

IN THE SUPREME COURT OF THE UNITED STATES

No. 24-1068

MONSANTO COMPANY,
Petitioner,

v.

JOHN L. DURNELL,
Respondent.

**AMICI ROUNDUP AND PARAQUAT MDL LEADERSHIP'S
MOTION FOR DIVIDED ARGUMENT**

Pursuant to Rules 21, 28.4, and 28.7 of this Court's Rules, *amici curiae*, the court-appointed leadership of the multidistrict litigations involving the pesticides Roundup and paraquat, respectfully move for divided argument. *Amici* request 10 minutes of the 30 allocated to respondent. Alternatively, *amici* request a 10-minute enlargement of argument to accommodate MDL Committee Leadership. Respondent opposes this request.

1. This case presents a weighty question about the authority of States and the federal government under the Federal Insecticide, Fungicide, and Rodenticide Act to regulate pesticides and to compensate injured individuals. Respondent John Durnell, who was not involved in a case assigned to the Roundup MDL, developed cancer after years of using Monsanto's Roundup weedkiller and obtained a jury verdict of \$1.25 million on his Missouri failure-to-warn claim. Monsanto contends that Durnell's claim is expressly or impliedly preempted by FIFRA. The Court granted certiorari to resolve whether FIFRA preempts label-based failure-to-warn claims where EPA has not required the warning.

Amici are the court-appointed leadership of the two largest pesticide MDLs in the federal system, representing more than 11,500 individuals whose claims will be affected by this Court’s ruling. See *In re Roundup Prods. Liab. Litig.*, MDL No. 2741 (N.D. Cal.); *In re Paraquat Prods. Liab. Litig.*, MDL No. 3004 (S.D. Ill.). Those individuals are differently situated from Durnell: They hale from all 50 States, not just Missouri, so they can offer this Court a broader perspective on how failure-to-warn claims relate to FIFRA’s requirements. And in the *Paraquat* MDL, plaintiffs press claims against a distinct manufacturer (Syngenta) involving a distinct chemical (paraquat) causing a distinct disease (Parkinson’s), involving largely distinct uses (commercial application by registered applicators), under a distinct FIFRA regulatory regime. Both groups of MDL plaintiffs raise claims encompassed within the Court’s Question Presented but not addressed by respondent’s brief.

This divergence supports divided argument. “Having more than one lawyer argue on a side is justifiable . . . when they represent different parties with different interests or positions.” Stephen M. Shapiro et al., *Supreme Court Practice* § 14.5, at 14-16 (11th ed. 2019). And here, *amici*’s familiarity with the record in the *Roundup* and *Paraquat* litigations would provide this Court with valuable perspective into FIFRA’s multifaceted statutory and regulatory regime.

2. Respondent’s merits brief and *amici*’s brief also advance complementary but distinct legal arguments for affirmance. Respondent chiefly argues that Congress delegated to the judiciary (not EPA) the power to determine whether a pesticide is “misbranded” under 7 U.S.C. § 136j(a)(1)(E). *Amici* directly

address this Court’s reformulated Question Presented by arguing that FIFRA expressly vests substantial authority on States to impose “use” restrictions under § 136v(a) and to serve as the “primary enforce[rs]” of FIFRA violations under § 136w-1, both of which can encompass state-law claims. *Amici* also contend that, as to both paraquat and Roundup, the manufacturers withheld critical information that cast doubt on EPA review of those pesticides’ registrations. And *amici* further argue that any applicable EPA regulations here have no preemptive effect. *Amici* plan to address, for example, the significance of the Ninth Circuit’s vacatur of EPA’s determination that glyphosate is “not likely to be carcinogenic to humans.” *NRDC v. EPA*, 38 F.4th 34, 45 (9th Cir. 2022). Based on this and other evidence, *amici* show that a faithful application of *Bates v. Dow AgroSciences LLC* requires affirmance, as the regulatory framework surrounding FIFRA “authorizes a relatively decentralized scheme that preserves a broad role for state regulation.” 544 U.S. 431, 450 (2005).

3. Although generally “[d]ivided argument is not favored,” Sup. Ct. R. 28.4, this Court grants it where *amici* offer to present on distinct, important issues that the parties would not otherwise raise. *See, e.g., Ortiz v. United States*, 585 U.S. 427 (2018) (allowing *amicus* to argue on an Article III question neither party had contested); *Dalmazzi v. United States*, 583 U.S. 1047 (2018) (mem.) (granting motion); *NLRB v. Noel Canning*, 573 U.S. 513 (2014) (allowing *amici* to raise points distinct from private respondent’s position).

This case fits squarely within that tradition. *Amici*’s considerable experience positions them well to answer questions pertaining to the broader factual record

and its implications for the thousands of pesticide-injury claimants they represent. Thus, the Justices will have an opportunity to ask questions about important features of FIFRA's statutory scheme and EPA's regulations and statutory preemption issues to an advocate who has briefed and argued them on many occasions, including in *Bates*, 544 U.S. 431, the leading precedent on FIFRA labeling preemption. *See also, e.g., United States v. Locke*, 529 U.S. 89 (2000); *Altria Grp., Inc. v. Good*, 555 U.S. 70 (2008); *Wyeth v. Levine*, 555 U.S. 555 (2009); *Merck Sharp & Dohme Corp. v. Albrecht*, 587 U.S. 299 (2019).

4. *Amici* respectfully ask this Court to allocate 20 minutes to counsel for respondent and 10 minutes to counsel for *amici*. Such a division would not require an enlargement of time beyond the standard 30 minutes allotted to respondent's side. This allocation reflects the distinct but complementary arguments advanced by each counsel. Alternatively, *amici* respectfully request an enlargement of the argument time of 10 minutes so that *amici* may present argument.

Respectfully submitted,



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March 31, 2026

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