



## REAL-TIME ANALYSIS WITH GEORGE AND JAY.

### Backgrounder and

*Estimated start time of oral arguments: 11 AM ET, April 27, 2026*

#### **Question before the U.S. Supreme Court:**

“Whether the *Federal Insecticide, Fungicide, and Rodenticide Act*, 7 U.S.C. 136 et seq., preempts a state-law failure-to-warn claim concerning a pesticide registered by the U.S. Environmental Protection Agency (EPA), where EPA has determined that a particular warning is not required and the warning cannot be added to a product label without EPA approval.”

#### **Introduction**

The public’s right to sue chemical manufacturers that do not warn of product hazards is up for review on Monday by the U.S. Supreme Court. The chemical industry is asking the U.S. Supreme Court to reverse decades of jurisprudence and shield manufacturers from liability associated with those who are harmed but not warned about pesticide adverse effects like cancer, neurological or immunological conditions, reproductive dysfunction, and other chronic illnesses.

Bayer/Monsanto is challenging billions of dollars in jury verdicts that hold the company responsible for disclosing hazards even when not required to do so by regulatory authorities. In the case being challenged, *Monsanto v. Durnell*, the injured party successfully argued that a chemical manufacturer has a duty to disclose potential harm even when not required to do so on the product label by the U.S. Environmental Protection Agency (EPA). The failure-to-warn in the *Durnell* case resulted in a jury verdict of \$1.2 million, and the total number of jury verdicts and settlements may amount to over \$10 billion in liability if the U.S. Supreme Court upholds the lower courts and hundreds of thousands of other plaintiffs make the same claim. The cases involve exposure to the weed killer glyphosate (Roundup™), the most widely used weed killer in the U.S. and worldwide, which is associated in the scientific literature with a range of serious adverse health and ecosystem and wildlife effects.

*Note: While EPA does not recognize glyphosate to be cancer-causing, the International Agency for Research on Cancer (IARC) finds it to be “probably carcinogenic to humans.”*

With this case, Bayer/Monsanto, the chemical industry, and allied industries are seeking liability immunity under federal pesticide law (*Federal Insecticide, Fungicide, and Rodenticide Act*, or FIFRA), questioning whether compliance with that law, in the Court’s words, “preempts a state-law failure-to-warn claim concerning a pesticide registered by EPA, where the agency has determined that a particular warning is not required and the warning cannot be added to a product label without EPA approval.”

If successful, the Court would be overturning (reversing) its 2005 decision in *Bates v. Dow Agrosciences*, 544 U.S. 431, which affirmed EPA's approved label as minimum protection, without releasing manufacturers of the responsibility to seek approval for a label that exceeds EPA's minimum. Pesticide manufacturers propose the text for their product labels, and EPA ensures compliance with its minimum requirements, which does not preclude them from disclosing potential adverse effects they know or should have known about. EPA does not require a cancer warning (or other chronic effects typically) on pesticide product labels, even when the agency and the chemical manufacturer have identified a harm, including cancer, under EPA's risk assessment review that it deems "acceptable."

The Court in the Supreme Court case [\*Dow Agrosciences v. Bates\*](#), 544 U.S. 431 (2005) made the important point that the notion of liability "emphasizes the importance of providing an incentive to manufacturers to use the utmost care in the business of distributing inherently dangerous items." In an age of deregulation, the ability to hold chemical manufacturers accountable for warning of hazards is the keystone to minimum protection of public health. Accountability in the courts serves the interests of farmers, farmworkers, consumers, and those potentially exposed to pesticide products, as demand in the market for the safest possible products and practices grows daily.

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### Excerpts of Amicus groups opposing Monsanto/Bayer

**11:26:01 From Beyond Pesticides:** Welcome to Real-Time Analysis with George Kimbrell (Center for Food Safety) and Jay Feldman (Beyond Pesticides)! The analysis will begin once oral arguments begin; the first docket is still wrapping up in the Supreme Court. Please stay tuned for *Monsanto v. Durnell*. Thank you for your patience. Part of the challenge of being the second docket of the day.

**11:33:30 From Jay Feldman, Beyond Pesticides:** While waiting for the Monsanto case to begin, you might want to check out a *New York Times* piece where George Kimbrell is quoted: "'E.P.A.'s overall review is limited, leaving an important and robust role for states,' George A. Kimbrell, lead counsel for the Center for Food Safety, wrote in his brief." \*\*\*Supreme Court to Hear Arguments in Landmark Roundup Weedkiller Case  
<https://www.nytimes.com/2026/04/26/climate/supreme-court-bayer-monsanto-roundup-glyphosate.html>

**11:36:34 From Jay Feldman, Beyond Pesticides:** If you'd like to see the Center for Food Safety amicus brief on behalf of farmers, consumers, breast cancer survivors, health care professionals, and other organizations, see CFS et al. \*\*\*Amicus [https://bp-dc.org/assets/media/documents/2026-04-01%20Durnell%20CFS%20et%20al%20Amicus%20FOR%20PRINTERS%20\(002\).pdf](https://bp-dc.org/assets/media/documents/2026-04-01%20Durnell%20CFS%20et%20al%20Amicus%20FOR%20PRINTERS%20(002).pdf)

**11:37:54 From Jay Feldman, Beyond Pesticides:** \*\*\*Earthjustice submitted an amicus on behalf of farmworkers: [https://www.supremecourt.gov/DocketPDF/24/24-1068/403413/20260401130540867\\_24-1068%20Farmworkers%20Amicus%20Brief.pdf](https://www.supremecourt.gov/DocketPDF/24/24-1068/403413/20260401130540867_24-1068%20Farmworkers%20Amicus%20Brief.pdf)

**11:45:41 From Jay Feldman, Beyond Pesticides:** Another fascinating amicus came in from former EPA officials, mostly high-level officials that support Durnell (opposing Monsanto/Bayer), the injured party. While it is unfortunate that EPA does not disclose this widely to the public and require disclosure on product labels, the former officials say this: "EPA may grant an application to register a pesticide despite safety concerns for some uses. Contrary to Petitioner's view [Monsanto] (Br. 25), registration does not mean a pesticide is 'safe when used in accordance with the label approved by EPA.'" The officials confirm what advocates have been saying for over 50 years, while people (as witnessed by most of the plaintiffs in cases against Monsanto) assume that pesticides are safe because they are registered by EPA. \*\*\*See former employees' amicus brief--it's worth the read:

[https://www.supremecourt.gov/DocketPDF/24/24-1068/403452/20260401152421539\\_Monsanto%20v%20Durnell%20exEPA%20officials%20amicus%20pdf%20FINAL.pdf](https://www.supremecourt.gov/DocketPDF/24/24-1068/403452/20260401152421539_Monsanto%20v%20Durnell%20exEPA%20officials%20amicus%20pdf%20FINAL.pdf)

**11:55:16 From Jay Feldman, Beyond Pesticides:** You may have noted that in the Monsanto reply brief, Monsanto argues that glyphosate is necessary (they make it sound like it is essential) for ensuring our food supply. To justify this position, the Monsanto brief uses, as its source, this: "As the President recently explained, '[l]ack of access to glyphosate-based herbicides would critically jeopardize agricultural productivity,' making it 'untenable for [farmers] to meet growing food and feed demands' in the United States." As we said at the time, the President made this statement without any findings with the issuance of the Executive Order (EO) invoking the *Defense Production Act of 1950*. \*\*\*See EO

<https://www.whitehouse.gov/presidential-actions/2026/02/promoting-the-national-defense-by-ensuring-an-adequate-supply-of-elemental-phosphorus-and-glyphosate-based-herbicides/>

\*\*\*Monsanto's reply brief: [https://www.supremecourt.gov/DocketPDF/24/24-1068/404756/20260417143840724\\_1.%202026-04-17%20Monsanto%20v.%20Durnell%20Reply%20Final.pdf](https://www.supremecourt.gov/DocketPDF/24/24-1068/404756/20260417143840724_1.%202026-04-17%20Monsanto%20v.%20Durnell%20Reply%20Final.pdf)

**12:05:29 From Jay Feldman, Beyond Pesticides:** Meanwhile, an amicus brief filed by farmers challenges Monsanto's claim that food cannot be grown without glyphosate. First, the farmers say, "[A]though Monsanto and its amici frame themselves as guardians of farmers' interests, the reality is that Monsanto wields its economic and legal power to the detriment of farmers who wish to use glyphosate and glyphosate-tolerant seeds." The farmers identify the issue of farm practices to be a policy issue outside the purview of the case, but bring their experience to the court, saying: "Holding Monsanto accountable for its tortious wrongdoing poses no danger

to amici or the farmers and farm workers they serve. Indeed, it is corporate impunity, which poses the larger threat to our food system. Amici therefore urge this Court to affirm."

**12:07:05 From Jay Feldman, Beyond Pesticides:** The farmers continue: "Farmers Can Control Weeds Without Pesticides Fortunately, farmers battling glyphosate-resistant weeds or who choose not to use pesticides like glyphosate have other options. . . For example, farmers can reduce weed pressure by diversifying away from planting just one or two glyphosate-tolerant crops year after year. Research consistently confirms the effectiveness of crop diversification as a non-chemical method of weed management. \*\*\*See, e.g., Nian-Feng Wan et al., Global Evidence that Plant Diversity Suppresses Pests and Promotes Plant Performance and Crop Production, 10 *Nature Ecol. & Evolution* 293 (2026), <https://perma.cc/63M8-5BR5>; \*\*\*D. Scott & R.P. Freckleton, Crop Diversification and Parasitic Weed Abundance: A Global Meta Analysis, 12 *Nature Sci. Reps.* (2022), <https://perma.cc/X2ZM-JGPP>; Gourav Sharma et al., Crop Diversification for Improved Weed Management: A Review, 11 *Agric. No.* 461 (2021), <https://perma.cc/8C57-2DTF>." Note that the amicus provides citations.

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### **Core Arguments:**

The main arguments in the Bayer/Monsanto brief include:

1. "FIFRA Expressly Preempts Durnell's Failure-To-Warn Claim";
2. "FIFRA Impliedly Preempts Durnell's Failure To-Warn Claim"; and,
3. "Preemption Of Durnell's Claims Is Critical to American Agriculture and Innovation."

**1. Express Preemption.** Monsanto alleges that the FIFRA creates binding federal requirements and is a comprehensive regulatory process. The brief maintains that Bayer's products are not misbranded, contain necessary warnings, do not cause "unreasonable adverse effects (statutory standard in FIFRA)," and the pesticide product label cannot be changed without authorization by EPA. Monsanto also alleges that the Missouri Court of Appeals is in violation of 7 U.S.C. §136v(b), which forbids state requirements "in addition to or different from" FIFRA's labeling regime. Previous SCOTUS cases—including *Bates v. Dow* (2005) and *Wisconsin Pub. Intervenor v. Mortier* (501 U.S. 597, 1991)—have already clarified the discrepancies between local, state, and federal responsibilities as they pertain to preemption. (For more detail, see the [Bates](#) Decision section below.)

**2. Implied Preemption.** The implied preemption argument emerges from the logic that the corporation (Monsanto) cannot add a cancer warning without EPA approval, otherwise it could constitute a "misbranding" of the product. Nothing in the law prevents the registrant (manufacturer) from proposing a label that exceeds EPA's minimum requirement. In *Bates v. Dow*, the Court ruled: "Section 360k does not preclude States from imposing different or additional *remedies*, but only different or additional *requirements*. . . Accordingly, although

FIFRA does not provide a federal remedy to farmers and others who are injured as a result of a manufacturer’s violation of FIFRA’s labeling requirements, nothing in §136v(b) precludes States from providing such a remedy.” The court acknowledges the manufacturer’s power over the pesticide product label, finding, “Successful [tort] actions of this sort may *lead manufacturers to petition EPA* to allow more detailed labelling of their products [emphasis added].”

**3. Preemption Critical to Agriculture and Innovation.** The argument assumes that alternatives to glyphosate, in this case, are not viable and cannot be used productively and profitably. With state-level failure to warn claims, Bayer/Monsanto states that farmers’ livelihood will be harmed by “keeping efficacious pesticides off the market based on purported risks that EPA has determined are unfounded, or based on risks that are real but reasonable, will cause farmers to resort to products that may create equal (or worse) health and environmental risks, while providing inferior protection for crops.” Moreover, Bayer/Monsanto argues that despite EPA’s conclusion that glyphosate “does not pose a cancer risk and EPA’s express rejection of IARC’s contrary view, plaintiffs have parlayed that IARC finding into over one hundred thousand lawsuits seeking billions and billions in liability.” This argument is undermined by findings in the [independent peer-reviewed scientific literature](#) and the November 2025 retraction of a journal article, which was cited in over 800 other peer-reviewed studies, without the authors’ disclosure of their relationship to Monsanto/Bayer. The editor-and-chief, Martin van den Berg, PhD, of [Regulatory Toxicology and Pharmacology](#), which published the article 25 years ago, wrote in the journal, “Concerns were raised regarding the authorship of this paper, validity of the research findings in the context of misrepresentation of the contributions by the authors and the study sponsor and potential conflicts of interest of the authors.” This retraction calls in question EPA’s classification of glyphosate as not carcinogenic. (See *Daily News* [here](#).) Numerous studies find organic production systems to be more productive and profitable than chemical-intensive practices promoted by Bayer/Monsanto and the agrichemical industry, with savings tied to the natural nutrient cycling and ecosystem services resulting from robust biodiversity. (See [Study Affirms that Organic Farming Improves Soil Health, Microbial Life, and Pathogen Resistance](#) with reference to the [Rodale Institute’s Farming Systems Trial — 40-Year Report](#)).

### **U.S. Solicitor General Amicus Brief**

In an [amicus brief](#) published on December 1, 2025, the Office of the Solicitor General (SG) and the White House called on SCOTUS to grant Bayer’s case certiorari. The U.S. Solicitor General D. John Sauer (former Solicitor General of Missouri, home to Bayer-Monsanto’s U.S.

headquarters), in siding with the Germany-based, multinational pesticide corporation, calls for SCOTUS to take on the case, which could lead to a prohibition on state-level failure-to-warn claims based on the arguments laid out in the amicus brief. (See *Daily News* [here](#).)

The Trump administration argues that certiorari should be granted on three grounds:

1. The Missouri Court of Appeals was incorrect in its decision in *Durnell v. Monsanto* (2023) because the plaintiff argues that there is a prohibition on unilateral label changes for federal labeling requirements; therefore, state tort duties requiring additional warnings are expressly preempted.

2. There are now opposing decisions in the Third Circuit and the Ninth and Eleventh Circuits. The Third Circuit Court of Appeals ruled that state level failure-to-warn claims are expressly preempted by FIFRA.
3. FIFRA §136v(b) on “Uniformity” prohibits states from requiring pesticide manufacturers from having to contend with 50 different labeling requirements.

The Solicitor General’s position in the Trump administration is a reversal from the Biden Administration’s position after Bayer’s 2022 petition for writ of certiorari. (See *Daily News* [here](#) for context.)

### Review of Bates Decision

A *Pesticides and You* article (2005) by [H. Bishop Dansby, Esq.](#) explains the U.S. Supreme Court decision on “failure to warn” in [Bates v. Dow Agrosciences](#), which includes the following:

- **Duty to Warn:** Manufacturers have a legal duty to provide adequate warnings about the potential risks associated with their products, including pesticides. This duty arises from the recognition that manufacturers possess knowledge about the potential dangers of their products and have a responsibility to inform consumers about these risks.
- **Negligence and Design Defect:** If a plaintiff alleges that a pesticide product caused harm even when used according to the label, they may argue that the product was negligently designed due to a failure to warn. In other words, they claim that the manufacturer did not adequately warn about the risks associated with the product’s design. The court may view this cause of action as a “failure to warn” disguised as a “design defect.”
- **Parallel Remedies:** The court clarified that state common law tort actions, such as failure to warn claims, can run parallel to federal regulations FIFRA. This means that even though FIFRA regulates pesticide labeling, state actions can still be pursued if they do not conflict with federal regulations and are not preempted.

*Bates v. Dow* cites an earlier case, *Ferebee v. Chevron* (*Ferebee*, [736 F. 2d](#), at 1541–1542), in which the court found:

“By encouraging plaintiffs to bring suit for injuries not previously recognized as traceable to pesticides such as [the pesticide at issue], a state tort action of the kind under review may aid in the exposure of new dangers associated with pesticides. Successful actions of this sort may lead manufacturers to petition EPA to allow more detailed labelling of their products; alternatively, EPA itself may decide that revised labels are required in light of the new information that has been brought to its attention through common lawsuits. In addition, the specter of damage actions may provide manufacturers with added dynamic incentives to continue to keep abreast of all possible injuries stemming from use of their product so as to forestall such actions through product improvement.”

## Resources

Docket, *Durnell, John L. v. Monsanto*

<https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/24-1068.html>

- **Amicus briefs** filed in support of the respondents:
  - *Center for Food Safety, Consumer Federation of America, Breast Cancer Prevention Partners, Rural Coalition, Alliance of Nurses for Healthy Environments, Center for Biological Diversity, Beyond Pesticides, and Food & Water Watch*
  - *U.S. Senator Corey Booker [press release]*
  - *Stand for Health Freedom*
  - *The American Association for Justice and Public Justice; Children’s Health Defense; 36 State Legislators*
  - *The Local Government Legal Center, National Association of Counties, National League of Cities, and International Municipal Lawyers Association*
  - *Former EPA Officials and Environmental Protection Network*
  - *Philip Landrigan, MD, MSc, Lianne Sheppard, PhD, Christopher Portier, PhD, Dennis Weisenburger, MD, and Bruce P. Lanphear, MD, MPH*
  - *Veterans of Foreign Wars; Public Citizen; United States Senator Cory Booker; Heartland Health Research Alliance*
  - *Earthjustice, Farmworker Justice, Farmworker Association of Florida, California Rural Legal Assistance Foundation, Migrant Clinicians Network, Alianza Nacional de Campesinas, and Pesticide Action & Agroecology Network*
  - *Texas, Florida, and Ohio*
  - *Farmer and Farmworker Groups*
  - *New Mexico and Seventeen Other States*
  - *Naomi Oreskes and Alexander A. Kaurov*
  - *Roundup and Paraquat MDL Leadership.*
- Plus, the **original brief** and **supplement brief** of the respondent, John L. Durnell
  
- **Resources from Beyond Pesticides:**
- *Bates v. Dow Agrosiences* primer:  
<https://www.beyondpesticides.org/assets/media/documents/dow/media/Bates-Dansby.pdf>
- Beyond Pesticides *Daily News* from April 2, 2026: Groups Tell U.S. Supreme Court that Monsanto Shuns Its Responsibility to Warn of Product Hazards, Files Brief  
<https://beyondpesticides.org/dailynewsblog/2026/04/groups-tell-u-s-supreme-court-that-monsanto-shuns-its-responsibility-to-warn-of-product-hazards-files-brief/>
- Beyond Pesticides *Daily News* from March 31, 2026: Groups Decry Chemical Industry Supreme Court Argument that Product Users Can Be Harmed But Not Warned  
<https://beyondpesticides.org/dailynewsblog/2026/03/groups-decry-chemical-industry-supreme-court-argument-that-product-users-can-be-harmed-but-not-warned/>

- Beyond Pesticides *Daily News* from March 11, 2026: Monsanto Brief Introduced as U.S. Supreme Court Considers Liability Immunity for Pesticide Manufacturers <https://beyondpesticides.org/dailynewsblog/2026/03/monsanto-opening-brief-introduced-as-u-s-supreme-court-considers-liability-immunity-for-pesticide-manufacturers/>
- Beyond Pesticides *Daily News* from July 21, 2025: Congress Asked To Stop Provision in Approps Bill Blocking Pesticide Lawsuits on Farmer and Consumer Harm <https://beyondpesticides.org/dailynewsblog/2025/07/congress-asked-to-stop-provision-in-approps-bill-blocking-lawsuits-by-farmers-and-consumers-harmed-by-pesticides/>
- Beyond Pesticides Failure-to-Warn Resource Hub: <https://www.beyondpesticides.org/resources/failure-to-warn>
- Statement, Protect the Right of Farmers, Consumers, and Workers to Hold Pesticide Companies Accountable for Their Harmful Products <https://bp-dc.org/failure-to-warn-fact-sheet-appropriations-fy26>
- Statement, Stop Chemical Company Secrecy of Pesticide Product Hazards, by 200+ grassroots, health, farm, farmworker, environmental, and consumer groups, socially responsible corporations, over 340 citizens from 46 states, and international partners by 200+ grassroots, health, farm, farmworker, environmental, and consumer groups, socially responsible corporations, over 340 citizens from 46 states, and international partners <https://www.bp-dc.org/stop-the-secrecy-2026-statement>

## Glossary of Terms

- ***Amicus curiae* brief:** A legal document filed by non-parties providing insights to assist a court in making decisions; *Amicus curiae* is Latin for "friend of the court."
- ***A priori*:** Reasoning, conclusions, or legal presumptions made prior to an investigation using theoretical deduction rather than empirical evidence; Latin for "from the former."
- ***Bates v. Dow Agrosciences (544 U.S. 431)*:** A U.S. Supreme Court case holding that FIFRA does not preempt farmers from bringing state-law claims—such as fraud, negligence, and strict liability—against pesticide manufacturers.
- ***Carcinogenic*:** Capable of causing or producing cancer in living tissue.
- ***Design defect*:** A product liability claim alleging a product is inherently dangerous due to a flawed blueprint, making all units unsafe even if manufactured perfectly.
- ***Durnell, John L. v. Monsanto (Case No. 24-1068)*:** A product liability case at the U.S. Supreme Court to determine if FIFRA preempts state-level failure-to-warn claims, involving John Durnell, who was awarded \$1.25 million by a Missouri jury for non-Hodgkin's lymphoma due to the company's failure to warn of cancer risks.
- ***Failure-to-warn*:** A product liability claim asserting that a manufacturer or seller is liable for injuries caused by a product because they failed to provide adequate warnings.
- ***Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)*:** A U.S. federal law administered by the U.S. Environmental Protection Agency (EPA) that regulates the registration, sale, distribution, and use of pesticides.

- ***Ferebee v. Chevron (736 F.2d 1529, D.C. Cir. 1984)***: A toxic tort case establishing that a manufacturer can be held liable for failure-to-warn of risks, even if regulatory bodies (like the EPA) deemed the label sufficient
  - ***Glyphosate/Roundup™***: Glyphosate is a widely used, broad-spectrum, non-selective systemic herbicide (weed killer) most commonly known as the active ingredient in Roundup™ linked in peer-reviewed, independent scientific literature to a myriad of health and environmental effects.
  - ***Jurisprudence***: Philosophy, theory, or science of law analyzing the nature, principles, and structure of legal systems; derived from the Latin *juris prudentia*, meaning "knowledge of law."
  - ***Liability shield***: A legal mechanism that protects manufacturers from lawsuits and negligence claims.
  - ***Preemption***: A legal doctrine based on the Supremacy Clause of the U.S. Constitution establishing that higher-level law (federal) supersedes lower-level law (state or local) when they conflict.
  - ***Tort law***: A body of civil law dealing with wrongful acts (torts) that cause harm to people or property, allowing victims to seek compensation.
  - ***Wisconsin Pub. Intervenor v. Mortier (501 U.S. 597, 1991)***: A Supreme Court ruling holding that FIFRA does not preempt (prohibit) local governments from regulating pesticide use.
  - ***Writ of certiorari***: An order by a higher court, most commonly the U.S. Supreme Court, to a lower court to send up the record of a case for review.
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## Real-Time Analysis

with George Kimbrell (Center for Food Safety) and Jay Feldman (Beyond Pesticides)  
 U.S. Supreme Court Oral Arguments  
**MONSANTO V. DURNELL**

Transcript of analysis during oral arguments,  
 April 27, 2026

12:08:30 Welcome to Real Time Analysis with George Kimbrell and Jay Feldman!

**12:08:30 From George Kimbrell, Center For Food Safety:** Here we go.

**12:08:41 From Jay Feldman, Beyond Pesticides:** Oral arguments beginning with Monsanto attorney.

**12:09:29 From George Kimbrell, Center For Food Safety:** Paul Clement for Monsanto. Former SG for the W. Bush Administration, he is a very well known advocate who has argued over 100 cases to the Supreme Court over his career.

**12:10:00 From George Kimbrell, Center For Food Safety:** He's getting 20 minutes for his opening, before he gets questions. (This is standard for all arguments.)

**12:10:41 From George Kimbrell, Center For Food Safety:** His opening is tracking their brief pretty closely.

**12:10:57 From Jay Feldman, Beyond Pesticides:** Justice Thomas speaking.

**12:11:23 From George Kimbrell, Center For Food Safety:** Justice Thomas is asking a softball-type question, to give Clement an opening.

**12:12:32 From George Kimbrell, Center For Food Safety:** Justice Thomas asking a harder question now.

**12:12:38 From Jay Feldman, Beyond Pesticides:** The law defines herbicides as pesticides.

**12:13:29 From George Kimbrell, Center For Food Safety:** This is Justice Jackson now.

**12:14:19 From George Kimbrell, Center For Food Safety:** Justice Jackson is teasing out the difference between pesticide registrations and the label and forcing Clement to admit you can be registered but misbranded.

**12:14:29 From Jay Feldman, Beyond Pesticides:** What constitutes misbranding of a pesticide product has been central to the case.

**12:14:44 From George Kimbrell, Center For Food Safety:** He's fighting the frame and circling back to other points.

**12:15:36 From George Kimbrell, Center For Food Safety:** She's highlighting the long periods of time between registration review and new science.

**12:16:15 From Jay Feldman, Beyond Pesticides:** It is the responsibility of the registrant, as cited in the former EPA officials' brief, to update its labels with new science and findings.

**12:16:41 From Jay Feldman, Beyond Pesticides:** Justice Gorsuch. . . questioning.

**12:16:48 From George Kimbrell, Center For Food Safety:** Pesticides are supposed to be re-registered every 15 years but nearly all of them miss that deadline. The last lawful review of glyphosate was in 1993 (not counting the 2020 decision that we got vacated).

**12:17:17 From George Kimbrell, Center For Food Safety:** Justice Barrett now asking questions.

**12:17:46 From Jay Feldman, Beyond Pesticides:** Yes, the basis for self-reporting under FIFRA has always been a weak spot re: enforcement. Misbranding is a different issue.

**12:17:52 From George Kimbrell, Center For Food Safety:** This is the Chief Justice now.

**12:18:49 From George Kimbrell, Center For Food Safety:** The Chief is setting out another scenario—EPA fails to update science but states do, so not inconsistent/preempted.

**12:19:34 From Jay Feldman, Beyond Pesticides:** Monsanto raises the issue of express preemption, which is distinguished from implied preemption.

**12:20:48 From Jay Feldman, Beyond Pesticides:** Justice Gorsuch.

**12:21:05 From George Kimbrell, Center For Food Safety:** The Chief is asking Clement: Tell me where exactly in the statute is the preemption coming from. Gorsuch is adding onto the questioning line.

**12:22:03 From Jay Feldman, Beyond Pesticides:** Justice Gorsuch's mother ran EPA in the Reagan administration. Anne Gorsuch Burford.

**12:22:29 From George Kimbrell, Center For Food Safety:** Gorsuch is making him point to the exact statutory and regulatory provisions, to brass tacks.

**12:22:38 From Jay Feldman, Beyond Pesticides:** “Anne Gorsuch, served as President Ronald Reagan’s first Environmental Protection Agency administrator and the first female leader in the agency’s history. But her short, tumultuous tenure was marked by sharp budget cuts, rifts with career EPA employees, a steep decline in cases filed against polluters and a scandal over the mismanagement of the Superfund cleanup program that ultimately led to her resignation in 1983.” “Neil Gorsuch’s mother once ran the EPA. It didn’t go well.”

*Washington Post*, February 1, 2017. <https://www.washingtonpost.com/news/energy-environment/wp/2017/02/01/neil-gorsuchs-mother-once-ran-the-epa-it-was-a-disaster/>

**12:23:50 From George Kimbrell, Center For Food Safety:** Both the Chief and Gorsuch seem to be doubtful on express preemption (from the text expressly) and are pushing Clement to go to the implied preemption, also called "impossibility" preemption, that is, it is impossible to comply with both federal and state law.

**12:25:16 From George Kimbrell, Center For Food Safety:** Justice Kavanaugh with a softball (friendly question) for Clement there.

**12:25:49 From George Kimbrell, Center For Food Safety:** Justice Jackson is going back to her line of question from earlier in the argument, the new information scenario, EPA failure to update/delay.

**12:26:50 From George Kimbrell, Center For Food Safety:** Clement is relying on "cancellation" of pesticides, but he leaves out that EPA virtually never cancels pesticides unless the industry asks them to do so.

**12:27:33 From Jay Feldman, Beyond Pesticides:** In the Earthjustice amicus brief, it states, "See 7 U.S.C. § 136(q)(1)(G) (providing that a pesticide is "misbranded" under FIFRA if "the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 136a(d) of this title, is adequate to protect health and the environment")." The key here is "to protect health and the environment."

**12:28:23 From Jay Feldman, Beyond Pesticides:** Justice Sotomayor.

**12:29:00 From George Kimbrell, Center For Food Safety:** Justice Sotomayor is pointing out that FIFRA itself has an express provision, f2, they are calling it, that says registration is not a bar to a state claim.

**12:31:35 From Jay Feldman, Beyond Pesticides:** Most of the amicus briefs in support of Durnell state that compliance with FIFRA registration does not mean that the pesticide cannot be "misbranded" at the same time, given what has been raised in the questioning about updated science, new information.

**12:31:44 From George Kimbrell, Center For Food Safety:** Justice Kagan now. She is also pushing him towards impossibility preemption.

**12:32:39 From George Kimbrell, Center For Food Safety:** Clement isn't willing to give up on express preemption, but the comments from the Court so far indicate some doubt there.

**12:33:26 From Jay Feldman, Beyond Pesticides:** The former EPA officials' amicus states, "EPA has not issued any regulations addressing what FIFRA requires in terms of warnings or other advisory statements for chronic health hazards like carcinogenicity." That does not immunize the manufacturer from nondisclosure of potential harm for chronic effects.

**12:34:16 From George Kimbrell, Center For Food Safety:** Justice Kavanaugh—another softball. He's clearly with Clement.

**12:35:48 From George Kimbrell, Center For Food Safety:** He's building up EPA as a robust regulator of pesticides, but we know the reality is the antithesis of that.

**12:36:59 From George Kimbrell, Center For Food Safety:** Justice Barrett—design defect claims, another state law cause of action, is outside the scope of this case. So, even if Monsanto wins this case, design defect claims will be permitted in the future.

**12:37:28 From George Kimbrell, Center For Food Safety:** She made Clement acknowledge on the record that design defect is outside the scope of the case, which he did.

**12:37:30 From Jay Feldman, Beyond Pesticides:** The Medical Defects Amendment is under a distinct law, the *Federal Food, Drug, and Cosmetic Act*.

**12:38:04 From George Kimbrell, Center For Food Safety:** Clement and Barrett both clerked for Justice Scalia, so he is talking to her about a Scalia case.

**12:39:30 From George Kimbrell, Center For Food Safety:** She is quibbling a little with him, but mostly friendly. Justice Barrett seems fine with preempting, unfortunately.

**12:39:35 From Jay Feldman, Beyond Pesticides:** Again, former EPA officials: “In addition to or different from” FIFRA’s, 7 U.S.C. § 136v(b), FIFRA expressly authorizes states to impose more stringent restrictions on sale and use of a pesticide, and even to outright ban EPA-registered pesticides, id. § 136v(a).

**12:40:17 From Jay Feldman, Beyond Pesticides:** *Dow v. Bates*, landmark decision in 2015.

**12:40:49 From Jay Feldman, Beyond Pesticides:** \*\*\*A must read:

<https://supreme.justia.com/cases/federal/us/544/431/>

**12:41:48 From George Kimbrell, Center For Food Safety:** Justice Jackson is going back to the lag of time theme. She's calling it by a fancy legal term, interregnum, but in lay terms, it’s just the long delay after registration before there is any updating by EPA.

**12:42:20 From Jay Feldman, Beyond Pesticides:** Former EPA officials: “FIFRA does not preempt state label-based failure-to-warn claims merely because EPA has accepted labeling lacking state-required warnings. When premised on the theory that labeling is “misleading” or warnings are “inadequate,” state-law claims are not “in addition to or different from” FIFRA’s requirements. *Bates v. Dow Agrosciences L.L.C.*, 544 U.S. 431, 447 (2005). FIFRA itself requires adequate warnings and labeling that are not misleading. 7 U.S.C. § 136(q)(1)(A), (G); Resp. Br. 3-4, 13, 33. A registrant may sometimes be unable to add warnings to its labeling

because EPA refuses to accept them. But without asking EPA, a registrant cannot presume that EPA would reject language that a jury finds necessary to satisfy these requirements.”

**12:45:19 From Jay Feldman, Beyond Pesticides:** More from former EPA officials: “... And where EPA desires a higher degree of labeling uniformity on a particular topic across products, it can promulgate “regulations that give content to FIFRA’s misbranding standards” and thereby preempt contradictory state requirements. *Id.* at 453. For example, a state requirement could be preempted if it specified that a “given pesticide’s label should have stated ‘DANGER’ instead of the more subdued ‘CAUTION’” for a certain acute toxicity risk. *Id.* But EPA has adopted no such regulations for chronic-exposure risks like cancer. . . Second, for all the reasons discussed above, EPA’s acceptance of certain labeling does not mean that any other labeling warnings are “in addition” to those required under FIFRA, and thereby preempted.”

**12:46:06 From George Kimbrell, Center For Food Safety:** Clement ending his opening. The government is now up. Sarah Harris of the Solicitor General's office.

**12:46:35 From Jay Feldman, Beyond Pesticides:** This is MS. SARAH M. HARRIS, Principal Deputy Solicitor General.

**12:47:14 From George Kimbrell, Center For Food Safety:** Justice Thomas starts with the same line of questioning: Where exactly in the text of the statute does the preemption come from?

**12:47:45 From Jay Feldman, Beyond Pesticides:** The Biden administration opposed Monsanto's position, and the Solicitor General (SG) at the time submitted a brief to that effect.

**12:48:31 From George Kimbrell, Center For Food Safety:** John Sauer is the SG, so I'm a little surprised it is Harris and not him, given the high profile of this case, though she is also a well-known Supreme Court advocate.

**12:49:52 From George Kimbrell, Center For Food Safety:** Yes, as Jay notes, the government's position on this legal issue has flip-flopped between administrations. The SG's office during the Biden administration did not support Monsanto's position; it has now changed its position to full-throated support.

**12:50:06 From Jay Feldman, Beyond Pesticides:** \*\*\*Biden administration asks U.S. Supreme Court to shun Bayer weed killer appeal. <https://www.reuters.com/world/us/biden-administration-asks-us-supreme-court-shun-bayer-weedkiller-appeal-2022-05-10/>

**12:51:08 From George Kimbrell, Center For Food Safety:** The Chief Justice asking a similar question he asked Clement: why can't states move ahead of EPA when EPA is lagging?

**12:52:33 From George Kimbrell, Center For Food Safety:** Gorsuch and the Chief Justice have asked the toughest questions of Clement and Harris of the conservatives on the court.

**12:52:37 From Jay Feldman, Beyond Pesticides:** Again, former EPA officials: "State jury decision-making is consistent with FIFRA's enforcement scheme. State tort suits are also compatible with FIFRA's 'relatively decentralized scheme' for enforcement. *Bates*, 544 U.S. at 450. The statute does not anoint EPA as the sole decisionmaker or enforcer."

**12:53:19 From George Kimbrell, Center For Food Safety:** Kavanaugh with yet another softball question....

**12:53:47 From George Kimbrell, Center For Food Safety:** Cancellation is incredibly hard and virtually never happens!

**12:54:51 From Jay Feldman, Beyond Pesticides:** Another amicus to look at from U.S. Senator Corey Booker: "Petitioner seeks to pervert FIFRA by recasting the statute not as the one Congress actually wrote—a floor for what pesticide manufacturers must do to register pesticides with the federal government—but rather the one Petitioner wishes it had written: a (largely Petitioner-controlled) ceiling on consumer safety that bars state tort actions."

\*\*\*Amicus brief:

<https://www.booker.senate.gov/imo/media/doc/20260401amicusbriefofsenatorbooker.pdf>

**12:55:16 From George Kimbrell, Center For Food Safety:** The example they are giving is a massive outlier—first time EPA had suspended a pesticide in that manner in 40 years!

**12:55:18 From Jay Feldman, Beyond Pesticides:** Yes, and it took years. All the while, the manufacturer was aware of the danger to children.

**12:56:39 From Jay Feldman, Beyond Pesticides:** \*\*\*If you're not familiar with the Dacthal decision, see EPA's Momentous Decision to Ban the Weed Killer Dacthal/DCPA: An Anomaly or a Precedent? <https://beyondpesticides.org/dailynewsblog/2024/08/epas-momentous-decision-to-ban-a-pesticide-an-anomaly-or-a-precedent/>

**12:58:08 From George Kimbrell, Center For Food Safety:** Not a lot of questions for Harris.

**12:59:01 From George Kimbrell, Center For Food Safety:** A fairly "cold" bench, less questions. This indicates support generally.

**13:00:20 From Jay Feldman, Beyond Pesticides:** Now, the Durnell attorney.

**13:00:26 From George Kimbrell, Center For Food Safety:** Somewhat concerning is that they didn't ask any questions of Clement or Harris that framed things in the Respondents argument.

**13:00:51 From Jay Feldman, Beyond Pesticides:** ASHLEY C. KELLER, Counsel of Record, Durnell Keller Postman LLC, Washington, DC.

**13:00:54 From George Kimbrell, Center For Food Safety:** Yes, this is Durnell's attorney now. Ashley Keller.

**13:01:20 From George Kimbrell, Center For Food Safety:** We will be able to tell a lot based on his questions, once he gets through his opening.

**13:02:44 From George Kimbrell, Center For Food Safety:** Here we go. Thomas and the delegation argument. This is an argument Durnell raised specifically to appeal to him and some of the other conservatives.

**13:04:15 From Jay Feldman, Beyond Pesticides:** Earthjustice amicus: "Monsanto raises the specter of EPA preventing it from adding a cancer warning to the Roundup label. But Monsanto never identifies a single instance where EPA has prevented the addition of a cancer warning. Nor has it pointed to a particular provision of FIFRA that would allow EPA to block addition of a cancer warning or further label directions to reduce exposure to a pesticide that has the potential to cause cancer."

**13:06:51 From George Kimbrell, Center For Food Safety:** Nobody followed up Thomas' question on delegation, which is maybe not a good sign. Pretty quiet so far. Keller is going on at some length, and they are letting him, but it may be more about being tired from the whole morning of argument as much as agreeing with what he is saying.

**13:08:11 From Jay Feldman, Beyond Pesticides:** It should be said, as George wrote in the amicus representing farmers, consumers, environmentalist, and breast cancer victims, and nurses: "Monsanto's arguments are all predicated on the core claim that EPA has "determined" that glyphosate does not cause cancer. That reliance is legally, factually, and scientifically incorrect: the glyphosate registration review and its "not likely to be carcinogenic" finding on which Monsanto so heavily relies was held unlawful and judicially vacated four years ago because it was contrary to EPA's own basic cancer risk assessment standards in multiple ways."

**13:08:59 From Jay Feldman, Beyond Pesticides:** \*\*\*See [https://bp-dc.org/assets/media/documents/2026-04-01%20Durnell%20CFS%20et%20al%20Amicus%20FOR%20PRINTERS%20\(002\).pdf](https://bp-dc.org/assets/media/documents/2026-04-01%20Durnell%20CFS%20et%20al%20Amicus%20FOR%20PRINTERS%20(002).pdf)

**13:09:03 From George Kimbrell, Center For Food Safety:** A softball question from the Chief Justice. Keller is doing well so far.

**13:10:48 From George Kimbrell, Center For Food Safety:** This is a compelling response to Justice Kagan, but it's hard to know if they are buying it. Kavanaugh clearly is not. Of all the justices, he's seemed to be the most strongly in Monsanto's corner today.

**13:11:43 From Jay Feldman, Beyond Pesticides:** Conservative AG amicus states: As our federal system permits and encourages, States have separately developed their product liability laws according to their own policy preferences. Texas, for example, applies a rebuttable presumption that a product manufacturer or seller is not liable if its label complies with safety regulations promulgated by the federal government. Tex. Civ. Prac. & Rem. Code § 82.008(a).

**13:11:48 From Jay Feldman, Beyond Pesticides:** See [https://www.supremecourt.gov/DocketPDF/24/24-1068/403409/20260401125538641\\_24-1068%20Amicus%20Brief.pdf](https://www.supremecourt.gov/DocketPDF/24/24-1068/403409/20260401125538641_24-1068%20Amicus%20Brief.pdf)

**13:13:33 From George Kimbrell, Center For Food Safety:** Oh boy. Alito's first words today.

**13:13:58 From George Kimbrell, Center For Food Safety:** He's questioning Keller's lead argument, based on a 2024 administrative law case called *Loper Bright*.

**13:14:15 From Jay Feldman, Beyond Pesticides:** In *Loper Bright Enterprises v. Raimondo*, the U.S. Supreme Court overturned the 40-year-old doctrine established in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, which had directed federal courts to defer to an agency's reasonable interpretation of an ambiguous statute that the agency administers.

**13:14:38 From George Kimbrell, Center For Food Safety:** Alito is saying that *Loper Bright* doesn't mean what Keller is arguing it says.

**13:15:54 From Jay Feldman, Beyond Pesticides:** Justice Kagan.

**13:16:10 From George Kimbrell, Center For Food Safety:** Kagan now also questioning the *Loper Bright* reliance by Durnell. *Loper Bright* said Congress has to be precise in delegating authority language to agencies, but wasn't about preemption. So, they are debating whether it applies to preemption or not.

**13:17:13 From George Kimbrell, Center For Food Safety:** Keller mentions our case!

**13:17:45 From George Kimbrell, Center For Food Safety:** (2022 decision striking down EPA's cancer safety finding).

**13:18:31 From Jay Feldman, Beyond Pesticides:** Justice Jackson.

**13:19:47 From George Kimbrell, Center For Food Safety:** Kavanaugh asking, "Well, why can't you just petition EPA to fix label problems that are out of date?" Shows a profound miscomprehension of EPA's oversight and approach.

**13:20:17 From George Kimbrell, Center For Food Safety:** No more questions. Wow. Probably not a good sign, or could be they are just tired, long day.

**13:20:22 From Jay Feldman, Beyond Pesticides:** Monsanto rebuttal.

**13:20:35 From George Kimbrell, Center For Food Safety:** Clement back up now for closing and that will be it.

**13:22:18 From George Kimbrell, Center For Food Safety:** It is traditional to not ask questions, which is why they aren't.

**13:22:39 From Beyond Pesticides:** Remember to stay on for a live discussion between George Kimbrell, Center for Food Safety, and Jay Feldman, Beyond Pesticides!

*Beyond Pesticides is a 501(c)3 nonprofit organization headquartered in Washington, D.C., which works with allies in protecting health and the environment with science, policy, and action to lead the transition to a world free of toxic pesticides. Learn more at <https://www.beyondpesticides.org/>*

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