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Legal Sidebar

Federal Preemption of State Pesticide Failure-to-Warn Claims After *Monsanto v. Durnell*

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The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) is the primary federal law regulating the sale and use of pesticides, including herbicides. FIFRA prohibits the sale or distribution in the United States of any pesticide that has not been registered with the U.S. Environmental Protection Agency (EPA), a process which includes submission of the pesticide's labeling. On June 25, 2026, in a case involving glyphosate-containing pesticides, the U.S. Supreme Court held in *Monsanto v. Durnell* that FIFRA's express preemption provision preempts a state law failure-to-warn claim—that is, an allegation that a pesticide manufacturer failed to include a required warning on the label of its pesticide—where EPA has registered the pesticide with a label that does not include such a warning. Similar conflicts regarding the preemptive effect of federal regulatory schemes for products and state tort regimes have arisen in other contexts in recent years, including in the context of medical devices.

A number of statutes contain preemption provisions similar to the FIFRA provision at issue in *Monsanto*. In addition to considerations specific to pesticide regulation, the Court's opinion may raise considerations for Congress about the preemptive scope of those statutes. Further, the Court's analysis of the language used in the FIFRA preemption provision may inform how Congress drafts preemption provisions in future legislation.

This Legal Sidebar explains the context and background for the Supreme Court's decision, the opinions of the Court and individual Justices, and selected considerations for Congress related to the case.

Background: Preemption and FIFRA Requirements

Preemption Under FIFRA

The Constitution's Supremacy Clause provides that federal law is the "supreme Law of the Land," meaning where a federal law and state law conflict, federal law preempts state law. Congress has the authority to define a federal statute's preemptive scope. A federal statute may preempt state law explicitly or by implication. A federal statute expressly preempts state law where the federal statute includes a provision—known as an *express preemption provision*—explicitly stating that the federal preempts state law in whole or in part. Where Congress is silent on preemption, a federal law impliedly preempts state

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law in certain circumstances, including where compliance with both federal and state law is impossible or would pose an obstacle to federal objectives (known as *conflict preemption*), and where Congress has established a comprehensive framework indicating an intent to exclude state regulation of the same subject (known as *field preemption*).

FIFRA both allows for state regulation of certain aspects of pesticide sale and use and expressly preempts state regulation of other aspects. Section 24(a) of FIFRA (7 U.S.C. § 136v(a)) explicitly allows states to regulate the sale and use of pesticides to the extent that the state does not permit any sale or use otherwise prohibited under FIFRA. Section 24(b) of FIFRA (7 U.S.C. § 136v(b)), in contrast, expressly prohibits states from imposing "any requirements for labeling or packaging in addition to or different from those required under" the statute. The statute defines "labeling" broadly to include "all labels and all other written, printed, or graphic matter accompanying the pesticide or device at any time," as well as material to which the label or literature accompanying the pesticide refers.

In 2005, the Supreme Court addressed the application of FIFRA's preemption provision to state tort claims that turn on information provided to the pesticide user by the manufacturer. In *Bates v. Dow*, the Court observed that FIFRA's express preemption provision, Section 24(b), applies only to state law "requirements," not events that might merely induce a manufacturer to act, but determined that those "requirements" extend beyond statutes and regulations to common law duties. The Court applied a two-part test, holding that FIFRA preempts a particular state law requirement if (1) the state requirement is "a requirement *for labeling or packaging*" and (2) the packaging or labeling requirement is "*in addition to or different from* those required" under FIFRA, including its implementing regulations. The Court further held that plaintiffs' negligent failure-to-warn claims rested on common law duties that constituted requirements for labeling or packaging. Proceeding to the second step of the test, the Court held that those claims would not be preempted if the state requirements were "parallel requirements" "equivalent to, and fully consistent with" a FIFRA requirement—specifically, the act's prohibition on misbranding—regardless of whether the state requirements explicitly incorporated FIFRA's standards. The Court did not, however, decide whether FIFRA in fact preempted those claims, instead remanding the question to the Court of Appeals for further proceedings.

In recent years, federal circuit courts have disagreed on the question of whether FIFRA preempts state tort failure-to-warn-claims, with the U.S. Courts of Appeals for the Ninth and Eleventh Circuits holding that FIFRA did not preempt failure-to-warn claims in two cases involving registered pesticides, and the U.S. Court of Appeals for the Third Circuit holding that FIFRA did preempt such claims in a case involving registered pesticides.

FIFRA's Substantive Requirements

FIFRA mandates that pesticide manufacturers register pesticides with EPA. FIFRA directs EPA to register a pesticide upon making certain determinations, including that, when used "in accordance with widespread and commonly recognized practice," the pesticide will not cause "unreasonable adverse effects on the environment" and that the pesticide's label complies with all requirements of FIFRA. The statute defines "unreasonable adverse effects on the environment" as unreasonable risk to man or the environment or human dietary risk. To allow EPA to make the required determinations, the statute establishes a registration procedure requiring the pesticide manufacturer to submit certain data and materials, including a copy of the pesticide's label and directions for use. EPA has promulgated regulations further detailing registration procedures and requirements.

EPA registers a pesticide only if it determines, among other things, that the application includes data sufficient to allow EPA to make the findings required by statute for registration and that the pesticide is not misbranded. The statute defines "misbranded" to include, among other things, a pesticide with a label

lacking a "warning or caution statement . . . adequate to protect health and the environment." FIFRA also prohibits the sale or distribution of a misbranded pesticide.

EPA has established regulations detailing the content required on pesticide labels. All labels must include directions for use "adequate to protect the public . . . and to prevent unreasonable adverse effects on the environment." All labels must also bear hazard and precautionary statements for both human and environmental hazards. EPA regulations further provide that, generally, a registrant must apply for an amended registration before modifying the labeling or packaging of a registered pesticide. EPA may determine that certain "minor modifications" are permissible without agency approval and issue procedures for the same. EPA proposed changes to those procedures in December 2025.

FIFRA requires EPA to re-review registrations periodically. EPA has authority to cancel a registration if it determines that the pesticide or its labeling is inconsistent with FIFRA or causes unreasonable harm. FIFRA also imposes an ongoing post-registration reporting requirement on pesticide registrants, requiring that they report to EPA "additional factual information regarding unreasonable adverse effects on the environment." Regulations promulgated under FIFRA also require registrants to report information about toxic or adverse effects, including "delayed or chronic" adverse effects.

Under Section 3(f)(2) of FIFRA, registration of a label with EPA is not a defense to a violation under the statute. For example, if EPA brought an enforcement action alleging that a pesticide was misbranded, the fact that the pesticide had been registered with EPA would not be a defense in that action. Instead, registration constitutes only prima facie evidence of compliance with FIFRA's requirements, including the prohibition on marketing misbranded products.

The Supreme Court's Decision in *Monsanto*

In *Monsanto v. Durnell*, the Supreme Court held that FIFRA expressly preempts state tort failure-to-warn claims arising from pesticides bearing labels registered with EPA. The case arose from a strict liability failure-to-warn claim under Missouri tort law. While the elements of a failure-to-warn tort may differ from state to state, in Missouri, a plaintiff alleging strict liability failure to warn must show that (1) the defendant sold the product in question, (2) the product was unreasonably dangerous when sold and when used as reasonably anticipated, (3) the defendant did not give adequate warning of the danger, (4) the product was used as reasonably anticipated, and (5) the sale of the product without adequate warning directly harmed the plaintiff.

John Durnell sued Monsanto in Missouri state court in 2019, alleging that chronic use of Monsanto's Roundup products caused his non-Hodgkins lymphoma and that Monsanto should have included a cancer warning on Roundup's label. EPA had registered the Roundup products, which contain the active ingredient glyphosate, without requiring their labels to contain cancer warnings, and had repeatedly determined that glyphosate is not likely to cause cancer. A jury found for Durnell on his failure-to-warn claim, and the Missouri Court of Appeals affirmed, rejecting Monsanto's argument that FIFRA preempted Durnell's claim. After the Supreme Court of Missouri exercised its discretion not to take up the case, Monsanto petitioned for certiorari, and the Supreme Court agreed to hear the case to resolve the split among various federal courts of appeals and state courts regarding whether FIFRA preempts state tort failure-to-warn claims. Numerous organizations and entities filed amicus curiae briefs in support of either Durnell or Monsanto. The United States also filed a brief and participated at oral argument as an amicus curiae, arguing that Durnell's failure-to-warn claim was preempted.

Justice Kavanaugh wrote the opinion for the Court, in which six Justices joined. The Court, following *Bates* and agreeing with the parties, first held that the state tort duty at issue—which would have required the pesticide label to bear a cancer warning—constituted a state labeling requirement. The Court then determined that this state-imposed duty was "in addition to or different from" requirements imposed

under FIFRA, because FIFRA and its implementing regulations required Monsanto to use the label approved by EPA—a label that did not contain the cancer warning the plaintiff alleged that the state tort duty would require. Because the state-imposed duty was "in addition to or different from" the FIFRA requirements, the Court held that the claim was expressly preempted. The Court distinguished the failure-to-warn claims at issue here, which dealt with safety concerns, from the failure-to-warn claims at issue in *Bates*, which "targeted a label's efficacy claims," on the ground that EPA registration determinations reflect "EPA's considered judgment" on issues of safety but not on efficacy. The Court did not consider whether FIFRA might also impliedly preempt state failure-to-warn claims.

The Court held that *Riegel v. Medtronic*, an earlier Supreme Court case construing what the Court called a "nearly identical" preemption clause in another statute, confirmed this reasoning and was dispositive. *Riegel* concerned the Medical Device Amendments of 1976 (MDA), a law the *Durnell* Court described as requiring the Food and Drug Administration (FDA) to register medical devices if it makes certain determinations, including that the device's label is not false or misleading, and requiring the manufacturer to use the label approved by FDA unless FDA has approved changes. The Court observed that the preemption provision at issue in *Riegel*, like the one in FIFRA, relates to requirements imposed "under" the law. FIFRA's use of "under," rather than "by," the Court held, incorporates EPA's registration decisions as "requirements" imposed "under" FIFRA, rather than limiting FIFRA's express preemption clause to only those requirements directly imposed in statutory language. The Court also observed that several other statutes contain "similar or identical labeling preemption provisions" and cautioned that a ruling that the plaintiff's claim in this case was not preempted would affect those other statutes, all of which "reflect Congress's judgment that the ability to sell a product throughout the country with a single label can be important to maintaining an efficient nationwide market."

The Court rejected an argument that, because Section 3(f)(2) of FIFRA provides that registration is not a defense to a violation of FIFRA and is only prima facie evidence of compliance, registration under FIFRA does not preempt a state tort suit that enforces a requirement parallel to a FIFRA requirement, such as the prohibition on misbranding. The Court observed that the relevant provision of FIFRA Section 3(f)(2) merely makes clear that EPA may bring enforcement actions against manufacturers of registered pesticides. The Court, citing representations made by the United States at oral argument, found it unlikely that EPA would bring such an action against a manufacturer for using an approved label, rather than for using a label including something the approved label did not or lacking something the approved label included. The Court held that, even if EPA did bring such an action, the relevant provisions of Section 3(f)(2) would still be inapplicable to state tort suits based on both the statutory text, which applies to "any offense under [FIFRA]," and the fact that such an application would "upend" the "EPA-centric" regulatory scheme established in FIFRA. The Court also held that these provisions are inapplicable in this case because Monsanto's defense relied not merely on registration but on "EPA's specific determination" that glyphosate-based pesticides did not require cancer warning labels. Finally, analogizing FDA's authority to withdraw medical device approval under the MDA with EPA's enforcement authority under FIFRA, the Court held that EPA's ability to bring an enforcement action does not change the "preemptive force" of registration decisions.

In a concurring opinion, Justice Clarence Thomas agreed with the Court's preemption analysis, but questioned whether, as agreed by all parties in this case, administrative action—that is, action by an agency exercising statutorily delegated authority—may preempt state law under the Constitution's Supremacy Clause. Justice Thomas also questioned whether FIFRA exceeds Congress's authority under the Commerce Clause by regulating intrastate sales and the use of pesticides after purchase, and whether FIFRA constitutes an impermissible delegation of legislative power by allowing EPA to make substantive rules punishable by fine or imprisonment.

Justice Ketanji Brown Jackson, writing in dissent and joined by Justice Neil Gorsuch, would have held that the duty underlying the state failure-to-warn claim is equivalent to FIFRA's prohibition on

misbranding, and therefore not preempted. The dissent observed that FIFRA's misbranding provision requires warnings "adequate to protect health and the environment," but does not define what warnings meet this adequacy standard. The dissent read existing EPA regulations to "give content to" this requirement for *acute* hazards, but found no EPA regulation setting specific requirements for *chronic* risks, such as cancer. Therefore, according to the dissent, FIFRA requires labels to warn of chronic risks, but neither the statute nor regulations promulgated under it require that warning to take a particular form. The dissent thus saw the statutory prohibition on misbranding as a requirement "parallel" to the duty underlying the state failure-to-warn tort. The dissent also reasoned that Section 3(f)(2) of FIFRA establishes that registration cannot be dispositive on the question of whether a pesticide is not misbranded, and that registration therefore does not create a "requirement" under FIFRA.

The dissent also disagreed with the majority on the application of *Riegel*, which it distinguished from this case on two grounds: first, that the MDA, the law at issue in *Riegel*, contained no provision analogous to Section 3(f)(2) of FIFRA; and second, that unlike the claim at issue in this case, the claim in *Riegel* did not concern a claim "parallel" to any violation of the MDA.

Having concluded that the claim was not expressly preempted, the dissent also rejected implied preemption under FIFRA on a number of grounds, including that Monsanto could have added a cancer warning without EPA approval under EPA's regulation allowing for minor modifications or, if necessary, applied for EPA approval of a revised label containing such a warning.

Considerations for Congress

The Court's opinion in *Monsanto v. Durnell* rests on its interpretation of the text of FIFRA's preemption provision. Congress has authority to amend FIFRA to expressly preempt or allow state failure-to-warn claims or delineate which types of failure-to-warn claims are preempted. At least one such bill has been introduced in the 119th Congress. H.R. 9528 would amend FIFRA's express preemption provision to provide that it "shall not be construed to prohibit or otherwise limit" a state law tort claim related to labeling or packaging of pesticides or devices. Another bill, H.R. 7567, as reported in the House, would not have amended FIFRA's express preemption provision, but instead would have established requirements for the application of that provision. Specifically, a provision of the reported bill would have mandated that Section 24(b) of FIFRA be applied to require "uniformity in pesticide labeling nationally," and to prohibit states from penalizing or holding liable any entity for failing to comply with any requirement that would require labeling or packaging in addition to or different from that approved by EPA, unless that entity had been penalized by EPA for "material" violations of FIFRA's prohibitions on submitting to EPA falsified information or data. That provision did not appear in the version of H.R. 7567 later engrossed in the House.

Rather than or in addition to FIFRA's preemption provision, Congress could amend FIFRA's substantive provisions, including by requiring or prohibiting particular warnings for glyphosate or any other pesticide. Congress could also create a *federal* cause of action similar to state failure-to-warn torts based on pesticide labeling and packaging, as has been proposed in S. 2324 in the 119th Congress, without changing the preemptive scope of FIFRA.

Congress may also consider whether to clarify the scope of the "similar or identical" labeling preemption provisions identified by the Court in other laws related to meat (21 U.S.C. § 678), eggs (21 U.S.C. § 1052(b)), poultry (21 U.S.C. § 467e), cosmetics (21 U.S.C. § 379s(a)), nonprescription drugs (21 U.S.C. § 379r(a)(2)), and nutrition labeling (21 U.S.C. § 343-1(a)(2)-(4)).

Finally, Congress might consider the Court's distinction between requirements imposed "under" a statute—including regulations promulgated pursuant to statutory authority—and those imposed "by" a

statute—limited to the requirements imposed in the statute itself—when drafting express preemption provisions in future legislation.

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