

Take-Aways From When FDA Tried To Take Away Your Cheese

By Alexander R. Cohen

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The FDA recently said it was illegal to age cheese on wooden boards; in the face of an outcry, it retreated -- kind of. It still says it plans to "engage with the artisanal cheese-making community to determine whether certain types of cheeses can safely be made by aging them on wooden shelving," which means it still might determine that they can't. Cheese fans beware: the threat still looms.

Writing at Forbes, Greg McNeal calls it a victory and a lesson:

When government officials make pronouncements that don't seem grounded in law or policy, and threaten your livelihood with an enforcement action, you must organize and fight back. While specialized industries may think that nobody cares, the fight over aged cheese proves that people's voices can be heard.

But Walter Olson of Overlawyered points out that fine cheese has a particularly articulate and influential constituency interested in its product and knowledgeable about it. Not all industries have that resource.

Sometimes fighting back over a particular product is successful. Sometimes, as we were recently reminded by the Buckyballs case, it isn't. And sometimes even a victory in one forum leaves regulators to fight in another, as when the IRS surrendered to the Institute for Justice in its court battle over licensing tax preparers, only to ask Congress to grant it the power the agency had claimed it already had.

In the long run, only a principle of individual rights can protect everyone. When we recognize that everyone has an interest in everyone else's freedom -- including everyone else's freedom to buy and sell products we ourselves don't want to make or use -- we know that we have reason to care about the issue even when the product in question doesn't interest us. If most people recognized that, the government would know it had to respect freedom, even in the case of products without influential constituencies.

Many fans of fine cheese are progressives, and I hope they learn something from this: When the government looks out for your safety and not your freedom, it may try to take away things you value. Even if you fight back, you may lose, and even if you seem to have won, you may lose soon thereafter. And even if the fans of fine cheese succeed in protecting it, there is probably some

other product you like that doesn't have so many influential fans. If you want to protect the things you value, you need the principles of freedom.