

Aloha e Kakou,

We need you to take action by early next week- and if you are able, please show up to testify on Wednesday December 17th! This is probably the most important email we have sent this year:

On November 26th, U.S. Magistrate Judge Barry Kurren overturned our GMO crop ban for Hawaii Island, known as Ordinance 13-121, saying in his ruling that such matters should be regulated by the state, and not the county.

The reality is that no such state laws exist to protect Hawaii Island's biodiversity and environment from the pesticide drift, genetic contamination and degradation of soil, air, and water quality associated with GE crop operations.

The vast majority of both experimental and approved genetically engineered crops are engineered in order to be resistant to and withstand large applications of pesticides. Hawaii County residents and their elected officials know what's best for protecting the future of Hawaii's agriculture, natural resources and wildlife.

While we are very disappointed in this ruling, this is by no means over, but we need your help. The county has 30 days after the date of the ruling to

file for an appeal to a higher court. We have a new county council, and they need to hear from you next week when they decide whether or not to appeal the ruling.

SAVE THE DATE: December 17th, 9am, at the Kona County Council Chambers, the council will convene to decide this. Please start preparing your testimony now. If you cannot make it to the hearing in Kona or one of the satellite offices, you can send in your testimony by email (talking points are below).

The Office of the County Clerk will accept written public testimony by mail to the Office of the County Clerk, 25 Aupuni Street, Hilo, HI 96720; by facsimile to (808) 961-8912; or by e-mail to counciltestimony@co.hawaii.hi.us

It's important to get your testimony in at least one day early. Here is a link to the agenda:

<http://records.co.hawaii.hi.us/Weblink8/DocView.aspx?id=841137>

In addition to sending in testimony to the main email, you can cc your councilmember:

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**Please also sign the Center For Food Safety's
petition to the individual council members~**

**[http://salsa3.salsalabs.com/o/1881/p/dia/action
3/common/public/?action_KEY=15274](http://salsa3.salsalabs.com/o/1881/p/dia/action3/common/public/?action_KEY=15274)**

Talking points to consider for you testimony...

First and foremost, we feel that the community has already spoken loud and clear on this issue. For many months, people took time off of work to show up and testify over and over to support both Bills 79 and 113. At this juncture, the right thing for the county to do is follow through with the law that our island community fought so hard to pass. We are looking to focus on talking points about home rule, and the legal reasons for supporting this appeal, and not so of much a re-hash of why we passed this bill- as in how and why GMO farming is harmful to people and the environment. We did that quite thoroughly already, and now we need to affirm the county's decision on that and get the higher court ruling that we deserve. Although such talking points are very much valid, of course.

Importance of Appealing the Lower Court's decision that rejected Hawai'i County's home rule ordinance on the cultivation of GMO crops/plants:

- Accepting the lower court decision means accepting that GMO contamination of conventional

and organic farms is legal, legitimate, moral, and ok to do.

- Accepting the lower Court decision amounts to a wanton disregard of the property rights and health concerns of those who do not use or want GMO crops and plants.

- Accepting the lower Court decision without opposition is a rejection of the state motto of Ua Mau Ke Ea O Ka Aina I Ka Pono. (“The Life of the Land is Perpetuated in Righteousness”)

LEGAL CONSIDERATIONS:

1. The principle of preemption is to prevent conflict between laws, so that the laws on the higher level of government prevail in cases of conflict. In this case there are no Hawai‘i state laws or regulations relating to the cultivation of GMO crops/plants, other than one Department of Health provision about state notification of proposed federal experimental GMO seed testing permits, so Ordinance 13-121 should be the prevailing law on the matter.

2. This decision by a lower level judge relates to a serious and contentious issue deserving of a definitive decision by an appellate court.

3. There is no other jurisdiction where a municipal level GMO related ordinance has been struck down based on State preemption.

4. The national policy is that laws protecting health are a floor not a ceiling, to laws passed by a lower level of government.

5. Magistrate Kurren's decision relied solely on the authority of the Kauai GMO ordinance case, also decided by Kurren, whose decision is being appealed by Kauai County. Plaintiffs and Magistrate Kurren did not rely on any other case law precedent finding preemption in the case of any county or municipal ordinance – as there is none.

6. During the past two legislative sessions, the biotech corporations seeking to use Hawai'i as their experimental test grounds for new genetically altered crops and plants corporations sought to enact state laws to prohibit County ordinances that would "interfere" with their corporate objectives. BUT, all of that legislation failed... e.g. SB727 (would have gutted County jurisdiction over matters relating to health and life) and SB 590 (would have disallowed County ordinances

relating to agriculture). Hence if the lower Court was correct in saying that the State has carved out this area for exclusive state regulation, then there would have been no need for these attempts to pass this preemption legislation.

7. Corporation Counsel's recommendation in other cases involving matters significant to the public has been that the County should appeal adverse decisions in order to obtain a high Court ruling (e.g. the Missler decision). To take a contrary position in this case would be caving in to the biotechs, and the County will be viewed as abandoning the will of the people, affirmed by over 2,000 pieces of written testimony, at least 570 in-person testimonies, and two petitions for both Bill 79 and Bill 113 -both of which received around 5,000 signatures.

8. The argument that we should not appeal because the decision could even be worse if federal preemption is found on all bases (in other words if the Court went even further in its decision) is meant to create the illusion that the losing side could risk losing even worse. The law is void... whether void on one basis or many.

FINANCIAL CONSIDERATIONS:

There is always some exposure in any lawsuit, however, well experienced attorneys have offered to appeal this case for the County at no cost to the County.

In parting, we would like to share with you again what our mayor wrote to the county council when he signed Bill 113 on December 5th, 2013:

"Aloha, Chair Yoshimoto and Members:

On Nov. 19, 2013 the Hawai'i County Council adopted Bill 113 Draft 3 adding a new article relating to Genetically Engineered Crops and Plants, and on Nov. 21, 2013 delivered the bill to me for my consideration. After careful deliberation and discussions with members of my administration and the public, I am signing Bill 113.

Our community has a deep connection and respect for our land, and we all understand we must protect our island and preserve our precious natural resources. We are determined to do what is right for the land because this place is unlike any other in the world. With this

new ordinance we are conveying that instead of global agribusiness corporations, we want to encourage and support community-based farming and ranching.

The debate over this bill has at times been divisive and hurtful, and some of our hard-working farmers who produce food for our community have been treated disrespectfully. We are determined to protect every farmer and rancher. Agriculture on Hawai'i Island will continue to grow with county assistance, investment and support. That commitment includes initiatives such as the public-private partnership to improve and expand the Pa'auilo Slaughterhouse to support our grass-fed beef industry, and the launch of the Kapulena Agricultural Park, the largest agricultural park in the state on 1,739 acres of county-owned land. It also includes support for innovative training programs to grow the farmers of the future, and to train veterans to engage in agriculture on Hawaiian Home Lands, and the introduction and advancement of Korean Natural Farming as a sustainable method of producing healthier crops

and livestock. It includes completion of the first-in-the-state Food Self-Sufficiency Baseline Study of Hawai'i Island to measure the island's progress toward food self-sufficiency.

We are determined to reunite our farming community to create a stronger and more vibrant agricultural sector. It is time to end the angry rhetoric and reach out to our neighbors. Our farmers are essential to creating a wholesome and sustainable food supply on this island, and they deserve to be treated with respect and aloha. We must turn now to a meaningful, factual dialogue with one another.

With my approval of this bill, our administration will launch a year of research and data collection to investigate factual claims and to seek out new directions that farming in our community should take. This work will include an expanded database detailing the locations of both organic and conventional farms, the crops that are grown, more accurate estimates of the revenue earned from these enterprises, and the challenges our

farmers face in meeting food safety and organic certification requirements. We will work with our farmers and our ranchers to carefully monitor the impacts of this bill over the next year to separate speculation and guesswork from the facts.

Today our communities expect that government will be as cautious as possible in protecting our food and water supplies. We all want to minimize impacts to the environment while also producing abundant, affordable food for local consumption. This ordinance expresses the desires and demands of our community for a safe, sustainable agricultural sector that can help feed our people while keeping our precious island productive and healthy.

Aloha,
William P. Kenoi
MAYOR"

Thank you so much, and please share this information with your contacts.

Mahalo nui, - the team at GMO Free Hawaii Island

Standing Together for Hawai'i

E Kulike Kakou mai ke ka'awale o ka GMO,

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