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The Solari Report

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**Solari Food Series:
Farm-to-Consumer Legal Defense
Fund
with
Alexia Kulwiec**



**Farm-to-Consumer
Legal Defense Fund[®]**



Pete Kennedy: Welcome to the Solari Food Series audiocast. This is your host, Pete Kennedy. Catherine Austin Fitts, the owner of Solari, has said, “What good is having assets, if you don’t have an army to protect them?”

Well, part of your army should be the Farm-to-Consumer Legal Defense Fund (FTCLDF). Launched on Independence Day 2007, for the last 14 years FTCLDF has been protecting and establishing the rights of small farmers and local artisans to produce nutritious foods and rights of consumers to have access to those foods.

With the current upheaval in our food system FTCLDF’s work is more important than ever. Catherine has generously made FTCLDF the beneficiary of donations on its Take Action crowdfund for the first quarter of 2021, so I thought it was appropriate today to have Alexia Kulwiec on as our guest. Alexia is the Executive Director of the Farm-to-Consumer Legal Defense Fund, and we are going to talk about the current work of FTCLDF and why it’s worthy of your support.

Alexia, welcome to The Solari Food Series audiocast.

Alexia Kulwiec: Thank you, Pete. I just want to say thank you to Solari for their support – for Catherine Austin Fitts’ support and for having us on today. It’s a great opportunity, and we are just so grateful to be able to reach readers and watchers – those who follow Solari.com – and introduce ourselves.

My name is Alexia Kulwiec, and like Pete said, I am the Executive Director of the Farm-to-Consumer Legal Defense Fund.

Kennedy: Let’s start off with the core of FTCLDF’s work. What is the mission of the organization?

Kulwiec: The mission itself is protecting, defending, and broadening the rights and viability of individual farmers, artisanal food producers, and their consumers. So essentially we are trying to support small farms and food producers in getting food directly to the consumers – to engage in direct commerce between farmers and their consumers.

Kennedy: I would say that there is a short-term goal and a long-term goal of the Legal Defense Fund. I think that the short-term is just creating the most favorable regulatory climate possible on a day-to-day basis with more of the long-term goal being establishing the right of all people to obtain the food of their choice from the source of their choice, whether that source is regulated or not.

Expand a little bit on some of the things FTCLDF does in support of its mission.

Kulwicz: Yes, I would agree that we have that kind of short-term/long-term goal. In the short-term I would add that we are providing direct legal representation to our members when they are struggling with these obstacles to get through directly to consumers. I think that the neat thing about this organization as opposed to others that are supporting small, sustainable farms is that we provide the direct legal support to our members, and we engage in policy work to try to make the regulatory system more favorable and supportive of small farmers and food producers like you mentioned, Pete.

We are providing legal support on a day-to-day basis. We are trying to make the regulatory scheme more favorable in terms of policy. Very often at the state and local level – *in the short-term* and then longer term – we would like to see broader choice be a part of it.

Would you like me to get into details now in terms of more of what we do for the members?

Kennedy: Yes, just the day-to-day work. If there are any other organizations that just work day-to-day with farmers, there aren't many. There are some other organizations that do some great work in the area of food and food rights, but I think that they have to do with more with just trying to litigate those particular cases; they don't necessarily provide a resource for someone who just has a question about day-to-day operations.

Let's get into the day-to-day work. Give us an idea of what these farmers face and how this impacts the work that we do. Go over the possible visits or inspections that they can get from agencies at the local, state, and federal level.

At the local level, it could be the county health department. It could be the zoning department. It could be the board of animal control. Some states like California have their own county department of agriculture. If things progress the wrong way, it could be the county or city board of commissioners. At the state level you are dealing with the Department of Agriculture, the Department of Health, Environmental Protection, and possibly the Bureau of Labor (maybe with an internship program on the farm). Again, if you get far enough, you are looking at the Attorney General or maybe in a state like Florida the Division of Administrative Hearings.

Then at the federal level you've got USDA, you've got FDA, and you've got EPA. For some farmers out West you might have the Department of Interior with Bureau of Land Management. If it gets far enough, you've got the Department of Justice.

So you are looking at quite a few obstacles for the farmers, and the Legal Defense Fund tries to shield them as best they can in their day-to-day operations.

Maybe you could get into the day-to-day work of the organization.

Kulwiec: Absolutely. First, I will just respond to what you've laid out. What you've just said is why it is so difficult for a small producer. You've got a couple of dairy cows, maybe some meat animals, maybe some vegetables, and you've got to deal with all of those agencies that you just listed. It's really overwhelming for someone who really just wants to produce healthy, local food and get it directly to the consumer.

What we do on a daily basis, I will start with responding to all of those agency comments. Yes, we are consulting with folks on all of those issues. We very regularly will get questions on the laws concerning raw dairy, meat slaughter and processing, poultry processing, and we seem to be getting more and more questions on cottage food issues. Then on a regular basis we are dealing with land use issues and zoning issues.

In addition to the consulting on those things, we will get involved when there is an agency problem. We will provide that representation. One example you just

said was the local animal control officers. We've had an awful lot of cases in the last year where they have shown up at a farm and complained either about livestock guard dogs or complained about the care of animals that are farm animals in wanting to confiscate the animal or feeling like there is a problem with how the animals are being raised. That is one agency that we not only consult *about* with the member, but we will get involved and we will contact the agency and try to walk the member through that administrative process.

Sometimes that ends up in an actual administrative agency hearing, and we will walk members through. We will often represent them in those agency hearings.

We will provide individual case legal representation (*as determined* on a case-by-case basis) in addition to simply consulting with our members.

I will just say that I do think that is one of the things that makes the organization unique. You have people working on policy, and you have some education out there, but *for* the individual who is struggling today because FSIS is at their farm gate, we will help them through that inspection process. I don't know of anyone else that does that.

Kennedy: One important aspect of Legal Defense Fund's work is levelling the playing field for small producers. When we started in 2007 – at least in our area of work – we grew to more cases where you get a government agency that would sometimes drag farmers through both administrative and judicial hearings, trying to deplete them of their resources.

What we can do if the issue is important enough is prevent them from depleting their resources that would go toward legal fees. They will still have their farming business *expenses but not legal costs*.

There are just some times when the department will take a hostile position towards a producer. Then when they find out that the producer has an attorney sometimes the department will back off a little bit.

That is a major part of work that the Legal Defense Fund does.

I think at least in some states where we have worked quite a bit, we are familiar

with the attorneys who might be working for the Department of Agriculture. So there is a chance, because of the familiarity and the experience that the attorneys have had in the work of getting a good result, that they won't have to go through some type of hearing.

One of the things that the organization does is it offers contractual advice. So maybe you could get into that.

Kulwiec: Yes, I wanted to touch on that. So in addition to the consultations, another thing that we do very regularly – on a daily basis – is to draft contracts or agreements that producers can use with their consumers as a way to provide locally-produced food. I don't want to say 'around the regulation', but they find a way to comply with the law but still allow the producer to get food directly to the consumer.

The biggest example – and I think this goes all the way back to the founding of the organization, and Pete, you probably know better than I on that – is the dairy herdshare agreements. In a lot of states it is totally lawful for a producer to sell some of the shares of a dairy animal or a dairy herd, and then each of the shareowners receive a portion of the production in a given week of that raw milk product.

At the federal level it is unlawful to distribute or sell raw milk or raw milk products *in interstate commerce*. At the state level, some states allow on-farm sales, some states will allow certain sales of raw milk, and some states will prohibit it. So we work with members to come up with these herdshare agreements that allow end consumers to become part-owners and lawfully obtain raw milk. So, many of our members and consumers realize the health benefits to that.

We *can* also enter into dairy services contracts which means that not only am I as a raw milk consumer getting a portion of the milk from *my part-ownership in* the, but I can pay the producer to then turn that milk product into another product. So I can pay a producer to make cheese or butter with my product – my portion of that raw milk. We draft those agreements on a pretty regular basis as well.

We've been much more active lately in meat and meatshare agreements. What I

mean by that is: the general rule is that for meat to be sold, you have to take [the animal] to a USDA or a state-inspected facility; but if you can sell a live *animal to a customer owner then you can* have the animal brought to a custom slaughter facility; that is one way that a smaller producer can provide that meat to the customers. So we have been involved in drafting contracts with a bill of sale so that producers can sell live animals or a portion of a live herd to an individual [or group of individuals] that can be custom-processed and not brought to a USDA or state-inspection facility.

With this last one, on the meat processing and slaughter, how it works in every state is different, but we do work with our members. What I will say about it is that this one is so important right now because this country is really going through a meat processing crisis. I was just reviewing some information the other day, Pete, that in February of 2020 even the USDA came out with a report talking about how consolidated the meat supply is. Then the very next month all of these plants shut down because of COVID, and there was no meat available.

The problem has existed for a really long time in terms of smaller producers not getting into these plants, but it has been made that much worse during COVID. So finding some opportunity for a small producer to produce meat and get it into the hands of the consumer without having to wait three years to get into a processing facility is so important to them. We hear from our members that helping them get meat directly to consumers was really their top priority, and this showed up when we did a survey last year.

Kennedy: I think one of the things we find out in the day-to-day work is that a lot of times the law itself isn't as important as the agency's interpretation of the law.

In some of these states with the herdshare agreements, some of the state agencies will fight back and it's difficult to have [those contracts]. In other states they will allow them. In some of these states we pursue what I call the 'Monsanto strategy'. They used to flood the fields with GMOs; we just try to flood the state with herdshare contracts so that it will be more difficult for them to put the genie back in the bottle.

The advantage that the attorneys have who work on this day-to-day is they

know how far they can push the envelope on these things. Sometimes it's just a matter of what they can do to just shift the controlling law.

With the raw milk *sometimes* you've got this prohibition *on sales of other raw dairy products*. The controlling law is dairy law; so, if you *provide* someone an ownership interest *in a dairy herd*, you have shifted the controlling law from dairy law to property law. [*Farmers are then*] able to provide an open service with a dairy services contract *to make other dairy products from an owner's milk*.

We work with licensed farmers who can only provide raw milk and raw cheese to their customers, foods like butter and cream are illegal. It's not a safety regulation; it's protecting the dairy processing industry. So, this is a way to keep them in compliance with the law but shift the controlling law from dairy to property.

Kulwicz: Well said.

Kennedy: We not only work with farmers, so talk about some of the day-to-day work with homesteaders.

Kulwicz: Sure. We have homesteader members, which means that they just want to grow food for their own use and their own purposes – not for sale – to support their own families and to live off the land. It's fascinated me how common it is for a state or local agency to get involved and object to that.

For example, it could be a zoning issue where somebody is raising animals so that they can do their own slaughter and processing of meat, and somebody decides that the zoning of the property is not accurate or that there is some kind of problem with that, or they don't have enough land for that.

Another common thing with homesteaders might be in raising animals or growing vegetables or other food or dairy for their own purposes in an area that might have ordinances that would regulate noise, odors, and what kinds of things you might have in your yard. So you've got people just trying to grow their own food, and then they have a township or a county or municipality telling them that they are in violation of some ordinance because they want the front lawn to look beautiful.

One interesting thing with homesteaders I'll raise with one of our examples: We are starting to see more urban homesteader members who are growing on their own land to eat their own food for their own purposes, and then the municipality raises eyebrows.

We had a case in Gary, Indiana a little bit ago in which we had a member take a lot, purchase a new home in Gary, Indiana on a lot that was probably not very healthy soil. She started reworking it so that she could work the land for herself to feed her own family. So she was using wood chips and water jugs to water all of the starter plants. The city said that she was in violation of some ordinance that prohibited 'debris' or a 'mess' in your front yard. Well, she used mulch and leaves and things that regenerate and heal the soil, and they objected to that.

That is one example of how homesteaders run into problems with the law. We were able in that case to finally resolve things with the city. Now she's doing a lot of good work healing that soil and making her own food.

Kennedy: It's like what you said; we've had calls where someone is growing food in their front yard, and the zoning board--or whatever--sends them a warning letter that says that they can only grow food in their backyard. I think that zoning is one of the worst developments. The best-looking lawn is a lawn that has all kinds of food growing in it.

Kulwicz: We were having a problem with a couple of cases last year where if it looked like beautiful rolling hills in the backyard, that was fine, but if you put up a hoop house so you could extend growing season, that was seen as some kind of a 'visual blight' or something like that.

It's fascinating because people growing their own food shouldn't be so complicated!

Kennedy: It's a good segue to get into some of the litigation that the FTCLDF does. We don't cherry-pick cases. If we have a member who is a long-standing member who has a *precedent-setting case* that we think is important. Even if it's a lousy fact situation, we will support them.

The way that the organization has approached its work is that there is more than one way to win a case. You can win the court case or court decision, but sometimes *when* you lose the court decision it jumpstarts the legislative process and bills get passed. We can do that on the administrative level. We can jumpstart the rule-making process and get regulation [issued].

More often than not the other change--when you don't get the court decision--is the agency will either change its enforcement policy and leave your farmer alone, even though they might have lost in court; that has happened to members of ours. They know that we will be willing to go back to court again if they take another action against the farmer. Or, they will change their interpretation of the law.

You had a right-to-farm case in Michigan that got a lot of notice last year and the year before. This is the kind of case where the litigation worked in tandem with the rule-making process. Could you go over the case, the name of the farm and what happened?

Kulwiec: Absolutely. The name of the farm is Hidden Creek Farm in Michigan. What is interesting in the case is the farm in question had been farming a number of acres and selling to consumers for a number of years. Then they had the audacity to hold a 'sale', and that seems to get people's attention at the local level.

So the township involved in that case filed a public nuisance action against the farmers, claiming that they were *creating a public nuisance and committing* violations by having the animals on the property and by growing and having customers come to the property. A neighbor joined the lawsuit and filed a private nuisance action against the farm.

So we took that case up, and this is a good example of an individual farm *case that* fell into the definition of public interest litigation because it involved an interpretation of a local regulation about how far from your neighbors' home you have to have your livestock facility.

The regulation at issue *raised the question*, "How far is your livestock facility from the neighbors' home?" The state agency had been interpreting that to mean that

it is only 250 feet from the barn where the livestock are kept from the neighbors' house. The township and the neighbors said that it was 250 feet from the property line. Initially a court agreed with them.

The case had implications for all small farmers throughout the state of Michigan. So this was not just a matter of one farmer.

We were in contact with the Michigan Small Farmers' Council, and other farmers were really watching the case carefully because MDARD (the state agency, the Michigan Department of Agriculture) interpreted it as, "From the barn to the neighbors' house had to be 250 feet." Hidden Creek was in compliance prior to the litigation.

The regulation was not written crystal clear. Like you said, Pete, it sometimes depends more not on the law but on the agency's interpretation.

So we took on the case. There was initially a temporary restraining order hearing against the farmer. Then there was a hearing on the merits. We represented the farm through all of those hearings and legal briefings, etc.

A court disagreed with MDARD and said that a farmer's property line had to be 250 feet away from the neighbor's house. This was a big chain for all small farmers in Michigan, so it impacted not just our members, but all farms across Michigan. So we were in the process of both appealing the decision, and we were willing to go through and had started the process of mediation to try to resolve this issue. At the same time, we were in contact with the state agency *about the right to farm requirements*. The committee on the state agency got together to make the regulation more clear that the terminology 'livestock facility' meant the physical structure of the barn [*being 250 feet away from the neighbor's house*] and not the property line.

So MDARD rewrote its regulation to make it clear that a farm was in compliance as long as there is 250 feet between their barn facility (their structure) and the neighbor's house.

So it was litigation against the members, and we had used *the state Right-to-Farm Act* as a defense. But the court was in disagreement because it saw a 'nuisance

per se'. As we were keeping the case alive in the courts, it became more of a policy resolution, and the state agency clarified its position on it. So we got it resolved, and all of the small farms across Michigan are now protected by that legislation.

I guess I should be clear that it was a right-to-farm case because as long as you are in compliance with the state regulations, the right-to-farm law gives you the right to farm *regardless of local zoning laws*. So we were fighting about whether this farm was in compliance with this rule on how much space between a livestock facility and the neighbors' house, but it is an example of a case that started from litigation and got resolved as a policy matter to a very good result for small farms across Michigan.

Kennedy: I would say that the Legal Defense Fund successfully negotiated a resolution with the town. Basically the litigation with the town was taken care of in court while this neighbor who was suing the farm was taken care of by policy, which was spurred on by the litigation.

One thing for the listeners to know is that these right-to-farm laws are very important. Michigan has about the best one.

The right-to-farm laws were originally enacted to protect the CAFOs – the big confined animal operations that were polluting the land. They are very broad in some states like Michigan. As long as you are in compliance with these farming regulations *and sell a minimal amount of product*; like you said as one court says that you can sell just a dozen eggs and be protected under the right-to-farm laws.

It is something that was meant to protect the big outfits, but it can also protect the small farmer as well.

Kulwicz: I agree that they are helpful even though it wasn't enacted to help small farms. What is interesting is where we have right-to-farm laws, your county or your township folks who are trying to enforce these kinds of ordinances are very often unaware. Resolving some of these cases sometimes is as simple as one of our attorneys calling up these local entities and showing them and explaining to them the right-to-farm law, and then we can resolve whatever the underlying issue was.

I think that we could have even done that in this Michigan case. The township, once we started educating them about the right-to-farm law, was reasonable. It was just this neighbor who continued, so we had to keep going forward in order to get it clarified.

Kennedy: One further point of clarification is that what the right-to-farm law says is that no matter what the zoning is, even if it's not zoned for agriculture, if you follow these farming regulations that the Michigan Department of Agriculture has issued and you have any sales at all, you can be protected under that law. So the Legal Defense Fund has probably litigated a half dozen right-to-farm cases in Michigan because it has the best law, and we want to keep the teeth in that law.

So that is an example of just being there for a member who gets in trouble. I mean, if either party [the town or the neighbor] had been successful in that case, the member would have been out of business and would have had to move elsewhere.

Occasionally Legal Defense Fund takes on a proactive case or a broader policy issue. Right now, there is currently litigation with FDA overturn the [ban on] raw butter in interstate commerce. Maybe you could speak to that litigation and give the background of the case.

Kulwiec: Yes. I know you were involved in the beginning, Pete, so please correct me if need be.

I'll just start out by explaining that the FDA prohibits the sale of raw milk across state lines, and [the agency] interprets that to include most raw milk products *including* raw butter. As a result of prior court litigation *over the interstate ban*, the FDA never really studied the impact of raw butter nor made a decision about the health and safety of raw butter. That is what led the Farm-to-Consumer Legal Defense Fund a number of years ago [in 2016] to petition the FDA to rule that the interstate sales of raw butter was lawful.

Three years went by, and the FDA did not bother to respond to the Farm-to-Consumer Legal Defense Fund petition. So ultimately we sued the FDA

because they failed their obligation under Federal law to respond to the citizens' petition. After that litigation they issued a decision that, in fact, they were upholding the ban on the interstate sales of raw butter.

We then amended our action in federal court to challenge that decision, arguing a couple of different things. One thing we argued was that legally [FDA] didn't have the right because of the way the statutes are written. Butter is already defined *in statute to include unpasteurized butter*, so they shouldn't have changed that. Also their decision was arbitrary and capricious because they didn't have evidence that raw butter was actually an unsafe product. In fact, we presented strong evidence that raw butter is a safe product. It is a product in which pathogens don't grow because of the low moisture and the high fat.

We are still litigating – and I know that we will get into some other details – this decision of the FDA that I believe came out in February of last year or the year before in continuing to prohibit the interstate sale of raw butter.

Kennedy: Right, it was last year.

Kulwicz: We have fully briefed the issue at this point, which means that we have filed out legal briefs back and forth. I think that there may still be an oral argument. Essentially, we are arguing that: 1) The FDA did not have the legal authority to do this. 2) Raw butter is a safe and healthy product, and the FDA did not rely upon specific scientific evidence to suggest that raw butter was unsafe in reaching its decision.

Kennedy: What was amazing to me was, like you said, the Legal Defense Fund along with Mark McAfee, who is the largest raw milk producer in the country, filed a petition requesting that the FDA issue a rule legalizing the sale of raw butter in interstate commerce. Like you mentioned, it took over three years for them to answer, where really the law requires an answer in six months.

The amazing thing was that in [FDA's] *petition* rejection letter they included this chart that had 13 cases of outbreaks caused by raw butter in over a 100-year period. When you read the data on each outbreak, it is very incomplete with most of the outbreaks. There is only one outbreak that said for sure that [the cause of illness] was unpasteurized butter. It turns out later in the case the FDA

said, “We included outbreaks that could have been either raw or pasteurized butter,” because a lot of these outbreaks just said ‘butter’.

Pasteurized butter is legal, so this isn’t about pasteurized butter. What do you have on raw butter? Where are the outbreaks on raw butter?

The only one that they specifically mentioned where they listed raw butter was homemade raw butter; there wasn’t a single case that they definitively showed where commercially-produced raw butter made anyone sick.

If the Legal Defense Fund had submitted a graph like that or a chart like that to the FDA, the FDA wouldn’t have given it the time of day.

Kulwiec: This chart is amazing to suggest that the data they are relying on in one of their legal briefs is this history of illness caused by butter dating back to the early 1900’s, and only one case in that entire chart – like you said – can they say that it was caused by raw, unpasteurized butter.

For some of the early years, it says ‘not specified, but commonly raw’ because they weren’t pasteurizing in the early 1900’s. But from a scientific standpoint, making presumptions and not having the data, I was not a very good science student, but even I know you can’t do that. This is pretty amazing stuff!

I also want to point out that you did mention that the one raw butter case that they had was from homemade and not from commercial sale raw butter. The one case that they had was also back in 2002; so, that means that since 2002 in this country (and the one case in 2003 in England *in the chart*) they don’t have any data or anything to rely on to suggest that raw butter is unsafe. That says to me that the producers are taking the care they need, and that it is a safe product because even the one instance they have, 2002 doesn’t feel like a long time ago, but that was quite a while ago. They have nothing recent to complain of.

Kennedy: The listeners *should* know that they enacted this ban based on their power to regulate communicable disease. So if raw butter is a communicable disease, they can ban just about any food under this power. That is the trouble with these regulations.

I think that the evidence clearly favors overturning the FDA's rejection, but the courts give the agencies so much deference. What the FDA is basically saying when you look at the low incidence of illness from raw butter is that they can ban any food that they want under this power. [To me, this is an abuse of] their authority.

Kulwicz: The thing that troubles me the most is that they rely on studies and information relating to fluid raw milk in a lot of cases, but raw butter is different. They didn't really separate that out for study. I find that very disturbing because it's a different product with different properties.

In my view, if the FDA is going to ban something, then you had better well have really good, solid scientific evidence of the health and safety problems with that product – which they just don't have when it comes to raw butter.

Kennedy: Both this Hidden Creek Farm case and the FDA case, you mentioned the term earlier as 'public interest litigation'. Could you define that for the listeners?

Kulwicz: Sure. I would define public interest litigation as litigation that will impact not just the parties but a group of people, and it really is a way to be changing policy through litigation. So even though the raw butter petition is a proactive piece of litigation, we do have a dairy farmer, Mark McAfee, who is part of it, but it's public interest *litigation* in the sense that we are bringing this because we believe it is in the public interest to have access to healthy and nutritious products, including raw butter. So we are trying to make this change on behalf of the public, not merely just *representing* one of our members in a local agency matter.

It's through litigation, trying to make improvements and policy that benefit the public – or at least a large portion of the public. We do like to engage in that kind of litigation when we can.

Kennedy: It's litigation that is going to affect more than just the member before the court. Speaking of policy, let's go on to some of the policy work Legal Defense Fund has done. You mentioned the overriding issue right now seems to be the lack of slaughterhouse infrastructure in the past and possibly

meat shortages in the future. One partial remedy for that is the PRIME Act. Could you talk about the PRIME Act?

Kulwiec: Yes. Like I said, the general rule is that you would have to bring animals to a USDA or state-inspected facility in order to sell the meat from those animals. Smaller producers are being given two or three years out in terms of when they can get into these facilities.

An alternative that we work with our members on is bringing animals to custom slaughter facilities. However, that has to be an animal that is owned by that person for their own personal use. You cannot sell the meat from animals that have been brought to custom slaughter.

What the PRIME Act would do would be to allow local producers to use these custom slaughter facilities and then sell the meat that was slaughtered at the custom slaughter and processing facilities. So it would allow states [to enact laws that allow custom meat sales].

People may wonder, so I just want to say that custom slaughter facilities are required under Federal law to meet stringent standards in terms of sanitation and not producing adulterated food or misbranded food. The only difference is that you don't have an inspector there for each and every slaughter.

I know I've heard some pushback to it where people are concerned, "Well, shouldn't we be regulating meat safety?" The answer is that it is still regulated – probably more so than you and I think it should be – but what the PRIME Act would do is allow the use of these custom slaughter facilities for local producers to bring animals and then sell the *meat* products rather than have to sell a live animal or a portion of a live animal before bringing it to the processor.

That would help these small producers so dramatically because the ones that are trying to use USDA and state-inspection facilities can't get in because they are the small guy, and the big producers are the ones who are getting the business in there. They will go under because they can't afford to maintain a live animal for two to three years and not get dates to bring in their animals for slaughter and processing.

It's a real example of how the policy supports the larger producers rather than the smaller ones. The PRIME Act would allow small folk to bring it to custom slaughter facilities and sell their meat.

Kennedy: There are a couple of federal laws that are very problematic for people at the state level because they preempted the field of state regulation so that states have to adhere to the federal standards. Number one on the list is the Federal Meat Inspection Act. What the PRIME Act would do would be to amend this, as you've described.

When it comes to policy, the Legal Defense Fund mainly works at the state level because the federal level has more lobbyists representing the big producers, and at the local level you get a lot of these NIMBY (not in my backyard) attitudes. So it seems like the state level is the place where we can make the most progress.

Maybe you could talk about some of the work done in the state legislature.

Kulwiec: Absolutely. I'll just say that we are seeing a lot of it right now because the early part of the year is when a lot of the state legislatures are active.

I think we are getting the attention of state legislators, particularly in light of some of the meat processing problems that we've seen post-COVID. I'll just say that COVID just illuminated the problems that already existed.

A few things that we are seeing at the state level are what we call 'Food Freedom Acts'. That would be to lessen regulations of smaller producers. In general, that might mean that you don't have a license for certain foods. It may specifically provide for food production in areas that were previously regulated.

Regarding the meat production bills that we are seeing, Nebraska and Colorado and Montana do have pending potential state laws that would make it more clear that you can have these meatshare agreements. I don't know the exact details of each of them off the top of my head, but they would make it easier in the state for a local producer to produce meat animals and then slaughter and process the animals and get it directly to the consumer.

The one current existing Food Freedom law that is really good on meat is the Wyoming statute, and that one says that the end consumer owns a share of that herd. They can purchase that, but then they can pay the producer or the farmer to provide them with a specific cut of meat as opposed to just getting a share of the animal.

I think that there may be similar language in the Nebraska statute and the Colorado statute.

Pete, you and I spoke yesterday on Montana, and I think you have a little bit better handle on state statutes. I think that we will get to some of the other subjects, but in general what I will say is that Farm-to-Consumer Legal Defense Fund will send out action alerts on these policies, we will find members that are interested and involved, sometimes providing for testimony at the state legislature level as we try to push through these policies, sometimes just educating folks like I recently did in Colorado – explaining the Federal Meat Inspection Act and why this is so important to make it easier at the state level.

There are a lot of ways that we can get involved in supporting some of this legislation.

Kennedy: That would also include development *of bills* and possibly even drafting *them*, like when the Legal Defense Fund worked on the development of the PRIME Act with lead sponsor Representative Thomas Massie. We *also* worked on drafting other legislation.

I break down local food legislation into five categories: 1) The ‘cottage food’ where *some allow* certain ‘foods not subject to time and temperature control’ which you can sell with little or no regulation. 2) Raw milk is kind of a category in and of itself because there is an interstate ban. The states are free more with that food than any other food with *setting* laws and regulations that they want. 3) The favorable custom exemption that you were talking about adapting the federal regulation on the custom exemption for uninspected meat. 4) On-farm poultry processing. Again, we are talking about *adapting* the federal regulations *exempting on-farm processed poultry from inspection*. 5) These food freedom bills which allow not only the sale of foods not subject to time and temperature control, but *also* many foods subject to time and temperature control. Wyoming was the first

state to do that.

Montana actually has a [food freedom] bill that passed out of the senate yesterday. Several other states have *passed similar*, but when you look at some of these other *categories* – almost every single *state has a cottage foods [law]; as for raw milk [laws]*, I'd say in almost 45 states now [farmers] can legally produce raw milk for human consumption *and/ or pet consumption*. [Most states have adopted] the custom slaughter exemption and the on-farm poultry processing. [Passing] these food freedom bills and expanding the foods that can be sold [is important]..

It's kind of counter intuitive really, the less regulation that there is at the local level, the safer the food is going to be. These producers have plenty of incentive to produce *safe* food. If there is one illness, it's not like some big corporation where [paying out damage awards] is the cost of doing business; [instead the producer is] done at the local level *and likely put out of business*.

It's just something where you see the progress being made *at the local level*. There is a lot more that can be made.

On the one hand, you are proactive – just trying to push more to deregulate. On the other hand, because of what is going on at the federal level, sometimes you have to fight these rearguard actions just trying to protect what people have gained in the various states already.

There was actually *worse* [legislation] *passed* after the Federal Meat Inspection Act. It was the worst food law – the one that is the most harmful to members, and that is the Food Safety Modernization Act [FSMA]. It just seems like it's designed to paperwork people to death.

There was actually a regulation pursuant to the Food Safety Modernization Act that was [proposed] recently. I know Legal Defense Fund commented on that. Maybe you could talk about that.

Kulwicz: Before I get into FSMA and the FDA traceability rule, which is what you are getting at, I just want to say that a third way that we can get involved in policy is when agencies change a regulation, they often have to publish it, and

there is something called ‘notice and comment’ where they are required by law – whether it’s state agency or Federal agency – to allow the public to comment on a proposed regulation. That is one thing that we have done a couple of times, and we will probably continue to do more and more.

I know we have [supported] some of the local legislation in Texas recently. I wrote to legislators in South Dakota, trying to support a cottage food bill there. It’s another way that we can get involved in policy.

In a lot of the federal laws [concerning] food safety, I think it’s just such an example of how we are writing a law to make sure that food is safe that is produced at these huge, large levels—*while not scaling the regulations so smaller firms can comply.*

I’m digressing a little, but bear with me. You pasteurize milk because you’ve got hundreds of [farms shipping milk to dairy cooperatives] from all over, and you can’t ensure that safety. But at the small producer level, you can. Policymakers don’t pay enough attention to our smaller, sustainable farms. Instead, they are just passing regulations that for a small farm is really onerous record-keeping requirements.

FSMA, the Food Safety Modernization Act, was passed several years ago. It does have some exemptions for small producers. It’s not as broad of an exemption as I would like, but it does have some exemptions in terms of some of the training requirements or sanitation requirements. There are also record-keeping requirements.

Again, the smallest [produce growers] usually fell under an exemption, but there was kind-of this middle ground which was between \$25,000 and \$500,000 of revenue in which they had to meet certain requirements, but not necessarily all of the things in FSMA.

In any case, we have now reached the point where all of the requirements of FSMA – which, again, require some training and have certain sanitation requirements and certain separation of animals from crops and that kind of thing – all of those regulations have now kicked into gear and should just be operating.

In the meantime, what happened – and this initially came out September of last year – was the FDA issued one of these proposed rules called the FDA Traceability Act where it is requiring producers to keep not just records of what they are doing in their field, but to keep records in a certain format and to keep details that are really, really onerous.

Two things that I really objected to with the FDA Traceability Act was: 1) It doesn't have that middle exemption between \$25,000 and \$500,000; it only has the super-super small producers who are exempt from the act. 2) The record-keeping requirements actually say that if the FDA shows up at your farm and wants to see the records of the crops that have been grown and sold and who they have been sold to and how long they were kept and exactly where they were grown, you need to provide that to the FDA in a spreadsheet form, including the GPS coordinates of where the crops are.

Kennedy: It's unbelievable.

Kulwicz: I picture our small members – particularly our small members very involved with regenerative agriculture whose 'crop' (if you can even call it a crop because it's such small production) they rotate – trying to keep track of this. So not only do they possibly not have access to the GPS coordinates, but even if they did, they would change from year to year because they are trying to keep the soil healthy, and that is not something that they are doing on those huge mono crops.

This act was very clearly written for large producers, and yet the small producers are included. So the Farm-to-Consumer Legal Defense Fund did file comments objecting to the new rule with the Federal government. Now it's still pending. But I know that several of our allies filed comments as well.

The record-keeping requirements for a producer doing any kind of decent volume is just really onerous. I guess your phrase of 'record-keeping to death' or 'papering to death' is really what this one is on.

The purpose is supposedly to be able to trace. Well, that is fine. You can ask smaller producers to keep records of what they've grown and where they've sold

it. But you don't need the level of detail and the GPS coordinates. The depth of detail in which they are going to tell farmers how to keep records under this proposed rule is really onerous.

Kennedy: It just seemed like it is designed to put small producers out of business by driving them crazy.

What is interesting is I was at a food safety conference a year or two ago. There was a high-level FDA official who spoke. He said that the Achilles heel of the food safety system is traceability. What is more traceable than locally-produced food?

So what they are doing with this regulation is they are putting the most traceable aspect of the food safety system out of business right now.

I always thought that the purpose of FSMA was really to consolidate the food supply into fewer hands in this country. I think that this is definitely going to do it.

One last part on the policy, and sometimes this is because of what happens to Legal Defense Fund farmers is farmers show that there is a weakness in the law, and the agency *subsequently* interprets the law differently. Could you talk about what happened in South Carolina recently with the custom slaughter? That is a good idea of how law, maybe not on paper but in effect, changes favorably sometimes.

Kulwiec: Thank you. That is an example of what you said earlier in terms of how the agency interprets a law can be much more important than necessarily what you see when you look the law up, in this area of state and local regulation in particular.

South Carolina has one of the most restrictive custom slaughter state laws in the country in my opinion. What it appears to say – which frankly it's not very clear, and I know when I first had to read through it, it was pretty confusing – is that the previous interpretation of the law was that a producer could use custom slaughter for their own animals. So if I have beef cattle or goats or what have you, I can bring my own animals to the custom slaughter facility, have them

slaughtered and processed, but I can only use that meat for the producers, for my own family and my invited non-paying guests. So it's really just for the producer's personal use.

Most states allow for the producer's personal use, but a lot go further and allow for [consumers] to purchase animals and then bring them to custom slaughter.

In any case, the interpretation for years of the South Carolina law appears to only be for producer's use. We had a member of our staff recently try to clarify the South Carolina law with the [state] authorities, and they said, "In light of the crisis that we are seeing with producers not being able to get into these USDA and state-inspection facilities, they will interpret the law as allowing for a producer to sell a live animal or a portion of a live animal to a new owner, and for that new owner to now be able to have the animal slaughtered and processed for their own use."

This is the law in many states, but it has not been the law in South Carolina. So we were really focusing on making sure that our red meat map information on our website was accurate because this is everyone's number one top priority at the moment, and you have to actually confirm it with the local agencies because the law is not at all clear.

In this case, the state agency seems to be saying *due to the backup in inspected slaughterhouses*, "Look, in light of the fact that people can't get [animals] to slaughter, we are interpreting our law to allow for end consumers to purchase a live animal or part of an animal, have it custom processed, and be able to get meat in that fashion."

This is a big win. This is our communication to the state agencies, pushing them on the interpretation and pointing out why the previous interpretation is so limiting to producers and will drive producers out of business.

We felt that that was a really helpful interpretation for our South Carolina producers who now can help end users get local meat. So it was a pretty exciting development.

Kennedy: The purpose of this broadcast is to get support for the Legal

Defense Fund. One last thing I'll say before I ask you about membership is FTCLDF is a true grassroots organization. It has never taken a dime from any government agency. As far as I know it has never taken any money from any big corporations either. It has been mostly small corporations of like mind.

The bulk of its revenues come from individual donations and membership fees. Maybe you could tell the listeners what people get for membership.

Kulwicz: Right, our main sources of revenue are definitely our member fees and then individual donations. It's so important that we get the donations because member fees won't necessarily on their own support litigation like the Michigan case that we discussed. We need to keep the membership [fee] low so that the smaller producers who are really struggling can be members and be represented.

What you get for membership is we do have different levels. For the Farmer and the Food Artisan level membership and an Affiliate membership, which may be a small retail or buying club scenario, in the first six months you will get a couple of hours of representation. After that, you pretty much get unlimited legal counsel. We will often, depending on the case, also provide legal representation in litigation to the individual. That is not a given, but in many, many cases we will provide legal representation under the circumstances to the members.

We do have a Consumer membership level that I think is also really important. It's really to support changing our food system so that consumers can also get a hold of these locally, healthy produced foods. So it's having consumer members support the organization in saying, "I want to support those small growers so that as a consumer I can go out to the farm and get healthy products from someone that I know," (talk about traceability), "as opposed to some other source."

So the legal representation for farmers and food producers is a major benefit of the organization, knowing that we are working on and supporting these policy efforts to attempt to level the playing field and to allow producers to get food of their choice to consumers' hands, which is also very important.

We do regularly keep everybody informed of policy developments. We have resources on our website. We have webinars on both legal issues and more practical issues for small farms. So there is a real host of benefits to being a member or supporting the organization.

I guess I'll just say that as a general rule I see it as this: If we can support the small food producer and the small farmer, that is working towards changing our food system back to a more decentralized system where we can get food that we can trust from local producers. That is really the name of the game.

We happen to do it through legal representation and policy work, but [decentralization] is what the organization is ultimately trying to [accomplish] with its support.

Kennedy: One thing that I would say about the farmer member and the homesteader is they not only get unlimited consultation after six months, but if the Legal Defense Fund does agree to represent them when they have a judicial or administrative hearing, frequently there is no cost to them beyond their membership fee.

Kulwicz: That is correct. We've had a number of agency hearings in the last year or so, and we just provide a lawyer who represents the member free of charge, and we represent them through that hearing; at times we will also represent them through court proceedings. There may be instances – but frankly they have been more rare than the opposite – where we wouldn't take on a specific legal case. For the most part, we are there to provide the legal representation.

Kennedy: For people wondering where the money is going, a lot of it just goes towards setting up an attorney network around the country. Can you briefly touch on that?

Kulwicz: Sure. We have a few folks who work on a daily basis with us, but for the most part, particularly if we are going to hearing or signing off on contracts, we are going to need local counsel all across the country to be involved with us. So a good portion of our funds that are spent will either be on outside attorneys doing litigation for us or on our attorney network finding other attorneys that

we will need to use periodically, either to approve things or to represent a member. So we do have this network to go to when we have members with legal problems across the country.

I really want to emphasize something here, which is that I think we do a very good job and are very fortunate and grateful to our attorneys who are part of that network because they often charge us very low rates. I want to be clear that it's not like we are collecting money and then paying high-priced lawyers. The attorneys helping us also believe in the mission, and we get a decent amount of pro bono work done as well. But there are certain things that you really do need to pay outside counsel for, and that is where a lot of our fees go, but at very reasonable rates to people who support the mission.

Kennedy: You mentioned the webinars earlier. Can you give an example or two about what people would get through these discounted webinars?

Kulwicz: We started last year for the first time what we are calling Members Only Webinars. It's another thank you and boost for being a member of ours. We are trying to hit topics that really serve and help our members.

We have done two webinars so far on farm marketing – learning techniques to continue growing a small farm, staying viable, finding new customers, and really growing your business. That is not legal expertise, but I think that it is something that our members appreciate.

We have also had webinars that were more directed to the law; so, we have had details on poultry processing, for example we had Dr. Michael Fisher, *a former USDA inspector*, review some poultry processing exemption laws with us in a webinar not that long ago.

We also hosted a webinar on raw butter so that people understood. If they were interested, they could attend the webinar and really get a better handle on why we feel strongly about the health and safety of raw butter – not necessarily all of these legal aspects that you and I were talking about, but why it is a good product.

That is what we have done so far. We will have another one up in April. I'm not

sure the order of things, so I'm going to hold off on saying what we will have coming up. We think that this will be a quarterly offering to members to have these educational webinars.

Kennedy: You have also had webinars on marketing for farmers.

Kulwicz: Correct. We had marketing for farmers so that they can grow their business and keep their customers and find new customers and the whole thing.

Kennedy: Farm-to-Consumer Legal Defense Fund is protecting your sources of real food. With the current state of the food system, this is an organization that I think is more important than ever for people to support.

Over the last three or four months I have heard that USDA is looking to lift the label disclosure requirement on irradiated poultry and meat. [Some businesses] are working towards approval of the FDA and USDA [to market] cell-cultured meat.

A food safety conference that I was at recently had a speaker talking about meat replacements, such as mealworms, crickets, and termites.

The conventional system is moving to this synthetic food. A better source for real food is increasingly going to be found in the local system, and that is the Legal Defense Fund's job to protect the producers' ability to make those foods and the consumers' ability to have access to the foods.

That is my pitch. What is your elevator speech if someone asks you about FTCLDF?

Kulwicz: Thank you, Pete. My short 'elevator speech', so to speak, would be that I, too, think that as an organization we are primed right now. Consumers want small, locally-produced, healthy real food. The policies and regulatory structures that are in place favor larger producers and make it really difficult for the small producers to remain viable.

What our organization does is provide the representation which could be an agency hearing or a negotiation or setting up a contract or a consultation, but we

provide that legal representation.

I will add that [our attorneys respond to members' requests for] consultations *and* will get to people pretty quickly. For example, Pete, I just want to thank you. Whenever I say, "Call this member. They have a meat processing question or a poultry processing question," I know that you are getting back to them quickly. That is true of all of us who are working with our members. Producers get the answers they need quickly.

We are there to represent you and to help you through when there is a crisis – like an inspector at the farm gate or somebody accusing a farm of an illness from raw milk. We are there to represent that member, and we are there to try to change policy so that it's easier for smaller producers to be able to get food that consumers want to the consumers without this regulatory burden.

Kennedy: My final question: How do people join or donate? If they want more information about FTCLDF, how do they get it?

Kulwiec: The best place to get information is our website, which is www.FarmToConsumer.org. We are on social media. We are on Facebook and Instagram as well.

You can join at any membership level online. You can also donate online. It is very nice and convenient.

Those of you at Solari, there is also something if you were to choose to donate that asks how you learned about us. It's nice to know that you heard of us from Catherine Austin Fitts and from Solari, so please let us know that.

You can also always call for those who don't like donating online. The phone number is 1-703-208-FARM or 1-703-208-3276. So you can go online or call us to support this mission, and we are always so grateful. It really means a lot to us to get the support to represent these small farmers and producers and homesteaders.

Kennedy: I would like to thank Solari members for the support that they have given the Legal Defense Fund so far. Hopefully for those who haven't joined or

donated yet, this podcast will help you see the importance of the work that Farm-to-Consumer does.

Alexia, I appreciate your time, and I wish you the best of success.

Kulwiec: Thank you so much, Pete, for having me and thank you to Solari for having us. As Pete said, we are grassroots. We are finding the people who understand that this system is rigged against the smaller producers who are producing the food that we are told that consumers want. So any support, even paying attention to policy and calling your legislators on policy issues, we greatly appreciate.

Kennedy: Take care, Alexia.

Kulwiec: Thank you. Take care.

MODIFICATION

Transcripts are not always verbatim. Modifications are sometimes made to improve clarity, usefulness and readability, while staying true to the original intent.

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