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**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	:	<b>CIVIL ACTION</b>
A. Henry	:	
	:	
Plaintiffs	:	Case No. <u>24-00528</u>
	:	
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.	:	

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**DEFENDANTS' BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS TO  
PLAINTIFFS' COMPLAINT & IN OPPOSITION TO ANY INJUNCTION**

**I. INTRODUCTION**

The PDA asks this court to do what no court in Pennsylvania has ever done: forbid a family farmer from distributing food from his own farm to his own members, his own family, or even his own animals. Indeed, no court in Pennsylvania has ever prohibited a farmer from producing, making, or distributing his own food to anyone. The PDA must prove the food made by Amos Miller's farm is unsafe for human consumption and not capable of being made safe for human consumption. They cannot. Two decades of history prove them wrong. Their own tests prove them wrong. That is why they do not even claim it now. No precedent exists for the power PDA now claims. There is a reason for that: the law doesn't authorize it, nor could it Constitutionally.

**II. PROCEDURAL POSTURE & FACTUAL BACKGROUND**

Amos Miller is an Amish farmer with an 8th grade education in the heart of Amish country: Lancaster County, Pennsylvania. As a matter of tradition and religious belief, the Amish generally do not seek permits, licenses, or the involvement of the state in their lives or livelihoods. Amos Miller's grandfather went to jail here in Lancaster County over the Amish right to educate their children in their own way until the Supreme Court affirmed their right to do so. Amos Miller makes food the same way generations of his family have made it before him for centuries in America, and exactly the way his members want him to. Those who personally visit the farm are struck by its sanitary conditions, modernized equipment, beautiful landscape, well taken care of animal stock, and dedication to organic farming methods consistent with their Amish tradition.



Amos Miller does not operate a retail store or restaurant, nor does he make his farm-made products available to any retail store or restaurant or open to the public. Amos Miller makes the food from his farm and neighboring Amish farmers available only to fellow private members of his farm, and only them. All members know Amos Miller's farm is not a PDA-licensed or PDA-permitted farm; in fact, that is precisely why they are members. They want food made the traditional Amish way; they do not want food the PDA way.

The members of Amos Miller's farm consider their choices an expression of their religious faith, political beliefs, and medical need, protected by their rights under both the United States and Pennsylvania Constitution. In just weeks, hundreds poured in their sworn testimony in support of Amos Miller. Amos Miller also provides a pillar to the Amish community, and the deep ties between their land and their religious beliefs. The loss of Amos Miller's farm will be devastating to his members and the Amish community.

There is a reason the members of Amos Miller's farm choose the Amish way rather than the PDA way. Out of the millions of food product deliveries made by Amos Miller's farming operation to over 10,000 Americans over the last quarter-century, no member of Amos Miller's customer association has ever complained once about the safety of his food. Unlike the corporate food producers who monopolize America's food's supply, Amos Miller has never had any food recall order ever issued. To the contrary, many need food from Amos Miller's farm for their medical needs and the medical needs of their family, including their children. Enjoining them from the chance to have that food endangers their health and the health of their loved ones. Perhaps there is a reason the Amish live longer, healthier and happier lives, and maybe it has something to do with their paramount livelihood: farming and eating the way their, and our, forefathers did.

By contrast, the PDA way has given us a food supply monopolized and corporatized, ultra-processed, made in factories not on farms, laced with additives, preservatives and chemicals foreign to food for most of human history, supervised by bureaucrats who've never farmed a day in their lives and often "retire" to work for the same big corporations they were supposed to govern. Their decades of control of our food supply produced a chronic health epidemic amongst the American people unlike we've ever seen. Why should the PDA get to shut down that Amish way of life and prohibit Americans from partaking by becoming members of Miller's farm merely because the Amish way isn't the PDA way?

Contrary to the claims of the PDA, other government agencies have resolved all concerns with Amos Miller's operations. Since representation by counsel Robert Barnes, all disputes with the federal government concerning food were satisfactorily resolved, contempt orders lifted, fines eliminated, cases dismissed, and food delivery restored. During this time, the PDA were often invited to partake in conference calls with the federal court and given an opportunity to object to any aspect of Amos Miller's operation and agreements with the federal government. The PDA never objected once. During this time, the PDA never reached out to either counsel or Miller to request registration, a permit, a license, inspection, or any other act of Amos Miller. During this time, the PDA never voiced any objection to any aspect of Amos Miller's known operation. During this time, the PDA closely monitored all public aspects of the case, as an Open Records Act request revealed, but never contacted counsel or Amos Miller once. Then, the PDA, in January of this year, after the untimely death of the federal jurist presiding over these matters, suddenly arrived unannounced, with gun-bearing police, raiding Amos Miller's family farm, and conducting a day long search at Amos Miller's farm, seizing items for sampling, and preventing anyone from observing their conduct, including their sampling methodologies.

Of note, when the PDA sought a warrant for this raid, the PDA failed to apprise the Pennsylvania courts of this multi-year recent history, and instead materially misled the court with perjured affidavits often based on events that occurred many years before in order to obtain a search warrant the law did not authorize them to seek. PDA could only cite one single example of any food problem in the quarter-century history of Amos Miller sharing millions of food products with tens of thousands of Americans, and even that was another PDA lie. PDA falsely claimed a person who was not a member of Amos Miller's farm had got access to raw milk produced to one of his members and had suffered serious injury and death. The problem is: it never happened. In fact, the elderly lady who died had advanced cancer, and never drank any raw milk product of Amos Miller's, as her caretaker testified to under oath and a former Wall Street Journal reporter had already previously investigated and independently found. The PDA now claimed another person who was not a member of Amos Miller's farm had got sick from an E-Coli STECH infected eggnog allegedly owned by a member of Amos Miller's association, but their own sampling of Amos Miller's products found no such problem in any of his seized and sampled goods. To date, the PDA has not produced a single case of a single member ever getting sick from any food produced at Amos Miller's farm, ever, an extraordinary record in an era where food recalls are daily issued in this state from other PDA-approved food producers, retailers, and restaurants.

After counsel objected to the illicit search warrant, the illicit method of executing the search warrant, and the refusal to produce timely receipts of the sample testing conducted, the PDA responded by claiming a small portion of the sampled raw milk items had an unidentified amount of listeria tested. Even though small amounts of listeria do not make raw milk unfit for human consumption, Amos Miller still immediately ceased the sale of all raw milk products until

further testing could be conducted. The problem identified a third-party provider, and that third-party provider was immediately excluded. Testing confirmed no listeria problem of any amount at Amos Miller's farm. The other testing by the PDA also confirmed no listeria problem in many of the samples taken, and no problems found at all in most of the samples taken of any kind. The PDA however hid these testing results from both counsel and the court until the eve of this hearing.

PDA's response once again took the path of abuse of power. This time, PDA sought an *ex parte* temporary injunction from this court, by materially misleading and omitting material information from the court. The PDA did not tell the court of the full testing results clearing Amos Miller, and also did not tell the court Miller had already ceased selling raw milk products until testing could give the all-clear. Instead, the PDA quoted counsel out of context, and hid the key information from the court, causing Amos Miller's farm to suffer extreme economic harm and the Amish community to suffer significantly, while members who desperately needed the food staples of the farm were denied access to it for more than a month.

Unsatisfied with an illegal raid and an injunction, the PDA then conducted another unauthorized raid, searched, and seized property of the farm, repeatedly interrogated Amos Miller without the presence of counsel and without notice, and after Miller asserted his right to counsel, penalized Miller with an order destroying food the PDA knew was safe. The PDA even ordered Miller not to feed to his own family or his own pigs without their permission.

The court calendared February 29, 2024, at 1:30 in Courtroom 6 of the Lancaster County Court of Common Pleas to determine whether to extend the injunction currently in force. As the courts warn: "it is equally our duty to protect the public against improper prosecution for

allegedly possessing or selling or offering for sale misbranded or adulterated foods.”

*Commonwealth v. Wilson*, 42 Pa. D & C 495, 498-99 (Co. Ct. 1941). That is necessary here.

### III. ARGUMENT

#### A. Standard of Review

An injunction exercises the equity powers of the court and must conform thereto. The state must prove “immediate and irreparable harm that cannot be adequately compensated by damages.” *Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc.*, 573 Pa. 637, 828 A.2d 995 (Pa. 2003). The state cannot. The state must also prove an injunction “will not substantially harm other interested parties”. *Id.* The state cannot. The state must prove the law makes “the right to relief is clear” and “likely to prevail on the merits.” *Id.* The state cannot. The state must prove the injunction is proportionate to the harm and “reasonably suited to abate the offending activity.” *Id.* The state cannot. The state must prove the injunction “will not adversely affect the public interest.” *Id.* The state cannot. And the state must prove all of those. *Id.* The state cannot prove any of them. A further injunction will cause immediate and irreparable harm to Amos Miller, his family, the Amish community, his farm members, and their Constitutional rights.

“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. See *Vaqueria Tres Monjitas, Inc., v. Irizarry*, 587 F.3d 464 (1st Cir. 2009). A decision addressing a request for a preliminary injunction thus requires extensive fact-finding by the trial court because the moving party must establish it is likely to prevail on the merits. *Synthes USA Sales, LLC v.*

*Harrison*, 2013 PA Super 324, 83 A.3d 242, 249 (Pa. Super. Ct. 2013); *see Summit*, 573 Pa. at 647, 828 A.2d at 1001; *Anglo–American Ins. Co. v. Molin*, 547 Pa. 504, 513, 691 A.2d 929, 933 (1997) (reversing grant of preliminary injunctive relief because moving party failed to establish clear right to relief). If the moving party's right to relief is unclear, then a preliminary injunction should not issue. *Synthes USA Sales, LLC v. Harrison*, 2013 PA Super 324, 83 A.3d 242, 250 (Pa. Super. Ct. 2013); *see also Anglo–American Ins. Co.*, 547 Pa. at 513–14, 691 A.2d at 933–34.

## **B. Pennsylvania Food Laws**

Pennsylvania food law concerns protecting consumers in the commercial retail marketplace from food unfit for human consumption and fraud, enshrining the consumer's informed consent as the basis of the American food commercial retail marketplace. As the Attorney General's own opinions found long ago, Pennsylvania's laws start at the retail shelf, not the farmer's fridge. *Pure Food Laws*, 1915 WL 5059 (Pa.Att'y Gen. Nov. 19, 1915).

Pennsylvania law carefully structures its restrictions and remedies regarding food, an essential good for all Americans that involve their deepest personal identity and beliefs, including religious, medical, and political. Pennsylvania law equally protects the family farmer, the foundation of American society from its founding, and the farm-to-table liberty interests of ordinary Americans making informed consent choices about their own food for their own bodies. That is why the laws only authorize injunctions to destroy food when the food is unfit for human consumption, un-amenable to ever be made for human consumption, and no other beneficial use of the food exists.

First, the laws don't apply to food that is not for human consumption, such as animal food. Indeed, the word food itself is defined solely as "for human consumption." 3 Pa. C.S.A. § 5712. Second, the laws don't apply to food that is not for commercial retail sale open to the

public, such as food made by farmers for their own family or other owners of the farm. 3 Pa. C.S.A. § 5722. Third, the laws limit the extreme remedy of food destruction by a carefully graduated set of remedies: the failure to register, license or permit a commercial retail food establishment is solely a summary offense that doesn't even elevate to a low-level misdemeanor until multiple violations occur and lesser sanctions do not prevail. 3 Pa. C.S.A. § 5725. The extreme remedy of food destruction can only occur for commercial retail food that is unfit for human consumption and cannot be made amenable to being fit for human consumption, and even then, the food must be permitted to be used for animal or other "beneficial use." 3 Pa. C.S.A. § 5726. Even commercial retail food for sale cannot be destroyed unless "the secretary determines that the food is unfit for human consumption and the food cannot be reconditioned so as to made fit for human consumption." 3 Pa. C.S.A. § 5726. At all times, the detained food "may be used as animal feed or for other beneficial use." 3 Pa. C.S.A. § 5726. Of note, the remedy for mislabeled food is relabeling the food correctly, not food destruction. 3 Pa. C.S.A. § 5726.

Pennsylvania courts repeatedly warn of the state overstepping their authority. *Commonwealth v. Sessoms*, 523 A.2d 775, 780 (Pa. 1987); *Commonwealth v. Sutley*, 378 A.2d 780, 783-84 (Pa. 1977); *Titusville Iron Works v. Keystone Oil Co.*, 15 A. 917, 919 (Pa. 1888). An agency cannot exceed its legislative limits. *Sunrise Energy, LLC v. FirstEnergy Corp.*, 148 A.3d 894, 907 (Pa. Cmwlth. Ct. 2016); *Aetna Casualty and Surety Company v. Insurance Department*, 638 A.2d 194, 200 (Pa. 1994).

Pennsylvania law does not authorize the Pennsylvania Department of Agriculture to seize a farmer's food from his own farm. The law applies only to "retail" facilities which are a "public eating or drinking place" or "relinquishes possession of food to a consumer directly or indirectly, through a delivery service such as home delivery of grocery orders of delivery service provided

by common carriers.” 3 Pa. C.S.A. § 5712. A family farm is neither. Indeed, the legislature made clear that if the public eating or drinking place or uber-eats style delivery service was located on a farm, then it was specifically and expressly exempt as whenever the goods “are produced or processed on the farm on which the retail food facility is located.” 3 Pa. C.S.A. § 5702. Of note, the legislature specifically demanded further exemptions for railroad dining cars, bed and breakfasts, and prepackaged goods. 3 Pa. C.S.A. § 5702. The law explicitly and expressly exempts even certain retail foods where the consumers are informed that the food is prepared in a place that is “not licensed or inspected.” 3 Pa. C.S.A. § 5712.

The temporary injunction law only applies to the food safety subchapter of the laws. 3 Pa. C.S.A. § 5724. Retail food facilities, honey-makers, and milk-facilities are expressly excluded from the retail food establishments governed by that subchapter. 3 Pa. C.S.A. § 5737. The law crafts a careful gradation of remedies: only adulterated food can be enjoined from distribution; only food unfit for human consumption can be destroyed; and otherwise, the remedies are a summary offense with only repeated violations constituting even a misdemeanor. 3 Pa. C.S.A. § 5725-5726. Of note, “the food shall not be considered adulterated under this section if the quantity of the substance in the food does not ordinarily render it injurious to health.” 3 Pa. C.S.A. § 5728. Nowhere does the law authorize the state to declare food adulterated merely because it was not produced by a PDA-permitted facility. 3 Pa. C.S.A. § 5726. A non-retail food establishment is for those buildings “commercially” preparing food, not a farm. 3 Pa. C.S.A. § 5712. Pennsylvania law repeatedly defines “commercial” as “activities exclusively on farms other than farms owned or operated by the owner.” (Statutory definition of “commercial implement of husbandry.”)



As the Pennsylvania authorities have long explained, the PDA’s authority over packaging starts at the retail shelf, not the farmer’s fridge or freezer. It is only “when the goods set upon the shelves of the retail merchant the state inspection begins.” *Pure Food Laws*, 1915 WL 5059 (Pa. Att’y Gen. Nov. 19, 1915). The only packages governed by the labeling aspect of the laws “clearly refers to the immediate container of the article which is intended for consumption by the public.” *Pure Food Laws*, 1915 WL 5059 (Pa. Att’y Gen. Nov. 19, 1915).

The law prohibits deceiving customers “offering for sale of any food that is adulterated or misbranded.” 3 Pa. C.S.A. § 5723. This consumer deception requirement is Constitutionally-rooted. Critically, even “alteration, mutilation, destruction or removal of the whole or any part of the labeling of a food” is only prohibited if “the food is held for sale and results in the food being adulterated or misbranded.” 3 Pa. C.S.A. § 5723. The law specifically forbids prosecution unless the food article is both “for sale” and “adulterated or misbranded.” 3 Pa. C.S.A. § 5723.

A package is limited by law to the wrapping “enclosed for delivery or display to retail purchasers” only. 3 Pa. C.S.A. § 5722. The law explicitly exempts wholesalers: it does not apply to shipping “in bulk or quantity” to other distributors. 3 Pa. C.S.A. § 5722. The law expressly exempts shipping containers or wrappers to ship directly to retail customers for unlabeled products. 3 Pa. C.S.A. § 5722. Farm foods sitting in a farmer’s own freezer are not “enclosed for delivery or display to retail purchasers.” 3 Pa. C.S.A. § 5722.

Regulatory interpretation is a question of law, with no court required to defer to a prior legal conclusion. *S&H Transport., Inc., v. City of York*, 210 A.3d 1028, 1038 (Pa. 2019). “The term adulteration is used in a particular sense. It is the combining of a forbidden substance with an article of food to be sold to the public.” *Commonwealth v. Fulton*, 106 A. 636, 637 (Pa. 1919). Adulteration requires “introduction into a food product of a substance foreign to it, and of a

poisonous and injurious nature.” *Commonwealth v. Kevin*, 51 A. 594, 596 (1902). The focus is on those “manifestly of a designedly fraudulent character” impairing the informed consent of the consumer, the focal point of the food laws. *Commonwealth v. Curry*, 4 Pa. Super. 356, 360 (1897). Any effort to expand its applications has been rejected by Pennsylvania courts as unconstitutional. *Commonwealth v. Kebort*, 61 A. 895, 896 (Pa. 1905) (“the act is clearly unconstitutional as far as it assumes to apply to drink”); *Commonwealth v. Di Meglio*, 122 A.2d 77, 80 (Pa. 1956) (producing food that didn’t defraud its customers “could not constitutionally be restrained”); *Commonwealth ex rel. Woodside v. Sun Ray Drug Co.*, 116 A.2d 833, 838 (Pa. 1955) (cannot prohibit marketing of food unless fraud upon the consumer); *Cott Beverage Corp. v. Horst*, 110 A.2d 405, 409 (Pa. 1955) (Constitution prohibits any attempt to prohibit food from being made in a particular way that doesn’t deceive the public); *Commonwealth v. Agway, Inc.*, 232 A.2d 69, 70 (Pa. 1967) (no Constitutionally protected state interest in wild game or fish); *Pennsylvania State Bd. Of Pharmacy v. Pastor*, 272 A.2d 487, 495 (Pa. 1971) (a statute is unconstitutional when it prohibits accurate advertising even if the state concludes the product is “dangerous” to health). This is rooted in the very founding of the state. *Jennings v. Gratz* 1831 WL 3207 (Pa. 1831) (adulteration is limited to when a product is not “the thing for which it has been sold”); *Wetherill v. Neilson*, 20 Pa. 448, 452 (Pa. 1853) (“the purchaser takes the risk the quality of the article purchased, unless it be warranted or he be fraudulently misled as to it.”)

### **C. Constitutional Constraints on the PDA**

PDA’s actions here do more than exceed their legislative authority or Constitutional role; their actions directly violate multiple provisions of both the Pennsylvania and United States Constitution. The PDA’s actions violate the right to informed consent choices on one’s own food, especially traditional foods of dairy obtained directly from farm-to-table, a fundamental

liberty interest under Section 1, but also find protection and expression in other sections of Article 1's Declaration of Rights, under Section 2, Section 3, Section 7, Section 8, Section 9, Section 21, Section 25, and Section 27.

The right to informed consent in one's own food choices is part of the "inherent power in people" under Section 2, religious affiliations and expression (especially so here with the Amish farmer and the often religiously rooted reasons for diet expressed in the many declarations before this court) under Section 3, political expression under Section 7 given the deeply philosophical association with what one puts one's body and who decides, the right against state invasions of one's privacy or property under Section 8, the right against state coercion of private information under Section 9, the right to self-preservation under Section 21, the reservation of powers to the people under Section 25, and the duty to conserve for future generations under Section 27.

Equally, the PDA's actions violate the First Amendment, Fourth Amendment, the Eighth Amendment and the Fourteenth Amendment to the United States Constitution, as they constitute infringement on religious expression, political affiliation, privacy and security in one's own home and one's own bodily autonomy, the property interest in food from one's own farm and the liberty interest to procure traditional foods directly from the farmer, and an excessive fine far disproportionate to the alleged underlying harm.

The rights of bodily autonomy, the concerns for the family farmer, and the tradition of farm-to-table food consumption in America, often concerned with religious expression, political affiliation or medical need, protect the right of the people to make their own food choices, the tradition of family farming, and the liberty for individuals to purchase directly from the farm for traditional food items, such as dairy, meat and poultry. The Supreme Court long recognized the right of bodily autonomy. *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). The same right

extends to family. *Wisconsin v. Yoder*, 406 U.S. 205 (1972). The same right derives from the broad right to privacy. *Griswold v. Connecticut*, 381 U.S. 479 (1965). The same right extends to all the privileges enjoyed since our founding. *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). The same right extends to health. *Washington v. Harper*, 494 U.S. 210 (1990); *Cruzan v. Dir., Mo. Dep't of Health*, 497 U.S. 261 (1990). As Thomas Jefferson explained, the same must apply to diet. Jefferson, Thomas, *Notes on Virginia*.

This is why Pennsylvania courts repeatedly strike down efforts by state regulators that infringe on those rights, restricting the permissible scope of the consumer food laws to the paramount focus on the informed consent of the consumer and protection for the family farmer. Pennsylvania's Constitution embraces more fundamental liberties than the federal Constitution. Indeed: "No police regulation should be allowed to interfere with the enjoyment of individual rights beyond the necessities of the case." *Flynn v. Horst*, 51 A.2d 54, 59 (Pa. 1947). Privacy protection in Pennsylvania is particularly robust: "the privacy that is invaded may be sheltered by the walls of a warehouse or other commercial establishment not open to the public." *Commonwealth v. Slaton*, 608 A.2d 5, 9 (Pa. 1992). The police power is limited to avoid anyone "injure his neighbors" and the state "cannot violate the popular privileges reserved by the declaration of rights" to the people. *Sharpless v. Mayor of Philadelphia*, 21 Pa. St. 161; *Craig v. Kline*, 65 Pa. St. 413, *Nonnan v. Heist*, 5 Watts & S. 173. The state has no "property interest" even in "wild game and fish". *Commonwealth v. Agway, Inc.*, 232 A.2d 69, 70 (Pa. 1967).

All Pennsylvania laws must be "subject to restrictions enumerated" in the Pennsylvania Constitution, especially the "express exception of certain fundamental rights reserved to the people in Article I." *League of Women Voters v. Commonwealth*, 178 A.3d 737, 803 (Pa. 2018). These fundamental rights include "certain inherent and inalienable rights, among which are

those of enjoying and defending life and liberty.” *Pa. Const. art. I, § 1*. Those substantive due process guarantees require the state’s power be “limited and subject to judicial review.” *Ladd v. Real Estate Comm’n*, 230 A.3d 1096, 1108 (Pa. 2020). Article 1, Section 1 of the Pennsylvania Constitution “established for the protection of personal safety and private property” limits the power of the state. *Appeal of Ervine*, 16 Pa. 256, 263 (Pa. 1851). This includes “substantive due process rights”. *Khan v. State Bd. Of Auctioneer Examiners*, 842 A.2d 936, 946 (Pa. 2004).

Of note, Article 1, Section I “provides a stronger textual basis for substantive protection of important interests than do the federal due process clauses.” Seth F Kreimer, *Still Living After Fifty Years: A Census of Judicial Review Under the Pennsylvania Constitution of 1968*, 71 Rutgers U.L.Rev. 287, 327 (2018); *Shoul v. Commonwealth, Dep’t of Transp., Bureau of Driver Licensing*, 173 A.3d 669, 677 (Pa. 2017) (Pennsylvania Constitution requires a more exacting test of state statutes than its federal counterpart). Article I intended to ensure Pennsylvanians’ “willingness of the people to attend to their own affairs.” John Bouvier, *Law Dictionary, Adapted to the Constitution and Laws of the United States of America, and of the Several States of the American Union* (14<sup>th</sup> ed., Philadelphia, George W. Childs 1871).

Strict scrutiny applies whenever a statute restricts or burdens a fundamental right. *Diop v. Bureau of Prof’l & Occupational Affairs*, 272 A.3d 548, 563 (Pa.Cmwlt. 2022). This includes any right “affecting liberty interests, or a denial of a benefit vital to the individual.” *Fischer v. Dep’t of Pub. Welfare*, 502 A.2d 114, 122 (Pa. 1985). This requires the state law to prove it is “supported by a compelling state interest” and “narrowly tailored to effectuate that interest.” *Id.* Of special interest are the fundamental rights concerning human dignity, bodily autonomy, individual liberty and privacy “so precious preserved by our founding fathers.” *Commonwealth v. Martin*, 626 A.2d 556, 562 (Pa. 1993) (Cappy, J., concurring).

This is why it was unconstitutional to specifically tax religious merchandise. *Murdock v. Pennsylvania*, 319 U.S. 105 (1943). Religious expression concerning diet has been protected. *Church of the Lukumi Babalu Aye, Inc. v. City of Healeah*, 508 U.S. 520, 524 (1993). Religious lifestyle in the case of the Amish has been specifically protected. *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

Pennsylvania courts repeatedly reinforce these rights. *Commonwealth v. DeJohn*, 403 A.2d 1283, 1289 (Pa. 1979); *Commonwealth v. Melilli*, 555 A.2d 1254, 1258-59 (Pa. 1989); *Commonwealth v. Duncan*, 817 A.2d 455 (Pa. 2003); *Commonwealth v. Edmunds*, 586 A.2d 887, 897 (Pa. 1991); *sAnnenberg v. Roberts*, 2 A.2d 612, 617 (Pa. 1938); *Commonwealth v. Murray*, 223 A.2d 102, 109-110 (Pa. 1966); *Commonwealth v. Sell*, 470 A.2d 457, 467 (Pa. 1983); *Driscoll v. Corbett*, 69 A.3d 197, 209 (Pa. 2013); *Commonwealth v. Tharp*, 754 A.2d 1251, 1253 (Pa. 2000); *Slander v. Kelley*, 250 A.2d 474, 478 (Pa. 1969).

Substantive due process claims arise under the Fifth and Fourteenth Amendments to the Constitution and protect citizens from the government's deprivation of a person's life, liberty, or property. Certain rights are inherent to mankind, and thus are secured rather than bestowed by the Constitution. The Supreme Court offered this definition in *Meyer v. Nebraska* in 1923, stating that liberty:

[D]enotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.  
262 U.S. 390, 399 (1923).

Food choice and the consumers' right to purchase foods traditionally grown directly from food's producer are a fundamental liberty right that are protected by the United States' and

Pennsylvania Constitutions. The consumer's desire to purchase and consume meat and poultry from the farmer who raised the animals, without governmental interference, are statements of self-identity and self-expression and forms of religious and political action that are aspects of our constitutionally protected liberty interests. Put simply, an individual's right to purchase and consume food of his or her choice is not only one that has been traditionally unregulated but is a liberty interest that should be constitutionally protected.

Our national customs and practices of purchasing dairy, meat, and poultry directly from the farmer who produced that food is so deeply rooted in our nation's history and tradition that it must constitute a fundamental liberty right guaranteed under the Due Process Clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution. Until well into the twentieth century, farmers and food producers in most states remained free to sell the products of their farms directly to consumers without any government intervention, licensure or permission required.

The PDA would eviscerate those protections, repudiate those liberties, and claim monopolistic power over all food for all people everywhere, even to the extent of telling a family farmer what he can feed his own kids or even his own pigs from his own farm. The extraordinary power grab by the PDA in this case threatens the Constitutional liberty of every American and the future of the family farm itself, and far exceeds the statutory authority afforded to the PDA by the legislature or the Constitution.

The PDA believes it knows best for everybody, even though its bureaucrats have little experience in actual farming. Millions of Americans believe the PDA, and its sister agencies in other states and at the federal level, don't know what's best for everybody. During their regulatory reign, American food supply got a lot worse, increasingly government-standardized to a monopolized, corporatized food supply that removed the family farm-to-table tradition of

American food to barely 2% of all food supply in America. During this regulatory reign, preservative-pervasive, additive-adulterated, and lots and lots of chemicals laced into our ultra-processed food supply of cattle often crammed into food containers so small they eat each others' dung. Thanks to the PDA, we are unhealthier than ever, our food supply more vulnerable than ever, and the family farm-to-table option that founded this country's food supply increasingly unavailable entirely as a mere option for the informed consumer. The individual's right to informed consent about their bodily autonomy, including their own diet and what goes into their body, cannot be eviscerated by the PDA's desire to monopolize all food supply when the only reason for PDA's existence is to maximize informed consent, not destroy it.

The PDA requested a warrant to search and seize without citing any fact that could constitute probable cause of a crime, exceeded the authority of that warrant in how it conducted its search, and requested a warrant that state law does not give the PDA the authority to. As such, the PDA actions violated the Pennsylvania and United States Constitution, and evidence born of that illicit search is inadmissible in this court or any court. The other problem with the state's action here is it constitutes an excessive fine, in violation of both the state and federal constitutions, including section 13 of Article 1. Pennsylvania courts repeatedly warn: "forfeitures are not favored under the laws of the Commonwealth and statutes authorizing forfeiture are strictly construed against the Commonwealth." *Commonwealth v. Real Prop. & Improvements Known as 2314 Tasker St. Philadelphia*, PA 19145, 67 A.3d 202, 208 (Pa. Commw. Ct., 2013); *Commonwealth v. Real Prop. & Improvements Commonly Known as 5444 Spruce St., Philadelphia*, 823 A.2d 396, 399 (Pa. 2003); *Commonwealth v. 1997 Chevrolet*, 160 A.3d 153 (Pa. 2017).



**D. PDA Seeks Inequitable Use of this Court's Equitable Powers in Excess of PDA's Statutory or Constitutional Powers and in Violation of Constitutionally Protected Liberties of Amos Miller & His Members**

As applied here, the laws do not authorize destruction of Amos Miller's food or his farm, as extending the injunction will do. Miller's members of the farm receive the food items they want, made in the way they demand it be made, and have never been deceived or harmed by his food. Indeed, in the millions of food items produced for tens of thousands of members over decades, not one member has ever once filed a complaint about the food produced from his farm.

First, Amos Miller doesn't commercially offer the food on his farm for retail sale open to the public. Second, Amos Miller operates a family farm, not a retail food facility. Third, none of the seized food was packaged "for delivery or display to retail purchasers", and thus could not be misbranded; to the contrary, every member of Miller's farm knows the source of the food, its ingredients, and that the farm is not a PDA facility. Fourth, none of the food at Amos Miller's farm was "unfit for human consumption", as reflected in the fact the PDA acknowledged that in failing to identify the food as unfit for human consumption or adulterated within the meaning of the law in its order of destruction. Fifth, none of the food was adulterated within the meaning of the law, and food that didn't defraud its customers "could not be constitutionally restrained." *Commonwealth v. Di Meglio*, 122 A.2d 77, 80 (Pa. 1956).

Equally, PDA's actions exceeds its statutory authority and invades the Constitutional liberties of Amos Miller and his members as the PDA seeks to dramatically expand its own powers, claiming it now has the authority to search, seize, and shut down any farm from producing any food for its own members, family, and community, including destruction of food that sample tests showed was fit for human consumption of food made at a farm that complies with all federal sanitation standards and has a quarter-century history of success, solely because

the PDA did not give a retail food facility permit to the farm that doesn't even fit the definition of a commercial retail food facility in the first place. PDA demands to label food in a farmer's freezer be called retail packaged goods on a shelf merely because someone might someday eat the food when the law expressly cannot Constitutionally apply to unpackaged food in a farmer's own freezer.

The PDA seeks to destroy not only the food on the farm but destroy the farm itself. This constitutes a fine hundreds of times higher than permitted by the summary offense laws for unpermitted retail food facilities; as such, an injunction would be an excessive fine under both the Pennsylvania and United States Constitution. PDA seeks to turn informed consent on its head, denying Americans the right to choose their own food because the food wasn't from a PDA facility. PDA claims the right to invade a family farm anytime they want, with or without a warrant, and dictate to the farmer what he can do with his own food, including prohibiting him from feeding himself, his family or his own animals without express advance permission from the PDA. The PDA seeks an inequitable exercise of this court's equitable power beyond PDA's statutory authority or Constitutional constraint. As such, the injunction should end.

#### **IV. CONCLUSION**

The food at Amos Miller's farm is not unfit for human consumption. There is no consumer deception by Amos Miller's farm. As such, no irreparable injury can occur. By contrast, extending the injunction will cause substantial harm to other parties, including Amos Miller, his family, his employees, his Amish community of fellow farmers, and his members, including irreparable injury to their Constitutional liberties, and endangerment to their individual health for those whose medical needs require access to Miller's farm. Of note, Pennsylvania law

does not give the PDA the right to destroy a farmer's food merely because it was made by a farm without a retail food permit and cannot establish a "clear right to relief" or likely to prevail on the merits. Of equal significance, prohibiting a farmer from distributing any dairy product to his members is not proportionate nor "reasonably suited to abate" the harm of unsafe food or consumer fraud, but is instead an excessive fine under the Constitution. Finally, continuing the injunction will adversely affect the public interest, including the public interest in protecting informed consent, the liberty interest in choosing for oneself one's own diet, the prohibition of excessive fines, the protection of privacy and bodily autonomy, and the Constitutional rights consecrated thereby.

**WHEREFORE**, Defendants respectfully request that the Court sustain these preliminary objections and deny the Plaintiffs any further injunction.

Dated: February 23, 2024

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**CERTIFICATION**

I hereby certify that this filing, **Defendants' Brief in Support of Preliminary Objections to Plaintiffs' Complaint & Opposition to Any Injunction**, 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.

February 23, 2024

/s/ Bradford L. Geyer  
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**CERTIFICATE OF SERVICE**

I hereby certify that on February 23, 2024, I caused a true and correct copy of the foregoing Defendants' Brief in Support of Preliminary Objections to Plaintiffs' Complaint & In Opposition To Any Injunction 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:

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