Key Drivers of State Preemption of Food, Nutrition, and Agriculture Policy: A Thematic Content Analysis of Public Testimony

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Abstract

Purpose: Local communities are often active public health policy makers, so state preemption—when the state withdraws authority from local governments—can hinder public health progress. Kansas enacted the most sweeping law in the nation preempting food, nutrition, and agricultural policy.

Design: Qualitative thematic content analysis was used on public comments to identify and evaluate common and key arguments. A codebook was developed using an iterative process. Open coding was applied to all comments.

Setting: All testimony and comments submitted by individuals and organizations to the Kansas State Legislature on the preemptive bill.

Participants: Eight types of commentators submitted 34 written and 12 oral comments.

Measures: The data were evaluated on a latent level to examine underlying drivers of preemption.

Results: Comments addressed 18 themes, referenced 366 times; 68% in opposition. Common themes included local control, food labeling, public health, need for statewide standards, and debate over food regulation. Key themes included the need for state and federal uniformity to support businesses and consumers, debate over topics not in the bill, the value of local control, confusion over bill coverage, and outside influences.

Conclusion: Confusion about bill language and coverage, the combination of food and agricultural issues, and backing by multinational corporations helped propel preemption forward in Kansas. Food policy stakeholders nationally can anticipate similar arguments and strategies in their state.

Keywords
preemption, public health, food policy, nutrition policy, agriculture policy

Purpose

Local governments often enact innovative policies that can provide lessons for future policy making, positively influence national policy, and benefit the communities that originated the measure. For example, New York City was the first to ban trans fats and require calorie disclosures on menus in restaurants; both were science based, spread to other communities, and ultimately led to federal policy change. Preemption, when a higher level of government withdraws or limits the authority of a lower level of government to act on an issue, may negatively affect the ability of locales to engage in such public health policy making and experimentation.

On rare occasions, federal or state preemption is necessary or appropriate as in the case of the airline smoking ban. Nonetheless, the Institute of Medicine (IOM) recommended that the federal government and states should avoid preempting public health policy and should instead set minimum requirements to allow locales to provide additional protections.1 The IOM’s recommendation against state preemption of local public health policies, and previous research highlighting the negative effect of preemption on public health policy making,2,3,4 provides a firm basis to question and oppose such preemptive laws. Yet, the tobacco and firearms industries have successfully pursued state preemption as a political strategy for decades,2 and the food industry has now adopted this strategy. Between 2008 and June 2018, thirteen states enacted preemptive food policy laws on topics such as nutrition labeling and food and beverage taxes.5

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The most sweeping state law to preempt food and nutrition policy was enacted in Kansas in 2016. This law is of particular importance for several reasons. First, Kansas’s preemption language encompasses more topics and actions than any other state’s preemptive language. Specifically, Kansas legislated that the state of Kansas and all political subdivisions may not enact, adopt, or implement legislation related to food nutrition information or consumer incentive items (eg, toys in children’s meals); or condition the license, permit, or regulatory approval on; or ban, prohibit, or otherwise restrict food service operations related to food nutrition information, consumer incentive items, or “food-based health disparities”; nor may the government restrict the sale, distribution, or service of food and non-alcoholic beverages; nor restrict the growing or raising of livestock or crops for food. Second, the Kansas law preempts all political subdivisions of the state from acting but also explicitly prevents the state from acting on the topics preempted. Third, the law was based on a model policy created by an outside entity called the American Legislative Exchange Council (ALEC) and not enacted in response to specific state or local efforts. Finally, unlike many preemptive laws, the Kansas legislature held a hearing on the bill, so there is a legislative record from which to evaluate the arguments in support and opposition to preemption. Such legislative testimony has been found to be influential to state legislators’ policy-making decisions.

Ohio, in 2011, and Mississippi, in 2013, enacted laws preempting most of the topics preempted in Kansas, but neither simultaneously prohibited state action. The Ohio law was added to an appropriations bill without a hearing, and the Mississippi legislature does not publish legislative records, so there is no public testimony on similar bills outside of Kansas. Yet, there is a gap in the literature identifying and analyzing key arguments made in favor of and opposition to food and nutrition policy preemption to evaluate underlying drivers propelling states to preempt local control counter to IOM recommendations.

**Approach or Design**

This article addresses the gaps identified through a qualitative content analysis of the comments and testimonies from the legislative hearing on the Kansas bill, HB 2595, from which we identified both common and key themes in arguments made in favor of and against preemption. By evaluating these arguments and the motivations behind preemption, this work can support local stakeholders to anticipate and potentially counter preemption.

**Setting**

In March 2018, all documents related to Kansas HB 2595 were retrieved directly from the Kansas State Legislature’s website, which included all versions of the bill (including the final version merged into SB 366), all written testimony on the bill, and the minutes from the February 2016 bill hearing. Additional bill-tracking information and a copy of the final law were obtained from LexisNexis.

**Participants**

Data extracted from the written comments and oral testimony included author entity and type, position supporting the bill’s passage (and thus preemption) or opposing it, types of arguments made, whether written or oral, and the number of times each argument was referenced in the testimony. For all parts of the study, one author reviewed, extracted, and coded data and a data analyst, and the second author checked for consistency.

**Method**

A codebook was developed using an iterative process. We applied open coding to all of the testimony and then recoded all of the testimony using the final codebook. This approach has been found to work well to analyze public comments because it allows the codebook to reflect the testimony. Like previous research, we used qualitative thematic content analysis to analyze and report patterns in the testimony. Thematic content analysis is used to identify common themes; a theme captures information from the data and represents a pattern or meaning within the data set. We counted the number of times a theme or subtheme was mentioned in each piece of testimony so that the same theme could be coded more than once per comment. We additionally analyzed the data on a latent level, which goes beyond explicit or surface meanings to identify and “examine the underlying ideas, assumptions, and conceptualizations—and ideologies—that are theorized as shaping or informing the semantic content of the data.” Because we sought to understand what is driving preemption in food policy, we evaluated key themes, rather than focusing solely on the most prevalent themes across the data set, to capture important elements of the hearing testimony.

**Results**

We identified 34 total written comments, with 11 entities in support of the bill and 23 entities opposed; there were no neutral comments. In order of frequency, commenters included representatives from nonprofit entities dedicated to health and/or youth; local associations; agricultural associations; food, beverage, or restaurant industry associations; general business industry groups; local governments; members of the general public; and a state government entity. Table 1 sets forth the testimony sources and positions on the bill. Five of the proponents and 7 of the opponents who submitted written comments also testified at the hearing; their individual written comments and hearing testimony overlapped with similar themes but were not identical. From this testimony, we identified 18 unique themes with multiple subthemes summarized in Table 2.
The 18 themes were referenced 366 times in all the comments; bill supporters referenced 137 of the themes collectively, while opponents collectively referenced 229 of them. In terms of frequency, testimony in support of Kansas’s preemptive bill primarily focused on the need for statewide or federal standards and the benefits of preemption for businesses and consumers; those opposed to the bill largely argued in support of local government control, healthy food access, and the need for governmental support of public health. Here, we set forth the key pro-preemption and anti-preemption themes.

Key Themes Supporting HB 2595

Uniformity to support businesses and consumers. Bill proponents routinely argued that preemption was necessary for uniformity of regulations to support and protect businesses and consumers. For example, a restaurant industry group representative stated that local bans and prohibitions create “confusion for consumers,” while:

Preventing a patchwork of varying and different regulations by multiple jurisdictions . . . creates a stable marketplace for both consumers and business owners.

Likewise, a business group representative stated:

HB 2595 takes proactive steps to ensure Kansas government . . . cannot harm restaurants or food vendors with restrictions on what products they can sell.

A food industry group representative argued:

Consumers can make their own choices about what they buy and what they eat. Individual responsibility is the single most effective way to address food-related public health issues rather than regulations.

Preemption of both state and local authority. Most proponents of the bill were clear that the law preempted local control while also withdrawing state authority (eg, “We appreciate the features of this bill that apply to both the state and smaller subdivisions of government.”), but a few comments erroneously implied that the law would only preempt locales. For example, one restaurant industry group representative stated: “HB 2595 very simply reserves these decisions for the [State] Legislature.” And a business industry group representative stated:

[This bill] gives statewide authority to the Legislature to impose labeling requirement and restrictions on sales of food items. However, municipalities do not have the resources and expertise of federal and state agencies to fully investigate and implement such policies.

Topics not in the bill. A key theme in comments supporting preemption was to debate topics not explicitly in the bill, including the labeling of genetically engineered (GE) foods and packaged foods, and that food safety would not be compromised. In terms of GE labeling, one agriculture group representative argued in support of federal standards for labeling GE ingredients; another stated, “Our policy strictly opposes mandatory labeling of food products containing biotechnology.” Both comments also referenced the efforts of 2 US federal legislators from Kansas proposing federal bills on this topic. Another comment argued that GE and similar labeling “can be used to mislead consumers regarding perceived, not science-based, food-health disparities.”

Related to packaged food labeling, for example, one food industry group argued that without the Kansas law:

Vending operators would need to warehouse and transport more product with different labels that meet the local requirements . . . it would also place a burden on manufacturers and distributors that would be faced with having different product packaging for each of their items sold to comply with local rules.

Table 1. Sources of Public Comments on the Kansas Preemption Bill.

<table>
<thead>
<tr>
<th>Source Type</th>
<th>Written Pro-Preemption (Also Testified at the Hearing)</th>
<th>Written Anti-Preemption (Also Testified at the Hearing)</th>
<th>Total Written Comments (Oral Testimony)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nonprofit entities dedicated to health and/or youth (eg, YMCA)</td>
<td>0</td>
<td>10 (3)</td>
<td>10 (3)</td>
</tr>
<tr>
<td>Local associations (local coalitions, leagues, associations; eg, League of Kansas Municipalities)</td>
<td>0</td>
<td>7 (2)</td>
<td>7 (2)</td>
</tr>
<tr>
<td>Agricultural associations (agriculture, livestock, farmer organizations and associations; eg, Kansas Corn Growers Association)</td>
<td>5 (2)</td>
<td>1 (1)</td>
<td>6 (3)</td>
</tr>
<tr>
<td>Food; beverage; restaurant industry associations (eg, Kansas Restaurant and Hospitality Association)</td>
<td>3 (2)</td>
<td>0</td>
<td>3 (2)</td>
</tr>
<tr>
<td>General business industry groups (eg, Kansas Chamber of Commerce)</td>
<td>2</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Local governments (eg, Wyandotte County)</td>
<td>0</td>
<td>2 (1)</td>
<td>2 (1)</td>
</tr>
<tr>
<td>Members of the general public (identified as voters)</td>
<td>0</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>State government entity (Kansas Department of Agriculture)</td>
<td>1 (1)</td>
<td>0</td>
<td>1 (1)</td>
</tr>
<tr>
<td>Total</td>
<td>11 (5)</td>
<td>23 (7)</td>
<td>34 (12)</td>
</tr>
</tbody>
</table>

Pomeranz and Pertschuk
Table 2. Themes and Subthemes in Written Comments and Minutes from Hearing Testimony for or Against the Kansas Preemption Bill.

<table>
<thead>
<tr>
<th>Themes</th>
<th>Subthemes</th>
<th>Number (%) of Times it Appeared in Pro-Preemption Testimony</th>
<th>Number (%) of Times it Appeared in Anti-Preemption Testimony</th>
<th>Total (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Support for local government</td>
<td>• Pro-local control</td>
<td>0 (0)</td>
<td>50 (21.8)</td>
<td>50 (13.7)</td>
</tr>
<tr>
<td></td>
<td>• Pro-local innovation</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Local governments are the closest to the people</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Local governments can respond to local needs</td>
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<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• A “one-size-fits-all” approach is problematic</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Other pro-local government and political subdivision sentiments</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Food labeling and information</td>
<td>• Supports preemption of nutrition information, food labeling, nutrition labeling, menu labeling, vending machine labeling, and packaged food labeling</td>
<td>28 (20.4)</td>
<td>19 (8.3)</td>
<td>47 (12.8)</td>
</tr>
<tr>
<td></td>
<td>• Opposes preemption of nutrition information, food labeling, nutrition labeling, menu labeling, vending machine labeling, and packaged food labeling</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>• Bill suppresses and reduces access to information</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>• Bill prevents inaccurate information</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Healthy food</td>
<td>• Access to healthy food must be addressed</td>
<td>1 (0.7)</td>
<td>38 (16.6)</td>
<td>39 (10.7)</td>
</tr>
<tr>
<td></td>
<td>• Healthy/ nutritious food options are necessary</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Preemption hinders local efforts to support healthy/ nutritious food options and thus consumers’ ability to choose healthy food</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public health</td>
<td>• Support for “public health”</td>
<td>2 (1.5)</td>
<td>37 (16.2)</td>
<td>39 (10.7)</td>
</tr>
<tr>
<td></td>
<td>• Importance of addressing obesity, other chronic diseases (eg, cardiovascular disease and diabetes) and oral health</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Benefits of state preemption</td>
<td>• Supports statewide standards</td>
<td>28 (20.4)</td>
<td>0 (0)</td>
<td>28 (7.7)</td>
</tr>
<tr>
<td></td>
<td>• Values uniformity</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• State preemption provides clarity, predictability, and simplicity</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Local experimentation is problematic</td>
<td></td>
<td></td>
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</tr>
<tr>
<td></td>
<td>• State preemption is necessary to avoid a “patchwork” of local requirements</td>
<td></td>
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<td></td>
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<tr>
<td></td>
<td>• State preemption is necessary to avoid “piecemeal” regulations</td>
<td></td>
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</tr>
<tr>
<td>Marketing/ regulation of food</td>
<td>• Supports preemption of bans and regulation of the sale of foods/beverages, advertising and marketing, consumer incentive items, nutritive or nonnutritive component of food, and the regulation of portion size</td>
<td>16 (11.7)</td>
<td>9 (3.9)</td>
<td>25 (6.8)</td>
</tr>
<tr>
<td></td>
<td>• Opposes preemption of bans and regulation of the sale of foods/beverages, advertising and marketing, consumer incentive items, nutritive or nonnutritive component of food, and the regulation of portion size</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Support for local food systems</td>
<td>• Support for local food systems including community gardens and urban agriculture</td>
<td>2 (1.5)</td>
<td>19 (8.3)</td>
<td>21 (5.7)</td>
</tr>
<tr>
<td></td>
<td>• Increasing interest in the state for local food</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current efforts</td>
<td>• Passing bill will hinder current food and nutrition programs and other efforts</td>
<td>0 (0)</td>
<td>18 (7.9)</td>
<td>18 (4.9)</td>
</tr>
<tr>
<td>Agriculture</td>
<td>• Enacting this bill will support agriculture, farming, or the raising of livestock in the state</td>
<td>7 (5.1)</td>
<td>9 (3.9)</td>
<td>16 (4.4)</td>
</tr>
<tr>
<td></td>
<td>• Enacting this bill will harm agriculture, farming, or the raising of livestock in the state</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Other references to the growing of crops and raising of livestock</td>
<td></td>
<td></td>
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</tbody>
</table>

(continued)
On the topic of food safety, proponents commented that the bill would not restrict the state’s “ability to ensure food safety” or interfere with “food safety rules.” Another comment stated that consumers rely on the “uniform application” of Kansas law “for the assurance of a safe product.”

**Outside influences.** Finally, testimony addressed influences outside of the state. Proponents argued the bill was necessary to avoid laws like those enacted outside Kansas, with one business group stating:

> A few examples of restrictive regulations on the food service industry include New York City’s proposal to ban sugary drinks, and San Francisco’s ban of Happy Meal toys.

**Key Themes Opposing HB 2595**

**Local control.** Opponents of HB 2595 supported “local control” and “local innovation.” A primary subtheme that emerged was the argument that local governments are closest to the people and thus, local officials know the values and needs of their community, are often more accountable, and can respond quickly to those needs. One local government official stated:

> Local control... is about “accountable government that puts people in control” because it leaves decisions to elected leaders closest to them in their own communities.

A member of the public expressed concern that preemption is undemocratic, stating:

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**Table 2. (continued)**

<table>
<thead>
<tr>
<th>Themes</th>
<th>Subthemes</th>
<th>Number (% of Times it Appeared in Pro-Preemption Testimony</th>
<th>Number (% of Times it Appeared in Anti-Preemption Testimony</th>
<th>Total (%)</th>
</tr>
</thead>
</table>
| Federal preemption of state/local regulation | - Supports bill’s preemption of both state and local regulations  
- Federal preemption is warranted for the topics at issue in the bill  
- The bill is no more restrictive than federal law | 13 (9.5) | 0 (0) | 13 (3.6) |
| Pro-Business | - Support for business and small businesses  
- Bill will foster trade  
- Bill necessary to protect business from regulatory burdens  
- Food is already highly regulated | 13 (9.5) | 0 (0) | 13 (3.6) |
| Consumer focus | - Bill necessary to protect consumers from confusion  
- Consumers can make their own decisions  
- Support for a personal responsibility approach  
- Other pro-consumer comments | 10 (7.3) | 3 (1.3) | 13 (3.6) |
| Economic burdens and costs | - Enacting this bill will protect against economic burdens and increased costs  
- Enacting this bill will increase economic burdens and costs | 5 (3.6) | 7 (3.1) | 12 (3.3) |
| Confusion around what is preempted | - Concerns about unintended consequences of passing bill  
- Concerns there are ill-defined or not well understood aspects of the bill  
- Concerns that the state is not planning to address the issues preempted | 0 (0) | 9 (3.9) | 9 (2.5) |
| Food based health disparities | - Preemption positive for food-based health disparities  
- Preemption negative for food-based health disparities  
- Concern that food-based health disparities need to be addressed | 2 (1.5) | 6 (2.6) | 8 (2.2) |
| Outside interests | - Bill preempts local regulations of the type enacted in New York City or San Francisco  
- Bill is support by the American Legislative Exchange Council (ALEC)  
- Bill is based on an ALEC model bill | 2 (1.5) | 5 (2.2) | 7 (1.9) |
| Genetic Engineering | - Opposes labeling of bioengineered food  
- The federal government should be the entity to act on bioengineered food labeling | 4 (2.9) | 0 (0) | 4 (1.1) |
| Safe food | - State’s ability to keep food safe is maintained if bill passes | 4 (2.9) | 0 (0) | 4 (1.1) |
| Total (100%) | | 137 | 229 | 366 |
I am appalled at the idea of a state legislature trying to wrest this very fundamental right of decision-making away from the very citizens [it] proposes to represent.

Similarly, a representative from a health organization stated:

This bill would remove opportunities for community members to exercise local control in making changes to improve the health of their community.

Preemption opponents also testified that current local efforts to improve healthy food access benefit community businesses and residents alike. For example, one argued that the bill:

would hinder, if not stop altogether, the fledgling efforts of Kansas communities to create more economic development around local food—growing it, selling it locally.

Confusion about the bill. Another key theme that emerged was confusion about what was preempted by the bill. An agriculture organization representative stated:

We believe there are far too many potential areas that will be affected that are not seemingly understood and/or defined well in the bill.

And a school group representative explained: “we are totally unsure what this bill might mean for school districts.” Similarly, a youth organization noted:

The bill’s broad definition of “political subdivision” seems to have the unintended consequence of disallowing any organization receiving even the smallest amount of public funds from exerting local control over the food they serve.

Additionally, an agriculture group sought clarity on how the bill would affect the following issues: “local control of zoning,” “nutrition programs” led by “rural hospitals and schools,” “future efforts to address food deserts and maintaining local grocery store infrastructure,” and “the potential impact to other local government related infrastructure.”

Outside influences. Finally, the key theme of outside influences also arose in opposition testimony. A local government representative pointed out that localities in Kansas are not considering nor would they likely follow the lead of other metropolitan areas such as New York City. He pointed to a different outside influence driving the bill—ALEC—and argued that:

ALEC model policies are about monolithic, top-down, centralized, big brother laws which attempt to impose the views of its big money corporate members on every county, city and citizen in America.

Conclusion

This study provides new evidence on the arguments made in support and opposition to preemption of food and agriculture policy. Like previous research, we found that proponents of preemption primarily argued that statewide or even federal standards were preferable and that preemption was necessary to protect businesses and consumers. Conversely, opponents primarily argued that local control was necessary and beneficial for local businesses, communities, and community members using arguments related to local democracy, public health, and healthy food access. Opponents made the majority of arguments and engaged in persuasive messaging. Nonetheless, Kansas enacted this bill, broadly preemption state and local control over multiple food and nutrition policy and agricultural topics. This indicates that more is relevant to passage of preemption than the frequency of sophisticated messaging at the hearing stage. Specifically, 3 pivotal key themes emerged that shed light on some of the true underlying issues that drove passage of preemption in Kansas.

First, there was multiple types of confusion about what was preempted as noted by the testimony and concurrent media reports. Although the bill explicitly removed state authority, some proponents referred to the bill as simply leaving the issues to the state legislature; this is technically accurate because the legislature can reinstate its own authority, but such testimony created a perception that the bill was less expansive than it was. Local governments are generally the direct overseers of food retailers, markets, and food service providers through licensing, inspection, and health and safety codes. Thus, the result of such broad state preemption—and the legislatively mandated freeze on Kansas state activity—could be deregulation of food service entities in the state, but this was not necessarily clear during the hearing. There was also substantial lack of clarity about whether the bill preempted issues traditionally under local control such as school food and zoning. The bill additionally utilized undefined or broad terms (eg, “food-based health disparities,” “political subdivision”), which can chill local activity that may not have been intentionally preempted. Moreover, preemption proponents debated topics not explicitly mentioned in the bill like GE and packaged food labeling; the impetus for the latter is highly questionable given that federal law prescribes packaged food labeling standards and preempts alternative state and local requirements. This invalidates food industry arguments that state preemption was necessary to protect food companies from “local rules” requiring “different product packaging for each of their items sold.”

It is unknown whether the confusion created by the bill language and testimony was intentional, but the creation of confusion over terms and policy coverage is not new (eg, the soda industry framing local sugary beverage taxes as “grocery taxes”). In Kansas, opponents had the dual burden of trying to defeat the bill while also seeking much needed clarification. As the bill passed through the legislature, opponents were forced to spend resources to both clarify this confusion and to carve out exceptions to the broad preemption language. As a result of
their efforts, the final law was amended to allow political sub-divisions to continue to participate in federal food assistance programs, maintain control over zoning, and promulgate nutrition information if part of a program and not a restrictive law.6

Second, the bill’s combination of nutrition policy with agricultural concerns—a key economic driver for the state29—increased the number and type of powerful proponents of preemption. This combination also implicated GE labeling concerns implicitly and explicitly.22,23 After the hearing on HB 2595, the bill stalled in the House,22,24 while US Senator Roberts from Kansas introduced a federal bill to establish a national voluntary labeling standard for bioengineered foods that would preempt state and local GE labeling requirements.25 The federal bill failed in the US Senate on March 16, 2016.26

The next day on March 17, 2016, the Kansas State House Committee resumed its efforts on HB 2595 and amended and adopted the bill, with the full House passing it the following day (89 yea to 34 nay).24 The GE labeling implications helped move the bill forward. Further, since GE labeling was not explicit in the bill, local stakeholders could not anticipate this argument, nor counter it with a call to sever the 2 issues, for example, by agreeing to preemption of GE labeling while fighting against preemption of local food and nutrition policies.

Third, although limited hearing testimony addressed outside policy influences, multinational corporations played a critical role in supporting preemption in Kansas. All industry representatives to support HB 2595 were state associations or state branches of national trade associations. No local Kansas business submitted testimony in support of or in opposition to the bill. Further, HB 2595 was based on an ALEC-model bill intended for adoption in all 50 states. American Legislative Exchange Council is an entity funded by multinational corporations that has sitting legislators as members, including those who proposed the bill in Kansas.8,27 In addition, an ALEC-affiliated group, Americans for Prosperity, submitted a comment on HB 2595 in support of preemption without disclosing its affiliation, which is only discoverable upon additional research.28 These relationships present a key challenge for local food policy stakeholders because they can “disguise industry-backed legislation as grassroots work.”29(p333)

Given the complexities related to the preemption efforts in Kansas and the vast resources available to preemption-proponents, it is unclear whether opponents could have prevented passage of the bill. Although state legislators report that legislative testimony can be influential to their policy-making decisions—especially to understand both sides of an issue and most notably when delivered by credible and knowledgeable experts—a large proportion of state legislators consider testimony to be “a factor in policymaking, but not the main one.”30(p93) Rather, many use the “testimony to support their existing position on an issue.”30(p93) This highlights a major challenge for local stakeholders when public health interests are pitted against strong business interests.

There may be a temptation to point to 1 political party as the driver of preemption due to the large Republican majority in the Kansas State Legislature during the 2016 preemption hearing.30,31 Initially, a bipartisan representation of House members voted against the bill (yea 89 [Republican 83/Democrat 6]; nay 34 [Republican 13/Democrat 21]); however, the final vote (following the amendments noted above) did fall along party lines (yea 103 [Republican 96/Democrat 7]; nay 22 [Republican 1/Democrat 21]).31 Nonetheless, it should be noted that the most striking case of food policy preemption was passed in 2018 by California—the state with the most local sugary beverage taxes in the country—by a Democratic state legislature and signed by a Democratic governor, whereby the state preempted additional local sugary beverage taxes for the next 12 years.32 As such, local stakeholders nationally should anticipate preemption and combine solid legislative testimony with additional nonpartisan strategies identified by advocacy organizations to combat and prevent preemption.18,19,33-35

This is the first study to analyze pro-preemption and anti-preemption arguments specifically for food policy and identify key themes exposing the drivers of state preemption in this context. An additional strength of this study is that we evaluated all testimony from the Kansas bill hearing covering food, nutrition, and agricultural topics and analyzed it in light of concurrent media reports and public health research. This will provide information for stakeholders in other states to anticipate and prepare for preemption.

Limitations of this study include the limited number of pieces of testimony. Nonetheless, our research into state
preemption of other public health laws found similar and some identical arguments made by proponents of preemption in Kansas, leading us to conclude that the small number did not impact the substance of our analysis.

Diet-related disease is a public health crisis in need of policy solutions consistent with the expertise and authority at the federal, state, and local levels. Confusion about bill language and coverage, the combination of both food and agricultural policy issues in 1 bill, and backing by multinational corporations helped propel preemption forward to passage in Kansas. Local stakeholders around the country can anticipate that preemption may be introduced in their state and can prepare by engaging grassroots movements and allies, educating state officials on the benefits of preserving local control, and urging the media to frame the discussion from a public health perspective to expose the true drivers of preemption.

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