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# State Preemption and Maui County's Right to Establish Pesticide Policy over County Property

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# The Risks of Pesticide Exposure

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- The lingering effect of pesticide drift, volatilization, and contamination
- The American Academy of Pediatrics (AAP) has concluded that children exposed to chronic, low-level exposure to pesticides are at a risk of neurodevelopmental disabilities like autism and ADHD, leukemia, and asthma
- Increased risk to brain cancer and other development diseases from pesticide exposure at fetal, neonatal, and infant life



# Preemption 101

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- Preemption – a higher-level government, in the relevant statutory or regulatory regime, trumps the lower level government’s regulatory regime
  - Express Preemption – relevant federal or state law expressly prohibit any state or local law or regulation
  - Implied Preemption – no explicit language, but courts apply a “comprehensive statutory scheme test” to find whether the statute indicates a legislative intent to be exclusive and uniform throughout the state.



# Ongoing County Appeals

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- Maui: Ballot Initiative
  - GE crop moratorium (cultivation & testing)
- Hawai'i (Big Island): Ordinance 13-121
  - GE crop ban (cultivation & testing)
- Kaua'i: Ordinance 960
  - Pesticide disclosure & notification, buffer zones
  - GE crop annual reporting



*Syngenta Seeds, Inc. v. Cnty. of Kaua'i*  
No. 14-00014, 2014 WL 4216022 (D.  
Haw. Aug. 25, 2014)

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- Pesticides disclosure, notification, buffer zone, **applicable to large-scale commercial agriculture producers only**
  - State: Implied preemption
    - Hawaii Pesticide Laws does not contain an express preemption clause explicitly forbidding county regulation of pesticides, but the Court interpreted the Hawaii Pesticide Law to implied occupy the field of pesticide regulation
  - Federal / FIFRA: No federal preemption



# Success Stories from States with Express Preemption

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- California

- City of Irvine: policy to use organic pesticides and ban the use of non-organic, chemical based pesticides on city property
- City of Richmond: pest management program banning the use of classes of high-risk pesticides on city property; designated playgrounds and picnic areas as pesticide-free zones

- Cuyahoga County, Ohio

- prohibits the use of pesticides on county property, subject to exceptions



# No Analogous Preemption Litigation Precedent

