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Loper Bright Didn't Nuke Preemption Law—And Pretending It Did Would Torch American Agriculture

by Cory L. Andrews

In the Supreme Court's latest clash over Roundup, *Monsanto Co. v. Durnell*, No. 24-1068, a Missouri jury's verdict against the manufacturer for failing to warn of cancer risks has metastasized into something far larger: a radical assault on decades of federal preemption doctrine. Respondent John Durnell doesn't just defend the verdict. He insists that the landmark 2024 decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), silently demolished the entire edifice of express and implied preemption whenever an agency's expert judgment under a statute collides with a state tort claim.

It is a breathtaking claim—novel, clever in its law-school-seminar way, and utterly untenable. If accepted, it would not merely revive a few glyphosate lawsuits. It would unravel the national uniformity Congress deliberately built into pesticide labeling, drug approvals, medical devices, and a host of other regulatory regimes. American farming, innovation, and consumer protection would pay the price.

For half a century, the EPA has conducted exhaustive scientific reviews of glyphosate—the active ingredient in Roundup—and has consistently concluded under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) that the herbicide does not cause cancer in humans when used according to label directions. On the strength of that science, the agency has registered and approved hundreds of Roundup labels that contain no cancer warning. Yet Durnell's Missouri verdict would hold Monsanto liable for failing to add precisely the warning EPA has repeatedly rejected as unnecessary. FIFRA's express preemption provision makes clear that state-law labeling requirements "in addition to or different from those required under" the federal statute are displaced. 7 U.S.C. § 136v(b). The case for preemption is straightforward.

Monsanto's defense rests squarely on that text. Durnell's merits brief, however, advances a theory that would upend it. Because FIFRA lacks an *express* delegation granting EPA "Chevron-like powers to interpret the ultimate meaning of the statutory 'misbranding' prohibition in a manner that binds the judiciary," Durnell contends, EPA's label approvals are mere "opinions." Juries and the agency can look at the same evidence and reach opposite conclusions. State-court verdicts demanding additional warnings would not be "in addition to or different from" anything that matters for preemption purposes. National uniformity, in this view, is optional.

This is where *Loper Bright* supposedly enters the picture. Durnell treats the decision as a stealth repeal of preemption doctrine writ large. *Loper Bright*, he says, overruled *Chevron U.S.A.,*

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Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984), and thereby stripped agencies of any power to "bind the judiciary" on statutory meaning beyond the clearest statutory statement. Because FIFRA contains no such magic-words delegation for misbranding determinations, EPA's conclusions are legally irrelevant.

This claim collapses under the slightest scrutiny. *Loper Bright* is a separation-of-powers decision about judicial review of agency action under the Administrative Procedure Act. Chief Justice Roberts's majority opinion holds that 5 U.S.C. § 706 requires courts to exercise independent judgment when deciding whether an agency has stayed within its statutory authority. Courts may no longer reflexively defer to an agency's "reasonable" gloss on ambiguous text. That is all. The opinion never mentions preemption. It never discusses FIFRA, pesticide labels, or state tort law. It does not disturb the foundational principle that agency actions taken *under* statutory authority—promulgating regulations, granting product approvals, conducting exhaustive scientific reviews—carry the force of federal law for Supremacy Clause purposes.

In fact, preemption doctrine has never depended on *Chevron* deference. It rests on the Supremacy Clause, on congressional intent, and on the practical reality that Congress often enlists expert agencies to implement uniform national standards. The Supreme Court has long understood as much. In *Bates v. Dow Agrosciences LLC*, 544 U.S. 431 (2005), the Court held that FIFRA preempts state-law labeling demands that diverge from federal ones, while preserving "parallel" claims that merely enforce the statute's misbranding prohibitions. The paradigmatic preempted claim, the Court explained, is one demanding a "DANGER" label when EPA has determined that the label should read "CAUTION" instead. *Id.* at 453. Similar logic governed in *Riegel v. Medtronic, Inc.*, 552 U.S. 312 (2008), where FDA premarket approval of a medical device's design and labeling created federal "requirements" that displaced state tort duties. Neither case turned on *Chevron*; both turned on the statute's text and the binding nature of agency action taken under it.

To read *Loper Bright* as a sub silentio repeal of preemption is to misapply the decision in a way that would upend settled preemption principles. The decision reaffirms that *when courts review agency action*, they interpret the statute themselves. It does not declare that agency *outputs*—validly issued rules, registrations, approvals—lack preemptive force once courts have independently confirmed that the agency acted within its delegated bounds. FIFRA's registration process is not a suggestion box. It is a comprehensive, science-driven federal scheme. EPA evaluates safety data, weighs risks, and approves labels that manufacturers *must* use. Deviating from an approved label risks civil and criminal penalties. Congress chose this centralized regime precisely to avoid the "patchwork" of fifty state labeling regimes that would paralyze interstate commerce and expose farmers and other consumers to conflicting commands. *See* 7 U.S.C. § 136v(b).

Durnell's theory would destroy that bargain. Manufacturers could face federal registration on one hand and jury-mandated label changes on the other—changes EPA has already rejected as scientifically unwarranted and potentially misleading. The result would be not enlightened federalism, but regulatory whiplash. A cancer warning deemed false or misleading by EPA could render the product misbranded under federal law yet be required under Missouri tort law. Farmers in one state could lawfully buy Roundup without the warning; in another, its sale could trigger liability. Innovation in crop protection would grind to a halt. Global food supply chains, already strained, would face new uncertainty. And the plaintiffs' bar would gain a powerful new

tool to second-guess expert agencies in every product-liability suit.

Nor does this stop at pesticides. The same logic would threaten FDA drug and device approvals, EPA emissions standards, NHTSA vehicle safety rules—any regime where Congress has tasked an agency with striking the delicate balance between safety and utility. State juries, armed with hindsight and sympathetic plaintiffs, could demand warnings or design changes that federal regulators, after years of peer-reviewed study, have deemed unnecessary or counterproductive. The Framers designed the Supremacy Clause to prevent exactly this sort of balkanization. *Loper Bright* did not rewrite Article VI.

Of course, agencies remain accountable. Courts still police statutory boundaries. Congress can always tighten or loosen delegations. And parallel claims—those that enforce, rather than contradict, federal standards—survive under *Bates*. But treating an EPA registration decision as legally inert once a jury disagrees is not judicial independence. It is judicial nullification of the very regulatory scheme Congress enacted.

Durnell's position also collides with the practical reality that lay juries and scientific agencies ask different questions. Juries resolve specific causation in a single case under state evidentiary rules. EPA conducts population-level risk assessments, weighs benefits against hazards, and sets national policy. They operate in distinct lanes. To conflate them is to invite the very disuniformity FIFRA's preemption provision was written to prevent.

The Supreme Court has repeatedly refused to let creative readings of one decision swallow entire bodies of doctrine. *Loper Bright* overruled *Chevron* because it could not be squared with the APA's command of independent judicial judgment. It did not, secretly or otherwise, overrule *Bates*, *Riegel*, or the structural logic of federal preemption. To hold otherwise would convert a decision restoring judicial primacy in *statutory interpretation* into a license for judicial (and jury) supremacy over *federal regulatory outputs*. That is a gross misreading of the decision.

As the Court takes up argument in *Monsanto v. Durnell* next Monday, it should reaffirm what it has long understood. When Congress enlists an expert agency to set uniform national standards and expressly preempts conflicting state requirements, those standards carry the force of federal law. *Loper Bright* sharpened the tools of judicial review. It did not melt down the federal regulatory state. The future of American agriculture—and the rule of law—depends on the Court saying so plainly.

