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United States Senate

WASHINGTON, DC 20510

COMMITTEES:
AGRICULTURE
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June 8, 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:

At a time when we are approaching a potential global food shortage, it is imperative that federal government actions not impair domestic food production. Specifically, I am concerned about the implications of your administration's decision to support a deeply flawed legal argument in the amicus curiae brief ("brief") submitted by Solicitor General Elizabeth Prelogar in *Edwin Hardeman v. Monsanto*. I believe the brief undermines the scientific integrity of the administration's career, subject-matter experts and disregards the impacts the Solicitor General's arguments may have on American agriculture. Accordingly, I urge you to call on the Department of Justice to withdraw the brief filed with the Supreme Court of the United States on May 10, 2022.

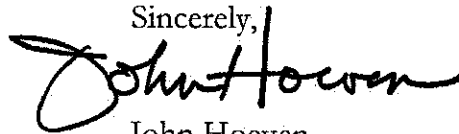
The question at hand in *Hardeman* involves the safety of glyphosate, a widely-used herbicide in the United States. By its own admission, the U.S. Environmental Protection Agency (EPA) agrees that glyphosate is safe for use. In a brief filed with the Ninth Circuit, the EPA stated that glyphosate does not cause cancer or "human-health risks of concern." Your administration's concurrence with the Ninth Circuit's decision is contrary to the science, conflicts with the federal preemption intent under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), and sets a dangerous precedent for future regulatory actions or litigation. The Solicitor General's arguments also represent a wholesale reversal from several previous administrations of both parties and threaten to undermine the United States' entire science-based regulatory system for crop protection products.

Beyond the inconsistency with the EPA's own science and federal precedent, this decision was made without consulting the appropriate subject matter experts within the Federal government. During a May 26, 2022, hearing of the Senate Committee on Agriculture, Nutrition and Forestry, Agriculture Secretary Tom Vilsack testified that the U.S. Department of Agriculture (USDA) was not consulted regarding the brief. This failure to understand the impacts of the Solicitor General's brief is deeply troubling and necessitates its withdrawal.

If the Supreme Court does not grant certiorari and the Ninth Circuit's decision is allowed to stand, American agriculture's ability to produce safe and affordable food for the world will be severely hindered. The Ninth Circuit's decision would create a completely unworkable patchwork of state regulations that would jeopardize producers' access to an essential tool. That is why, in a May 23, 2022 letter to you, 54 agricultural groups noted their concerns with the administration's action, stating the brief "risks undercutting food production and important environmental practices at a time when we cannot afford to hinder either."

Accordingly, I urge the withdrawal of the May 10, 2022, brief and strongly encourage you to consult with all relevant stakeholders, including USDA, to assess the impacts of this case on America's agricultural producers. Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink that reads "John Hoeven". The signature is written in a cursive style with a large, sweeping initial "J".

John Hoeven
U.S. Senator

Cc: Attorney General Merrick Garland, Department of Justice
Secretary Tom Vilsack, U.S. Department of Agriculture
Administrator Michael Regan, U.S. Environmental Protection Agency