

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051

MINORITY (202) 225-5074

<https://oversight.house.gov>

June 7, 2022

The Honorable Elizabeth B. Prelogar
Solicitor General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Solicitor General Prelogar:

Committee on Oversight and Reform Republicans are conducting oversight of a recent amicus brief you filed recommending the Supreme Court not grant review of a case that could have serious negative impacts on the American food supply. On May 22, 2022, you filed an amicus brief in *Monsanto Company v. Hardeman* arguing that state laws should pre-empt the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) despite the Environmental Protection Agency's (EPA) longstanding position that the chemical glyphosate is not carcinogenic.¹ This position places the future use of glyphosate, a key pesticide used to protect crops, in jeopardy at a time when some grocery shelves are already empty. Just as troubling, it appears the brief may not have followed the accepted practice of being approved by the relevant federal agencies. In order to understand why the Biden Administration is attempting to hinder the ability of farmers to be a global leader in food production and why proper procedure was not followed in filing the brief, we request documents and information regarding your decision not to support Supreme Court review of a case involving glyphosate.

The Administration's position puts in jeopardy the future use of glyphosate as a pesticide and threatens the currently unstable American food supply. This contravenes the EPA's longstanding position, backed by federal government scientific research and regulatory assessment, that glyphosate is safe when used correctly.² Such an extreme stance on glyphosate negatively impacts the ability of American farmers to provide United States citizens and the world with affordable food crops. Even President Biden has called upon American farmers to backfill global food shortages due to the Ukraine invasion – actions that limit the use of glyphosate; therefore, present a significant concern to national security.³ If this Administration is truly

¹ Brief for the U.S. as Amicus Curiae at 4, *Monsanto Co., v. Hardeman*, No. 21-241 (9th Cir. May 10, 2022).

² U.S. EPA, Glyphosate, available at <https://www.epa.gov/ingredients-used-pesticide-products/glyphosate>.

³ Josh Wingrove, *Biden Says to Expect 'Real' Food Shortages Due to Ukraine War*, BLOOMBERG, Mar. 24, 2022.

committed to American farmers as the “backbone” of our economy,⁴ you should reconsider your position on whether the Supreme Court should take up this case.

Additionally, the process you undertook in drafting the amicus brief is troubling. Recent reporting suggests your office failed to consult with Secretary of Agriculture Thomas Vilsack, whose agency’s mission is to “provide leadership on food, agriculture, natural resources, rural development, nutrition, and related issues based on sound public policy, the best available science, and efficient management.”⁵ At a hearing before the U.S. Senate Committee on Agriculture, Secretary Vilsack testified that the U.S. Department of Agriculture was not consulted in the formulation of the government’s position as established in the amicus brief.⁶ This lack of consultation raises serious questions about the process your office followed in formulating a legal position that has the potential for such profound impacts on American farmers and the U.S. food supply. A willful disregard for consultation with the USDA, the agency protecting the interests of farmers and the food supply, requires you to reconsider the government’s position on this case.

The amicus brief filed by the Solicitor’s Office also fails to list any officials from the EPA as co-signers.⁷ Precedent suggests that in instances where the government has taken a legal position on pre-emption of the statute at issue, the federal agency charged with administering that statute is included on the brief as endorsing that action. For example, in an amicus brief filed by the Solicitor General regarding a cert petition for *Virginia Uranium, Inc v. Warren*, the Solicitor and attorneys on behalf the Nuclear Regulatory Commission were included as co-signers of the brief – solidifying their endorsement of the position.⁸ In this case, with the future of the American food supply on the line, the lack of an express concurrence on the legal issue by EPA raises serious questions as to whether the agency that administers FIFRA was properly consulted and agrees with the position taken by the Solicitor General on behalf of the U.S. government.

It is critical for the American people to better understand the actions of the Administration that may have an impact on the domestic food supply at a time of rising costs due to record inflation.⁹ To assist with this investigation, please produce the following documents and information no later than June 21, 2022:

1. All documents and communications between or among the Office of the Solicitor and any official or employee from EPA referring or relating to the amicus brief filed in *Monsanto*.

⁴ Maegan Vazquez, et al., *Biden Blames Russia’s War in Ukraine for Food Supply Shortages and Price Hikes*, CNN May 11, 2022.

⁵ USDA, About the U.S. Department of Agriculture, available at <https://www.usda.gov/our-agency/about-usda>.

⁶ Hearing before the S. Comm. on Agriculture, testimony of Hon. Thomas J. Vilsack, May 26, 2022.

⁷ Brief for the U.S. as Amicus Curiae at 24, *Monsanto Co., v. Hardeman*, No. 21-241 (9th Cir. May 10, 2022).

⁸ Brief for the U.S. as Amicus Curiae at 23, *Virginia Uranium Inc., et al., v. Warren, et al.*, 139 S. Ct. 1894, 204 L. Ed. 2d 277 (2019) (No. 16-1275).

⁹ Mike Winters, *Rising Inflation Has Made It More Expensive to Eat at Home – Here’s How Much Grocery Prices Have Increased*, CNBC, Apr. 12, 2022.

Hon. Elizabeth B. Prelogar

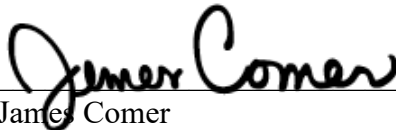
June 7, 2022

Page 3

2. All documents and communications between or among the Office of the Solicitor and any official or employee from USDA referring or relating to the amicus brief filed in *Monsanto*.
3. All documents and communications between or among the Office of the Solicitor and any official or employee from the White House Counsel's Office and the Executive Office of the President referring or relating to the amicus brief filed in *Monsanto*.
4. All documents and communications between or among the Office of the Solicitor and any non-governmental organization, group, or company referring or relating to the amicus brief filed in *Monsanto*.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. If you have any questions about this request, please contact Oversight Committee Republican Staff at 202-225-5074. Thank you for your cooperation with this inquiry.

Sincerely,

A handwritten signature in black ink that reads "James Comer". The signature is written in a cursive style and is positioned above a horizontal line.

James Comer

Ranking Member

Committee on Oversight and Reform

cc: The Honorable Carolyn Maloney, Chairwoman
Committee on Oversight and Reform