amos Miller to ration his own food from his own farm to his own family—and how much he could feed his own family—or even his own pigs. It is this kind of power grab that has enraged people across the country, including Presidential candidate Robert Kennedy and leading agriculture committee Congressman Thomas Massie. *Declaration of Robert E. Barnes.*

The PDA asks this court to add language to the injunction that doesn’t exist in the law. The PDA asks the court to add “regardless of where Defendants’ customers reside.” That exists nowhere in the law. In fact, it contradicts the law. The PDA would also ban the mere delivery of raw milk products by misconstruing the statutory definition of sale. This court already rejected

what the PDA requests here: applying the milk permit laws to sales to people outside the state. PDA made the exact same argument they make now in their opposition to the defendant's modification motion, and the court rejected their requested language then and should do so now.

**B. The PDA Asks This Court Ignore the Public Policy Behind the Law**

The PDA completely ignores the law's intent. According to the PDA, the legislature intended to make PDA a substitute for the FDA, governing all food everywhere to "protect" people from themselves and to dictate their diets around the globe. If any food product ever crosses into their borders, the PDA must permit it before anyone, anywhere, can consume it, as the PDA claims the power to govern the mere "exchange" or "distribution" of food regardless of intent to sell (as a "sale"), and food consumed outside the state by citizens of other states, to extend their power "regardless of where the customers reside." That is not the law.

The law governs Pennsylvania customers concerning Pennsylvania food products: interstate commerce only. Protecting Pennsylvania's citizenry is within its police power, not "protecting" other states' citizens from themselves, as the PDA demands. An attempt to restrict what a farmer could do on his own land would raise its own Constitutional issues, but the legislature avoided those issues by not making the law apply to producers, processors, or possessors of food products, but only to "sell within this Commonwealth."

For example, the legislature made it clear in establishing authority to enter into interstate compacts concerning food that the purpose of all these laws is "to ensure inhabitants of this Commonwealth that food sold in this Commonwealth complies with this subchapter and its regulations." 3 Pa. C.S. § 5733(c). The entire focus of the law is solely to protect "inhabitants of this Commonwealth" concerning "food sold in this Commonwealth," not exports to other states.



The PDA also falsely claims no regulations apply to sales to customers outside Pennsylvania. This is a lie. As PDA admitted to this court at the hearing, **the USDA and FDA govern sales to customers outside Pennsylvania. 21 C.F.R. 1240.61.** Defendants spent years working out solutions with the Federal government on its operations, which PDA never objected to and would now unilaterally undermine. **The PDA may want to be the world’s FDA, but the law gives them no such authority, nor could it Constitutionally.**

### **C. The PDA Asks This Court Amend the Law & Amend the Constitution**

The law is clear in its limits: “No person shall sell milk, milk products or manufactured dairy products **WITHIN THIS COMMONWEALTH** without first having obtained a permit.” 31 P.S. 646 (caps added). The permit is only required to “sell milk, milk products or manufactured dairy products **within this Commonwealth.**” 7 Pa. Stat. 59a12. **The PDA’s requested legislative amendments—add the word “from” the Commonwealth to “within” the Commonwealth, add the words “regardless of the customer’s residence,” and interpret the word “sell” to include mere possession, processing, production, or “delivery” without regard to sale – would violate both the Pennsylvania Constitution’s Declaration of Rights and the United States Constitution. *Pa. St. Bd. of Pharmacy v. Pastor*, 272 A.2d 487 (Pa. 1971); *Hertz Drivurself Stations, Inc. v. Siggins*, 58 A.2d 464 (Pa. 1948); *Gambone v. Commonwealth*, 101 A.2d 634 (Pa. 1954); *Commonwealth ex rel. Woodside v. Sun Ray Drug Co.*, 116 A.2d 833 (Pa. 1955). Critically, **any interpretation of the statute to allow Pennsylvania to govern exports to other states 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 repeatedly held in the context of food****

law. *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). The state provided no rebuttal at all to these precedents in either their opposition to the modification motion or their own modification motion.

### **1. PDA’s Amendment of the Law Would Amend the Constitution in Violation of the Commerce Clause**

Article 1, Section 8, Clause 3 of the United States Constitution gives exclusively to Congress—alone—the power “to regulate commerce with foreign Nations and among the several States, and with the Indian tribes.”

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 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). The laws governing milk other than raw milk state the same. The permit is only required to “sell milk, milk products or manufactured dairy products within this Commonwealth.” 7 Pa. Stat. 59a12.

Laws that attempt to regulate food intended for out-of-state sales merely because the food may be produced, processed, or possessed in-state at some point are precisely the laws that “have been consistently invalidated by this Court under the Commerce Clause.” *Pike v. Bruce Church Inc.*, 397 U.S. 137, 142 (1970) (citing *Foster-Fountain Packing Co., v. Haydell*, 278 U.S. 1; *Johnson v. Haydel*, 278 U.S. 16; *Toomer v. Witsell*, 334 U.S. 385; *Lemke v. Farmers Grain Co.*,

258 U.S. 50; *Shafer v. Farmers Grain Co.*, 268 U.S. 189). Burdening in-state food production for out-of-state sales is the kind of “particular burden on commerce has been declared to be virtually **per se illegal**.” *Pike v. Bruce Church Inc.*, 397 U.S. 137, 145 (1970). It is up to the federal government, not a state government, to “safeguard the customer from the time food is introduced into the channels of interstate commerce to the point that it is delivered to the ultimate consumer.” *United States v. Wiesenfeld Warehouse Co.*, 376 U.S. 86, 92 (1964). Congress governs interstate commerce, considering it interstate if “they will end their transit after purchase in another state.” *Bruhn’s Freezer Meats v. U.S.*, 438 F.2d 1332, 1339 (8th Cir. 1971). Indeed: “[I]t is **settled doctrine that where one purchases goods in one state for transportation to another, the interstate commerce transaction includes the purchase as well as the transportation.**” *Id.* (citing *United States v. Rock Royal Co-Op*, 307 U.S. 533 (1938); *Dahnke-Walker Milling Co., v. Bondurant*, 257 U.S. 282 (1921); *Swift Co. v. United States*, 196 U.S. 375 (1904)).

**The Supreme Court struck down the Milk laws of other states whenever they tried to govern interstate commerce.** *Baldwin v. G.A.F. Seelig* 294 U.S. 511 (1935). A state “has no **power to project its legislation**” into another state concerning food. *Baldwin* at 521. “Such a power, if exerted, will set a barrier to traffic between one state and another as effective as if customs duties equal to the price differential has been laid upon the thing transported.” *Baldwin* at 521. **This is precisely “the express prohibition of the Constitution” and what the Constitution makes “beyond the power of a state.”** *Baldwin* at 522. “It is the established doctrine of this court that a state may not, in any form or under any guise, directly burden the prosecution of interstate business.” *Baldwin* at 522. If a product merely “contain[s] components that have been shipped interstate,” then federal law governs. *Impro Product, Inc., v. Herrick*, 715 F.2d 1267, 1269 (8th Cir. 1983). The Constitution averts conflicts between states concerning what is “good” for their

respective citizens “by subjecting commerce between the states to the power of the nation” in Congress exclusively. *Baldwin* at 522.

The Supreme Court denied states the very power the PDA now seeks more than a century ago. Minnesota tried to impose its inspection laws on interstate commerce. “A burden imposed upon interstate commerce is not to be sustained simply because the statute imposing it applies alike to the people of all states, including the people of the state enacting it.” *Minnesota v. Barber*, 136 U.S. 313 (1890) (striking down food inspection laws that limited interstate commerce). PDA would have this court declare as criminals anyone producing or possessing food within the state’s borders for sale anywhere in the world, which is precisely what the Supreme Court already ruled a state cannot do. Indeed, what the PDA seeks “would result in the destruction of commerce among the several states, so far as such commerce is involved in the transportation from one part of the country to another of...human food.” *Barber* at 321. A law that “ignores the right which the people of other states have in commerce between those states and the State of Minnesota” and “ignores the right of people of Minnesota to bring into that state” food products for sale is an unconstitutional law. *Barber* at 329.

Consider the havoc the PDA’s position would have on interstate commerce: no one could produce, process, or possess food intended for sale outside the state unless from a state-permitted facility, making criminals of thousands of people in the state overnight. It is precisely the kind of havoc on interstate commerce the Constitution prohibits, and the Supreme Court invalidates. *Bibb v. Navajo Freight Lines., Inc.*, 359 U.S. 520, 522 (1959). The Supreme Court even struck down state laws trying to limit the export of their own groundwater to another state. *Sporhase v. Nebraska ex rel. Douglas*, 458 U.S. 941 (1982). As the Supreme Court made clear: “[T]he agricultural markets...provide the archetypal example of commerce amongst the several states

for which the Framers of our Constitution intended to authorize federal regulation.” *Sporhase* at 953. Notably, the state’s police power is limited to “protecting the health of its citizens.” *Sporhase* at 956.

## **2. PDA’s Amendment of the Law Would Amend the Constitution in Violation of the Supremacy Clause**

Article VI, Section 2 of the Constitution states “the laws of the United States shall be the supreme law of the Land and the Judges in every state shall be bound thereby.” As PDA previously admitted, the FDA has issued extensive control over interstate commerce concerning milk, completely preempting the field. 21 C.F.R. 1240.61. As the Supreme Court reiterates: “under the Supremacy Clause, from which our preemption doctrine is derived, any state law however clearly within a State’s acknowledged power which interferes with or is contrary to federal law, must yield.” *Mutual Pharmaceutical v. Bartlett*, 570 U.S. 472, 480 (2013). The PDA’s attempt for this court to usurp the legislature would also violate the Constitution.

Courts repeatedly reject efforts to supplant the federal government in the field of interstate commerce governing food or medicine sales. *Natl. Meat Ass’n v. Harris*, 565 U.S. 452 (2012); *Rigel v. Medtronic, Inc.*, 552 U.S. 312 (2008); *Bowling v. Johnson & Johnson*, 65 F.Supp.3d 371 (S.D.N.Y. 2014); *Marentette v. Abbot Laboratories, Inc.*, 886 F.3d 112 (2d Cir. 2018); *Dachauer v. NBTY, Inc.*, 913 F.3d 844 (9<sup>th</sup> Cir. 2019); *Carol Leining v. Foster Poultry Farms and American Humane Association*, 61 Cal. App. 5<sup>th</sup> 203 (Cal. 2021); *Webb v. Trader Joe’s Co.*, 999 F.3d 1196, 1204 (9<sup>th</sup> Cir. 2021); *National Broiler Council v. Voss*, 44 F.d3 740 (9<sup>th</sup> Cir. 1994); *Armour & Co. v. Ball*, 468 F.2f 76 (6<sup>th</sup> Cir. 1972); *Northwestern Selecta, Inc. v., Munoz*, 106 F.Supp.2d, 233 (D. Puerto Rico 2000); *In re PepsiCo., Inc., Bottled Water Mktg. and Sales Practices Litig.*, 588 F.Supp.2d 527, 532 (S.D.N.Y. 2008).

**3. PDA’s Amendment of the Law Would Amend the Constitution in Violation of the Right to Travel Clause, the Privileges and Immunities Clause, the Takings Clause, the First Amendment Freedom of Religion, the Fourth Amendment Right to Privacy, and the Fifth Amendment Right to Due Process of Law**

As articulated by legal scholars in the field, **access to traditional foods directly from the producer of that food is a fundamental right protected under multiple clauses and amendments of the Constitution of Pennsylvania as well as the Constitution of the United States.** Berg, David J., *Food Choice is a Fundamental Liberty Right*, 9 *Journal of Food Law & Policy* 2 (2021). A law “may not impose a penalty upon those who exercise a right guaranteed by the Constitution.” *Harman v. Forssenius*, 380 U.S. 528, 540, 85 S.Ct. 1177, 1185, 14 L.Ed.2d 50 (1965). Indeed, our “Constitutional rights would be of little value if they could be . . . indirectly denied.” *Id.* Laws that have “no other purpose or effect than to chill the assertion of constitutional rights by penalizing those who choose to exercise them” are “patently unconstitutional.” *U.S. v. Jackson*, 390 U.S. 570, 581 (1968).

Equally, the **Privileges and Immunities Clause** of the Constitution allows the residents of one state to enjoy the privileges and immunities of the residents of another state. **Article IV, Section 2** provides, “**the citizens of each state shall be entitled to the privileges and immunities of citizens in the several states.**” This includes the **right to travel and the carrying on of interstate commerce.** *Crutcher v. Kennedy*, 141 U.S. 47, 57 (1891). The United States Supreme Court long recognized a constitutional right to travel. *United States v. Guest*, 383 U.S. 745, 757, 86 S.Ct. 1170, 1178, 16 L.Ed.2d 239 (1966); *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 901-902 (1986); *Saenz v. Roe*, 526 U.S. 489, 501 (1999).

With respect to the right to travel, this means that a state or federal law that does not promote a compelling governmental interest will be struck down if it “implicates the right to travel when it actually deters such travel, (citations omitted), when impeding travel is its primary objective, (citations omitted), or when it uses ‘any classification which serves to penalize the exercise of that right.’” *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 903 (1986); *Crandall v. State of Nevada*, 73 U.S. 35, 47, (1867) (law that required Nevada railroads and stagecoach operators to collect a tax from each individual passenger who entered or left Nevada violated right to travel); *Dunn v. Blumstein* 405 U.S. 330, 339-342 (1972) (law that imposed a durational requirement in order to exercise the right to vote in Tennessee violated right to travel, even when none of the litigants had been deterred from voting); *Zobel v. Williams*, 457 U.S. 55, 62, fn. 9 (1982) (law that distributed income derived from state oil resources in Alaska to residents based on length of residency violated equal protection and right to travel).

The PDA’s prohibition of making raw milk available to out-of-state residents who have testified they desperately need it would operate as nothing more than a barrier to the free movement across State lines with raw milk and raw dairy products as a “classification which serves to penalize the exercise of” the fundamental right to travel to “chill” or “obstruct” or “interfere with” or “restrict” the right to travel across state lines with raw dairy in one’s possession. *Shapiro v. Thompson*, 394 U.S. 618, 634 (1969).

When analyzing a substantive due process claim, the reviewing court should begin “by examining our Nation's history, legal traditions, and practices.” *Washington v. Glucksberg*, 521 U.S. 702, 710 (1997). *See also Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705 (1973); *Moore v. East Cleveland*, 431 U.S. 494, 503, 97 S.Ct. 1932, 1937-1938, 52 L.Ed.2d 531 (1977) (plurality opinion); *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 851 (1992).

These factors include “our philosophical, legal, and cultural heritages.” *Washington v. Glucksburg*, 521 U.S. at 711.

The right to consume the food of one’s choice for oneself and one’s family is consistent with this country’s heritage since 1607. Moreover, the requirement that milk be “pasteurized” is a recent event in this nation’s history. Finally, there was never any prohibition against taking raw dairy across state lines until 1973—and no full and complete prohibition until 1987. This country’s citizens have been drinking raw milk and consuming raw dairy products like cheese, kefir, yogurt, and butter from the 1600s to the present. In fact, USDA keeps statistics on the number of gallons of raw milk consumed by dairy farmers all over the country. For example, from 1996 to 2005, USDA estimates that farmers consumed nearly two billion pounds of raw milk, as either fluid milk or cream, at the farm where the raw milk was produced. See National Agriculture Statistics Service data at [http://www.nass.usda.gov/Publications/Ag\\_Statistics/2007/2007.pdf](http://www.nass.usda.gov/Publications/Ag_Statistics/2007/2007.pdf), table 8-16. (Agricultural Statistics 2007, Chapter 8, Dairy and Poultry Statistics). To paraphrase Hippocrates, “[L]et your medicine be your food and let your food be your medicine.”

Food is also central to traditional family life, the right to bodily autonomy, the right to privacy, the right to political expression and religious affiliation, all of which find expression and protection in both the Declaration of Rights of the Constitution of Pennsylvania and the Clauses and Amendments of the United States Constitution. *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510 (1925); *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1925); *Rochin v. California*, 342 U.S. 165 (1952); *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Loving v. Virginia*, 388 U.S. 1 (1967);



*Cruzan v. Dir. Mo. Dep't of Health*, 497 U.S. 261 (1990); *Troxel v. Granville*, 530 U.S. 57 (2000); *Lawrence v. Texas*, 530 U.S. 558 (2003); *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

To prevent a person from consuming the foods of their own choice is a denial of that person's liberty. Our liberties are protected by substantive due process, whose purpose is "to prevent government from abusing [its] power, or employing it as an instrument of oppression" (citations and quotations omitted) and to "protect the people from the State, not to ensure that the State protect[s] them from each other." *DeShaney v. Winnebago County Dept. of Social Services*, 489 U.S. 189, 196 (1989). Substantive due process also "forbids the government to infringe certain 'fundamental' liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." *Reno v. Flores*, 507 U.S. 292, 302 (1993) (emphasis in original). If the right of privacy means anything, it is "the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters [that] fundamentally affect[] a person....". *Eisenstadt v. Baird*, 405 U.S. 438, 459 (1972).

The PDA seeks authority neither the legislature of this state nor the Constitution ever afforded. Scholars, journalists, and historians alike condemn this kind of power grab. David E. Gumpert, *Life, Liberty and the Pursuit of Food Rights* (2013); Michael Pollan, *The Food Movement Rising*, N.Y. Review of Books, June 10, 2010; Jaime Bouvier, *The Symbolic Garden: An Intersection of the Food Movement and the First Amendment*, 65 ME.L.REV. 426, 430 (2013); Carole A. Bisogni et al., *Who We Are and How We Eat: A Qualitative Study of Identities in Food Choice*, 34 J. Nurt. Educ. & Behav., 128 (2002).

"Was the government to prescribe to us our medicine and diet, our bodies would be in such keeping as our souls are now" under tyranny. Thomas Jefferson so stated in *Notes on the*

*State of Virginia.* Jefferson decried foreign efforts to ban food from the informed consent of the consumer as an existential threat to fundamental liberty, and the PDA proves the wisdom of his words.

#### IV. CONCLUSION

When the defense counsel raised concerns about the raw milk statute, the court advised the counsel to go to the legislature to amend the law. Now, it is the Plaintiffs that demand the court amend the law. One of the best rules of legal principle is that what is good for the goose is good for the gander. If the PDA wants to change the law, go to the legislature and go to Congress, not the courts. Secretary Redding may fancy himself the Pennsylvania Pope of Food for all Americans – no one is allowed to eat anything until he blesses it with his licensure regimen – but that is not the law, nor can it ever Constitutionally be. The court’s current order is consistent with the law as written, avoids unnecessary Constitutional conflicts, and comports with the equitable role of the court at this preliminary stage of the case.

**WHEREFORE**, Defendants respectfully request the Court deny the Plaintiff’s motion to further modify the order.

Dated: April 3, 2024

By: /s/ Robert E. Barnes  
Robert E. Barnes  
Barnes Law, LLP  
CA. Bar ID #: 235919  
700 S. Flower Street, Suite 1000  
Los Angeles, CA 90017  
Telephone: (310) 510-6211  
Fax: (310) 510-6225  
Email: robertbarnes@barneslawllp.com

Bradford L. Geyer  
Pa. Bar ID #: 62998

FormerFedsGroup.Com  
141 I Route 130 South, Suite 303  
Cinnaminson, NJ 08007  
Telephone: (888) 486-3337  
Email: brad@formerfedsgroup.com

*Attorney for Defendants*

**CERTIFICATION**

I hereby certify that this filing, **Defendants' Memorandum Of Law In Opposition To Plaintiff's Expedited Motion For Clarification Of March 19, 2024 Injunction Order**, complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

April 3, 2024

/s/ Robert E. Barnes  
Robert E. Barnes

**CERTIFICATE OF SERVICE**

I hereby certify that on April 3, 2024, I caused a true and correct copy of the foregoing **Defendants' Memorandum Of Law In Opposition To Plaintiff's Expedited Motion For Clarification Of March 19, 2024 Injunction Order** to be filed via Lancaster County's Court of Common Pleas E-Filing system as stated and served via E-Mail and certified prepaid mail upon the following:

**Heather Z. Kelly**

PA I.D. # 86291

Senior Deputy Attorney General

**John M. Abel**

PA I.D. # 47313

15th Floor, Strawberry Square

Harrisburg, Pennsylvania 17120

Kelly: (717) 678-4613

hkelly@attorneygeneral.gov

Abel: (717) 497-5931

jabel@attorneygeneral.gov

*Attorneys for Plaintiffs*

By: /s/ Robert E. Barnes

Robert E. Barnes

Barnes Law, LLP

CA. Bar ID #: 235919

700 S. Flower Street, Suite 1000

Los Angeles, CA 90017

Telephone: (310) 510-6211

Fax: (310) 510-6225

Email: robertbarnes@barneslawllp.com

Bradford L. Geyer

Pa. Bar ID #: 62998

FormerFedsGroup.Com

141 I Route 130 South, Suite 303

Cinnaminson, NJ 08007

Telephone: (888) 486-3337

Email: [brad@formerfedsgroup.com](mailto:brad@formerfedsgroup.com)

*Attorney for Defendants*

Bradford L. Geyer  
Pa. Bar ID #: 62998  
FormerFedsGroup.Com  
141 I Route 130 South, Suite 303  
Cinnaminson, NJ 08007  
Telephone: (888) 486-3337  
Email: [brad@formerfedsgroup.com](mailto:brad@formerfedsgroup.com)

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: (310) 510-6211  
Fax: (310) 510-6225  
Email: [robertbarnes@barneslawllp.com](mailto:robertbarnes@barneslawllp.com)

***Attorneys for Defendants***

**IN THE COURT OF COMMON PLEAS OF  
LANCASTER COUNTY, PENNSYLVANIA**

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

**DECLARATION OF ROBERT E. BARNES IN SUPPORT OF DEFENDANTS’  
MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF’S EXPEDITED MOTION  
FOR CLARIFICATION OF MARCH 19, 2024 INJUNCTION ORDER**

I, ROBERT E. BARNES, Esq., hereby declare as follows:

1. I am an attorney, admitted pro hoc vice in this action. I am counsel of record for the Defendants. I make this declaration in support of Defendant’s Opposition to Plaintiff’s Motion for Clarification.
2. The facts stated herein are within my personal knowledge and if called upon to testify, I can truthfully and competently do so as to all matters herein.
3. The public statements of public government figures and candidates, Thomas Massie and Robert F. Kennedy, from the online platform “X” and attached hereto are true and accurate, are incorporated and verified through this Declaration to the Defendants’ opposition brief as evidentiary support for the facts contained therein.
4. The following exhibits are attached and are true and accurate copies of documents produced or available through verified the online news and public forum platform known as “X”:
  - a. Attached hereto as Exhibit A, the Statement of Robert F. Kennedy Jr.,

@RobertKennedyJr, stating:

“Let’s stand with Amos Miller and the Amish for food freedom. The government is trying to criminalize all food production outside of approved government processing facilities. This is the final stage of a long war by Big Ag, Food Processors and their government puppets to destroy family farms and wholesome food production. Thank you Amos for standing up for our health and our liberty to grow healthy food.”

and found at <https://twitter.com/RobertKennedyJr/status/1762249203387179219>

is a true and accurate copy of his public statement on the public news and forum of



“X”; last accessed on April 3, 2024, available at <https://twitter.com/RobertKennedyJr/status/1762249203387179219>.

- b. Attached hereto as Exhibit B, the Statement of Robert F. Kennedy Jr., @RobertKennedyJr, stating: “Are we heading toward a society where every activity is forbidden unless you have a government license for it? Not on my watch.”

<https://twitter.com/RobertKennedyJr/status/1762249396404822401>

- c. Attached hereto as Exhibit C, the Statement of Representative Thomas Massie @RepThomasMassie, stating:

“Looks like Amos Miller’s farm is being raided. With all of the problems in society today, this is what the government wants to focus on? A man growing food for informed customers, without participating in the industrial meat/milk complex? It’s shameful that it’s come to this.”

and found at <https://twitter.com/RepThomasMassie/status/1742955184240619949>,

is a true and accurate copy of his public statement on the public news and forum of

“X”; last accessed on April 3, 2024, available at <https://twitter.com/RepThomasMassie/status/1742955184240619949>.

- d. Attached hereto as Exhibit D, the Statement of Representative Thomas Massie, @RepThomasMassie, stating

“There’s a rally today in Pennsylvania preceding Amos Miller’s court case. He’s being prosecuted for operating outside of the onerous regulatory regime that keeps small farmers from providing nutritious food directly to consumers. My raw milk bill & my PRIME Act need to pass now!”

and found at

<https://twitter.com/RepThomasMassie/status/1763227017196060691>,

is a true and accurate copy of his public statement on the public news and forum of “X”; last accessed on April 3, 2024, available at <https://twitter.com/RepThomasMassie/status/1763227017196060691>.

Pursuant to section 6206, I declare under penalty of perjury under the law of the Commonwealth of Pennsylvania that the foregoing is true and correct.

Executed this 3rd day of April, 2024.

/s/ Robert E. Barnes  
Robert E. Barnes, Esq.  
*Declarant*

# Exhibit A



Settings

← Post

 **Robert F. Kennedy Jr**    
@RobertKennedyJr

Let's stand with Amos Miller and the Amish for food freedom. The government is trying to criminalize all food production outside of approved government processing facilities. This is the final stage of a long war by Big Ag, Food Processors and their government puppets to destroy family farms and wholesome food production. Thank you Amos for standing up for our health and our liberty to grow healthy food.

 **Thomas Massie**  @RepThomasMassie · Jan 4

Looks like Amos Miller's farm is being raided.

With all of the problems in society today, this is what the government wants to focus on?

...  
[Show more](#)

5:52 PM · Feb 26, 2024 · 1.4M Views

7,063 Reposts 243 Quotes 27.8K Likes 540 Bookmarks




New to X?

Sign up now to get you



By signing up, you agree [Privacy Policy](#), includin

Relevant peo

 **Robert F. Ke**  
@RobertKer  
Independen  
of the Unite

 **Thomas Ma**  
@RepThom:  
U.S. Repres  
Farmer, Inve  
American. I  
[#sassywithi](#)  
[#politicalsc](#)  
Pappaw

Trends are unava

[Terms of Service](#) [Priv](#)  
[Accessibility](#) [Ads info](#)

Don't miss what's happening

People on X are the first to know.

Log in

# Exhibit B



Settings

Post

Robert F. Kennedy Jr @RobertKennedyJr

Are we heading toward a society where every activity is forbidden unless you have a government license for it? Not on my watch.

Robert Barnes @barnes\_law · Feb 26

Let me explain what the #AmosMiller case is about after a court conference. The @PAAgriculture claims ALL food is "illegal" -- as illegal as illegal drugs -- unless it was made by a government-approved facility, and they can destroy it at will. See brief: vivabarneslaw.locals.com/post/5309392/a...

5:52 PM · Feb 26, 2024 · 756.3K Views

1,929 Reposts 68 Quotes 12.5K Likes 164 Bookmarks



New to X?

Sign up now to get you



By signing up, you agree Privacy Policy, includin

Relevant peo

Robert F. Ke @RobertKer Independent of the Unite

Robert Barr @barnes\_la Trial lawyer, clients in civ law, crimina constitutor

Trends are unava

Terms of Service Priv Accessibility Ads info

Don't miss what's happening

People on X are the first to know.

Log in

# Exhibit C



Settings

Post

Thomas Massie @RepThomasMassie

Looks like Amos Miller's farm is being raided.

With all of the problems in society today, this is what the government wants to focus on?

A man growing food for informed customers, without participating in the industrial meat/milk complex?

It's shameful that it's come to this.

The Lancaster Patriot @TheLanPatriot · Jan 4

BREAKING: State Troopers conducting search warrant on Amos Miller's farm in Lancaster County, PA.



0:43

There's a new version of this post

12:04 PM · Jan 4, 2024 · 2.9M Views

12.1K Reposts 642 Quotes 33.9K Likes 1,090 Bookmarks



New to X?

Sign up now to get you

Sign u

Sign t

Creat

By signing up, you agree Privacy Policy, includin

Relevant peo

Thomas Ma @RepThom

U.S. Repres Farmer, Inve American. I #sassywith #politicalsc Pappaw

The Lancas @TheLanPa

Lancaster C honest new

Trends are unava

Terms of Service Priv Accessibility Ads infr

Don't miss what's happening

People on X are the first to know.

Log in



# Exhibit D

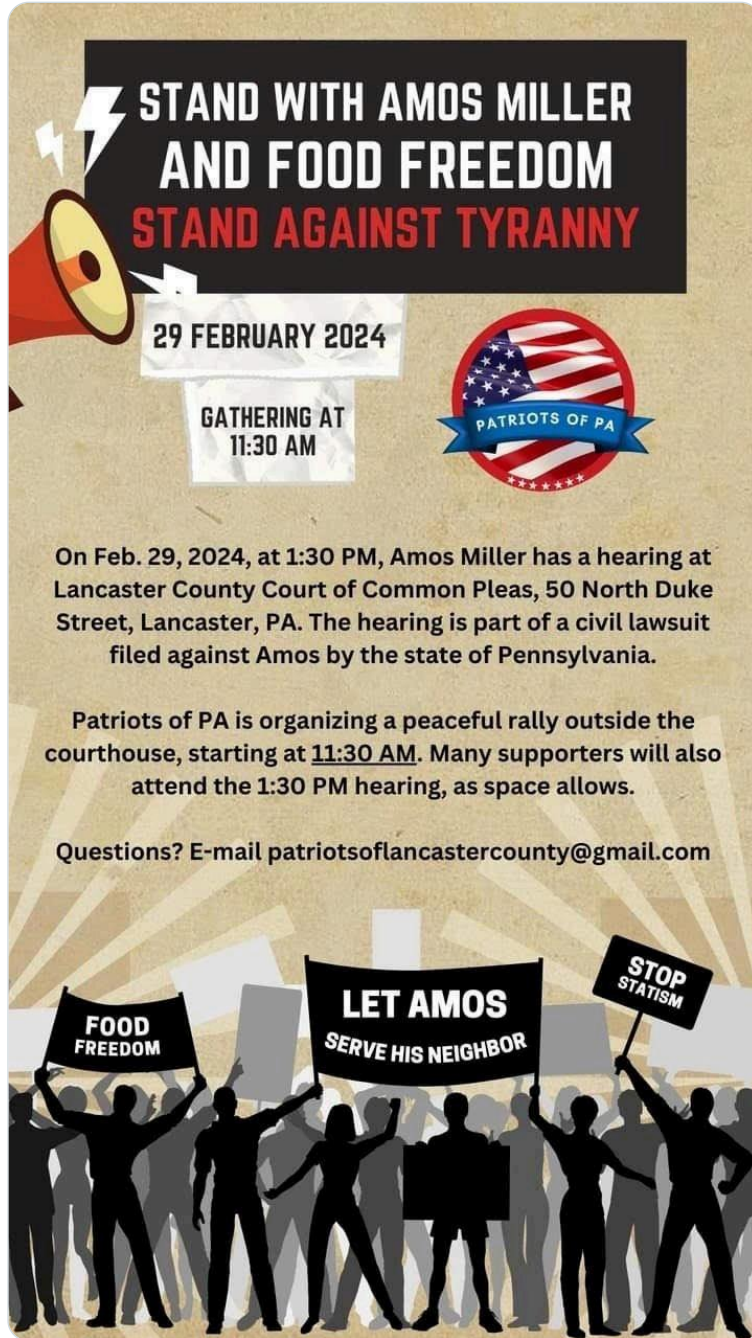


Settings

Post

Thomas Massie @RepThomasMassie

There's a rally today in Pennsylvania preceding Amos Miller's court case. He's being prosecuted for operating outside of the onerous regulatory regime that keeps small farmers from providing nutritious food directly to consumers. My raw milk bill & my PRIME Act need to pass now!



The HighWire @HighWireTalk · Feb 28  
TOMORROW ON THE HIGHWIRE | FEBRUARY 29, 2024

Watch at TheHighWire.com/WATCH  
Every Thursday, 11am PT (2pm ET)

Show more

New to X?

Sign up now to get you

Sign u

Sign t

Creat

By signing up, you agree to our [Privacy Policy](#), including

Relevant peo

Thomas Ma @RepThom: U.S. Repres Farmer, Inve American. I #sassywith #politicalsc Pappaw

The HighWi @HighWireT High above media spin, the corporat HighWire.

Trends are unava

Terms of Service Priv Accessibility Ads inf

Don't miss what's happening

People on X are the first to know.

Log in



Settings



10:37 AM · Feb 29, 2024 · 91.8K Views

1,050 Reposts 45 Quotes 3,649 Likes 34 Bookmarks



34



Don't miss what's happening

People on X are the first to know.

Log in