

# STIFLING EFFORTS TO BUILD LOCAL FOOD SYSTEMS: HOW PREEMPTION CAN IMPACT YOUR COMMUNITY'S ACCESS TO HEALTHY FOOD

kchealthykids®

 PUBLIC HEALTH  
LAW CENTER  
at Mitchell Hamline School of Law

 KANSAS ALLIANCE FOR  
WELLNESS

 American  
Heart  
Association  
 American  
Stroke  
Association.  
life is why™

6/26/2018

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# TODAY'S PRESENTERS



Natasha Frost,  
Senior Staff Attorney  
Public Health Law Center



Ashley Jones-Wisner,  
State Policy Director  
KC Healthy Kids

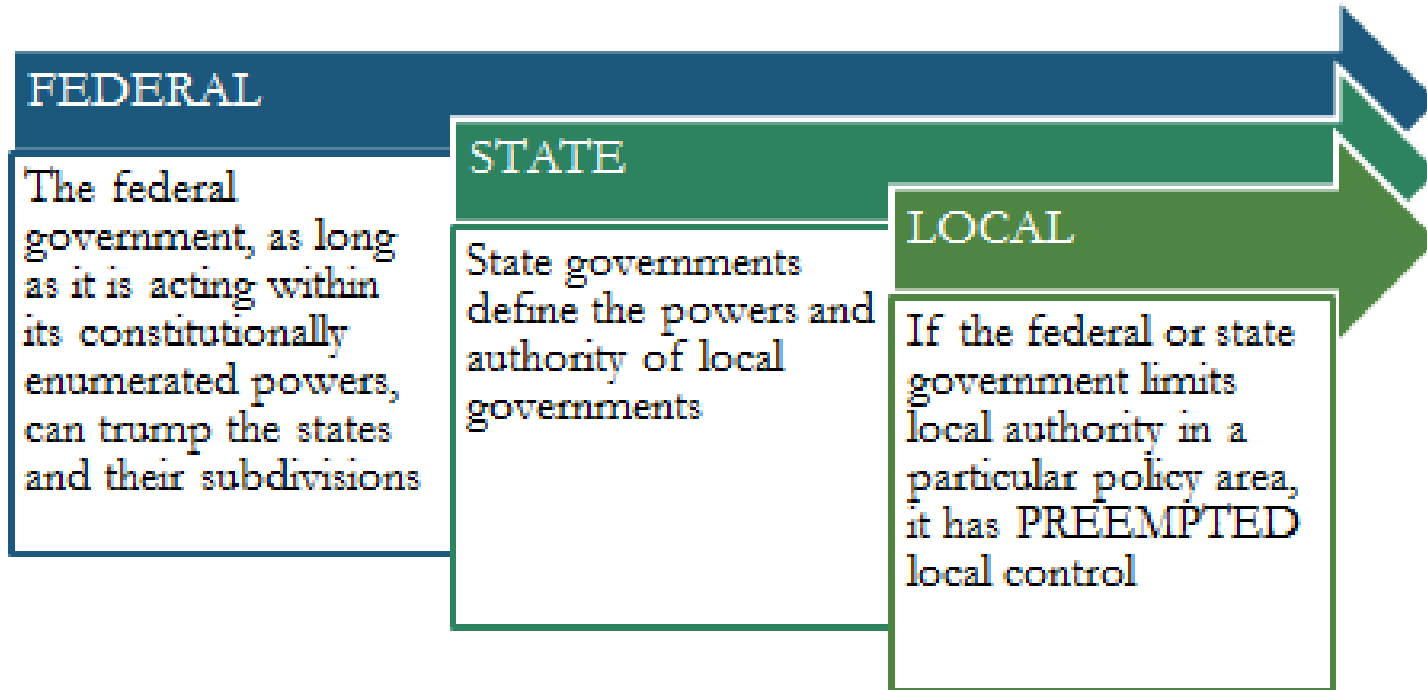


Julie Ralston Aoki,  
Director, Healthy Eating  
& Active Living  
Public Health Law Center



Misty Lechner,  
Advocacy Project Director  
American Heart Association,  
Midwest Affiliate

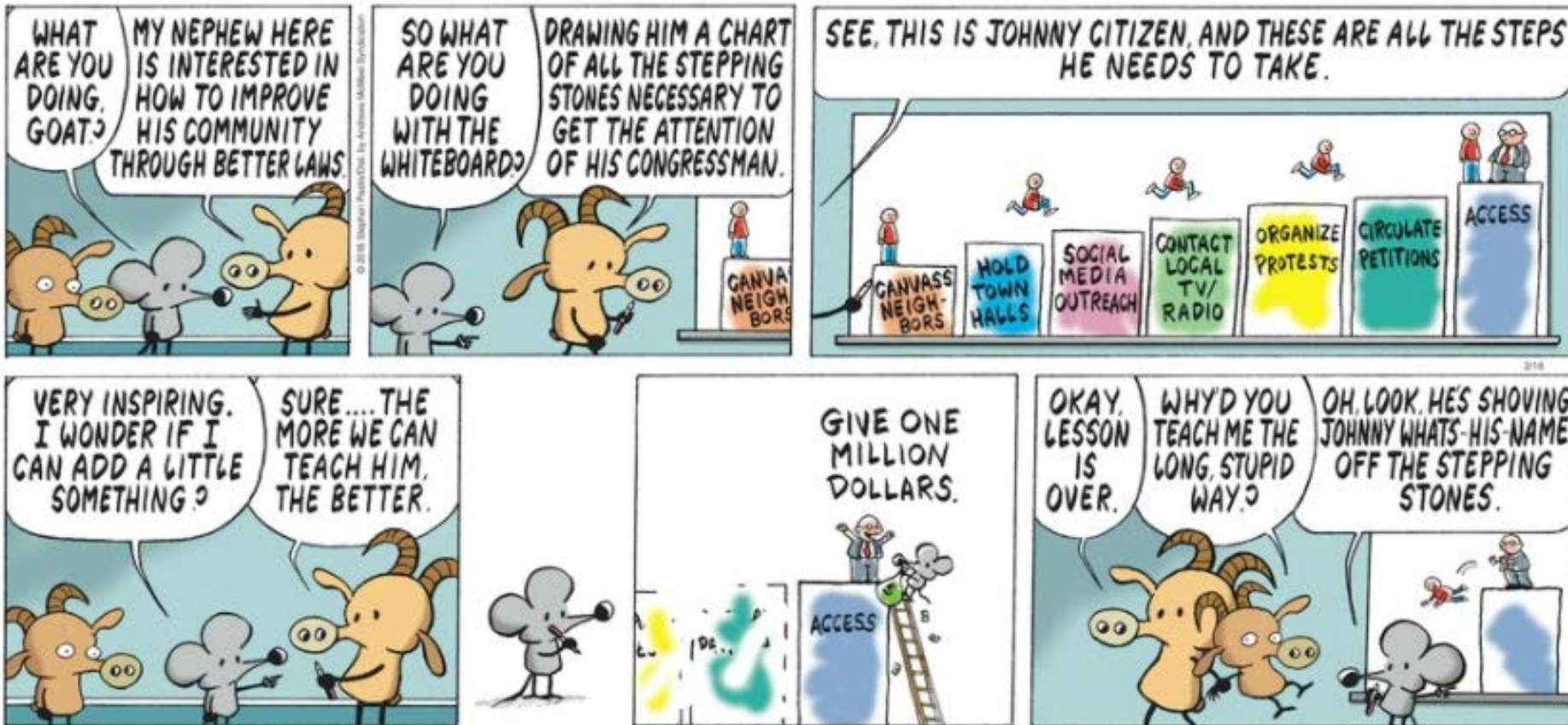
# WHAT IS THIS ABOUT?



# WHY PREEMPTION MATTERS:

## PEARLS BEFORE SWINE

BY STEPHAN PASTIS



# TOBACCO INDUSTRY STRATEGY

"We could never win at the local level... So the Tobacco Institute and tobacco companies' first priority has always been to preempt the field, preferably to put it all on the federal level, but if they can't do that, at least on the state level."

--Victor L. Crawford, Former Tobacco Institute Lobbyist

Skolnick, A.A., "[Cancer converts tobacco lobbyist: Victor L. Crawford goes on the record](#)," *Journal of the American Medical Association* 274(3): 199 , July 19, 1995.

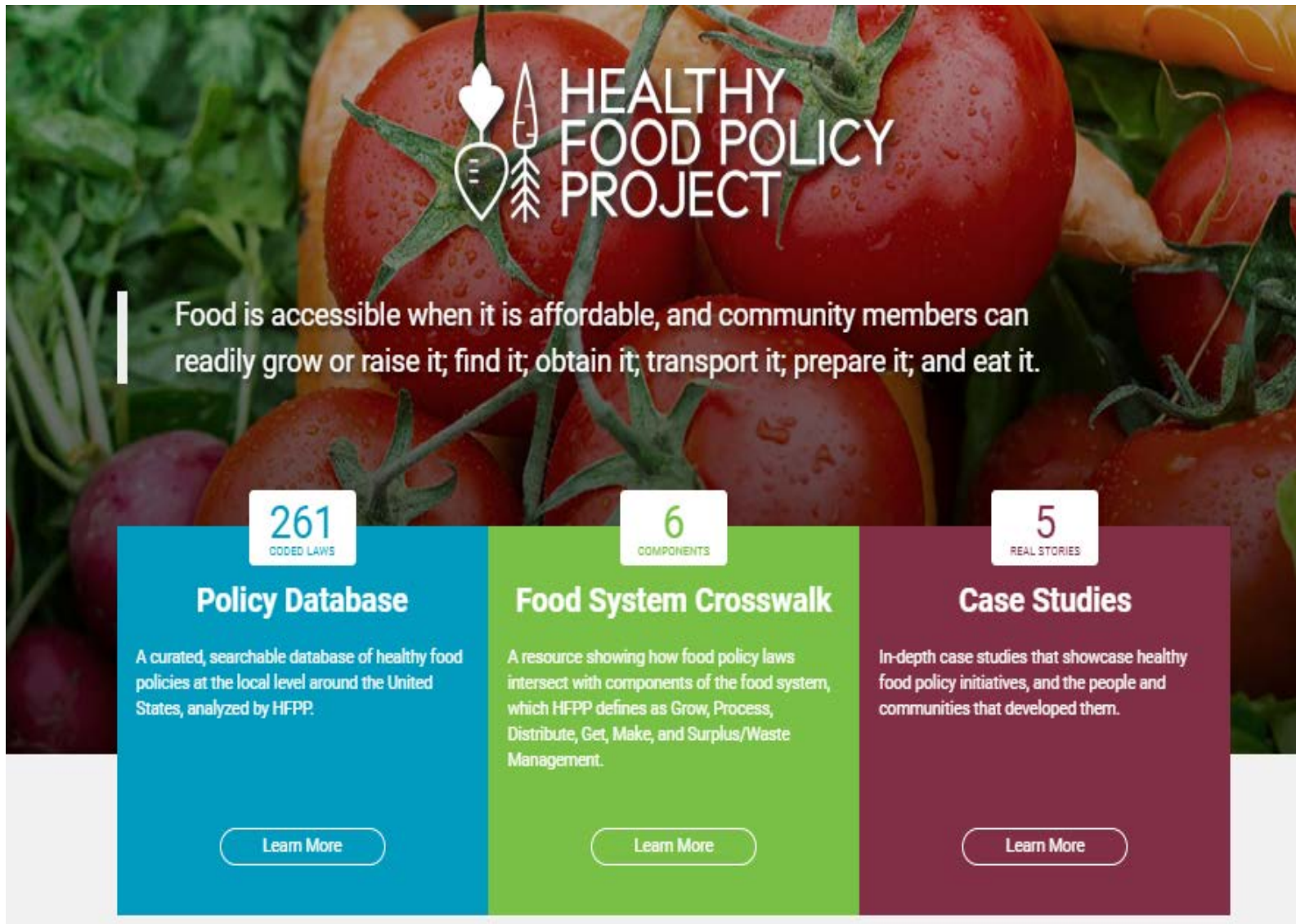
# WHY PREEMPTION MATTERS

- Kills momentum
- Results in **WEAKER** laws
- Trades future progress for short-term gain
- Commercial tobacco control movement rule: never accept preemption



Photo credit: Star Tribune

# THE VALUE OF LOCAL AUTHORITY



**HEALTHY FOOD POLICY PROJECT**

Food is accessible when it is affordable, and community members can readily grow or raise it; find it; obtain it; transport it; prepare it; and eat it.

261 CODED LAWS	6 COMPONENTS	5 REAL STORIES
<b>Policy Database</b> A curated, searchable database of healthy food policies at the local level around the United States, analyzed by HFPP.	<b>Food System Crosswalk</b> A resource showing how food policy laws intersect with components of the food system, which HFPP defines as Grow, Process, Distribute, Get, Make, and Surplus/Waste Management.	<b>Case Studies</b> In-depth case studies that showcase healthy food policy initiatives, and the people and communities that developed them.
<a href="#">Learn More</a>	<a href="#">Learn More</a>	<a href="#">Learn More</a>

# THE VALUE OF LOCAL AUTHORITY

## Kansas Resources

[Home](#) > [Topics](#) > [Special Collections](#) > [Kansas Resources](#)

The Public Health Law Center works with public health organizations and communities in Kansas to support progress towards achieving healthy behavior goals. This work includes supporting efforts to improving access to healthy, affordable food and clean water, supporting a robust local food system, increasing physical activity opportunities, increasing access to affordable housing and child care, and reducing commercial tobacco use.

We work with Kansas communities to identify and understand the dynamics of equity and social determinants of health, so communities can use policy and systems change to support health for all. We tailor our publications, trainings and individualized legal technical assistance to fit the unique contexts facing Kansas communities.

Since 2013, we have worked with grantees and partners with funding from the Kansas Health Foundation, the Kansas Department of Health and Education, Pathways to a Healthy Kansas (a grant program of Blue Cross and Blue Shield of Kansas), Kansas Action for Wellness (a program of the American Heart Association), KC Healthy Kids and other public health partners.

For more information, please email [Mary Marrow](#) or [Natasha Frost](#).

Featured resource collections are below. Other relevant resources in right sidebar (desktop/tablet), or end of page (mobile).



### [Kansas Healthy Food Resources](#)

Increasing access to healthy food is emerging as a priority in Kansas as local governments and communities are taking action to address food insecurity, support local producers, and improve healthier food and beverage options. These resources provide an overview of Kansas laws that support access to healthy and affordable local food and influence initiatives that provide healthier food environments.



### [Kansas Bicycling and Walking Resources](#)

Kansas communities are taking action to promote health, prosperity, and economic vitality by increasing physical activity through bicycling and walking. These resources provide an overview of laws and policies impacting bicycling and walking to support these efforts.

### Related Topics

[Access to Healthy Affordable Food](#)

[Bicycling and Walking](#)

[Child Care](#)

[Local Government](#)

### Resources

[Tobacco 21 Policies in Kansas \(2018\)](#)

[Season Extension Activities in Kansas: Legal Issues and Local Policy Options \(2017\)](#)

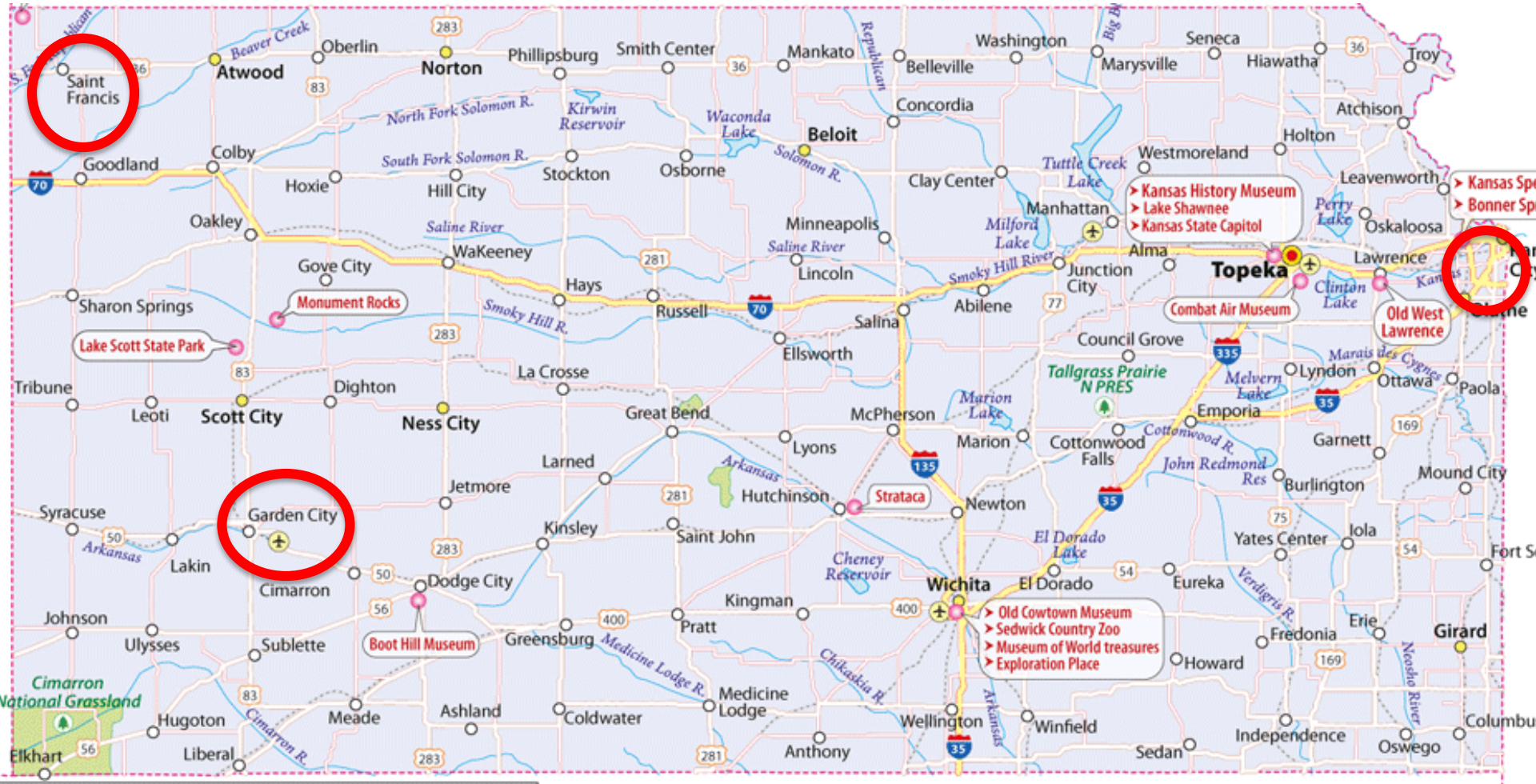
[Stopping Tobacco Use in Kansas Schools \(2017\)](#)

[Smoke-Free Policies in Kansas Public Housing \(2017\)](#)

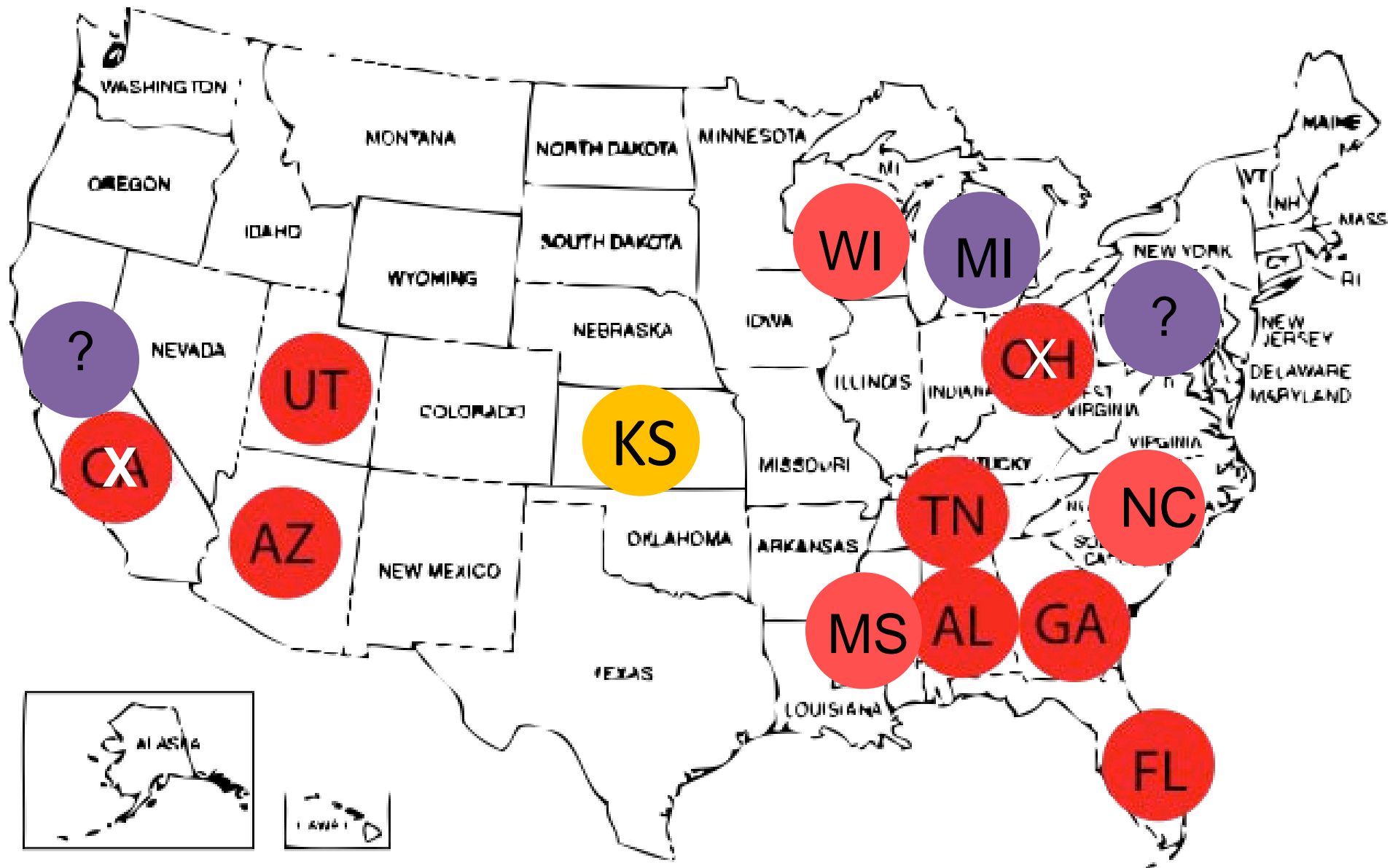
[Model Tobacco-Free Policy For Kansas Schools \(2017\)](#)

[School Community Use Liability in Kansas \(2017\)](#)





“ALL FOOD SYSTEMS ARE LOCAL.”



# PERPETUATION OF FOOD-BASED HEALTH DISPARITIES?? (OH, KS, MS)



Local governments may not:

“condition any license, permit or regulatory approval for a food service operation *upon the existence or nonexistence of food-based health disparities;*”

or

“where food service operations are permitted to operate, ban, prohibit or otherwise restrict a food service operation *based upon the existence or nonexistence of food-based health disparities* as recognized by the department of health, the institute of health or the centers for disease control.”

# WHY PREEMPTION MATTERS: CAN ENTRENCH INEQUITIES





Reshape your  
Community

KC Healthy Kids rallies the people in our communities to improve access to affordable fresh food and safe places to walk and play.

[kchealthykids.org](http://kchealthykids.org)



## Political Background House Bill 2595

- Battle between state and local government
- Education Policy and Funding
- Gun control/concealed carry
- Tax lids
- Elections
- Nutrition labeling and HB 2595



“Under House Bill 2595, municipalities would be unable to require retail food establishments to post nutritional information, including caloric content and allergy warnings.”

– The Topeka Capital-Journal February 16, 2018

“House Bill 2595 would restrict local regulation and decision-making on public health issues relating to nutrition. KAC is concerned with another state encroachment on local control.”

- Melissa Wangeman  
Kansas Association of Counties



# HB 2595 Timeline

Feb 2: Introduced

Feb 12: Hearing in House Committee

Feb 19: Amended and passed committee

Mar 18: Amended and passed House 89-34

Apr 30: Conference Committee report adopted by House

May 1: Conference Committee report adopted by Senate

July 1: HB 2595 effective date







## Supporters of HB 2595

- Americans for Prosperity
- Kansas Beverage Association
- Kansas Chamber of Commerce
- Kansas Cooperative Council
- Kansas Corn Growers
- Kansas Dept. of Agriculture
- Kansas Farm Bureau
- Kansas Livestock Association
- Kansas Restaurant and Hospitality Association
- Kansas Wheat Growers
- Rep. Gene Sullentrop



## Opponents of HB 2595

- American Cancer Society
- American Heart Association
- Hodgeman County
- Johnson County
- Kansas Action for Children
- Kansas Association of Counties
- Kansas Association of School Boards
- Healthcare Foundation of Greater Kansas City
- Kansas Farmers Union
- Kansas League of Municipalities
- Kansas Public Health Association
- Kansas Rural Center
- KC Healthy Kids
- Sunflower Foundation
- Unified Government of Wyandotte County
- YMCAs of Kansas



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# WHAT DOES THE LAW SAY?



**PUBLIC HEALTH LAW CENTER**  
at Mitchell Hamline School of Law

## Kansas' Government Control of Local Food Policies Law

**What is HB 2595/SB 366?**

This is a Kansas law enacted in 2016 that preempts local authority in favor of state government authority in several areas, including with respect to local regulation and oversight of food service operations, retail food establishments, and other matters concerning local food and agricultural practices. This law ("Government Control" law) also expressly limits local authority to try to reduce food-based health disparities.<sup>1</sup> It is very similar to laws passed in Ohio and Mississippi (see

box on page 3 about the invalidation of Ohio's law). The Ohio,<sup>2</sup> Mississippi,<sup>3</sup> and Kansas laws closely resemble an ALEC (American Legislative Exchange Council) bill.<sup>4</sup>

**What does the Government Control law say about restrictions on the authority of "political subdivisions?"**

The law says that the following topics are matters of statewide concern that can only be regulated through state legislation:

- the regulation of "consumer incentive items," which are toys, crayons, coupons, and any other premium, prize or consumer product associated with a meal served by a food service operation;
- nutrition labeling for food and nonalcoholic beverages in restaurants, retail food establishments or vending machines; and
- how food service operations are "characterized."

**WHAT IS PREEMPTION?**

Preemption occurs when, by legislative or regulatory action, a "higher" level of government (state or federal) eliminates or restricts the authority of a "lower" level over a given issue. Preemption can impact a local government's ability to implement public health strategies that are different from or go beyond existing state and federal laws.

Public Health Law Center, Preemption in Public Health, <http://publichealthlawcenter.org/topics/other-public-health-law/preemption-public-health>. For more information about the impact of preemption on public health efforts, see Grassroots Change, Preemption, <http://grassrootschange.net/ks/issues/preemption>.

 This fact sheet is funded by the Kansas Health Foundation to increase access to and consumption of healthy food in Kansas.

Public Health Law Center 875 Summit Avenue St. Paul, Minnesota 55105 [www.publichealthlawcenter.org](http://www.publichealthlawcenter.org) 651.290.7506

<http://www.publichealthlawcenter.org/sites/default/files/resources/phlc-fs-KS-pre-emption-resources-WEB-2016.pdf>

# KANSAS PREEMPTION LAW

Limits local food policy choices by prohibiting **political subdivisions** from passing certain kinds of **laws** that would impact **food retail and food service**



# WHO IS RESTRICTED BY THE LAW?

- **Political subdivisions:** Entities that can pass laws or collect taxes--cities, counties, townships, school boards, etc.
- NOT private groups, foundations, nonprofits, community coalitions

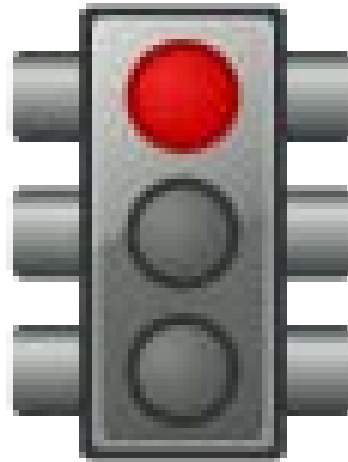
# WHAT FOOD ENVIRONMENTS ARE COVERED?

- Restaurants of all types
- Clubs, commissaries
- Snack/concession stands
- Mobile food trucks
- Soup kitchens
- “any other private, public or nonprofit organization or institution routinely serving food and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge”
- Grocery stores selling hot food?



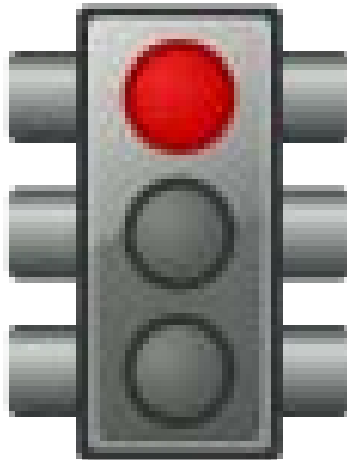
# WHAT LOCAL POLICY LISTED AS PREEMPTED IN PREEMPTION LAW?

- Menu labeling/calorie labeling laws
- Laws to improve the nutritional quality of kids meals



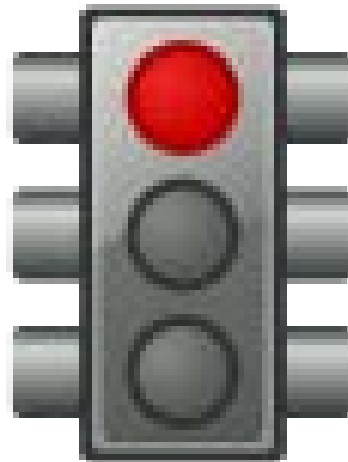
# WHAT LOCAL POLICY LISTED AS PREEMPTED IN PREEMPTION LAW?

- Restrict sale, distribution or serving of foods/nonalcoholic beverages approved for sale by a federal or state agency
- Restrict the growing or raising of livestock or crops approved for sale by a federal or state agency



# WHAT LOCAL POLICY LISTED AS PREEMPTED IN PREEMPTION LAW?

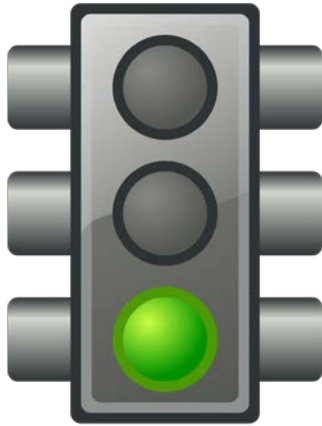
- Restrictions, including through licenses, permits, or other regulatory approval process, based on the existence (or nonexistence) of a food-based health disparity





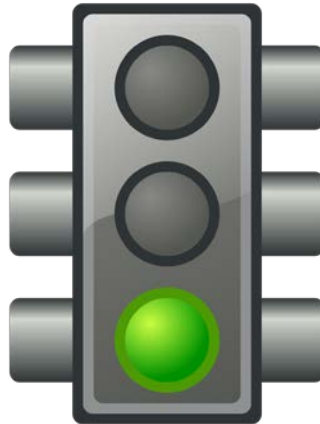
# WHAT IS LISTED AS ALLOWABLE UNDER PREEMPTION LAW?

- General planning and zoning
- Community gardens



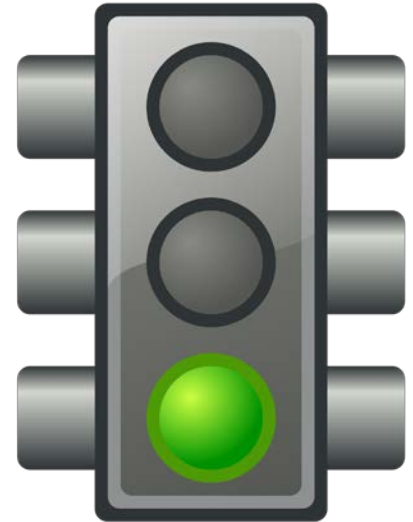
# WHAT IS LISTED AS ALLOWABLE UNDER PREEMPTION LAW?

- Nutrition education activities
- Double Up Bucks and similar kinds of financial assistance programs
- Food and Farm Councils



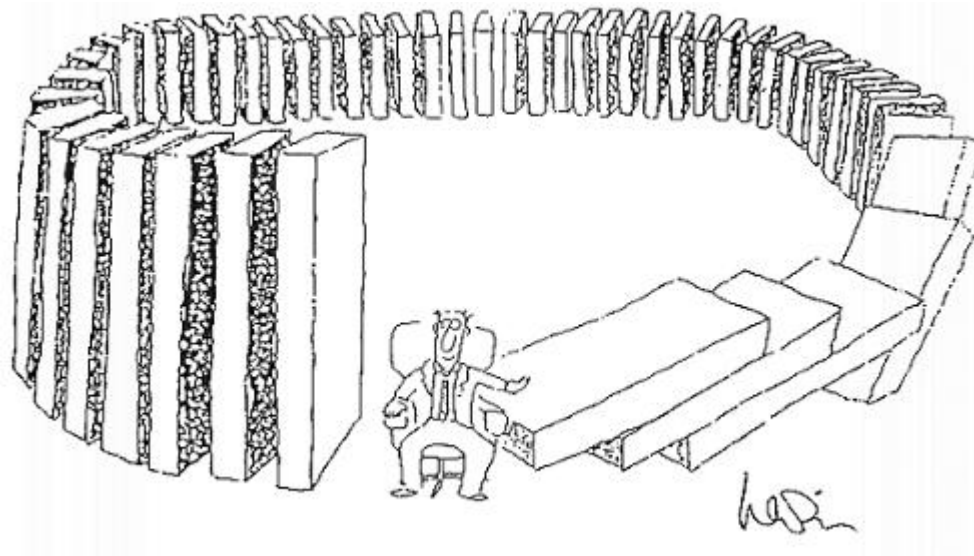
# WHAT IS LISTED AS ALLOWABLE UNDER PREEMPTION LAW?

- Administrative policies that set nutrition standards for vending machines, concessions, cafeterias in city/county facilities
- As long as they are not part of a law or ordinance that restricts another entity



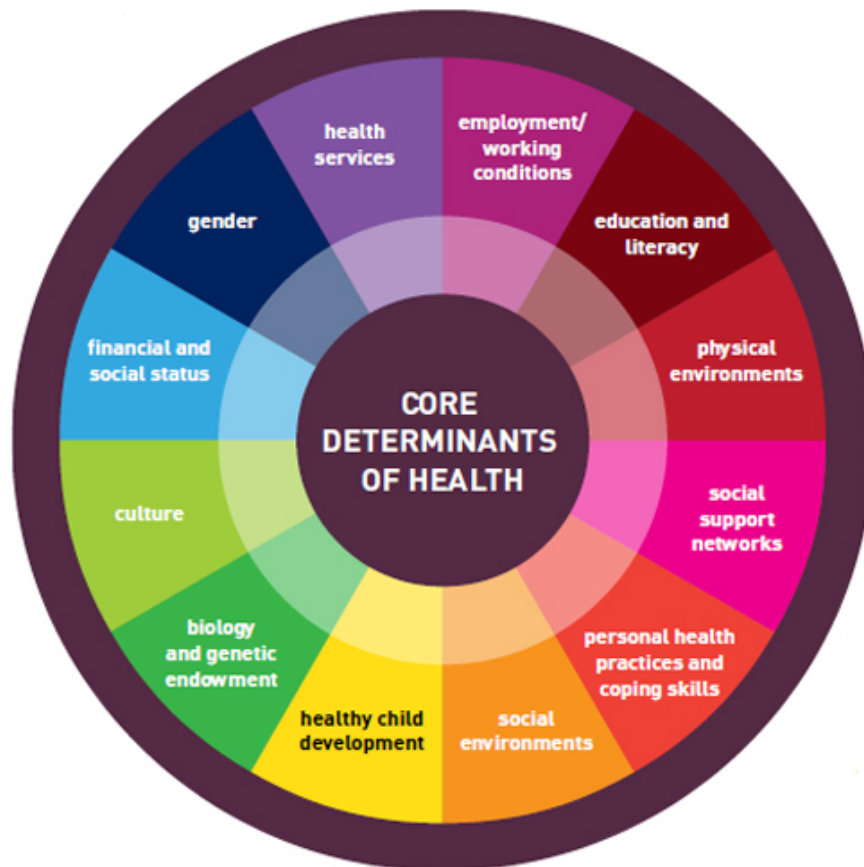
# UNINTENDED CONSEQUENCES?

- Animal control/beekeeping and similar laws?
- Local food preference laws?
- Recruitment of grocery stores to underserved areas?





# WHAT DOES IT MEAN?



# HAVE QUESTIONS? CONTACT ME



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[www.publichealthlawcenter.org](http://www.publichealthlawcenter.org)



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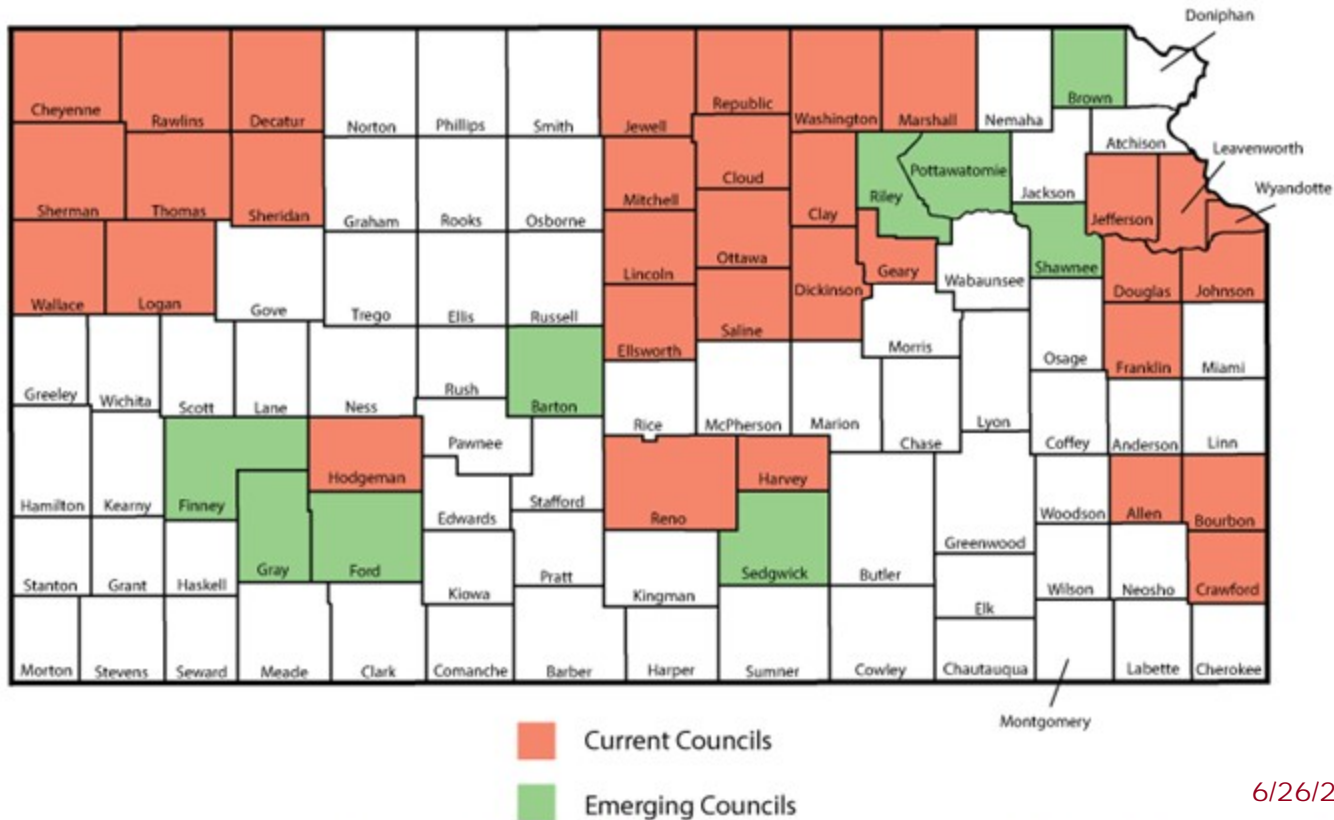
# Local Impact: Government Control of Local Foods Law

Misty Lechner  
Advocacy Project Director  
American Heart Association



KANSAS ALLIANCE FOR  
**WELLNESS**

# Current Councils in Kansas



A statewide network of communities, organizations and individuals committed improving the health of Kansans by creating healthy food and beverage environments.

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# Advocates made ALL the difference

Local advocates helped fight the popular perception among lawmakers that Kansans desired this legislation. **THANK YOU** for your hard work!

My salute to HB 2595, "anti-Bloomberg" bill prohibiting nanny-state nutrition regs such as soft drink size limits



← (actual tweet by a lawmaker)

A statewide network of communities, organizations and individuals committed improving the health of Kansans by creating healthy food and beverage environments.

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# How can communities or councils move forward?

1. Know what this law preempts
2. Know what this law does not address
3. Prepare yourself for the grey area
  - We can't know everything impacted until the courts decide

## How can communities or councils move forward?

4. If you are told “no” on a policy campaign or you are concerned that you shouldn’t move forward because of preemption–

**Tell me [Missy.Lechner@heart.org](mailto:Missy.Lechner@heart.org)**

4. Legal counsel for your city or county may need to talk to PHLC