

Source: AI Image created by Google Gemini

Late last Wednesday, sandwiched between all of the news about the repeal of the endangerment finding and the Supreme Court's ruling on the Trump tariffs, the White House issued a new Executive Order invoking a Korean War era statute, the Defense Production Act of 1950, to ensure that chemical companies can continue to manufacture a dangerous pesticide without having to worry about liability. In keeping with President Trump's infatuation with his emergency powers, the new Executive Order mandates **as a matter of national security** the ongoing production of glyphosate, which is the active ingredient in *Roundup,* the most widely used weed killer in the world. As discussed in a previous blog post, *Roundup* has been the subject of many thousands of lawsuits over its links to cancer, leading to more than $11 billion in settlements with Monsanto, which the German multinational chemical company Bayer purchased in 2018. With mounting evidence linking glyphosate exposure to non-Hodgkins lymphoma, Monsanto and now Bayer have faced an avalanche of lawsuits. Bayer's litigation exposure has grown to such levels, in fact, that the company has threatened to stop producing the chemical altogether. But in early February, after a failed legislative attempt to secure liability protection, Bayer received some good news when the Supreme Court agreed to hear arguments on whether state law failure-to-warn cases against Bayer are preempted under FIFRA. As noted in my previous post, the United States weighed in

on behalf of Bayer and urged the Court to take the case. But even with what looks like good prospects before the Court, the White House has now decided to exercise its extraordinary powers under the Defense Production Act on behalf of a German chemical company.

The new Executive Order is based on the finding that "production of glyphosate-based herbicides is central to American economic and national security." It directs the Secretary of Agriculture to take all necessary measures to ensure continued production of glyphosate. And it provides immunity to Bayer and other glyphosate producers for any "damages or penalties" resulting from "any act or failure to act" in accordance with "any rule, regulation, or order" issued to implement the new Executive Order, even if such rule, regulation, or order is later found by a court or "other competent authority" to be invalid. In the context of wartime and other similar emergencies, one can understand why such expansive liability protection might be necessary. But as a way to placate and protect a German multinational chemical company, this is beyond extreme. While the liability protections here are forward looking (that is, they do not resolve Bayer's existing liabilities from past glyphosate exposures, which is what the Supreme Court will soon be considering), the new protections give Bayer virtually complete liability protection going forward. Bayer can now make and sell as much glyphosate as it wants to without having to worry about any additional new claims stemming from those sales.

MAHA is apparently "enraged" by the President's actions, as if there wasn't already more than enough evidence that they have been playing a sucker's game with President Trump from the beginning. Some Republicans are also breaking ranks, including Representative Thomas Massie of Kentucky (the same Thomas Massie who has incurred the wrath of the President for his work on the Epstein files), who has apparently drafted legislation seeking to prevent implementation of the Order. Good luck with that!

The bigger question of course is whether this represents a permanent rupture between Trump and the MAHA movement—a recognition (finally!?) that the Trump Administration is pursuing a Toxics First Agenda at the behest of the chemical industry, just like they did in the first Trump administration. With this new Executive Order, the White House is now going above and beyond to protect the commercial interests of a single German chemical company despite mounting evidence of harm and longstanding concerns among the MAHA faithful. For many MAHA influencers, in fact, glyphosate was Exhibit A of everything that was wrong with America's approach to chemicals regulation—and the main reason many of

them joined the MAHA movement in the first place.

So now we have another huge f*#ck you to the MAHA faithful who seemed to think that the Trump administration was actually going to do something about chemicals in the food supply.  While it is tempting to revel in a bit of schadenfreude as they realize the bullshit they have been sold, the great tragedy is that the White House seems undaunted – and unhinged – as they look for new and creative ways to deliver on their Toxics First Agenda.