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# environmentalcommons

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To: House Committee on Agriculture  
Date: March 4, 2009  
RE: HB 1226, OPPOSE: Preemption of Local & State Authority for Genetically Modified Plant Organisms  
Via: Email

My name is Britt Bailey. I am currently a law student at the University of Hawaii's, William S. Richardson School of Law. I am also acting director of Environmental Commons, a non-profit organization dedicated to assisting in sound environmental decision-making. Much of my work prior to attending law school centered on the issues and concerns raised by the growing of genetically modified foods ("GMOs"). I do not intend to get into an exhaustive discussion of those issues, as I would like to focus my testimony on state and local preemption and its effects.

## **Background:**

Preemption bills related to GMOs were first introduced in 2005 after four California counties passed measures to regulate GMO usage. To date, fifteen states have passed such "preemption bills" disallowing local governments from regulating GMOs, thus reserving that regulatory authority for the States. An additional six states have introduced preemption bills though they have been defeated for various reasons.

Hawaii's GMO preemption bill is very unique. Not only has the author introduced a bill that removes the regulatory authority of local governments, but also, in its reading, Hawaii will become the first and likely only state in the country to preempt itself to the federal government. The only other state to attempt such broad preemption of GMOs to the federal government was Missouri, home to Monsanto Company. Missouri twice introduced such a bill and twice it failed.

## **HB1226**

According to the puzzling language of HB 1226, the bill would disallow the agricultural agency from restricting one's testing, growing, or planting of GMOs as long as a valid permit has been issued by the federal government. The bill further states a regulatory agency may regulate GMOs as long as it is in a manner that is considered "not discriminatory." A regulatory action is deemed "discriminatory" if the action has a regulatory effect on a genetically modified plant organism that differs from the effect on a similar non-genetically modified plant organism. In a very round about way, this bill states Hawaii's agricultural agency can regulate GMOs as long as you do not regulate them. The very essence of the bill eliminates the state's ability to regulate or respond in any way to foods that are genetically modified.

In HB1226, Hawaii is considering preempting itself to the federal government just as many states are embracing regulatory systems for GMOs. In the past ten years, thirty states have passed laws providing special regulation or oversight for GMOs apart from their conventional counterparts. The bills range from protecting farmers who choose to use or not use the technology, providing labeling, prohibiting certain types of crops such as GMO-based

pharmaceuticals, creating public notification systems, and creating a study or task force to look at the effects of GMOs to health and the environment. States such as Arkansas, Alaska, Minnesota, and Washington have passed bills regulating GMOs so that they can better protect their specific and unique non-GMO crops and foods.

Why, particularly now, would Hawaii want to give up agricultural authority to the federal government? Not only have unfortunate incidents occurred which have required strong state response, but also the federal regulations concerning GMOs have proved to be sorely inadequate. The last two scientific assessments (National Academy of Sciences & an internal USDA audit report<sup>1</sup>) have concluded:

- "APHIS lacks basic information about the field test sites it approves and is responsible for monitoring, including where and how the crops are being grown, and what becomes of them at the end of the field test."
- "By refusing to require submission of protocols, APHIS is relinquishing its regulatory responsibility in favor of self-certification by the notification applicants." In many instances, this may represent a significant risk to public health and the environment."
- "Weaknesses in APHIS regulations and internal management controls increase the risk that regulated genetically engineered organisms will inadvertently persist in the environment before they are deemed safe to grow without regulation."
- "There has been no environmental monitoring of transgenic crops, so any effects that might have occurred could not have been detected. "

In closing, Hawaii is simply too unique both geographically and climatically, to pass on its responsibility for creating an economically viable, healthy, and secure food system to the federal government. I strongly urge your "NO VOTE" on HB1226.

Respectfully,



Britt Bailey

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<sup>1</sup> Environmental Effects of Transgenic Plants: The Scope and Adequacy of Regulation, Washington, DC: National Academy of Sciences Press, 2002. ; Audit Report: Animal and Plant Health Inspection Service Controls Over Issuance of Genetically Engineered Organism Release Permits, U.S. Department of Agriculture Office of the Inspector General, Southwest Region, Audit #50601-8-Te, December 2005.