

The National Agricultural Law Center

We are the nation's leading source of agricultural and food law research and information



Failure to Warn?

A Look at Recent State and Federal Action on Pesticide Labeling

UofA

DIVISION OF AGRICULTURE

RESEARCH & EXTENSION

University of Arkansas System

About the NALC

- Since 1987, the National Agricultural Law Center is the nation's leading source for agricultural and food law research and information.
 - The NALC is a unit of the University of Arkansas System Division of Agriculture
 - In close partnership with the USDA Agricultural Research Service, National Agricultural Library
- Objective, non-partisan research and information regarding laws and regulations affecting agriculture

nationalaglawcenter.org



What's Going On?



- In the last decade, the question of pesticide preemption and liability has become central
 - Stems from on-going pesticide product liability litigation
- The Supreme Court has agreed to hear the question of preemption in *Monsanto v. Durnell*
- States are weighing in with liability limitation bills
 - Congress as well
- Outcomes could impact access to crop protection tools going forward



Outline:

 *Monsanto v. Durnell*

 State Legislation

 Congress & the Farm Bill

 Final Thoughts

The Basics



In January 2026, the Supreme Court agreed to hear *Monsanto v. Durnell*



The lawsuit was filed by a plaintiff who claimed that use of Roundup gave him cancer and that Monsanto failed to warn him about the risk



Bayer argues that the plaintiffs' failure to warn claim should be dismissed because it is preempted by FIFRA



Oral argument was held on April 27, final opinion expected sometime later in the year



The decision is likely to impact thousands of active Roundup lawsuits and other pesticide liability cases – very likely to shape the future of pesticide liability litigation

Context

- Since 2015, thousands of lawsuits have been filed by plaintiffs against Monsanto/Bayer alleging that the company failed to warn consumers about health risks of glyphosate
- Bayer has argued that FIFRA preempts the plaintiffs' failure to warn claims
- EPA has never found that glyphosate, the active ingredient in Roundup, is carcinogenic – there is no cancer warning required on the federal label
- But plaintiffs disagree – they argue that their failure to warn claims satisfy the parallel requirements standard from *Bates* and that their claims are parallel to FIFRA's misbranding requirements



Central Issue

- While thousands of these lawsuits have been filed in nearly every state in the U.S., only a handful have gone to trial
 - Some juries ruled in favor of Monsanto/Bayer
 - Other juries have ruled in favor of the plaintiffs and returned multi-billion dollar jury awards
- The central legal question of these lawsuits: does FIFRA preempt the common law failure to warn claims raised by the plaintiffs, or do those claims run parallel to FIFRA's misbranding requirements?



FIFRA Recap



- Provides for federal regulation of pesticide distribution, sale, and use
 - No pesticide may be distributed or sold until it has been registered under FIFRA
- Implemented by EPA
- To register a pesticide, EPA must determine that the product will not have “unreasonable adverse effects on the environment” when used as intended
 - Balancing test – EPA must weigh costs and benefits of using pesticide

Pesticide Labels

- For a pesticide to be legally used in the United States, it must have a federally registered label
- Label contains information about how to apply the pesticide
 - Including when to apply, safety measures, what it can be applied to, etc.
- The label is the law
 - Violating a federally registered label is a violation of federal law

The diagram shows a rectangular label for Touchdown Total herbicide. On the left side, several labels with orange lines pointing to specific parts of the product label are listed: Commercial Name, Active Ingredient, Inert Ingredients, Signal Words, EPA Registration No. / EPA Establishment No., and Physical Quantity. The product label itself features the Touchdown Total logo at the top, followed by the word 'Herbicide' and a description: 'Nonselective Foliar Systemic Herbicide for Weed Control'. Below this is a table of ingredients: Active Ingredient (*Glyphosate: N-(phosphonomethyl) glycine) at 36.5% and Other Ingredients at 63.5%, totaling 100.0%. A 'LOW FOAM' logo is also present. The label includes the signal word 'CAUTION' and the instruction 'KEEP OUT OF REACH OF CHILDREN.' At the bottom, it lists the EPA registration and establishment numbers (100-1169 and 100-LA-001) and the net contents (2.5 gallons). The Syngenta logo is at the bottom right.

Component	Percentage
Active Ingredient: *Glyphosate: N-(phosphonomethyl) glycine	36.5%
Other Ingredients	63.5%
Total	100.0%

Touchdown Total® is a registered trademark of Syngenta Crop Protection, LLC.



State Authority Under FIFRA

- FIFRA allows states to regulate the sale or use of federally registered pesticides
- But sets stricter limits on state authority to regulate language on pesticide labels
- A state may “not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under [FIFRA].”
 - 7 U.S.C. § 136v(b).
- How does the regulation of sale and use differ from labeling requirements?



FIFRA & Misbranding

- FIFRA makes it unlawful to sell any pesticide which is “misbranded”
- A pesticide is considered “misbranded” if:
 - Its labeling bears false or misleading information about its ingredients
 - Its packaging does not meet FIFRA standards
 - It bears the name of a different pesticide
 - Its label does not include the product’s registration number
 - Any statement required by FIFRA does not appear on the product’s label
 - The labeling does not contain necessary directions for use
 - The label does not include necessary health warnings
 - And more...



Failure to Warn

- In a products liability case, failure to warn claims are raised by plaintiffs who believe that the product manufacturer failed to instruct consumers on how to safely use the product
- To prove failure to warn, a plaintiff must show:
 - That the manufacturer did not adequately warn of a particular risk,
 - That was known or knowable in light of the generally recognized and prevailing best scientific and medical knowledge available at the time of manufacture and distribution.
- Restatement (Third) of Torts notes that inadequate warnings can render a product defective:
 - “[...] defects based on inadequate instructions or warnings arise when the specific product unit conforms to the intended design, but the intended design itself, or its sale without adequate instructions or warnings, renders the product not reasonably safe.” Restatement (Third) of Torts § 1 a.



*Bates v. Dow
Agrosciences
LLC, 544 U.S.
431 (2005)*

- Filed by peanut farmers in Texas who claimed their crops were damaged by Dow's "Strongarm" pesticide
- Claimed that the label recommended use of Strongarm in all peanut growing areas when Dow knew or should have known that it would stunt peanut growth in soils which have pH levels of at least 7.0
- Dow argued that plaintiffs' claims were preempted by FIFRA which does not allow states to add language to a pesticide label which is "different from or in addition to" the federally registered label
- Supreme Court held that:
 - FIFRA's preemption provision applies to state law requirements for labeling or packaging
 - States may not impose labeling or packaging requirements that are "different from" or "in addition to" the federal label
 - BUT plaintiffs' claim that Dow failed to warn them was not preempted because it was a "parallel requirement" to FIFRA's labeling requirements

Bates v. Dow – “Parallel Requirements”

- Plaintiffs’ claim that Dow had failed to warn that Strongarm could stunt peanut growth was based in common law rules that qualify as a *requirement* for labeling or packaging
 - Plaintiffs’ claim was that Dow had violated standards for labeling
- Court found that common law rules are subject to FIFRA’s limits on state authority but are not automatically preempted
- If a common law rule would impose a labeling requirement that diverges from the federal label it would be preempted
- BUT if the common law rule is equivalent to or fully consistent with FIFRA’s labeling standards it would not be preempted – instead it would be considered a *parallel requirement*
- Claims in *Bates* were parallel to FIFRA’s requirement that a pesticide not be misbranded



The Two Main Arguments

FIFRA Preempts Failure to Warn Claims

State law failure to warn claims would require a new warning to be added to the glyphosate label that is *different from* or *in addition to* the federally registered label.

Preemption under 7 U.S.C. § 136v.

FIFRA misbranding requirement is broader than state law failure to warn claims, so preemption does not occur.

No preemption if FIFRA requirements are parallel to state law requirements.

FIFRA Does **NOT** Preempt Failure to Warn Claims



Courts Have Differed...

So far, three Circuit Courts of Appeal have considered this question

Ninth and Eleventh Circuits ruled that FIFRA *does not* preempt the plaintiffs' failure to warn claims

Third Circuit has ruled that FIFRA *does* preempt the plaintiffs' failure to warn claims and that such claims should be dismissed

Durnell: Pathway to SCOTUS

Plaintiff filed suit
in 2019

Jury awarded
plaintiff \$1.25
million in 2023

Bayer appealed
jury decision,
claiming
preemption, to
Missouri Court of
Appeals which
affirmed trial court
in 2025

Bayer appealed to
Supreme Court



Durnell: Primary Arguments

Bayer argues

- FIFRA preempts failure to warn claims
- Express preemption because text of FIFRA directly prohibits states from altering label language
- Implied preemption because Bayer cannot comply with both federal and state labeling requirements

Durnell argues

- Failure to warn claims not preempted
- Failure to warn claims are consistent with FIFRA prohibition on misbranding
- FIFRA authorizes the judiciary to determine whether a pesticide is misbranded
 - EPA determinations that a label complies with misbranding provisions are the agency's "opinion"



The Federal Government Weighs In...

Solicitor General submitted a brief at the request of SCOTUS in 2025 giving its view on the case

- Urged SCOTUS to hear the case and supported Bayer's argument in favor of preemption

In amicus brief and during oral argument, the government continued to support preemption

- Text of FIFRA expressly preempts state law failure to warn claims
- Such claims interfere with FIFRA's uniform labeling requirements



Durnell: Main Takeaways from Oral Argument

- Express vs. impossibility preemption
- Definition of “misbranding”
- State by state or jury by jury?
- *Chevron vs. Loper Bright*
- “New evidence”
- “Anyone can petition to cancel a pesticide” and other claims plaintiffs could still raise



What Now?

Final decision expected in late June/early July

If SCOTUS sides with Bayer, failure to warn claims in pesticide liability cases likely preempted

Other options remain for those litigants, though unclear how they may proceed

Either way, thousands of glyphosate cases remain active across the United States

Outline:

✓ *Monsanto v. Durnell*

✓ State Legislation

○ Congress & the Farm Bill

○ Final Thoughts

In the Meantime...

As the question of FIFRA
preemption and failure to
warn works its way through
the court system, some states
have also weighed in

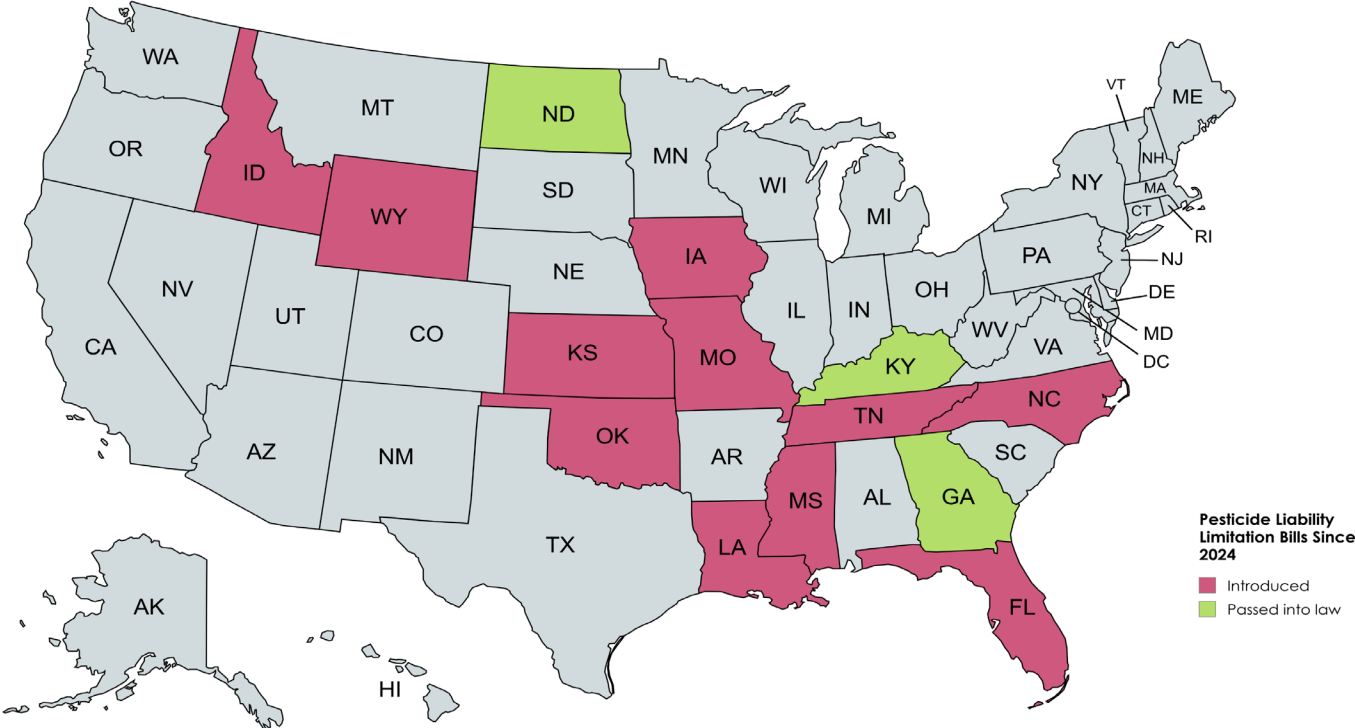
Since 2024, several states
have attempted to answer
the FIFRA preemption
question through
legislation

State Pesticide Liability Limitation Bills

- State bills have sought to limit liability for pesticide manufacturers by making a federally registered pesticide label a complete defense to a failure to warn claim
 - Note: some bills provide that a federally registered label would be a defense to all common law claims related to labeling, *including* failure to warn
- These bills provide that a federally registered pesticide label that has been approved by EPA under FIFRA shall be considered:
 - “a sufficient warning label for the purposes of an action commenced under any provision of state law concerning the duty to warn or label, or any other common law duty to warn”



Which States?



Created with mapchart.net



Highlights from Adopted Bills

- **GA:** “any pesticide [...] which displays a label that has been approved by the [EPA] [...] or is consistent with the most recent human health risk assessment performed under FIFRA shall be deemed a sufficient warning label for [...] an action commenced under any provision of state law concerning the duty to warn or label, or any other common law duty to warn”
- **KY:** “any pesticide registered for use [...] that displays a label that has been approved by the EPA in registering the pesticide or consistent with the most recent human health risk assessment performed under the FIFRA shall be deemed a sufficient warning label for the purposes of an action commended under any provision of state law concerning the duty to warn or label, or any other common law duty to warn.”
- **ND:** “any pesticide [...] which displays a label approved by [EPA] consistent with the most recent human health assessment performed under [FIFRA] or displays a label consistent with the [EPA] carcinogenicity classification [...] is sufficient to satisfy any requirement for warning or labeling regarding health or safety [...] and any other provision or doctrine of state law concerning the duty to warn or label, or any other common law duty to warn”

Exceptions?

- Both the Georgia and Kentucky laws clarify that they will not apply if a manufacturer has “knowingly withheld, concealed, misrepresented, or destroyed” information regarding the human health risks of a pesticide



Will *Durnell* Change the Field?

Difficult
to say...

Lots of factors at play! How SCOTUS rules and how it frames its ruling will be important

Some bills go beyond failure to warn to cover all common law claims related to warning/labeling a pesticide

State legislators may want additional certainty



Outline:

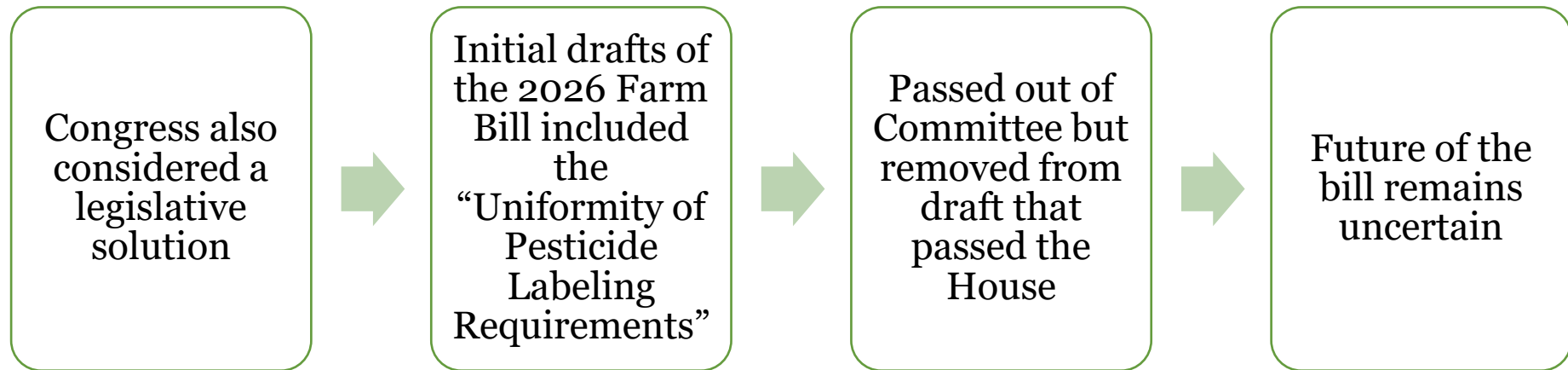
✓ *Monsanto v. Durnell*

✓ State Legislation

✓ Congress & the Farm Bill

○ Final Thoughts

On the Federal Level



Key Language

- “[FIFRA] shall be applied to require uniformity in pesticide labeling nationally, and to prohibit any State, instrumentality or political subdivision thereof, *or a court* from directly or indirectly imposing or continuing in effect any requirements for, or penalize or hold liable any entity for failing to comply with requirements that would require labeling or packaging that is in addition to or different from the labeling or packaging approved by [EPA], including any requirements relating to warnings on such labeling or packaging”
- Potential impacts?
 - Strengthen FIFRA preemption provision
 - Limit role of courts



What About MAHA?

- Difficult to say...
- Lots of state-level MAHA activity but harder to pin down federal policy impacts



Outline:

✓ *Monsanto v. Durnell*

✓ State Legislation

✓ Congress & the Farm Bill

✓ Final Thoughts

Final Thoughts



- *Durnell* decision expected over the summer – for now, we wait and see
- Outcome likely to impact cases throughout the country
 - Not only glyphosate, but other pesticides as well
 - Nature of legal challenges to registered pesticides may change, but unlikely to stop entirely
- States and Congress may continue to pass liability limitation/uniformity bills
 - At federal level, this has proven to be more difficult
 - Impact of MAHA uncertain

Contact Information



(479) 575-7646
nataglaw@uark.edu

www.nationalaglawcenter.org

Brigit Rollins
Staff Attorney
brollins@uark.edu



@nataglaw

Stay in Touch:
Sign up for “The
Feed”

