



FOOD LAW
and POLICY CLINIC
HARVARD LAW SCHOOL

Food Waste Policy: Using Systems Change to Stop Squandering One of our Greatest Resources

Emily M. Broad Leib, JD
Teale Lecture Series, University of CT
September 19, 2019

ABOUT FLPC

Provide **legal and policy advice** to nonprofits, government agencies, entrepreneurs, and other organizations on a range of food policy questions



Educate students about the role of law and policy in the food system



Our Work

Department of ENERGY & ENVIRONMENTAL PROTECTION

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ENERGY ENVIRONMENTAL QUALITY NATURAL RESOURCES OUTDOOR RECREATION PURA

Reduce/Reuse/Recycle

Recycling...It's the Law!
 Recycling Means Jobs
 Recycling At Home
 Business Recycling Assistance
 Recycling at Schools and Institutions
 Special Event and Venue Recycling
 Municipal Recycling Resource Center
 State Agency Recycling Resources
 Reduce/Reuse/Recycle Main Page
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Food Waste Reduction and Recovery

[Why Does It Matter?](#)
[EPA Food Recovery Hierarchy](#)
[Food Banks and Rescue Programs](#)
[Food Donation: Liability and Food Safety](#)
[Preventing Wasted Food at Home](#)
[Preventing Wasted Food at School](#)

[Preventing Wasted Food at Food Businesses](#)
[EPA Food Recovery Challenge](#)
[U.S. Food Waste Challenge](#)
[Cleaning Crops from Local Farms / Survey](#)
[Additional Resources](#)

"Throwing away food is like stealing from the tables of the poor, the hungry"
 ~ Pope Francis, World Environment Day, 2013

Legal Fact Sheets
[Connecticut Food Donation: Date Labeling Laws](#)
[Connecticut Food Donation: Liability Protections](#)
[Connecticut Food Donation: Tax Incentives for Businesses](#)
NEW: [Connecticut Food Donation: Feeding Food Scraps to Animals](#)

Why Does it Matter?
 The single largest component of solid waste sent to incinerators and landfills is food waste. According to the EPA, in the United States in 2011 - 12, just 3.9% was diverted from

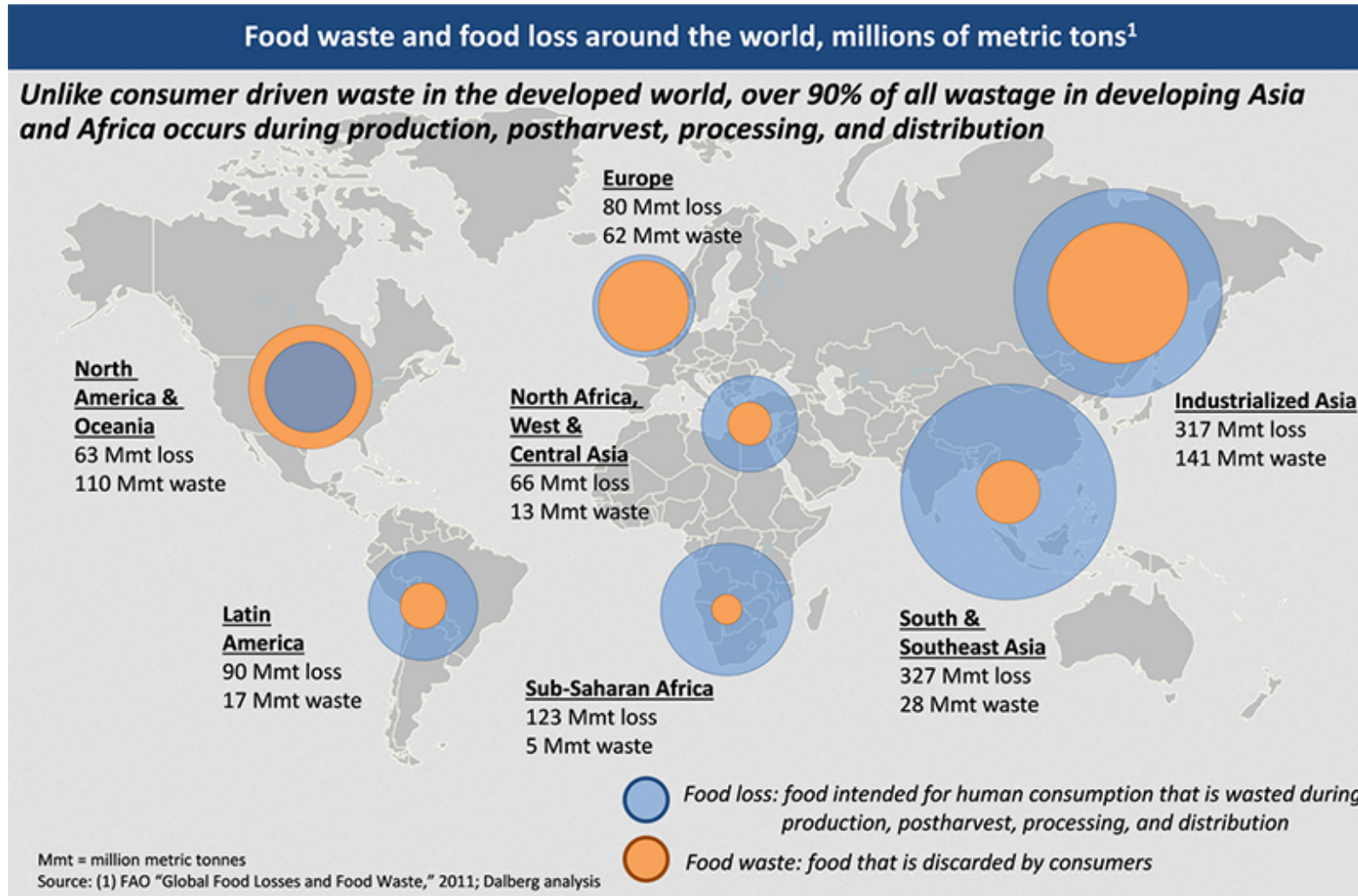


Keeping Food Out of the Landfill: Policy Ideas for States and Localities



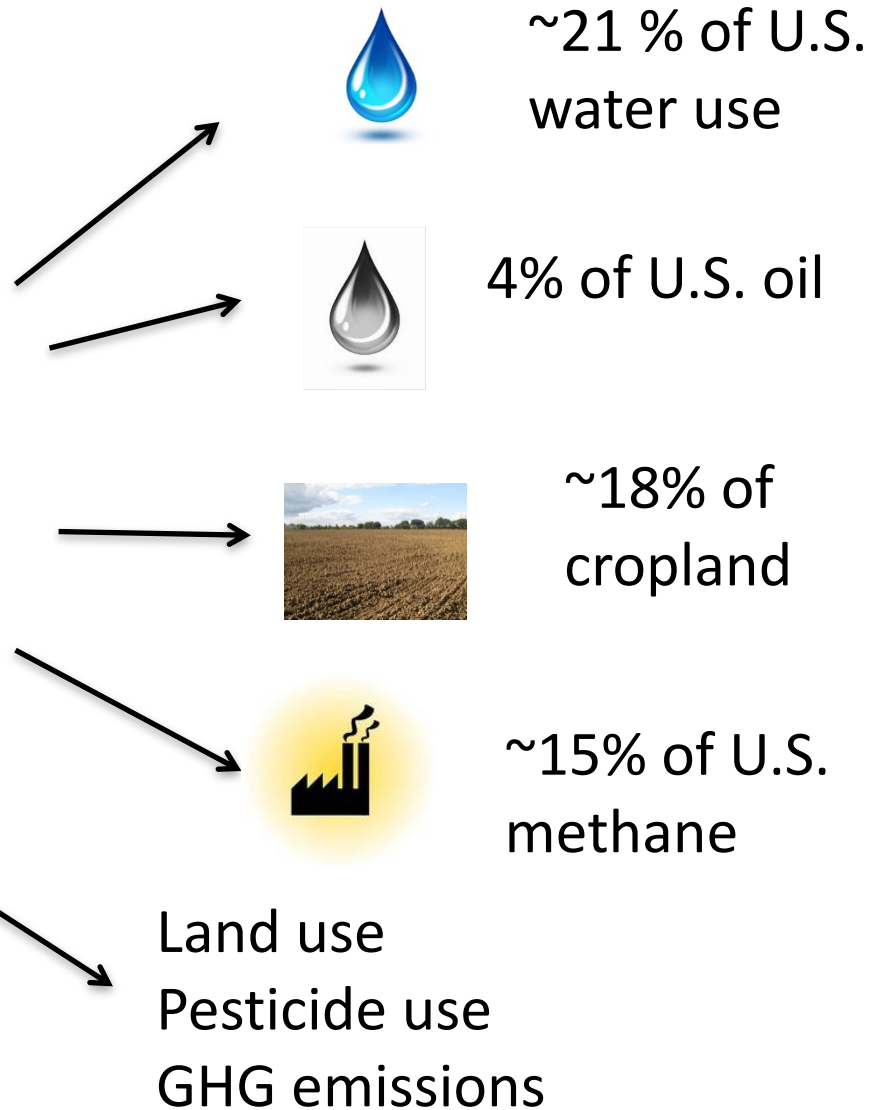
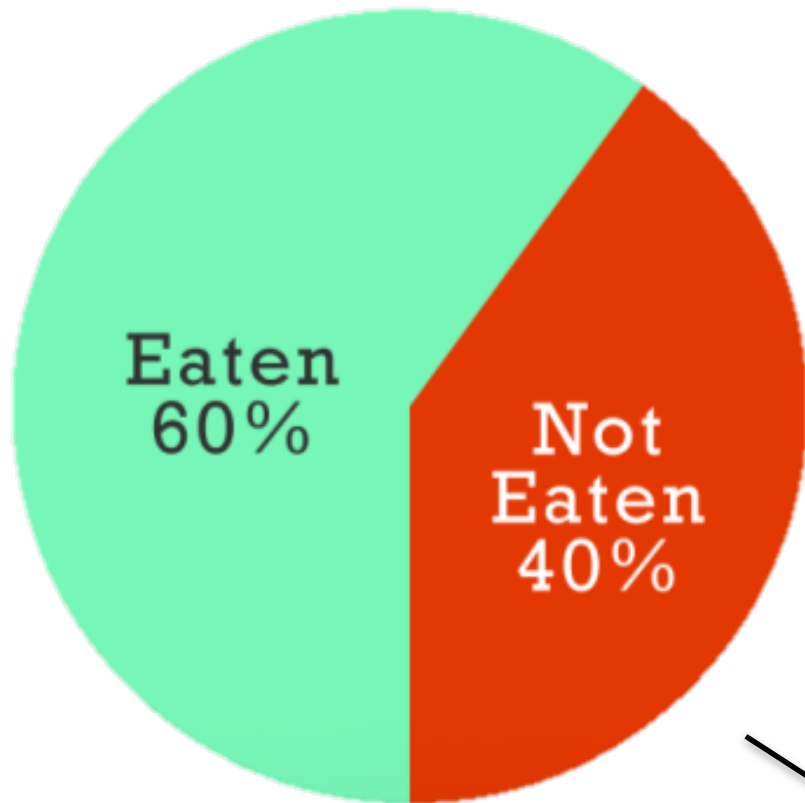


1.3 Billion Tons of Food Loss/Waste Globally





U.S. Food Waste



Intergov'l Panel on Climate Change (Aug. 2019)

ipcc

REPORTS

WORKING GROUPS

ACTIVITIES

NEWS

CALENDAR



FOLLOW



SHARE

Climate Change and Land

An IPCC special report on climate change, desertification, land degradation, sustainable land management, food security, and greenhouse gas fluxes in terrestrial ecosystems

FINDING: Reducing food waste by 50% would generate net emissions reductions in the range of 20 to 30% of total food-sourced GHGs.

Addressing Food Waste: Triple-Bottom Line Opportunity



People:

- Recovering just **30%** of wasted food could feed all food insecure Americans

Planet:

- 20% reduction could save **1.6 trillion gallons** of water and avoid **18 million tons** of GHGs annually

Profit:

- 20% reduction could generate **15,000** new jobs and **\$1.9 billion** in annual business profit



**WHAT DO YOU THINK ARE
CAUSES OF FOOD WASTE?**

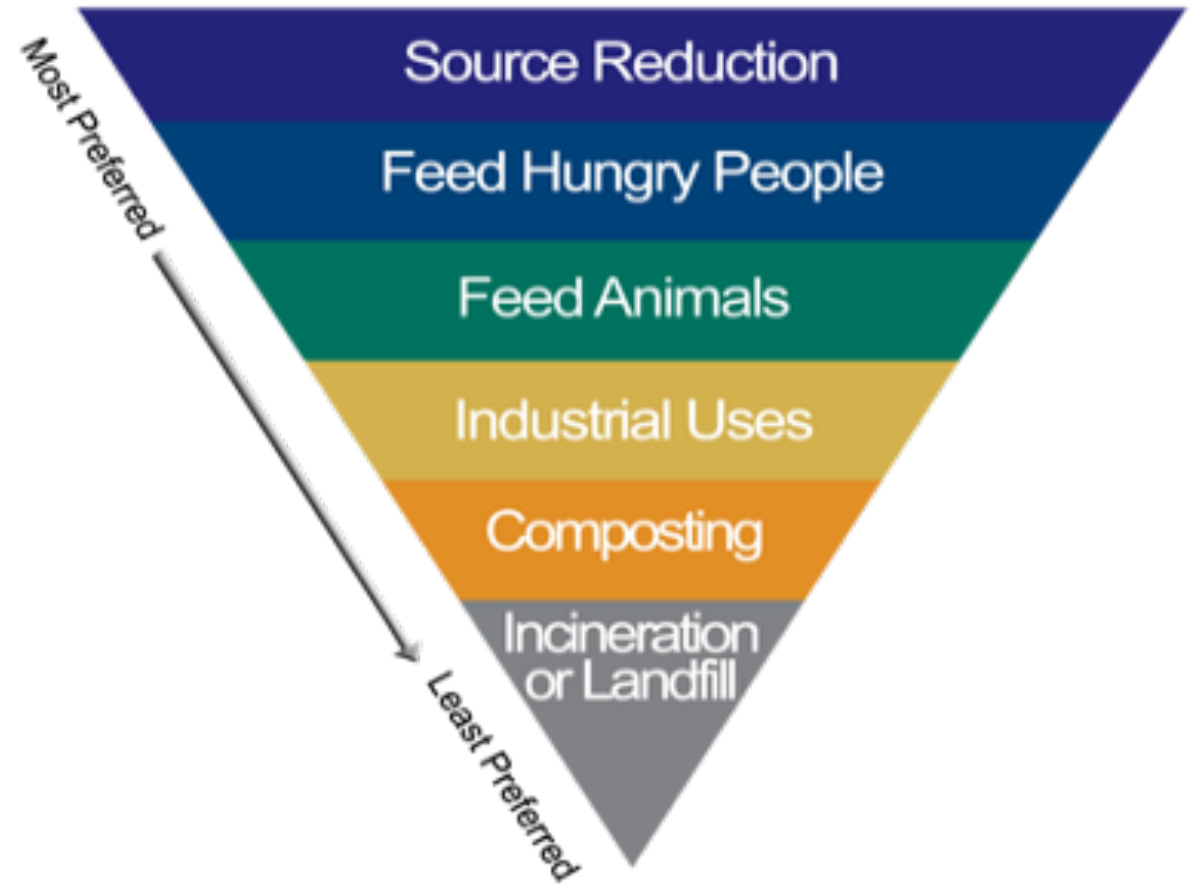


WHAT ARE SOME SOLUTIONS?

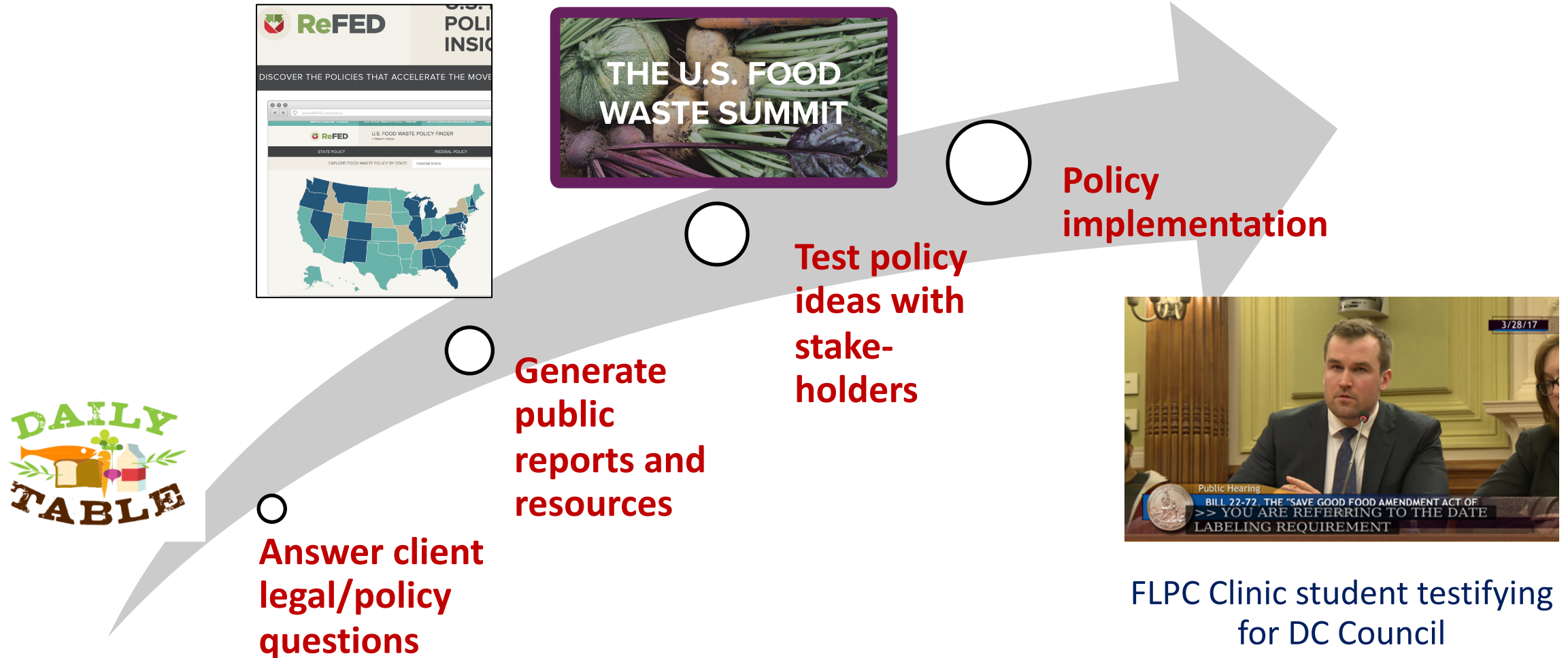
What is the role for policy?

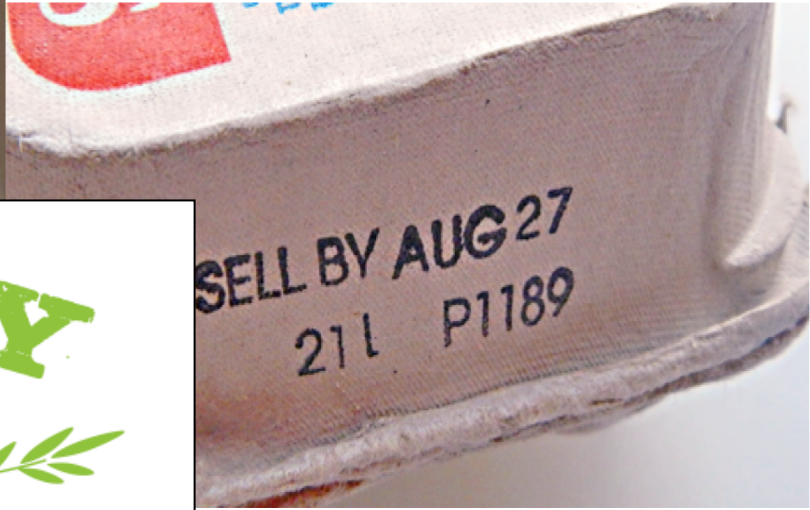
- Regulation
- Labeling
- Tax
- Liability
- Spending
- Education and awareness
- Technical assistance
- Reporting requirements

EPA Food Recovery Hierarchy



FLPC Role in Policy Development



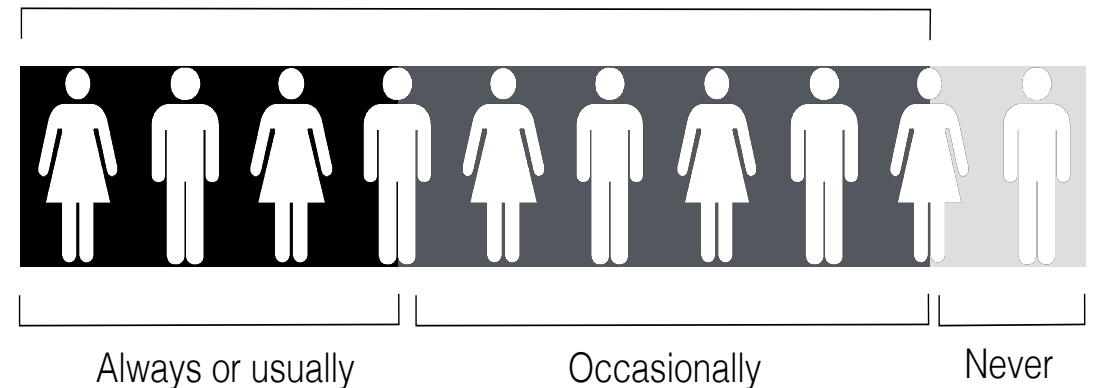
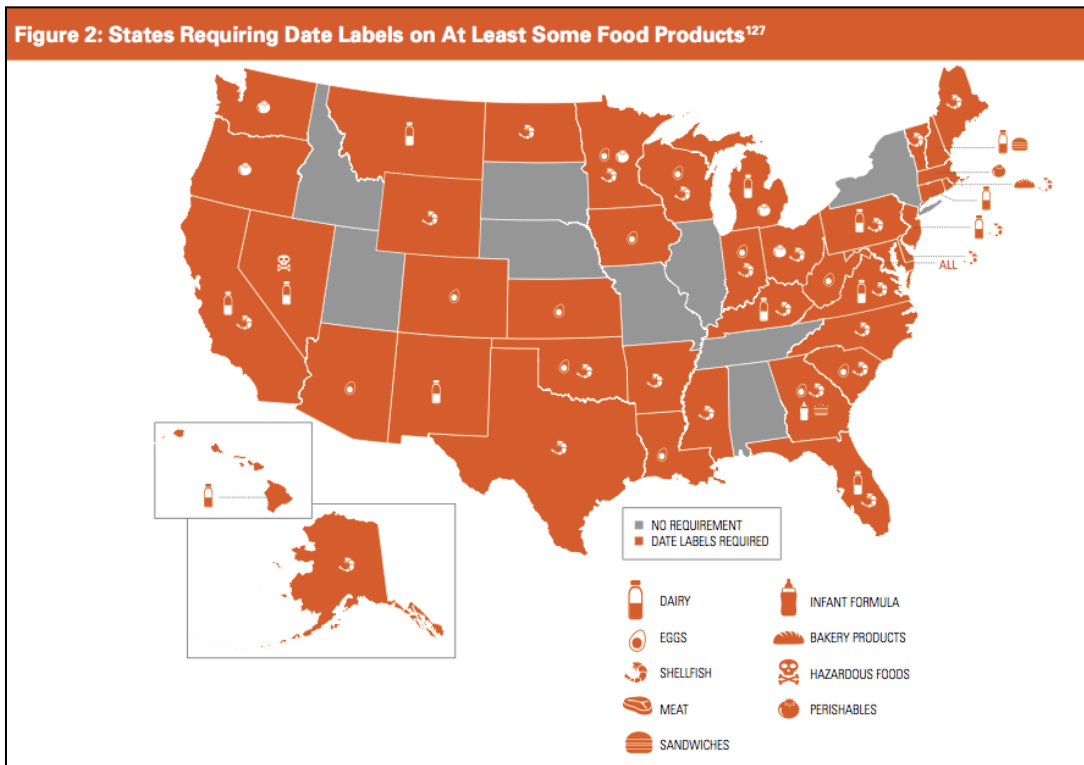




Problems with the System

Dating Game, FLPC and NRDC (2013)

84% of consumers at least occasionally discard food close to or past the date on its package



Consumer Perceptions of Date Labels, FLPC, National Consumers League, Johns Hopkins (2016)





Voluntary Date Label Standard

- FMI/GMA voluntary standard for the U.S. (Feb 2017); Consumer Goods Forum (international) (July 2017)
 - “BEST If Used By” for quality
 - “USE By” for discard
- ***But***
 - Not universal – some may use labels incorrectly
 - In over half of the states, state laws prevent compliance with the standard
- Working on national legislation to turn this into policy



DATE LABELS:

The Case for Federal Legislation



JUNE 2019

Food Date Labeling Act (Introduced July 2019)

Elements

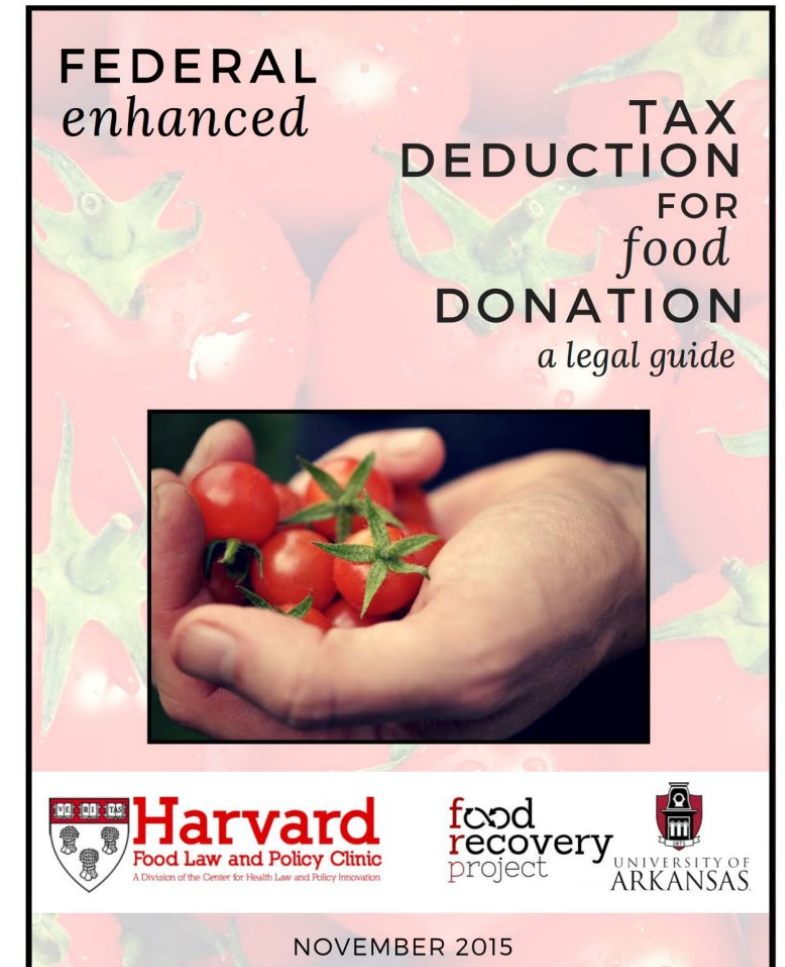
- 1) Standard labels – optional, but if a label is used it must be one of the following:
 - “BEST IF USED by” for quality
 - “USE by” for discard
- 2) Bans states from prohibiting sale or donation of foods past quality date
- 3) Requires FDA/USDA consumer education

Tax Incentives & Barriers



Incentives

- Federal tax deduction
 - (1) General Deduction
 - (2) Enhanced Deduction [almost 2x as much value as general deduction]
- Impact of federal tax deduction
 - When enhanced deduction expanded in 2005, donation increased by 137% the next year
- 12 states have state tax incentives

But, incentives may serve as a barrier – because certain types of nonprofits are not eligible → stifles innovation



Liability Protection

SEPTEMBER 2016
 FS-16-08-C

FACT SHEET

RECOMMENDATIONS TO STRENGTHEN THE BILL EMERSON GOOD SAMARITAN ACT

Food donation provides a critical link between organizations with wholesome, surplus foods and the 42 million Americans who are food insecure today. Unfortunately, many food manufacturers, retailers, and restaurants cite fear of liability as a primary deterrent to donating food. A 2016 survey by the Food Waste Reduction Alliance, a joint food industry task force, found that 44 percent of manufacturers, 41 percent of restaurants, and 25 percent of retailers identified liability concerns as a barrier to donation.¹ There are strong federal and state liability protections for food donations, but some small changes could help extend and strengthen those protections.

THE EMERSON ACT
 In 1996, Congress passed the Bill Emerson Good Samaritan Food Donation Act (Emerson Act), which provides a federal floor of civil and criminal liability protection to food donors and nonprofit organizations that receive food donations and distribute those donations to those in need.² The Emerson Act protects a broad range of food donors, including individuals, businesses, and government entities, as well as gleaners (an individual or entity that harvests donated agricultural crops) and food recovery organizations. The Emerson Act protects donors and nonprofit recipients from civil and criminal liability for injury caused by the donated food unless either acts with gross negligence or intentional misconduct. Donors and distributors must meet the following four requirements to receive protection under the Act:

1. The food must be donated to a nonprofit organization in good faith.
2. The food must meet all federal, state, and local quality and labeling requirements; if all quality and labeling requirements are not met, the food must be reconditioned to meet all quality and labeling requirements before it can be donated.
3. The donated food must be distributed by the receiving nonprofit to needy individuals.
4. The needy individuals receiving the food may not pay for it.

This broad base of liability protection was intended to encourage food donations, yet donors are often unaware of it. Further, several provisions in the Act should be broadened to better align with the current food recovery landscape. Clarifying the Emerson Act's coverage and expanding its protections, as described below, can boost more food donations. Most of our suggestions would require Congressional action to modify the Act's language. However, a federal agency can take action immediately to clarify the Emerson Act by providing interpretive guidance.

1. AN EXECUTIVE AGENCY SHOULD BE RESPONSIBLE FOR IMPLEMENTING AND INTERPRETING THE EMERSON ACT
 Unlike many statutes which delegate power to an agency to interpret and enforce them, Congress never assigned the Emerson Act to a particular federal agency for interpretation and enforcement. Thus, no agency is responsible for providing federal guidance or raising awareness of the Act. Further, the Emerson Act has not been challenged in court, so there are no judicial interpretations of it. Given the dearth of judicial or administrative interpretations, potential donors can only refer to the 1996 statutory language to determine whether or not they are protected. As a result, donors do not know how to interpret some of the Act's more ambiguous terms, such as "apparently wholesome," "needy individual," and "gross negligence" and are unclear on the Act's requirements.

For more information, please contact:
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www.nrdc.org/policy
www.chfpj.org/flpc
www.facebook.com/nrdc.org
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- Federal Law:
- **Bill Emerson Good Samaritan Act (42 U.S.C. 1791)** protects donors, nonprofits, volunteers, gleaners from civil and criminal liability *unless* they act with gross negligence or intentional misconduct
 - Food must be donated to a **nonprofit in good faith**
 - Food must meet all federal/state/local **quality and labeling requirements** (or be reconditioned to meet them)
 - Donated food must be distributed to **needy individuals**
 - Needy individuals receiving the food **must not pay for it**
- States also have protections; some go above federal

Liability Protection - Issues

- Confusing terminology, for example, Emerson Act protects donors, etc. if they donate an “apparently fit grocery product”

“...a grocery product that meets all quality and labeling standards . . . even though the product may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.”

- Other issues – keeping up with innovation
 - Doesn’t protect direct donations to needy individuals
 - Doesn’t protect donations if the end recipient pays





Food Safety: Regulatory Landscape

- Many anecdotes about lack of information or risk averse health inspectors posing barriers to donation
- Language in the FDA Food Code winds up in state codes (all 50 states have adopted some version)
- FDA Food Code does not include any language or guidance on food safety for donations

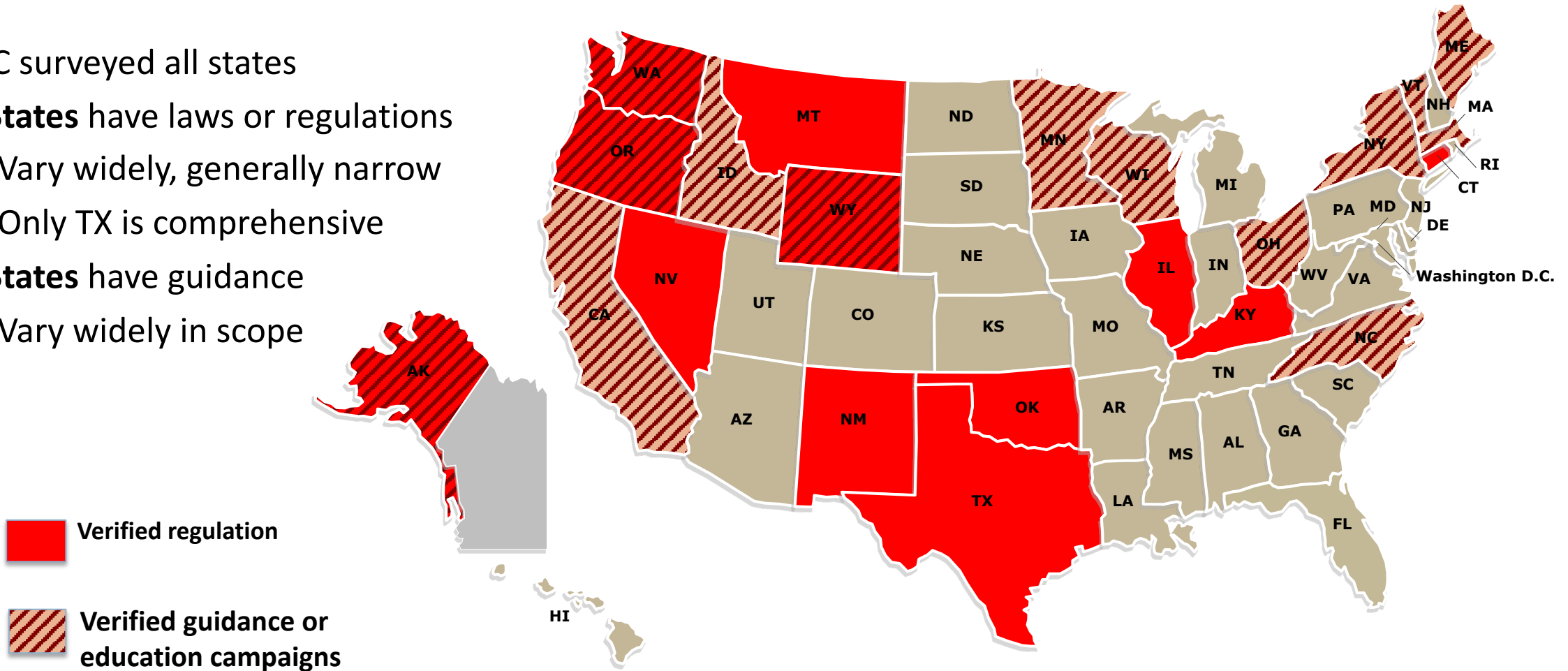
→ So, what do states do?





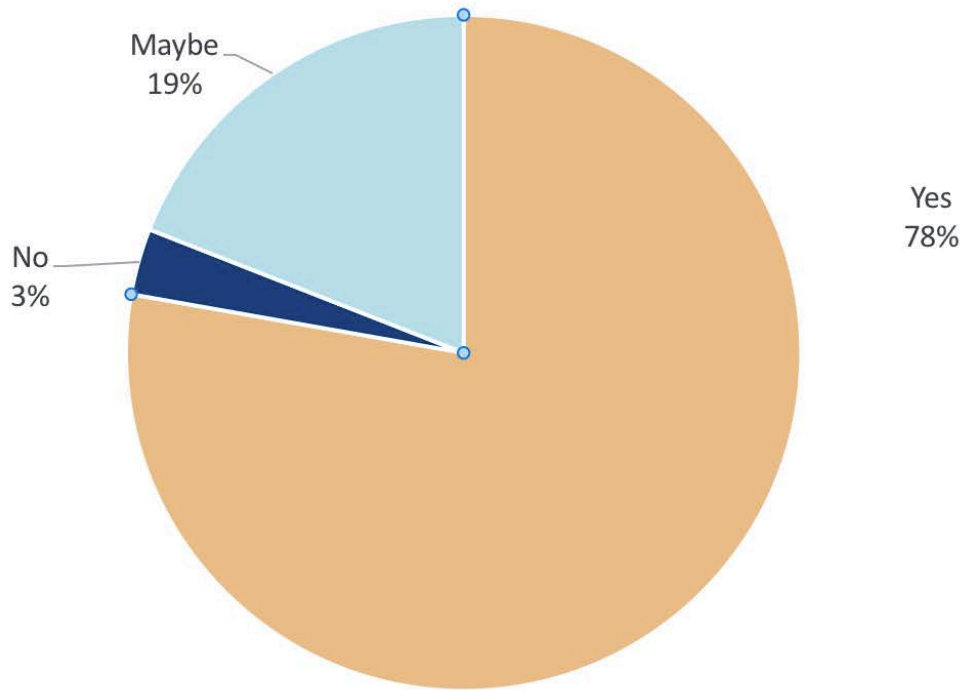
Food Safety for Donations: 50-state survey

- FLPC surveyed all states
- **12 States** have laws or regulations
 - Vary widely, generally narrow
 - Only TX is comprehensive
- **14 States** have guidance
 - Vary widely in scope

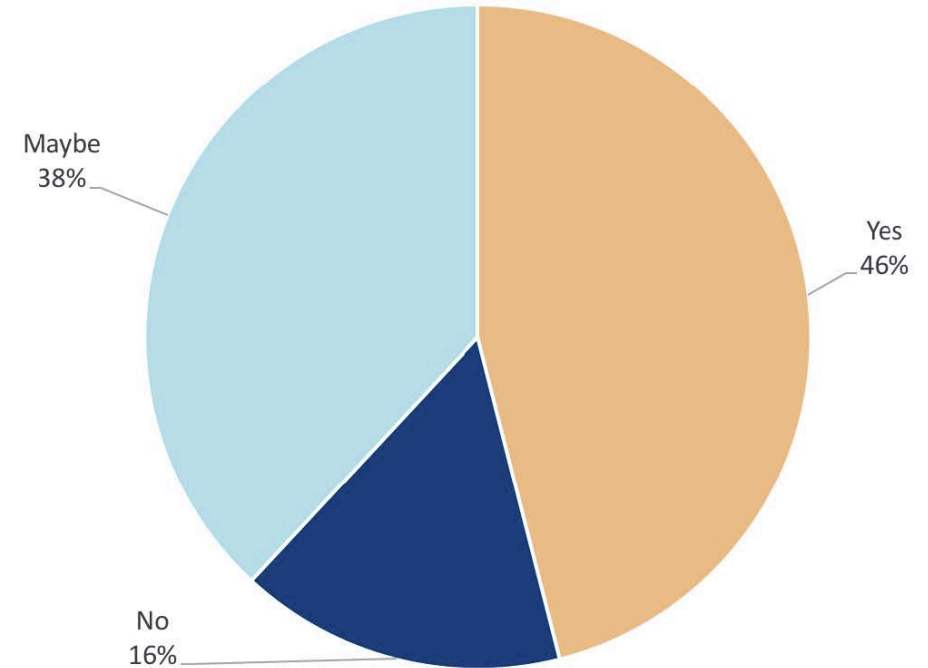




Survey Results: Model Language



Do you think model language would be / would have been helpful in creating food safety guidance for food donations?



Would you like to see model requirements specific to food safety for food donation practices included in the FDA food code?

Donation/Diversions Requirements

- 6 states and 10 cities in the U.S.
 - Eg) Massachusetts prohibits businesses from sending > than 1 ton of food to the landfill per week
- France:
 - Requires grocery stores over 400m² to donate extra food; requires them to create contracts with charitable organizations to redistribute food



ReFED

U.S. FOOD WASTE POLICY FINDER

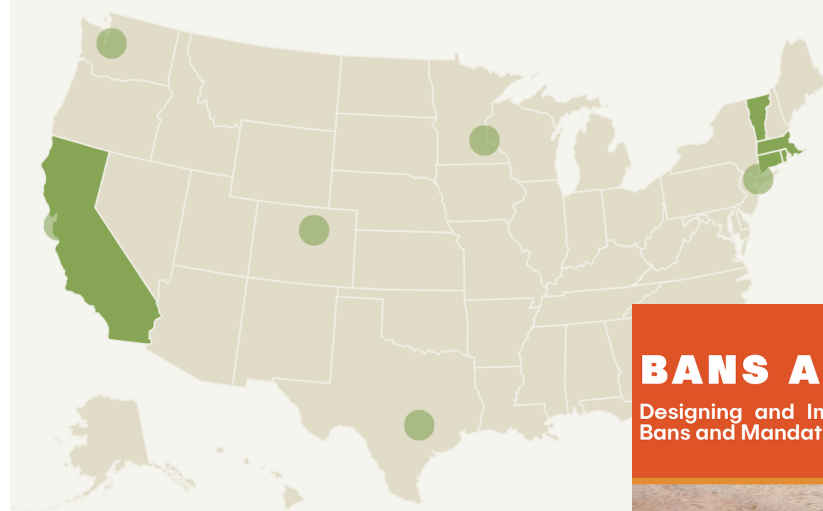
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STATE POLICY

FEDERAL POLICY

EXPLORE FOOD WASTE POLICY BY STATE

CHOOSE STATE



STATES AND MUNICIPALITIES THAT HAVE ORGANIC WASTE RECYCLING LAWS

BANS AND BEYOND:

Designing and Implementing Organic Waste Bans and Mandatory Organics Recycling Laws



JULY 2019



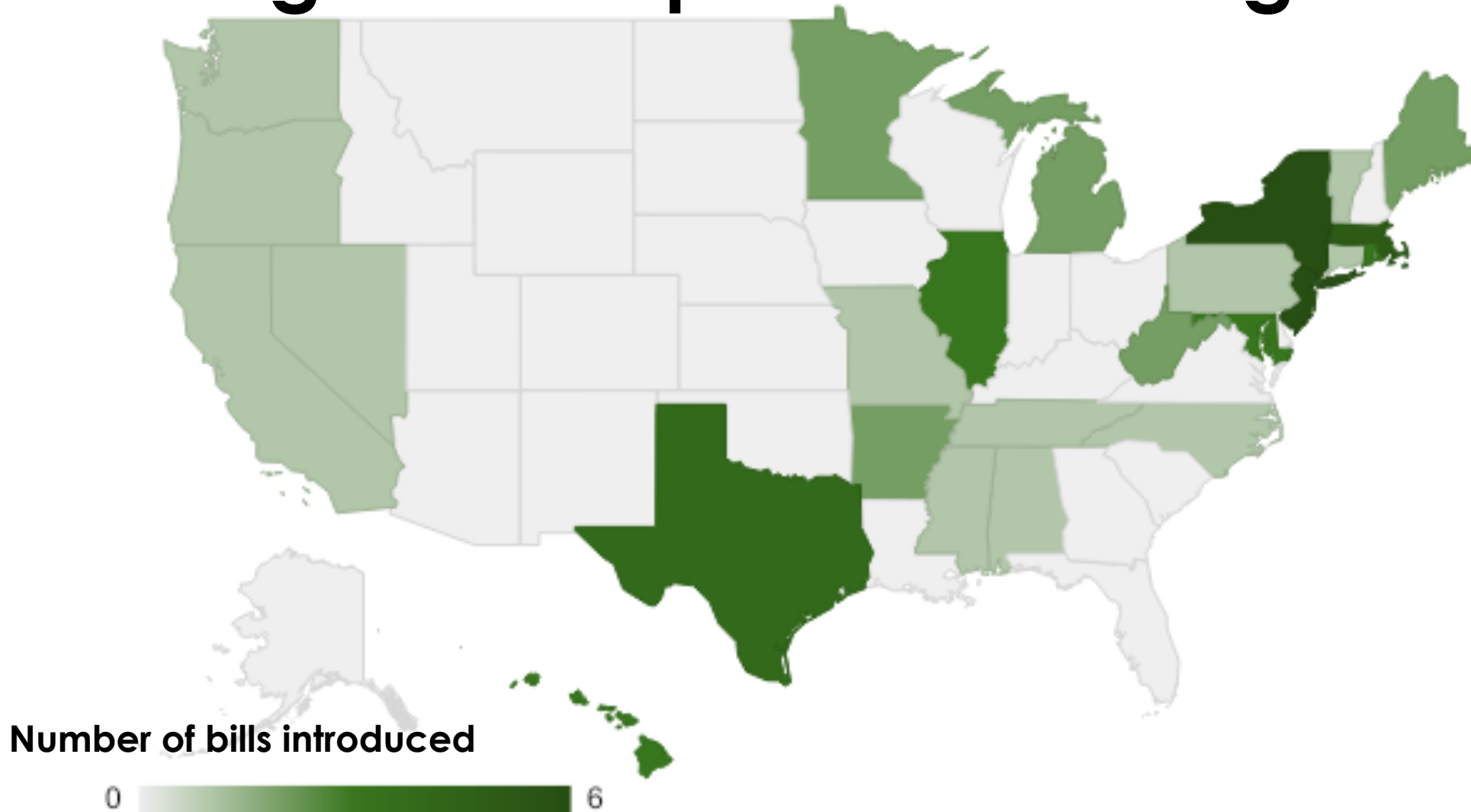
Progress?

Recent U.S. Proposed/Passed Laws

- S.1680/H.R.3444 – Food Recovery Act of 2017
- H.R.952 Food Donation Act of 2017 and S.2787 Food Donation Act of 2018
- S.2824 Farm to Food Bank Act (2018)
- H.R.4425 Food and Farm Act (2017)
- S.2337/H.R.3981 Food Date Labeling Act of 2019
- **H.R.2/S.3042 – Agriculture Improvement Act of 2018 (Farm Bill)**
- **Winning at Reducing Food Waste month & national strategy (Apr 2019)**
- National Food Waste 50% Reduction Goal (Sept 2015)



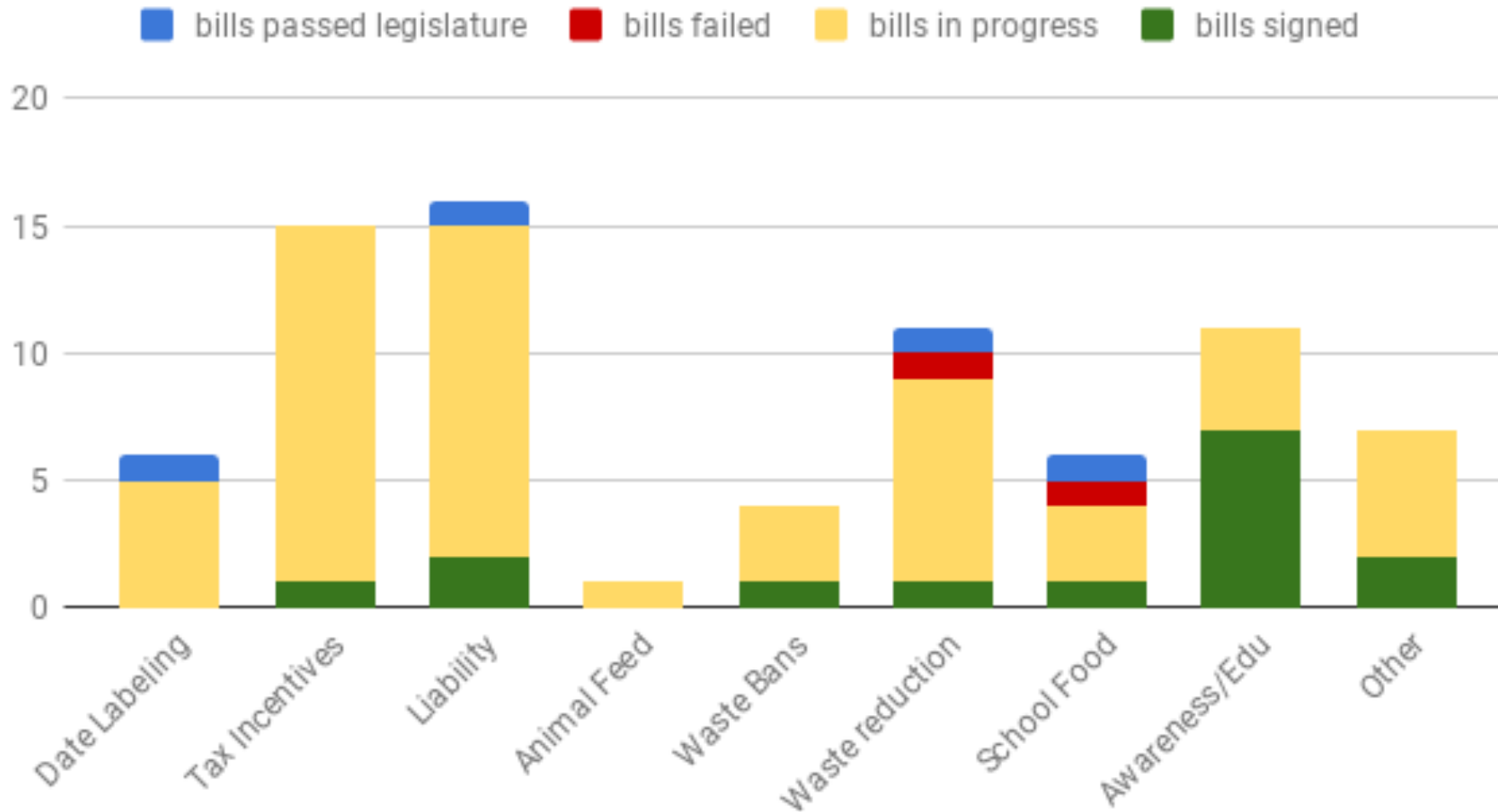
Progress? Proposed State Legislation





Trending Issues in State Legislation

Trending Issues in Introduced State Legislature





passed legislature

2.9%

failed

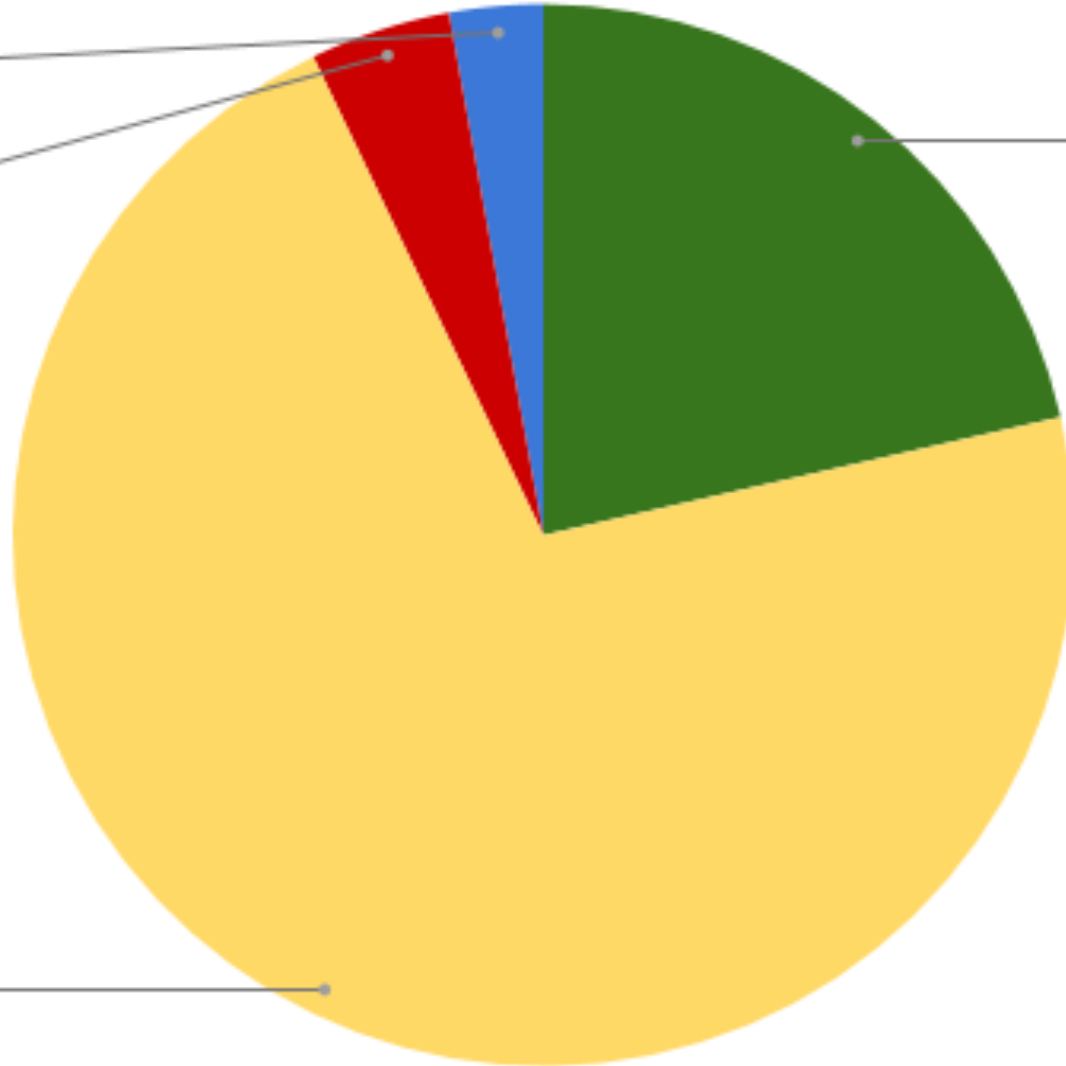
4.3%

signed

21.4%

in progress

71.4%



Status of State Legislation



New Project: Global Food Donation Policy Atlas



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