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OP-ED CONTRIBUTOR

Bullies Along the Potomac

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WITH conservatives controlling the White House and Congress, one might expect states' rights to be firmly in vogue. But several recent federal actions have seriously weakened the states' efforts to protect health and the environment.

In March, for example, the House of Representatives passed, and the Senate is considering, the benign-sounding "National Uniformity for Food Act," which would bar states from addressing food-borne hazards, leaving food safety solely to the Food and Drug Administration. Thirty-nine state attorneys general signed a letter opposing the act.

The proposed law would keep California from applying its highly effective Proposition 65 — a law meant to protect people from carcinogens — to foods. This year, the state used Proposition 65 to stop Pepsi from selling soda bottles with labels that contain lead. The federal proposal would also keep Michigan and Connecticut from requiring labels for sulfite-containing dried fruit, which can cause serious allergic reactions.

This act is no anomaly. A report last month from Representative Henry Waxman, Democrat of California, shows that since 2001 Congress has enacted 27 laws that pre-empt state authority in areas from air pollution to consumer protection.

The Bush administration is following Congress's lead — but in a quieter way that is likely to undermine states even more. Its strategy to block California limits on greenhouse-gas emissions from cars (which 10 other states plan to adopt) is a case in point. Since 1967, California has been allowed to set its own automotive pollution limits, subject to limited review by the Environmental Protection Agency. But this spring, the Department of Transportation stepped in by inserting into its new fuel-economy standards for light trucks a statement that the exclusive federal authority to set fuel-economy standards bars California's emissions limits, because car manufacturers might comply with emission limits by increasing fuel efficiency. The car industry will surely use this to reinforce its position in court that California cannot set greenhouse-gas limits.

The F.D.A., for its part, is moving to limit states' authority over prescription drug labels. Buried in the preamble to

the agency's new labeling standards — meant to make drug labels easier to read — is a statement that state agencies and courts cannot require any safety information beyond what the F.D.A. requires. GlaxoSmithKline has already cited the F.D.A. statement in court, arguing that the company is not responsible for failing to disclose that Paxil increases suicide risk.

The F.D.A. has also moved — faster than Congress — to oppose California's food safety efforts. The agency tried to block a lawsuit brought by California's attorney general against tuna manufacturers for failing to place warnings on tuna cans about the dangers of mercury. Because of the risks to fetal development and children, the F.D.A. itself has recommended limits on tuna consumption, but it has stopped short of requiring labels. In the California case, at the tuna companies' request, the agency wrote a letter to the attorney general accusing California of interfering with the F.D.A.'s wish "to avoid overexposing consumers to warnings" of tuna's risks. In May, the judge ruled that the state could not require any extra warnings.

Federal environmental and health rules have historically provided a floor of minimum protection. States, for their part, have led the way on countless matters, from requiring health insurers to cover mammograms to stringently regulating mercury emissions from power plants.

So why is the federal government suddenly trying to block state efforts to protect public health — through bureaucratic actions largely outside the public view? The unfortunate result is that big businesses' revenues are being shielded, while protections for consumers and the environment are being stripped away.

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