

Approved

Date

3/31/92

MINUTES OF THE HOUSE COMMITTEE ON ENERGY & NATURAL RESOURCES

The meeting was called to order by Representative Ken Grotewiel at  
Chairperson

3:35 ~~am~~ p.m. on March 24, 1992 in room 526-S of the Capitol.

All members were present except:

Representative Stephens, excused

Committee staff present:

Raney Gilliland, Principal Analyst, Legislative Research Department  
Pat Mah, Legislative Research Department  
Mary Torrence, Revisor of Statutes Office  
Lenore Olson, Committee Secretary

Conferees appearing before the committee:

Representative Nancy Brown  
Dale Lambley - Plant Health Division, State Board of Agriculture  
Howard Tice - Kansas Association of Wheat Growers;  
and Kansas Environmental Education & Protection Council  
Richard Jones - Kansas Association of Conservation Districts  
David Murphy - Green Valley Company  
Don Tannahill - Professional Lawn Care Association of America  
Jim Johnson - Leprechaun Lawns  
Vernon McKinzie - Kansas Termite & Post Control Association  
Carl J. Meyer - President, Horticultural Services, Inc.  
Bill Fuller - Kansas Farm Bureau  
Pat Ross - farmer/stockman from Lawrence area  
Chris Wilson - KS Grain & Feed Ass'n; KS Fertilizer & Chemical Ass'n  
Jim Herynk - President, Kansas Greenhouse Growers Association  
Dennis Peterson - President, County Weed Director's Ass'n of Kansas  
Vic Studer - Executive Director, Kansas Rural Center at Whiting  
Terry Shistar - Pesticide Chair, Kansas Sierra Club  
Cheryl Powers - Lawrence, KS  
Jim Kaup - General Counsel, League of Kansas Municipalities  
Michael Dealy - Kansas Groundwater Management Districts Association  
Al LeDoux - Committee of Kansas Farm Organizations  
Carl Jarboe - Jarboe's Nursery  
Dee Likes - Kansas Livestock Association  
Dennis Whitegon - Vice President, Swecker-Knipp Inc.  
Joe Lieber - Kansas Cooperative Council

Chairperson Grotewiel opened the hearing on SB 543.

SB 543 - An act concerning the Kansas pesticide law; relating to the uniform application thereof.

Dale Lambley, Board of Agriculture, presented a historical background on SB 543 and on issues raised by this bill. He said that if this bill is enacted, it would prevent counties, townships, municipalities and other local governmental entities from unilaterally enacting their own pesticide restrictions, but would still allow local entities to take action on a localized basis. (Attachment 1) Mr. Lambley responded to several questions from the Committee. Representative Patrick requested information on the total dollar amount levied and the amounts levied in urban counties in 1992 for violations of pesticide/herbicide laws.

Representative Nancy Brown appeared before the Committee representing the State Emergency Response Commission. She presented information on the potential impact of pre-emption of local authority to regulate pesticides on public safety. (Attachment 2)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY & NATURAL RESOURCES,  
room 526-S, Statehouse, at 3:35 ~~xxx~~/p.m. on March 24, 1992.

Howard Tice, Kansas Ass'n of Wheat Growers and Kansas Environmental Education and Protection Council, testified in support of SB 543. He said that this bill will prevent chaos and protect the system that is protecting the people of Kansas. (Attachment 3)

Richard Jones, Kansas Ass'n of Conservation Districts, testified in support of SB 543. He stated that each local government making their own pesticide regulations would result in confusing and conflicting regulations. (Attachment 4)

David S. Murphy, Green Valley Company, testified in support of SB 543, stating that the history of federal and state preemption is a fact - it worked for nearly 20 years. (Attachment 5)

Don Tannahill, Professional Lawn Care Ass'n, testified in support of SB 543, stating that uniformity of regulation state wide is a practical necessity for companies serving many communities. (Attachment 6)

Jim Johnson, Leprechaun Lawns, testified in support of SB 543 and asked the Committee to keep the decisions about the use of pesticides on a state or federal level. (Attachment 7)

Vernon McKinzie, Kansas Termite and Pest Control Ass'n, testified in support of SB 543. He said that adoption of this bill will insure that citizens of Kansas continue to have their pest control needs met in a safe and economical manner under a well regulated state program which protects the health and welfare of all Kansans. (Attachment 8)

Carl J. Meyer, Horticultural Services, Inc., testified in support of SB 543. He stated that only a partnership of the federal and state governments is equipped to provide a secure, uniform and sensible system of pesticide regulation. (Attachment 9)

Bill Fuller, Kansas Farm Bureau, testified in support of SB 543. He said that this bill keeps the responsibility of pesticide regulation with state and federal governmental entities, but does not take pesticide regulation away from local control in Kansas. (Attachment 10)

Pat Ross, Lawrence area farmer/stockman, testified in support of SB 543. He said that overlapping of regulatory boundaries and regulations could be so contradictory that breaking the law would be unavoidable. (Attachment 11)

Chris Wilson, Kansas Grain & Feed Ass'n and Kansas Fertilizer and Chemical Ass'n, testified in support of SB 543. She said that a solid, uniform system of pesticide regulation can only be achieved through the state and federal governments. (Attachment 12)

Jim Herynk, Kansas Greenhouse Growers Association, testified in support of SB 543. He said that without state-wide regulations the different laws of 105 counties, thousands of towns and townships would have to be considered before a scientifically sound recommendation could be made. (Attachment 13)

Dennis Peterson, County Weed Director's Ass'n of Kansas, testified in support of SB 543. He said that the Kansas Pesticide Law, enforced by the Kansas State Board of Agriculture, provides for a uniform, safe, and effective means of regulating pesticide use in the state of Kansas. (Attachment 14)

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY & NATURAL RESOURCES

room 526-S, Statehouse, at 3:35 ~~a.m.~~/p.m. on March 24, 1992

The Chair took a break from the testimony for the Committee to question conferees. Chris Wilson was asked to provide information regarding how many ordinances proposed in the U.S. for regulating pesticides have been enacted. The Chair then requested that the opponents of SB 543 present their testimony.

Vic Studer, Kansas Rural Center at Whiting, testified in opposition to SB 543. She said that this bill reverses one of the foremost considerations of the Rural Center - that local entities be encouraged to be involved in all matters that have local consequence and impact. (Attachment 15)

Terry Shister, Kansas Sierra Club, testified in opposition to SB 543. She said that bill is a direct attack on home rule in Kansas, and it is the Kansas version of the state preemption bills being promoted by lawn care companies and other pesticide application businesses. (Attachment 16)

Cheryl Powers, Lawrence, testified in opposition to SB 543. She said that she supports the right and responsibility of individual localities to practice their legal option in creating ordinances to support the safety of their citizens and guests. (Attachment 17)

Jim Kaup, League of Kansas Municipalities, testified in opposition to SB 543. He said that this bill is contrary to constitutional home rule and violates a 30-year tradition of joint state-local authority to regulate the use and disposal of pesticides. (Attachment 18)

Mike Dealy, Kansas Groundwater Management Districts Ass'n, testified in opposition to SB 543 and requested several modifications to this bill as shown on (Attachment 19)

After several questions from the Committee to opponents, the Chair directed proponents of SB 543 to continue their testimony.

Al LeDoux, Committee of Kansas Farm Organizations, testified in support of SB 543, stating that they believe the citizens of Kansas would best benefit from uniform regulations concerning the use and management of pesticides. (Attachment 20)

Carl Jarboe, Jarboe's Nursery, testified in support of SB 543, stating that it is important for the State of Kansas to set the regulations for pesticide use and application so that all areas are treated the same. (Attachment 21)

Dee Likes, Kansas Livestock Association, testified in support of SB 543. He said that with the passage of this bill, Kansas citizens will be assured that they will only have to call one agency to determine what pesticide regulations/restrictions may apply. (Attachment 22)

Dennis Whitegon, Swecker-Knipp, Inc., testified in support of SB 543. He said that the state needs to provide uniform pesticide regulation for his business and those he serves. Mr. Whitegon also said that if this bill does not pass, his business will strangle under the unnecessary burden of local regulations. (Attachment 23)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY & NATURAL RESOURCES,  
room 526-S, Statehouse, at 3:35 ~~a.m.~~ p.m. on March 24, 1992

Joe Lieber, Kansas Cooperative Council, testified in support of SB 543. He stated that this bill would keep pesticide control in the hands of the state, instead of having regulation rights in the hands of thousands of local entities of government. He also said that the state has the experience to regulate pesticides and if it is done at the local level, it will be an added expense for local governments. (Attachment 24)

Written testimony in support of SB 543 was provided by:

Keith Knearem, Kansas Association of Nurserymen (Attachment 25)

The Kansas Agricultural Aviation Association (Attachment 26)

The Chair closed the hearing on SB 543.

The meeting adjourned at 5:52 p.m.

GUEST LIST

COMMITTEE: ENERGY & NATURAL RESOURCES

DATE: 3/24/92

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Jim Blaauw	P.O. Box 750285 Topeka, KS	Ks. Soybean Assn.
Jane White	P.O. Box 446 GARNETT, KS 66032	Ks Corn Growers Assn.
Jal Leber	Topeka	Ks-Coop Council
Chris Wilson	Topeka	Ks Grain & Feed Ass'n
Mary Ross	Lawrence	Farmer
Pat Ross	"	"
Bill Leber	Topeka	KLA
Warren Lake	Manhattan	Ks. Farm Bureau
Al LeDoax	Holton	CKFG
Greg Krusch	Topeka	KSBA
Grace May	Topeka	KAGC
Bill Craven	Metro News	
Tony Shistar	Lawrence	Ks. Sierra Club
Cheryl Powers	Lawrence	
Dennis Peterson	Manhattan	Co. Weed Directors Assn.
Rodney Biesenthal	Onaga Ks	Pott Co Weed Directo
Jim Johnson	Topeka	LEPRECHAUN LAWN
Don Tannahill	Olathe	TRIDON & PHCAMA
Vernon McKinzie	Emporia	Ks. Pest Control Assn.
Marty Johnson	Wichita	Johnsons Garden CTR
Barbara Meyer	St. George	Horticultural Services
Carl J. Meyer	St. George	Horticultural Service
Bill R. Fuller	Manhattan	Kansas Farm Bureau
James E. Geryndt	Topeka	Kan. Ass. Greenhouse Growers
Howard W. Zice	HUTCHINSON	Ks. Assn. of Wheat Growers



TESTIMONY

SENATE BILL NO. 543

DALE LAMBLEY  
PLANT HEALTH DIVISION  
KANSAS STATE BOARD OF AGRICULTURE

March 24, 1992

As you no doubt recognize Senate Bill No. 543 is a proposed amendment to the Kansas Pesticide Law. Upon enactment of the law in 1977, administrative duties were assigned to the Kansas State Board of Agriculture. The Plant Health Division is the unit within the Board which conducts the daily operations of the various pesticide programs so it is in that capacity that I come before you today.

There is a substantial amount of historical background behind this particular bill and the issues it raises. Over the years there has been in this country an occasional attempt by a local unit of government to enact pesticide use restrictions. They were never successful because of the U.S. Environmental Protection Agency's stance that pesticide regulation was the sole prerogative of the federal government and the states working under federal primacy arrangements. Kansas, as you know, accepted federal primacy as did almost all other states. In the late 1980's there were some cases in California where the courts disagreed with EPA's stance. The entire situation was virtually turned upside down by a 1991 U.S. Supreme Court decision. On June 21, 1991, the United States Supreme Court ruled on the case WISCONSIN PUBLIC INTERVENOR VS. MORTIER in which the court held that the language of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) did not pre-empt enactment of pesticide regulations by any local entity of government so long as

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Attachment 1

Those requirements were not less stringent than federal requirements. Of particular note was the Supreme Court observation that "... the more plausible reading of FIFRA's authorization to the states leaves the allocation of regulatory authority to the absolute discretion of the states themselves, ..." That decision began a debate which is occurring at the national level as well as in many states. At issue is whether pesticide regulation should be standardized at the national and state levels, as has been the case, or whether individual counties, cities, townships and other governmental entities should be free to adopt pesticide ordinances unique unto themselves. Put another way, does the state intend to occupy the field of pesticide regulation or does it not. This is an issue that is going to be debated hotly at the national level where at least 3 different bills have been introduced and in other states also. Intertwined in the debate at all levels are concerns perceived over potential loss of home rule powers, disruption of business operations and impacts to regulatory efforts. From the perspective of persons with interest or concerns about pesticide use, this is a heavy issue - heavy to farmers and suburban homeowners, important to rural and urban based business entities using pesticides, important to environmental advocates.

Because of our role as state pesticide regulator, I would like to share some of our observations with you today on Senate Bill 543. Senate Bill No. 543 provides for uniform state regulation of the sale and use of pesticides in Kansas. The meaning of the term "sale" is, I believe, self evident. However, some additional comment should be made relative to the term "use". "Use" under both state and federal pesticide laws relates to that which takes place when the pesticide is in the



ands of the end user. It includes transporting the product home, mixing the spray solution, applying the material, and rinsing and properly disposing of the empty container. Consequently, use means more than just standing there with sprayer in hand. Therefore, although the terms disposal, storage, handling and so forth are used, they refer to actions of the end user. As a result, the bill would not affect state protection programs handled by other agencies which relate to pesticide disposal, transportation, manufacture, storage, handling, chemical use reporting, emergency preparedness and so forth. The bill would affect the user and the type and uniformity of restrictions placed on the end user.

If enacted, the bill would prevent counties, townships, municipalities and other local governmental entities from unilaterally enacting their own pesticide restrictions, but would still allow local entities to take action on a localized basis. The Kansas Pesticide Law currently provides two mechanisms which could be utilized to address needs which might be unique to certain classes of governmental units or to individual units. These are through (1) rules and regulations and (2) formal agreements. The statute currently authorizes the state administrative agency to enter into pesticide use agreements with other governmental entities. Consequently, S.B. 543 would function in some respects to establish the state as a central clearing house for pesticide use regulation.

Finally, it should be noted that many municipalities in Kansas require city occupational licenses for plumbers, electricians, pesticide businesses and others operating within the community. I know from experience that cities are often accused

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enacting these requirements simply to raise funds. However, in most instances communities use the occupational license as an aid in keeping track of businesses operating in the area. These licenses provide a degree of consumer protection. S.B. 543 would have no effect upon city occupational licensing programs provided that they were registration programs only and did not impose any additional training or certification requirements on pesticide users.

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STATE OF KANSAS



STATE EMERGENCY RESPONSE COMMISSION

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Joan Finney, Governor

Rep. Nancy Brown, Chairperson

March 9, 1992

Ken Grotewiel, Chairperson  
House Committee of Energy and Natural Resources  
Statehouse  
Topeka, KS 66612

RE: SB 543

Dear Committee Members:

The State Emergency Response Commission (SERC) would like to provide some information regarding the implications of pre-emption as proposed in SB 543. The language in this bill is extremely broad and its scope would encompass many activities of local government in the realm of protection of public safety, emergency planning and emergency response, as they relate to pesticides, a class of hazardous chemicals. The SERC, established under the federal and state Emergency Planning and Community Right-to-Know Acts, is empowered under K.S.A. 65-5701 et. seq. to coordinate state agency activities relating to: 1) chemical emergency training, preparedness and response; and 2) chemical release reporting and prevention, transportation, manufacture, storage, handling, and use. Its membership consists of department heads of nine state agencies, the Governor, Lt. Governor, and five appointed public members. This Commission designates local emergency planning districts and appoints Local Emergency Planning Committees (LEPCs). Historically, local government has been the primary focus for emergency response to hazardous chemicals. They represent the operational arms of Local Emergency Planning Committees, and through local police, fire, emergency service, and building departments they implement local regulation to control use, storage, and handling of hazardous chemicals. This local control is critical to the effectiveness of our state chemical emergency preparedness and response. Actions which limit or undermine local participation are detrimental to the state program.

Local government has traditionally had the authority to regulate hazardous materials in order to protect public safety and health. Senate Bill 543 proposes to eliminate this authority with regard to pesticides by pre-empting local government. Local governments role in pesticide regulation was only recently reinforced by the U.S. Supreme Court in their decision in Wisconsin Public Intervenor et. al. vs Mortier et. al. This decision, sometimes know as the Casey, Wisconsin decision, was a result of many years of exercise of local authority to establish ordinances regulating pesticides, and conflicting lower court decisions. The Supreme Court in interpreting the Federal Insecticide, Fungicide and Rodenticide Act

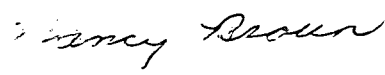
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(FIFRA) stated "as we have made plain, the statute does not expressly or implicitly preclude regulatory action by political subdivisions with regard to local use. To the contrary, FIFRA implies a regulatory partnership between federal, state, and local governments.... Nor does FIFRA suggest that any goal of coordination precludes local use ordinances because they were enacted independent of specific state or federal oversight...." The US Environmental Protection Agency joined with the Wisconsin Public Intervenor in supporting local authority.

Pesticides are one of two major groups of hazardous chemicals that are designed specifically to kill organisms, the other group being the military's chemical warfare agents. (in fact, some pesticides were originally designed as chemical warfare agents). These pesticide chemicals incorporate a broad spectrum of hazards including carcinogenicity, acute toxicity, neurotoxicity, and flammability among others. Their presence in the community through transportation, storage and use, represent a threat to public safety, health and environment. Federal regulation of pesticide packaging, labelling, and application does not make these hazardous chemicals safe. Federal rules are designed to minimize adverse safety and health consequences when chemicals are used according to label. They do not address hazards associated with spills, fire, explosion, improper disposal, or other unintended consequences of their presence in the community.

While the SERC does not feel it is their role to take a position, we do feel it is our responsibility to share information. Table 1. attached lists some of the areas of local regulation of hazardous chemicals that would be affected by pre-emption with regard to pesticides. Because of the extent of the potential consequences of passage of SB 543 and its pre-emption, we felt that the committee should be appraised of these implications. The Commission stands ready to provide any additional technical information or other professional guidance as requested. Thank you very much for the opportunity to contribute to your deliberations.

On behalf of the State Emergency Response Commission, very truly yours,



Nancy Brown  
Chairperson

Table 1.

Potential Impact of Pre-emption of Local Authority to Regulate Pesticides on Public Safety

Preemption of pesticides from local control will also remove pesticides from regulation as hazardous materials, which have traditionally been regulated at the local level in order to protect public safety. What follows is a short list of programs at the local level that would be affected and the nature of that effect.

<u>PROGRAM</u>	
1. Zoning	Zoning restrictions apply to facilities that store, transport or use hazardous materials; would not be applicable to those facilities if the hazardous material involved were pesticides.
2. Fire Codes	Currently over 20 major cities and many other municipalities have adopted the National Fire Protection Association uniform fire codes. These codes give the authority to the local fire marshal to regulate storage of hazardous chemicals (including pesticides) with regard to combustibility, toxicity, and other public safety implications. In addition, many municipalities require permit fees for these activities which support their fire protection efforts.
3. Well-head protection	Silver Lake and other units of local government using ground water supplies are considering regulating the storage and use of hazardous chemicals in the vicinity of their wells to prevent contamination of potable groundwater.
4. Surface water protection	Towns that maintain reservoirs or other water impoundments may need to control storage and application of hazardous chemicals which could migrate of into surface waters contaminating the water supply.
5. Landfills	Because of federal superfund liabilities associated with hazardous waste disposal sites, many localities are concerned about disposal of hazardous materials into their landfills. The federal law is not inclusive and local ordinance would be necessary to prohibit small quantity generators from disposing of hazardous waste, in this case pesticide waste or residues, into landfills. Failure to do so may result in multi-million dollar liabilities on behalf of landfill owners.
6. Hazardous Materials Transportation Corridors	Under federal law, local governments may petition the US Department of Transportation to designate hazardous materials transportation corridors for purposes of protecting public safety and reducing risk. This local option may be precluded for pesticides if a local ordinance is required in conjunction with federal authorization.
7. Emergency Planning and Spill Response	Federal and state law have established national standards for emergency planning and spill response. These standards however have created thresholds and exemptions for certain classes and quantities of hazardous materials. These laws specifically allow more stringent local regulation and reporting standards. Local option to impose more stringent standards on pesticides would be pre-empted. This could result in situations at the local level where local reporting requirements are imposed on hazardous materials handlers but not upon those using pesticides, resulting in an inequitable situation.
8. Building Codes	Municipalities may regulate design and construction standards for plumbing, structures, electrical systems, etc. Where hazardous materials are stored or used there may be the need to prohibit plumbing cross-connections, or require back flow prevention devices. Electrical systems may have to have spark arresters or flash back prevention. Structural standards may require spill containment and prevention technologies. Leak detection and alarm systems may be needed. All of the foregoing, to the extent required by local ordinances could not be imposed on pesticide facilities.

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(Slip Opinion)

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 821, 237.

# SUPREME COURT OF THE UNITED STATES

Syllabus

WISCONSIN PUBLIC INTERVENOR ET AL. *v.*  
MORTIER ET AL.

CERTIORARI TO THE SUPREME COURT OF WISCONSIN

No. 89-1905. Argued April 24, 1991—Decided June 21, 1991

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA or Act), 7 U. S. C. § 136 *et seq.*, was primarily a pesticide licensing and labeling law until 1972, when it was transformed by Congress into a comprehensive regulatory statute. Among other things, the 1972 amendments significantly strengthened the pre-existing registration and labeling standards, specified that FIFRA regulates pesticide use as well as sales and labeling, and granted increased enforcement authority to the Environmental Protection Agency (EPA). Regarding state and local authorities, FIFRA, as amended, includes provisions requiring pesticide manufacturers to produce records for inspection "upon request of any officer or employee . . . of any State or political subdivision," § 136f(b); directing the EPA to cooperate with "any appropriate agency of any state or any political subdivision thereof . . . in securing uniformity of regulations," § 136t(b); and specifying that "[a] State" may regulate pesticide sale or use so long as such regulation does not permit a sale or use prohibited by the Act, § 136v(a). Pursuant to its statutory police power, petitioner town adopted an ordinance that, *inter alia*, requires a permit for certain applications of pesticides to private lands. After the town issued a decision unfavorable to respondent Mortier on his application for a permit to spray a portion of his land, he brought a declaratory judgment action in county court, claiming, among other things, that the ordinance was preempted by FIFRA. The court granted summary judgment for Mortier, and the Wisconsin Supreme Court affirmed, finding pre-emption on the ground that the Act's text and legislative history demonstrate a clearly manifest congressional intent to prohibit any regulation of pesticides by local governmental units.

Syllabus

Held: FIFRA does not pre-empt local governmental regulation of pesticide use. Pp. 5-15.

(a) When considering pre-emption, this Court starts with the assumption that the States' historic powers are not superseded by federal law unless that is the clear and manifest purpose of Congress. That purpose may be expressed in the terms of the statute itself. Absent explicit pre-emptive language, congressional intent to supersede state law may nonetheless be implicit if, for example, the federal Act touches a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject. Even where Congress has not chosen to occupy a particular field, pre-emption may occur to the extent that state and federal law actually conflict, as when compliance with both is a physical impossibility, or when the state law stands as an obstacle to the accomplishment of Congress' purposes and objectives. Pp. 5-6.

(b) FIFRA nowhere expressly supersedes local regulation. Neither the Act's language nor the legislative history relied on by the court below, whether read together or separately, suffices to establish pre-emption. The fact that § 136v(a) expressly refers only to "[a] State" as having the authority to regulate pesticide use, and the Act's failure to include political subdivisions in its § 136(aa) definition of "State," are wholly inadequate to demonstrate the requisite clear and manifest congressional intent. Mere silence is insufficient in this context. *Rice v. Santa Fe Elevator Corp.*, 331 U. S. 218, 230. And the exclusion of local governments cannot be inferred from the express authorization to "State[s]" because that term is not self-limiting; political subdivisions are merely subordinate components of the very entity the statute empowers. Cf., e. g., *Sailors v. Board of Education of Kent County*, 387 U. S. 105, 108. Indeed, the more plausible reading of the express authorization leaves the allocation of regulatory authority to the absolute discretion of the States themselves, including the options of specific redelegation or leaving local regulation of pesticides in the hands of local authorities under existing state laws. Nor is there any merit to Mortier's contention that the express references in §§ 136t(h) and 136f(b) to "political subdivision[s]" show that Congress made a clear distinction between nonregulatory authority, which may be exercised by such subdivisions, and the regulatory authority reserved to the "State[s]" in § 136v(a). Furthermore, the legislative history is at best ambiguous, reflecting a disagreement between the responsible congressional committees as to whether the provision that would become § 136v pre-empted local regulation. Pp. 6-11.

(c) FIFRA also fails to provide any clear and manifest indication that Congress sought to supplant local authority over pesticide regulation

Syllabus

impliedly. The argument that the 1972 amendments transformed the Act into a comprehensive statute that occupied the entire pesticide regulation field, and that certain provisions, including § 136v(a), reopened certain portions of the field to the States but not to political subdivisions, is unpersuasive. Section 136v itself undercuts any inference of field pre-emption, since § 136v(b) prohibits States from enacting or imposing labeling or packaging requirements that conflict with those required under FIFRA. This language would be pure surplusage if Congress had already occupied the entire field. Nor does FIFRA otherwise imply pre-emption. While the 1972 amendments turned the Act into a comprehensive regulatory statute, substantial portions of the field are still left vacant, including the area at issue in this case. FIFRA nowhere seeks to establish an affirmative permit scheme for the actual use of pesticides or to occupy the field of local use permitting. Thus, the specific grant of authority in § 136v(a) must be read not as an exclusion of municipalities but as an act ensuring that the States could continue to regulate use and sales even where, such as with regard to the banning of mislabeled products, a narrow pre-emptive overlap might occur. Pp. 11-13.

(d) There is no actual conflict either between FIFRA or the ordinance at issue or between the Act and local regulation generally. Compliance with both the ordinance and FIFRA is not a physical impossibility. Moreover, Mortier's assertions that the ordinance stands as an obstacle to the Act's goals of promoting pesticide regulation that is coordinated solely at the federal and state levels, that rests upon some degree of technical expertise, and that does not unduly burden interstate commerce are based on little more than snippets of legislative history and policy speculations and are unpersuasive. As is evidenced by § 136t(b), FIFRA implies a regulatory partnership between federal, state, and local governments. There is no indication that any coordination which the statute seeks to promote extends beyond the matters with which it expressly deals, or does so strongly enough to compel the conclusion that an independently enacted ordinance that falls outside the statute's reach frustrates its purpose. Nor is there any indication in FIFRA that Congress felt that local ordinances necessarily rest on insufficient expertise and burden commerce. Pp. 13-15.

154 Wis. 2d 18, 452 N. W. 2d 555, reversed and remanded.

WHITE, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and MARSHALL, BLACKMUN, STEVENS, O'CONNOR, KENNEDY, and SOUTER, JJ., joined. SCALIA, J., filed an opinion concurring in the judgment.

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

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## SUPREME COURT OF THE UNITED STATES

No. 89-1905

WISCONSIN PUBLIC INTERVENOR, ET AL., PETITIONERS *v.* RALPH MORTIER ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

[June 21, 1991]

JUSTICE WHITE delivered the opinion of the Court.

This case requires us to consider whether the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA), 61 Stat. 163, as amended, 7 U. S. C. § 136 *et seq.* pre-empts the regulation of pesticides by local governments. We hold that it does not.

I

A

FIFRA was enacted in 1947 to replace the Federal Government's first effort at pesticide regulation, the Insecticide Act of 1910, 36 Stat. 331. 61 Stat. 163. Like its predecessor, FIFRA as originally adopted "was primarily a licensing and labeling statute." *Ruckelshaus v. Monsanto Co.*, 467 U. S. 986, 991 (1984). In 1972, growing environmental and safety concerns led Congress to undertake a comprehensive revision of FIFRA through the Federal Environmental Pesticide Control Act. 86 Stat. 973. The 1972 amendments significantly strengthened FIFRA's registration and labeling standards. 7 U. S. C. § 136a. To help make certain that pesticides would be applied in accordance with these standards, the revisions further insured that FIFRA "regulated the use, as well as the sale and labeling, of pesticides; regulated pesticides produced and sold in both intrastate and interstate commerce; [and] provided for review, cancellation,



and suspension of registration." *Ruckleshaus, supra*, at 991-992. An additional change was the grant of increased enforcement authority to the Environmental Protection Agency (EPA), which had been charged with federal oversight of pesticides since 1970. See Reorganization Plan No. 3 of 1970, 35 Fed. Reg. 15623 (1970), 5 U. S. C. App., p. 1343. In this fashion, the 1972 amendments "transformed FIFRA from a labeling law into a comprehensive regulatory statute." 467 U. S., at 991.

As amended, FIFRA specifies several roles for state and local authorities. The statute, for example, authorizes the EPA Administrator to enter into cooperative agreements with the States to enforce FIFRA provisions. 7 U. S. C. §§ 136u, 136w-1. As part of the enforcement scheme, FIFRA requires manufacturers to produce records for inspection "upon request of any officer or employee of the Environmental Protection Agency or of any State or political subdivision, duly designated by the Administrator." § 136f(b). FIFRA further directs the EPA Administrator to cooperate with "any appropriate agency of any State or any political subdivision thereof." § 136t(b). Of particular relevance to this case, § 24(a) specifies that States may regulate the sale or use of pesticides so long as the state regulation does not permit a sale or use prohibited by the Act. § 136v(a).

## B

Petitioner, the town of Casey, is a small rural community located in Washburn County, Wisconsin, several miles northwest of Spooner, on the road to Superior.<sup>1</sup> In 1985, the town adopted Ordinance 85-1, which regulates the use of pesticides. The ordinance expressly borrows statutory definitions from both Wisconsin laws and FIFRA, and was enacted under Wis. Stat. §§ 61.34(1), (5) (1989-1990), which accords

<sup>1</sup>The town has a population of from 400 to 500 persons, large enough to enact the ordinance at issue in this case. See Washburn County Directory 1982-83, Brief for Respondents 4, n. 4; Tr. Oral Arg. 12.

village boards with general police, health, and taxing powers.'

The ordinance requires a permit for the application of any pesticide to public lands, to private lands subject to public use, or for the aerial application of any pesticide to private lands. Ord. § 1.2, 2 App. to Pet. for Cert. 6. A permit applicant must file a form including information about the proposed pesticide use not less than 60 days before the desired use. § 1.3(2), *id.*, at 7. The town board may "deny the permit, grant the permit, or grant the permit with . . . any reasonable conditions on a permitted application related to the protection of the health, safety and welfare of the residents of the Town of Casey." § 1.3(3), *id.*, at 11-12. After an initial decision, the applicant or any town resident may obtain a hearing to provide additional information regarding the proposed application. §§ 1.3(4), (5), *id.*, at 12-14. When a permit is granted, or granted with conditions, the ordinance further requires the permittee to post placards giving notice of the pesticide use and of any label information prescribing a safe reentry time. § 1.3(7), *id.*, at 14-16. Persons found

'Section 61.34(1) provides:

"Except as otherwise provided by law, the village board shall have the management and control of the village property, finances, highways, streets, navigable waters, and the public service, and shall have power to act for the government and good order of the village, for its commercial benefit and for the health, safety, welfare, and convenience of the public, and may carry its powers into effect by license, regulation, suppression, borrowing, taxation, special assessment, appropriation, fine, imprisonment, and other necessary or convenient means. The powers hereby conferred shall be in addition to all other grants and shall be limited only by express language."

Section 61.34(5) provides:

"For the purpose of giving to villages the largest measure of self-government in accordance with the spirit of article XI, section 3, of the [Wisconsin] constitution it is hereby declared that his chapter shall be liberally construed in favor of the rights, powers and privileges of villages to promote the general welfare, peace, good order and prosperity of such villages and the inhabitants thereof."

4 guilty of violating the ordinance are subject to fines of up to \$5,000 for each violation. § 1.3(7)(c), *id.*, at 16.

Respondent Ralph Mortier applied for a permit for aerial spraying of a portion of his land. The town granted him a permit, but precluded any aerial spraying and restricted the lands on which ground spraying would be allowed. Mortier, in conjunction with respondent Wisconsin Forestry/Rights-of-Way/Turf Coalition,<sup>3</sup> brought a declaratory judgment action in the Circuit Court for Washburn County against the town of Casey and named board members, claiming that the town of Casey's ordinance is pre-empted by state and federal law. The Wisconsin Public Intervenor, an assistant attorney general charged under state law with the protection of environmental public rights, Wis. Stat. §§ 165.07, 165.075 (1989-1990), was admitted without objection as a party defendant. On cross-motions for summary judgment, the Circuit Court ruled in favor of Mortier, holding that the town's ordinance was pre-empted both by FIFRA and by state statute, §§ 94.67-974.1; 2 App. to Pet. for Cert. 14.

The Supreme Court of Wisconsin affirmed in a 4-to-3 decision. *Mortier v. Casey*, 154 Wis. 2d 18, 452 N. W. 2d 555 (1990). Declining to address the issue of state-law pre-emption, the court concluded that FIFRA pre-empted the town of Casey's ordinance because the statute's text and legislative history demonstrated a clearly manifest congressional intent to prohibit "any regulation of pesticides by local units of government." *Id.*, at 20, n. 2, and 30, 452 N. W. 2d, at 555, n. 2, 560. The court's decision accorded with the judgments of two Federal Courts of Appeals. *Professional Lawn Care Association v. Milford*, 909 F. 2d 929 (CA6 1990); *Maryland Pest Control Association v. Montgomery County*, 822 F. 2d 55 (CA4 1987), summarily aff'g 646 F. Supp. 109 (Md. 1986). Two separate dissents concluded that neither FIFRA's language nor its legislative history expressed an in-

<sup>3</sup>The coalition is an unincorporated, nonprofit association of individual businesses and other associations whose members use pesticides.

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tent to pre-empt local regulation. *Casey, supra*, at 33, 452 N. W. 2d, at 561 (Abrahamson, J., dissenting); 154 Wis. 2d, at 45, 452 N. W. 2d, at 566 (Steinmetz, J. dissenting). The dissenters' conclusion in part relied on decisions reached by two State Supreme Courts. *Central Maine Power Co. v. Lebanon*, 571 A. 2d 1189 (Me. 1990); *People ex rel. Deukmejian v. County of Mendocino*, 36 Cal. 3d 476, 683 P. 2d 1150 (1984). Given the importance of the issue and the conflict of authority, we granted certiorari. 498 U. S. — (1991). We now reverse.

## II

Under the Supremacy Clause, U. S. Const., Art. VI, cl. 2, state laws that "interfere with, or are contrary to the laws of congress, made in pursuance of the constitution" are invalid. *Gibbons v. Ogden*, 9 Wheat. 1, 211 (1824) (Marshall, C. J.). The ways in which federal law may pre-empt state law are well established and in the first instance turn on congressional intent. *Ingersoll-Rand Co. v. McClendon*, 496 U. S. — (1990). Congress' intent to supplant state authority in a particular field may be express in the terms of the statute. *Jones v. Rath Packing Co.*, 430 U. S. 519, 525 (1977). Absent explicit pre-emptive language, Congress' intent to supersede state law in a given area may nonetheless be implicit if a scheme of federal regulation is "so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it," if "the Act of Congress . . . touch[es] a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject," or if the goals "sought to be obtained" and the "obligations imposed" reveal a purpose to preclude state authority. *Rice v. Santa Fe Elevator Corp.*, 331 U. S. 218, 230 (1947). See *Pacific Gas & Electric Co. v. State Energy Resources Conservation and Development Commission*, 461 U. S. 190, 203-204 (1983). When considering pre-emption, "we start with the assumption that the historic police powers of the States were not to

be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Rice, supra*, at 230.

Even when Congress has not chosen to occupy a particular field, pre-emption may occur to the extent that state and federal law actually conflict. Such a conflict arises when "compliance with both federal and state regulations is a physical impossibility," *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U. S. 132, 142-143 (1963), or when a state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines v. Davidowitz*, 312 U. S. 52 (1941).

It is, finally, axiomatic that "for the purposes of the Supremacy Clause, the constitutionality of local ordinances is analyzed in the same way as that of statewide laws." *Hillsborough v. Automated Medical Laboratories, Inc.*, 471 U. S. 707, 713 (1985). See, e. g., *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U. S. 624 (1973).

### III

Applying these principles, we conclude that FIFRA does not pre-empt the town's ordinance either explicitly, implicitly, or by virtue of an actual conflict.

### A

As the Wisconsin Supreme Court recognized, FIFRA nowhere expressly supersedes local regulation of pesticide use. The court, however, purported to find statutory language "which is indicative" of pre-emptive intent in the statute's provision delineating the "Authority of States." 7 U. S. C. § 136v. The key portions of that provision state:

"(a) . . . A State may regulate the sale or use of any federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this subchapter.

"(b) . . . Such State shall not impose or continue in effect any requirements for labeling or packaging in addi-

tion to or different from those required under this subchapter."

Also significant, in the court's eyes, was FIFRA's failure to specify political subdivisions in defining "State" as "a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and American Samoa." 7 U. S. C. § 136(aa).

It is not clear to the State Supreme Court, however, "that the statutory language [ §§ 136v and 136(aa) ] alone evince[d] congress' manifest intent to deprive political subdivisions of authority to regulate pesticides." *Casey*, 154 Wis. 2d, at 25, 452 N. W. 2d, at 557-558. It was nevertheless "possible" to infer from the statutory language alone that pesticide regulation by local entities was pre-empted; and when coupled with its legislative history, that language "unmistakably demonstrates the intent of Congress to pre-empt local ordinances such as that adopted by the Town of Casey." *Id.*, at 23, 452 N. W. 2d, at 559. The court's holding thus rested on both §§ 136v and 136(aa) and their legislative history; neither the language nor the legislative history would have sufficed alone. There was no suggestion that absent the two critical sections, FIFRA was a sufficiently comprehensive statute to justify an inference that Congress had occupied the field to the exclusion of the States. Nor have the respondents argued in this Court to that effect. On the other hand, it is sufficiently clear that under the opinion announced by the court below, the State would have been precluded from permitting local authorities to regulate pesticides.

We agree that neither the language of the statute nor its legislative history, standing alone, would suffice to pre-empt local regulation. But it is also our view that even when considered together the language and the legislative materials relied on below are insufficient to demonstrate the necessary congressional intent to pre-empt. As for the statutory language, it is wholly inadequate to convey an express pre-emptive intent on its own. Section 136v plainly authorizes

the "States" to regulate pesticides and just as plainly is silent with reference to local governments. Mere silence, in this context, cannot suffice to establish a "clear and manifest purpose" to pre-empt local authority. *Rice*, 331 U. S. at 230. Even if FIFRA's express grant of regulatory authority to the States could not be read as applying to municipalities, it would not follow that municipalities were left with no regulatory authority. Rather, it would mean that localities could not claim the regulatory authority explicitly conferred upon States that might otherwise have been pre-empted through actual conflicts with Federal law. At a minimum, localities would still be free to regulate subject to the usual principles of pre-emption.

Properly read, the statutory language tilts in favor of local regulation. The principle is well settled that local "governmental units are "created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them" . . . in [its] absolute discretion.'" *Sailors v. Board of Education of Kent County*, 387 U. S. 105, 108 (1967), quoting *Reynolds v. Sims*, 377 U. S. 533, 575 (1964), quoting *Hunter v. City of Pittsburgh*, 207 U. S. 161, 178 (1907). The exclusion of political subdivisions cannot be inferred from the express authorization to the "State[s]" because political subdivisions are components of the very entity the statute empowers. Indeed, the more plausible reading of FIFRA's authorization to the States leaves the allocation of regulatory authority to the "absolute discretion" of the States themselves, including the option of leaving local regulation of pesticides in the hands of local authorities.

Certainly no other textual basis for pre-emption exists. Mortier, building upon the decision below, contends that other provisions show that Congress made a clear distinction between nonregulatory authority, which it delegated to the States or their political subdivisions, and regulatory authority which it expressly delegated to the "State[s]" alone. The provisions on which he relies, however, undercut his con-

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tention. Section 136t(b), for example, mandates that the EPA Administrator cooperate with "any appropriate agency of any State or any political subdivision thereof, in carrying out the provisions of this subchapter." As an initial matter, the section does not limit "the provisions of the subchapter" which localities are authorized to carry out to "nonregulatory" provisions. Moreover, to read this provision as pre-empting localities would also require the anomalous result of pre-empting the actions of any agency to the extent it exercised state-delegated powers that included pesticide regulation. Likewise, § 136f(b) requires manufacturers to produce records for the inspection upon the request of any employee of the EPA "or of any State or political subdivision, duly designated by the Administrator." Section 136u(a)(1), however, authorizes the Administrator to "delegate to any State . . . the authority to cooperate in the enforcement of this [Act] through the use of its personnel." If the use of "State" in FIFRA impliedly excludes subdivisions, it is unclear why the one provision would allow the designation of local officials for enforcement purposes while the other would prohibit local enforcement authority altogether.

Mortier, like the court below and other courts that have found pre-emption, attempts to compensate for the statute's textual inadequacies by stressing the legislative history. *Casey*, 154 Wis. 2d, at 25-28, 452 N. W. 2d, at 558-559; *Professional Lawn Care Association*, 909 F. 2d, at 933-934. The evidence from this source, which centers on the meaning of what would become § 136v, is at best ambiguous. The House Agriculture Committee Report accompanying the proposed FIFRA amendments stated that it had "rejected a proposal which would have permitted political subdivisions to further regulate pesticides on the grounds that the 50 States and the Federal Government should provide an adequate number of regulatory jurisdictions." H. R. Rep. No. 92-511, p. 16 (1971). While this statement indicates an unwillingness by Congress to grant political subdivisions reg-

latory authority, it does not demonstrate an intent to prevent the States from delegating such authority to its subdivisions, and still less does it show a desire to prohibit local regulation altogether. At least one other statement, however, concededly goes further. The Senate Committee on Agriculture and Forestry Report states outright that it "considered the decision of the House Committee to deprive political subdivisions of States and other local authorities of any authority or jurisdiction over pesticides and concurs with the decision of the House of Representatives." S. Rep. No. 92-838, p. 16 (1972).

But other Members of Congress clearly disagreed. The Senate Commerce Committee, which also had jurisdiction over the bill, observed that "[w]hile the [Senate] Agriculture Committee bill does not specifically prohibit local governments from regulating pesticides, the report of that committee states explicitly that local governments cannot regulate pesticides in any manner. Many local governments now regulate pesticides to meet their own specific needs which they are often better able to perceive than are State and Federal regulators." S. Rep. No. 92-970, p. 27 (1972). To counter the language in the the Agriculture and Forestry Committee Report, the Commerce Committee proposed an amendment expressly authorizing local regulation among numerous other, unrelated proposals. This amendment was rejected after negotiations between the two Committees. See 118 Cong. Rec. 32251 (1972); H. R. Conf. Rep. No. 92-1540, p. 33 (1972).

As a result, matters were left with the two principal Committees responsible for the bill in disagreement over whether it pre-empted pesticide regulation by political subdivisions. It is important to note, moreover, that even this disagreement was confined to the pre-emptive effect of FIFRA's authorization of regulatory power to the States in § 136v. None of the Committees mentioned asserted that FIFRA pre-empted the field of pesticide regulation. Like FIFRA's

text, the legislative history thus falls far short of establishing that pre-emption of local pesticide regulation was the "clear and manifest purpose of Congress." *Rice*, 331 U. S., at 230. We thus agree with the submission in the *amicus* brief of the United States expressing the views of the Environmental Protection Agency, the agency charged with enforcing FIFRA.<sup>4</sup>

<sup>4</sup>JUSTICE SCALIA's foray into legislative history runs into several problems. For one, his concurrence argues that the House Agriculture Committee made it clear that it wanted localities "out of the picture" because its report specifies as grounds for rejecting a proposal *permitting* the localities to regulate pesticides the observation that the Federal Government and the 50 States provided an adequate number of regulatory jurisdictions. *Post*, at 2. But the only way to infer that the Committee opposed not only a direct grant of regulatory authority upon localities but also state delegation of authority to regulate would be to suppose that the term "regulatory jurisdictions" meant regulatory for the purposes of exercising any authority at all as opposed to exercising authority derived from a direct Federal grant. H. R. Rep. No. 92-511, p. 16 (1971). The language of the Report does not answer this question one way or another.

The concurrence further contends that the Senate Agriculture Committee unequivocally expressed its view that § 136v should be read to deprive localities of regulatory authority over pesticide. This may be true, but it is hardly dispositive. Even if § 136v were sufficiently ambiguous to justify reliance on legislative history, the meaning a committee puts forward must at a minimum be within the realm of meanings that the provision, fairly read, could bear. Here the Report clearly states that § 136v should be read as a prohibition, but it is just as clear that the provision is written exclusively in terms of a grant. No matter how clearly its report purports to do so, a committee of Congress cannot take language that could only cover "flies" or "mosquitoes", and tell the courts that it really covers "ducks."

Finally, the concurrence suggests that the Senate Commerce Committee report reconfirmed the views of the two agriculture committees that § 136v prohibited local pesticide regulation. *Post*, at 3-4. But the Commerce Committee at no point states, clearly or otherwise, that it *agrees* that the section before it does this. Rather, the Report states that "while the Agriculture Committee bill does not specifically prohibit local governments from regulating, the report of that committee states explicitly that local governments cannot regulate in any matter." S. Rep. No. 90-970, p. 27 (1972) (emphasis added). The Commerce Committee, indeed, went on to

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## B

Likewise, FIFRA fails to provide any clear and manifest indication that Congress sought to supplant local authority over pesticide regulation impliedly. In particular, we reject the position of some courts, but not the court below, that the 1972 amendments transformed FIFRA into a comprehensive statute that occupied the field of pesticide regulation, and that certain provisions opened specific portions of the field to state regulation and much smaller portions to local regulation. See *Professional Lawn Care*, 909 F. 2d, at 933-934; *Maryland Pest Control*, 646 F. Supp., at 110-111; see also, Brief for National Pest Control Association et al. as *Amici Curiae* 6-16; Brief for Washington Legal Foundation as *Amicus Curiae* 5-18. On this assumption, it has been argued, § 136v(a) could be viewed as opening the field of general pesticide regulation to the States yet leaving it closed to political subdivisions.

assert its policy differences with its Agriculture counterpart. It did this by attempting to strike at the root of the problem through changing the language of the provision itself. Far from showing agreement with its rival, the Commerce Committee's words and actions show a body that first, conceded no ground on the meaning of the disputed language and then second, raised the stakes by seeking to insure that the language could go only its way. On both the existence and the desirability of a prohibition on local regulation, there can be no doubt that the Commerce and Agriculture Committees stood on the opposite sides of the Senate debate.

As for the propriety of using legislative history at all, common sense suggests that inquiry benefits from reviewing additional information rather than ignoring it. As Chief Justice Marshall put it, "[w]here the mind labours to discover the design of the legislature, it seizes every thing from which aid can be derived." *Fisher v. Blight*, 2 Cranch 358, 386 (1805). Legislative history materials are not generally so misleading that jurists should never employ them in a good faith effort to discern legislative intent. Our precedents demonstrate that the Court's practice of utilizing legislative history reaches well into its past. See, e.g., *Wallace v. Parker*, 6 Peters 680, 687-690 (1832). We suspect that the practice will likewise reach well into the future.

This reasoning is unpersuasive. As an initial matter, it would still have to be shown under ordinary canons of construction that FIFRA's delegation of authority to "State[s]" would not therefore allow the States in turn to redelegate some of this authority to their political subdivisions either specifically or by leaving undisturbed their existing statutes that would otherwise provide local government with ample authority to regulate. We have already noted that § 136v(a) can be plausibly read to contemplate precisely such redelegation. The term "State" is not self-limiting since political subdivisions are merely subordinate components of the whole. The scattered mention of political subdivisions elsewhere in FIFRA does not require their exclusion here. The legislative history is complex and ambiguous.

More importantly, field pre-emption cannot be inferred. In the first place, § 136v itself undercuts such an inference. The provision immediately following the statute's grant of regulatory authority to the States declares that "[s]uch State shall not impose or continue in effect any requirements for labeling and packaging in addition to or different from those required under" FIFRA. 7 U. S. C. § 136v(b). This language would be pure surplusage if Congress had intended to occupy the entire field of pesticide regulation. Taking such pre-emption as the premise, § 136v(a) would thus grant States the authority to regulate the "sale or use" of pesticides, while § 136v(b) would superfluously add that States did not have the authority to regulate "labeling or packaging," an addition that would have been doubly superfluous given FIFRA's historic focus on labeling to begin with. See *Monsanto*, 467 U. S., at 991.

Nor does FIFRA otherwise imply pre-emption. While the 1972 amendments turned FIFRA into a "comprehensive regulatory statute," *Monsanto*, 467 U. S., at 991, the resulting scheme was not "so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it." *Rice*, 331 U. S., at 230. To the contrary, the

statute leaves ample room for States and localities to supplement federal efforts even absent the express regulatory authorization of § 136v(a). FIFRA addresses numerous aspects of pesticide control in considerable detail, in particular: registration and classification, § 136a; applicator certification, § 136b; inspection of pesticide production facilities, §§ 136e and 136g; and the possible ban and seizure of pesticides that are misbranded or otherwise fail to meet federal requirements, § 136k. These provisions reflect the general goal of the 1972 amendments to strengthen existing labeling requirements and insure that these requirements were followed in practice. § 136k. See *Monsanto*, 467 U. S., at 991-992. FIFRA nonetheless leaves substantial portions of the field vacant, including the area at issue in this case. FIFRA nowhere seeks to establish an affirmative permit scheme for the actual use of pesticides. It certainly does not equate registration and labeling requirements with a general approval to apply pesticides throughout the Nation without regard to regional and local factors like climate, population, geography, and water supply. Whatever else FIFRA may supplant, it does not occupy the field of pesticide regulation in general or the area of local use permitting in particular.

In contrast to other implicitly pre-empted fields, the 1972 enhancement of FIFRA does not mean that the use of pesticides can occur "only by federal permission, subject to federal inspection, in the hands of federally certified personnel and under an intricate system of federal commands." *City of Burbank v. Lockheed Air Terminal*, 411 U. S., at 634, quoting *Northwest Airlines v. Minnesota*, 322 U. S. 292, 303 (1944) (Jackson, J., concurring). The specific grant of authority in § 136v(a) consequently does not serve to hand back to the States powers that the statute had impliedly usurped. Rather, it acts to ensure that the States could continue to regulate use and sales even where, such as with regard to the banning of mislabeled products, a narrow pre-emptive overlap might occur. As noted in our discussion of express pre-

emption, it is doubtful that Congress intended to exclude localities from the scope of § 136v(a)'s authorization, but however this may be, the type of local regulation at issue here would not fall within any impliedly pre-empted field.

## C

Finally, like the EPA, we discern no actual conflict either between FIFRA and the ordinance before us or between FIFRA and local regulation generally. Mortier does not rely, nor could he, on the theory that compliance with the ordinance and FIFRA is a "physical impossibility." *Florida Lime & Avocado Growers*, 373 U. S., at 142-143. Instead, he urges that the town's ordinance stands as an obstacle to the statute's goals of promoting pesticide regulation that is coordinated solely on the federal and state levels, that rests upon some degree of technical expertise, and that does not unduly burden interstate commerce. Each one of these assertions rests on little more than snippets of legislative history and policy speculations. None of them is convincing.

To begin with, FIFRA does not suggest a goal of regulatory coordination that sweeps either as exclusively or as broadly as Mortier contends. The statute gives no indication that Congress was sufficiently concerned about this goal to require pre-emption of local use ordinances simply because they were enacted locally. Mortier suggests otherwise quoting legislative history which states that FIFRA establishes "a coordinated Federal-State administrative system to carry out the new program," and raising the specter of gypsy moth hoards safely navigating through thousands of contradictory and ineffective municipal regulations. H. R. Rep. No. 92-511, at 1-2. As we have made plain, the statute does not expressly or impliedly preclude regulatory action by political subdivisions with regard to local use. To the contrary, FIFRA implies a regulatory partnership between federal, state, and local governments. Section 136t(b) expressly states that the Administrator "shall cooperate with . . .

appropriate agency of any State or any political subdivision thereof, in carrying out the provisions of this [Act] and in securing uniformity of regulations." Nor does FIFRA suggest that any goal of coordination precludes local use ordinances because they were enacted independent of specific state or federal oversight. As we have also made plain, local use permit regulations—unlike labeling or certification—do not fall within an area that FIFRA's "program" pre-empts or even plainly addresses. There is no indication that any coordination which the statute seeks to promote extends beyond the matters with which it deals, or does so strongly enough to compel the conclusion that an independently enacted ordinance that falls outside the statute's reach frustrates its purpose.

FIFRA provides even less indication that local ordinances must yield to statutory purposes of promoting technical expertise or maintaining unfettered interstate commerce. Once more, isolated passages of legislative history that were themselves insufficient to establish a pre-emptive congressional intent do not by themselves establish legislative goals with pre-emptive effect. See, *e. g.*, S. Rep. No. 92-838, at 16. Mortier nonetheless asserts that local ordinances necessarily rest on insufficient expertise and burden commerce by alluring, among other things, large-scale crop infestation. As with the specter of the gypsy moth, Congress is free to find that local regulation does wreak such havoc and enact legislation with the purpose of preventing it. We are satisfied, however, that Congress has not done so yet.

#### IV

We hold that FIFRA does not pre-empt the town of Casey's ordinance regulating the use of pesticides. The judgment of the Wisconsin Supreme Court is reversed, and the case is remanded for proceedings not inconsistent with this opinion.

*It is so ordered.*

## SUPREME COURT OF THE UNITED STATES

No. 89-1905

WISCONSIN PUBLIC INTERVENOR, ET AL., PETITIONERS *v.* RALPH MORTIER ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN

[June 21, 1991]

JUSTICE SCALIA, concurring in the judgment.

I agree with the Court that FIFRA does not pre-empt local regulation, because I agree that the terms of the statute do not alone manifest a pre-emption of the entire field of pesticide regulation. *Ante*, 12-15. If there *were* field pre-emption, 7 U. S. C. § 136v would be understood not as restricting certain types of state regulation (for which purpose it makes little sense to restrict States but not their subdivisions) but as *authorizing* certain types of state regulation (for which purpose it makes eminent sense to authorize States but not their subdivisions). But the field-pre-emption question is certainly a close one. Congress' selective use of "State" and "State and political subdivisions thereof" would suggest the authorizing rather than restricting meaning of § 136v, were it not for the inconsistent usage pointed to in Part I of the Court's opinion.

As the Court today recognizes, see *ante*, at 7, the Wisconsin Justices agreed with me on this point, and would have come out the way that I and the Court do *but for* the Committee Reports contained in FIFRA's legislative history. I think they were entirely right about the tenor of those reports. Their only mistake was failing to recognize how unreliable Committee Reports are—not only as a genuine indicator of congressional intent but as a safe predictor of judicial



construction. We use them when it is convenient, and ignore them when it is not.

Consider how the case would have been resolved if the committee reports were taken seriously: The bill to amend FIFRA (H. R. 10729) was reported out of the House Committee on Agriculture on September 25, 1971. According to the accompanying Committee Report:

"The Committee rejected a proposal which would have permitted political subdivisions to further regulate pesticides on the grounds that the 50 States and the Federal Government should provide an adequate number of regulatory jurisdictions." H. R. Rep. No. 92-511, p. 16 (1971).

Had the grounds for the rejection not been specified, it would be possible to entertain the Court's speculation, *ante*, at 9, that the Committee might have been opposing only *direct* conferral upon localities of authority to regulate, in contrast to state *delegation* of authority to regulate. But once it is specified that an excessive number of regulatory jurisdictions is the problem—that "50 States and the Federal Government" are enough—then it becomes clear that the Committee wanted localities out of the picture, and thought that its bill placed them there.

The House Agriculture Committee's bill was passed by the full House on November 9, 1971, and upon transmittal to the Senate was referred to the Senate Committee on Agriculture and Forestry, which reported it out on June 7, 1972. The accompanying Committee Report both clearly confirms the foregoing interpretation of the House Committee Report, and clearly endorses the disposition that interpretation produces.

"[We have] considered the decision of the House Committee to deprive political subdivisions of States and other local authorities of any authority or jurisdiction over pesticides and concurs with the decision of the

House of Representatives. Clearly, the fifty States and the Federal Government provide sufficient jurisdictions to properly regulate pesticides. Moreover, few, if any, local authorities whether towns, counties, villages, or municipalities have the financial wherewithal to provide necessary expert regulation comparable with that provided by the State and Federal Governments. On this basis and on the basis that permitting such regulation would be an extreme burden on interstate commerce, *it is the intent that section [136v], by not providing any authority to political subdivisions and other local authorities of or in the States, should be understood as depriving such local authorities and political subdivisions of any and all jurisdiction and authority over pesticides and the regulation of pesticides.*" S. Rep. No. 92-838, pp. 16-17 (1972) (emphasis added).

Clearer committee language "directing" the courts how to interpret a statute of Congress could not be found, and if a such a direction had any binding effect, the question of interpretation in this case would be no question at all.

But there is still more. After the Senate Agriculture Committee reported the bill to the floor, it was re-referred to the Committee on Commerce, which reported it out on July 19, 1972. The report of that Committee, plus the accompanying proposals for amendment of H. R. 10729, *reconfirmed* the interpretation of the Senate and House Agriculture committees. The Report said:

"While the Agriculture Committee bill does not specifically prohibit local governments from regulating pesticides, the report of that committee states explicitly that local governments cannot regulate pesticides in any manner. Many local governments now regulate pesticides to meet their own specific needs which they are often better able to perceive than are State and Federal regulators." S. Rep. No. 92-970, p. 27 (1972).

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The Court claims that this passage, plus the amendment that it explains, show that "the two principal committees responsible for the bill [were] in disagreement over whether it pre-empted pesticide regulation by political subdivisions." *Ante*, at 10. I confess that I am less practiced than others in the science of construing legislative history, but it seems to me that quite the opposite is the case. The Senate Commerce Committee Report does not offer a different *interpretation* of the pre-emptive effect of H. R. 10729. To the contrary, it acknowledges that the report of the originating committee "states explicitly that local governments cannot regulate pesticides in any manner," and then proceeds to a statement ("Many local governments now regulate pesticides, etc.") which questions not the *existence* but the *desirability* of that restriction on local regulatory power. And since it agreed with the interpretation but did not agree with the policy, the Senate Commerce Committee proposed an amendment to H. R. 10729, whose purpose, according to its report, was to "giv[e] local governments the authority to regulate the sale or use of a pesticide beyond the requirements imposed by State and Federal authorities." S. Rep. No. 92-970, at 27. In a supplemental Report, the Senate Agriculture Committee opposed the Commerce Committee's amendment, which it said would "giv[e] local governments the authority to regulate the sale or use of a pesticide," thereby "vitiat[ing]" the earlier Agriculture Committee Report. S. Rep. No. 92-838, pt. 2, at 46-47 (1972). This legislative history clearly demonstrates, I think, not (as the Court would have it) that the two principal Senate committees disagreed about whether H. R. 10729 pre-empted local regulation, but that they were in complete accord that it *did*, and in disagreement over whether it *ought* to.

course that does not necessarily say anything about Congress as a whole thought. Assuming that all the members of the three committees in question (as opposed to just the relevant subcommittees) actually adverted to the in-

interpretive point at issue here—which is probably an unrealistic assumption—and assuming further that they were in *unanimous* agreement on the point, they would still represent less than two-fifths of the Senate, and less than one-tenth of the House. It is most unlikely that many Members of either chamber read the pertinent portions of the Committee Reports before voting on the bill—assuming (we cannot be sure) that the Reports were available before the vote. Those pertinent portions, though they dominate our discussion today, constituted less than a quarter-page of the 82-page House Agriculture Committee Report, and less than a half-page each of the 74-page Senate Agriculture Committee Report, the 46-page Senate Commerce Committee Report, and the 73-page Senate Agriculture Committee Supplemental Report. Those Reports in turn were a minuscule portion of the total number of reports that the Members of Congress were receiving (and presumably even writing) during the period in question. In the Senate, at least, there was a vote on an amendment (the Commerce Committee proposal) that would have changed the result of the supposed interpretation. But the full Senate could have rejected that *either* because a majority of its Members disagreed with the Commerce Committee's proposed policy; *or* because they disagreed with the Commerce Committee's and the Agriculture Committee's interpretation (and thus thought the amendment superfluous); *or* because they were blissfully ignorant of the entire dispute and simply thought that the Commerce Committee, by asking for recommittal and proposing 15 amendments, was being a troublemaker; *or* because three different minorities (enough to make a majority) had each of these respective reasons. We have no way of knowing; indeed, we have no way of knowing that they had any *rational* motive at all.

All we know for sure is that the full Senate adopted the text that we have before us here, as did the full House, pursuant to the procedures prescribed by the Constitution; and

that that text, having been transmitted to the President and approved by him, again pursuant to the procedures prescribed by the Constitution, became law. On the important question before us today, whether that law denies local communities throughout the Nation significant powers of self-protection, we should try to give the text its fair meaning, whatever various committees might have had to say—thereby affirming the proposition that we are a Government of laws not of committee reports. That is, at least, the way I prefer to proceed.

If I believed, however, that the meaning of a statute is to be determined by committee reports, I would have to conclude that a meaning opposite to our judgment has been commanded three times over—not only by one committee in each house, but by *two* committees in one of them. Today's decision reveals that, in their judicial application, committee reports are a forensic rather than an interpretive device, to be invoked when they support the decision and ignored when they do not. To my mind that is infinitely better than honestly giving them dispositive effect. But it would be better still to stop confusing the Wisconsin Supreme Court, and not to use committee reports at all.

\* \* \*

The Court responds to this concurrence in a footnote, *ante*, at 11–12 n. 4, asserting that the legislative history is really ambiguous. I leave it to the reader to judge. I must reply, however, to the Court's assertion that the "practice of utilizing legislative history reaches well into [our] past," *ante*, at 12 n. 4, for which proposition it cites an opinion written by none other than John Marshall himself, *Wallace v. Parker*, 6 Pet. 680 (1832). What the Court neglects to explain is that what it means by "the practice of utilizing legislative history" is *not* the practice of utilizing legislative history for the purpose of giving authoritative content to the meaning of a statutory text—which is the only practice I object to. Marshall

used factual statements in the report of an Ohio legislative committee "as part of the record" in the case, *id.*, at 689, 690, assuming that that was permissible "under the laws of Ohio," *ibid.* I do not object to such use. But that is quite different from the recent practice of relying upon legislative material to provide an authoritative interpretation of a statutory text. That would have shocked John Marshall. As late as 1897, we stated quite clearly that there is "a general acquiescence in the doctrine that debates in Congress are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body." *United States v. Trans-Missouri Freight Assn.*, 166 U. S. 290, 318. And even as late as 1953, the practice of using legislative history in that fashion was novel enough that Justice Jackson could dismiss it as a "psychoanalysis of Congress," and a "weird endeavor." *United States v. Public Utilities Comm'n*, 345 U. S. 295, 319 (Jackson, J., concurring). It is, in short, almost entirely a phenomenon of this century—and in its extensive use a very recent phenomenon. See, *e. g.*, Carro & Brann, *Use of Legislative Histories by the United States Supreme Court: A Statistical Analysis*, 9 J. Legis. 282 (1982); Wald, *Some Observations on the Use of Legislative History in the 1981 Supreme Court Term*, 68 Iowa L. Rev. 195, 196–197 (1983).

I am depressed if the Court is predicting that the use of legislative history for the purpose I have criticized "will reach well into the future." But if it is, and its prediction of the future is as accurate as its perception that it is continuing a "practice . . . reach[ing] well into [our] past," I may have nothing to fear.

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# Kansas Association of Wheat Growers

P.O. Box 2349

Hutchinson, KS 67504-2349

(316) 662-2367

ONE STRONG VOICE FOR WHEAT

## TESTIMONY

House Committee on Energy and Natural Resources  
Chairman, Representative Ken Grotewiel

SB-543

Mr. Chairmen and members of the committee, my name is Howard W. Tice, and I serve as Executive Director of the Kansas Association of Wheat Growers. I am also serving as President of the Kansas Environmental Education and Protection Council, and some of my remarks will be in that capacity. I appreciate the opportunity to testify today in support of Senate Bill 543.

I would note at the outset, that the KEEP Council is not a lobbying group, but exists as a coalition of organizations which are dedicated to compiling and disseminating science-based information on environmental issues. In our organizational meetings, the subject of pesticide regulation has been thoroughly discussed.

Our membership includes general farm organizations, commodity groups, lawn care and golf course professionals, home pest treatment groups and others who share the same concern for accurate, scientifically verifiable information on environmental issues. We, and the organizations we represent, are equally concerned that regulation of pesticides be handled by governmental agencies that have adequate knowledge and experience, sufficient funding and properly trained personnel to do the job right.

The Kansas Association of Wheat Growers passed the following resolution at our annual convention this past December:

The U.S. Supreme Court has ruled that the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) does not contain language that prevents local political subdivisions from enacting ordinances that exceed FIFRA standards. FIFRA regulations have been researched and have sufficient background data to support their recommendations.

RESOLUTION: In order to prevent an influx of confusing and conflicting local regulations, the KAWG supports state and national legislation that preempts the authority of local political subdivisions to enact pesticide regulations which exceed the standards set by state and national law.

A similar resolution was passed at the National Association of Wheat Growers annual convention in January, and both our state and national Associations will be supporting federal legislation as well as the bill before this committee today.

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A good example of the problem with placing pesticide regulation in the hands of people who don't have the proper background is found in the ordinance enacted by Casey, Wisconsin, which became the Supreme Court test case. Under that ordinance, a sixty day waiting period is required for anyone to obtain a permit to apply a pesticide. Farmers certainly don't have sixty days notice that weeds or insect pests will create an economic threat to their crops which will require a chemical application. Home owners don't have sixty days to spray their lawns before their healthy stand of grass, or a vegetable garden is lost to weeds or insects.

It is essential to the public health, safety and welfare of the people of Kansas, that a uniform system of pesticide regulation be in place, and that it be consistent with both state and federal law. It is absolutely necessary that pesticides, as well as other toxic materials, are regulated by agencies with adequate technical expertise and practical experience to do the job right. They must also have sufficient resources to enforce their regulations. It takes both money and trained personnel to properly administer public health and safety regulations.

The need for thorough knowledge of both the pesticide being regulated and the enterprise using that pesticide is illustrated by an incident that occurred in Missouri recently. The subject was wetlands protection, but I believe you will readily see the connection with pesticide regulation.

Missouri Senator Kit Bond's chief agriculture aide was contacted by a farmer who had been accused by a federal agency, of violating wetlands regulations. An employee of that agency had identified a field as a jurisdictional wetland, due to a stand of "cat tails" in an area under cultivation. In truth, the stand of "cat tails" was a field of grain sorghum. The point is that the agent thought he understood the rules; he had read the regulations, but he had no practical knowledge to enable him to accurately assess actual field conditions and properly apply those rules.

There is little doubt that similar situations will occur involving pesticide regulation, if we turn responsibility over to people who are not equipped to handle it properly and fairly.

The present partnership between the Environmental Protection Agency and the Kansas Board of Agriculture provides farmers with accurate label information on what products will be effective to protect their crops and how best to use them to protect the environment and the health of the consuming public. My primary concern, as a representative of the wheat industry, is to maintain that system which has helped provide our nation with the safest, most nutritious and most affordable food supply in the world.

At a news conference earlier this year, the Kansas Board of Agriculture was accused of not protecting the public. One person even went so far as to claim that the Board allows illegal use of pesticides. One of the opponents of this bill testified in the Senate committee hearing that the reference was to Section 18 approval of the use of Capture on corn in southwest Kansas. He said he didn't see how the emergency could have continued for ten years.

Unfortunately, the drouthy conditions that bring on spider mite infestations has continued for ten years. During that time, the EPA has not approved a product farmers in southwest Kansas can regularly use against spider mites. As a result, the only way farmers can avoid massive crop loss is to seek Section 18 approval for Capture. In short, Section 18 use is not only perfectly legal, but extremely important in many cases.

In addition, the Kansas Board of Agriculture cannot approve a Section 18 exemption on its own. Every case must fit very strict criteria and every request must be approved by the federal government as well as the state agency.

Both the U.S. Environmental Protection Agency and the Kansas Board of Agriculture have proven track records of protecting the public safety in their labeling and regulation of beneficial chemical products.

Neither farmers, homeowners, professional pest control companies or other users of beneficial pesticides need another layer of confusing, costly and frustrating regulations. We have a system that is working well, that is administered by knowledgeable, well trained professionals. That system has also made applicators more aware and more careful. Senate Bill 543 will prevent chaos and protect the system that is protecting our people. I urge the committee to recommend this bill favorably for passage.

KANSAS HOUSE OF REPRESENTATIVES  
ENERGY AND NATURAL RESOURCES COMMITTEE

MARCH 24, 1992

Testimony on Senate Bill No. 543 - AN ACT concerning the Kansas pesticide law; relating to the uniform application thereof.

I am Richard G. Jones, Executive Director of the Kansas Association of Conservation Districts.

The Association represents the 105 county conservation districts in Kansas. Conservation Districts provide assistance to landowners and operators for the protection and improvement of their soil, water, plant, and animal resources. Conservation Districts are governed by a five member board of supervisors made up of local landowners who serve without compensation.

On November 26, 1991, at our 47th annual convention the Conservation Districts of Kansas passed the attached resolution concerning the uniform application of pesticide regulations. We strongly believe that the state and national regulations have be thoroughly researched and have sufficient background to support their recommendations for use. We do not believe that local units of government need to enact ordinances that would exceed the state or national regulations. Most would not have the technical or scientific expertise to develop more sound or useable regulations than are presently governed by the state or nation. Each local government making their own pesticide regulations would result in confusing and conflicting regulations. Farmers, lawn care applicators, and just the ordinary citizens would be at a loss as to what regulations applied to what area.

The Kansas Association of Conservation Districts recommend the passage of Senate Bill No. 543.

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Pesticide Regulations

WHEREAS, the U.S. Supreme Court has ruled that the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) does not contain language that prevents local political subdivisions from enacting ordinances that exceed FIFRA standard; and

WHEREAS, regulations have been researched and have sufficient background data to support their recommendations, and in order to prevent an influx of confusing and conflicting local regulations;

THEREFORE, BE IT RESOLVED, that the Kansas Association of Conservation Districts support state and National Legislation that preempts the authority of local political subdivisions to enact pesticide regulations which exceed the standards set by State and National law.



David S. Murphy  
P.O. Box 328  
Shawnee Mission, KS 66201

My name is Dave Murphy. I am the owner of, what many people would call, a "mom and pop" lawn service in Merriam Kansas.

On June 21, 1991 the Supreme Court of the United States overturned a long standing assumption that state and federal pesticide policies preempt local jurisdictions.

The court concluded that although congress intended to have federal and state pesticide laws preempt local regulation, the expressed language of the statute itself did not provide sufficient justification for preempting local regulation.

Justice White concluded "...Congress is free to find that local regulation does wreak havoc and enact legislation with the purpose of preventing it. We are satisfied, however, that Congress has not done so yet."

The opponents of this bill will try to show how clearly they have thought this thing out:

In the city of Lawrence, they want everyone to post signs around their property 48 hours in advance of, and for 48 hours after, any pesticide application that the public could be exposed to (even the smell).

Seventy-two hours before a pesticide application can be made, all persons within 1000 feet of the property must be notified. Imagine trying to write letters to notify the neighbors in a circle nearly 1/2 mile across around your home. To make matters worse, there would be a list of people who must be contacted, no matter how far away they live, that must also be contacted 72 hours in advance.

An article in the Washington Post indicates that, although only eight months has gone by since the loss of preemption, there are already 80 communities around the country that have adopted their own pesticide regulations. All over the country anti pesticide groups are proposing ordinances.

It is not just a matter of inconvenience to an industry

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or people who enjoy healthy lawns and trees. Poorly conceived local policies cause problems for all citizens. The use of a herbicide to remove pollinating weeds can make a significant difference to those people who suffer from weed pollen allergies. Those who are allergic to insect stings can die in just a few minutes. Lyme disease is on the rise. These are real medical needs, not phobias.

To distract you from the real issues, the opponents will say this bill will take away the rights of local citizens to have a voice in the area of pesticide regulation. To the contrary, we believe that local input into this important area is wholly justified and highly desirable. Federal regulations require the state to take special regional needs into consideration.

Pesticides are important tools of agriculture, horticulture and sanitation. Used with respect, and controlled by sound policies, they have provided us all with a greatly improved standard of health, life and well being. A great part of the reason we live longer today is because of pesticides: we eat better food, we live in more sanitary homes, we eat in pest free restaurants, we have fewer allergy symptoms caused by weed pollen, we have fewer cases of encephalitis and lyme disease and fatal insect stings. Offset this with the fact that in this country there has never been a recorded death from the application of a pesticide to a lawn.

The need for pest control is overwhelming. The need for science based pesticide regulations is no less overwhelming. There are few, if any, cities in the entire country with the knowledge and budget to scientifically develop and enforce pesticide regulations at the local level.

The anti pesticide mob has an ongoing attack on the Board of Agriculture. It's a knee jerk reaction. No matter how much the Board does, or could do, the opponents will never be satisfied. It has nothing to do with how good a job the Board does. Complaining is the modus operandi of the anti pesticide group that opposes this bill.

The Kansas Board of Agriculture has been criticized by the same group of activists that plague every other

board or department that regulates the use of pesticides in every other state. In Kansas, and across the whole country these extremely small, but very vocal minorities never changes their tune. Each state's regulatory policy will be wrong. Nothing will change that.

The ideas of state preemption were not invented by the Kansas Board of Ag, nor by Kansas industry as the pesticide critics have stated in their press releases. Preemption is a matter of history. It's not a recent phenomenon.

The Kansas Board of Agriculture's position is consistent with other states in this matter. On August 5, 1991 the National Association of State Departments of Agriculture resolved "that the regulation of pesticides under FIFRA remain solely within the framework of federal and state government...that the proposal should be implemented by encouraging states to enact appropriate legislation that preempts local government regulation of pesticides. Further, the U.S. Congress should be encouraged to amend FIFRA to preempt local government regulation.

This isn't about big business. This is about people's rights to protect their homes, health and property, as people do all over the country. Local regulations put false limits on our ability to protect property and health. Will Kansans be able to spray for ticks so they can use their lawns without risk of Lyme disease. Will they be able to get rid of the wasp nest on their house, or prevent bagworms from killing their landscape? Will the state abandon its requirements for mosquito abatement, or noxious weed control? If we allow the opponents to dismantle our best regulatory system, hundreds of thousands of people stand to suffer to satisfy a very few, very vocal, very unrealistic pesticide critics.

Although my lawn care trucks generally travel no more than about 25 miles from our office, we treat lawns in 48 cities and four counties. With only 5 of my people treating customer lawns I'd have to notify 20,000 to 30,000 people per day, to satisfy the kind of regulations the opponents think is reasonable.

If only half the people in the metropolitan area of Kansas City, use a pesticide just once per year, they'd have to mail about 19 billion letters. Postage alone

would cost \$551 million. A whole forest would have to be cut down to supply the paper. We'd have to start drilling for oil in the most remote arctic wilderness refuges to supply the fuel for a new fleet of mail trucks just for my area alone.

For my poultry few customers alone I'd have to mail about 15 million letters per year, at a total cost in excess of \$9 million annually. My company's total annual budget is only a minuscule part of such a number. I couldn't afford a single customer that required such notification requirements.

Nor can I spend unlimited time educating and working with the 50 or so cities and counties in my area. In the news media, my side of the story is seldom told. It isn't exciting or dramatic like the scandalous fear and government distrust campaigns that attract the media like fly paper.

The intent of those in opposition to this legislation is not reasonable pesticide use. Their intent is to outlaw the use of pesticides by creating isolated battle fields all over the country, including Kansas. Since they do not have science and facts on their side, they hope to win by undermining the best sources of pesticide regulation available. Every effort they make is aimed at this process. Their constant attack on the federal and state regulatory authorities is but one example of this.

The history of federal and state preemption is a fact. It worked for nearly 20 years. In the brief 8 months since the shield of preemption has been lowered we've only just begun to see the convoluted logic the opponents want to call reasonable. There is no need to battle unreasonable pesticide ordinances in each jurisdiction across the state as the opponents want to do. The nature of such skirmishes is to promote distrust of the state and federal government, create fear of the things the average citizen doesn't understand, and to undermine the industries of agriculture and horticulture that provide an important part of our economy and better way of life.

In the strongest way possible, I ask you to please support Senate Bill 543.

5-4

Chairman and members of the House Energy and Resources Committee. My Name is Donald R. Tannahill and I am an "Environmentalist" as I am in business to establish and maintain a healthy lawn which contributes to the quality of the earth's environment and our future.

Lawns replenish our oxygen supply, cool our neighborhoods, prevent soil erosion, purify water, filter dust and pollen from the air, build topsoil and absorb noise pollution.

This is accomplished by being a co-owner of a lawn care company (TRIDON Lawn Services, Inc.) which is licensed in the State of Kansas as a Pesticide Business. Our business became licensed by having at least one Commercial Applicator.

To become a Commercial Applicator one must:

- 1 - Study the required General Manual (104 pages) and then pass a closed book exam.
- 2 - To service the "Turf" customer one must study the required Turf Pest Control Manual (Category 3B - 84 pages) and then pass a closed book exam.
- 3 - To service the "Tree/Shrub" customer one must study the required Ornamental Pest Control Manual (Category 3A - 49 pages) and then pass a closed book exam.

Having met the requirements of the Kansas Pesticide Law I became a Commercial Applicator and have to be recertified every three years.

Currently I am a member of the Board of Directors of the Professional Lawn Care Association of Mid-America (PLACAMA) acting as Co-Chairman of the Legislative Committee for the State of Kansas and am also a member of the Education Committee.

PLCAMA's mission is "To provide education for ourselves and the general public, to participate in legislative issues and to promote success and professionalism within our industry".

As part of our Code of Ethics we seek

- "To provide employee training in the safe handling and use of pesticides, and monitor safety and environmental factors relating to services performed."
- "To abide by the laws and regulations affecting the industry and to promote enforcement."

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PLCAMA (with its current 85 Kansas member firms)

- has developed an approved Registered Technician Training Manual for use by firms in Kansas and Missouri.

- sponsors certification, recertification and registered technician training for both Kansas and Missouri.

During 1991 PLCAMA conducted 23 days of training.

Why the need for the bill before you today? It is the result of a decision in 1991 by the United States Supreme Court concerning the Federal Insecticide Fungicide and Rodenticide Act (FIFRA)

- "After the town (Casey, Wisconsin) issued a decision unfavorable to respondent Mortier on his application for a permit to spray a portion of his land, he brought a declaratory judgment in county court claiming, among other things, that the ordinance was pre-empted by FIFRA. The court granted summary judgment for Mortier, and the Wisconsin Supreme Court affirmed, finding pre-emption on the grounds that the Act's text and legislative history prohibit any regulation of pesticides by local governmental units." - Quoted from the Supreme Court of the United States - Syllabus - Wisconsin Public Intervenor ET AL. v. Mortier ET AL.

- The United States Supreme Court in a 9-0 vote indicated that FIFRA did not prohibit authorities below State level from passing their own ordinances. Supreme Court Justice White in delivering the opinion of the Court states: "---we conclude FIFRA does not pre-empt the town's ordinance-----". In further writing he states "We agree that neither the language of the statute nor its legislative history, standing alone, would suffice to pre-empt local regulation." He also states "----Congress is free to find that local regulation does wreak such havoc and enact legislation with the purpose of preventing it. We are satisfied, however, that Congress has not done so yet."

Supreme Court Justice Scalia, concurring in the judgment, discussed that they had reviewed the House and Senate Committee reports and confirmed the impression that the 50 States and Federal Government should provide an adequate number of regulatory jurisdiction.

Justice Scalia states "Clearer committee language 'directing' the courts how to interpret a statute of Congress could not be found, and if such a direction had any binding effect, the question of interpretation in

this case would be no question at all."

Further, Justice Scalia states "If I believed that the meaning of a statute is to be determined by committee reports, I would have to conclude that a meaning opposite to our judgment has been commanded three times over - not only by one committee in each house, but by two committees in one of them."

For you information - US Senate Bill #2085 and US House of Representatives Bill #3850 have been introduced to amend FIFRA to authorize the federal and state governments to exclusively regulate the use of pesticides and would expressly prohibit local government regulation. Senator Dole was one of six Senators (3 Democrat & 3 Republican) that sponsored the Senate version. Representatives Nichols and Pat Roberts were of the 31 Representatives (16 Republicans and 15 Democrats) that sponsored the House version.

There is a need for the "Bill" that you are hearing today because:

- 1 - It is not known how long it will take for completed action on the National level.
- 2 - Acknowledging that there currently IS NOT one Kansas governing entity below state level that has passed a "pesticide" ordinance - it is my belief that there will be if legislative action is not taken at the Federal or State level.

This belief is based on the fact that the City of Lawrence has already been petitioned for such an ordinance. The presented ordinance draft if approved would, among other undesirable items, require:

- Posting - all property receiving pesticide application would need to be posted at least 72 hours prior to the application and 72 hours after application.  
(This would include residential, public lands or private lands subject to public use; commercial or multi-unit residential dwellings and golf courses)

NOTE: Currently there is no State Posting requirement.

- Recordkeeping - 20 years

NOTE: Current State Requirement is 3 Years.

- Licensing and fees - must have a city license and pay appropriate city fee. Each applicator must complete a city standardized test and complete a city safety course.

NOTE: Testing is currently already required by State.

- Notification - written notification to all neighbors within 1000 foot radius - each tenant will receive written notification -----all of the above at least 48 hours in advance of intended application.

NOTE: Currently no State requirement for pre-notification.

This is just a small example of what could happen if each city and/or county is permitted to pass their own ordinance and how conflicting it could be. Compounding the problem even more would be if a city passed an ordinance that went beyond their own city limits.

I would like to reemphasize that we in the industry ARE NOT against legislation.

It is the desire of the Professional Lawn Care Association of Mid-America (PLCAMA) that the current bill before you be passed as written.

Our reasons for the need of this legislation are:

- Current federal and state laws - developed by regulators with scientific and technical expertise not available on the local level - already afford sufficient protection.--- (Enforcement of the Kansas Pesticide Law has been available to local government agency since 1977 by provisions of the Kansas Pesticide Law (K.S.A.2-2460a). This ability was further enhanced by the legislature in 1989 by amending the law and setting forth the provisions for Pesticide Management Areas in K.S.A. 2-2471 through 79.
- Uniformity of regulation state wide is a practical necessity for companies serving many communities.

Again I - the Professional Lawn Care Association of America and - the attached individuals in their petition - ask that you vote in favor of the "Bill" before you today.

Thank you for your time and consideration.

  
DONALD R. TANNAHILL

11690 Renner Road, Olathe, Kansas 66061 (913) 782-2561  
Co-Chairman, Professional Lawn Care Association of  
Mid America (PLCAMA)

6-4



I, the undersigned, support the need for and request your voting in favor of legislation for state preemption on pesticide regulations.

DATE - SIGNATURE - MAILING ADDRESS

DATE	SIGNATURE	MAILING ADDRESS
2/4/92	Tom Swift	3447 New Brickyard Rd Topeka 66618
2/4/92	Jim Murphy	6412 Carter, Shawnee, KS 66203
2/4/92	Ken Potter	310 VALLYVIEW CT ANDOVER, KS 67002
2/4/92	Matthew K. Wayne	2850 S. NINTH Salina, KS 67401
2/4/92	Dave Furbush	2850 S. NINTH SALINA, KS 67401
2/4/92	Carl Furbush	8343 TRAVIS O.P. KS. 66212
2/4/92	Randy Gorman	7576 Rainbow Dr. PU KS 66203
2/4/92	Jack Rosenbly	30285 Hillside Wichita, KS 67216
2/4/92	W. David Clark	10701 W 75 <sup>th</sup> Terr Apt 101 Shawnee KS 66201
2/4/92	James	8501 Deer Run Lane KS 66221
2/4/92	Paul Allen	12829 Sagamore Leeward Ks 66200
2/4/92	James John	2730 SW 57 <sup>th</sup> Topeka, KS 66609
2-4-92	Bob Win	13106 W 115 <sup>th</sup> O.P. KS. 66210
2-4-92	Mike	11010 W 72 <sup>nd</sup> LEAN SHAWNEE, KS 66203
2-4-92	Joe Schuetz	318 W 74 <sup>th</sup> KC MO 64114
2-4-92	Jim Coleman	7015 Rene Shawnee KS 66216
2-4-92	Don Gloom	3035 S. W. 18 <sup>th</sup> WICHITA KS 67204
2-4-92	Jeffrey A. Chapel	8343 Beverly, Overland Park KS 66207
2/5/92	E. Gray Aldridge	15-22 N 99th St, KC, K
2/4/92	Mike Paulson	2730 S. 157 Topeka KS 66601
2/4/92	Carl Schroeder	10295 Woodland Lenexa, KS 66224
2/4/92	Joel Brewer	9164 W 90 <sup>th</sup> Overland Park KS 66214
2/4/92	John E. Long II	15152 Monrovia, Overland Park KS 66221
2/4/92	Mike Frasel	1011 N. Yale, Wichita, KS 67208
2-4-92	Don Wenzel	4431 Auburn Wichita KS 67220
2-4-92	Peter X. Solomon	407 Bay Country Ct. Wichita KS. 67233

I, the undersigned, support the need for and request your voting in favor of legislation for state preemption on pesticide regulations.

DATE - SIGNATURE - MAILING ADDRESS

DATE	SIGNATURE	MAILING ADDRESS
2-4-92	Tom Blford	6701 W 8.2nd O.P. KS. 66204
2-4-92	Coony Return	2321 E. Cedar Olathe KS 66062
2-4-92	Judith K. Henry	7014 St 73rd Overland Park 66208
2-4-92	Paul Bell	6412 CARTER Merriam KS
2-4-92	Mark Fausz	8141 W 56 Terr Merriam KS 66202
2-4-92	Michael T. Hyer	503 N Mesquite Olathe KS 66061
2-7-92	Dave Pellett	1046 Penn. Lawrence KS 66044
2/4/92	Steve Dale	3026 S. Hillside Wichita KS 67211
2/4/92	Thom Wenat	4431 Auburn Wichita 67200
2/4/92	John M. Harts	2396 W 151st Stanley KS 66229
2/4/92	Mark Cook	8050 LAKEVIEW Lenexa, KS 66219
2/4/92	Michael D. Moore	814 NW Hillside P. Kville, MO 64152
2/4/92	Mike J. Vandrey	6400 HANSEN LANE SHANNON KS 66202
2/4/92	Gary Custer	9921 W 128th Terr O.P. KS 66211
2/4/92	Walter Hunter	14531 W 91 Terr Lenexa KS 66215
2-4-92	Larry Ryan	4900 W. 101 Terr. O.P., KS 66207
2/4/92	John C. Lora	3720 S.W. 31st Topeka, KS 66611
2/5/92	Steve Goodwin	P.O. Box 12614. O.P., KS. 66212
2/5/92	Steve Schuch	9978 Fairlane Lenexa KS 66215
2/5/92	Sierra Christine	12057 W. 77 Terr Lenexa KS 66216
2/5/92	Charles A. Edworthy	2625 S. West 702 Wichita KS 67217
2/5/92	Donna Bell	2625 S. West 702 Wichita KS 67217
2/5/92	Paul S. Wetters	Rt 1 Box 39 F. Edgerton KS 66021
2/5/92	Donna Ernst	602 W. Santa Fe Gardner, KS 66030
2/5/92	Jim Egan	3310 W. 71 Terr. P.V. KS. 66208
2/5/92	Paul D. J.	1802 Vermont St. Lawrence KS 66044

I, the undersigned, support the need for and request your voting in favor of legislation for state preemption on pesticide regulations.

DATE - SIGNATURE - MAILING ADDRESS

DATE	SIGNATURE	MAILING ADDRESS
2-5-92	John Murphy	4907 Helwig, Shawnee, Ks 66216
5 Feb 92	Jayne R. Jetter	505 N. STEVENSON Olathe KS 66001
6 Feb 92	William J. [unclear]	6934 Reed's Rd OP. KS 66208
9 Feb 92	Donald R. [unclear]	11690 Remond Rd, Olathe, KS 66061



# Leprechaun Lawns "for a magically green lawn"

MARCH 24, 1992

STATE OF KANSAS  
HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

RE: HEARING - SENATE BILL NO. 543

HONORABLE CHAIRMAN AND COMMITTEE MEMBERS,

MY NAME IS JIM JOHNSON. I AM PRESIDENT AND OWNER OF LEPRECHAUN  
LAWNS, TOPEKA, KANSAS.

I APPRECIATE THE OPPORTUNITY TO TESTIFY ON BEHALF AND IN FAVOR OF  
SENATE BILL NO. 543, PROHIBITING ANY AUTHORITY LOWER THAN THE  
STATE LEVEL FROM ESTABLISHING THEIR OWN REGULATIONS CONCERNING  
THE USE OF PESTICIDES.

I AM HERE TO ASK YOU TO KEEP THE DECISIONS ABOUT THE USE OF  
PESTICIDES ON A STATE OR FEDERAL LEVEL. WHEN COMMUNITIES ARE  
TRYING TO MAKE A DECISION OF THIS NATURE, IS IT DIFFICULT FOR  
THEM TO HAVE ACCESS TO THE SCIENTIFIC FACTS AND IN MANY CASES  
THEY MAY LET EMOTIONS BE THEIR GUIDE. WE KNOW THAT IN ORDER FOR  
THE CORRECT DECISION TO BE MADE IT IS IMPORTANT TO EXPLORE ALL  
AVENUES AND FACTS SO THE PROPER RESULTS WILL FOLLOW.

WE ARE REGULATED BY THE KANSAS STATE BOARD OF AGRICULTURE AND  
MUST PROVE OUR PERSONNEL ARE QUALIFIED TO APPLY PESTICIDES BY  
PROVIDING THE NECESSARY TRAINING AS REQUIRED BY THE STATE. WE ARE  
ALSO REQUIRED TO LIST ON EACH INVOICE WE LEAVE WITH OUR CUSTOMERS  
THE NAME OF THE PESTICIDE USED, THE CONCENTRATION AND THE E.P.A.  
REGISTRATION NUMBERS. WE MUST ALSO PROVIDE COMPLETE INFORMATION  
ON TIME OF THE APPLICATION, WIND SPEED, WIND DIRECTION AND THE  
NAME OF THE TECHNICIAN DOING THE APPLICATION.

AS PROFESSIONAL LAWN CARE OPERATORS WE ARE LICENSED, INSURED AND  
TRAINED. I AM A LICENSED CERTIFIED APPLICATOR IN THREE SEPARATE  
CATEGORIES AND EACH OF MY TECHNICIANS THAT APPLY ANY PESTICIDES  
HAVE BEEN FULLY TRAINED AND REGISTERED WITH THE STATE OF KANSAS.  
I SPEND FORTY TO FIFTY HOURS OF ON THE JOB TRAINING AND A MINIMUM  
OF TEN TO FIFTEEN HOURS OF CLASSROOM TRAINING ON EACH NEW PERSON  
I HIRE TO BECOME A TECHNICIAN. AT THE BEGINNING OF EACH YEAR I  
HAVE TEN TO FIFTEEN HOURS OF CLASSROOM TRAINING FOR MY CURRENT

KANSAS  
TURFGRASS  
FOUNDATION

2730 SW 57th • Topeka, Kansas 66609

(913) 862-9461

PROFESSIONAL LAWN CARE ASSOCIATION  
**PLCAMA**  
OF MID-AMERICA

3/24/92

House ENR

Attachment 7



# Leprechaun Lawns *"for a magically green lawn"*

REGISTERED TECHNICIANS. AS YOU CAN SEE, THIS IS VERY EXPENSIVE FOR ME TO DO. BEYOND THE FACT OF EXPENSE AND THAT IT IS THE LAW, I FEEL IT NECESSARY SO MY TECHNICIANS ARE ALL FULLY QUALIFIED TO PREFORM THE DUTIES AS REQUIRED BY ME.

MY COMPANY CURRENTLY SERVICES 6 COUNTIES AND 26 CITIES IN KANSAS. SHOULD EACH CITY, COUNTY OR TOWNSHIP ESTABLISH THEIR OWN LOCAL REGULATIONS IT WOULD CREATE A BOOKKEEPING AND POLICING NIGHTMARE. THIS WOULD REQUIRE ME TO ESTABLISH NEW POLICIES AND PROCEDURES FOR EACH COMMUNITY THEREBY ADDING TO MY OVERALL COST OF OPERATION WHICH WOULD NEED TO BE PASTED ON TO THE CONSUMER. I, AS ANY PROFESSIONAL LAWN CARE OPERATOR, AM MORE THAN HAPPY TO CALL AHEAD OUR CUSTOMERS WHO REQUEST IT, OR TO NOTIFY A CONCERNED NEIGHBOR BEFORE WE MAKE AN APPLICATION, AND WILL PROVIDE TO THEM THE INFORMATION I HAVE BEEN SUPPLIED CONCERNING OUR PRODUCTS.

PLEASE UNDERSTAND I AM NOT AGAINST REGULATION AS LONG AS IT IS UNIFORM. PLEASE SEE THE DIFFICULTIES WITH LOCAL REGULATIONS AS THEY COULD EXIST. EXAMPLE: A SET OF REGULATIONS FOR SHAWNEE COUNTY, ANOTHER FOR TOPEKA, AND ANOTHER FOR SILVER LAKE. YOU CAN SEE THE CHANCE FOR AN INNOCENT MISTAKE TO BE MADE BY GOING FROM ONE TOWN TO ANOTHER OR IN AN EXTREME CASE SIMPLY CROSSING THE ROAD TO TREAT A NEIGHBORS LAWN, ALL WITHIN THE SAME COUNTY, WHICH MAY HAVE YET ANOTHER SET OF REGULATIONS.

I RESPECTFULLY REQUEST YOU KEEP THE REGULATION OF PESTICIDE USE AT THE STATE OR FEDERAL LEVEL AND VOTE FOR SENATE BILL 543.

THANK YOU FOR THIS OPPORTUNITY TO PRESENT MY VIEWS TO YOU.

JAMES B. JOHNSON  
PRESIDENT/LEPRECHAUN LAWNS - TOPEKA

**KANSAS TERMITE &**

**PEST CONTROL ASSOCIATION**

**INC**



March 24, 1992

TESTIMONY PRESENTED TO

Committee on Energy and Natural Resources, Ken Groetweil, Chm.

**President**

Forrest St.Aubin  
(913) 383-1313  
FAX (913) 383-1382

**President-Elect**

Jim Jarvis  
(913) 825-5143

**Vice-President**

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**Past-President**

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**Executive Secretary**

Mrs. Peg King  
410 N. Jefferson  
P.O. Box 1665  
Junction City,  
Kansas 66441-2988  
(913) 238-6800  
FAX (913) 238-8304

Mr. Chairman, Members of the committee: Thank you for allowing me to appear before you today to comment in support of SB 543. My name is Vernon McKinzie, I operate pest control businesses in Emporia, Manhattan, and Parsons, and am here today as chairman of the Kansas Termite & Pest Control Association (KTPCA) Government Affairs committee. Our Association members are responsible for over a million pesticide applications annually in Kansas, including termite treatments, roach treatments, flea control, plus rodent and pest bird control. Presently our industry is licensed, certified and regulated at the state level.

The U.S. Supreme Court decision handed down in June 1991 (Wisconsin Public Intervenor vs. Mortier) found that the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) the Environmental Protection Agency (EPA) and the states could not pre-empt local ordinances regulation pesticide use. Prior to this ruling, we had followed the notion that Congress had not intended to allow local ordinances. Since the ruling, over 80 local units of government have begun to consider local ordinances. In Kansas, the city of Lawrence has been asked to consider a special ordinance.

Justice Byron White wrote on page 16 of the Supreme Court Decision, "Congress is free to find that local regulation does wreak such havoc and enact legislation with the purpose of preventing it."

Most of our Association members serve multiple communities. Our company serves customers in 79 cities and over a dozen counties. If each of these governmental units were permitted to enact regulations without regard and independent of one another, conflicts would arise and havoc would result,

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making it difficult or impossible for us to serve our customers needs. Such conflicts have already occurred in Pennsylvania and New Jersey.

If cities and counties are to regulate pesticide usage, they may need to meet training, certification and regulatory standards and enter into a written contract with EPA to implement their laws and regulations. This will no doubt require local governments to add personnel resulting in added costs to duplicate a regulatory program already in place at the state level. A comprehensive and complete structure is now in place at the state level in Kansas to regulate pesticide usage. Enforcement is carried out by a technically competent and experienced staff. This staff is presently available at no cost to local governments to assist with pesticide applicator problems.

I understand most of the trade groups (carpenters, electricians, plumbers) as well as professional groups (architects, attorneys, barbers, doctors, physical therapists, nurses, veterinarians, etc.) are licensed at the state level in Kansas and are not further regulated on a local basis. KTPCA thinks SB 543 insures similar recognition for pesticide applicators.

If local ordinances were to be adopted, they would not only create havoc, but duplicate an already existing state system that works well.

We think the adoption of SB 543 will insure that citizens of Kansas continue to have their pest control needs met in a safe and economical manner under a well regulated state program which protects the health and welfare of all Kansans. Failure to adopt SB 543 could result in unnecessary added costs to local governments, lack of effective and knowledgeable enforcement, a patchwork of conflicting ordinances, and decreased availability of professional pest control services.

We urge your adoption of SB 543. Thank you. Are there any questions?

STATEMENT  
to  
THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

Representative Ken Grotewiel, Chairman

RE: Senate Bill 543 - Preemption of Local Authority to  
Regulate Pesticide Use

by  
Carl J. Meyer, President  
Horticultural Services, Inc.  
11524 Landscape Lane  
P.O. Box 159  
St. George, KS 66535  
913-494-2418

March 24, 1992

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Chairman Grotewiel and members of the Committee:

I am Carl Meyer, President of Horticultural Services, Inc. a full service production landscape and retail nursery business. We have served a large portion of northeast Kansas since 1970 and employ 25 people full-time.

I welcome this opportunity to present my views, which I believe are widely held by those in the nursery and landscape industry, regarding preemption of local authority to regulate pesticide use.

ECONOMIC IMPACT OF NURSERY AND LANDSCAPE INDUSTRY

USDA's Economic Research Service (ERS) estimates farmer cash receipts of nursery and greenhouse crops in 1990 at \$8.7 billion. Our industry accounts for 10% of all farm crop cash receipts --- ranking behind soybeans and corn in plant crops, but accounting for more cash receipts than wheat or cotton. And, unlike so many other agricultural segments, the nursery industry does not receive --- and does not want --- any federal subsidies or similar support.

The demand for nursery and landscape products continues to rise dramatically due to heightened environmental awareness, changing lifestyles, and higher disposable incomes. For example, the growth rate in the number of nursery farms and greenhouse operations is one of the highest in American agriculture --- at least 10% annually, which is considerably higher than the pace of the general economy. A recent ERS study estimates that total consumer expenditures in 1990 for nursery and greenhouse products were approximately \$38 billion. However, this estimate does not even include the value of landscape services and related materials. Comparatively, ERS estimates total consumer expenditures in 1990 for fresh produce were \$49 billion.

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Unfortunately, I cannot give you similar information specifically about Kansas as there are currently no accurate figures on our industry for the state. It is my understanding the Kansas State Board of Agriculture is planning to survey the industry and will have such figures available in approximately two years.

#### IMPLICATIONS OF LOCAL PESTICIDE ORDINANCES ON THE NURSERY AND LANDSCAPE INDUSTRY

Local pesticide regulations will impede agricultural production of nursery crops. Approximately 50% of all nursery crops grown in the United States are involved in interstate shipments which, by law, must be essentially free of injurious pests. Many shipments involve entire plants with soil intact. Soil increases the likelihood of harboring pests and requires safe and effective pesticides to prevent the spread of insects (e.g. Japanese beetle and imported fire ant) or plant diseases (e.g. Dutch elm disease).

Pesticide treatments are required by a host of federal and state inspection, certification and quarantine laws which properly govern the interstate shipment of nursery plants and trees. A patchwork quilt of local pesticide ordinances may inhibit the shipment of nursery stock on both an interstate and intrastate basis. For instance, gypsy moth is an example of an introduced pest which is not particularly damaging to nursery crops. Nonetheless, nursery operations within quarantine areas must comply with restrictions to prevent the spread of gypsy moth to uninfested areas. If a local jurisdiction within a gypsy moth quarantine area decides to ban such treatments, a nursery farm in that local jurisdiction will simply no longer be able to ship plant material to uninfested areas.

Enactment of local pesticide ordinances raises the specter of potentially upsetting or interrupting the interstate shipment of plants and trees by nursery farmers. As localities begin enacting pesticide ordinances, nursery growers with farms in different towns and counties, and garden center retailers with outlets in neighboring jurisdictions, will be forced to keep informed of, and comply with, differing and potentially conflicting pesticide ordinances.

Landscape contractors typically operate across many local jurisdictions all of which are now free to adopt conflicting or overlapping regulations due to the Casey decision. Conflicting local pesticide ordinances may force landscape contractors to limit their services areas, which, in turn, may result in fewer job opportunities.

#### LOCAL JURISDICTIONS LACK TECHNICAL EXPERTISE TO REGULATE PESTICIDES

The federal-state partnership in pesticide regulation has worked effectively to create a nationwide pesticide regulatory program which protects the public's health and our environment. The issues

comprising pesticide regulation are complex and mandate that policy decisions be based on facts and proper science -- not emotionalism. There are few, if any, localities which have the technical expertise in the area of pesticide regulation to second-guess the technical and policy decisions of the U.S. Environmental Protection Agency and state regulatory agencies. Moreover, I question whether local jurisdictions are aware of or even prepared to incur the increased costs associated with effective enforcement of any such locally imposed regulations.

Our effective pesticide regulatory system is in jeopardy of being dismantled if pesticide rules are fueled by emotion, fear or hysteria, rather than being based on scientific fact.

I strongly believe that only a partnership of the federal and state governments is equipped to provide a secure, uniform and sensible system of pesticide regulation. A poignant example of how well this federal-state regulatory partnership can work is the "Pesticides and Groundwater Strategy" issued by the U.S. Environmental Protection Agency in 1991. In this crucial groundwater program, EPA established national needs, priorities and goals. EPA's approach is to provide guidance and flexibility to the states for effectively dealing with localized conditions.

PASSAGE OF S.B. 543 IS NEEDED

I strongly urge you to pass Senate Bill 543 to prevent the wreaking of havoc, which not only the nursery industry, but our entire pesticide regulatory system, will otherwise be forced to endure over time.

Mr. Chairman, thank you for this opportunity to present testimony on this critical issue. If you or any other committee members have questions, I will be pleased to answer them.



# PUBLIC POLICY STATEMENT

## HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

### RE: S.B. 543 - Maintaining the uniform regulation of pesticides in Kansas

March 24, 1992  
Topeka, Kansas

Presented by:  
Bill Fuller, Assistant Director  
Public Affairs Division  
Kansas Farm Bureau

**Chairman Grotewiel and members of the Committee:**

My name is Bill Fuller, I am the Assistant Director of the Public Affairs Division for Kansas Farm Bureau. We certainly appreciate this opportunity to testify as a **proponent** of S.B. 543. Our statement is based upon new policy adopted by the voting delegates representing the 105 County Farm Bureaus at the Kansas Farm Bureau Annual Meeting on November 23, 1991.

Pesticides are important tools of production for many farmers and ranchers. In fact, they contribute significantly to production efficiency and the ability to produce an abundance of high quality food for consumers at an affordable price. We support the judicious and safe use of these crop protection products. We do not condone the misuse or over application of pesticides.

The U.S. Supreme Court ruled in June of 1991 that the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) did not contain

*3/24/92 House E+NR Attachment 10*

language that preempted the authority of local political subdivisions to enact pesticide regulations. Up to the time of the court ruling, FIFRA had been considered the standard for pesticide regulation nationwide.

Farm Bureau is part of the 147 member national "Coalition For Sensible Pesticide Policy". We support the bills that have been introduced in the U.S. House of Representatives and the U.S. Senate. We have been encouraged by several members of the Kansas delegation to work for passage of preemption legislation in the Kansas Legislature. They suggest the state legislature may be able to approve legislation more quickly and any state plan would strengthen their efforts in Washington, D.C.

S.B. 543 keeps the responsibility of pesticide regulation with state and federal governmental entities where it has always been. The Kansas State Board of Agriculture administers the Kansas Pesticide Law. The Kansas Department of Health and Environment and the Kansas Department of Wildlife and Parks are two additional state agencies that have pesticide regulation responsibilities. We believe state and federal agencies have the professional staff, expertise and resources.

S.B. 543 does not take pesticide regulation away from local control in Kansas. Local units have not had the authority until the Supreme Court decision last June. There is now a concerted effort to pass local ordinances in Kansas. In fact, the National Coalition Against the Misuse of Pesticides has publicly announced that Kansas is one of its target states to get a series of local ordinances enacted. The bill prevents locals from becoming involved. Most local governmental units do not have the expertise, personnel or dollars to set up regulatory programs. Local programs would put more pressure on the already overburdened property tax. This would result in

competition with education and social programs for property tax funds. Local restrictions are likely to be based upon fear, hysteria and other non-scientific grounds.

We must realize the current state and federal regulations are not the only restrictions on pesticide use. Millions of dollars and years of research are required to develop and certify pesticides. The label contains many restrictions, prohibitions, precautions and instructions to protect the public health and the environment. This 99 page label for (Sencor) illustrates the details provided to assure proper use.

KFB Policy encourages farmers and ranchers to keep records on pesticide use. Kansas Farm Bureau developed and is distributing a **Crop and Pesticide Record Book** to help producers comply with a new 1990 Farm Bill Pesticide Recordkeeping requirement. Beginning January 1, 1992 all applicators using restricted use pesticides are required to keep records. Records must include the product name, amount used, date of application and location of application. Farmers interest in compliance is demonstrated by the fact that the first 2,500 book printing sold out in the first week. Another 6,000 books are now being printed and distributed. More demand for the record book is expected. We are providing you a copy of the Farm Bureau **Crop and Pesticide Record Book** for your review.

We appreciate this opportunity to testify as a proponent for S.B. 543. This issue is extremely important to agriculture and homeowners. We encourage you to approve S.B. 543. We believe passage of S.B. 543 will continue the uniform federal and state regulation of pesticides based on sound, scientific judgement and fact. Thank you!

To: Kansas House Energy and Natural Resource Committee

From: Pat Ross, farmer/stockman  
R. R. 4, Box 217  
Lawrence, KS 66044

I have traveled to Topeka today to testify in favor of Senate Bill 543.

Our farming operation covers 2,000 acres of cropland and 800 acres of grassland located in Douglas, Jefferson and Leavenworth Counties. The land is located within 5 townships, 3 counties, 1 city, 1 state and 1 nation. That is 11 different governmental agencies. Without Senate Bill 543, it would be possible for each of these entities to pass a separate pesticide ordinance. Variations between towns, townships and counties would further complicate compliance. The overlapping of regulatory boundaries and regulations could be so contradictory that breaking the law would be unavoidable. A person could be required to control noxious weeds by the state and be fined by a county for having the noxious weeds that could not be treated because of a township ordinance.

The City of Lawrence, which we rent land from, was approached on November 9, 1991 about placing an ordinance on the books to essentially prohibit the use of any pesticide within the city. The City Commission tabled the proposed ordinance and is awaiting the outcome of this bill.

Those of us that own property know that it is our responsibility to take care of and improve the land. We farmers also know that we have a responsibility to produce food for the growing population of this nation and world. Without passage of Senate Bill 543 our ability to do so would become increasingly difficult.

Senate Bill 543 is needed in Kansas.

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Attachment II

STATEMENT OF  
KANSAS GRAIN AND FEED ASSOCIATION  
AND  
KANSAS FERTILIZER AND CHEMICAL ASSOCIATION  
TO THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE  
REP. KEN GROTEWIEL, CHAIRPERSON  
REGARDING S.B. 543  
MARCH 24, 1992

Mr. Chairman and Members of the Committee, I am Chris Wilson, Director of Public Affairs for the Kansas Grain and Feed Association (KGFA) and the Kansas Fertilizer and Chemical Association (KFCA). The two associations have distinct memberships and association programs and activities, but share staff. KFCA's 600 member firms provide production inputs and services to producers. KGFA's 1300 member firms are involved in the transportation, warehousing, merchandising and processing of grain or provide services to the grain handling industry. Many are firms which also provide production inputs and services to producers. We appreciate the opportunity to speak in support of S.B. 543, which clarifies that pesticide regulations, relative to the Kansas Pesticide Law, are to be uniform throughout the state.

Our members sell and apply pesticides, which are stringently regulated by state and federal law. As you have heard, historically FIFRA, the federal pesticide law, was assumed to govern pesticide use in conjunction with the state pesticide laws. EPA, which administers FIFRA, accordingly did not permit

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local pesticide regulations in conflict with those pesticide uses governed by FIFRA.

Last summer's Supreme Court ruling found that, while it was congressional intent to preempt local regulation, FIFRA did not specifically do so. Obviously, state and federal laws exist to provide legal uniformity throughout the country as needed and to address areas of law which have a national interest and scope. Clearly, pesticide regulation is one of those areas.

The federal government, through FIFRA and EPA, has the authority for approving pesticides for use and for establishing the conditions of their use. A great deal of time, expertise and financial resources are needed for this responsibility. Thus, it is appropriate for the federal government to have that responsibility, as opposed to the states each having to replicate the time, expertise, and resources to make those determinations.

States generally, in cooperation with EPA, assume responsibility for enforcement of federal pesticide law within their boundaries and specify pesticide regulations for applicator certification and some pesticide use areas not otherwise covered by EPA. This system has worked very well in Kansas. Local units of government have called upon the state when they have had a pesticide law enforcement problem. The state has provided the expertise and enforcement personnel to assist local units of government. This system has worked well for the local governments.

It seems obvious to us that local pesticide ordinances would create a chaotic patchwork of regulation, resulting in often



overlapping, senseless differences between local jurisdictions. Surely such a system would lead to less, rather than more, effective enforcement of regulations.

We believe that local governments should have the right to have pesticide business licensing in their jurisdictions, so that they know who is involved in pesticide application in their areas. S.B. 543 would not prohibit that or other types of local ordinances, such as zoning, fire codes or hazardous waste disposal, which have existed in harmony with FIFRA. We also believe that local governments should have the ability to seek justified pesticide regulations from the state, which they also currently may do. S.B. 543 likewise will not prohibit local units from seeking state regulations or state-approved local regulations under the Kansas Pesticide Law.

What S.B. 543 does do is to preempt local authority relative to the Kansas Pesticide Law only. Of course, there are numerous other state statutes providing authority relative to pesticides to a number of state and local entities. S.B. 543 does not provide preemption for any statute other than the Kansas Pesticide Law.

Another state statute governing pesticide use in Kansas is the Kansas Chemical Act. A preemption clause is already contained in that law. So, preemption is already the policy of the state with regard to the pesticide use provisions in the Chemical Act.

A question which has been raised is if there is really a need for S.B. 543. Is there a real potential that local

ordinances will be passed in Kansas? The answer is a definite yes. Over 100 ordinances have been proposed or enacted throughout the country since the Supreme Court decision. An attachment to this statement illustrates the senselessness and misinformation of many of those ordinances and proposals. In addition, a national campaign to promote and establish local ordinances is being organized by anti-pesticide groups. Their efforts in Kansas have already begun.

Federal and state law and regulation of pesticides maintain a high degree of sophistication and science in regulating pesticide use. EPA requires that pesticide manufacturers conduct more than 120 separate research tests on a chemical before it is approved for use. For each of the few chemicals (about one in 20,000) that make it through this exhaustive process, manufacturers spend 8 to 10 years and \$35 to \$50 million. Local governments do not have the scientific or fiscal resources to make legitimate determinations about the health and safety benefits resulting from proper use of pesticide products.

Our members use pesticides for the purpose of crop protection, in order to help produce a safe, high quality, abundant and affordable food supply. The wise, judicious and safe use of pesticides is of the highest priority to our members, who work with these tools on a daily basis. Today's pesticides and pesticide use technologies provide for a high degree of efficiency, applicator safety and protection of the environment. The professionalism of our industry and safe use of pesticides

depend on a solid, uniform system of pesticide regulation, which can only be achieved through the state and federal governments.

We urge your support for S.B. 543.

###

KEY POINTS ABOUT S.B. 543

S.B. 543 MAINTAINS THE STATUS QUO WHICH HAS EXISTED THROUGHOUT THE HISTORY OF FIFRA AND THE KANSAS PESTICIDE LAW.

S.B. 543 DOES NOT TAKE ANY AUTHORITY FROM LOCAL GOVERNMENTS WHICH THEY HAVE PREVIOUSLY HAD, SINCE IT WAS ALWAYS PRESUMED THAT FIFRA PREEMPTED LOCAL REGULATIONS, UNTIL LAST SUMMER'S SUPREME COURT DECISION.

THE SUPREME COURT DECISION SAID IT WAS CONGRESSIONAL INTENT TO PROVIDE AUTHORITY TO FEDERAL AND STATE GOVERNMENTS ONLY, BUT FIFRA DOES NOT SPECIFICALLY SAY SO.

S.B. 543 WILL NOT PREEMPT LOCAL UNITS OF GOVERNMENT FROM HAVING LOCAL LICENSING, ZONING, FIRE CODE, HAZARDOUS WASTE DISPOSAL, OR OTHER REGULATIONS WHICH HAVE EXISTED IN HARMONY WITH FIFRA AND THE KANSAS PESTICIDE LAW IN THE PAST.

THERE IS A NEED FOR S.B. 543. EFFORTS ARE UNDERWAY TO ESTABLISH LOCAL ORDINANCES IN CONFLICT WITH STATE REGULATIONS, IN KANSAS AS WELL AS IN OTHER STATES.

## EXAMPLES OF ADOPTED & PROPOSED LOCAL REGULATIONS

1. A Mansfield, Massachusetts ordinance requires notification of pesticide use by posting a pink sign, exactly 11" x 8-1/2", although a preexisting Massachusetts state law required posting of a 4" x 5" yellow sign with bold, black letters.
2. An ordinance proposed in Koshkonong, Wisconsin would require posting of a warning sign (containing seven separate information statements) for 48 hours prior to and 6 months after, any application of pesticides. In addition, a "Special Waste Permit" would have to be issued by the Town Board prior to virtually all pesticide applications.
3. A Plum, Pennsylvania ordinance required homeowners to be at home during any fumigation of a home.
4. The preamble to a proposed ordinance in Denver, Colorado states that "wind" is a "unique" local condition which justifies restrictions on certain types of application of pesticides, including any application over 5 feet off the ground.
5. The Minneapolis Environmental Commission has recommended forming citizen patrols to monitor neighbors' pesticide use. The "MEC" also urges use of "reusable plastic signs" as part of a posting and notification plan, requiring that they be in place before and during application, and even though the signs might not be free from pesticide residues after repeated exposure to multiple products from prior users.
6. A proposed ordinance in Agawan, Massachusetts would make it illegal to spray pesticides between 6pm and 8am, meaning that most pesticide applications to schools and day care centers would have to be made when children are present.
7. Fayetteville, Arkansas banned all herbicides, significantly restricting and delaying research by weed scientists at the University of Arkansas by nearly 2 years.
8. The Stone County, Arkansas "Quorum Court" has been asked to ban all pesticide use in the county, although no health or environmental problem has been shown to exist.
9. The myriad of pre-application notification and posting requirements proposed in Missoula, Montana would have applied not only within city limits, but also "five miles outside city limits." The posting would have required signs with "frown faces" and the international circle with a slash through a family with a dog.
10. A proposal in Lake Winnebago, Missouri banned not only products which have not been registered or available for over 20 years (2,4,5,T; DDT, endrin, dieldrin, toxaphene), but also commonly used products (simazine, lindane, 2,4,D, diazanon, glyphosate, and Roundup), showing how arbitrarily decisions can be made without scientific input.
11. An ordinance in Burlington, Vermont requires the posting of the "International Mr. Yuk" symbol on signs to be placed at the perimeter of all places treated with pesticides.

STATES WITH EXISTING PREEMPTION CLAUSES

California  
Connecticut  
Georgia  
Minnesota  
New York  
North Carolina  
North Dakota  
Ohio  
Oregon  
Pennsylvania  
Rhode Island  
Utah  
West Virginia

STATES WITH PARTIAL EXEMPTION

Colorado  
Florida  
Louisiana  
New Jersey

STATES WITH PREEMPTION LEGISLATION PENDING

Indiana	Signed
Virginia	Passed, not yet signed
Vermont	
Maryland	
Delaware	
Washington	
New Mexico	Passed
Florida	Passed
Maine	
Kansas	
Missouri	
Tennessee	
Oklahoma	
Mississippi	
Massachusetts	
Iowa	
South Carolina	
Washington	Moratorium on new ordinances passed
New Hampshire	
Kentucky	

# Chemical Industry and Congress to Reverse Supreme Court Decision NCAMP Launches Campaign to Protect Local Rights

A major victory in the June, 1991 Supreme Court decision upholding the rights of local governments to regulate pesticides has unleashed a massive effort by chemical, food, and service industry groups, joined by members of Congress and some state legislators, to reverse the Court decision and take away state and local authority.

At the same time, these groups are pushing so-called "negligible risk" law which legalizes residues of cancer causing pesticides on food at levels EPA will determine are acceptable.

The chemical industry is aligning powerful support for these anti-democratic measures. Two industry groups are becoming prominent, the Coalition for Sensible Pesticide Policy (CSPP) (co-founded by the National Agricultural Chemicals Association and the National Pest Control Association) which already has more than 160 members - including

USDA as supporters in principle, and Responsible Industry for a Sound Environment (RISE). Already their actions have defeated a local pesticide initiative in Missoula, Montana.

It is time to organize a public interest coalition larger than we have ever seen to combat industry efforts and protect basic rights to public health and environmental protection. Local and state authority, once curtailed in the pesticide arena, will be a natural target for all health and environment issues. "Negligible risk," once adopted for pesticides, is likely to be applied broadly to environmental and public health law.

**We are asking that you sign on to the attached National Toxic Poisoning Prevention Platform.**

We would like you to circulate this document as widely as possible among friendly community organizations and elected officials in your town, state, and

region as soon as possible.

Several pieces of legislation have already been introduced to Congress which would take away local authority to regulate pesticides and establish a "negligible risk" safety standard. Representative Charlie Rose (D-NC) has introduced H.R. 3742, the *Pesticide Safety Improvement Act of 1991*, which would institutionalize negligible risk as well as preempt local authority. Representatives Hatcher (D-GA) and Marlenee (R-MT) have introduced H.R. 3850, the *Federal State Pesticide Regulation Partnership Act of 1991*, which would explicitly preempt any local body - including school boards - from regulating pesticides in any manner. This legislation is strongly supported by CSPP.

INCAMP is launching a program to assist in the development of local pesticide policies. If you would like details on this program, please contact us!

## The following represents a preliminary list of signatories to the National Toxic Poisoning Prevention Platform.

This local, state and national coalition is seeking hundreds more groups to sign on and join the campaign to retain and improve local authority to protect people and the environment from toxic chemicals. Contact the National Coalition Against the Misuse of Pesticides (NCAMP), 701 E Street, S.E., Washington, D.C. 20002, 202-552-5500, to sign on.

- |   |  |   |
|---|--|---|
| <p>Agricultural Resources Center (NC)<br/>Alaska Survival<br/>AFSCME - American Federation of State, County and Municipal Employees<br/>American Defense Network<br/>Americans for Safe Food<br/>American Ebers<br/>Arizona Toxics Information<br/>Black Hawk Aviators Society (OH)<br/>Center for Policy Alternatives<br/>Centre Communautaire (WA)<br/>Chemical Connections (CO)<br/>Citizens for Responsible Pest Management (PA)<br/>Cleveland Heights High School (OH) - Green Team<br/>Crisis Center Club, General Environmental Club, Inequalities Learning Club, National Honor Society, Political Awareness Club, Students Against Drunk Driving<br/>Varsity Tennis Team, Varsity Volleyball Team<br/>Coalition Against Toxics (MI)<br/>Colorado Pesticide Network<br/>Community Nutrition Institute<br/>Congress<br/>Consumers Citizens of North Florida<br/>Consumers Pesticide Project<br/>Defenders of Wildlife<br/>The Earth Day Coalition (OH)<br/>Ecology Center of Ann Arbor (MI)<br/>Empire State Consumer Association (NY)<br/>Environmental Action<br/>Environmental Health Coalition (CA)<br/>Environmental Law Institute<br/>Families Against Toxic Waste (OH)<br/>Farm Labor Organizing Committee (FLOC)<br/>Farmworker Justice Fund<br/>Food &amp; Allied Services Trades Dept., AFL-CIO<br/>Foundation on Economic Trends<br/>Friends of the Earth</p> | <p>Friends of Whisky Island (OH)<br/>Grassroots Coalition for Environmental and Economic Justice (MI)<br/>Grassroots for Organic Way (GROW) (PA)<br/>Gray Panthers<br/>Greater Cleveland Environmental Coalition (OH)<br/>The Greenhouse Crisis Foundation<br/>Guamans, USA<br/>Help Eliminate Lethal Pesticides (HELP) (NY)<br/>Hope Outreach Center (IL)<br/>Human Ecology Study Group of Metropolitan Chicago (IL)<br/>Human Ecology Research Foundation of Chicago<br/>The Humane Society of the U.S.<br/>Interfaith Council for the Protection of Animals and Nature<br/>Institute of Agriculture and Toxic Policy<br/>The Inuit Women League of America<br/>Kansas for Safe Pest Control<br/>Kentucky Resources Council<br/>Lake County Defenders (IL)<br/>Laramie Valley Food Coop (PA)<br/>Learning Disabilities Association of America<br/>Maine Organic Farmers &amp; Gardeners Association<br/>Maine TO (FL)<br/>Massachusetts Audubon Society<br/>McHenry County Defenders (IL)<br/>Minnesota Pesticide Coalition<br/>Movements for a Clean Environment (MI)<br/>Montgomery County Environ. Network (MD)<br/>Mother Earth Network (IL)<br/>National Coalition Against the Misuse of Pesticides<br/>National Environmental Law Center<br/>National Foundation for the Chemically Hypersensitive<br/>National Network to Prevent Birth Defects</p> | <p>National Toxics Campaign<br/>New York Coalition for Alternatives to Pesticides<br/>Northeast Midwest Institute<br/>Northwest Coalition for Alternatives to Pesticides<br/>Ohio Coalition Against the Misuse of Pesticides<br/>OTA of Center Elementary (Flint Branch, PA)<br/>Pesticide Action Network (PAN) North America Regional Center<br/>Public Citizen<br/>Rachel Carson Council<br/>Rhode Island Group for Alternatives to Spraying Pesticides<br/>Rochesterians Against the Misuse of Pesticides (NY)<br/>Sierra Club - National<br/>Sierra Club Chapters<br/>The Allegheny Group (PA)<br/>Kansas Chapter<br/>Sierra Club of Northeast Ohio<br/>Wakarusa Group (KS)<br/>Southern Research and Development Corporation (LA)<br/>Temperance Roman Catholic Church (Wauconda, IL)<br/>Terra (IL)<br/>United Farmworkers of Washington State<br/>United Methodist Church, General Board of Church &amp; Society<br/>US FIRC (Public Interest Research Group)<br/>Mayor James Koussis and the Trustees of the Village of Wauconda (IL)<br/>Washington Toxics Coalition<br/>Westchester People's Action Coalition (NY)<br/>Wimberly Citizens for Alts. to Pesticides (CO)<br/>Young Environmental Activists of the Sierra Club (OH)</p> |
|---|--|---|

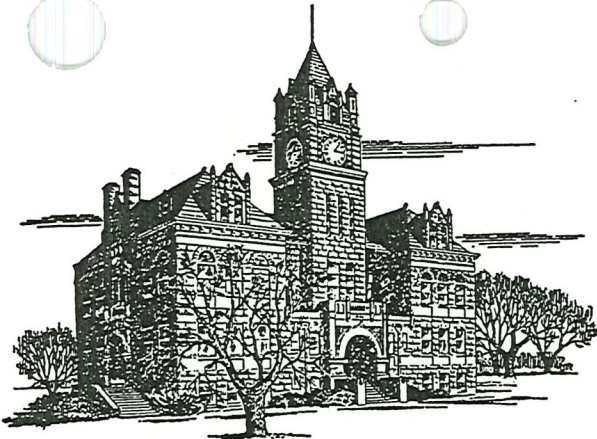
MARION COUNTY, KANSAS

# OFFICE OF THE COUNTY CLERK

316-382-2185  
MARION, KANSAS 66861

MARQUETTA EILERTS, CLERK  
COUNTY ELECTION OFFICER

COUNTY COMMISSIONERS  
CHARLES DEFOREST  
LINDA D. PETERSON  
LEON SUDERMAN



MARION COUNTY COURTHOUSE

March 9, 1992

## LETTER OF SUPPORT

WE hereby resolve that we feel it is in the best interest of the people of Marion County and the citizens of the state of Kansas to approve passage of Senate Bill 543. It is our opinion that a uniform regulation of the pesticide industry state wide would be far better than individual entities providing their own regulations.

WE, therefore, go on record as the Board of Marion County Commissioners as being in favor of passage of Senate Bill 543

BOARD OF COUNTY COMMISSIONERS  
MARION COUNTY, KANSAS

Charles K. DeForest  
Charles K. DeForest, Chairman

Linda D. Peterson  
Linda D. Peterson, Member

Leon Suderman  
Leon Suderman, Member

ATTEST:

Marquetta Eilerts  
Marquetta Eilerts,  
Marion County Clerk

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RESOLUTION


WE hereby resolve that we feel it is in the best interest of the people of Mitchell County and the citizens of the state of Kansas to approve passage of Senate Bill 543. It is our opinion that a uniform regulation of the pesticide industry state wide would be far better than individual entities providing their own regulations.

WE, therefore, go on record as the Board of Mitchell County Commissioners as being in favor of passage of Senate Bill 543.

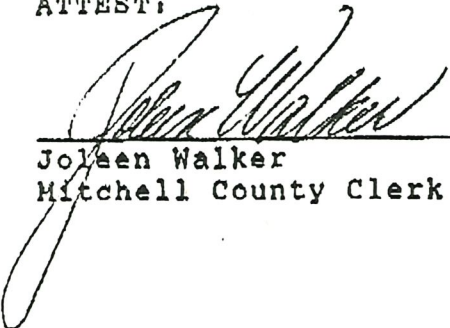
BOARD OF COUNTY COMMISSIONERS  
MITCHELL COUNTY, KANSAS

  
Fred J. Hirsch, Chairman

  
Lyle McPeak, Member

  
William P. Bunger, Member

ATTEST:

  
Joleen Walker  
Mitchell County Clerk

To: Members of the House Energy and Natural Resources Committee

From: James F. Herynk, President, Kansas Greenhouse Growers Association

Re: Senate Bill 543

My name is Jim Herynk, and I am the president of the Kansas Greenhouse Growers Association. We have 212 members. Our industry has retail sales of Kansas produced plants of over 156 million dollars a year. We are a viable source of income and employment for the state of Kansas. By our very nature, we are also an industry that is concerned about the health and safety of our environment.

The Kansas Greenhouse Growers Association believe that the people of Kansas deserve a scientifically sound pesticide regulatory system...I repeat, scientifically sound. We also believe that a state system would best serve the interests of both the people of Kansas and the industry. We do not believe that a hodge podge of local laws will serve that purpose, and that emotion, here say, media attention, and reactionism will take precedent over sound scientific judgements.

Our industry relies on recommendations from Kansas State University scientists about appropriate chemicals to use for specific problems and what rates to apply these chemicals. Without state wide regulations the different laws of 105 counties, thousands of towns and townships would have to be considered before a scientifically sound recommendation could be made. A grower on one side of the street may be subject to an entirely different set of regulations simply because a county line separates the two.

I can barely keep up with the laws of one governing entity; doing business in 10 to 12 different towns would require me to stay knowledgeable of 10 to 12 different sets of regulations. This would become a paperwork nightmare, and probably impossible for anyone but a trained lawyer. What I provide to one customer, I may not be able to provide to another, simply because they are in a different governing entity.

Think about this as you drive through Shawnee County. Where does one governing agent begin and end? Where do township limits end? Where are the city limits? Does the average person really know?

I recently was involved in an accident. The Topeka City Police responded. After completing the paperwork, they questioned whether it was really their jurisdiction or should the Shawnee County Sheriff have been called? Can there be effective enforcement under these circumstances?

I suggest that state laws regulating pesticide application should be based on sound scientific facts, easily understood by both the public and the industry, and have effective enforcement systems in place. We believe that this can be done most effectively at the state level and therefore support this bill.

Thank you... Jim Herynk

*House E+NR*  
*3/24/92*  
*att 13*

**COUNTY WEED DIRECTOR'S ASSOCIATION OF KANSAS**

**HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES**

**RE: S.B. 543 - Maintaining the uniform regulation  
of pesticides in Kansas**

**March 24, 1992  
Topeka, Kansas**

**Presented by:  
Dennis Peterson, President  
County Weed Director's Association of Kansas**

**Mr. Chairman and members of the Committee:**

My name is Dennis Peterson. I am president of the County Weed Director's Association of Kansas and director of the Riley County Noxious Weed Department. Our association appreciates this opportunity to testify as a **proponent** of S.B. 543.

We believe that state and federal laws are essential to the safety of pesticide application in the state of Kansas. Our association believes that the Kansas Pesticide Law, enforced by the Kansas State Board of Agriculture, provides for a uniform, safe, and effective means of regulating pesticide use in the state of Kansas.

When dealing with pesticide use, several problems arise if local authorities are allowed to enact their own pesticide

*3/24/92  
House E+NR  
Attachment 14*

regulations. Under the Kansas Noxious Weed Law, the Kansas State Board of Agriculture approves certain pesticides for cost-share use to control each noxious weed. These pesticides are then applied according to federal and state labels which strictly govern the use of each pesticide. Millions of dollars of research have gone into each of these products to make sure they are environmentally safe before they are approved for use by the E.P.A. Allowing local authorities to restrict the use, or to completely ban the use, of these pesticides in a particular area would make control of noxious weeds very difficult and make enforcement of the Kansas Noxious Weed Law nearly impossible.

Presently, the Kansas State Board of Agriculture, Plant Health Division, Pesticide Use Section, is responsible for enforcement of the Kansas Pesticide Law. The question arises as to who is going to enforce regulations established by local authorities. At present, there is not sufficient expertise to enact or enforce pesticide regulations on a local level.

It has been suggested that the county weed departments could be the local authority within each county. While county weed directors are considered to be the experts on noxious weed control in the state of Kansas, our expertise is limited to the noxious weed law and related activities. Our actions when applying pesticides are governed by the Board of Agriculture just as the pest control, lawn care, local coops, or any company or private individual who applies pesticide in the state of Kansas. Asking the county weed department to be the enforcement agency of the Kansas Pesticide Law on a local level would not make sense.

This authority needs to remain with the Kansas State Board of Agriculture as it is today.

Section 1 (a) of this bill dealing with storage and transportation of pesticides was a concern during the senate hearings. Testimony was presented that said this would affect the local zoning ordinances in counties and cities. When I checked with my local zoning officer and the Board of Agriculture, I found this was not the case. Under the Kansas Pesticide Law, storage of pesticides means how pesticides are stored--not where they are stored, and would not affect local zoning. Also, transportation of pesticides means how pesticides are placarded, manifested, and stored during transportation--not where trucks are allowed to go. This would not affect a city from prohibiting truck traffic in a downtown area.

The Board of Directors of the County Weed Director's Association of Kansas has voted unanimously to support this legislation. We appreciate this opportunity to testify as a **proponent** for S.B. 543. We feel that it is essential that the Kansas Pesticide Law remains intact and under the enforcement of the Kansas State Board of Agriculture.

We urge you to support S.B. 543. Thank you!

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THE KANSAS RURAL CENTER, INC.

304 Pratt Street

WHITING, KANSAS 66552

Phone: (913) 873-3431

Testimony Before the House Energy and Natural Resource Committee

Opposing Senate Bill 543

March 24, 1992

Representative Grotewiel and Members of the Committee:

I am Vic Studer, Executive Director of the Kansas Rural Center at Whiting. The Rural Center is a nonprofit corporation concerned with the needs of family farmers and rural communities.

SB543 reverses one of the foremost considerations of the Rural Center - that local entities be encouraged to be involved in all matters that have local consequence and impact. Due to the diversity of the state and the exceptional responsibility of many local communities to better manage and become involved in dealing with hazardous materials, the state would benefit by encouraging citizens at local levels to deal directly with pesticide management. In many cases, pesticides are managed in a much more effective manner, thus offering greater control and protection.

It is significant to examine the purpose of this bill and recognize that there is more than just "good intent" involved. SB543 was written by the Kansas State Board of Agriculture for private industry interests and introduced by a representative from the Farm Bureau. It is curious to me, why ag and insurance interests are attempting to make a special case out of those particular hazardous materials that are used in agriculture. Local fire departments, county commissions, noxious weed departments and municipalities have experience in regulating all sorts of hazardous materials. Why arbitrarily take one class of hazardous products and treat them as a separate case?

SB543 takes responsibility away from the people of this state and places it in the hands of a quasi-state agency that in the Rural Center's opinion is failing in the manner by which they are currently handling pesticide management. The Board of Agriculture has a history of conflicts of interest - with private industry ruling their roost. An example of which is the controversy surrounding the State Board of Ag's creation of a pesticide management area in Northeast Kansas. At issue is their lack of establishment of restrictive measures that will substantially reduce atrazine in drinking water and their failure to involve affected and interested parties in the process. Further, no board should have regulatory authority when they are not subject to legislative review and are influenced by conflicts of interest on their own board.

In closing, I will just borrow the current popular adage "Think Globally and Act Locally."

COMMENTS ON SB 543  
 Terry Shistar, Pesticide Chair  
 Kansas Sierra Club

My name is Terry Shistar. I am the Pesticide Chair for the Kansas Sierra Club, which has about 3000 members. I have been active on pesticide issues in Kansas since 1979 when my family and I were sprayed with an agricultural insecticide. In addition to my role on a state level, I serve as the Pest Management Coordinator for the Sierra Club nationally and as president of the National Coalition Against the Misuse of Pesticides (NCAMP). NCAMP has about 1200 individual members in 50 states and more than 200 member organizations active at the state and local levels.

#### History of preemption issue

Because of concerns about the shortcomings of state and federal regulation of pesticides, local governments across the country have from time to time sought to provide additional safeguards to citizens from pesticides used in the community. These local ordinances have most commonly been right-to-know ordinances that required posting of areas treated with pesticides and/or notification of those who might be adversely affected by a pesticide application. Such local pesticide ordinances have been passed, for example in: Humboldt County, CA; Wauconda, IL; Boulder, CO; Casey, WI; Prince George's County, MD.

The ordinance in Casey, WI is unusual in that it goes beyond posting and notification, and requires a permit for a pesticide to be applied in public places.

I know of two local pesticide ordinances currently in effect in Kansas. Both--in Prairie Village and Wellington--require a local occupational license for pesticide applicators. Prairie Village makes a state license and payment of a fee prerequisites to obtaining such a license. Wellington requires in addition insurance that is not required by state law.

Ordinances have been challenged by pesticide applicators, and district courts arrived at conflicting opinions. In the absence of a Supreme Court decision, local governments could not be sure that their ordinance would withstand a court test. The Supreme Court's decision stating that federal law does not preempt local regulation of pesticides (Wisconsin Public Intervenor v. Mortier) therefore removed a practical obstacle, not a legal obstacle, to local ordinances.

I have heard proponents of SB 543 claim that the Supreme Court decision says that Congress intended for FIFRA to preempt local regulation but somehow didn't quite pull it off. This is a misrepresentation of the Supreme Court decision. The Supreme Court opinion actually states:

"As we have made plain, the statute does not expressly or impliedly preclude regulatory action by political subdivisions with regard to local use. To the contrary,

*3/24/92  
 House E + NR  
 Attachment 16*

FIFRA implies a regulatory partnership between federal, state, and local governments....Nor does FIFRA suggest that any goal of coordination precludes local use ordinances because they were enacted independent of specific state or federal oversight....FIFRA provides even less indication that local ordinances must yield to statutory purposes of promoting technical expertise or maintaining unfettered interstate commerce."

The response to the Supreme Court decision was predictable. The pesticide application industry, led by ChemLawn, launched a campaign to explicitly preempt local regulation through state and federal law. We at NCAMP renewed our efforts to assist local groups seeking local pesticide control ordinances, while also protecting their right to do so.

Why is the local option to regulate pesticides necessary?

The federal pesticide law--the Federal Insecticide, Fungicide and Rodenticide Act or FIFRA--theoretically provides a minimum level of protection from pesticides. However, even if EPA had succeeded in meeting its Congressional mandates for deadlines in requiring and reviewing pesticide safety data, there would remain some severe shortcomings, such as:

FIFRA does not provide for a systematic review based on active monitoring of use and adverse effects.

FIFRA fails to take into account all of the risks posed by pesticides from manufacture to disposal.

FIFRA is a risk-benefit statute, yet EPA only requires support for benefits supposedly provided by pesticides when a registration is about to be cancelled.

EPA never performs risk-benefit analyses for some of the uses that expose the most people--pesticide applications to lawns and ornamentals in towns and cities.

Because EPA never weighs risks and benefits of these non-essential, cosmetic uses, and because so many people are exposed without their consent to toxic materials through those uses, lawn care in particular has been the target of the majority of local pesticide right-to-know ordinances. Local governments have seen the role allowed them by FIFRA--of making risk-benefit judgments appropriate for their community--as a legitimate part of their traditional job of protecting public safety.

The majority of ordinances specifically directed at pesticides proposed by environmentalists in this country have been right-to-know ordinances designed to allow people to avoid exposure to toxic materials. Up to this time, they have had very little impact on agriculture because agriculture is not generally present in the urban areas where the ordinances have been passed.

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Another reason that these ordinances have had little impact on agriculture is that the impact of agricultural chemical use is generally much more diffuse and widespread. For example, atrazine use in the Delaware, Big Blue, and Republican River basins is causing serious problems for water users downstream. But I have not been able to think of a way for the city of Lawrence to pass an ordinance that would protect its drinking water sources from atrazine used upstream.

That is not to say that local regulation of pesticide use, storage, transportation, and disposal does not affect agricultural pesticide users. Any town that decided it is inappropriate land use to allow storage and mixing of large quantities of pesticides within a quarter mile of a school or hospital, for example, would have an impact on the local coop. That kind of regulation, however, would most likely be accomplished through zoning. Wellhead protection and local environmental protection programs could also have very direct impacts on pesticide use, storage, transportation, and disposal.

#### SB 543

SB 543 is the Kansas version of the state preemption bills being promoted by lawn care companies and other pesticide application businesses. It was drafted by the Kansas State Board of Agriculture's attorney at the request of pesticide applicators.

SB 543 is a direct attack on home rule in Kansas, and it seeks to give sole authority for everything having to do with pesticides to the Kansas State Board of Agriculture. We find this to be especially dangerous because the Kansas State Board of Agriculture is accountable to agribusiness and not the public at large.

Representatives of the Kansas State Board of Agriculture and other proponents of the bill have consistently misrepresented the current legal status and effects of the bill. Proponents would have you believe that the Supreme Court decision changed the legal status of local ordinances. The current legal status has not changed since the passage of the 1978 amendments to FIFRA. Proponents would have you believe that SB 543 maintains the status quo. It dramatically changes it. Proponents assert that the bill would have no effects on local zoning, transportation, hazardous materials storage, or other laws. The bill clearly preempts all of these as they relate to pesticides. Pesticides would thus become a privileged class of hazardous materials.

At the hearing on the bill in the Senate, Dale Lambley delivered testimony on behalf of the Kansas State Board of Agriculture that contained a number of false statements:

1. "Over the years there has been an occasional attempt by a local unit of government to enact pesticide use restrictions. They were never successful because of the U.S. Environmental Protection Agency's stance that pesticide regulation was the sole prerogative of the federal

government and the states working under federal primacy arrangements."

As I said earlier, there have been several successful local ordinances, and their success provoked the whole preemption issue. The EPA did not take the stance that local ordinances were preempted--in fact, the EPA intervened on behalf of the Casey, WI ordinance in the Supreme Court.

2. "That decision began a debate which is occurring at the national level as well as in many states. At issue is whether pesticide regulation should be standardized at the national and state levels, as has been the case, or whether individual counties, cities, townships and other governmental entities should be free to adopt pesticide ordinances unique unto themselves."

The debate was going on long before the Supreme Court decision--the decision moved the debate from the courtroom to the legislative arena. The current situation is not one where regulation is standardized. The current situation allows local governments to take additional precautions to protect their citizens.

3. "'Use' under both state and federal pesticide laws relates to that which takes place when the pesticide is in the hands of the end user. It includes transporting the product home, mixing the spray solution, applying the material, and rinsing and properly disposing of the empty container....Therefore, although the terms disposal, storage, handling and so forth are used, they refer to actions of the end user. As a result, the bill would not affect state protection programs handled by other agencies which relate to pesticide disposal, transportation, manufacture, storage, handling, chemical use reporting, emergency preparedness and so forth."

There is nothing in FIFRA, the Kansas Pesticide Law, or the bill to limit its effects to end users. But even if the effects of the bill were to be limited to the end user, the user includes coops and other commercial pesticide applicators who use, store, transport, and dispose of large quantities of pesticides. The bill would affect a large number of local laws that govern how hazardous materials are used, transported, stored, and disposed of by exempting pesticides from the universe of regulated hazardous chemicals.

4. "Consequently, S.B. 543 would function in some respects to establish the state as a clearing house for pesticide use regulation."

A clearinghouse serves to collect and distribute information or materials. What the KSBA suggests is that

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the state would determine whether local regulations would be allowed. This is preemptive state regulation, not a clearinghouse for pesticide use regulation.

5. "S.B. 543 would have no effect upon city occupational licensing programs provided that they were registration programs only and did not impose any additional training or certification requirements."

If this statement is intended to mean that SB 543 would not apply to occupational licenses, it is false--such ordinances all contain at least one additional requirement--payment of a fee. If this is intended to mean that the KSBA would allow such ordinances through rules and regulations or formal agreements, then it would still not allow the Wellington ordinance, for example, which imposes an insurance requirement not imposed by the state.

It has also been claimed that local governments do not have the expertise necessary to implement ordinances concerning pesticides. This sells our local governments short. Fire departments and police departments train personnel in hazardous materials response. Most cities and counties have certified pesticide applicators working for noxious weed or city parks departments. Every county in Kansas has a Local Emergency Planning Committee whose function is to oversee hazardous materials in the county, interpret chemical hazards, and prepare for hazardous materials emergencies. In order to perform those functions, the LEPC must develop a capability for making judgments about hazardous materials, including pesticides. They also receive technical assistance from the state Right-to-Know program.

At any rate, local governments do not need to adopt ordinances that their governing bodies believe would require unavailable resources.

#### Conclusion

We oppose SB 543. We support the right of communities to pass ordinances that protect their citizens from hazards in the community and reject the idea that pesticides should be exempt from those ordinances.



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

JAMES E. DOYLE  
ATTORNEY GENERAL

Patricia J. Gorence  
Deputy Attorney General

114 East, State Capitol  
P.O. Box 7857  
Madison, WI 53707-7857  
608/266-1221

March 3, 1992

The Honorable Charles Rose, Chair  
Subcommittee on Department Operations,  
Research and Foreign Agriculture  
2230 Rayburn House Office Building  
Washington, DC 20515-3307

Dear Congressman Rose:

On June 21, 1991, in Wisconsin Public Intervenor v. Mortier, the United States Supreme Court unanimously held that the Federal Fungicide, Insecticide and Rodenticide Act (FIFRA) does not preempt local governmental regulation of pesticide use. This is a striking affirmation of the "regulatory partnership between federal, state and local governments" contemplated by Congress in enacting FIFRA. Mortier, 111 S. Ct. 2476, 2479 (1991).

Recently, the pesticide industry has mobilized to pressure Congress to enact laws to expressly preempt local regulation, thereby overruling this important decision. We, the undersigned state Attorneys General, are writing you to express our opposition to such proposals.

Under FIFRA, states may regulate pesticides, and may, if they choose, preempt local regulation. Some states, like New York, for example, retain exclusive jurisdiction over pesticide regulation, while others share that power to varying degrees with local governments. Therein lies the heart of the matter: each state, based on its unique characteristics, must retain its sovereign power to protect the health and welfare of its citizens in the manner best suited to the needs of that state.

State and local governments have the right to protect citizens from the unnecessary use of pesticides. Unfortunately, the chemical industry is dedicating its considerable resources in an attempt to undercut that right. Three bills have been introduced in Congress to overrule the Mortier decision and preempt both state and local pesticide regulation. (HR 3850, introduced by Rep. Charles Hatcher; HR 3742, introduced by you; and S 2085, introduced by Sen. David Pryor.) We do not believe there is any demonstrated need to change existing law.

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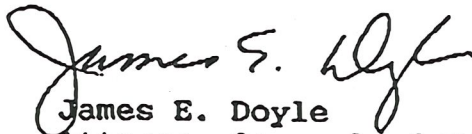
The Honorable Charles Rose, Chair  
March 3, 1992  
Page 2

HR 3742 would require states to submit their own pesticide regulations to the Environmental Protection Agency (EPA) for approval, in effect stripping the states of their fundamental police powers. Some states have regulations more stringent than the federal regulations and this bill would allow the EPA to preempt those provisions. It would also significantly narrow local governments' right, presently guaranteed by FIFRA if not preempted by state law, to enact pesticide regulations by permitting such regulation only if it "provides a significantly higher degree of protection from such risk than the existing Federal regulation . . . and does not unduly burden interstate commerce." (Section 117(a)(3).) HR 3850, the Hatcher bill, and its companion S 2085, would terminate local governments' right to regulate pesticides regardless of whether states choose to share that authority.

Industry's claim that the Supreme Court's ruling will open the door to myriad, patchwork local regulations, creating an unmanageable business environment for those who use pesticides, is baseless. The Court did not grant a new right, but merely affirmed a presently existing right. Few localities have enacted pesticide regulations and those which have enacted them have done so judiciously and appropriately.

State and local governments have used their pesticide authority appropriately. Moreover, the Supreme Court has unanimously held that local units of government have this power under current law. Therefore, we hope you will join us in standing up for the right of states to decide whether local pesticide regulation should be preempted. We appreciate your attention to this very important environmental enforcement issue.

Sincerely,



James E. Doyle  
Attorney General of Wisconsin

Grant Woods  
Attorney General of Arizona

Richard Blumenthal  
Attorney General of Connecticut

Roland W. Burris  
Attorney General of Illinois

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The Honorable Charles Rose, Chair  
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Bonnie J. Campbell  
Attorney General of Iowa

Robert T. Stephan  
Attorney General of Kansas

Michael E. Carpenter  
Attorney General of Maine

Scott Harshbarger  
Attorney General of Massachusetts

Frank J. Kelley  
Attorney General of Michigan

Hubert H. Humphrey III  
Attorney General of Minnesota

Mike Moore  
Attorney General of Mississippi

Tom Udall  
Attorney General of New Mexico

Robert Abrams  
Attorney General of New York

Nicholas Spaeth  
Attorney General of North Dakota

Lee Fisher  
Attorney General of Ohio

Dan Morales  
Attorney General of Texas

Paul Van Dam  
Attorney General of Utah

Jeffrey L. Amestoy  
Attorney General of Vermont

cc: Representative Pat Roberts  
Members of House Subcommittee on Department Operations,  
Research, and Foreign Agriculture

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MARCH 24, 1992

TO: KANSAS HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

FROM: CHERYL M. POWERS *CMP*  
722 BELLE MEADE PLACE  
LAWRENCE, KANSAS 66046  
(913) 749-4291

RE: OPPOSITION TO SENATE BILL 543

HELLO. MY NAME IS CHERYL POWERS. I AM HERE TODAY AS A CONCERNED CITIZEN. ALTHOUGH I OFFICIALLY REPRESENT ONLY MYSELF AND NO ONE ELSE, I ASSURE YOU THAT MY OPPOSITION TO S.B. 543 IS SHARED BY NUMEROUS INDIVIDUALS AND ORGANIZATIONS.

I AM A LONG-TERM RESIDENT OF LAWRENCE, AND I AM THE ONE WHO PRESENTED THE LAWRENCE CITY COMMISSIONERS WITH A PROPOSED ORDINANCE ON THE USE AND REGULATIONS OF PESTICIDES LAST WINTER.

I HAVE COME TO BE INVOLVED IN THIS ISSUE, NOT AS AN ENVIRONMENTALIST OR ACTIVIST, BUT RATHER AS A CONCERNED MOTHER AND CITIZEN. LAST SPRING I WAS IN A LAWRENCE CITY PARK WITH A GROUP OF TWO YEAR OLDS. THE PARKS WORKERS CAME INTO THE PARK AND BEGAN TO SPRAY A CHEMICAL PESTICIDE IN A WIDE SWEEPING MOTION. THEY APPROACHED MYSELF AND THE GROUP OF TWO YEAR OLDS WITHOUT EVER ATTEMPTING TO WARN US OF THEIR ACTIONS, NOR DID THEY ATTEMPT TO HALT THEIR ACTIONS UNTIL WE WERE OUT OF THEIR WAY. I BECAME CONCERNED ABOUT THE WELFARE OF THE CHILDREN, AND WE QUICKLY LEFT THE PARK. I WAS CONCERNED THAT THE CHILDREN OR MYSELF, OR OTHERS IN THE PARK WOULD INHALE THE CHEMICALS UNKNOWINGLY, AND THAT THE CHILDREN WOULD BE CHILDREN AND ROLL IN THE GRASS, AND THEN PUT THEIR FINGERS INTO THEIR EYES AND MOUTHS.

AFTER SEVERAL CALLS AND CONTACTS WITH THE LAWRENCE CITY MANAGER, PARKS DIRECTOR, AND OTHER CONCERNED CITIZENS, I WENT BEFORE THE LAWRENCE CITY COMMISSIONERS LAST WINTER WITH A PROPOSED ORDINANCE CONCERNING THE USE AND REGULATION OF PESTICIDES.

WHEN I WENT BEFORE THE LAWRENCE CITY COMMISSION, I WAS MET WITH CONCERN AND A RECEPTIVE EAR FROM THE CITY COMMISSIONERS, YET I WAS ALSO MET WITH GREAT OPPOSITION AND WHAT I PERCEIVED AS AN ATTACK ON MY PERSONAL INTEGRITY FROM SOME OPPONENTS OF THE PROPOSED ORDINANCE, MOST OF WHOM WERE REPRESENTATIVES OF THE LAWN CARE ASSOCIATIONS IN THE MID-WEST. THE OPPOSITION THAT I WAS GREETED WITH MADE ME QUESTION JUST WHAT WAS REALLY AT STAKE. I QUESTION WHY ORGANIZATIONS SUCH AS THE LAWN CARE BUSINESS' WOULD WANT TO HALT ANY ORDINANCE WHICH WOULD NOT ONLY MAKE THEIR WORKING CONDITIONS SAFER, YET, WOULD BE FOLLOWING THE LINE OF SAFETY WHICH THEY ALREADY PURPORT TO MAINTAIN.

I SUPPORT THE RIGHT AND RESPONSIBILITY OF INDIVIDUAL LOCALITIES TO PRACTICE THEIR LEGAL OPTION IN CREATING ORDINANCES TO SUPPORT THE SAFETY OF THEIR CITIZENS AND GUESTS. THE U.S. SUPREME COURT HAS UPHELD THIS LEGAL OPTION, AND I URGE YOU TO SUPPORT THE LAW AS IT IS NOW STATED.

I AM BY NO MEANS AN EXPERT ON PESTICIDES OR ON HOW THE EPA DOES OR DOES NOT REGULATE PESTICIDES. I HAVE BEEN DOING RESEARCH ON THIS ISSUE AND WHAT I FIND DOES ALARM ME. I AM NOT CONVINCED THAT THE STATE DEPARTMENT OF AGRICULTURE IS SET UP TO CREATE, EDUCATE ON, OR TO REGULATE ORDINANCES IN EVERY LOCALITY IN THE STATE OF KANSAS. I HAVE NOT BEEN SHOWN THEIR ABILITY TO REGULATE SUCH ISSUES IN COMMUNITIES. I SAY THIS, BECAUSE OF MY OWN EXPERIENCE. LAST SPRING WHEN I FIRST CONTACTED THE CITY ABOUT MY CONCERN, I WAS

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NOT AWARE THAT I COULD HAVE ALSO CONTACTED THE STATE DEPT. OF AGRICULTURE WITH MY CONCERNS. I WAS TOLD THIS AT A LATER DATE. IF THE DEPT. OF AGRICULTURE IS NOT ABLE TO EDUCATE THE POPULOUS OF SUCH AVENUES FOR STATING CONCERNS, I WONDER HOW AN ADDITIONAL RESPONSIBILITY OF SUCH A MAGNITUDE CAN BE DEALT WITH.

MY FURTHER CONCERN IS THE WORDING OF S.B.543. IF I UNDERSTAND IT CORRECTLY, ALL LOCALLY PRODUCED ORDINANCES ON THIS ISSUE WILL BE NULL AS OF THE PASSING OF S.B.543. IT DOES NOT ALLOW FOR ANY ORDINANCE OR REGULATION TO COVER KANSAS COMMUNITIES UNTIL THE TIME THAT THE STATE DEPT. OF AGRICULTURE SHOULD COME UP WITH ONE OF THEIR OWN SET OF REGULATIONS. THIS WILL FURTHER THE PROBLEM OF INDIVIDUALS POSSIBLY COMING INTO CONTACT WITH UNWANTED CHEMICALS SINCE THERE WILL BE NO REGULATION OR ORDINANCE ON ANY LEVEL TO PROTECT US.

ALTHOUGH THE CITY OF LAWRENCE HAS YET TO ACCEPT AN ORDINANCE ON THIS SUBJECT, THEY HAVE TAKEN STEPS IN THE DIRECTION OF PROTECTING ITS CITIZENS. THE CITY OF LAWRENCE HAS MADE AN ADMINISTRATIVE DECISION TO POST SIGNS IN HEAVILY USED PUBLIC SPACES WHENEVER ANY CHEMICAL PESTICIDE OR HERBICIDE IS SPRAYED.

THE STATE LEGISLATURE HAS ALLOWED MUNICIPALITIES TO CREATE ORDINANCES ON NUMEROUS OTHER ISSUES, AND I BELIEVE IT IS A RIGHT OF EACH COMMUNITY WHICH SHOULD BE UPHELD BY YOU AGAIN. WHERE WILL THE LINE BE DRAWN? EACH COMMUNITY IS DIFFERENT, INCLUDING THE NEEDS, BUSINESS, AND CONCERNS, AND I BELIEVE THIS IS BEST LEFT UP TO THE COMMUNITY INVOLVED.

IN CLOSING, I AGAIN URGE YOU TO OPPOSE S.B.543, IF NOT FOR ANYTHING ELSE, THEN UNTIL SUCH TIME THAT A CAREFULLY CREATED SAFEGUARD IS IN PLACE TO PROTECT THE CITIZENS OF KANSAS, INSTEAD OF VOIDING THE EFFORTS OF COMMUNITIES AND PUTTING LITTLE OR NOTHING IN ITS PLACE.

I THANK YOU FOR YOUR TIME AND YOUR CONCERN ON THIS MATTER.





**THE LEAGUE  
OF KANSAS  
MUNICIPALITIES**

**Municipal  
Legislative  
Testimony**

AN INSTRUMENTALITY OF KANSAS CITIES 112 W. 7TH TOPEKA, KS 66603 (913) 354-9565 FAX (913) 354-4186

TO: Chairman Grotewiel and Members, House Committee on Energy and Natural Resources  
FROM: Jim Kaup, League General Counsel  
RE: **SB 543; Preemption of Local Regulation of Pesticides**  
DATE: March 23, 1992

The League of Kansas Municipalities, on behalf of its member cities, opposes Senate Bill 543 for the reason that it is contrary to constitutional home rule and violates a 30-year tradition of joint state-local authority to regulate the use and disposal of pesticides. SB 543 proposes a broad prohibition against any local regulation of pesticide "sale or use, including, but not limited to, application of pesticides, training and certification of pesticide applicators, storage of pesticides, transportation of pesticides and disposal of pesticides...".

The League's Statement of Municipal Policy provides in relevant part:

The state legislature should avoid intervention in matters of local affairs and government and should act to encourage and promote the exercise of authority and assumption of responsibility by locally elected, locally responsible governing bodies... The League shall oppose, as a general rule, any direct or indirect attempt to limit or restrict the constitutionally granted home rule authority of cities....

**Joint State-Local Regulatory Authority.** Proponents of SB 543 apparently believe, and the League would agree, that the subject of pesticide regulation is an area local governments in Kansas can today lawfully regulate, given the absence of state law prohibiting such local regulation. From the League's perspective, the subject matter of pesticide regulation is no different than the many other areas of joint state-local regulation. There are numerous subjects the state and cities jointly regulate--cities pass laws under their home rule authority which complement or supplement state law on the same subject, so long as no conflict exists between local and state laws. In situations where conflict does arise, state law controls. This tradition of joint state-local regulation is seen in areas such as traffic control, public offenses, alcoholic liquor, and many other subjects including pesticide regulation, and traces back to the very origins of the home rule constitutional amendment. The League of Kansas Municipalities has long opposed efforts to preclude cities from enacting laws on the same subject as laws passed by the Kansas legislature, except in those instances where the protection of public health, safety or welfare demands that a subject matter be dealt with exclusively by state law, thereby preempting local authority to act.

What is the rationale for preemption for local regulation here? Where has local regulation, or even the consideration of such local regulation, anywhere in Kansas created such a problem that the state should preempt 627 city governing bodies from even considering the enactment of laws those local officials might believe to be necessary to protect the public health, safety and welfare?

It is important to understand that the existence of local laws regulating pesticides does not preclude or hinder in any way the ability of the state to enact and enforce its own laws on the same subject. In other words, pesticide applicators must comply with state law regardless of the existence of local laws.

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The League is not aware of any significant number of cities or counties which currently have laws directly regulating the use, application and disposal of pesticides. In truth, probably for the great majority of our membership there is satisfaction in whatever level of regulation the state and federal governments provide. Why then does the League care about SB 543? One reason, as stated earlier, is preservation of home rule authority. But in terms of protecting the public, if locally-elected governing bodies believe that spraying chemicals near a public park or playground or in the proximity of a public water supply or school or nursing home on a gusty Kansas day would be injurious to the public health, safety and welfare, why should the State of Kansas say that such local regulation is unreasonable and unlawful?

**Consequences of Broad Language of SB 543.** The League also notes the impact the broad language in SB 543 would have. The bill would make invalid laws dealing with storage of pesticides--where such local regulation now occurs it is most commonly in the form of zoning regulations. So SB 543 appears to invalidate local zoning laws which restrict the storage of hazardous chemicals such as pesticides to certain industrial or commercially zoned districts. If this is correct, the State of Kansas would create an exception to local land use authority which appears to have only one analogy --local regulation of the storage of radioactive materials!

The proposed, broad prohibition of local regulation of the disposal of pesticides would also appear to preempt local government regulation of the collection of pesticides by refuse collection services, both public and private. Does this language prevent a city or county owning or operating a solid waste site from enacting regulations on the disposal of pesticides? Again, the League simply asks what is the public purpose that is so compelling as to carve out an exception such as this for those who sell and use and dispose of pesticides?

**Action Requested.** The League asks for this Committee's careful consideration of the consequences for home rule which would result from passage of SB 543. We urge you not to remove in one quick step all local authority to protect the public health, safety and welfare with respect to pesticides. We note again that the ability of local units of government to enact laws on this subject in no way compromises the authority of the State of Kansas to enact and enforce its own laws.

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Testimony present to the

Energy and Natural Resource Committee

by Michael T. Dealy

March 24, 1992

for the:

## KANSAS GROUNDWATER MANAGEMENT DISTRICTS ASSOCIATION

### LEGISLATIVE ISSUE

SENATE BILL NO. 543 is a proposed act concerning the uniform application of the Kansas pesticide law. Included in the bill are provisions to **restrict local authority** from enacting or enforcing any law, ordinance, rule, regulation or resolution in conflict with, in addition to, or supplemental to the provisions of the pesticide law, unless expressly authorized by law to do so.

The bill declares that local regulation of pesticides by cities, counties or political subdivisions of the state **does not materially assist** in achieving a uniform system of pesticides for the state that is consistent with both state and federal law.

### ISSUE INFORMATION

- Groundwater management districts are a body politic and a local unit of government established for the proper management of the groundwater resources of the state pursuant to Groundwater Management District Act, K.S.A. 82a-1020 through 82a-1040.
- Since 1974, local people have formed five groundwater management districts in the state for the proper management of their groundwater resources and for the conservation of their groundwater supplies.
- Each district must develop an aquifer management program before actively undertaking active management of their groundwater resources.
- The aquifer management program is a written document describing the local characteristics of the district and the nature and methods of dealing with groundwater supply problems within the district.
- In order to implement the aquifer management program locally, each district has been granted statutory authority to adopt and enforce reasonable standards and policies relating to the conservation and management of groundwater resources within the district.
- Additionally districts have the authority to recommend to the state, rules and regulations necessary to implement and enforce its policies locally.
- In cooperation with state and federal authorities, groundwater management districts have adopted local standards and policies and rules and regulations needed to carry out their respective aquifer management programs and address local groundwater supply

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problems, such as water well spacing, waste of water, abandoned water wells, cathodic protection boreholes, water conservation, groundwater pollution and aquifer development.

- Senate bill 543 would restrict the districts' authority to enact or enforce a local groundwater protection standard and policy or rule and regulation needed to prevent or remediate groundwater contamination caused by the improper storage, application or disposal of pesticides.
- Senate bill 543 seeks to apply one uniform method or standard of pesticide regulation across the state in which climate, soils, geology, hydrology and demographics are not uniform.
- Senate bill 543 would not permit a local authority, such as a groundwater management district, to address a pesticide concern or problem unique to a locality or region of the state that may not have been identified or addressed at a state or federal level.
- Eliminating the groundwater management district's local authority to protect and remediate groundwater pollution from pesticides would result in the micro-management of local groundwater pesticide problems by understaffed and overwhelmed state and federal agencies.

## **RECOMMENDATIONS**

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Modify the bill:

- to permit local authority to address pesticide concerns that are unique to that locality or region of the state;
- to permit the local authority to adopt and enforce standards or regulations that are consistent with state and federal laws and regulations and provide for the same or greater degree of environment and water quality protection state and federal laws and regulations; and
- to establish a uniform procedure for local authorities to recommend to the state, regulations that would address pesticide concerns and problems that appear state-wide.

**Please refer to the attachment with proposed bill modification prepared by the Kansas Groundwater Management Districts Association.**

**Additional information may be obtained by contacting:  
Michael T. Dealy, Manager  
Equus Beds Groundwater Management District No.2  
313 Spruce Street  
Halstead, Kansas 67056-1925  
Voice: (316) 835-2224 Fax: (315) 835-2210**

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ATTACHMENT  
SENATE BILL No. 543

By Committee on Energy and Natural Resources

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AN ACT concerning the Kansas pesticide law; relating to the uniform application thereof.

WHEREAS, The legislature of the state of Kansas hereby determines that the citizens of this state benefit from a uniform, safe effective and scientifically sound pesticide regulation; and

WHEREAS, A uniform system of pesticide regulation which is consistent with both local, state and federal law and which is coordinated with both local, state and federal technical expertise is essential to the public health, safety and welfare of the people of the state of Kansas; and

WHEREAS, Local regulation of pesticides by cities, counties or political subdivision of the state does not materially assist in achieving this purpose: Now, therefore,

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) On and after the effective date of this act, the provisions of the Kansas pesticide law, and any rules and regulations promulgated thereunder relating to pesticide sale or use, including, but not limited to, application of pesticides, training and certification of pesticide applicators, storage of pesticides, transportation of pesticides and disposal of pesticides within the state of Kansas shall be applicable and uniform throughout this state and in all cities, counties and political subdivisions therein. No local authority shall may adopt, amend, promulgate, and enforce by suitable action any reasonable standards and policies enact or enforce any law, ordinance, rule, regulation or resolution relating to the pesticide sale or use, including, but not limited to, application of pesticides, training and certification of pesticide applicators, storage of pesticides, transportation of pesticides and disposal of pesticides within the jurisdiction of its authority which is consistent with and provides the same or greater degree of environmental and water quality protection as required by state and federal regulations and in conflict with, in addition to, or supplemental to, the provisions of the Kansas pesticide law, unless expressly authorized by law to do so. Any law, ordinance, rule, regulation or resolution in conflict with, in addition to or supplemental to, the provisions of the Kansas pesticide law is hereby declared to be invalid and of no effect. Any amendment to the Kansas pesticide law or any amendment of the rules and regulations promulgated thereunder, shall supersede and preempt the conflicting, additional or supplemental provisions of any law, ordinance, rule, regulation or resolution enacted by any city, county or other political subdivision of this state.

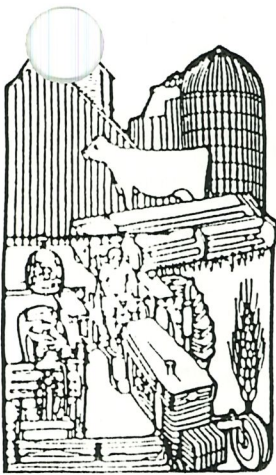
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(b) Cities, counties and political subdivisions shall have the power to recommend to the Director, Plant Health Division, State Board of Agriculture rules and regulations necessary to implement and enforce any law, ordinance, rule, regulation or resolution of the local authority. Such rules and regulations shall be of no force and effect unless and until adopted by the director to impliment the provisions of the Kansas pesticide law.

~~(b)~~ (c) This act is supplemental to and shall become a part of the Kansas pesticide law.

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas register.

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# Committee of Kansas Farm Organizations

## STATEMENT OF POSITION OF THE COMMITTEE OF KANSAS FARM ORGANIZATIONS

RE: SENATE BILL 543

HOUSE ENERGY AND NATURAL RESOURCES

Al LeDoux  
Legislative Agent  
Route 1  
Holton, KS 66436  
(913) 364-3219

March 24, 1992

Committee of Kansas  
Farm Organization Members

Associated Milk Producers, Inc.

Kansas Agri-Women Association

Kansas Association of Soil  
Conservation Districts

Kansas Association of  
Wheat Growers

Kansas Cooperative Council

Kansas Corn Growers Association

Kansas Electric Cooperatives

Kansas Ethanol Association

Kansas Farm Bureau

Kansas Fertilizer and  
Chemical Association

Kansas Grain and Feed Association

Kansas Livestock Association

Kansas Meat Processors  
Association

Kansas Pork Producers Council

Kansas Rural Water  
Districts Association

Kansas Seed Industry Association

Kansas Soybean Association

Kansas State Grange

Kansas Veterinary Medical  
Association

Kansas Water Resources Association

Kansas Water Well Association

Mid America Dairymen, Inc.

Western Retail Implement and  
Hardware Association

Kansas Grain Sorghum Producers

Kansas Association of Nurserymen

Mr. Chairman, Members of the Committee: My name is Al LeDoux and I am speaking to you this afternoon on behalf of the Committee of Kansas Farm Organizations. As you well know, our group is made up of twenty-five (25) Ag and Ag related organizations operating here in Kansas.

CKFO has elected to unanimously support Senate Bill 543. In addition, many of our members have chosen to address this subject individually because of their strong belief in its purpose.

When arguing Senate Bill 543, our committee came to the conclusion that the citizens of our state would best benefit from uniform regulations concerning the use and management of pesticides. Senate Bill 543 addresses this concern effectively. We therefore would ask for your favorable consideration and passage of Senate Bill 543.

Respectfully submitted,

Al LeDoux

3/24/92

House E+NR

Attachment 20

**JARBOE'S NURSERY**

**&  
GARDEN  
SPOT<sup>INC.</sup>**

*For Selection & Service*

*Route 1, Box 118  
Holton, Kansas 66436  
Ph. (913) 364-2905*

Bill No. 543  
THE EFFECT ON MY BUSINESS

Jarboe's Nursery is located just south of Holton Kansas or about 25 miles north of Topeka. We have been in business since 1978 with a retail store and a landscape division that includes some maintenance work including pesticide and fertilizer application. We serve all of N.E. Kansas covering 4 counties and about 30 different small communities. The population is about 55,000 people in our main service area.

We feel it is important for the State of Kansas to set the regulations for pesticide use and application so that all areas are treated the same. Currently keeping up with State and Federal changes in laws can be time consuming. I can't imagine how it would be to keep up with each towns own regulations.

Our crews can work in several different communities in the same day. Can you imagine how time consuming it would be to have to change products we use for each towns rules and regulations? It could make it so expensive that many people in small towns would not have these services available to them.

At our retail store we recommend many products as they are labeled for pesticide management. If Holton didn't allow Diazion to be used but Hiawatha would it would be hard for the average home owner to understand besides requiring us to stock more inventory to cover all angles. We spend a great amount of time teaching our employee's about pesticide use and how to help the customer properly without Preemption this would be even more time consuming. Each employee would need to learn which town allows which products.

I feel the best way to monitor pesticide products and application is through the State Department of Agriculture. They have the background that well meaning city commissions do not have to determine which products are safe and which are not. Local rule is always a concern but this time I feel that the State is in a better position to watch over businesses like my own for the good of all Kansan's.

Thank you for your time today, I would be glad to answer any questions you might have.

Carl Jarboe

*3/24/92*

*House Ex NR  
Attachment 2)*

**the Garden Spot for Selection & Service**





6031 S.W. 37th Street • Topeka, Kansas 66614-5128 • Telephone: (913) 273-5115  
FAX: (913) 273-3399

Owns and Publishes The Kansas STOCKMAN magazine and KLA News & Market Report newsletter.

March 24, 1992

STATEMENT OF THE  
KANSAS LIVESTOCK ASSOCIATION  
TO THE COMMITTEE OF  
ENERGY AND NATURAL RESOURCES

Representative Ken Grotewiel, Chairman

WITH RESPECT TO SB 543

Presented by

Dee Likes

Executive Vice-President

The Kansas Livestock Association (KLA) is a voluntary trade organization with approximately 9,000 members. These members are predominantly cow-calf producers, purebred breeders, stocker cattle operators and cattle feeders. Many KLA members are diversified and operate both grain and livestock enterprises. The state's livestock industry is a major consumer of feed grains. Kansas feedyards alone feed 4.1 million cattle and use over 180 million bushels of grain, 8 million bushels of soybeans, and 8 billion pounds of silage and hay annually. Of the 4.1 million cattle fed in Kansas in 1991, over 70% were imported from other states. In 1991 over 6.2 million cattle were slaughtered by Kansas packing plants, ranking first in the nation.

Mr. Chairman and members of the committee, the Kansas Livestock Association supports Senate Bill 543. Due to a recent court decision, local units of government were given the authority to regulate pesticides. Senate Bill 543 would preempt that authority by prohibiting local authorities from enacting any ordinance not consistent with the Kansas Pesticide Law. This bill will provide consistency and uniformity in the sale and use of pesticides. The state would remain responsible for regulating such things as the application of pesticides, training and certification of pesticide applicators, storage of pesticides, transportation of pesticides, and disposal of pesticides. Furthermore, with the passage of this bill, Kansas citizens will be assured that they will only have to call one agency to determine what pesticide regulations/restrictions may apply.

Thank you for considering our support for this measure.

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House E+NR  
Attachment 22



**SWECKER-KNIPP INC.**

900 NW Jackson • Topeka, Kansas 66608-1333 • 913/234-5652 • Fax 913/234-5691

Lawn and Garden Wholesale Distributors since 1961.

March 24, 1992

Energy and Natural Resources Committee  
Mr. Ken Grotewiel, Chairman  
State Capital Room 425-S  
Topeka, Ks 66612

Dear Chairman Grotewiel and Committee Members:

My name is Dennis Whitegon. I am vice-president of Swecker-Knipp Inc. Our company has been in business in Kansas for over thirty years. We are a wholesale lawn and garden supplier. We distribute products to businesses throughout the state. Our business is founded on supplying garden centers, greenhouses, golf courses, and hundreds of mom and pop businesses in each one of your districts.

I would ask for your support in passing senate bill 543. The state needs to provide uniform pesticide regulation for our business and those we serve. There is already much existing regulation of pesticides in effect at the state and federal level. We have been able to handle those regulations because they are uniform throughout the state. If senate bill 543 does not pass, our business will strangle under the unnecessary burden of local regulations.

Our truck makes several stops on a typical delivery day. Our normal route may include driving from Topeka to Manhattan, to Junction City and on to Salina. What will happen if Junction City will not allow a particular chemical in their town but Salina will? Do we exit off of I-70, take country roads around Junction City, and arrive in Salina via the back roads? Please consider the effects this would have on Kansas business people.

Senate bill 543 must be passed in this committee and approved by the House as soon as possible. Our business depends on it and so do our customers throughout the state.

Please vote yes on senate bill 543. Thank-you for your consideration.

Sincerely,

Forrest D. Whitegon  
Swecker-Knipp, Inc.

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House E+NR  
Attachment 23

Testimony on SB 543  
House Energy and Natural Resources Committee  
March 24, 1992  
Prepared by Joe Lieber  
Kansas Cooperative Council

Mr. Chairman and members of the committee, I'm Joe Lieber, executive vice president for the Kansas Cooperative Council. The Council has a membership of nearly 200 cooperatives which are owned by the nearly 200,000 Kansas farmers and ranchers.

The Council supports the passing of SB 543. This bill would keep pesticide control in the hands of the state, instead of having regulation rights in the hands of thousands of local entities of government.

The trade areas of several of our cooperatives include several counties. It would be virtually impossible to keep up with the different regulations for each of these counties, townships and communities.

We feel the state has the experience to regulate pesticides and if it is done at the local level, it will be an added expense for local governments. We feel Kansans would be better served with state regulations concerning the use of pesticides.

We ask for your support of SB 543.

Thank you for your time and I will attempt to answer any questions.

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Attachment 24



*Written Only*

# KANSAS ASSOCIATION OF NURSERYMEN

## BOARD OF DIRECTORS

### KEITH KNEAREM

*President*  
Blue Valley Nursery  
and Landscape Service  
12501 W. 151st St.  
Olathe, KS 66062  
(913) 897-3420

### ANN PEUSER

*Vice President*  
Clinton Parkway Nursery  
Rt. 6, Box 203  
Lawrence, KS 66047  
(913) 842-3081

### ROY RIGGS

*1 Year Board Member*  
Southwestern Nurseries  
P.O. Box 224  
Kingman, KS 67068  
(316) 532-2811

### JAN OLSON

*2 Year Board Member*  
Family Tree Nursery  
8424 Farley  
Overland Park, KS 66212  
(913) 642-6503

### JOE KNICKERBOCKER

*3 Year Board Member*  
P.O. Box 526  
Independence, KS 67301  
(316) 331-8301

### MATTHEW K. WAGONER

*Ex-Officio Member of the Board*  
Earthcare Services, Inc.  
2850 S. Ninth St.  
Salina, KS 67401  
(913) 827-9056

## COMMITTEE CHAIRMEN

### ANN PEUSER

*& BARBARA OTTO Co-Chr.*  
*Certification Comm.*

### LEA MINTON

*Legislative Comm.*

### KEITH KNEAREM

*Membership Comm.*

### DARYL WEBB

*Awards Comm.*

### MARTY JOHNSON

*Market Development  
& Publicity*

### LEROY HANNEBAUM

*Horticulture Society*

### BOB HEIFNER

*& JOE BRADY Co-Chr.*  
*Necrology*

## TESTIMONY

presented to the

ENERGY AND NATURAL RESOURCES COMMITTEE

Ken Grotewiel, Chairman

Mr. Chairman, and members of the committee, the Kansas Association of Nurserymen welcomes this opportunity to present the nursery and landscape industry's views regarding state preemption of local authority regulating pesticides. The K A N would like to go on record in support of Senate Bill 543.

Founded in 1923 the Kansas Association of Nurserymen (K A N) is the state trade organization of the nursery and landscape industry. We directly represent nearly 300 members: nursery crop farmers, landscape contractors, garden center retailers and horticultural suppliers.

Our members and the people of this state would benefit from passage of S.B. 543. There are numerous state and federal regulations regarding pesticides. Addition of local control would not promote many, if any favorable results. It would add a complex and expensive burden to the small businesses of our association.

We would like your committee to understand the U.S. Supreme Court ruled only that FIFRA did not expressly prohibit localities from regulating pesticides. Thus it is up to each state to legislate for state preemption over the blanket right of localities to regulate. The following states already have preemption legislation: Ohio, North Carolina, Connecticut, Rhode Island, New York, Pennsylvania, Kentucky, Louisiana, Minnesota, Utah and California.

MARY ODGERS, *Executive Secretary*

411 Poplar  
Wamego, KS 66547  
(913) 456-2066

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Legislation for state preemption is underway in: Georgia, Tennessee, Michigan, Massachusetts, Mississippi, Missouri, Indiana, Colorado, New Jersey, and others. \*

We urge this committee to pass S.B. 543 to the House for consideration.

Thank you,

*Keith Knearem*

Keith Knearem

President, Kansas Association of Nurserymen

\* Information on states with pre-emption legislation provided by the American Association of Nurserymen.

Before the  
House Energy and Natural Resources Committee  
Testimony of  
The Kansas Agricultural Aviation Association  
regarding  
Senate Bill 543

The Kansas Agricultural Aviation Association, representing aerial applicators licensed in Kansas, endorses and supports S.B. 543

Kansas aerial applicators long have recognized and respected the need for regulation of the use of pesticides. It has been our belief that safe and responsible use of pesticides has the very first priority in all of our operations. We do believe, however, that regulation of the use of pesticides must be done in a uniform, fair, and well coordinated manner. This must be so in order that all persons of the State of Kansas can comply with the law without confusion and without conflicting regulations which may result from local government regulation.

Senate Bill 543 mandates all regulation be carried on by the State of Kansas in a coordinated manner with federal laws and regulations. We support that concept and thus, we support S.B. 543.

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