

Fax to: 202-318-7557

## PLEASE TELL THE FDA THE CONSTITUTION MATTERS

Date: \_\_\_\_\_

Chairman Jack Kingston  
Appropriations Subcommittee on Agriculture, Rural Development,  
Food and Drug Administration, and Related Agencies  
US House of Representatives

Dear Chairman Kingston:

**As an American health freedom advocate I am asking your help with the Food and Drug Administration (FDA). Nutrition is the cornerstone of good health. A majority of Americans used dietary supplements and like me feel strongly about keeping those products available. With the passage of the Nutrition Labeling and Education Act (NLEA) in 1990 Congress showed its clear intention for consumers to be informed about the true health benefits of food and dietary supplements.** While it gets less attention than the Dietary Supplement Health and Education act of 1994 (DSHEA) it is no less important. NLEA created a 'safe harbor' for foods and dietary supplements from a 'drug' designation by the FDA when making a health claim. The pathway to making such a claim was intended by Congress to be easier to achieve than the drug label approval process. **The FDA's refusal for two decades to comply with the law needs warrants a Congressional reprimand. They have failed to fully and fairly implement NLEA and DSHEA.** Instead, the FDA has wasted years rejecting claims or changing the language so much as to make them meaningless. Furthermore, they have used tens of millions of taxpayer funds in the courts rather than comply with Congressional instruction. There is no one more powerful in Congress than an appropriator, and thus I am asking for your help as Chairman of the Committee that oversees the FDA's budget.

This issue has dragged on since the Clinton Administration with multiple law suits and appeals. Twice in the last six months the courts have ruled that the **FDA violated the First Amendment of the Constitution by denying health claims.** The courts have been clear, "where the evidence supporting a claim is inconclusive, the First Amendment permits the claim to be made; the FDA cannot require a disclaimer that simply swallows the claim."

**As you prepare the Appropriations' Committee report to the FDA, I am requesting that you include the following comment:** *The Committee reminds the FDA that protecting the Constitution for all Americans including individual and commercial free speech is its sacred trust. The Committee is concerned that the FDA continues to be found by courts to be abridging the constitutionally guaranteed rights of free speech to companies in regards to health claims for foods including dietary supplements. The Committee reminds the FDA that accurate information in the form of health claims is a legal mechanism which the Congress desires to see fully and fairly implemented. We agree with the court's opinion, "where the evidence supporting a claim is inconclusive, the First Amendment permits the claim to be made; the FDA cannot require a disclaimer that simply swallows the claim."<sup>1</sup>*

**Thank you.**

Signed: \_\_\_\_\_ Print Name: \_\_\_\_\_

Email: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zipcode: \_\_\_\_\_

<sup>1</sup> Statement in Memorandum Order signed by US District Judge Beryl A. Howell in Civil Action No. 09-1546 (BAH) on 13 April 2011 (page 35), <http://www.courthousenews.com/2011/04/15/Supps.pdf>

This letter was prepared by health freedom advocates Beth Clay, Diane Miller & Clinton Ray Miller. For more information visit [www.codexfund.com](http://www.codexfund.com). Fax Signed letter to 202-318-7557.