

BREYER, J., concurring

**SUPREME COURT OF THE UNITED STATES**

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No. 03–388

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DENNIS BATES, ET AL., PETITIONERS *v.* DOW  
AGROSCIENCES LLC

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

[April 27, 2005]

JUSTICE BREYER, concurring.

I write separately to stress the practical importance of the Court’s statement that state-law requirements must “be measured against” relevant Environmental Protection Agency regulations “that give content to [the Federal Insecticide, Fungicide, and Rodenticide Act’s] misbranding standards.” *Ante*, at 21. In *Medtronic, Inc. v. Lohr*, 518 U. S. 470 (1996), I pointed out that an administrative agency, there the Food and Drug Administration, had the legal authority within ordinary administrative constraints to promulgate agency rules and to determine the preemptive effect of those rules in light of the agency’s special understanding of “whether (or the extent to which) state requirements may interfere with federal objectives.” *Id.*, at 506 (opinion concurring in part and concurring in judgment). The EPA enjoys similar authority here. See 7 U. S. C. §136w(a)(1). As suggested by *Medtronic*, the federal agency charged with administering the statute is often better able than are courts to determine the extent to which state liability rules mirror or distort federal requirements. Thus, the EPA may prove better able than are courts to determine whether general state tort liability rules simply help to expose “new dangers associated with pesticides,” *ante*, at 18 (quoting *Ferebee v. Chevron Chemical Co.*, 736 F.2d 1529, 1541 (CA5 1984)), or

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instead bring about a counterproductive “‘crazy-quilt of anti-misbranding requirements,” *ante*, at 15 (quoting Brief for Respondent 16). And, within appropriate legal and administrative constraints, it can act accordingly. Cf. *Hillsborough County v. Automated Medical Laboratories, Inc.*, 471 U. S. 707, 721 (1985) (agencies can monitor the dynamic between federal and local requirements and promulgate regulations pre-empting local legislation that interferes with federal goals). Emphasizing the importance of the agency’s role in overseeing FIFRA’s future implementation, I join the Court’s opinion.