Panel: Stifling Efforts to Build Local Food Systems: How Preemption Can Impact Your Community’s Access to Healthy Food

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Presenter Information
Mary Marrow, Missty Lechner, Natasha Frost, and Ashley Jones-Wisner
STIFLING EFFORTS TO BUILD LOCAL FOOD SYSTEMS: HOW PREEMPTION CAN IMPACT YOUR COMMUNITY’S ACCESS TO HEALTHY FOOD
TODAY’S PRESENTERS

Natasha Frost,
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Director, Healthy Eating & Active Living
Public Health Law Center

Ashley Jones-Wisner,
State Policy Director
KC Healthy Kids

Missty Lechner,
Advocacy Project Director
American Heart Association,
Midwest Affiliate
WHAT IS THIS ABOUT?

**FEDERAL**

The federal government, as long as it is acting within its constitutionally enumerated powers, can trump the states and their subdivisions.

**STATE**

State governments define the powers and authority of local governments.

**LOCAL**

If the federal or state government limits local authority in a particular policy area, it has PREEMPTED local control.
WHY PREEMPTION MATTERS:

PEARLS BEFORE SWINE

WHAT ARE YOU DOING, GOAT? MY NEPHEW HERE IS INTERESTED IN HOW TO IMPROVE HIS COMMUNITY THROUGH BETTER LAWS.

SO WHAT ARE YOU DOING WITH THE WHITEBOARD?

DRAWING HIM A CHART OF ALL THE STEPPING STONES NECESSARY TO GET THE ATTENTION OF HIS CONGRESSMAN.

SEE, THIS IS JOHNNY CITIZEN, AND THESE ARE ALL THE STEPS HE NEEDS TO TAKE.

VERY INSPIRING. I WONDER IF I CAN ADD A LITTLE SOMETHING? SURE.... THE MORE WE CAN TEACH HIM, THE BETTER.

GIVE ONE MILLION DOLLARS.

OKAY. LESSON IS OVER. WHY'D YOU TEACH ME THE LONG, STUPID WAY?

OH, LOOK. HE'S SHOVING JOHNNY WHAT'S-HIS-NAMES OFF THE STEPPING STONES.

BY STEPHAN PASTIS
"We could never win at the local level... So the Tobacco Institute and tobacco companies' first priority has always been to preempt the field, preferably to put it all on the federal level, but if they can't do that, at least on the state level."

--Victor L. Crawford, Former Tobacco Institute Lobbyist

WHY PREEMPTION MATTERS

• Kills momentum
• Results in WEAKER laws
• Trades future progress for short-term gain
• Commercial tobacco control movement rule: never accept preemption

Photo credit: Star Tribune
THE VALUE OF LOCAL AUTHORITY

Food is accessible when it is affordable, and community members can readily grow or raise it; find it; obtain it; transport it; prepare it; and eat it.

Policy Database
A curated, searchable database of healthy food policies at the local level around the United States, analyzed by HFPP.

Food System Crosswalk
A resource showing how food policy laws intersect with components of the food system, which HFPP defines as Grow, Process, Distribute, Get, Make, and Surplus/Waste Management.

Case Studies
In-depth case studies that showcase healthy food policy initiatives, and the people and communities that developed them.

Healthyfoodpolicyproject.org
THE VALUE OF LOCAL AUTHORITY

Kansas Resources

The Public Health Law Center works with public health organizations and communities in Kansas to support progress towards achieving healthy behavior goals. This work includes supporting efforts to improving access to healthy, affordable food and clean water, supporting a robust local food system, increasing physical activity opportunities, increasing access to affordable housing and child care, and reducing commercial tobacco use.

We work with Kansas communities to identify and understand the dynamics of equity and social determinants of health, so communities can use policy and systems change to support health for all. We tailor our publications, trainings and individualized legal technical assistance to fit the unique contexts facing Kansas communities.

Since 2013, we have worked with grantees and partners with funding from the Kansas Health Foundation, the Kansas Department of Health and Education, Pathways to a Healthy Kansas (a grant program of Blue Cross and Blue Shield of Kansas), Kansas Action for Wellness (a program of the American Heart Association), KC Healthy Kids and other public health partners.

For more information, please email Mary Marrow or Natasha Frost.

Featured resource collections are below. Other relevant resources in right sidebar (desktop/tablet), or end of page (mobile).

Kansas Healthy Food Resources
Increasing access to healthy food is emerging as a priority in Kansas as local governments and communities are taking action to address food insecurity, support local producers, and improve healthier food and beverage options. These resources provide an overview of Kansas laws that support access to healthy and affordable local food and influence initiatives that provide healthier food environments.

Kansas Bicycling and Walking Resources
Kansas communities are taking action to promote health, prosperity, and economic vitality by increasing physical activity through bicycling and walking. These resources provide an overview of laws and policies impacting bicycling and walking to support these efforts.

Publichealthlawcenter.org/Kansas
“ALL FOOD SYSTEMS ARE LOCAL.”
Local governments may not:

“condition any license, permit or regulatory approval for a food service operation upon the existence or nonexistence of food-based health disparities;”

or

“where food service operations are permitted to operate, ban, prohibit or otherwise restrict a food service operation based upon the existence or nonexistence of food-based health disparities as recognized by the department of health, the institute of health or the centers for disease control.”
WHY PREEMPTION MATTERS: CAN ENTRENCH INEQUITIES
KC Healthy Kids rallies the people in our communities to improve access to affordable fresh food and safe places to walk and play.
Political Background
House Bill 2595

- Battle between state and local government
- Education Policy and Funding
- Gun control/concealed carry
- Tax lids
- Elections
- Nutrition labeling and HB 2595
“Under House Bill 2595, municipalities would be unable to require retail food establishments to post nutritional information, including caloric content and allergy warnings.”
- The Topeka Capital-Journal February 16, 2018

“House Bill 2595 would restrict local regulation and decision-making on public health issues relating to nutrition. KAC is concerned with another state encroachment on local control.”
- Melissa Wangeman
Kansas Association of Counties
HB 2595 Timeline

- Feb 2: Introduced
- Feb 12: Hearing in House Committee
- Feb 19: Amended and passed committee
- Mar 18: Amended and passed House 89-34
- Apr 30: Conference Committee report adopted by House
- May 1: Conference Committee report adopted by Senate
- July 1: HB 2595 effective date
Supporters of HB 2595

- Americans for Prosperity
- Kansas Beverage Association
- Kansas Chamber of Commerce
- Kansas Cooperative Council
- Kansas Corn Growers
- Kansas Dept. of Agriculture
- Kansas Farm Bureau
- Kansas Livestock Association
- Kansas Restaurant and Hospitality Association
- Kansas Wheat Growers
- Rep. Gene Sullentrop
Opponents of HB 2595

- American Cancer Society
- American Heart Association
- Hodgeman County
- Johnson County
- Kansas Action for Children
- Kansas Association of Counties
- Kansas Association of School Boards
- Healthcare Foundation of Greater Kansas City
- Kansas Farmers Union
- Kansas League of Municipalities
- Kansas Public Health Association
- Kansas Rural Center
- KC Healthy Kids
- Sunflower Foundation
- Unified Government of Wyandotte County
- YMCAs of Kansas
WHAT DOES THE LAW SAY?

Kansas’ Government Control of Local Food Policies Law

What is H 2596/S 364?
This is a Kansas law enacted in 2016 that preempts local authority to enforce state government authority in several areas, including with respect to local regulation and oversight of food service operations, retail food establishments, and other matters concerning local food and agricultural practices. This law ("Government Control" law) also expressly limits local authority to try to reduce food-based health disparities. It is very similar to laws passed in Ohio and Mississippi (see box on page 3 about the invalidation of Ohio’s law). The Ohio, Mississippi, and Kansas laws closely resemble an ALEC (American Legislative Exchange Council) bill.*

What does the Government Control law say about restrictions on the authority of "political subdivisions"?
The law says that the following topics are matters of statewide concern that can only be regulated through state legislation:

- the regulation of "consumer incentive items," which are toys, coupons, coupons, and any other premium, prize or consumer product associated with a meal served by a food service operation;
- nutrition labeling for food and nonalcoholic beverages in restaurants, retail food establishments or vending machines; and
- how food service operations are "characterized."

* This fact sheet is funded by the Kansas Health Foundation to increase access to and consumption of healthy food in Kansas.

KANSAS PREEMPTION LAW

Limits local food policy choices by prohibiting political subdivisions from passing certain kinds of laws that would impact food retail and food service.
WHO IS RESTRICTED BY THE LAW?

- **Political subdivisions**: Entities that can pass laws or collect taxes--cities, counties, townships, school boards, etc.

- **NOT private groups, foundations, nonprofits, community coalitions**
WHAT FOOD ENVIRONMENTS ARE COVERED?

- Restaurants of all types
- Clubs, commissaries
- Snack/concession stands
- Mobile food trucks
- Soup kitchens
- “any other private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge”
- Grocery stores selling hot food?
WHAT LOCAL POLICY LISTED AS PREEMPTED IN PREEMPTION LAW?

- Menu labeling/calorie labeling laws
- Laws to improve the nutritional quality of kids meals
WHAT LOCAL POLICY LISTED AS PREEMPTED IN PREEMPTION LAW?

- Restrict sale, distribution or serving of foods/nonalcoholic beverages approved for sale by a federal or state agency
- Restrict the growing or raising of livestock or crops approved for sale by a federal or state agency
WHAT LOCAL POLICY LISTED AS PREEMPTED IN PREEMPTION LAW?

• Restrictions, including through licenses, permits, or other regulatory approval process, based on the existence (or nonexistence) of a food-based health disparity.
WHAT IS LISTED AS ALLOWABLE UNDER PREEMPTION LAW?

- General planning and zoning
- Community gardens
WHAT IS LISTED AS ALLOWABLE UNDER PREEMPTION LAW?

- Nutrition education activities
- Double Up Bucks and similar kinds of financial assistance programs
- Food and Farm Councils
WHAT IS LISTED AS ALLOWABLE UNDER PREEMPTION LAW?

- Administrative policies that set nutrition standards for vending machines, concessions, cafeterias in city/county facilities
- As long as they are not part of a law or ordinance that restricts another entity
UNINTENDED CONSEQUENCES?

• Animal control/beekeeping and similar laws?
• Local food preference laws?
• Recruitment of grocery stores to underserved areas?
WHAT DOES IT MEAN?

CORE DETERMINANTS OF HEALTH

- health services
- employment/working conditions
- education and literacy
- physical environments
- social support networks
- personal health practices and coping skills
- social environments
- healthy child development
- biology and genetic endowment
- culture
- financial and social status
- gender
HAVE QUESTIONS? CONTACT ME

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Local Impact: Government Control of Local Foods Law

Missty Lechner
Advocacy Project Director
American Heart Association
Current Councils in Kansas

A statewide network of communities, organizations and individuals committed to improving the health of Kansans by creating healthy food and beverage environments.
Advocates made ALL the difference

Local advocates helped fight the popular perception among lawmakers that Kansans desired this legislation. THANK YOU for your hard work!

(actual tweet by a lawmaker)
How can communities or councils move forward?

1. Know what this law preempts
2. Know what this law does not address
3. Prepare yourself for the grey area
   • We can’t know everything impacted until the courts decide
How can communities or councils move forward?

4. If you are told “no” on a policy campaign or you are concerned that you shouldn’t move forward because of preemption—

   Tell me Missty.Lechner@heart.org

4. Legal counsel for your city or county may need to talk to PHLC