

Monsanto and Dow Chemical Challenge Anti-GMO Law in Hawaii

By Philip Merksamer, J.D. Candidate 2017 | December 2, 2014

Less than two weeks after the voters of Maui County, Hawaii [approved](#) a moratorium on the cultivation of genetically engineered crops, Monsanto and Mycogen Seeds (a subsidiary of Dow Chemical) have filed [suit](#) in federal court to block the law. If upheld, the local referendum may substantially limit the development of genetically modified organisms (GMOs) in Maui County, which could have a tremendous impact on how biotech companies conduct research.

Agricultural biotechnology companies such as Monsanto [research](#) and develop genetically engineered corn, soybean, and cotton in Maui and other Hawaiian counties primarily to improve the crops' resistance to droughts, floods, and pests. Hawaii's year-round warm climate [allows](#) multiple crop cycles per year, which accelerates research and development efforts. Moreover, research conducted in Hawaii is [protected](#) under strong U.S. intellectual property laws making Hawaii a preferred site for the development of GMOs. Of note, about 90% of U.S. corn [comes](#) from genetically modified seeds developed in Hawaii.

The lawsuit [alleges](#) that the Maui law conflicts with federal and state laws that already regulate GMOs. Three federal agencies regulate different aspects of GMO development. The U.S. Department of Agriculture reviews field-trial applications for the testing of new genetically engineered crops. In addition, the Environmental Protection Agency regulates genetically engineered pesticides including pesticides engineered within crops. Finally, the Food and Drug Administration evaluates safety assessments of GMOs from the manufacturers to help ensure they are safe for human consumption.

The Hawaiian Constitution [empowers](#) the state legislature to “conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands.” The legislature has enacted statutes in accordance with this provision and has delegated authority to the Hawaii Department of Agriculture to regulate potentially dangerous plants and pests.

Supporting the plaintiffs' position, the federal judge assigned to this suit recently invalidated a Kauai County law that mandated disclosure of GMO planting locations and pesticide use because it was preempted by state law, which has exclusive authority in this domain. The plaintiffs contend that similar to the Kauai law, the Maui law [covers](#) subject matter within the exclusive domain of the State and which conflicts with state law. Proponents of the Maui law [counter](#) that GMO research may harm the environment and the people of Maui, and that the Environmental Rights and Public Trust Doctrine of the Hawaiian Constitution grant authority to the people to enact laws to prevent such harm.

Both sides of the lawsuit have [agreed](#) to a temporary injunction to delay implementation of the Maui law until the court has an opportunity to hear arguments from each side.