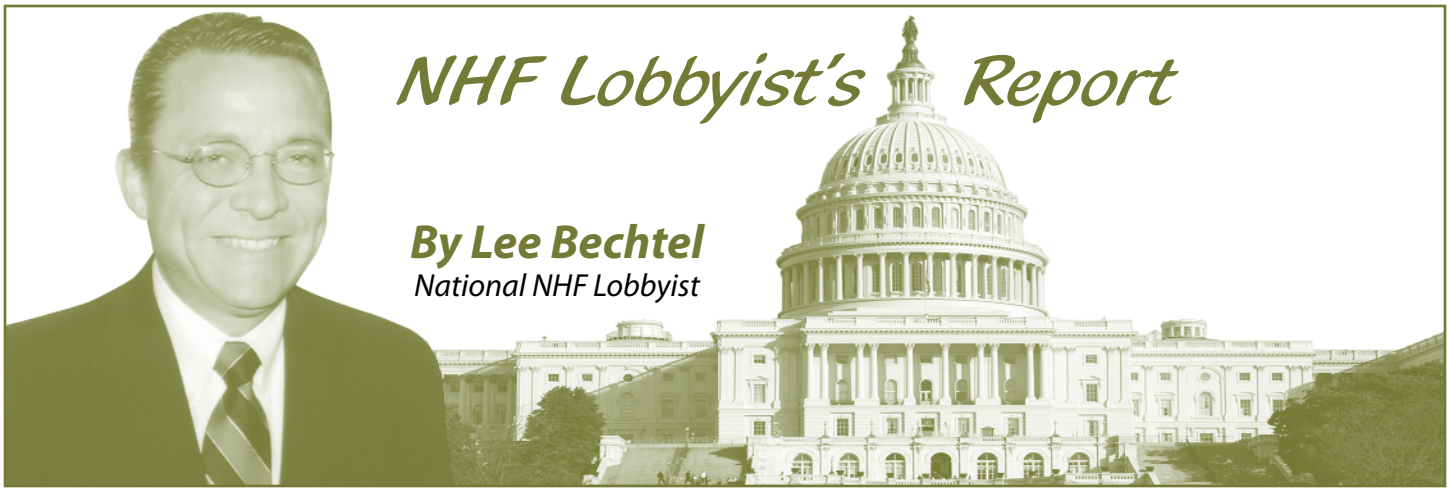

NHF Lobbyist's Report

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CONGRESSIONAL CHALLENGES IN 2010

In the *Health Freedom News* Spring Lobbyist's Report *(Vol. 27, No. 1)*, I outlined several of the major Congressional legislative issues likely to be faced by the health-freedom community in 2009. At the time of this writing, several of these are still in play – national health-insurance reform and granting the Food and Drug Administration (FDA) unprecedented authority over the production, importation, and distribution of food products.

We have provided timely updates to NHF members on developments with national health-insurance legislation, food-safety legislation, the creation of a Federal Coordinating Council for Comparative Effectiveness Research (CER), FDA supplement adverse event reporting and proposed supplement health-claims regulations, legislation dealing with health information technology and personal-privacy concerns, Congressional actions on bills to ban the use of bisphenol A in beverage and food containers, the Lane Labs win in court over the FDA, and other legislative and regulatory actions that establish more Federal government control over health freedom of choice.

With exception for several of these anti-health freedom pending bills and new laws that have been enacted, including national health insurance, several other health freedom of choice and access to nutritional foods and supplements legislative matters will carry over into the second session of the 111th Congress in 2010.

Codex Fix Derailed

Earlier this year, the NHF joined in a joint lobbying effort with the National Health Freedom Coalition (NHFC) and the Sunshine Health Freedom Foundation (SHFF) to force the FDA to put an end to yet another long-standing FDA abuse of how it attempts to regulate supplements and other vitamins and minerals products. For over ten years the FDA has ignored Federal law by refusing to publish regulations exempting dietary supplements from the Codex Alimentarius international food-harmonization standards. Without a Congressional directed fix there will continue to be no FDA transparency or accountability to either Congress or the public when FDA Codex representatives "reach consensus" with what their international bureaucratic counterparts at the Codex want to implement, in violation of U.S. laws.

The SHFF and NHF Congressional lobbyists have actively engaged in this effort but, at the time of this writing, have not been able to overcome several key challenges. For some months, coalition lobbyists were seeking the inclusion of language in the Agriculture Appropriations Bill to have the FDA update their *Code of Federal Regulations* relative to Codex. The update is needed to acknowledge Section 410 of the Food and Drug Administration Modernization Act of 1997, which forbade harmonization of international guidelines relative to dietary supplements manufactured in the U.S. Unfortunately, this spending bill passed Congress without this directive; but this is not the only venue through which to achieve our legislative goal. The jury is still out for now, but next year for certain provides another opportunity to influence Congress and the FDA.

Our Four Lobbying Challenges

There are four lobbying challenges this year and in 2010, the first of which consists of a small but powerful group in Congress who would like nothing better than to see the Dietary Supplement Health and Education Act of 1994 (DSHEA) repealed or taken apart, i.e., the Reid, Durbin, Pelosi, Dingell and Waxman leadership axis, supported by their elitist fellow travelers who believe that more government control over our lives is better. Only the Federal government can protect the citizenry from its own stupidity is their view, conveniently forgetting, of course, that they themselves sprang from this "stupid" citizenry.

The second challenge stems from the continued lack of knowledge about Codex in general, the FDA's own true and lawful role within Codex, and the Agency's activities regarding

dietary supplements. The NHF has been educating Members of Congress and their staffs for years, and continues to do so. While progress has been made, much work still remains.

The third factor was and is that for years legislators have been told that there is no problem with Codex as it pertains to supplements and their sale domestically. (Remember that those who have been in Congress for a while thought they fixed the problem in 1997, with Section 410 of the Food and Drug Administration Modernization Act of 1997 that prohibited harmonization of more-liberal American laws to harsher Codex standards.) This ignorance of the true threat can also be laid at the feet of members of the health-food industry and their trade associations who have lobbied Congress with the false message that Codex will never impact domestic commerce.

The fourth and biggest lobbying problem actually comes from within – from health-freedom activists themselves! This year, many Capitol Hill staff received letters or e-mails from their constituents who use and believe in supplements, and who had heard from another "health-freedom" group – the Natural Solutions Foundation – that on December 31, 2009, the U.S. government was going to ban all dietary supplement sales because of Codex. This assertion was and is blatantly false. Sadly enough, in lobbying visit after visit, the mere mention of the word Codex sent staff into the "duck and cover" mode because of the constituent hysteria caused by this hoax, perpetrated against honest people who use and believe in supplements. In short, the Natural Solutions Foundation, the organization responsible for the hoax, in an effort to gain attention and followers (and even though it does not directly lobby Congress on health-freedom issues), not only ruined its own organizational creditability with Congress, but also embarrassed other respectable health-freedom organizations, whether these organizations were or were not directly involved with the Codex coalition lobbying effort. More importantly, they ruined any near-term chance to have any of us believed on Codex.

The primary goal of our ad-hoc coalition has been to work to find solutions through elected leaders that will resolve the arbitrary regulatory practices employed by the FDA, in violation of Federal law for the past ten years. There is too much in this World that people are afraid of and restricting access to nutritional foods and dietary supplements should not be one of them. Dietary supplements play an important role in promoting and maintaining wellness. By far and away, dietary supplements are safe and affordable. They also play a valuable role in helping Americans improve their health and can be a major part of lowering the high cost of health care in this country. A majority of Americans regularly use supplements and feel strongly about maintaining that option. We all need to stay involved in making sure legislators continue to protect DSHEA. Everyone who consumes, distributes, recommends, or manufactures dietary supplements needs be engaged and stay engaged in educating legislators about Codex and FDA issues.

Illegal Steroids Sold As Supplements

This is another potential legislative issue in the next session of Congress. (*See NHF Press Release of October 5, 2009 at http://www.thenhf.com/press_releases/pr_05_oct_2009.html* .) Senator Arlen Specter (D-PA) chaired a recent hearing of a Senate Judiciary Committee Subcommittee focused on the alleged illegal marketing of steroids as dietary supplements, and the expressed concern about competitive athletes testing positive for banned substances. The Senator used this forum to suggest that legislation to place drug-like premarket-approval requirements on dietary supplements may be needed because of the steroid "issue." Senator Orrin Hatch, who also serves on the Committee, was there and countered this suggestion, eloquently explaining the actual extensive regulatory framework in which dietary supplements operate. Senator Hatch and several of the witnesses pointed out that the FDA already has significant authority to remove illegally-marketed steroids from the marketplace. This is another legislative work in progress for the second session of the 111th Congress.

Other Bills Still in Play Next Year

The following are other bills that the NHF has been involved with in 2009. More detailed information on these bills and letters to send to Congressional Representatives and Senators is available on the NHF website at the addresses listed below on our Government Affairs (Federal) page.

- **H.R.3394 Freedom of Health Speech Act** To amend the Federal Trade Commission Act to transfer the burden of proof in false-advertising cases involving dietary supplements and dietary ingredients from companies to the FTC. (Bill text – http://www.thenhf.com/government_affairs/federal/HR3394.pdf)

- **H.R.3395 Health Freedom Act** To amend the Federal Food, Drug, and Cosmetic Act concerning claims about the effects of foods and dietary supplements on health-related conditions and disease, and for other purposes. (Bill text – http://www.thenhf.com/government_affairs/federal/HR3395.pdf)

- **H.R.3396 Congressional Responsibility and Accountability Act** To amend Title 5, United States Code, to prohibit agencies from enforcing rules that result in a specified economic impact until the requirements of those rules are enacted into law by an act of Congress, and other purposes. (Bill text - http://www.thenhf.com/government_affairs/federal/HR3396.pdf)

- **H.R.778 Authorizing Interstate Traffic of Unpasteurized Milk and Milk Products** This Bill would repeal current Federal legislation prohibiting raw milk/products for human consumption in interstate commerce. It would allow consumers to obtain raw milk products from other States without violating

Federal law. At present, in the U.S., you may consume raw milk in all States but may only sell it in half of the States. (Bill text –http://www.ftcldf.org/docs/HR_778_Interstate_Traffic_of_unpast_milk_012809.pdf)

- **H.R.2629 Coercion is Not Health Care Act** This Bill will protect the American people's ability to make their own health care decisions by ensuring that the Federal government shall not force any American to purchase health insurance. (Bill text – http://www.thenhf.com/government_affairs/federal/gaf_212.htm)

- **H.R.2630 Protect Patients & Physicians Privacy Act** This Bill would ensure that patients are free to opt out of a Federally-mandated electronic system for maintaining health-care information. (Bill text – http://www.thenhf.com/government_affairs/federal/gaf_213.htm)

The Threats and Opportunities Continue

This will continue to be a challenging time for NHF members and other health-freedom advocates who strongly believe that Congress and the Federal legislative process should involve open debate, thoughtful consideration by elected officials of either political party, issue transparency, and accountability. These are people who believe that adhering to the principles of our Constitution and our Congressional legislative process is something that should be done, and that the public policy legislative process should not be conducted in "banana republic" style, with only lip service being paid to the Constitution. Unfortunately, under Speaker Pelosi, the "banana republic" philosophy seems to be winning when it comes to the House of Representatives.

We must continue our honest and principled fight to protect our civil rights. This is why the NHF will continue lobbying Congress and Federal agencies, and working with other respected health-freedom organizations, to constructively oppose legislation and regulations detrimental to health freedom as well as support such other legislation as will advance health freedom. HFN

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