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Dan Flynn
State Representative • District 2

September 13, 2016

The Honorable Commissioner Charles Smith
900 N. Lamar Blvd.
Brown-Heatly Bldg.
Austin, TX 78751

Dear Commissioners Smith and Hellerstedt,

As legislators, we seek to uphold the fundamental principle that we are a government of laws, not of men. Implicit in that statement is the need for laws to be interpreted consistently and fairly.

We are deeply concerned that the Department of State Health Services has reversed its previous written interpretation of the regulations governing the sale of raw milk. In 2013, the agency stated that customers could legally pick up milk for others and distribute it, and that the farmer was in compliance as long as he or she was not delivering.

This interpretation of the regulation is consistent with basic principles of law, including individuals' rights to designate an "agent" to act on their behalf. For over two hundred years, the courts have upheld the principle that an agent "stands in the shoes" of the person who has hired him, and that there is no legal difference between an individual taking action and his agent taking that same action. Texans do not sacrifice their normal legal rights simply because they choose to drink raw milk.

Yet the agency has recently embarked on a series of what can best be described as aggressive enforcement actions aimed at both a licensed raw milk farmer and the customers who purchase milk from him. Based on what reportedly are complaints from competitors – not customers – DSHS has taken action both directly and by encouraging action by local health departments.

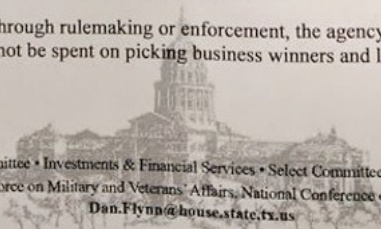
This new course of action directly conflicts with what the agency assured farmers and consumers was the law as recently as 2013. And by taking these actions, the agency is interfering with both the licensed farmers' ability to conduct their business and the customers' individual rights.

Not one illness has been reported from raw milk in our state in more than four years. A total of six illnesses have occurred in the last 20 years. There is no public health development that would justify DSHS' actions against these small businesses and the consumers who seek out their products.

At a minimum, if the agency contends that greater restrictions are appropriate, it should propose them through the normal rulemaking process, with public notice and the opportunity for public comment. The agency should not adopt what is effectively a new restriction through enforcement mechanisms.

Before taking any action, whether through rulemaking or enforcement, the agency should assess the basis for that action. Our state resources should not be spent on picking business winners and losers, but on things that pose a true threat to Texans' public health.

Committees: Chairman, Pensions Committee • Investments & Financial Services • Select Committee on Emerging Issues in Law Enforcement
Chairman, Task Force on Military and Veterans' Affairs, National Conference of State Legislators
Dan.Flynn@house.state.tx.us



House of Representatives

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Dan Flynn
State Representative • District 2

Representative
Hunt, Hopkins,
Van Zandt Cou

May God Bless You and May God Bless the Great State of Texas!

Sincerely,

Representative Dan Flynn
House District 2

Senator Bob Hall
Senate District 2

Senator Konni Burton
Senate District 10

Representative Cecil Bell
House District 3

Representative Ryan Guillen
House District 31

Representative Phil King
House District 61

Representative Susan King
House District 71

Representative James White
House District 19

Representative Bryan Hughes
House District 5

Representative Matt Shaheen
House District 66

Representative Drew Springer
House District 68

Representative Bill Zedler
House District 96

Representative Ina Minjarez
House District 124

