



Written by [Michael Tennant](#) on December 22, 2011

## Amish Dairy Farmer Selling Raw Milk Won't Be Cowed by FDA

The sale of unpasteurized, or raw, milk is legal in Pennsylvania, where Allgyer lives. In Maryland, where some of his customers live, it is not. The Food and Drug Administration has decided that interstate sales of raw milk, particularly when the state for which the milk is destined bans its sale, are illegal; and that is why Allgyer now finds himself in hot moo juice with the feds.



Currently a food-buying club in Maryland called Grassfed on the Hill sends a truck to Allgyer's farm to purchase and pick up his milk. They then transport it back to their home state, where it is distributed to club members in private homes. Allgyer is not personally selling the milk in Maryland at all.

The FDA, whose headquarters are in Silver Spring, Maryland, apparently got wind of this arrangement and launched an investigation. The agency spent over a year and countless tax dollars on an undercover infiltration of Grassfed on the Hill. Its agents joined the club under assumed names, placed orders for milk, and went into private residences to pick up their purchases. Then the FDA conducted an armed, pre-dawn raid on Allgyer's farm in April 2010, during which agents found raw milk coolers marked for various destinations in Maryland. Now it had all the evidence it needed to prove that Allgyer was engaged in the dastardly act of selling raw milk across state lines.

The Department of Justice is asking U.S. District Court Judge Lawrence Stengel for summary judgment to impose the injunction on Allgyer. All the judge has to do is sign the government's ready-made form, and Allgyer will be banned from ever selling his milk to folks from out of state again, at which point he will be "essentially ... out of business," according to raw-milk advocate [David Gumpert](#).

Actually, he doesn't just get to be put out of business. The proposed injunction provides for the added privilege of having his farm inspected whenever FDA agents are bored or just have the urge, AND he gets to pay big time for the privilege (at rates of \$87.57 or \$104.96 per hour, plus 51 cents a mile for their travel, plus the regular government "per diem" for meals and hotels). One inspection that lasts a day or two, and involves two or three agents, who, of course, have to write up a detailed report afterwards, could cost \$10,000. Maybe they decide to do it once a year, maybe once a month, maybe once a week. Whatever their pleasure.

At the end of five years, Allgyer can tell the court he's been a good boy, and appeal to have the injunction lifted, and maybe it will be and maybe it won't. If not, the inspection arrangement continues. Gumpert takes issue with a number of the "undisputed facts" in the government's case. For one thing, the government asserts that Allgyer's arrangement with the food club amounts to interstate commerce;



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yet the food was purchased in Pennsylvania and driven to Maryland by the organization that had purchased it, where it was then distributed to members. The commerce took place entirely within the bounds of the Keystone State.

In addition, the government leaves out some crucial information. It points out that “a few state courts have addressed” the matters of private food clubs and cow-share arrangements (in which individuals purchase shares in cows and receive the cows’ raw milk in return) but cites only the case in which Wisconsin ruled against such arrangements, conveniently omitting another case in which Ohio ruled in favor of them. Furthermore, while the FDA says that it tested 12 samples of Allgyer’s milk to confirm that it was unpasteurized, it neglects to mention that those tests, whose results Gumpert obtained via a Freedom of Information Act request, also showed that the milk was safe to drink, undercutting the FDA’s [argument](#) that “drinking raw milk is dangerous and [it] shouldn’t be consumed under any circumstances.”

Allgyer is fighting back with what Gumpert [calls](#) “a credible and cogent [response](#)” to the FDA’s motion for summary judgment.

Allgyer makes several arguments as to why summary judgment should be denied and he be given his day in court. First he argues that his arrangement with Grassfed on the Hill is a private agreement not subject to the FDA, citing some Supreme Court decisions to buttress his case. Allgyer also contends that the case is not “a civil matter” but “a quasi-criminal matter because of the severe sanctions and consequences that could occur as a result.” Therefore, he maintains, he is entitled to due process of law, especially since “there was no probable cause to even file a complaint in this instant case.” As Gumpert summarized the argument, “trying to stamp out a small enterprise should require more careful judicial consideration than just signing a pre-printed FDA order form.”

Allgyer further argues that the FDA has not answered Privacy Act questions as required by law, which means that “the information and excessive data [the FDA has] obtained to date from [its] inspections are tainted and cannot be used against us in any matter.” He states that under FDA laws and regulations the warning letters he received from the FDA are not permitted as part of an investigation and should thus be “rescinded, cancelled, abated, and voided.” Finally, he writes that he “requested the oaths of office of the agents involved and did not receive them,” but such oaths must by law be taken and filed or else those agents have no authority to investigate anyone.

Claiming that the FDA’s actions have “created a serious dilemma” for him by violating his rights to due process and equal protection under the law, Allgyer makes one final plea for denial of summary judgment, concluding, “The Defendant is prepared to proceed with a public court forum, if necessary.” This, Gumpert notes, is a step most Amish take very reluctantly; but he also believes that Allgyer has good reason to take it:

The FDA obviously wants to avoid a public confrontation with an Amish farmer, which is why it filed a written motion for summary judgement [sic] in the first place. It hoped the judge would simply sign its pre-printed Permanent Injunction, allowing the big-shot Justice Department lawyers to walk away without having to confront their prey. No, a public hearing, with a humble dairy farmer making his own defense, in front of a courtroom full of buying club supporters, is not what the FDA had in mind when it launched this case last April.

With any luck, however, that is exactly what it is going to get. Then maybe Allgyer and others who in one form or another defy the FDA’s [unconstitutional](#) ban on interstate raw milk sales will be vindicated



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as well.



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