

## Constitutional Amendment Takes Center Stage For 2015

By: Christine Solem

After more than 20 years of wrangling in the Virginia General Assembly over the people's right to have farm-produced food, it has finally come down to this - not that a Constitutional Amendment has not been tried before. In 2005, Delegate Tom Gear introduced a Constitutional Amendment with respect to the right to acquire farm-produced food. The legislation had 20 co-sponsors, but died in the House Privileges and Elections Committee with only 2 voting for it-Delegate Richard Black (now Senator Black) and Delegate Bob Marshall.

But this was before everyone started dropping like flies from agribusiness food production. When I first started lobbying in 1992 I had to haul around this huge stack of reference materials to prove that large scale food production was the culprit. I don't have to do that anymore; it's common knowledge. The CDC reports that 1 out of 6 will get sick from food poisoning each year. Heck, if you went to Court, you probably would not even have to prove it. You would just have to ask the Court to take judicial notice of the matter as it is common knowledge.

And who hasn't seen Food, Inc? Now, 10 years later, everyone is much more informed, the local food movement is monumental and it is time to try the Constitutional Amendment again.

But Why a Constitutional Amendment? There have been several attempts to introduce broad legislation to exempt all on-farm sales of food or food products. The first was an on-farm exemption for all farm-produced food in 1997 introduced by Senator Emmett Hanger, the second in 2005 by Delegate Albert Pollard, and thirdly the Food Processing Bill introduced this year by Delegate Rob Bell and championed by Bernadette Barber, which actually included more than just farm-produced products. All three Bills were very broad and none passed. The most successful was Delegate Pollard's-it did pass the House but lost in the Senate Ag Committee. Bills such as these are very difficult to draw up as there are so many laws and regulations in Virginia on food production that it is analogous to dealing with Pandora's Box.

Smaller more specific bills such as the Home Kitchen Bill in 2008 have been more successful. You lose your rights a little at a time, and in the food theater we have lost a lot; therefore, incremental progress seems to work better to get these rights back. But who can wait a lifetime for this to happen. Since a Virginia Constitutional Amendment would trump any statute or regulation it would hopefully provide faster relief.

The Proposed Constitutional Amendment would read,

"That the people shall have a right to acquire, for their own consumption, farm-produced food, directly at the farm from the farmer who produced it."

"Of course" everyone says, that is the gut reaction. Notice that nothing's stated about the farmers' right to sell it. This is on purpose. It is undoubtedly an intentional quirk of the law that it is not illegal to buy certain farm-produced food, it is only illegal for the farmer to sell it. This proposed Amendment would give the consumer what is called "standing" in Court to challenge the fact that they cannot get, for instance, raw milk from their local farmer. See, Courts aren't really interested in you if you're not illegal.

I hate to burst everyone's bubble, including my own, who believes that farmers should have a Constitutional right to sell their farm-produced food, but Courts have ruled that any business may not operate if what they are selling or doing is deemed to be injurious to the public health and safety. The government doesn't even need a warrant if emergency circumstances exist to enter and shut the business down. Since the legislature has been so difficult to deal with because of all the outside monetary pressure from big business interests, a Constitutional Amendment such as this one could move the battle into another branch of government, i.e., the judicial branch,

which may provide a more advantageous arena for change.

### The Constitutional Amendment Involves a Fundamental Right

Surely the right for a person to contract for his own food directly from the farmer who produced it is a fundamental right. The Amendment further restricts the acquisition to “at the farm”-no internet or delivery or farmers’ market sales. This restriction focuses the right. We are not talking about the general public here. Individuals have the right to life, liberty and property and no State can take that away without due process of law. Years ago most everyone raised their own food; that is not the case today. We the people must have the freedom to seek out and obtain the type of food we want from the farmer of our choice. After all, there is only one person in the world who knows truly what food he wants and that one person is you, because you and only you experience how it goes down, goes through and comes out. Yuck.

In July of 1980 I was taken to Court by the Virginia Department of Agriculture and Consumer services and the Health Department in an attempt to obtain an Injunction prohibiting me from renting my goats on a daily basis so that people who came to me for raw goat milk could have it. I couldn’t legally sell it. In denying the Injunction Albermarle Circuit Court Judge, David Berry, ruled that, as he construed the law and regulations that it was the general public that is to be protected by laws and regulations from the consumption of disease carrying milk, but that in this case,

“...everyone of these people who have engaged in this transaction on the other side have sought Mrs. Solem out. She has not placed her goods or products in commerce. She has sold them, if it’s a sale, on the premises and the customer has sought her out, and I am unprepared and certainly unwilling to say that the customer is to be protected from himself when he knows what he is getting and is asking for it. The Injunction therefore is denied.”

That ruling was overturned on other grounds by the Supreme Court of Virginia in April of 1983-so the farm food fight has really raged on for the last 35 years-and now-it all comes down to the Constitutional Amendment.