



BEYOND PESTICIDES

701 E Street, SE ■ Washington DC 20003
202-543-5450 phone ■ 202-543-4791 fax
info@beyondpesticides.org ■ www.beyondpesticides.org

Statement of
Jay Feldman, Executive Director
Beyond Pesticides
LD 1505, An Act To Create Consistency in the Regulation of Pesticides

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We submit this statement on behalf of our members in Maine, including those who live in communities that have adopted ordinances that will be rescinded by LD 1505. Founded in 1981 as a national, grassroots, membership organization that represents community-based organizations and a range of people seeking to bridge the interests of consumers, farmers and farmworkers, Beyond Pesticides advances improved protections from pesticides and alternative pest management strategies that reduce or eliminate a reliance on pesticides. Our membership and network span Maine and the 50 states.

The democratic process is foundational to the culture of Maine and the country. LD 1505 betrays the democratic process. Maine communities want to be able to adopt standards that exceed or are more stringent than state standards as a matter of public health and environmental protection, or quality of life. Why would a town or city want to do use its local authority to adopt a pesticide restriction? It is the simple exercise of the local democratic process that, while meeting state and federal standards, decides that it wants to do more to protect the health of families, children, local waterways, pollinators, and those with pre-existing medical conditions that are exacerbated by pesticide exposure.

The language of the legislation, LD 1505, is broad, deep, undemocratic, and a violation of conservative principles of local control. LD 1505 states: "A municipality may not adopt or enforce any ordinance or rule regulating the sale or use of pesticides, including without limitation ordinances relating to pesticide use limitations, registration, use notification, advertising and marketing, distribution, applicator training and certification, storage, transportation, disposal or product composition or the disclosure of confidential information related to pesticides. An ordinance regulating the sale or use of pesticides adopted prior to the effective date of this subsection is void."

Communities across Maine have long shown an interest in addressing concerns surrounding sensitive populations and unique environmental impacts and have taken meaningful action to restrict pesticide use in accordance with local conditions and concerns. LD 1505 would take away that authority under the guise of correcting a problem that does not exist. In fact, with dozens of pesticide-restrictive ordinances across the state of Maine, the economic interests in the delivery of lawn care services and selling lawn care products and tools have thrived. Local

pesticide restrictions do not stop the use of products, they simply shift to materials that are protective of public health and the environment.

Local Economies Thrive with Pesticide Restrictions

Local policies incentivize the adoption of lawn care practices that meet community expectations by nurturing soil biology to support the natural cycling of nutrients, resulting in resilient turf systems and plants. Because the use of toxic materials undermines the soil food web by harming soil microbial life, identifying ecologically compatible products is an essential component of the system. To give you an example, many communities are now utilizing ecologically sensitive products in accordance with (i) the National List of Allowed and Prohibited Substances of the Organic Foods Production Act (OFPA), passed by the U.S. Congress in 1990 and overseen by a stakeholder board created by the statute, the National Organic Standards Board (7 C.F.R 205.601 and 602), and (ii) the U.S. Environmental Protection Agency's list of exempt pesticides, Section 25(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (40 C.F.R. 152.25). See List of Products Compatible with Organic Landscape Management.¹

Certainly, there is a role for the state and federal government to establish a floor of protection and regulate commerce to protect the health and the environment of the people of Maine. But, when it comes to adding to the levels of protection based on local conditions, or based on a belief within that local jurisdiction there is not adequate protection afforded by the state and federal government, we have a long history in the state of Maine of allowing local governments to elevate that level of protection.

The Supreme Court Upheld the Right of Local Government to Restrict Pesticides

The role of local government in imposing pesticide use requirements is important to the protection of public health and the environment. This right was affirmed by the U.S. Supreme Court in *Town of Casey v. Ralph Mortier*, June 21, 1991. In this case, the Court affirmed the right of cities and towns to regulate pesticides that are not explicitly curtailed by state legislatures. The Court found that in conferring on states the authority to “regulate the sale and use of pesticides so long as the state regulation does not permit a sale or use prohibited by the Act [USC 136v(a)],” the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) “leaves the allocation of regulatory authority to the ‘absolute discretion’ of the states themselves, including the option of leaving local regulation of pesticides in the hands of local authorities.”

In the Casey case, the applicant, who was denied a permit to use a pesticide that resulted in non-target exposure to the town's residents, argued that the town's permitting ordinance “stands as an obstacle to the statute's [FIFRA] goals of promoting pesticide regulation that is coordinated solely on the federal and state levels, that rests upon some degree of technical expertise, and that does not unduly burden interstate commerce.” In this case, the argument is extended to preempting the state of the authority to regulate pesticides.

¹ Beyond Pesticides, Products Compatible with Organic Landscape Management: The market for greener pest management materials grows, *Pesticides and You*, Vol. 37, No 1. 2017, pp18-21.

Protect the Rights of Local Communities

However, the Supreme Court found, “FIFRA nowhere seeks to establish an affirmative permit scheme for the actual use of pesticides,” and the law “does not equate registration and labeling requirements with a general approval to apply pesticides throughout the Nation without regard to regional and local factors, like climate, population, geography and water supply.” In effect, the court recognized the value of local authority in addressing pesticide use in the context of local conditions and concerns.

Congress has historically affirmed the rights of localities. In 1972, the Senate Commerce Committee (which then had joint FIFRA jurisdiction with the Agriculture Committee) found, “Many local governments now regulate pesticides to meet their own specific needs which they are often better able to perceive than are State and Federal regulators.”

There is no evidence that local ordinances regulating pesticides wreak havoc any more than other local ordinances governing zoning, building codes, or protection of the water supply. Historically, local communities have long adopted ordinances to respond to nuisance and matters of public health and welfare. Local jurisdictions have tackled the question of second hand smoke from cigarettes and adopted ordinances protecting the public from this nuisance and potential health problem. Local communities are eager to protect pollinators.

We urge you to protect the right of local communities across Maine to exercise their democratic right to adopt pesticide restrictions that incentivize the adoption of land management practices that support healthy ecosystems and people. We urge you to oppose LD 1505.

Thank you for your consideration of our comments.