

WEIL'S SCOTUS TERM IN REVIEW

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Supreme Court Forecloses Liability for Roundup Cancer Warning Claims

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Today, the Supreme Court held in [*Monsanto v. Durnell*](#) that federal law preempts state-law failure-to-warn claims that would go above and beyond the EPA-approved label for a pesticide. In a decision authored by Justice Kavanaugh, the Court concluded that a state tort verdict against Monsanto for failing to include a cancer warning on its label for Monsanto's popular weedkiller Roundup was preempted under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") because the EPA had approved Roundup's label without requiring a cancer warning.

Under FIFRA, no pesticide may be distributed or sold unless it has been registered with the EPA and the EPA has approved the pesticide's label. The EPA has consistently determined that the pesticide in Roundup (glyphosate) is not carcinogenic and has therefore not required manufacturers to include cancer warnings on glyphosate products. FIFRA contains an express preemption clause, providing that states "shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter." 7 U.S.C. § 136v(b).

Respondent John Durnell brought a state-law failure-to-warn claim against Monsanto alleging that the lack of a warning had contributed to his cancer. The jury agreed, awarding him more than \$1 million in damages, and the Missouri courts affirmed.

In a 7-2 opinion authored by Justice Kavanaugh, the Supreme Court reversed and held that Durnell's failure-to-warn claim was expressly preempted by FIFRA. The Court began from the premise that state-law tort duties can qualify as labeling requirements for purposes of FIFRA's preemption clause. The Court explained that requiring Monsanto to add a cancer warning to its label where the EPA had not required the warning was a requirement that was "in addition to" and "different from" Monsanto's obligations under FIFRA. The Court analogized the EPA's pesticide registration scheme to the regulatory structure at issue in *Riegel v. Medtronic*, an earlier decision holding that the FDA's premarket approval of medical devices imposes federal requirements that preempt contrary state-law duties.

The Court also rejected Durnell's reliance on a FIFRA provision stating that registration is not a defense to an EPA enforcement action. The Court reasoned, among other things, that Monsanto was not relying on registration alone but also on the EPA's specific determination that glyphosate labels do not need to include a cancer warning.

Justice Thomas joined the Court's opinion in full but wrote separately to question the constitutional foundations of FIFRA. Justice Jackson, joined by Justice Gorsuch, dissented. The dissent would have held that Durnell's failure-to-warn claim was not preempted because it paralleled FIFRA's prohibition on misbranded pesticides and because Monsanto's

registration of its label was only prima facie evidence of compliance with FIFRA rather than a dispositive labeling requirement.

The Court's decision is a major victory for manufacturers of federally registered pesticides. In particular, the decision forecloses the principal theory under which plaintiffs targeting registered pesticides have sought to impose state-law liability for label warnings. More broadly, the opinion signals that comprehensive federal registration schemes containing similar preemption language are more likely to be construed to preempt conflicting state-law claims.

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