

# United States Senate

WASHINGTON, DC 20510-0609

March 14, 2023

The Honorable Tom Vilsack  
Secretary  
U.S. Department of Agriculture  
1400 Independence Avenue SW  
Washington, DC 20250

Dear Secretary Vilsack,

On Thursday, May 26, 2022, you testified before the United States Senate Committee on Agriculture, Nutrition, and Forestry. We write today to request a clarification of the testimony you provided that day.

Senator Roger Marshall, M.D. and Senator Chuck Grassley both raised an issue of pressing concern to the agricultural industry relating to *Monsanto Company v. Hardeman*. As you are aware, on May 10, 2022, the U.S. Solicitor General reversed a long-held view on federal preemption, siding instead with the Plaintiffs' Bar on that case. She recommended the Supreme Court of the United States not hear the *Monsanto* case about the safe use of glyphosate - a product American farmers use on roughly 40% of acreage that enables more than \$50B of US crop production annually. Specifically, Senator Grassley asked:

The first thing that I am going to ask you about is pretty simple . . . was the USDA consulted in regard to this. Two weeks ago, the Solicitor General filed a brief of whether or not the Supreme Court should take a case involving widely used pesticides, in Iowa what we call Roundup, but the big classification is glyphosate. In that brief, the Solicitor General flipped the government's long-held position that has been the position of the law since 1972, that FIFRA preempts state law. And then the Solicitor General argued even against the EPA authority that the law requires. Were you consulted on that in any way?

Your response to Senator Grassley was, "Senator, we were not."

Following that hearing, Senator Marshall wrote a letter to President Biden with serious concerns regarding the Biden Administration's apparent policy to deny or limit access to critical crop protection tools. Senator Marshall and others then asked the President to direct the Department of Justice (DOJ) to reverse its recommendation and defend glyphosate's use as consistent with the Federal Insecticide, Fungicide and Rodenticide Act's requirements. A copy of the letter is attached.

On February 2, 2023, Senator Marshall's office received a response from Deputy Assistant Attorney General N. Slade Bond II. In that letter, Mr. Bond states:

When the Supreme Court invites the Solicitor General to file a brief expressing the views of the United States, the Department of Justice's established practice is to solicit the views of all federal stakeholders with equities related to the litigation. **The stakeholders, including the Environmental Protection Agency and the Department of Agriculture, were invited to submit views in the *Monsanto* case.** Longstanding Department of Justice policy precludes us from providing further information regarding internal or interagency communications about this matter.

(emphasis added).

As Secretary of Agriculture for a decade, you should be well aware that the longstanding practice of the DOJ is to solicit the views of other cabinet departments before taking a public position on a matter before the Supreme Court. Here, those stakeholders expressly include your department as indicated by the DOJ in its response to Senator Marshall. Your allegation that DOJ ignored the Agriculture Department before filing its brief in the *Monsanto* case stunned many in the agricultural community and led them to believe that USDA had been shunted aside.

We acknowledge that it is possible that Deputy Assistant Attorney General N. Slade Bond II could have provided false information in his letter. However, considering the DOJ's admission that USDA was asked for its views, we would like to offer you the opportunity to clarify the testimony you provided on Thursday, May 26, 2022 or reaffirm that what you said was accurate.

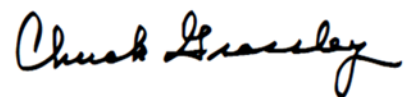
In addition, if indeed USDA provided feedback, we request that you inform us of what position USDA recommended the DOJ take on the case. The primary responsibility for communicating with DOJ lies with the Office of General Counsel. If USDA failed to provide any views when requested to do so by the DOJ, have you as Secretary taken any corrective action to discipline those who failed to communicate the interests of American agriculture? American agriculture must have confidence that the Department of Agriculture understands the concerns that agricultural producers face and can effectively communicate those concerns to Departments in Washington, DC, that do not know the difference between a corn and soybean field.

American farmers and ranchers work through the volatility of weather, market demand, and the cost of production every day to feed the world. They depend on the Secretary of Agriculture to consult, advise, and educate those in the Biden Administration who may not be aware of agriculture's unique challenges. Now that DOJ indicated that it sought USDA's opinion on the *Monsanto* case before filing its Supreme Court brief, we look forward to receiving clarification of your testimony and answers to the above questions so that farmers can know the truth and any necessary accountability can take place.

Sincerely,



Roger Marshall, M.D.  
United States Senator



Chuck Grassley  
United States Senator

# United States Senate

WASHINGTON, DC 20510-0609

June 2, 2022

The Honorable Joseph R. Biden, Jr.  
President of the United States  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, D.C. 20500

Dear President Biden:

We write today with serious concerns regarding the direction your Administration has taken with respect to crop protection tools. Your Administration has taken an interagency, blanket posture of denying or limiting access to critical crop protection tools, even during times of record inflation, rising food prices, and global food insecurity.

The latest example of this occurred as recently as May 10, 2022, when the U.S. Solicitor General (USG) reversed a long-held view on federal preemption, siding with the Plaintiffs Bar on the impending glyphosate litigation and recommending the Supreme Court of the United States not hear the case about the safe use of glyphosate - a product American farmers use on roughly 40% of acreage that enables more than \$50B of US crop production annually. The U.S. Environmental Protection Agency (EPA) even maintains the science on glyphosate remains unchanged. Therefore we are left to wonder if this decision to allow states to utilize unscientific, anti-pesticide scare tactics on labeling is solely a political decision in order to appease progressive activist groups who are not concerned about where their food comes from or how much it costs. **As such, we ask that you direct the Department of Justice (DOJ) to reverse its recommendation and defend the product, as consistent with the Federal Insecticide, Fungicide and Rodenticide Act requirements on misbranding.**

It should be noted, DOJ's recommendation undermines the science and responsible use of this pesticide. For more than 40 years, leading health and safety regulators around the world, including the EPA under both parties, have repeatedly concluded glyphosate is not carcinogenic. In fact, the DOJ brief makes multiple references to EPA's safety conclusions regarding the tool.

Your administration, specifically the EPA, pledged to uphold scientific integrity. However now, EPA only chooses to invoke science when convenient, and uses the courts as a shield to not appear to be at odds with the agricultural industry on pesticide policies. For instance, Administrator Regan keeps pointing to the 9<sup>th</sup> Circuit Court of Appeals with respect to its decision to revoke all food tolerances for Chlorpyrifos in August of 2021. However, the court clearly gave EPA an option to retain 11 safe uses of the product— a point the Administrator himself is either unaware of or likes to ignore when talking to farmers about this issue.

Recently, EPA also announced a new additional step in the process for evaluating and registering new active ingredients (AIs) through the Endangered Species Act (ESA). EPA will now evaluate

the potential effects of the AI and initiate an ESA consultation with the U.S Fish and Wildlife Service, as appropriate, before registration. A calculation which will add months to the already tedious pesticide registration process. EPA claims this is in efforts to mitigate legal risks, yet it will inevitably have a detrimental impact to U.S. food prices.

On the same day as this announcement, the EPA announced the renewal of registrations for Enlist One and Enlist Duo using this new process. Enlist is a critical crop protection tool that many producers rely on. At first blush, this was a welcome announcement. However, hidden in the fine print were county-wide prohibitions on the product that came after many farmers already invested in the seed and the product.

Dicamba is another major crop protection tool for U.S. soybean and cotton farmers. On December 21, 2021, EPA put out an unrequired, not mandated report tallying up the “increased number of drift complaints” of Dicamba from last growing season. This could only be interpreted as an attempt to build a record to justify abandoning or restricting the current label in future growing seasons.

These are several examples of political decisions your Administration is making to appease unelected activists instead of lowering food prices for Americans. It is a reoccurring theme attempting to placate both constituencies, and it needs to stop here. Access to safe, effective pesticides is vital for allowing farmers to continue to efficiently and sustainably feed, clothe, and fuel the world. Crop protection products like the ones listed above are the key to make no-till farming practical and efficient at a commercial level. They are the reason the government can discuss farmers sequestering the carbon produced by other industries in the U.S. If these tools are not available, farmers will be forced to revert to full tillage methods, which would ultimately set yields and conservation efforts back decades. The bottom line is, pesticides are necessary to continue an efficient, economical, and sustainable system of food, fiber, and biofuels production. Importantly for your administration, they are necessary to sequester the carbon released from other industries. To maintain good conservation practices and the benefits they offer, it is important growers can reasonably access and use pesticides.

Our farmers and ranchers are charged with delivering global food security under unprecedented circumstances. We ask that you direct all levels of your administration to work hand in glove with farmers as they work through supply chain challenges. This includes directing your DOJ, EPA, and the U.S. Department of Agriculture to ensure farmers have meaningful access to the tools they use to feed the world.

Sincerely,



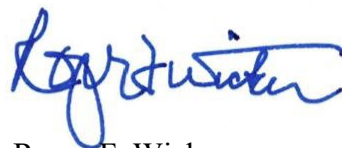
Roger Marshall, M.D.  
United States Senator



Cindy Hyde-Smith  
United States Senator

Handwritten signature of Thom Tillis in blue ink.

Thom Tillis  
United States Senator

Handwritten signature of Roger F. Wicker in blue ink.

Roger F. Wicker  
United States Senator

Handwritten signature of James Lankford in blue ink.

James Lankford  
United States Senator



**U.S. Department of Justice**

Office of Legislative Affairs

---

*Office of the Assistant Attorney General*

*Washington, DC 20530*

The Honorable Roger Marshall, M.D.  
United States Senate  
Washington, DC 20510

Dear Senator Marshall:

This responds to your letter to President Biden, dated June 2, 2022, regarding the litigation in *Monsanto Company v. Hardeman*, No. 21-241. We apologize for the delay in responding. We are sending identical responses to the other Members who joined your letter.

On May 14, 2021, the Ninth Circuit affirmed the district court's judgment in favor of the plaintiff in *Monsanto*. As relevant here, the court held that the plaintiff's state-law tort claim was not preempted by the Federal Insecticide, Fungicide, and Rodenticide Act. A petition for a writ of certiorari was filed on August 16, 2021, and on December 13, 2021, the Supreme Court invited the Solicitor General to file a brief in the case expressing the views of the United States. On May 10, 2022, the Solicitor General filed a brief arguing that the court of appeals correctly held that the plaintiff's state-law tort claim was not preempted, and further arguing that Supreme Court review was not warranted. On June 21, 2022, the Supreme Court denied the petition.

When the Supreme Court invites the Solicitor General to file a brief expressing the views of the United States, the Department of Justice's established practice is to solicit the views of all federal stakeholders with equities related to the litigation. The stakeholders, including the Environmental Protection Agency and the Department of Agriculture, were invited to submit views in the *Monsanto* case. Longstanding Department of Justice policy precludes us from providing further information regarding internal or interagency communications about this matter.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

N. Slade Bond II  
Deputy Assistant Attorney General