No 16-1289

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

CONRAD E LEBEAU,

Defendant-Appellant.

Petition for Enbanc

Filed with Appellate Brief

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To - 7th Circuit Court of Appeals
219 S Dearborn St
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Petition for Enbanc

Pursuant to Fed. R. App. P. Rule 35 (a) (2), Conrad LeBeau, pro se, requests the 7th Circuit Court of Appeals to grant an Enbanc hearing in this case due to the exceptional importance of the multiple legal issues involved. A list of questions on these issues in the Appeal brief is filed concurrently with this Petition. My presentation will be limited to parts of issues in questions 3 through 10 that were not adequately covered in the brief.

The exceptional question is – **Does the Congressional Record from 1906 through 1994 indicate that Congress authorized the FDA to classify "foods" as "drugs" based on their intended use to prevent or mitigate disease, and does this suppression of commercial speech run contrary to the First amendment?**

While the Courts have for the past 75 years given deference to the Executive branch of government to use an expanded definition of "drug", first defined by the Pure Food Act of 1906, the defendant presents a compelling arguments in his brief and will do so in person why this definition is not only an over-reach of regulatory power to suppress speech, but is contrary to the First Amendment right of commercial speech and contrary to the intent of Congress. This has resulted in a regulatory padlock that the FDA has placed on more than half a million scientific studies at the National Library of Medicine on how foods (spices, herbs, plants, vegetables and fruits) and traditional natural remedies can prevent or mitigate disease or do both.

Because it is impossible or virtually impossible (both factually and legally) to comply with the mandate that speech about foods medicinal value be subject to the approval of the U.S. Food and Drug Adm. through the New Drug Application process, and because 100 million Americans either buy health foods or use nutritional supplements, and because the First Amendment protects the right of free speech, and because word limitations prevented the defendant from presenting all of his legal arguments in his brief, defendant request an Enbanc or nine judge panel to allow him to present the balance of his reasoning on why "how the law as applied" must change.

The 10 questions listed in my brief are as follows:

1. **Defendants intentions**: Did the defendant intend, as the government alleges, to make a disease claim for Perfect Colon Formula when he used the term "reduces food allergies" in a handout flyer and do the facts about the case as reported in Document 28 (Motion to Dismiss) support or refute this?

2. **Plea Agreement defect, transcript contradictions, and threats from the government**: Does the Plea Agreement (Doc 58) support the government's narrative that the plea of "guilty" meant the defendant intentionally had a "state of mind" to distribute unapproved new drugs in interstate commerce, and does the transcript of the Jan 13, 2012 hearing on the Plea Agreement (Doc 96) support or contradict this narrative?

3. **The Patent issue and the Doctrine of Impossibility**: Why is it that the U.S. Food and Drug Administration has never approved a single vitamin, mineral, herbs, food, nutritional or dietary supplement as an "approved new drug" in its entire history of approving drugs? Does the New Drug Application (NDA) mandate fatally impair the First Amendment right of LeBeau to use speech about a food supplement by placing a regulatory and financial burden for pre-government approval of that speech?

4. **Congressional intent and the Doctrine of Overbreadth**; The Congressional Record on 1906 and as amended in 1938, 1962, 1990 and 1994 show that the original definition of a "drug" had a limited meaning that included, besides patented medicines, cocaine, heroin, narcotics, and nostrums but did not include water, herbs, food, spices, nutritional supplements, vegetables and fruits?

5. **Judicial expansion of the legal definition of drug.** Did the Courts, not Congress, expand the legal definition of "drug" as originally described in the Congressional Record of 1906, and amended (in1938, 1962,1994), to go beyond its original meaning and expand the scope of the definition at the insistence of the Executive Branch of government?

6. **Congressional intent in passing DSHEA in 1994:** Did Congress intend to narrow the scope of health products that the FDA could classify as "drugs" with the passage of DSHEA? After passage of DSHEA, has the FDA done an end run around this law by classifying food and dietary supplements as drugs based on speech they object to that was used in labeling? As the FDA applies numerous case law citations to foods and dietary supplements, is the speech itself the alleged "drug"?

7. **Applying DSHEA to Perfect Colon Formula**: With the passage of DSHEA in 1994, should Perfect Colon Formula be considered by its composition to be a food or dietary supplement and not a drug? Are the words "reduces food allergies" used in a handout brochure the alleged "drug" that the government objects to and found offensive? Based on the scientific research cited in Doc 28 and Doc 75, are the words "reduces food allergies" a truthful and not misleading statement in the context of how they were used?

8. **DSHEA and the Congressional Record of 1994 and other relevant arguments**: When U.S. District Judge Charles Clevert set the date of July 21, 2015 for oral arguments in this case, did he open the door for the defendant to expand his arguments of law to include the Congressional record of 1994 in passing the Dietary Supplement Health and Education Act?

9. **24 questions for the government that it failed to admit or deny**: Did Judge Clevert open the door for further factual and legal arguments when he set the date of July 21, 2015 for oral arguments? Should the 7th circuit consider allowing all of these requests for admissions to be entered into the record as evidence they were "admitted" or "acknowledged" by the government?

10**. Restraint of Trade and Case law on the freedom of speech and press**: How does Central Hudson, the Caronia case, and legal cases discussed in the book "**The Rise of Tyranny'**" by Attorney Jonathan Emord support the defendants first amendment arguments in this case? In 1788, in framing the U.S. Constitution, did the Continental Congress delegate to the new U.S. Congress in Art 1, Sec 8, U.S. Constitution the power to suppress commercial speech about how foods, herbs, water and other traditional natural remedies prevent and mitigate disease?

Thank you for your consideration of this request.

Dated: March 17, 2016

Conrad E LeBeau - pro se

CERTIFICATE OF SERVICE

The undersigned Defendant-Appellant, Conrad E LeBeau, hereby certifies that on March 17, 2016, a copy of Defendant-Appellant's Petition for Enbanc, was served on AUSA Jonathan Koenig,, 517 E. Wisconsin Avenue-Room 530, Milwaukee, Wisconsin 53202, counsel for the government in this action by mailing a copy by priority mail today along with the Appellate Brief.

Dated: March 17 2016

Conrad E LeBeau pro-se

Defendant-Appellant Conrad E LeBeau