

Background: Industry Aims to Strip Local Control of Food Supply

Legislators in nineteen states have introduced legislation preventing local control of plants and seeds.



Fifteen of these states have already passed the provisions into law (Georgia, Pennsylvania, Iowa, Idaho, North Dakota, South Dakota, Arizona, Oklahoma, Kansas, Indiana, Florida, Texas, Ohio, West Virginia and Michigan). The Nebraska, Missouri, North Carolina and California legislatures adjourned without voting on their bills. Additionally, the Maine Department of Agriculture is seeking to forestall local action around genetically modified organisms (GMOs) via an overreaching interpretation of the state's 'Right to Farm' Law. For a continually updated tracking of seed pre-emption legislation, see

<http://www.environmentalcommons.org/gmo-tracker.html>.

Why this challenge to local rights?

Since 2002, towns, cities and counties across the US have passed resolutions seeking to control the use of genetically modified organisms (GMOs) within their jurisdiction. Close to 100 New England towns have passed resolutions opposing the unregulated use of GMOs; nearly a quarter of these have called for local moratoria on the planting of GMO seeds. In 2004, three California counties, Mendocino, Trinity and Marin, passed ordinances banning the raising of genetically modified crops and livestock. Advocates across the country believe that the more people learn about the potential hazards of genetically modified foods and crops, the more they seek measures to protect public health, the environment, and family farms. They have come to view local action as a necessary antidote to inaction at the federal and state levels.

Who is behind this strategy of state pre-emption?

State legislators who support large-scale industrial agriculture, and are often funded by associated business interests are introducing these pre-emption bills. Farm Bureau chapters in the various states are key supporters. The bills represent a back-door, stealth strategy to override protective local measures around GMOs.

The industry proposal for a "Biotechnology state uniformity resolution" was first introduced at a May 2004 forum sponsored by the American Legislative Exchange Council (ALEC). ALEC claims over 2000 state legislators as members and has more than 300 corporate sponsors, according to People for the American Way (see Resources). The organization has its origins in the efforts of political strategist and fundraiser Paul Weyrich to rebuild a Republican power base at the federal and state levels in the aftermath of Watergate. Other recent measures supported by ALEC include efforts to deregulate electric utilities, override local pesticide laws, repeal minimum wage laws, limit class action lawsuits and privatize public pensions.

The tobacco industry has mounted similar efforts in recent years to circumvent local ordinances restricting youth access to cigarettes as well as smoking in restaurants, bars, and workplaces. Ironically, many of the interests now promoting state pre-emption have vociferously opposed federal regulations designed to pre-empt weaker state laws.

Why is this a cause for wide public concern?

Local governments have historically overseen policies related to public health, safety, and welfare. Preventing local decision-making contradicts the legitimate and necessary responsibilities of cities, towns, and counties. Traditionally, laws enacted at the state level have set minimum requirements and allowed for the continued passage and enforcement of local ordinances that establish greater levels of public health protection. Preemptive legislation reverses this norm.

Furthermore:

- Pre-emption undermines democracy and local control, and is a threat to meaningful citizen participation around issues of widespread concern. Communities enact local measures as an expression of their fundamental right to shape their future, whereas wealthy corporate interests are far better able to wield power and influence policy in state capitols.
- Local actions around GMOs, in particular, are designed to address important gaps in federal and state policy, and mitigate potentially serious threats to public health, the environment, and survival of local farm economies. Additionally, some communities are taking a further step, and benefiting economically from the positive effect of becoming known as “GMO-Free,” supporting farmers and the local food system by promoting organic and sustainable agriculture in their jurisdictions.
- In recent years, similar local measures have sought to address a variety of industry practices not adequately regulated at higher levels of jurisdiction, including pollution from factory farms, use of sewage sludge as fertilizer, uncontrolled pesticide use, and mismanagement of water resources. The current pre-emption campaign is part of a strategy aimed to weaken all such protective measures; it is part of a well-funded, highly-orchestrated, and frequently stealthy corporate effort to rewrite public policies at all jurisdictional levels.

What are the legal precedents for local action?

According to the Washington-based Center for Food Safety, local measures to restrict the use of GMOs are generally on a sound legal footing:

- Local rights of self-governance and protection of health, safety and well-being are guaranteed by most state constitutions. Local governments are free to be more protective of their citizens and unique communities than lowest-common-denominator state laws can provide.
- The federal government does not have specific mandatory safety testing requirements for most GE crops, instead allowing companies to voluntarily determine what tests are needed; also there is virtually no monitoring of commercial GMO crops for persistent hazards.
- No state has yet enacted comprehensive regulations governing GMO crops and livestock that protect public health and the environment.

Historically, American custom and tradition has granted local communities considerable autonomy. Local sovereignty has its foundation in the Town Meetings of colonial New England. While some

states have come to view local jurisdictions as creations and agents of the state, others endow municipalities with varying degrees of “home rule,” an established legal principle with origins in the 19th century.

Town Meetings and subsequent local decision-making procedures are further rooted in Common Law, which has hinged on the traditional maxim, “Use your property as not to injure another’s.” Harmful activities affecting the public commons, such as over-cutting timber or spreading noxious weeds, have traditionally been restricted in the name of the greater public good.

For more information:

Pre-emption Bill Tracker

For a continually updated tracking of seed pre-emption legislation, see <http://www.environmentalcommons.org/gmo-tracker.html>

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Resources on Pre-emption and GMOs

Michael E. Libonati, “Local Government,” from *Subnational Constitutions and Federalism: Design and Reform Conference*, Center for State Constitutional Studies, Rutgers University, March 2004, available at <http://www.environmentalcommons.org/locgov.pdf>

People for the American Way profile of ALEC:
<http://www.pfaw.org/pfaw/general/default.aspx?oid=6990>.

Karen Olsson, “Ghostwriting the Law,” *Mother Jones*, September 2002, at http://www.motherjones.com/news/outfront/2002/09/ma_95_01.html.

County Ban on the Planting of Genetically Engineered Crops: Background on Legal Authority, Center for Food Safety, March 2004, at <http://www.environmentalcommons.org/CFSlegal.pdf>

New England local measures on GMOs: <http://www.nerage.org>. California counties: <http://www.calgefree.org>

Margaret Mellon and Jane Rissler, *Gone to Seed: Transgenic Contaminants in the Traditional Seed Supply*, Union of Concerned Scientists, February 2004, at http://www.ucsusa.org/news/press_release.cfm?newsID=382.

Charles M. Benbrook, *Genetically Engineered Crops and Pesticide Use in the United States: The First Nine Years*, BioTech InfoNet Technical Paper Number 7, October 2004, <http://www.biotech-info.net/technicalpaper7.html>.

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GRAIN, "Farmers' Privilege Under Attack," at <http://www.grain.org/briefings/?id=121>.