



C E N T E R F O R FOOD SAFETY

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Oregon State Legislature

Joint Interim Committee on Special Session

Testifying in Opposition to Legislative Concept 5, Preemption of Local Laws Regulating Agriculture

Co-chairs Courtney and Kotek, co-vice chairs Burdick and Garrett, and members of the committee, I thank you for the opportunity to present testimony in opposition of Legislative Concept 5. My name is Lori Ann Burd and I am an attorney with the non-profit, public interest organization the Center for Food Safety (CFS). CFS is a nationwide consumer and sustainable agriculture organization whose mission includes protecting the public's right to know how their food is produced. We have nearly 350,000 farmer and consumer members across the country, including thousands in Oregon.

Legislative Concept 5 would strip away the rights of communities to make locally appropriate decisions about food and agriculture and is a direct affront to a significant economic contributor to our state's economy, the organic and natural food trade. The inclusion of this controversial legislation—promoted by out-of-state, anti-conservation interests—has no place in this important discussion of tax and public pension reform and its inclusion as a bargaining chip in this legislation is completely inappropriate.

CFS has worked on the issue of genetically engineered (GE) crops, GE labeling, and farmer protection for nearly two decades, at both the state and federal level. We have worked with dozens of states, counties, and cities to craft bills regulating GE crops. Counties throughout our neighboring states have taken action to regulate GE crops,

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including Santa Cruz, Mendocino, Marin, and Trinity counties in California; Hawaii and Maui counties in Hawaii; and San Juan County in Washington.¹ These bills have successfully regulated GE crops. They have not created undue regulatory burdens nor have they been subject to legal challenges.

These local governments have taken such action because states and the federal government have failed to adequately regulate GE crops, and these crops have significant impacts on our agricultural economy, human health, and the environment. This was evidenced this year by the costly discovery of experimental, unapproved GE wheat in an eastern Oregon field. This finding cost Oregon farmers access to vital export markets and caused untold financial losses. In addition, a field trial of experimental GE Creeping Bentgrass near Madras resulted in transgenetic contamination at the Crooked River National Grassland.² In 2010, USDA discovered that GE bentgrass that escaped from field trials seven or eight years prior had established itself in the wilds of eastern Oregon. This GE bentgrass was never commercially approved, was tested here despite the protests of many Oregon grass seed farmers, and has now proven itself to be nearly impossible to eradicate.

Gene flow from GE crops to conventional, organic, and wild plants can result from pollen drift, seed mixing, flooding, seeds in machinery, seed spillage, and a variety of natural events and human errors that occur at each stage of the crop production process.³ Both farmers and researchers have documented contamination in a variety of crops

¹ Santa Cruz County, Cal., Code of Ordinances, tit. 7, ch. 7.31 (2006); Mendocino County, Cal., Code of Ordinances, tit. 10A, ch. 10A-15 (2004); Marin County, Cal., Code of Ordinances, tit. 6, ch. 6.92 (2004); Trinity County, Cal., Code of Ordinances, tit. 8, ch.

8.25, art. 1 (2004); Hawai'i County, Haw., County Code, ch. 14, art. 15 (2008); Maui County, Haw., Code of Ordinances, tit. 20, ch. 20.38 (2009); San Juan County, Wash., Initiative Measure 2012-4, Ordinance Concerning Prohibitions on the Growing of Genetically Modified Organisms (adopted Nov. 2012).

² JR Reichman et al., *Establishment of Transgenic Herbicide-Resistant Creeping Bentgrass (Agrostis stolonifera L.) in nonagronomic habitats*, Mol. Ecol., Nov. 2006.

³ *Geertson Seed Farms, et al. v. Johanns, et al.*, 2007 WL 518624, at *4 (N.D. Cal. Feb. 13, 2007) (“[C]ontamination can occur through pollination of non-genetically engineered plants by genetically engineered plants or by the mixing of genetically engineered seed with natural, or non-genetically engineered seed.”).

including but not limited to alfalfa, canola, corn, rice, and sugar beets. A single incident of GE contamination can cost farmers hundreds of millions of dollars.⁴ For some Oregon farmers, the *risk* of transgenic contamination alone has caused economic harm. One CFS member farmer has lost the majority of his *Beta* crop market—worth \$18,000 a year—due to the threat of contamination from Roundup Ready sugar beets. As GE crops continue to spread in Oregon, farmers may continue to lose export markets and other clients due to contamination and the threat of contamination. These are the types of harms Legislative Concept 5 would preempt counties from addressing.

GE contamination doesn't just result in lost markets, it can also result in farmers getting sued. As of November, 2012, seed giant Monsanto has filed 142 alleged patent infringement lawsuits involving 410 farmers and 56 small farm businesses in 27 states.⁵ Again, this kind of harm can be prevented by the very kinds of county regulation Legislative Concept 5 seeks to preempt.

In addition to protecting the agricultural economies, counties may seek to regulate GE crops in order to protect human health and the environment. The vast majority of GE crops are engineered to withstand what would otherwise be fatal applications of the herbicide glyphosate, commonly known as Round-up. Round-up Ready crop systems have made glyphosate the most heavily used pesticide in the history of agriculture, with 180-185 million pounds applied by American farmers in 2007.⁶ Overall glyphosate use in American agriculture jumped tenfold from 1995 to 2007.⁷ The increased herbicide use associated with GE crops threatens Oregon's watersheds and creates health risks for farm

⁴ See, e.g., *In re Genetically Modified Rice Litigation*, 666 F. Supp. 2d 1004 (E.D. Mo. Oct. 9, 2009); *In re Genetically Modified Rice Litigation*, 2009 WL 4801399 (E.D. Mo. Dec. 9, 2009).

⁵ Center for Food Safety & Save Our Seeds, *Seed Giants v. U.S. Farmers* (2013), available at http://www.centerforfoodsafety.org/files/Seed%20Giants_final_04424.pdf.

⁶ U.S. EPA, Biological and Economic Analysis Div., Office of Pesticide Programs, Pesticide Industry Sales and Usage: 2006 and 2007 Market Estimates, tbl. 3.6 (2011). Total 2007 glyphosate usage in the United States of 198-208 million lbs. is more than twice as high as the second-leading pesticide, and exceeds even the peak U.S. production of DDT. Nat'l Pesticide Info. Ctr., Oregon State Univ., *DDT Technical Fact Sheet*, <http://npic.orst.edu/factsheets/ddttech.pdf>. Peak DDT production in the United States was 188 million lbs. in 1963. *Id.*

⁷ Robert Service, *A Growing Threat Down on the Farm*, *Sci.*, May 25, 2007, at 1114-17.

workers, community members, and wildlife. GE crops have also reduced biodiversity and have created an epidemic of herbicide resistant superweeds which now infest 50-62 million acres in the U.S.⁸ Legislative Concept 5 would preempt concerned counties from protecting human health and the environment by regulating the cause of these harms.

Oregon has a rich history of allowing local entities to regulate agriculture in a manner than comports with local interests. Many Oregon counties already have regulations in place for food, crops, and plants. These regulations could be nullified by Legislative Concept 5, resulting in significant uncertainty for farmers. Legislative Concept 5 would preclude the counties from acting to protect their unique agricultural economies as well as human health and the environment. I ask you to withdraw Legislative Concept 5 from this package. It is an inappropriate addition to this legislation and its overly broad language would cripple local democratic efforts to protect farmers, consumers, and the environment.

Thank you for the opportunity to testify. I am happy to answer any follow up questions or provide additional analysis.

⁸ Charles M. Benbrook, *Impacts of Genetically Engineered Crops on Pesticide Use in the U.S. - the First Sixteen Years*, Environmental Sciences Europe, Sept. 28 2012, available at <http://www.enveurope.com/content/24/1/24>.