

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION**

<b>Farm-to-Consumer</b>	:	<b>Case No. 5:10-cv-4018</b>
<b>Legal Defense Fund, et al.</b>	:	
	:	
<b>Plaintiffs</b>	:	<b>Judge Mark W. Bennett</b>
	:	
<b>v.</b>	:	
	:	
<b>Sebelius, et al.</b>	:	
	:	
<b>Defendants</b>	:	

**PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND BRIEF IN  
SUPPORT**

Pursuant to Fed.R.Civ.Proc. 56 and LR 56(a), Plaintiffs move the Court for a summary judgment on all of the Counts in their First Amended Complaint. The grounds for Plaintiffs' motion is as follows:

1. Defendants' interpretation and application of 21 C.F.R. 1240.61 and 131.110 against Plaintiffs is arbitrary and capricious, contrary to constitutional right, and/or in excess of statutory authority because:
  - a. Plaintiffs are not engaged in interstate commerce and they cannot be commanded to purchase a specific agricultural product when they cross State lines;
  - b. The raw milk that Plaintiffs purchase and transport across state lines is not *per se* a communicable disease; and
  - c. 1240.61 and 131.110 do not promote honesty and fair dealing when the consumer and producer have a direct transaction with one another.
2. 1240.61 and 131.110 violate the constitutional right to travel.

3. 1240.61 and 131.110 violate the constitutional right to privacy.
4. 1240.61 and 131.110 violate Article 1, Section 1 of the Constitution.
5. 1240.61 and 131.110 violate substantive due process as guaranteed by the Fifth Amendment to the Constitution.

A Brief in Support, a Statement of Material Facts, and an Appendix are attached hereto and incorporated as if rewritten herein.

Dated: June 10, 2011

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 10, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system that will send notification of such filings(s) to the following:

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