No. 24-1068

IN THE

Supreme Court of the United States

MONSANTO COMPANY,

Petitioner,

v.

JOHN L. DURNELL,

Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of Missouri, Eastern District

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, AMERICAN TORT REFORM ASSOCIATION, PRODUCT LIABILITY ADVISORY COUNCIL, AND WASHINGTON LEGAL FOUNDATION AS *AMICI CURIAE* SUPPORTING PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

The Chamber of Commerce of the United States of America is the world's largest business federation. The Chamber directly represents approximately 300,000 members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the Nation's business community.

The American Tort Reform Association (ATRA) is a broad-based coalition of businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil justice system with the goal of ensuring fairness, balance, and predictability in civil litigation. For more than three decades, ATRA has filed *amicus* briefs in cases involving important liability issues.

The Product Liability Advisory Council, Inc. (PLAC) is a nonprofit professional association of corporate members representing a broad cross-section of product manufacturers. PLAC contributes to the improvement and reform of the law, with emphasis on the law governing the liability of manufacturers of products and

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[1] No counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief. All parties received timely notice of *amici*'s intent to file this brief.

those in the supply chain. PLAC's perspective is derived from the experiences of a corporate membership that spans a diverse group of industries in various facets of the manufacturing sector. In addition, several hundred leading product litigation defense attorneys are sustaining (non-voting) members of PLAC. Since 1983, PLAC has filed over 1,100 *amicus curiae* briefs on behalf of its members, presenting the broad perspective of product manufacturers seeking fairness and balance in the application and development of the law as it affects product risk management.

The Washington Legal Foundation (WLF) is a nonprofit, public-interest law firm and policy center with supporters nationwide. WLF promotes free enterprise, individual rights, limited government, and the rule of law. It often appears as *amicus curiae* in important federal preemption cases, urging courts to ensure that federal law operates efficiently and uniformly—as Congress intended. WLF believes that conflicting federal and state-law duties are not merely inefficient; they make it impossible for regulated parties to comply with both state and federal law without incurring enormous liability.

Amici have a strong interest in ensuring that the preemptive force of federal laws is fully implemented—thus alleviating the need for businesses to navigate a patchwork of inconsistent state regulations.

INTRODUCTION AND SUMMARY OF ARGUMENT

The decision below adopts a theory of preemption that subordinates a federal law, and the nationwide judgments made under it, to the judgments of state juries. That is no exaggeration. This case deals with one

of the many domains in which Congress has expressly rejected the notion that federal law is just a floor upon which the states may build more demanding regulatory structures. Regulated businesses must follow the federal labeling law; state labeling requirements must yield. Yet the court below concluded that it could reject preemption upon concluding that the state and federal laws had the same general purpose—to ensure adequate warnings. That is not enough in a field like this one. When a state, or a jury, wants to require a warning that federal law has ruled out, the federal judgment must prevail.

Unless this Court intervenes, a "crazy-quilt" of state labeling requirements, *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 448 (2005), will impose massive liability on businesses *for adhering to federal law*. And the problems with the preemption approach of the decision below, and the other decisions on that side of the split, are by no means limited to the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"). The reasoning of those decisions threatens to undermine basic principles of both express and implied preemption in a variety of areas. This Court should review the split and eliminate this profoundly unfair regime.

I. The lower court's decision flies in the face of FIFRA's preemption provision. A state may not adopt labeling requirements that are "in addition to or different from" those required under FIFRA's regulatory framework. 7 U.S.C. § 136v(b). That language "sweeps widely," *Nat'l Meat Ass'n v. Harris*, 565 U.S. 452, 459 (2012) (considering materially identical preemption language in the Federal Meat Inspection Act), and gives preemptive force, not only to the text of FIFRA itself, but also to the contents of a label that the

Environmental Protection Agency ("EPA") approves for a pesticide as part of FIFRA's mandatory registration process. As the EPA has made clear, "[t]he label is the law," EPA, *Pesticide Registration Manual* 3 (last updated Dec. 26, 2024),[2] and a pesticide manufacturer may not unilaterally depart from it by adding warnings the EPA has not endorsed—including the carcinogen warning for glyphosate that respondent seeks to force upon petitioner's Roundup label.

The Missouri Court of Appeals circumvented the clear language of FIFRA's express preemption provision by defining the federal labeling "requirements" at an absurdly high level of generality. It concluded that state-law requirements are permitted as long as they are generally directed to adequately warning a product's users. That reasoning zooms out so far that the federal preemption provision disappears. Allowing it to stand will strip FIFRA's preemption provision, and this Court's preemption precedent, of any force in a substantial number of cases.

II. Respondent's state failure-to-warn claim is preempted for the independent reason that it requires what federal law prohibits—a clear case in which compliance with both regimes is an impossibility. This Court has made clear that a state labeling requirement is impliedly preempted if federal law prohibits the regulated entity from unilaterally altering its label to conform to a state requirement. *See PLIVA, Inc. v. Mensing*, 564 U.S. 604, 616-18 (2011). That is exactly the case here, as the EPA's regulations make abundantly clear. *See* p. 8, *infra*. And not just its regulations. The

[2] https://www.epa.gov/pesticide-registration/pesticide-registration-manual-introduction.

EPA has explicitly told manufacturers of products containing glyphosate that it would deny any request to alter those products' labels to include a warning that glyphosate is a carcinogen. It is simply impossible for manufacturers to adhere to the EPA-approved label, as required, *and* comply with state law. And in that scenario, federal law prevails.

III. The stakes of this case, and others like it, are enormous. The rationale of the Missouri court, and the state and federal courts that it followed, would fatally undermine Congress's repeated decisions designed to require nationwide uniformity in major areas of economic regulation. Many federal statutes that create labeling standards for varied industries—from medical devices and cosmetics to pork and dairy—employ the exact (or nearly exact) express preemption language used in FIFRA. Unless corrected now, the lower court's gutting of FIFRA preemption is ripe for replication across several federal regulatory regimes. The harmful effects will not be limited to higher compliance costs: if federal preemption is discarded in cases like this one, manufacturers will routinely face potentially crushing liability under *state* law for failing to give warnings that *federal* law forbids.

This Court should intervene now to resolve the deepening split exacerbated by the lower court's decision and to restore the efficacy of federal preemption in this and other contexts.

ARGUMENT

I. The Missouri Court of Appeals and other appellate courts have gutted FIFRA's express preemption provision, allowing liability under a patchwork of state labeling requirements that differ from federal law.

Under FIFRA, states are prohibited from imposing labeling requirements "in addition to or different from" those imposed under FIFRA's regulatory framework, 7 U.S.C. § 136v(b), and that framework mandates that a pesticide manufacturer adhere to the label that the EPA approves for a given pesticide. "[T]he label," in other words, "is the law." *Pesticide Registration Manual*, *supra*, at 3. A state failure-to-warn cause of action requiring petitioner to add a warning to the Roundup label that the EPA has declined to require is the paradigmatic example of a state labeling requirement that is "in addition to or different from" the federal requirement. The decision of the Missouri Court of Appeals *approving* such a conflicting state labeling requirement effectively guts FIFRA's express preemption provision and disregards this Court's case law in the process.

A. An EPA-approved pesticide label imposes "requirements" for labeling for purposes of FIFRA's preemption provision.

1. As amended in 1972, FIFRA created a "comprehensive regulatory statute" to govern the "labeling" of pesticides as well as their "use" and "sale." *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 991-92 (1984). With this new regulatory regime came a recalibration of the division of responsibility between states and the

federal government. On one hand, FIFRA allowed states to continue to "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." 7 U.S.C. § 136v(a) (emphasis added). But labeling is different. To prevent a confusing and unworkable patchwork of 50 different labeling requirements, the statute "sweeps widely," *Nat'l Meat Ass'n*, 565 U.S. at 459, to preempt state-law labeling requirements:

> 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.

Id. § 136v(b).

This language means exactly what it says: a state's "requirement[] for labeling" that is "in addition to or different from" a "requirement for labeling[]" under FIFRA is preempted—period. So, for example, a state "failure-to-warn claim alleging that a given pesticide's label should have stated 'DANGER' instead of the more subdued 'CAUTION' would be pre-empted" if the EPA regulations mandated the more subdued label, some other warning(s), or even no warning at all. *Bates*, 544 U.S. at 453. It is not necessary that "the federal Act requires what the state law forbids (or forbids what the state law requires)," *Nat'l Meat Ass'n*, 565 U.S. at 460-61; mere disagreement is sufficient.

2. If the contents of the EPA's currently approved label for Roundup had been written word-for-word into FIFRA, this lawsuit surely would never have been filed. A Missouri-law duty to add a carcinogen warning to the Roundup label would be preempted in that hypo-

thetical case, because the warning indisputably would be "in addition to or different from" a labeling "requirement[]" under FIFRA.

But statutory text is not the only source of federal "requirements" that have preemptive effect under § 136v(b)—"[a] requirement" encompasses any "rule of law that must be obeyed." *Bates*, 544 U.S. at 445. A pesticide label that was approved by the EPA as part of the registration process required for every pesticide easily satisfies this definition. *See* Pet. 4-6 (explaining registration process); 7 U.S.C. § 136a(a). Although the statute allows the pesticide manufacturer to propose a label as part of that registration process, the EPA may approve the proposed label (and grant registration) only if the label "compl[ies] with the requirements" of FIFRA, 7 U.S.C. § 136a(c)(5), (c)(9)—including the requirement that the proposed label not be "false or misleading" and not omit "warning or caution statement[s] which may be necessary … to protect health and the environment, *id*. § 136(q)(1)(A), (G); *id*. § 136j(a)(1)(B), (E); *accord* 40 C.F.R. § 152.112(f). And once the EPA has approved a proposed label, the manufacturer cannot unilaterally depart from it. 7 U.S.C. § 136j(a)(1)(B); 40 C.F.R. §§ 152.44, 152.46, 156.70(c); *accord id*. § 152.130(a). At that point, "[t]he label is the law," *Pesticide Registration Manual*, *supra*, at 3—it sets the "rule of law that must be obeyed," *Bates*, 544 U.S. at 445.

This Court's decision in *Riegel v. Medtronic, Inc.*, 552 U.S. 312 (2008), all but decides this case. There, the Court considered whether the preemption provision in the Medical Device Amendments of 1976 to the Federal Food, Drug, and Cosmetic Act ("FDCA") barred state-law strict-liability and negligence claims based on,

among other things, a medical device's labeling. *Id*. at 315, 316, 320-21. The preemption provision in that statute closely resembles the FIFRA provision at issue in this case; it prohibits states from imposing "any requirement—'which is different from, or in addition to, any requirement applicable under this chapter to the device.…'" *Id*. at 316 (quoting 21 U.S.C. § 360k(a)(1)). The Court concluded that the FDCA's extensive preapproval process, which included review of a device's proposed labeling, "impose[d] … 'requirements'" for purposes of the preemption provision. *Id*. at 318, 322. In particular, the Court explained that "[o]nce a device has received premarket approval, the [statute] forbids the manufacturer to make, without FDA permission, changes in design specifications, manufacturing processes, labeling, or any other attribute." *Id*. at 319; *see id*. at 323 ("[T]he FDA requires a device that has received premarket approval to be made with almost no deviations from the specifications in its approval application"); *accord Altria Grp., Inc. v. Good*, 555 U.S. 70, 86 (2008) ("The plaintiffs' products [in *Riegel*] fell within the core of the [statute's] pre-emption provision because they sought to impose different requirements on precisely those aspects of the device that the FDA had approved.").

The same goes here. A company may market a pesticide only upon completing a thorough registration process and obtaining the EPA's approval of, among other things, the pesticide's label. *See* p. 8, *supra* (describing same). And the company is forbidden by law from altering that label without EPA approval, except in narrow circumstances not present here. *Schaffner v. Monsanto Corp.*, 113 F.4th 364, 382-85 (3d Cir. 2024). The fact that *the EPA* has authority to approve changes to a pesticide's label does not make the existing label

any less a "requirement" for purposes of FIFRA. After all, the statute in *Riegel* allowed for post-approval labeling changes to be made with FDA approval, but the Court still held that "[p]remarket approval … impose[d] 'requirements'" for purposes of preemption. 552 U.S. at 322-23.

B. The lower court's ruling disregards this Court's precedent and the EPA-approved labels manufacturers are compelled by law to follow.

The Missouri Court of Appeals held that respondent's state-law failure-to-warn claim is not preempted by § 136v(b), but only by ignoring this Court's precedent and the compulsory nature of the EPA-approved label. The court compared the state failure-to-warn cause of action only with FIFRA's broad prohibition on marketing misbranded pesticides, and blithely concluded that the two are identical because "both require a pesticide manufacturer to adequately warn users of the potential dangers of using its product." Pet. App. 7.

That approach defies *Bates*'s mandate and nullifies Congress's decision to bar state-law labeling requirements that are either additional or different. "[A] state-law labeling requirement must *in fact* be equivalent to a requirement under FIFRA in order to survive pre-emption." *Bates*, 544 U.S. at 453-54 (emphasis added). It is not enough that federal and state requirements look the same from 50,000 feet or share the same general purpose. What matters is that the two be "*genuinely* equivalent," *id.*—a standard that must factor in *all* the "requirements for labeling or packaging" that are imposed "under" FIFRA, including its regulatory regime. Indeed, *Bates* made clear that the preemption analysis must consider "the relevant

FIFRA misbranding standards, *as well as any regulations that add content to those standards*." *Id.* at 454 (emphasis added). A state law that imposes labeling requirements on a pesticide manufacturer that differ from those imposed by the EPA-approved label cannot plausibly be said to be "genuinely" equivalent to labeling "requirements" under FIFRA.

The lower court's failure to adhere to this Court's decision in *Bates* renders FIFRA's preemption provision a dead letter. Taken to its logical end, the court's approach would uphold a state failure-to-warn claim even if the labeling requirements for glyphosate were written into an EPA regulation or FIFRA itself. In those circumstances, "FIFRA's prohibition on misbranding under section 136(q)(1)(G) and a strict liability failure to warn claim in Missouri" would still be "the same" in the only sense that mattered to the state court of appeals—they would "both require a pesticide manufacturer to adequately warn users of the potential dangers of using its product." Pet. App. 7. That cannot be correct. As the Tenth Circuit explained in finding preemption under a similarly worded statute, framing the preemption analysis at such a high level of generality misses the "critical feature"—how both requirements apply in a particular case. *Thornton v. Tyson Foods, Inc.*, 28 F.4th 1016, 1025 (10th Cir. 2022) (construing the Federal Meat Inspection Act). If a label is permitted under a federal law prohibiting deceptive labeling but not state law, the assertion that the two laws "require[] exactly the same thing … plainly fails." *Id.*

The Missouri Court of Appeals "ch[o]se" to follow one side of the current split, Pet. App. 10-11; *see* Pet. 17-19 (discussing same), though without discussing the other

cases' reasoning in any detail. Two of those decisions (from the Ninth and Eleventh Circuits) relied in part on a "Miscellaneous" provision in FIFRA to justify their refusal to regard EPA-approved labels as "requirements" under § 136v(b):

> In no event shall registration of an article be construed as a defense for the commission of any offense under [FIFRA]. As long as no cancellation proceedings are in effect registration of a pesticide shall be prima facie evidence that the pesticide, its labeling and packaging comply with the registration provisions of [FIFRA].

7 U.S.C. § 136a(f)(2). But this provision has nothing to do with the preemption analysis. Neither respondent nor the Missouri court has suggested that petitioner committed an "offense" *under FIFRA* or otherwise failed to "comply" with "the registration provisions of" that *federal* statute. Rather, the sole question in this case is whether petitioner may be held liable under *state law* because it did not add a warning to its EPA-approved label. As the Third Circuit correctly recognized, the fact that "section 136a(f)(2) indicates that registration cannot itself be a defense to a charge of misbranding" does not mean "that the registration process cannot play any role in determining the content of a requirement imposed under FIFRA." *Schaffner*, 113 F.4th at 397.

The Missouri court's decision is egregiously wrong. It conflicts with the text of FIFRA's preemption provision and this Court's precedent. The Court's review is urgently needed to protect the integrity of FIFRA's preemption provision and prevent it from being rendered inoperative.

II. The Missouri Court of Appeals and other appellate courts have flouted this Court's precedent holding that a state-law claim is impliedly preempted if the regulated party cannot simultaneously comply with both federal and state law.

Respondent's failure-to-warn claim is preempted twice over. Even absent express preemption, a state-law claim is impliedly preempted if, as here, "it is impossible for a private party to comply with both state and federal requirements." *Mut. Pharm. Co. v. Bartlett*, 570 U.S. 472, 480 (2013) (citation and internal quotation marks omitted); *see Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 869 (2000) (holding that neither an express preemption provision nor a savings clause limiting express preemption "bar[s] the ordinary working of conflict pre-emption principles").

A. This Court's decision in *Mensing*, 564 U.S. 604, resolves the implied preemption question against respondent. In *Mensing*, this Court held that a state-law failure-to-warn claim against a generic drug manufacturer was impliedly preempted by the FDCA. *Id.* at 610-11. The Court explained that generic manufacturers cannot simply change their labels at will: the FDCA requires generic labels to be "the same as" those of the FDA-approved label for the brand-name drug. *Id.* at 612-13 (citing 21 U.S.C. § 355(j)(2)(A)). Although the Court assumed that federal law requires generic manufacturers "that become aware of safety problems [to] ask the agency to work toward strengthening the label that applies to both generic and brand-name equivalent drug[s]," the FDCA still "prevented [generic] Manufacturers from *independently* changing their generic drugs' safety labels." *Id.* at 616, 617 (emphasis

added). This, the Court held, was sufficient for implied preemption:

> [S]tate law imposed on the [generic] Manufacturers a duty to attach a safer label to their generic [drug]. Federal law, however, demanded their generic drug labels be the same at all times as the corresponding brand-name drug labels. Thus, it was impossible for the Manufacturers to comply with both their state-law duty to change the label and their federal-law duty to keep the label the same.

Id. at 618 (citation omitted).

That reasoning applies with full force here. As the petition explains, FIFRA and its implementing regulations forbid pesticide manufacturers like petitioner from "independently changing" the content of the EPA-approved label for a registered pesticide. Pet. 29-30; *see also* p. 8, *supra*. Instead, "any modification in the … labeling … of a registered product must be submitted with an application for amended registration" to the EPA, and "the application must be approved by the Agency before the product, as modified, may legally be distributed or sold." 40 C.F.R. § 152.44(a); *see also id.* § 156.70(c) ("Specific statements pertaining to the hazards of the product and its uses must be approved by the Agency."); *Schaffner*, 113 F.4th at 382-85.

The Missouri court gave *Mensing* short shrift, deeming it "distinguishable" because it "involve[d] pharmaceutical products regulated under the [FDCA]." Pet. App. 11. That is no answer, however, to the key similarity between the FIFRA regulatory regime and that in *Mensing*: under both regimes, manufacturers cannot "independently chang[e]" their labels. *Mensing*,

564 U.S. at 617. They cannot sell their products with any label other than the federally approved one. State law, therefore, may not require manufacturers to stop selling the product with the federally approved label. *Mut. Pharm. Co.*, 570 U.S. at 488 ("[A]n actor seeking to satisfy both his federal- and state-law obligations is not required to cease acting altogether in order to avoid liability. Indeed, if the option of ceasing to act defeated a claim of impossibility, impossibility pre-emption would be 'all but meaningless.'") (quoting *Mensing*, 564 U.S. at 621).

It makes no difference to this conclusion that pesticide manufacturers can *ask* the EPA to approve a new label. That exact argument was made in *Mensing* and this Court "reject[ed] it," because it would "make most conflicts between state and federal law illusory"—it is *possible* that a manufacturer could convince the EPA "to rewrite" its regulations to allow unilateral label changes, or "talk[] Congress into amending" FIFRA to allow the same. 564 U.S. at 620-21. Those far-flung possibilities do not preclude implied preemption, because the relevant inquiry is whether the regulated party *can now* "independently do under federal law what state law requires of it." *Id.* at 620.

B. Even if FIFRA and its regulations allowed pesticide manufacturers to unilaterally alter the content of an EPA-approved label, that still would not defeat implied preemption, because the EPA has been "fully informed" of the claimed reasons for adding a carcinogen warning to the Roundup label, and "there is 'clear evidence'" that the agency would ultimately reject such a warning. *See Merck Sharp & Dohme Corp. v. Albrecht*, 587 U.S. 299, 310, 313-14 (2019) (citation omitted). Indeed, it has done so explicitly.

Since the EPA originally registered glyphosate under FIFRA in 1974, the agency has gathered, assessed, and reassessed copious scientific evidence and studies as to whether the compound causes cancer in humans and has consistently concluded that it likely does not. *See* Pet. 7-12. For example, in its 1993 FIFRA reregistration for glyphosate, the EPA designated glyphosate a Group E carcinogen, denoting "evidence of non-carcinogenicity in humans." EPA, *Reregistration Eligibility Decision (RED) – Glyphosate*, at viii (Sept. 1993).[3] More than two decades later—after the International Agency for Research on Cancer ("IARC") released its 2015 report asserting that glyphosate may cause cancer in humans—the EPA completed another exhaustive reexamination of all then-current data, research, and literature as part of its FIFRA registration review of the compound. Again, the EPA concluded that glyphosate was likely not a human carcinogen, noting that its study was "more robust" and "more transparent" than IARC's, and that its conclusion was "consistent with other regulatory authorities and international organizations." EPA, *Glyphosate: Proposed Interim Registration Review Decision Case Number 0178*, at 7-8 (Apr. 2019).[4]

Consistent with these conclusions, the EPA has stated that it would not approve a label for glyphosate warning that it is a carcinogen. In August 2019, the EPA sent a letter to glyphosate registrants in response to a March 2017 California ordinance mandating a cancer warning on labels of Roundup and other glypho-

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[3] https://www3.epa.gov/pesticides/chem_search/reg_actions/registration/red_PC-417300_1-Sep-93.pdf.

[4] https://www.regulations.gov/document/EPA-HQ-OPP-2009-0361-2344.

sate products in the wake of IARC's 2015 report asserting that glyphosate may cause cancer in humans. *See* Letter from Michael L. Goodis, EPA, Office of Pesticide Programs, to Registrant, at 1-2 (Aug. 7, 2019).[5] In that letter, the EPA explained that it "disagrees with IARC's assessment," because "EPA scientists have performed an independent evaluation of available data since the IARC classification" and determined that glyphosate is "not likely to be carcinogenic to humans." *Id.* The EPA explicitly cautioned that a warning on glyphosate-based herbicides suggesting that glyphosate may cause cancer would be "false and misleading," and would render any product so labeled "misbranded pursuant to section 2(q)(1)(A) of FIFRA." *Id.* (citing 7 U.S.C. §136(q)(1)(A)). To be sure, the EPA has since suggested that it might approve a label that includes a statement that IARC "classified glyphosate as probably carcinogenic to humans." Letter from Michal Freedhoff, EPA, Office of Chemical Safety and Pesticide Programs, to Dr. Lauren Zeise, California EPA, at 1 (Apr. 8, 2022).[6] But the EPA did not retract its established position that glyphosate is not a carcinogen; rather, it said that the warning might be approved because it does not actually represent that glyphosate *is* a carcinogen, and also includes the statement that the "US EPA has determined that glyphosate is not likely to be carcinogenic to humans." *Id.*

The EPA's message is unmistakably clear: it will not approve a change to labels for FIFRA-covered

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[5] https://www.epa.gov/sites/default/files/2019-08/documents/glyphosate_registrant_letter_-_8-7-19_-_signed.pdf.

[6] https://www.epa.gov/system/files/documents/2022-04/letr-to-ca-oehha-on-ca-prop-65.pdf.

glyphosate herbicides to warn that they are carcinogenic to humans. This is far more than the mere "possibility of impossibility" that does not suffice for implied preemption. *Mensing*, 564 U.S. at 624 n.8 (emphasis omitted).

III. Allowing the lower-court split on preemption to persist will undermine uniformity under several important federal statutes, impede nationwide marketing, and open the floodgates to crushing liability against businesses that comply with federal law.

Not only is the rationale of the Missouri court patently incorrect, the split that the court has joined presents a genuine threat to a nationwide market—not just for pesticide manufacturers but for businesses in many industries. In zones of regulation like this one—for which Congress has specified that states cannot impose different or additional labeling requirements—federal law is not just a floor. Federal law is also a ceiling: the authoritative measure of a regulated business's labeling obligations. The rationale of courts on respondent's side of the split, by contrast, threatens to leave federal requirements as just the first hurdle that a regulated business must clear. And failing to follow the requirements of just one state could result in crippling liability. This Court should grant certiorari now.

Businesses are already subject to comprehensive regulatory schemes under both federal and state law, which impose significant costs on their operations to the tune of hundreds of billions of dollars annually. *See, e.g.*, U.S. Chamber of Commerce Found., *The Regulatory Impact on Small Business: Complex. Cumber-*

some. Costly., at 4 (2017)[7]; Nicole V. Crain & W. Mark Crain, *The Cost of Federal Regulation to the U.S. Economy, Manufacturing & Business*, The National Association of Manufacturers, at 4-5 (Oct. 2023).[8] Allowing each of the 50 states to adopt its own unique rulebook for pesticide labeling promises to compound those existing burdens by subjecting businesses to a "crazy-quilt of anti-misbranding requirements." *Bates*, 544 U.S. at 448. As this Court recognized, allowing "50 different labeling regimes prescribing the color, font size, and wording of warnings … would create significant inefficiencies for manufacturers" and deprive them of the "uniformity" they "need" to operate. *Id*. at 452 & n.26 (citation omitted). The inevitable consequence of that regulatory morass will be to drive up the cost of operations, stifle competition, and constrain employment opportunities—with severe impacts on ordinary consumers, who will face higher prices and have access to fewer valuable goods and services.

The harmful effects of the lower court's decision, and decisions like it, are not confined to FIFRA. Many federal statutes employ express preemption language that is identical (or virtually identical) to the operative language in FIFRA, preempting state-law labeling requirements in a host of industries. For example, the Medical Device Amendments bar states from "establish[ing] or continu[ing] in effect … any requirement … which *is different from, or in addition to*, any" requirement under that law. 21 U.S.C. § 360k(a) (emphasis added). Once the FDA "approves a device's label," "the

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[7] https://ndpanalytics.com/wp-content/uploads/Report-25.pdf.

[8] https://nam.org/wp-content/uploads/2023/11/NAM-3731-Crains-Study-R3-V2-FIN.pdf.

manufacturer usually may not alter the label's warnings without prior agency approval." *Caplinger v. Medtronic, Inc.*, 784 F.3d 1335, 1341 (10th Cir. 2015) (citing 21 U.S.C. § 360e(d)). Similarly, the Federal Meat Inspection Act prohibits states from imposing any "[m]arking, *labeling*, packaging, or ingredient requirements *in addition to, or different than*, those made under this chapter…." 21 U.S.C. § 678 (emphasis added). Other examples abound. *See, e.g.*, *id.* § 1052(b) (for egg products, prohibiting "[l]abeling … requirements, in addition to or different than those made under this chapter, the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act"); *id.* § 467e (same for labeling of poultry and poultry products); *id.* § 379s(a) (prohibiting states from "establish[ing] or continu[ing] in effect any requirement for labeling or packaging of a cosmetic that is different from or in addition to, or that is otherwise not identical with" federal labeling standards); *id.* § 379r(a)(2) (similar for non-prescription drug labeling); *id.* § 387p(a)(2)(A) (same for tobacco products).[9] If the lower court's ruling is allowed to stand, other courts may transplant its misguided reasoning into similarly worded preemption provisions—neutering their preemptive force.

This court should intervene now to prevent the contagion. And time is of the essence. Under the lower court's holding, businesses like petitioner are stuck in a vise: they must adhere to the EPA-approved label,

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[9] Moreover, other federal statutes use the same preemption language for non-labeling requirements. 21 U.S.C. § 379aa(h) (serious adverse event reports for non-prescription drugs); *id.* § 379aa-1(h) (serious adverse event reports for dietary supplements); 7 U.S.C. § 4817(b) (promotion and consumer education regarding pork); 15 U.S.C. § 78o(i) (regulation of brokers and dealers).

but by doing so they face crippling liability from state failure-to-warn claims ordering them to depart from it. That is already the reality for petitioner. *See* Pet. 32-33. More than 177,000 claims have been filed in state and federal court against petitioner based on its Roundup product's label. *See* CNN US, *Georgia jury orders Monsanto parent to pay nearly $2.1 billion in Roundup weedkiller lawsuit* (Mar. 27, 2025)[10]; *see also* Pet. 12. This torrent of litigation has resulted in enormous payouts. Petitioner has paid *$11 billion* to settle nearly 100,000 claims, and has been ordered to pay billions more as a result of jury verdicts or court orders. *See* Michelle Llamas, *Roundup Lawsuits*, ConsumerNotice.org (May 1, 2025).[11] And there is no end in sight absent this Court's intervention; tens of thousands of cases remain pending against petitioner in federal and state court. *Id.*

Businesses across the country—whether pesticide manufacturers or those operating in any of the other industries governed by federal labeling standards—could face similarly crushing liability simply for adhering to the federally prescribed label for their products. This Court should not allow state law to be weaponized to extract huge sums from the Nation's businesses in defiance of Congress's clear directive to preempt those state laws.

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[10] https://www.cnn.com/2025/03/24/us/bayer-monsanto-to-pay-2-billion-roundup/index.html.

[11] https://www.consumernotice.org/legal/roundup-lawsuits/.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted.

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