Press Release

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WLF Urges En Banc Eleventh Circuit Not To Allow State Tort Law To Trump Federal Regulatory Law

(*Carson v. Monsanto*)

> **"By expressly prohibiting a State from altering the content of pesticide labeling, FIFRA not only protects pesticide manufacturers like Monsanto from state-tort liability but also promotes national labeling uniformity."**
> —Cory Andrews, WLF General Counsel & Vice President of Litigation

WASHINGTON, DC—Washington Legal Foundation (WLF) recently urged the U.S. Court of Appeals for the Eleventh Circuit, siting en banc, to affirm a trial-court decision that correctly refused to allow state tort law to override federal regulatory law. WLF joined the amicus brief of Atlantic Legal Foundation, authored by Larry Ebner of Capital Appellate Advocacy, in urging the appeals court to affirm the trial court's dismissal under the Supremacy Clause.

The case arises from a failure-to-warn claim by a plaintiff who contends that his cancer was caused by his exposure to the popular herbicide Roundup. Suing under Georgia tort law, the plaintiff alleges that Monsanto, Roundup's manufacturer, had a duty to warn about the risk of cancer on Roundup's label. Rejecting that theory of liability, the district court found that the plaintiff's claim was preempted by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). FIFRA's express preemption provision prohibits states from imposing labeling requirements that are "in addition to or different from" federal labeling requirements for a given pesticide. The Environmental Protection Agency (EPA) has rejected any cancer-related warning on Roundup as scientifically unwarranted, false, and misleading.

In its amicus brief supporting Monsanto, WLF argues that state tort law should not be allowed to flout express preemption provisions in federal law by undermining the congressionally mandated, science-based regulation of herbicide labeling. Imposing state tort liability for failing to provide a label warning that EPA has determined is false and misleading, and thus should not be provided, would place manufacturers like Monsanto in an impossible quandary. They either will be held liable under state tort law for complying with federal law, or they must face federal civil or criminal liability for knowingly violating federal law to comply with state tort law. The Supremacy Clause relieves manufacturers from having to make that choice.

Celebrating its 46th year, WLF is America's premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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