

Ag Groups Urge Withdrawal of Administration's SCOTUS Brief in Roundup Case

A “stunning” and “dangerous” shift in U.S. policy toward pesticide labeling “poses great risks to our science-based regulatory system and global food systems,” dozens of commodity and other ag groups assert in a letter asking the Biden administration to withdraw a recently filed brief in the Supreme Court.

Led by the American Soybean Association (ASA) and National Corn Growers Association (NCGA), the letter to President Joe Biden takes aim at the brief filed by Solicitor General Elizabeth Prelogar in a case involving a verdict that found the Federal Insecticide, Fungicide, and Rodenticide Act does not preempt state tort law claims.

California resident Edwin Hardeman claimed his exposure to Roundup from the mid-1980s through 2012 had caused his non-Hodgkin’s lymphoma and that Monsanto had failed to adequately warn him of the herbicide’s health risks. A federal jury awarded him about \$80 million, which included \$75 million in punitive damages. A district court judge reduced the punitive damages award to \$20 million.

The U.S. Court of Appeals for the Ninth Circuit upheld the judgment against Monsanto, finding Hardeman’s claims were not preempted by FIFRA, as argued by Monsanto in its petition to the high court on Aug. 16.

Prelogar filed the government’s brief on May 10, which was a reversal from the position taken by the Trump administration at the appeals court, a point made by Monsanto in its brief filed today responding to the government.

FIFRA “makes clear that a particular pesticide may be found to violate FIFRA’s misbranding prohibition even though EPA approved the labeling when registering the pesticide,” the brief says, urging the Supreme Court to reject the petition.

But the groups quote FIFRA in their letter that “a pesticide is misbranded if its labeling bears any statement ... which is false or misleading in any particular.”

"The brief asserts federal law and regulations do not prevent states from imposing their own labeling requirements, even if those labels run counter to federal findings," the groups said in their press release.

Brad Doyle, an Arkansas soy farmer and president of the ASA, said, “Federal law is clear that pesticide labels cannot be false or misleading. Allowing states to require health warnings contrary to decades of sound science is beyond disturbing and obviously not in line with federal law. I and other farmers are concerned this new policy will open the floodgate to a patchwork of state labels that will undermine grower access to safe, effective pesticides needed to farm productively and sustainably.”

“Science-based regulation has always been a central [tenet] of U.S. trade policy,” the groups' letter said. “This new position undermines this standard and has already drawn criticism from our trade partners and foreign customers.”

“We are concerned this monumental change in the federal government’s policy will not just threaten science-based regulation, but it risks undercutting food production and important environmental practices at a time when we cannot afford to hinder either,” the groups said. “We strongly urge your administration to withdraw the brief and to consult with the U.S. Department of Agriculture regarding the implications of this decision for food production, environmental sustainability, and science-based regulation.”

Among the 54 groups signing on were ASA, NCGA, the American Farm Bureau Federation, three state farm bureaus, the Weed Science Society of America, the National Association of State Departments of Agriculture, the National Association of Wheat Growers, National Cotton Council, and American Sugarbeet Growers Association.