



October 2, 2020

The Honorable Tani Gorre Cantil-Sakauye, Chief Justice
The Honorable Associate Justices
Supreme Court of the State of California 350 McAllister Street
San Francisco, California 94102

Re: *Dewayne Johnson v. Monsanto Company*
California Supreme Court Case No. S264158
Amicus Letter in Support of Petition for Review

Dear Chief Justice Cantil-Sakauye and Associate Justices:

I write on behalf of the North Dakota Grain Growers Association (NDGGA) to respectfully request the California Supreme Court to accept review of the *Dwayne Johnson v. Monsanto Company* case number S264158 from the Court of Appeal, First Appellate District, Division One. This case impacts the farmers represented by NDGGA; this impact warrants the Supreme Court's review.

Some background, the North Dakota Grain Growers Association has represented wheat farmers in the State of North Dakota since 1967. Through our contract with the North Dakota Wheat Commission our Association works to represent the 19,000 wheat farmers in North Dakota in domestic policy issues on the federal and state levels. NDGGA's slogan is "You Raise; We Represent"; NDGGA takes that slogan very seriously. NDGGA wants to ensure that North Dakota and U.S. agriculture is allowed to utilize the tools that provides the safest, most abundant and cost-effective food available on earth and at the same time ensuring those tools are utilized in the safest methods possible.

Dewayne Johnson v. Monsanto Company raises an issue of vital concern to NDGGA and its members. It is critical that farmers be allowed to utilize crop protection tools that protect their crops and their livelihoods and at the same time

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utilizing tools that have been proven time and again to be environmentally safe. Those crop protection tools must be used according to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. §§136-136y.

NDGGA would respectfully request this Court review *Dewayne Johnson v. Monsanto Company* to clarify expressed and implied preemption under FIFRA for state failure-to-warn claims and design defect claims. Further, your Court review is needed in order to resolve issues regarding when state tort claims are inconsistent with FIFRA's product labeling requirements and misbranding provisions, particularly when state warning label obligations would be more expansive than what is required under FIFRA and/or conflict with federally approved pesticide labels.

NDGGA members are alarmed at the Appellate Court's decision in *Dewayne Johnson v. Monsanto Company*. FIFRA's regulations and pesticide registration process has proven time and again to effectively regulate the pesticide use process. It is science-based and is recognized throughout the process by all parties concerned. Inhibiting the FIFRA process will result in reducing farmers' abilities to rely on the production tools necessary to provide the safest and most abundant food source on earth.

Therefore the North Dakota Grain Growers Association respectfully requests the California Supreme Court to review the Appellate Court's decision in *Dewayne Johnson v. Monsanto Company* in order to clarify the proper scope of preemption and whether state law tort claims such as the ones at issue here are preempted under FIFRA.

Sincerely,



Tom Bernhardt
President
North Dakota Grain Growers Association