

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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January 04, 2023

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 21-10994-U
Case Style: John Carson v. Monsanto Company
District Court Docket No: 4:17-cv-00237-RSB-CLR

For purpose of the upcoming en banc rehearing in the above referenced case, the court desires for counsel to focus their briefs on the following issues:

The Federal Insecticide, Fungicide, and Rodenticide Act contains an express-preemption provision, which states that a “State shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those under this subchapter.” 7 U.S.C. § 136v(b).

1. Can an express-preemption provision like § 136v(b) give preemptive effect to a federal agency action that otherwise lacks the “force of law”? Or must a reviewing court determine, as a threshold matter, whether federal agency action has the “force of law”?
2. How should a reviewing court identify the federal “requirements . . . under this subchapter” to which § 136v(b) refers, and what role, if any, does a “force of law” analysis play in that determination?

The appellant’s en banc brief is due on or before February 13, 2023. The appellee’s en banc brief is due within 30 days after the service of the appellant’s brief. The appellant’s en banc reply brief, if any, is due within 21 days after the service of the appellee’s brief. **NO EXTENSIONS WILL BE GRANTED.**

Please see FRAP 28 and 32 and the corresponding circuit rules for information on the form of briefs. Fifteen (15) copies of the en banc briefs shall be filed (appellant’s in blue covers, appellee’s in red covers and any reply in gray covers). Attorneys must file briefs electronically

using the ECF system. PAPER COPIES OF THE BRIEFS SHOULD BE RECEIVED THE NEXT BUSINESS DAY. Counsel is not required to submit the additional copies of the previous filed briefs.

The filing of an en banc amicus brief is governed by 11th Cir.R.35-8.

Oral argument will be conducted the week of June 12, 2023 in Atlanta, Georgia. Each party will be allotted twenty (20) minutes per side for oral argument. Counsel will receive subsequent correspondence regarding the specific time of oral argument.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Jenifer L. Tubbs

Phone #: 404-335-6166

BR-1CIV Civil appeal briefing ntc issued