

No. \_\_\_\_\_

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In the  
**Supreme Court of the United States**

\_\_\_\_\_  
MONSANTO COMPANY,  
*Petitioner,*

v.

JOHN L. DURNELL,  
*Respondent.*

\_\_\_\_\_  
**On Petition for Writ of Certiorari to the  
Missouri Court of Appeals**

\_\_\_\_\_  
**PETITION FOR WRIT OF CERTIORARI**

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April 4, 2025

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## QUESTION PRESENTED

The Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”) creates a comprehensive regulatory scheme governing the use, sale, and labeling of pesticides. The Act preempts any state “requirement[] for labeling or packaging in addition to or different from those required under” FIFRA. 7 U.S.C. §136v(b). For decades, EPA has exercised its authority under FIFRA to find that Monsanto’s Roundup product line and its active ingredient, glyphosate, do not cause cancer in humans. Consistent with that understanding, EPA has repeatedly approved Roundup’s label without a cancer warning. FIFRA prohibits Monsanto from making any substantive change to an EPA-approved label unless it first obtains EPA’s permission.

Respondent is one of more than 100,000 plaintiffs across the country that nonetheless seek to hold Monsanto liable for not warning users that glyphosate, the active ingredient in Roundup, causes cancer. The federal courts of appeals and state appellate courts are divided over whether FIFRA preempts such claims. The Third Circuit has held that it does. In the decision below, the Missouri Court of Appeals joined the Ninth and Eleventh Circuits and state appellate courts in California and Oregon in holding that it does not.

The question presented is:

Whether FIFRA preempts a state-law failure-to-warn claim where EPA has repeatedly concluded that the warning is not required and the warning cannot be added to a product without EPA approval.

**PARTIES TO THE PROCEEDING**

Petitioner Monsanto Company was the appellant in the Missouri Court of Appeals. Respondent John L. Durnell was the appellee.

**CORPORATE DISCLOSURE STATEMENT**

Petitioner Monsanto Company is an indirect, wholly owned subsidiary of Bayer AG, a publicly held corporation. No other publicly held corporation owns 10% or more of Monsanto's stock.

**STATEMENT OF RELATED PROCEEDINGS**

*Durnell v. Monsanto Co.*, No. SC100975 (Mo.)  
(application for transfer denied Apr. 1, 2025).

*Durnell v. Monsanto Co.*, No. ED 112410 (Mo. Ct.  
App.) (opinion and judgment issued Feb. 11, 2025).

*Durnell v. Monsanto Co.*, No. 1922-CC00221 (Mo.  
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## PETITION FOR WRIT OF CERTIORARI

The Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”) includes a “[u]niformity” provision that expressly preempts all state “requirements for labeling or packaging” that are “in addition to or different from those required under” FIFRA. 7 U.S.C. §136v(b). There is a square and acknowledged circuit split over the scope of that provision as applied to the particular product at issue here. Specifically, in evaluating suits against Petitioner for its Roundup product (of which there are many), the circuits have split over “whether, once the Environmental Protection Agency (‘EPA’) registers and approves a pesticide label that omits a particular health warning, a state-law duty to include that warning is preempted.” *Schaffner v. Monsanto Corp.*, 113 F.4th 364, 370-71 (3d Cir. 2024).

The Third Circuit says yes. In a thorough, 65-page opinion, a unanimous panel of that court held that FIFRA preempted a state-law failure-to-warn claim that sought to hold Monsanto liable for failing to warn users of the alleged carcinogenic effects of glyphosate, the active ingredient in Monsanto’s Roundup product. The Third Circuit explained that EPA “regulations promulgated to implement FIFRA require the health warnings on a pesticide’s label to conform to the proposed label approved by the EPA during the registration process.” *Id.* at 371. Thus, when EPA has conducted “extensive review of [the] scientific evidence” of a potential health issue (as it had with glyphosate) and “approved proposed labels omitting a [health] warning” on that issue, FIFRA

preempts a “state-law duty to include” that same warning. *Id*

As the Third Circuit recognized, however, its “analysis differs from” that of its “colleagues in other courts.” *Id.* at 399. Like the Missouri Court of Appeals here, the Ninth and Eleventh Circuits (as well as intermediate appellate courts in California and Oregon) have held that FIFRA does not preempt state-law failure-to-warn claims that seek to hold Monsanto liable for not warning users of the alleged carcinogenic effects of glyphosate. According to those courts, FIFRA does not preempt state-law claims so long as the elements of the claim can be said to “parallel” FIFRA’s general misbranding prohibition. *See Carson v. Monsanto Co.*, 92 F.4th 980 (11th Cir. 2024); *Hardeman v. Monsanto Co.*, 997 F.3d 941 (9th Cir. 2021); *Johnson v. Monsanto Co.*, 554 P.3d 290 (Or. App. 2024), *appeal denied*, 562 P.3d 237 (Or. 2024); *Pilliod v. Monsanto Co.*, 282 Cal.Rptr.3d 679 (Ct. App. 2021), *appeal denied*, No. S270957 (Cal. Nov. 17, 2021). It is immaterial in those courts that EPA has repeatedly “approv[ed] ... individual pesticide registrations and corresponding labels” without the relevant warning, or that “manufacturers cannot change the label’s contents without the Agency’s prior approval.” *Carson*, 92 F.4th at 990, 992.

The Court should resolve this split now. The legal issues have been exhaustively ventilated and explored from every angle in lengthy opinions from multiple federal and state appellate courts. There is no material chance the split will resolve itself, as the Third and Eleventh Circuits have each denied en banc review. And as this case exemplifies, the



consequences are enormous. More than 100,000 cases have been filed seeking to hold Monsanto liable based on a supposed link to cancer that the EPA has exhaustively studied and rejected as unfounded. The litigation has already forced Monsanto to remove glyphosate from its consumer version of Roundup, but the continuing overhang of these lawsuits threatens Monsanto's ability to continue to supply glyphosate to farmers who need it to remain world leaders in food production. More broadly, without this Court's intervention, the circuit conflict will engender confusion in litigation over any pesticide whose safety EPA has reviewed and whose label it has approved. And it will breed uncertainty in the interpretation of myriad other similarly worded preemption provisions.

This Court previously recognized the importance of the question presented when it called for the views of the Solicitor General in *Hardeman*, No. 21-241. In response, the United States recommended that this Court not "grant review unless and until a conflict in authority emerges." U.S. Br.19, *Monsanto Co. v. Hardeman*, No. 21-241 (U.S. filed May 10, 2022). That conflict has now emerged. There is no reason for further delay. The Court should grant this petition and resolve that conflict.

#### **OPINIONS BELOW**

The opinion of the Missouri Court of Appeals is reported at 2025 WL 451540 and reproduced at App.2-12. The Missouri Supreme Court's order denying Petitioner's application for transfer is unreported but reproduced at App.1. The opinion of the Missouri trial court denying Monsanto's motion for summary judgment is unreported but reproduced at App.13-16.

## JURISDICTION

The Missouri Court of Appeals issued its opinion on February 11, 2025. The Missouri Supreme Court denied Petitioner’s application for transfer on April 1, 2025. This Court has jurisdiction under 28 U.S.C. §1257(a).

## STATUTORY PROVISIONS INVOLVED

The full text of 7 U.S.C. §136v(a)-(b) is reproduced at App.44.

## STATEMENT OF THE CASE

### A. Legal Background

Congress created FIFRA through a series of enactments to regulate the use, sale, and labeling of pesticides. *See Wis. Pub. Intervenor v. Mortier*, 501 U.S. 597, 601 (1991). As originally enacted in 1947, *see* Pub. L. No. 80-104, 61 Stat. 163, FIFRA “was primarily a licensing and labeling statute.” *Mortier*, 501 U.S. at 601 (quoting *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 991 (1984)). In 1972, Congress “significantly strengthened FIFRA’s registration and labeling standards” in response to “environmental and safety concerns.” *Id.*; *see also* Federal Environmental Pesticide Control Act of 1972, Pub. L. No. 92-516, 86 Stat. 973. The 1972 amendments effectively “transformed FIFRA from a labeling law into a comprehensive regulatory statute.” *Mortier*, 501 U.S. at 601 (quoting *Ruckelshaus*, 467 U.S. at 991).

Under FIFRA, no pesticide may be sold or distributed domestically without EPA registration. 7 U.S.C. §136a(a). To register a pesticide, EPA must determine (among other things) that the pesticide poses no unreasonable risk of adverse effects on

human health and the environment, *see* 7 U.S.C. §§136a(c)(5)(C), 136(bb); 40 C.F.R. §152.112(e), and that its labeling complies with FIFRA's requirements, including its misbranding prohibition, *see* 7 U.S.C. §136a(c)(5)(B). "A pesticide is 'misbranded' if its label contains a statement that is 'false or misleading in any particular,'" *Bates v. Dow Agrosiences LLC*, 544 U.S. 431, 438 (2005), or "does not contain a warning or caution statement which may be necessary and if complied with[] ... is adequate to protect health and the environment," 7 U.S.C. §136(q)(1)(G).

EPA has published regulations that govern the registration process. *See* 40 C.F.R. pt. 152. Under those regulations, manufacturers must submit voluminous scientific and safety data (including carcinogenicity studies), as well as proposed labeling that includes any precautionary statements regarding potential effects on human health. *E.g.*, 7 U.S.C. §136a(c); 40 C.F.R. §§156.10(a)(1)(vii), 156.60, 158.500. EPA reviews the scientific studies and safety data to ensure that the pesticide does not impose any unreasonable risk of adverse effects on human health, including cancer. And it reviews and approves the proposed label to ensure that it complies with FIFRA's requirements. *See* 40 C.F.R. §§152.40-55. If EPA has reason to believe a pesticide violates FIFRA's provisions, EPA may issue "stop sale, use, or removal" orders, 7 U.S.C. §136k(a), seize and condemn the offending products, *id.* §136k(b), and seek civil and criminal penalties from the manufacturer, *id.* §136l. EPA must review a pesticide's registration every 15 years. *Id.* §136a(g)(1)(A)(iii)(II). This process requires EPA to consider whether any "labeling changes" are necessary given new information and whether the

product still meets FIFRA's requirements, including its misbranding prohibition. 40 C.F.R. §155.58(b)(4).

Pesticide registrants have a continuing obligation to comply with FIFRA's labeling requirements. Once EPA approves a label, the "label is the law." EPA, Pesticide Registration Manual 3 (last updated April 2017), <https://perma.cc/3GTB-3892>. It is illegal to distribute a pesticide with labeling substantially different from the EPA-approved label. 7 U.S.C. §136j(a)(1)(B). And the manufacturer must seek approval for virtually any substantive change to that label. 40 C.F.R. §§152.44, 152.46; 7 U.S.C. §136a(c)(9)(C). While the manufacturer may make some "minor modifications" through a streamlined "notification" process, it may not change any "precautionary statements" via that notification process. See EPA, Office of Pesticide Programs, *Pesticide Registration Notice 2000-5* (May 10, 2000), <https://perma.cc/ANB4-UGG9>; EPA, Office of Pesticide Programs, *Pesticide Registration Notice 98-10* (Oct. 22, 1998), <https://perma.cc/EZ7M-62MY>; 40 C.F.R. §156.70(c). Instead, for such changes, it may proceed only by formal amendment.

FIFRA establishes a program for federal-state cooperation in regulating pesticides. See *Mortier*, 501 U.S. at 601-02. Section 136v, titled "Authority of States," sets forth key principles of that relationship. See 7 U.S.C. §136v. Section 136v(a) recognizes that, as a general matter, states retain their historic authority to regulate pesticide sale or use, provided that a state does not permit a sale or use that FIFRA, or EPA's implementing regulations, prohibit:

## (a) In general

A State may regulate the sale or use of any federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this subchapter.

*Id.* §136v(a).

But when it came to labeling, FIFRA sought to ensure that manufacturers would not have to comply with “50 different labeling regimes.” *Bates*, 544 U.S. at 452. FIFRA thus forbids a state from imposing any additional or different requirements on pesticide labeling or packaging than those imposed under FIFRA:

## (b) Uniformity

Such State shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter.

7 U.S.C. §136v(b).

**B. Factual Background**

Monsanto produces Roundup, “a weed-killer that employs glyphosate as its active ingredient.” *Schaffner*, 113 F.4th at 373.<sup>1</sup> EPA has registered pesticides containing glyphosate since 1974. *See* EPA, *Revised Glyphosate Issue Paper: Evaluation of Carcinogenic Potential* 12 (Dec. 12, 2017),

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<sup>1</sup> While courts have generally referred to a single Roundup product, in reality, Monsanto has produced dozens of Roundup-branded products over the decades, each of which has been approved by EPA for marketing without a cancer warning.

<https://perma.cc/UWM2-6BHB>. EPA has repeatedly evaluated whether glyphosate is carcinogenic. *Id.* In 1986, for example, EPA found that the evidence did not support a conclusion that glyphosate causes cancer, and EPA prescribed “Required Labeling” with no cancer warning. *Id.*; *see also* EPA, Office of Pesticides and Toxic Substances, *Guidance for the Reregistration of Pesticide Products Containing Glyphosate as the Active Ingredient* 6-8, 20-34 (June 1986), <https://perma.cc/DTH7-FR4V>. In 1991, EPA’s Carcinogenicity Peer Review Committee classified glyphosate “as a Group E chemical: ‘Evidence of Non-Carcinogenicity for Humans.’” *Revised Glyphosate Issue Paper* 13. In 1993, EPA completed its statutory re-registration of glyphosate, concluding that “glyphosate products, labeled and used as specified [by EPA], will not pose unreasonable risks or adverse effects to humans.” EPA, *Reregistration Eligibility Decision (RED) Glyphosate* 57 (Sept. 1993), <https://perma.cc/528H-F4FN>. And in subsequent years, EPA has reiterated its conclusion that glyphosate is not carcinogenic. *Revised Glyphosate Issue Paper* 12-13. In 2008, for instance, EPA determined that glyphosate is “not a carcinogen” based on its review of an “extensive database” of research. *Glyphosate; Pesticide Tolerances*, 73 Fed. Reg. 73,586, 73,589 (Dec. 3, 2008). Public health regulators worldwide have similarly found that glyphosate does not cause cancer in humans. *See Hardeman*, 997 F.3d at 951.

In 2015, against that global consensus, a working group of the International Agency for Research on Cancer (“IARC”) classified glyphosate as a “Group 2A” agent—meaning it is, in IARC’s view, “probably

carcinogenic to humans” based on “limited” evidence of cancer in humans. IARC, 112 *Some Organophosphate Insecticides and Herbicides* 398 (2015), <https://perma.cc/9TPL-278R>. IARC’s classification reflected a hazard assessment, meaning a theoretical determination of carcinogenic potential; it did not assess the *actual* risk glyphosate poses under real-world conditions. *Id.* at 10-11; *see also In re Roundup Prods. Liab. Litig.*, 390 F.Supp.3d 1102, 1108, 1113-14 (N.D. Cal. 2018) (noting the “limited” and “abstract” nature of IARC’s assessment).

When IARC released its assessment of glyphosate, EPA was already engaged in its statutory registration review. During that review, the agency developed an extensive database on the carcinogenic potential of glyphosate, reviewing 736 studies as part of an open literature review as well as “numerous studies ... submitted to the agency” by independent parties. *Revised Glyphosate Issue Paper* 21-22. The agency specifically examined the studies “included in the evaluation by IARC.” *Id.* at 23. It further convened a scientific advisory panel to contribute to its analysis. After considering IARC’s classification, EPA again determined that “[t]he strongest support” is for classifying glyphosate as “not likely to be carcinogenic to humans.” *Id.* at 143. And in 2019, after accounting for public comments, EPA issued a proposed registration review decision in which the agency reiterated both its conclusion that glyphosate is not carcinogenic to humans and its disagreement with IARC—noting that its evaluation was “more robust” and “more transparent” than IARC’s and “consistent with” those of “other regulatory authorities and international organizations.” EPA,

*Glyphosate Proposed Interim Registration Review Decision* 7-8 (Apr. 2019), <https://perma.cc/8K63-HD36>. EPA was hardly the only authority to reject IARC's findings. No shortage of national and international health organizations rejected IARC's position, including the European Union's European Chemicals Agency, its European Food Safety Authority, and the national health authorities of Australia, Canada, Germany, and New Zealand. *See Nat'l Ass'n of Wheat Growers v. Bonta*, 85 F.4th 1263, 1270 (9th Cir. 2023).

In an August 2019 letter rejecting a cancer warning for glyphosate, EPA again reaffirmed its determination that glyphosate is “not likely to be carcinogenic to humans.” App.38. The proposed warning, which California law automatically requires because of IARC's classification, would have required manufacturers to add a label stating that glyphosate is “known” to cause cancer. In its letter, EPA explained that it “disagrees with IARC's assessment” and that it had “considered a more extensive dataset than IARC.” App.38. “Given EPA's determination,” EPA concluded that a warning stating glyphosate causes cancer would render a pesticide “misbranded pursuant to section 2(q)(1)(A) of FIFRA.” App.39.<sup>2</sup> That conclusion was consistent with how state environmental protection agencies had addressed

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<sup>2</sup> EPA more recently stated that it “could approve” labels noting *both* the IARC classification *and* the contrary findings of EPA and other regulatory authorities. App.41-43. But it simultaneously reiterated its assessment that glyphosate is likely not carcinogenic and its rejection of a warning that glyphosate causes cancer. App.41-42.



glyphosate products for decades. Before California, *none* had attempted to require a cancer warning.

After considering public comments for a second time, EPA in 2020 finalized its interim registration review determination that glyphosate does not cause cancer, and again approved labeling with no cancer warning. Various parties challenged that decision in the Ninth Circuit. In response to those suits and a change in administration, EPA again reviewed its decision in early 2021. The agency reaffirmed the view espoused without interruption over the last six administrations: “[G]lyphosate is not likely to be a human carcinogen and ... it does not pose human-health risks of concern.” EPA.Br.17, *NRDC v. EPA*, Nos. 20-70787, 20-70801 (9th Cir. May 18, 2021). The Ninth Circuit vacated EPA’s 2020 Interim Decision in June 2022 after concluding that the agency failed to offer enough “analysis and explanation.” *Nat. Res. Def. Council v. U.S. Env’t Prot. Agency*, 38 F.4th 34, 52 (9th Cir. 2022). Consistent with the Ninth Circuit’s ruling, EPA announced that it will “revisit and better explain its evaluation of the carcinogenic potential of glyphosate,” but that “EPA’s underlying scientific findings regarding glyphosate, including its finding that glyphosate is not likely to be carcinogenic to humans,” remain the same. Memorandum from Cathryn Britton, Branch Chief, Risk Management and Implementation Branch V, Pesticide Re-evaluation Division, to Glyphosate Registration Review Docket (EPA-HQ-OPP-2009-0361) at 5-6 (Sept. 21, 2022), <https://perma.cc/3KDJ-JT2N>. Since then, EPA has continued to approve labels of numerous glyphosate-based pesticide products

without cancer warnings. See EPA, Chemical Name: Glyphosate, <https://perma.cc/7PHA-8UXP>.<sup>3</sup>

### C. Procedural History

In the wake of the IARC decision, more than 100,000 plaintiffs filed lawsuits in federal and state courts nationwide, alleging that Roundup caused their cancer and that Monsanto is liable for failing to warn them of glyphosate's purportedly carcinogenic properties.<sup>4</sup> In 2016, the Judicial Panel on Multidistrict Litigation centralized cases alleging that Roundup caused plaintiffs' non-Hodgkin's lymphoma in the Northern District of California, where several cases were already pending. *In re Roundup Prods. Liab. Litig.*, 214 F.Supp.3d 1346, 1348 (J.P.M.L. 2016); see also, e.g., *Hardeman v. Monsanto Co.*, No. 3:16-cv-00525 (N.D. Cal. filed Feb. 1, 2016). This tidal wave of litigation forced Monsanto to remove glyphosate from the consumer version of Roundup.

That removal—and the ongoing litigation—has sparked fear among American farmers that Monsanto will be forced to remove glyphosate from the

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<sup>3</sup> EPA has on at least two prior occasions approved labels that included a cancer warning. But EPA has acknowledged that those decisions were the result of an "implementation mistake." U.S. Br. at 17-19 & n.14, *Monsanto Co. v. Hardeman*, No. 19-16636 (9th Cir. filed Dec. 20, 2019).

<sup>4</sup> The massive volume of the litigation stems from two main factors. First, millions of Americans have used Roundup. And second, non-Hodgkin's lymphoma is a common and naturally occurring blood cancer. As of 2022, the plaintiffs' bar had spent an estimated \$131 million on more than 625,000 television advertisements for Roundup litigation. See T. Joyce, Am. Tort Reform Ass'n, *When Plaintiffs' Attorneys Mislead the Public*, Bloomberg Law (Sept. 28, 2022), <https://perma.cc/SV28-9BFW>.

agricultural version of Roundup as well. Farmers describe Roundup as “a fabulous tool” and “one of the least harmful chemicals [they] use.” P. Cohen, *Roundup Weedkiller Is Blamed for Cancers, but Farmers Say It’s Not Going Away*, N.Y. Times (Sept. 20, 2019), <https://perma.cc/J2LQ-BEKS>. Indeed, farmers “continue to depend on Roundup,” especially given global “increases [in] the demand for food.” *Id.* And while the glyphosate lawsuits have been “a boon to trial lawyers who have made a career and a fortune” off of them, they risk forcing American farmers to return to the “miserable,” “mind-numbing,” and “back-breaking labor” that was necessary before Monsanto introduced glyphosate to the agricultural industry in the 1970s. B. Hurst, *Roundup Lawsuits Pose a Threat to My Missouri Farm*, Wall Street Journal (Sept. 13, 2024), <https://perma.cc/M24F-TJTB>. Moreover, removing glyphosate from shelves would force farmers to turn to other herbicides that are “harsher, more toxic[,] and more likely to drift and cause damage to surrounding vegetation.” *Id.*

Since removing glyphosate from its consumer version of Roundup, Monsanto has settled many claims against it. But tens of thousands of claims remain pending in courts across the country. This is one of those cases.

In January 2019, Respondent John Durnell sued Monsanto in Missouri state court, alleging that he had developed non-Hodgkin’s lymphoma as a result of exposure to Roundup. App.3. Durnell brought Missouri common-law products-liability tort claims, including strict liability defective design, strict liability failure to warn, and negligence. App.3. Those

claims were tried to a jury in September 2023. App.3. Both at the close of Durnell’s case in chief, as well as after the close of all evidence, Monsanto moved for a directed verdict on the ground that FIFRA preempts Durnell’s claims. App.3. The court denied both motions. App.3; *see also* App.17-18.

The jury ultimately found Monsanto not liable on all of Durnell’s claims except his failure-to-warn claim. App.3. As for the failure-to-warn claim, the jury found Monsanto liable and awarded Durnell \$1.25 million in damages. App.3. Monsanto promptly moved for entry of judgment notwithstanding the verdict, again on the ground that FIFRA preempted Durnell’s failure-to-warn claim. App.3. The trial court again denied Monsanto’s motion and entered final judgment, and Monsanto appealed. App.3; *see also* App.19, 20-21.

On appeal, Monsanto once again argued that FIFRA preempted Missouri’s state-law failure-to-warn claims. App.4. The court rejected Monsanto’s argument that FIFRA expressly preempts Durnell’s failure-to-warn claim. The court recognized that “FIFRA will preempt a state law requirement—including a common-law cause of action—that is not fully consistent with FIFRA’s requirements.” App.5. Here, that analysis turns on whether the state failure-to-warn claim would require Monsanto to carry a label “in addition to or different from” the one FIFRA required. App.5-6; 7 U.S.C. §136v(b). The court ultimately concluded that an adverse jury verdict would not impose an additional requirement because the “practical effect” of FIFRA’s misbranding prohibition and Durnell’s failure-to-warn claim “are

the same: both require a pesticide manufacturer to adequately warn users of the potential dangers of using its product.” App.7. Durnell’s claim therefore did not impose a requirement “in addition to or different from” the requirements of FIFRA. App.7. The court acknowledged that the Third Circuit had come to a different conclusion in *Schaffner*. App.10. But because it did “not find *Schaffner* persuasive,” the Court chose instead to follow decisions in the Ninth and Eleventh Circuits rejecting Monsanto’s express preemption arguments. App.11 (citing *Hardeman*, 997 F.3d 941 (9th Cir. 2021), and *Carson*, 92 F.4th 980 (11th Cir. 2024)).

The court also rejected Monsanto’s implied-preemption argument. The court recognized that state tort claims are preempted if it is “impossible to comply with both federal and state law.” App.8. And it acknowledged that EPA had repeatedly concluded that glyphosate does not cause cancer in humans and repeatedly approved Roundup labels that did not include a cancer warning. The court nevertheless held that that was not enough. Because Monsanto had not specifically sought EPA’s approval to add a cancer warning, the court could not say with certainty that such a request for approval would be denied. App.9. The mere “possibility of impossibility” was insufficient to preempt Respondent’s failure-to-warn claim. App.9. The court appeared to recognize that this Court found impossibility preemption in similar circumstances in *PLIVA, Inc. v. Mensing*, 564 U.S. 604 (2011). But the Court declined to rely on that decision because it involved a different statutory scheme. App.11.

### **REASONS FOR GRANTING THE PETITION**

EPA has repeatedly determined that glyphosate, the world's most widely used herbicide, does not cause cancer. EPA has consistently reached that conclusion after studying the extensive body of science on glyphosate for over five decades. Consistent with that determination, EPA has approved hundreds of labels for dozens of Roundup products without requiring a cancer warning. EPA has not only determined that such a warning is unnecessary under FIFRA. It has told registrants that including a glyphosate-causes-cancer warning would render their products affirmatively "misbranded" under the Act. Once EPA approves a label, moreover, FIFRA makes it unlawful for a pesticide manufacturer to add additional warnings without EPA's permission. It is thus no surprise that Monsanto has never tried to unilaterally include a cancer warning on its Roundup products. Not only is such a label against the overwhelming weight of scientific evidence, including it would have exposed Monsanto to civil and criminal penalties under FIFRA.

The premise of this lawsuit, however, and the thousands like it, is that Missouri law requires Monsanto to include the precise warning that EPA rejects. The Third Circuit correctly held that FIFRA squarely preempts such suits. The court below had the benefit of that thorough, 65-page opinion, but deemed the analysis of the Ninth and Eleventh Circuits more persuasive. Splits of authority do not get any clearer than that. The circuits are squarely and irrevocably split not just on the scope of FIFRA preemption in the abstract; they have reached

diametrically opposed conclusions in lawsuits involving the exact same product.

The decision below is wrong. It avoided finding preemption by distorting FIFRA's text and misreading this Court's decisions. And the stakes are high. There are tens of thousands of Roundup suits in the Missouri court system and thousands more in state and federal courts throughout the country. Those suits have already forced Monsanto to remove glyphosate from the consumer version of Roundup, and they threaten Monsanto's ability to continue to supply glyphosate to farmers who need it to stay competitive. Moreover, while there is a Roundup-specific circuit split, the division and confusion extend to all other pesticides subject to FIFRA and EPA jurisdiction. There is no reason to allow this confusion to linger and every reason for this Court to grant review.

#### **I. The Decision Below Deepens A Square And Acknowledged Circuit Split.**

As the decision below recognized, and multiple courts have acknowledged, the courts of appeals are divided over whether FIFRA preempts state failure-to-warn claims that require pesticide manufacturers to include a warning on glyphosate products. Like the Missouri Court of Appeals, the Ninth and Eleventh Circuits have held that FIFRA does not preempt state failure-to-warn claims that would require Monsanto to warn consumers that glyphosate causes cancer. The Third Circuit, by contrast, has squarely held that it does.

1. Like the Missouri Court of Appeals, the Ninth Circuit has held that FIFRA does not preempt state failure-to-warn claims that would require pesticide

manufacturers to warn consumers that glyphosate causes cancer. In *Hardeman*, the plaintiff alleged that Monsanto's failure to warn him of the purportedly carcinogenic effects of Roundup caused him to develop non-Hodgkin's lymphoma. 997 F.3d at 952. Monsanto argued that FIFRA preempted the plaintiff's failure-to-warn claim, but the Ninth Circuit disagreed. According to the Ninth Circuit, a jury verdict requiring Monsanto to add a cancer warning to Roundup's label would not impose a requirement "in addition to or different from" what FIFRA already requires because, at a general level, "FIFRA's requirement that a pesticide not be misbranded is consistent with, if not broader than, California's common law duty to warn." *Id.* at 954. The Ninth Circuit acknowledged that EPA, applying FIFRA, has repeatedly concluded that Monsanto was not required to include a cancer warning for glyphosate, including by "repeatedly register[ing] Roundup for sale without a cancer warning on the label" and by notifying manufacturers in 2019 that EPA would consider any glyphosate product including a cancer warning to be misbranded. *Id.* at 956. But the court deemed those facts insufficient for express preemption, reasoning that, because registration is not "a defense for the commission of any offense under this subchapter," EPA's approval of a label "is not conclusive of FIFRA compliance." *Id.* (quoting 7 U.S.C. §136a(f)(2)). The court discounted EPA's approval of Roundup and its 2019 letter because neither "carr[ied] the force of law." *Id.*

The Eleventh Circuit took the same approach as the Ninth. In *Carson*, the Eleventh Circuit held that FIFRA did not preempt the plaintiff's failure-to-warn



claim because, at a general level, “both FIFRA and Georgia common law require pesticide manufacturers to warn users of potential risks to health and safety.” 92 F.4th at 992. The Eleventh Circuit recognized that, by registering a pesticide without a cancer warning, EPA necessarily makes “an individualized finding that a particular pesticide is not misbranded.” *Id.* at 993. But, like the Ninth Circuit, the Eleventh Circuit nevertheless deemed EPA’s registration of Roundup irrelevant to the preemption question because EPA’s “approvals provide only ‘prima facie evidence,’ not conclusive proof, that a pesticide is not misbranded.” *Id.* (citing 7 U.S.C. §136a(f)(2) and *Hardeman*, 997 F.3d at 956). And while the court acknowledged EPA’s 2019 determination that including a cancer warning on glyphosate products would be affirmatively “false or misleading,” the court discounted that conclusion because it “did not foreclose any and all warnings related to glyphosate’s potentially harmful effects” and “did not carry the force of law.” *Id.* at 996.<sup>5</sup>

2. The Third Circuit, by contrast, has squarely held that FIFRA preempts state-law failure-to-warn claims that would require Monsanto to warn purchasers about glyphosate’s supposedly carcinogenic effects. The plaintiff in *Schaffner* alleged that he developed non-Hodgkin’s lymphoma because Monsanto failed to warn him of the purportedly

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<sup>5</sup> The California Court of Appeal and the Oregon Court of Appeals have likewise rejected Monsanto’s argument that FIFRA preempts state failure-to-warn claims that would require Monsanto to warn consumers that glyphosate causes cancer. *See Pilliod*, 282 Cal.Rptr.3d 679, *appeal denied*, No. S270957 (Cal. Nov. 17, 2021); *Johnson*, 554 P.3d 290, *appeal denied*, 562 P.3d 237 (Or. 2024).

carcinogenic effects of glyphosate. The Third Circuit held that FIFRA expressly preempted the plaintiff's claim because a jury verdict in his favor would impose labeling requirements that are "in addition to or different from" what EPA required in administering FIFRA. 113 F.4th at 395-96, 399. The Third Circuit acknowledged that the Ninth and Eleventh Circuits had gone the other way on the theory that FIFRA's misbranding prohibition is, at a high "level[] of generality," equivalent to the common law duty to warn. *Id.* at 389 (citing *Carson*, 92 F.4th at 991-92, and *Hardeman*, 997 F.3d at 955-56). But the Third Circuit expressly rejected the notion that a "state-law duty can[] survive preemption simply because its standard of liability is equivalent to the broad statutory definition of misbranding." *Id.* at 390. The court explained that under §136v(b), "federal requirements must be articulated at [a] more specific level." *Id.* So, if "EPA regulations specifically identify the contents required to be included on a pesticide label, a state-law requirement is preempted unless it is equivalent to that specific regulatory requirement." *Id.*

Applying those principles, the Third Circuit concluded that "EPA regulations specifically identify the contents required to be included on" Roundup's label. *Id.* Consistent with its longstanding view that glyphosate does not cause cancer, EPA repeatedly registered Roundup for use and approved its label without a cancer warning. *Id.* at 373-75. And because EPA approved Roundup's label, EPA's regulations prohibited Monsanto from modifying the label to include a cancer warning without EPA's permission. *Id.* at 382-85 (citing 40 C.F.R. §152.44(a)). While EPA

regulations permit some minor modifications to a pre-approved label, they do not permit changes to “precautionary statements,” which a cancer warning unquestionably is. *Id.* at 383-84. Because the plaintiff’s state-law failure-to-warn claim would require Monsanto to include a cancer warning that EPA’s regulations did not require—and in fact affirmatively forbade it from adding without EPA’s permission—FIFRA preempted the plaintiff’s claim. *Id.* at 393.

In so holding, the Third Circuit squarely rejected the Ninth and Eleventh Circuits’ reliance on §136a(f)(2), which specifies that registration is merely “prima facie evidence” (rather than conclusive proof) that the pesticide is not “misbranded.” *Id.* at 396 (citing *Carson*, 92 F.4th at 993, and *Hardeman*, 997 F.3d at 956). The Third Circuit explained that while registration alone is not “dispositive” as to whether a pesticide is “misbranded,” EPA’s treatment of Roundup disposes of the preemption question. After all, once EPA approved Roundup’s label, EPA’s regulations prohibited Monsanto from adding new “precautionary statements” to the label—including the cancer warning requested by the plaintiff in that case. *Id.* at 396-97.

The Third Circuit likewise rejected the Ninth and Eleventh Circuits’ “force of law” analysis. *Id.* at 398 & n.20. As the Third Circuit explained, force of law analysis generally has no place when interpreting an express preemption provision. *Id.* at 398. Because “Congress has decreed in the text of [FIFRA] that federal ‘requirements’ have preemptive force, no further analysis is necessary” once a FIFRA

“requirement” is identified. *Id.* at 398 (citation omitted). And FIFRA’s restriction on changing a pre-approved label was just that. Schaffner sought rehearing en banc, noting that the Third Circuit had “split[] expressly from the Ninth and Eleventh Circuits,” En Banc Pet. at 3-4, *Schaffner v. Monsanto Corp.*, No. 22-3075 (3d Cir. filed Sept. 12, 2024), but the court denied the petition without any judge calling for a response, let alone recording a dissent.<sup>6</sup>

In short, the circuits are squarely divided over “whether, once the [EPA] registers and approves a pesticide label that omits a particular health warning, a state-law duty to include that warning is preempted.” *Schaffner*, 113 F.4th at 370-71. More specifically, the circuits are divided over whether FIFRA preempts state-law failure-to-warn claims that seek to impose liability on pesticide manufacturers for failing to warn consumers that glyphosate causes cancer. Like the Missouri Court of Appeals, the Ninth and Eleventh Circuits and the California and Oregon appellate courts have held that FIFRA does not preempt such claims. On the other side of the split, the Third Circuit has held that it does. There is no realistic chance that the split will resolve itself given

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<sup>6</sup> Massachusetts and Hawaii courts have likewise held that FIFRA preempts state-law claims that seek to hold Monsanto liable for failing to include a cancer warning on its Roundup products. See Mem. of Decision and Order on Defs.’ Mot. for Summ. J., Dkt. 40, *Cardillo v. Monsanto Co.*, No. 2177CV00462 (Mass. Super. Ct. filed Oct. 21, 2024), *appeal granted*, No. 2024-P-1382 (Mass. filed Feb. 24, 2025); Order Granting Def.’s Mot. for Partial Summ. J., Dkt. 1058, *Peters v. Monsanto Co.*, No. 1CCV-20-0001630 (Haw. Cir. Ct. filed Oct. 25, 2023), *appeal granted*, *id.*, Dkt. 1166 (filed Mar. 13, 2024).

the Third Circuit's denial of en banc review. Only this Court can resolve the conflict on this important issue of law.

## **II. The Decision Below Is Wrong.**

The decision below not only deepens an acknowledged circuit split, it distorts the text of FIFRA and this Court's precedents. When a state tort claim requires a pesticide manufacturer to add a warning that EPA has repeatedly concluded is not only unnecessary, but also "false and misleading," FIFRA preempts that claim. *See* App.39. Any other rule would undermine the nationwide "[u]niformity" in pesticide labeling that Congress set out to achieve.

1. FIFRA expressly preempts state laws that impose "any requirements for labeling or packaging in addition to or different from those required under this subchapter." 7 U.S.C. §136v(b). Respondent claims that Monsanto violated a state-law duty to warn consumers that glyphosate causes cancer. Because the term "requirements" in §136v(b) includes "common-law duties" that "set a standard for a product's labeling," *Bates*, 544 U.S. at 443, 446, Respondent's claim unquestionably seeks to impose a "requirement[] for labeling or packaging." 7 U.S.C. §136v(b). The only question is whether it imposes a requirement that is "in addition to or different from" what EPA requires in administering FIFRA. Text, precedent, and common sense confirm that it does.

A state labeling requirement is "in addition to or different from those required under" FIFRA if it "diverges from those set out in FIFRA and its implementing regulations." *Bates*, 544 U.S. at 442-43, 452. As this Court made clear in *Bates*, it is not

enough for a state requirement to be “nominally equivalent[]” to what FIFRA demands. *Id.* at 454. The “state-law labeling requirement must *in fact* be equivalent to a requirement under FIFRA in order to survive pre-emption.” *Id.* at 453 (emphasis added). The quintessential example of such a “parallel requirement” under *Bates* is a state tort claim that simply provides a damages remedy for a violation of the existing federal labeling standards. *Id.* at 448. A “manufacturer should not be held liable under a state labeling requirement subject to §136v(b) unless the manufacturer is also liable” for misbranding under FIFRA. *Id.* at 454.

Respondent’s failure-to-warn claim plainly imposes a labeling requirement that is “in addition to or different from” what EPA requires in administering FIFRA. After all, this is not a case in which the plaintiff is seeking to impose a state-law labeling requirement on which EPA has “never passed,” such as the pesticide’s efficacy. *See id.* at 440. Since Monsanto introduced Roundup in 1974, “EPA has repeatedly evaluated the health risks posed by glyphosate,” *Schaffner*, 113 F.4th at 373, and it has “repeatedly ... conclud[ed] that it is not likely to be carcinogenic to humans,” *Hardeman*, 997 F.3d at 951. Consistent with that conclusion, EPA has repeatedly approved labels for Roundup that do not include a cancer warning.

Those approvals trigger preemption. As the Third Circuit explained, EPA’s approvals necessarily “identify the contents required to be included on a pesticide label,” *Schaffner*, 113 F.4th at 390, because EPA’s approval locks a manufacturer’s label in place.

EPA regulations forbid manufacturers from adding new “precautionary statements” without prior EPA approval. A jury verdict requiring Monsanto to add a new cancer warning to Roundup’s label is irreconcilable with that regime. It necessarily requires a jury to determine that there was some warning that the manufacturer could have included on the label but failed to. But under EPA’s rules, there is no additional warning the manufacturer can add on its own—and certainly not a statement that EPA has determined would render the product misbranded. *See* App.39. State law effectively tells the manufacturer “add this warning,” while federal law tells it “do not.” Because the jury verdict in this case requires Monsanto to include a cancer warning that EPA’s regulations did not require—and in fact affirmatively forbade it from adding—FIFRA preempts Respondent’s claim.

This Court’s decision in *Riegel v. Medtronic, Inc.*, 552 U.S. 312 (2008), confirms that conclusion. *Riegel* addressed the scope of preemption under the Medical Device Amendments of 1976 (“MDA”), Pub. L. No. 94-295, 90 Stat. 539, a statute with a similarly worded preemption provision. *See* 21 U.S.C. §360k(a)(1) (prohibiting states from imposing a requirement for a medical device “which is different from, or in addition to, any requirement applicable under this chapter to the device”); *see also* *Bates*, 544 U.S. at 447 (noting that FIFRA and MDA express preemption provisions are “similarly worded”). “[T]he MDA’s system of premarket approval” also “operates very similarly to pesticide registration under FIFRA.” *Schaffner*, 113 F.4th at 387. In particular, like pesticides under FIFRA, “medical devices must be reviewed and

approved before being marketed, and once approved they cannot be modified unless the proposed modification is itself reviewed and approved.” *Id.* at 387-88.

*Riegel* held that FDA’s “premarket approval” of a device “imposes ‘requirements’” for purposes of the MDA’s preemption provision. 552 U.S. at 322-23. The Court reasoned that “a device that has received premarket approval” must “be made with almost no deviations from the specifications in its approval application,” since “the FDA has determined that the approved form provides a reasonable assurance of safety and effectiveness.” *Id.* at 323. And as the Third Circuit recognized, that analysis “carries over to FIFRA.” *Schaffner*, 113 F.4th at 388. “If the prohibition on modifying medical devices following their approval for safety establishes ‘requirements’ for medical devices, then FIFRA’s regulatory approach, which employs the same two elements, should likewise establish ‘requirements’ under [FIFRA’s] similar preemption provision[.]” *Id.* at 388-89.

The Missouri Court of Appeals concluded otherwise by assessing FIFRA’s requirements at too high a level of generality. According to the court, Missouri common law “is fully consistent with” FIFRA’s misbranding provision because “both require a pesticide manufacturer to adequately warn users of the potential dangers of using its product.” App.6-7. That reasoning cannot be squared with this Court’s decision in *Bates*. As the Court explained in that case, the question is not whether state and federal law have “nominally equivalent” labeling standards. *Bates*, 544 U.S. at 454. The question is whether the state imposes



a labeling requirement for a particular pesticide that is *in fact* different from what EPA requires for that pesticide. *Id.* at 453. That is why *Bates* explained that FIFRA preempts a state law that requires a label for a particular pesticide to say “DANGER” when EPA has determined that it should say “CAUTION” instead. *Id.* But under the decision below, the state-law requirement to use “DANGER” on a pesticide label “would not be preempted so long as the label satisfies the statutory definition of misbranding.” *Schaffner*, 113 F.4th at 390-91.

Assessing FIFRA’s requirements at such a high level of generality would render FIFRA’s “Uniformity” provision largely meaningless. Under that approach, virtually all failure-to-warn claims are “consistent” with FIFRA’s misbranding provision, because virtually all failure-to-warn claims require (as FIFRA’s misbranding provision does) the manufacturer to “adequately warn users of the potential dangers of using its product.” App.7. Under the decision below, a jury would be free to impose liability on pesticide manufacturers for failing to include all manner of warnings, no matter how different they are from what EPA requires. Worse still, different juries in different states could impose countless different requirements, directly impeding the uniformity Congress sought to achieve through §136v(b). As the Third Circuit recognized, “[s]tate-law duties framed in these vague and broad terms would produce considerable heterogeneity, not uniformity, in the labels that pesticides are required to bear, for different factfinders deciding different individual cases might reasonably disagree about whether a

particular warning was necessary to protect health.” *Schaffner*, 113 F.4th at 393.

Nor does §136a(f)(2) support the decision below. That provision, located elsewhere in the statute and grouped with other provisions in a subsection labeled “Miscellaneous,” simply says that “registration” of a pesticide under FIFRA is not “a defense for the commission of any offense under this subchapter” but is “prima facie evidence” that a pesticide’s labeling “compl[ies] with the registration provisions of the subchapter.” 7 U.S.C. §136a(f)(2). That provision has “no bearing on” preemption. *MacDonald v. Monsanto Co.*, 27 F.3d 1021, 1025 n.4 (5th Cir. 1994); *Schaffner*, 114 F.3d at 396-97. It simply “stands for the unremarkable proposition that a registration is not a defense against an allegation that a product violates the terms of that registration.” *Reckitt Benckiser, Inc. v. Jackson*, 762 F.Supp.2d 34, 45 (D.D.C. 2011). If it were otherwise, then EPA’s determination that a warning label is unnecessary (or, as here, false and misleading) would never be preemptive. The result would be the very proliferation of divergent state and federal labeling requirements Congress sought to end.

2. Respondent’s failure-to-warn claim is doubly preempted because it is “impossible” for Monsanto “to comply with both state and federal requirements.” *Mut. Pharm. Co. v. Bartlett*, 570 U.S. 472, 480 (2013). In the context of labeling requirements, impossibility arises where the warning could not have been added without prior federal approval, *see PLIVA*, 564 U.S. at 617-19.

Here, Monsanto could not have added the label required by the jury verdict in this case without prior

federal approval. In *PLIVA*, this Court held that a state-law failure-to-warn claim is preempted where federal law bars a manufacturer from adopting, without prior federal approval, a labeling change that state law requires. *Id.* at 617-18. It is irrelevant, *PLIVA* held, whether the manufacturer might have persuaded the relevant agency to approve that change. *Id.* at 619. Because “[t]he question for ‘impossibility’ [preemption] is whether the private party could *independently* do ... what state law requires,” state law is preempted wherever the manufacturer’s ability to comply with state law depends upon prior agency approval. *Id.* at 620 (emphasis added).

That is the case here. Selling a pesticide with labeling that makes “any claims” “substantially differ[ent]” from the EPA-approved labeling is unlawful. 7 U.S.C. §136j(a)(1)(B), (2)(G); *see also id.* §136a(a). And pesticide manufacturers may not change substantive aspects of their products’ labeling without EPA’s prior approval. *See* 40 C.F.R. §§152.44, 156.70(c); *Pesticide Registration Notice 2000-5*. To change labeling, a manufacturer must submit an amended registration application that includes all data relevant to the change. *See id.* §§152.44(a), 152.50. “[T]he application must be approved by [EPA] before the product, as modified, may legally be distributed or sold.” *Id.* §152.44(a). Like the manufacturer in *PLIVA*, therefore, Monsanto could not have “independently do[ne] ... what state law require[d].” *PLIVA*, 564 U.S. at 620. Nor could Monsanto have added a cancer warning to Roundup’s label via EPA’s “notification” procedure, as changes to precautionary statements may not be made without

prior agency approval. *See Pesticide Registration Notice 2000-5; Pesticide Registration Notice 98-10.*

Even if FIFRA did not expressly bar Monsanto from adding a cancer warning on its own, EPA would unquestionably reject any attempt to add a cancer warning to Roundup. For decades, EPA has assessed the carcinogenic potential of glyphosate and consistently approved both glyphosate and Roundup's labeling *without* a cancer warning. *See supra* at 7-8. Even after the IARC working group's "hazard identification," EPA—following a "systematic review," including of all studies IARC considered—confirmed the conclusion it has reached for years: Glyphosate is "not likely to be carcinogenic to humans." *Supra* at 8-10. EPA eliminated any remaining doubt in 2019 when it informed all glyphosate registrants that, "[g]iven EPA's determination that glyphosate is 'not likely to be carcinogenic to humans,'" EPA considers any warning that glyphosate *is* carcinogenic "to constitute a false and misleading statement" that violates FIFRA's prohibition against "misbranded" substances. App.39.<sup>7</sup>

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<sup>7</sup> While EPA's 2022 letter suggested that EPA might approve a warning that advised consumers both of California's determination that Roundup poses cancer risks and of EPA's disagreement with that determination, Respondent did not ask for this type of warning at trial. Moreover, Respondent's exposure to glyphosate ceased in 2012—five years before California categorized glyphosate as carcinogenic and three years before the IARC report that triggered that categorization. Monsanto thus could not have known to propose the kind of warning the 2022 letter suggests. That letter, moreover, reaffirms EPA's 2019 conclusion that a warning stating that

The Missouri Court of Appeals rejected all that on the ground that none of EPA's actions carried "the force of law." App.9-10. But EPA's actions approving Roundup's labeling without a cancer warning are comparable to the agency actions the Court identified as sufficient to "answer ... the pre-emption question" in *Merck Sharp & Dohme Corp. v. Albrecht*, 587 U.S. 299, 315 (2019). This Court explained in *Merck* that "agency actions taken pursuant to the [agency's] congressionally delegated authority" can establish that the agency would not have taken a particular action for conflict-preemption purposes. *Id.* The Court listed three ways FDA is authorized to "communicate its disapproval of a warning" and thus "answer ... the pre-emption question": (1) "notice-and-comment rulemaking setting forth labeling standards," (2) "formally rejecting a warning label that would have been adequate under state law," and (3) "other agency action carrying the force of law." *Id.* at 315-16.<sup>8</sup>

EPA has taken analogous actions in approving Roundup's labeling. First, in conducting its statutorily required re-registration in 1993, EPA engaged in formal statutory procedures, *see* 7 U.S.C. §136a-1, and went through the notice-and-comment

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glyphosate is known to cause cancer *would* be misbranded, which is the kind of warning Respondent sought.

<sup>8</sup> As an example of the kind of action satisfying the final category, the Court pointed to a provision requiring the FDA to notify the manufacturer if it "becomes aware of new information ... that [it] determines should be included in the labeling of [a] drug," 21 U.S.C. §355(o)(4)(A). *Merck*, 587 U.S. at 316.

process before reaffirming its conclusion that “glyphosate products, labeled and used as specified [by EPA], will not pose unreasonable risks or adverse effects to humans.” EPA, *Reregistration Eligibility Decision (RED) Glyphosate 57* (Sept. 1993). Second, EPA has notified glyphosate registrants in a letter that it would not approve glyphosate labeling containing a warning that glyphosate causes cancer. App.38-40. And EPA has declined to require a cancer warning through its registration review process or its approval of individual labels—a process that (like the FDA notification requirement discussed in *Merck*) requires EPA to propose “labeling changes” when necessary, 40 C.F.R. §155.58(b)(4), and requires EPA to determine that the label contains all necessary health warnings.

### **III. The Question Presented Is Important, And This Case Is An Ideal Vehicle To Resolve It.**

1. The question presented is critically important, and the stakes are high. The decision below is just one of tens of thousands of pending tort suits in Monsanto’s home state of Missouri. And the litigation is hardly limited to Missouri, as thousands more suits remain pending in state and federal courts across the nation. Simply litigating those suits is financially draining, and losing them in jurisdictions that have erroneously rejected a preemption defense is more costly still. Not only can manufacturers find themselves on the hook for significant sums in compensatory damages stemming from the plaintiffs’ injuries, but in many states, they may also be liable for punitive damages too. *See, e.g., Home Ins. Co. v. Am. Home Prods. Corp.*, 550 N.E.2d 930, 935 (N.Y.

1990); *Fischer v. Johns-Manville Corp.*, 512 A.2d 466, 480 (N.J. 1986). Those jury verdicts can be exorbitant. *See, e.g.*, D. Cameron & P. Thomas, *Bayer Told to Pay \$1.56 Billion After Losing Roundup Case*, Wall Street Journal (Nov. 18, 2023), <https://perma.cc/MZP4-HANE>; H. Smolak, *Bayer Shares Fall After Jury Orders \$2.25 Billion in Damages in Roundup Case*, Wall Street Journal (Jan. 29, 2024), <https://perma.cc/7ZMD-75JH>. The cost of managing this veritable flood of litigation has already forced Monsanto to remove glyphosate from the consumer version of Roundup. It threatens Monsanto's ability to supply the product to farmers who depend on it for their livelihoods. And it undermines the United States' position as a world leader in agriculture. *See supra* at 12-13. The stakes for glyphosate alone are therefore enormous.

But as unusual as it is to have a clear circuit split involving a single product line, the consequences of the question presented are hardly limited to glyphosate and Monsanto and other manufacturers of pesticides that include glyphosate. Instead, the divide among the circuits extends to any pesticide that has been studied by EPA and deemed safe for use with an EPA-approved label. More broadly, the decision below and the Ninth and Eleventh Circuit decisions it follows threaten to undermine Congress's statutory goal of ensuring uniformity in pesticide labeling laws, thus restoring the pre-1972 status quo Congress sought to replace. Congress enacted the "[u]niformity" provision specifically to address the chaos and confusion in the pesticide industry engendered by the dozens of disparate state pesticide-labeling regimes. *Bates*, 544 U.S. at 452 n.26. The "crazy-quilt" of "conflicting state

labeling regulations” produced “significant inefficiencies for manufacturers,” which could not simultaneously comply with the rules established in each of the nation’s many jurisdictions. *Id.* at 448, 452, 453 n.26. Congress sought to impose a uniform regime of pesticide labeling by preempting state efforts to impose labeling requirements that are in addition to or different from what FIFRA requires. 7 U.S.C. §136v(b).

Decisions like the one below disrupt that design. By allowing state failure-to-warn claims to impose labeling rules in addition to those Congress imposed through FIFRA, such decisions permit precisely what *Bates* feared: “50 different labeling regimes prescribing the ... wording of warnings,” creating “significant inefficiencies for manufacturers.” *Bates*, 544 U.S. at 452. Indeed, this new state of affairs is even worse than the patchwork Congress attempted to eliminate. Before Congress enacted the “[u]niformity” provision, state labeling regulations typically took the form of state statutes. *See, e.g.*, Mont. Rev. Codes Ann. §§27-213 *et seq.* (1971); N.C. Gen. Stat. §§143-434–70 (1971); N.H. Rev. Stat. §§149-D:1-11 (1972). As difficult as it was to comply with multiple statutory labeling requirements, attempting to comply with the requirements reflected in disparate jury verdicts across the country is downright impossible. Those unpredictable and varying requirements create headaches for consumers and manufacturers alike. *Cf. Turek v. Gen. Mills, Inc.*, 662 F.3d 423, 426 (7th Cir. 2011) (“Manufacturers might have to print 50 different labels, driving consumers who buy [pesticides] in more than one state crazy.”).



2. Nor are the stakes limited to the FIFRA context. FIFRA’s express preemption language appears in a wide range of other statutes, such that any preemption analysis adopted in the FIFRA context will inevitably carry over to those other schemes.

The text that governs the scope of preemption under FIFRA—including its focus on preempting state “requirements” that are “in addition to or different from” those under federal law, 7 U.S.C. §136v(b)—appears in a variety of statutes, including those regulating medical devices, poultry products, meat, and motor vehicles. *See* 21 U.S.C. §360k(a) (MDA) (preempting certain state “requirement[s]” that are “different from, or in addition to, any requirement applicable under” the statute); *id.* §467e (Poultry Products Inspection Act) (preempting certain state “[r]equirements ... which are in addition to, or different than those made under” the statute); *id.* §678 (Federal Meat Inspection Act (“FMIA”)) (preempting certain state “[r]equirements ... which are in addition to, or different than those made under” the statute); *see also* 49 U.S.C. §30103(b) (National Traffic and Motor Vehicle Safety Act) (generally preempting state motor vehicle safety standards not “identical to the standard[s] prescribed under” the statute).

That similarity magnifies the impact of the FIFRA preemption split because courts are “guided by ... prior decisions interpreting similar language in other ... statutes.” *Gomez-Perez v. Potter*, 553 U.S. 474, 479 (2008); *see also Riegel*, 552 U.S. at 324 (“Congress is entitled to know what meaning this Court will assign to terms regularly used in its

enactments.”). Indeed, courts routinely look to decisions interpreting similar statutory language when determining the scope of express preemption provisions in particular. *See, e.g., Bates*, 544 U.S. at 447-48 (relying on the interpretation of the MDA’s similar preemption provision in *Medtronic, Inc. v. Lohr*, 518 U.S. 470 (1996)); *Thornton v. Tyson Foods, Inc.*, 28 F.4th 1016, 1026 (10th Cir. 2022) (FMIA) (citing *Bates*); *McMullen v. Medtronic, Inc.*, 421 F.3d 482, 488-89 (7th Cir. 2005) (relying on *Bates* in applying the MDA’s preemption provision).

All of this means that the conflicting preemption frameworks that the Third, Ninth, and Eleventh Circuits have adopted in the FIFRA context are likely to confuse the preemption analysis that courts employ in those other statutory schemes.

3. This case is an excellent vehicle to resolve the question presented. While Respondent initially brought numerous claims against Monsanto, the jury ruled for him on only a single claim: failure to warn. The upshot is that the sole claim in front of this Court undeniably concerns labeling and packaging, and there are no other state-law claims that might complicate the Court’s review. Likewise, the sole issue that Monsanto raised on appeal was the preemption question. And there are no obstacles that would prevent the Court from considering that issue.

Finally, now that a clear circuit split has emerged, there is no reason to delay plenary review. To the contrary, the agricultural community needs clarity about glyphosate’s continuing availability and the FIFRA labeling regime more broadly, which governs hundreds of federally regulated registered products.

Moreover, approximately 30 trials are currently scheduled to occur over the course of 2025, and approximately 50 more in 2026. In short, there is no reason for further delay and every reason for this Court to grant review.

### CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

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April 4, 2025