

November 16, 2023

The Honorable Debbie Stabenow
Chairwoman, U.S. Senate Committee on Agriculture, Nutrition, & Forestry
731 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Glenn “GT” Thompson
Chairman, House Committee on Agriculture
400 Cannon House Office Building
Washington, DC 20515

The Honorable John Boozman
Ranking Member, U.S. Senate Committee on Agriculture, Nutrition & Forestry
141 Hart Senate Office Building
Washington, DC 20510

The Honorable David Scott
Ranking Member, House Committee on Agriculture
468 Cannon House Office Building
Washington, DC 20515

Chairwoman Stabenow, Chairman Thompson, Ranking Member Boozman and Ranking Member Scott:

We are writing to express our strong support for including in the 2023 Farm Bill reauthorization language under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) that codifies regulatory oversight of pesticides at the state level. Under FIFRA, the Environmental Protection Agency (EPA) enters into cooperative agreements with individual states to effectively co-regulate pesticide products. Further, forty-six states have adopted by statute some form of state preemption, reserving for themselves the robust oversight of federal and state pesticide laws.

Ensuring that policy decisions concerning pesticide use remains at the state level is of paramount importance to protect our nation’s food supply, public health, pets, property, and the environment. Scientific experts at the state level conduct extensive evaluation of pesticides after initial approval by the EPA. States also administer and regulate robust certification and training programs to which all professional pesticide applicators must adhere. Absent strong preemption language, a political subdivision can usurp the extensive state and federal regulatory scheme placing all communities in danger of unnecessary exposure to harm that all manner of pests present, from insects to diseases, from weeds to rodents and everything in between.

Regulation of pesticides through strong federal/state cooperation should not be controversial due to the need for consistency across jurisdictions to protect the public from the risks posed by pests. Preemption of pesticide regulation at the state level is no different from a myriad of other preemption laws that require state level certification and training (specifically in trades like

HVAC, plumbing and electrical) designed to protect communities and provide a consistent set of regulations that are implemented and enforced statewide.

Opponents to this common-sense effort have attempted to obfuscate, conflate, and emotionalize this straightforward proposal. We would like to take this opportunity to set the record straight on what state pesticide preemption does and does not do in response to recent efforts to grossly mischaracterize state pesticide preemption.

First, state pesticide preemption is a targeted fix that will ensure that those with expertise at state lead agencies and EPA are the ones to determine pesticide policy and protect the status quo in 46 States where robust oversight of pesticides is already in place, including Arkansas, California, Georgia, Michigan, and Pennsylvania. The status quo will remain in effect for the vast majority of states and prevent further erosion of much needed pesticide oversight at the state level.

Second, state pesticide preemption does NOT restrict a state from making statewide decisions on pesticide use, quite to the contrary. This provision does NOT impact the ability for a state lead regulatory agency to make independent determinations of pesticide labels necessary for state specific needs. Additionally, the legislative branch of each of the 50 states can continue to enact laws to place further restrictions on pesticide use beyond what EPA prescribes. This provision ensures that these decisions that can impact the entire state are done through a democratic, deliberate, transparent, factual and scientific based process that includes all stakeholders and with significant expertise from the state lead regulatory agency that regulates pesticides.

Third, state pesticide preemption does NOT restrict a local government from making decisions on pesticide use on **public** property, e.g., schools, parks, sports fields, and other common areas under their ownership and within their jurisdiction. State preemption does preempt a locality from making uninformed, emotionally driven decisions on whether residents can use EPA and State approved pesticides on **private** property. This ensures the ability for homeowners and business owners to make informed decisions on hiring professionals to responsibly use pesticides on their property to mitigate damages and protect public health.

Fourth, state pesticide preemption does not and would not alter any existing state laws that restrict pesticide use in and around schools. Thirty-six states currently have laws and regulations that restrict the time, manner and distance in which pesticides can be applied in and around schools. As professional applicators we have consistently supported and adhered to these regulations as part of robust school Integrated Pest Management protocols. Additionally, as mentioned in points two and three (above), these regulations are being made at the state level and, because public schools are on public property, there is nothing preventing a locality from making a unilateral decision about what products are used on public property.

Fifth, local decisions about pesticide use that are not based on scientific review by state regulators have real world negative consequences. They often lead to increased pest infestations that exacerbate allergies and disease, increase pest resistance and make it much more difficult to manage invasive species that destroy trees and other native vegetation.

The fact that opponents of pesticide preemption have recently resorted to messaging that state pesticide preemption would endanger schools and children is cynical and categorically false. Ironically, such arguments actually highlight the need to ensure decisions are made at the state level. Sadly, these types of fear-mongering rhetorical tactics are what rules the day in deliberations at the local level to the detriment of communities and businesses that rely on responsible pesticide use to protect people, pets and property. This further solidifies the need to ensure decisions are rooted in facts and based on sound science conducted by experts in their respective fields.

What we are asking Congress to do is to fix a small but significant error that escaped detection five decades ago when FIFRA was amended. At that time, the two committees of jurisdiction agreed that political subdivisions of the states *should not* be permitted to engage in regulation of pesticides, instead reserving that power to the federal government through oversight by the EPA, and the states under their designated lead state agencies. This agreement is documented in the deliberations of the committees, yet the final bill does not contain this language. As discussed in *Wisconsin Public Intervenor v. Mortier*, the Supreme Court said that “The fact that 136v(a) expressly refers only to “[a] State” as having the authority to regulate pesticide use, and the Act's failure to include political subdivisions in its 136(aa) definition of “State,” are wholly inadequate to demonstrate the requisite clear and manifest congressional intent.”

There is precedent for including similar language in the Farm Bill, as demonstrated in H.R. 2 The Agriculture Improvement Act of 2018, where the House included such language in its initial 2018 Farm Bill. However, it was ultimately not included in the final conferenced version signed into law on December 20, 2018. It is therefore important the language be included, and remains in, the final 2023 Farm Bill.

On behalf of the organizations signed below, please consider supporting such language in the 2023 Farm Bill.

Agricultural Retailers Association
AmericanHort
American Mosquito Control Association
Golf Course Superintendents Association of America
National Agricultural Aviators Association
National Association of Landscape Professionals
National Association of State Departments of Agriculture
National Pest Management Association