



Monsanto v. Durnell: An Analysis

The Supreme Court, in a 7-2 decision, issued a ruling on June 25 that prohibits, under current federal law, the right of those harmed by pesticides to sue manufacturers for their failure to warn consumers of potential hazards on their product labels. The decision effectively shields manufacturers from failure to warn lawsuits. See *opinion in [Monsanto v. Durnell](#)*.

Background

John Durnell helped manage his local park in St. Louis. For about 20 years he used the weed killer Roundup (glyphosate) and then developed non-Hodgkin lymphoma. He sued Monsanto and won a \$1.25 million jury verdict because Monsanto failed to warn him on Roundup's label that the product could cause cancer. The court found that that the *Federal Insecticide, Fungicide, and Rodenticide Act* (known as FIFRA) "preempts a state-law failure-to-warn claim concerning a pesticide registered by [the U.S. Environmental Protection Agency] 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."

Holding Up EPA Pesticide Label as Conclusive Statement on Safety

The majority. [Justice Brett Kavanaugh] Opinion reads: "[B]efore registering a pesticide, EPA must evaluate a pesticide and its proposed label—and must determine that the proposed label includes all warnings necessary and adequate to protect human health and the environment, and is not false or misleading. EPA's registration of the pesticide and approval of the pesticide's label embodies the agency's considered judgment that a pesticide is not misbranded—that is, that the label is not false or misleading and does not omit a necessary warning." States that a pesticide product's registration with EPA— EPA's decision to allow the marketing of that product— is "prima facie" evidence of a complete and thorough review and determination of safety.

The dissent. [Justice Ketzia Brown Jackson and Justice Neil Gorsuch] Explains that EPA approved label, which majority refers to as prima facie evidence of safety is not "conclusive evidence."

[[Former EPA officials in amicus brief](#)]: "Under FIFRA and EPA's procedures, mere onetime acceptance of labeling confers no defense to liability for misbranding. To avoid such liability, the manufacturer must keep both EPA and the product labeling up to date with necessary safety information". Note that reference to the manufacturers' responsibility for accurate labeling is absent in the majority opinion, except for two passing references. The former officials continue, "Pesticides registered by EPA may carry risks that are not adequately addressed by the registration of the EPA-accepted labeling."



Context for People Poisoned by Pesticides

People poisoned by a pesticides are not able, under the Supreme Court decision, to seek justice for not being warned of the potential harm because EPA registered the chemical, despite all the widely documented limitations of the registration and regulatory process. The limitations of the pesticide registration process can be found in the robust independent scientific literature, in U.S. General Accountability Office (GAO) reports, in findings of the Office of Inspector General, in Congressional hearings, and more.

Pesticide registrants, or the chemical manufacturers, have tremendous influence in the pesticide registration process. They write the pesticide labels, test the chemicals for safety, negotiate deals that allow long phaseouts of chemicals known to harm children, allow for disproportionate risks to people of color, establish exposure assumptions in risk assessments, and too often hire former EPA scientists, lawyers, assistant administrators, and division directors. The pesticide manufacturer can move a label change through EPA quickly when information on adverse effects become known.

Policy Context

The Supreme Court's reading of FIFRA calls out the weaknesses of the statute, the lack of protection, and the importance of the courts in holding chemical manufacturers accountable for notifying consumers and farmers about potential product hazards. There are still possible legal remedies for those harmed to pursue strict liability claims for design defects and negligence, but these strategies are challenging and expensive in our legal system. Labeling offers an opportunity for preventing harm and incentivizing manufacturers to producer safer products. A 2005 Supreme Court case reversed, in a 7-2 vote, the lower court's decision against Texas peanut farmers who had sued for crop damage under FIFRA.

Suing chemical companies is, in fact, pro-farmer. The Supreme Court majority in *Bates v. Dow* said, "The long history of tort litigation against manufacturers of poisonous substances adds force to the basic presumption against pre-emption. If Congress had intended to deprive injured parties of a long available form of compensation, it surely would have expressed that intent more clearly." [and they end with, and this is key] "Moreover, this history emphasizes the importance of providing an incentive to manufacturers to use the utmost care in the business of distributing inherently dangerous items."

Support Legislation to Reverse Monsanto v. Durnell

H.R. 9528, the [*People Over Poison Act*](#)—introduced by Representatives Chellie Pingree (D-ME) and Thomas Massie (R-KY)— is intended to restore the right of people to hold pesticide manufacturers accountable under state law when they fail to warn consumers about the risks of their products. The bill may be subject to clarifying amendments.