



PRODUCT LIABILITY LITIGATION UPDATE

July 2026

Supreme Court Rules FIFRA Preempts State Failure-to-Warn Claims

Key Notes:

- Defendants in state-court failure-to-warn suits involving EPA-registered pesticides may move to dismiss on FIFRA preemption grounds where EPA has approved the label without the warning plaintiffs seek.
- Parallel state common-law claims that previously survived preemption under *Bates v. Dow* may now be foreclosed when the claim would require a warning EPA has affirmatively declined to impose, significantly reducing plaintiffs' available theories.
- Defendants facing California Proposition 65 actions involving any EPA-registered pesticide should evaluate whether EPA has made a contrary safety finding, which may now support a preemption challenge to the state warning requirement.
- Defendants in Proposition 65 cases across multiple industries should assess whether their product is subject to a federal statute with a comparable uniformity provision and a federal agency finding on the chemical's safety.

On June 25, the U.S. Supreme Court issued its opinion in *Monsanto Co. v. Durnell*, No. 24-1068, 609 U.S. ____ (2026), resolving a long-standing circuit split on whether the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) preempts state-law failure-to-warn claims against pesticide manufacturers.

Glyphosate – the active ingredient in Roundup – is the most commonly used pesticide in the United States, with approximately 300 million pounds applied annually. EPA has regulated glyphosate since 1974 and has repeatedly concluded that glyphosate is “not likely to be carcinogenic to humans,” issuing assessments to that effect in 1991, 2005, 2015, and 2017. In 2015, however, the International Agency for Research on Cancer (IARC) classified glyphosate

as “probably carcinogenic to humans.” EPA reexamined the issue in 2017 and 2019 following IARC’s classification but adhered to its long-standing position.

Missouri gardener John Durnell sued Monsanto in Missouri state court in 2019, alleging that approximately 20 years of Roundup use caused his non-Hodgkin lymphoma and that Monsanto should have included a cancer warning on the product label. A jury awarded Durnell \$1.25 million in compensatory damages on a strict-liability failure-to-warn theory. The Missouri Court of Appeals affirmed, rejecting Monsanto’s federal preemption defense.

The Supreme Court granted certiorari to resolve a circuit split: the Third Circuit had found FIFRA preemption (*Schaffner v. Monsanto*, 113 F.4th 364 (3d Cir. 2024)), while the Ninth and Eleventh Circuits and several state courts had found no preemption (*Carson v. Monsanto*, 92 F.4th 980 (11th Cir. 2024); *Hardeman v. Monsanto*, 997 F.3d 941 (9th Cir. 2021); *Pilliod v. Monsanto*, 67 Cal. App. 5th 591 (2021)).

In its *Durnell* ruling, the Supreme Court overturned this jury verdict, deciding that the plaintiff’s state failure-to-warn claim was expressly preempted by FIFRA.

Durnell Holding

Writing for a 7-2 majority, Justice Brett Kavanaugh held that FIFRA’s express preemption provision, 7 U.S.C. § 136v(b), bars Durnell’s state-law failure-to-warn claim. Section 136v(b) prohibits states from imposing labeling requirements “in addition to or different from” those required under FIFRA. The Court reasoned that because EPA has *never* required a cancer warning on glyphosate-based products – and has affirmatively determined that

glyphosate is not likely to cause cancer – a state-law requirement to add such a warning is plainly “in addition to or different from” the federally approved label.

The Court held that this uniformity provision prevents states from creating their own labeling requirements for chemicals subject to FIFRA, as Congress has explicitly delegated that authority to the EPA alone.

Practically, this means that while states may devise their own regulatory schemes that run parallel to FIFRA, they may not impose labeling requirements that add to or contradict those promulgated by the EPA.

This decision narrowed the space that *Bates v. Dow Agrosciences*, 544 U.S. 431 (2005), had left for parallel state common-law claims. In *Bates*, the Court recognized that state claims operating as the functional equivalent of FIFRA’s misbranding standards could survive preemption. The *Durnell* majority concluded that a failure-to-warn claim requiring a warning EPA has affirmatively declined to require does not operate in parallel with FIFRA but rather in direct conflict with it.

Squaring *Durnell* with *Bates*

In dissent, Justice Ketanji Brown Jackson, joined by Justice Neil Gorsuch, opined that the majority misunderstood FIFRA’s demands, and that while the uniformity provision limits a state’s authority to regulate pesticide labels, “it does not eliminate that authority.” Unlike the majority, Justice Jackson concluded that Missouri’s state-law failure-to-warn claim runs parallel to, rather than in conflict with, FIFRA, and is thus not subject to federal preemption under the 2005 case *Bates v. Dow Agrosciences LLC*.

Bates similarly addresses questions of FIFRA preemption of state failure-to-warn claims, holding that states retain the authority to pass label-based requirements that are *equivalent to* FIFRA’s prohibition on the misbranding of pesticides. Because the Court in *Durnell* found the cancer warning to be *additional to* the FIFRA labeling requirement, it is distinguished from this *Bates* rule. Justice Jackson viewed this as a “rewrite” of *Bates*, rather than a factual distinction. She further pointed out that the Court’s decision in *Bates* expressly acknowledges that a pesticide

can be “registered but nevertheless misbranded,” and that states could impose label-based requirements that were equivalent to FIFRA’s demands.

In Justice Jackson’s view, the majority failed to grapple with a central logical feature of the *Bates* decision: that EPA’s approval of a label is not conclusive evidence of the label’s compliance with the statute. Nevertheless, *Durnell* now dictates that EPA alone possesses the authority to impose and enforce labeling requirements on FIFRA-qualified pesticides.

Durnell and California Proposition 65

Durnell carries significant implications for California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65). Glyphosate has been listed under Proposition 65 as a chemical known to the state of California to cause cancer since 2017, a listing driven by IARC’s 2015 classification. Proposition 65 requires businesses to provide a “clear and reasonable” warning before knowingly and intentionally exposing individuals to a listed carcinogen.

Under the majority’s reasoning, **any state requirement – whether tort-based or statutory like Proposition 65 – that would compel a cancer warning on an EPA-registered pesticide label where EPA has declined to require one is preempted as “in addition to or different from” federal labeling requirements.**

This effectively resolves the long-standing tension between FIFRA and Proposition 65 in favor of federal preemption, at least for pesticides whose labels EPA has approved without a cancer warning. Legal commentators have noted that the ruling “potentially weakens state right-to-know chemical health warning laws like California’s Proposition 65.”

The Court’s holding carries implications beyond the ongoing Monsanto Roundup litigation, offering defendants a potential tool to challenge aspects of Proposition 65. Critically, the Court’s rationale turns on FIFRA’s uniformity provision rather than any glyphosate-specific facts. This means that Proposition 65 warning requirements for other EPA-registered pesticides whose labels EPA approved without a corresponding warning are vulnerable to the same preemption argument. The decision thus has the

potential to affect Proposition 65 enforcement across a wide range of FIFRA-regulated products and beyond.

Notably, Proposition 65 is a strict and highly litigated mandate requiring warning labels on products sold in California that contain chemicals known to be carcinogenic or cause reproductive harm. Its labeling requirements cover many of the same chemicals that are also subject to federal regulatory oversight by EPA and FDA.

Importantly, EPA has determined that some chemicals covered by Proposition 65 carry no significant risk of causing cancer or reproductive harm. After *Durnell*, Proposition 65 claims based on these specific chemicals may now be subject to preemption challenges where federal agencies have made contrary safety determinations.

Beyond pesticides, the *Durnell* holding may extend to other product categories. The Court identified comparable “uniformity” provisions in federal statutes governing over-the-counter drugs, meat and poultry products, cosmetics, and food labeling. Thus, *Durnell* has empowered a new preemption defense for Proposition 65 defendants across multiple industries. For any Proposition 65 chemical claim, defendants should analyze: (1) whether the particular chemical is regulated by a federal agency, (2) whether the statute granting that federal regulatory authority contains a uniformity provision, and (3) whether the federal agency with authority over that chemical has made a finding regarding the chemical’s risk of causing cancer or reproductive harm.

Looking Forward

Durnell presents a new preemption-based challenge to Proposition 65, complementing the First Amendment compelled-speech challenges that defendants have raised in federal courts. Until now, California state courts have largely deferred to federal courts to address these constitutional issues. *Durnell* may force state courts to engage more directly with preemption arguments.

For now, defendants should keep in mind this expanding toolkit of defenses when engaging in Proposition 65 litigation and assess whether federal preemption arguments may apply to the specific chemicals at issue in their cases.

FOR MORE INFORMATION

For more information, please contact:

Andrew H. Cox

216.566.5747

Andrew.Cox@ThompsonHine.com

Eric S. Daniel

216.566.5526

Eric.Daniel@ThompsonHine.com

Karen M. Firstenberg

216.566.5676

310.382.1298

Karen.Firstenberg@ThompsonHine.com

Sophie Krueger

310.382.1327

Sophie.Krueger@ThompsonHine.com

This advisory bulletin may be reproduced, in whole or in part, with the prior permission of Thompson Hine LLP and acknowledgment of its source and copyright. This publication is intended to inform clients about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in it without professional counsel.

This document may be considered attorney advertising in some jurisdictions.

© 2026 THOMPSON HINE LLP. ALL RIGHTS RESERVED.