

Agrichemical Industry Demands Biden Administration Rescind Support for Cancer Victims Before Supreme Court

By [Beyond Pesticides](#)

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Earlier this month, the [U.S. Department of Justice urged the Supreme Court to deny a request by Bayer](#) to review a verdict that found the corporation liable for damages from the use of its Roundup (glyphosate) herbicides. Now, Bayer is using proxy organizations to place pressure on the Biden Administration and Justice Department to rescind its decision. Alongside a range of chemical industry umbrella groups, many of which—like Croplife America—Bayer is a member of, [a letter](#) was sent to President Biden expressing “grave concern” about the opinion filed by Solicitor General Elizabeth Prelogar. Among a range of baseless claims, the agrichemical industry is deflecting lower court findings on the hazards and cancer risk of their products with the claim that their toxic chemicals are needed to feed the world, as crops shipments from Ukraine have been halted during the ongoing war. “The agrichemical industry has long tried to sell the idea that their toxic pesticides are needed to feed the world, as if to suggest that their motives are altruistic when, in fact, they have shown a callous disregard for life and a sustainable future,” said Jay Feldman, executive director of Beyond Pesticides. “We can grow food without toxic chemicals and offer support for all the victims of war, with a reverence for healthy ecosystems and the life they support,” he said.

Bayer filed [its petition](#) with the Supreme Court [in August 2021](#), seeking to reverse the case of Hardeman v. Monsanto, as Bayer assumed all liabilities associated with Monsanto [when it purchased the company in 2018](#). In that suit, a California court found unanimously in favor of the plaintiff, Edwin Hardeman. Mr. Hardeman told the jury he had used Roundup since the 1980s to spray poison oak and weeds around his property, resulting in his diagnosis of non-Hodgkin lymphoma in 2014. He was awarded \$5.27 million, while the punitive damages were ultimately reduced from \$75 to \$20 million.

Bayer’s appeal to the Supreme Court includes two claims. The first is a preemption argument, suggesting that federal pesticide law preempts state-level “failure-to-warn”

claims that form the basis of the Hardeman suit. To prevail under California's failure-to-warn law, plaintiffs must prove that the product had knowable risks, the risks presented were substantial if used in a reasonably foreseeable manner, consumers would not have recognized those risks, defendants failed to warn consumers, and consumers were thus injured as a result.

The [U.S. Ninth Circuit Court of Appeals has already affirmed](#) a lower court ruling that state-level failure-to-warn claims were "equivalent to" and "fully consistent with" federal pesticide law, the Federal Insecticide Fungicide and Rodenticide Act (FIFRA), and that because the company had the ability to comply with both federal and California law, federal law did not preempt plaintiff claims. Bayer is arguing that because the U.S. Environmental Protection Agency (EPA) did not approve labels with a cancer warning, failure-to-warn claims should not apply. However the court ruled that Roundup's label did not have "the force of law necessary to have a preemptive effect."

Bayer is also arguing that the allowance of expert testimony by the Ninth Circuit violates court precedent and federal rules. The Ninth Circuit held that a district court applied the correct standards in admitting expert testimony in the Hardeman case. This issue centers significantly around causation experts use of epidemiological evidence, a strong and growing body of literature [linking glyphosate to cancer](#), which EPA and pesticide manufacturers have regularly discounted.

In December 2021, the Supreme Court requested the Solicitor General provide an opinion about whether the Court should take up the civil verdict. This resulted in Bayer suspending settlement discussions until the Supreme Court made its decision. It is very rare for the Supreme Court to review a civil claim; reports indicate less than 1% of such claims are granted review by the Justices.

The [amicus brief](#) filed by the Solicitor General rejects both of Bayer's claims. It asserts that the Ninth Circuit's standard for the admission of expert testimony is not different from other circuit courts, "and its factbound application of that standard here raises no issue of general importance."

In regard to preemption, it notes, "The court of appeals correctly held that FIFRA [federal pesticide law] does not preempt respondent's claims, and that decision does not conflict with any decision of this Court or another court of appeals. The brief further indicates, "Although some aspects of EPA-approved labeling may preempt particular state-law requirements, EPA's approval of labeling that does not warn about particular chronic risks does not by itself preempt a state law requirement to provide such warnings." Despite having the statutory authority to do so, and making regulatory determinations regarding the issue, EPA does not relay information on its label about the chronic risks, like cancer, that a pesticide product may pose. No legal requirements within federal pesticide law stop or preempt California from requiring pesticide labels to include information about chronic health dangers like cancer.

To the pesticide industry, allowing states to alert the public about the chronic hazards of the products they produce would stop them from feeding the world while there is a war in Ukraine. "Supplying wheat to the world is more important than ever given the unprecedented times with Russia's invasion of Ukraine," said National Association of Wheat Growers President Nicole Berg. "NAWG is concerned this new policy would undermine

access to safe and effective crop protection tools that play a critical role in helping feed the world.”

The wording of the industry’s letter to President Biden urging his Administration to withdraw the brief is even more bombastic. “Such action would reduce crop yields at a time when lives depend on us producing every bushel possible.” With such a claim, one may suppose that the agrichemical industry is a nonprofit charity. Yet, nothing could be farther from the truth. These industry groups represent a modern-day oligopoly, focused solely on short-term goals, the next quarterly returns, and outsized compensation for its executives. The chemical industry aims to extract as much profit as possible from the land, and through the unnecessary use of hazardous pesticides, transfer the risk of crop loss from weeds and insects to its customers in the form of chronic health risks, health care costs, and environmental contamination. As the agrichemical industry proclaims its mission to “feed the world,” [as many as 30 million adults and 12 million children](#) are living in food insecure homes where they are not consistently getting enough to eat.

Bayer is a member, has a representative who sits on the board, or provides monetary donations to nearly every industry group that signed the letter attempting to pressure the Biden Administration to withdraw its amicus brief. This letter follows along with Bayer’s “Hail Mary” attempts to sidestep responsibility for the health effects of Roundup. As Bayer notes on its website, “Regardless of the final outcome at the Supreme Court, the company is fully prepared to move forward with its five-point plan, manage litigation risks and bring closure to the Roundup™ litigation.” As part of this “five-point plan,” the corporation has already indicated it is reformulating consumer-use Roundup products beginning in 2023. However, [as Beyond Pesticides noted at the time](#), there would be nothing to stop Bayer from rescinding that decision at any moment.

It is not enough to maintain a status quo that permits chemical industry cartels to bully regulators and elected officials into defending their hazardous products. Real reform is needed to address the depth of corruption that allows dangerous, carcinogenic pesticides to be placed on the market in the first place. [Join Beyond Pesticides in urging your Senators to enact meaningful reforms to federal pesticide law](#), and [tell EPA to stop allowing the pesticide industry free rein to regulate itself based on financial risks instead of the risks to health and the environment that federal law requires](#).

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