No. 24-1068

In the

Supreme Court of the United States

MONSANTO COMPANY,
Petitioner,

v.

JOHN L. DURNELL,
Respondent.

On Writ of Certiorari to the Missouri Court of Appeals

BRIEF OF AMERICAN FREE ENTERPRISE CHAMBER OF COMMERCE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

Michael Buschbacher
James R. Conde
Counsel of Record
Walker Fortenberry
BOYDEN GRAY PLLC
800 Connecticut Ave. NW
Suite 900
Washington, DC 20006
(202) 955-0620
jconde@boydengray.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutional Provisions

Statutes

Other Authorities

INTEREST OF *AMICUS CURIAE*[1]

Formed in 2022, the American Free Enterprise Chamber of Commerce ("AmFree") is an entity organized consistent with section 501(c)(6) of the Internal Revenue Code that represents hard-working entrepreneurs and businesses across all sectors of the U.S. economy. AmFree's members are vitally interested in protecting the continued viability of our commercial republic, including by protecting its members from patchwork legal regimes. AmFree launched the Center for Legal Action to represent these interests in court.

[1] No counsel for any party has authored this brief in whole or in part, and no entity or person, aside from *Amicus*'s counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

"Modern preemption jurisprudence is a muddle." *See* Caleb Nelson, *Preemption*, 86 Va. L. Rev. 225, 232 (2000). Although written more than 25 years ago, Professor Caleb Nelson's words still ring true.

1. Much of that confusion can be traced to the presumption against preemption, which instructs courts "[i]n all pre-emption cases" to "start with the assumption that the historic police powers of the State [are] not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) (cleaned up).

As five Justices have explained, the presumption against preemption conflicts with the Supremacy Clause. The Clause includes a *non obstante* provision instructing "that courts should not strain to find ways to reconcile federal law with seemingly conflicting state law." *PLIVA, Inc. v. Mensing*, 564 U.S. 604, 622 (2011) (plurality op.) (Thomas, J., joined by Roberts, C.J., Scalia & Alito, JJ.); *Kansas v. Garcia*, 589 U.S. 191, 213–14 (2020) (Thomas, J., concurring, joined by Gorsuch, J.). This judge-made normative canon also has no footing in early methods of interpreting the Supremacy Clause. *See* Amy Coney Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. Rev. 109, 153 n.211 (2010) ("Early cases confronting preemption analyzed the issue without discussing any special interpretive rule."). Importantly, the modern version of the canon protecting state regulatory fiefdoms originated

during the New Deal and rests upon policy concerns with preempting too much state regulation as federal law expanded at the same time. *See* Stephen Gardbaum, *New Deal Constitutionalism and the Unshackling of the States*, 64 U. Chi. L. Rev. 483, 536–40 (1997). These policy concerns may not override the Constitution. When there is a conflict between federal and state law, judges have no authority to narrowly construe federal law to avoid the conflict. Doing so is not "faithful agency." Barrett, *supra*, at 181.

But despite its inconsistency with constitutional text and textualism, the presumption against preemption lives on in federal and state courts, and, as here, sometimes rears its head even when Congress has spoken by expressly preempting state law. Pet. App. 4. The result is "a deeply troubled area of law" and "conflicting lines of cases." *Cal. Rest. Ass'n v. City of Berkeley*, 89 F.4th 1094, 1107 (9th Cir. 2024) (O'Scannlain, J., concurring).

"In deciding cases involving the American economy, courts should strive, where possible, for clarity and predictability." *Seven County Infrastructure Coal. v. Eagle County*, 605 U.S. 168, 192 (2025). The Court should clarify this "vitally important" area, Nelson, *supra*, at 225–26, by holding that the Supremacy Clause does not countenance a judge-made presumption against preemption.

2. Rejecting a judicial thumb on the scale does not resolve this case; it merely sets the stage. The Court must still decide whether the Federal Insecticide,

Fungicide, and Rodenticide Act ("FIFRA") conflicts with Missouri's rule of decision here.

Most would agree that federal law conflicts with state law at least when "the two are in logical contradiction." *Merck Sharp & Dohme Corp. v. Albrecht*, 587 U.S. 299, 319 (2019) (Thomas, J., concurring). "It is not easy to say, however, what constitutes a contradiction or conflict between federal and state law." Michael S. Greve, *The Upside-Down Constitution* 108 (2012). "If federal law tells a private citizen to do *A* and state law tells him to do *B* instead, the conflict is manifest. What though, if a state law says 'more than *A*'"? *Id.*

Sometimes, "more than A" will contradict federal law, if not expressly, then impliedly. When Congress entrusts a federal agency with a "golden mean"—balancing risks against benefits to get regulation "just right"—the best reading is that Congress entrusted the agency with authority to set a national *ceiling*, not just a floor that states can trample upon. State laws that go beyond federal law setting a more stringent ceiling are logically repugnant to such a Goldilocks scheme, except where the statute expressly provides otherwise.

FIFRA creates such a Goldilocks health and safety scheme for labeling pesticides. FIFRA requires the U.S. Environmental Protection Agency ("EPA") to strike a reasonable balance between the health, safety, and environmental risks of a pesticide label and its societal benefits and the countervailing risk of excessive warnings. FIFRA's Uniformity Clause con-

firms that reading, prohibiting additional or even different state labeling requirements. *See* 7 U.S.C. § 136v(b). When Congress orders that pesticide labels be "just right," states cannot unilaterally say they are wrong.

3. That's what happened here. The state-law rule of decision that the jury applied contradicts FIFRA by going beyond EPA's approved label for glyphosate products and requiring Monsanto to add an unwarranted cancer warning. The Missouri Court of Appeals purported to avoid the conflict by applying the presumption against preemption and then framing federal law at a high level of generality. Accepting that framing tactic would enable the easy evasion of federal supremacy. Neither EPA when registering products nor state juries deal in vague generalities, and neither should this Court's vertical conflicts jurisprudence.

The Court should reverse, unequivocally abandon the presumption against preemption, and enforce Congress's stated goal of national uniformity in labeling.

BACKGROUND

I. THE STATUTE

FIFRA is a "comprehensive regulatory statute" that governs the "use, as well as the sale and labeling, of pesticides." *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 437 (2005) (cleaned up). Under FIFRA, no person may distribute or sell a pesticide unless it has been registered by EPA. 7 U.S.C. § 136a(a). Registering a product requires complying with several procedural hurdles and submitting a wealth of health and safety information to EPA. *Id.* § 136a(c).

EPA must register a pesticide if the label complies with FIFRA and the pesticide "will not generally cause unreasonable adverse effects on the environment." *Id.* § 136a(c)(5)(B), (C), (D). FIFRA defines that phrase to include "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide." *Id.* § 136(bb). EPA must review the label to ensure it is "adequate to protect health and the environment," *see id.* § 136(q)(1)(G), which includes protecting the public against "unreasonable" risks to public health. *Id.* § 136(x). In short, EPA decides whether the pesticide and its label are the right amount of "safe."

Once EPA registers a pesticide, the pesticide's labeling cannot contain "claims" that substantially differ from claims made to secure registration. *Id.* § 136j(a)(1)(B). By regulation, EPA requires registrants to seek approval of amendments to the label.

See 40 C.F.R. § 152.44(a); *see also* 7 U.S.C. § 136w(a)(1), (2) ("The Administrator is authorized … to prescribe regulations to carry out the provisions of this subchapter.").

FIFRA expressly permits States to "regulate the sale or use of any federally registered pesticide or device in the State." 7 U.S.C. § 136v(a). But the statute mandates nationwide uniformity in labeling:

> (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.

Id. § 136v(b).

II. THE DECISION BELOW

Petitioner Monsanto Company sells registered glyphosate-based pesticides under the brand name "Roundup." *See Schaffner v. Monsanto Corp.*, 113 F.4th 364, 373 (3d Cir. 2024). As Monsanto explains, EPA has repeatedly concluded that glyphosate-based pesticides do not cause cancer and has refused to include a cancer warning in Roundup labeling requirements, deeming it unnecessary to protect public health. Pet. Br. 10–18.

This makes sense. "More information is not better if it is wrong, or misleadingly incomplete, or irrelevant, or likely lead people to over- or under-emphasize elements of a decision." Omri Ben-Shahar & Carl E. Schneider, *More Than You Wanted to Know: The Failure of Mandated Disclosure* 175 (2014).

Monsanto has nevertheless faced "over one hundred thousand lawsuits" alleging that Roundup causes cancer. Pet. Br. 51–52. Some of these lawsuits allege that Monsanto's EPA-approved Roundup label failed to warn the plaintiff of the risk of cancer.

This is such a case. In this case, a Missouri jury awarded plaintiff John Durnell $1.25 million based upon Monsanto's failure to warn him about the alleged risk of cancer associated with using Roundup, and the Missouri Court of Appeals affirmed the verdict. Pet. App. 2–12.

In rejecting Monsanto's federal preemption argument, the Missouri Court of Appeals started by applying the presumption against preemption. *Id.* at 4. Stating the purpose of FIFRA and Missouri law at a high level of generality, the court then concluded that Missouri's rule didn't impose any different or additional requirements because the general objectives of FIFRA and Missouri law "are the same: both require a pesticide manufacturer to adequately warn users of the potential dangers of using its product." *Id.* at 7. The Missouri Court of Appeals also rejected Monsanto's argument for implied preemption because the precedents cited by Monsanto "all involve pharmaceutical products" and the court "decline[d] to extend their holdings to pesticide products regulated under FIFRA." *Id.* at 11.

ARGUMENT

I. COURTS ARE CONFUSED ABOUT THE PRESUMPTION AGAINST PREEMPTION

This Court has been less than clear about when to invoke the presumption against preemption in both express and implied preemption cases, spawning confusion in the lower courts. The result is an unworkable patchwork of conflicting approaches that cries for the national uniform answer that only this Court can provide.

A. This Court's Decisions Are Confusing

"This Court has sometimes used different labels to describe the different ways in which federal statutes may displace state laws—speaking, for example, of express, field, and conflict preemption." *Va. Uranium, Inc. v. Warren*, 587 U.S. 761, 767 (2019). Express preemption "occurs when a federal statute includes a preemption clause explicitly withdrawing specified powers from the states." Nelson, *supra*, at 226; *see, e.g.*, *Chamber of Com. of U.S. of Am. v. Whiting*, 563 U.S. 582, 594–95 (2011). Field preemption occurs when "Congress legislated so comprehensively in a particular field that it left no room for supplementary state legislation," *Kansas*, 589 U.S. at 208 (cleaned up), and conflict or implied preemption occurs when a federal law "actually conflicts" with the state law, *English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990). Implied preemption forbids, at a minimum, "state laws that require a private party to violate federal law." *Mut. Pharm. Co. v. Bartlett*, 570 U.S. 472,

475 (2013). "But these categories are not rigidly distinct." *Va. Uranium*, 587 U.S. at 767 (cleaned up).

1. ***Express Preemption***

In *Cipollone v. Liggett Group*, 505 U.S. 504 (1992) (plurality op.), this Court considered whether an express preemption provision of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1334(b), preempts common-law claims alleging that cigarette makers misled the public about the health effects of cigarettes. A plurality opinion written by Justice Stevens relied upon a "presumption against the pre-emption of state police power regulations" to give the preemption provision a "narrow reading," and ultimately held that some of the common-law claims (breach of warranty, fraud, and conspiracy) were not preempted by the federal statute. *Cipollone*, 505 U.S. at 518, 524–31.

Justices Scalia and Thomas dissented in part, criticizing the plurality's application of the presumption to an expressly preemptive provision as "novel" and contrary to "ordinary principles of statutory construction." *Id.* at 547–48 (Scalia, J., concurring in the judgment and dissenting in part, joined by Thomas, J.). As Justice Scalia explained, "[t]he proper rule of construction for express pre-emption provisions is, it seems to me, the one that is customary for statutory provisions in general: Their language should be given its ordinary meaning." *Id.* at 548; *see also* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 293 (2012) ("[T]he preemption

canon ought not to be applied to the text of an explicit preemption provision.").

Since *Cipollone*, this Court has sporadically invoked the presumption against preemption to construe preemption provisions.[2] Other times, the Court has mentioned the presumption without placing much analytical weight on it.[3] In some cases, the Court has not mentioned the presumption.[4] The Court has inconsistently applied the presumption even to the *same* statute.[5]

---

[2] *See, e.g.*, *Lohr*, 518 U.S. at 500–01; *De Buono v. NYSA-ILA Med. & Clinical Servs. Fund*, 520 U.S. 806, 814 (1997); *Altria Grp., Inc. v. Good*, 555 U.S. 70, 77 (2008); *CTS Corp. v. Waldburger*, 573 U.S. 1, 18–19 (2014).

[3] *Compare Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 541–42 (2001) (plurality op.), *with id.* at 592 (Stevens, J., concurring in part, concurring in the judgment in part, and dissenting in part) ("If Congress' intent to pre-empt a particular category of regulation is ambiguous, such regulations are not pre-empted.").

[4] *See, e.g.*, *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364 (2008); *Bruesewitz v. Wyeth LLC*, 562 U.S. 223 (2011); *Nat'l Meat Ass'n v. Harris*, 565 U.S. 452 (2012); *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251 (2013); *Bartlett*, 570 U.S. at 497–98 & n.1 (Sotomayor, J., dissenting) (noting that the presumption was "conspicuously absent from the majority opinion").

[5] *Compare Lohr*, 518 U.S. at 500–01 (applying presumption against preemption in holding that the manufacturing and labeling requirements of the Medical Device Amendments of 1976 did not preempt state common-law claims), *with Riegel v. Medtronic*, 552 U.S. 312 (2008) (interpreting the scope of the same preemption provision without applying the presumption).

A decade ago, this Court stated that it would "not invoke any presumption against pre-emption" "because the statute contains an express pre-emption clause." *Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 579 U.S. 115, 125 (2016) (cleaned up). Instead, the Court "focus[ed] on the plain wording of the clause," which is "where the inquiry should end, for the statute's language is plain." *Id.* (cleaned up); *see also Cuomo v. The Clearing House Ass'n, LLC*, 557 U.S. 519, 554 (2009) ("There should be no presumption against pre-emption because Congress has expressly pre-empted state law in this case.").

Franklin should have been the end of the presumption in express preemption cases. But as Judge O'Scannlain has explained, *Franklin* "left much room for confusion":

> The *Franklin* Court did not acknowledge—and, most importantly, did not expressly overturn—the decades of decisions applying the presumption against preemption to express-preemption provisions. And the *Franklin* Court did not resolve—nor even discuss—the scope of the rule it was applying. Was the *Franklin* Court simply electing to "not invoke" the presumption in a case easily answered by the "plain" statutory text?

Cal. Rest. Ass'n, 89 F.4th at 1110 (O'Scannlain, J., concurring).

2. *Implied Preemption*

This Court has also inconsistently applied the presumption against preemption in conflict or implied preemption cases.

In *Wyeth v. Levine*, this Court relied upon the presumption against preemption in holding that the Federal Food, Drug, and Cosmetic Act did not impliedly preempt failure-to-warn claims against a brand-name drugmaker. 555 U.S. 555, 565 & n.3 (2009). But, Justice Alito argued in his dissent, the Court had earlier "rejected the argument … that the 'presumption against preemption'" was "relevant to the conflict preemption analysis," and called its relevance "an open question." *Wyeth*, 555 U.S. at 623–24 & n.14 (Alito, J., dissenting) (citing *Geier v. Am. Honda Motor Co.*, 529 U.S. 861 (2000)); *see also Geier*, 529 U.S. at 906–07 (Stevens, J., dissenting) ("[T]he Court simply ignores the presumption [against preemption].").

Two years after *Wyeth*, however, a plurality of this Court rejected the presumption explaining that the presumption against preemption conflicts with the text of the Supremacy Clause. *See Mensing*, 564 U.S. at 621–24; *see also id.* at 642 (Sotomayor, J., dissenting) ("The plurality's new theory of the Supremacy Clause is a direct assault on" the presumption against preemption); *Bartlett*, 570 U.S. at 497–98 & n.1 (Sotomayor, J., dissenting) (noting that the presumption was "conspicuously absent from the majority opinion").

This Court's recent implied preemption cases have not invoked the presumption. *See, e.g.*, *Kansas*, 589 U.S. 191; *Va. Uranium*, 587 U.S. 761. Rather than end the presumption, this Court has seemingly given the presumption against preemption the silent treatment. *Cf. Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 406 (2024) ("This Court, for its part, has not deferred to an agency interpretation under *Chevron* since 2016.").

* * *

Notably, the considerable confusion in this Court's caselaw is only about *whether* the presumption is even a legitimate canon of construction. Confusion about *how* the presumption applies compounds the uncertainty.

The presumption's proper domain raises its own difficult questions and generates conflicting answers: what qualifies as an area of traditional state concern? *Cf. Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 531 (1985) (rejecting the "traditional governmental function" test as "unworkable"). At what level of generality does one even frame that question? And how strong is the presumption anyway? The presumption requires a "clear and manifest" purpose evinced from the text. But "how clear is clear?" *Loper Bright*, 603 U.S. at 408 (cleaned up). And how can *implied* preemption ever be "clear and manifest"? "We are no closer to an answer to that question than we were four decades ago." *Id.*

B. Lower Courts Are Confused

Despite this Court's recent silence, this Court's cases applying the presumption against preemption "remain[] on the books. So litigants must continue to wrestle with it." *Loper Bright*, 603 U.S. at 406; *Cal. Rest. Ass'n*, 89 F.4th at 1108 (O'Scannlain, J., concurring) ("As an inferior-court judge—bound to respect Supreme Court and Ninth Circuit precedent—I have great difficulty in deciding how to read the Supreme Court's instructions here.").

1. In express preemption cases, lower courts are divided over whether, after *Franklin*, the presumption against preemption still applies. Most federal circuit courts have taken the broad view of *Franklin*, holding that the presumption no longer applies.[6] But the Second and Third Circuits have read *Franklin* narrowly, and continue to rely upon the presumption in their decisions.[7] For example, the Third Circuit has said that *Franklin* is irrelevant because it arose in the

---

[6] *See Carson v. Monsanto Co.*, 72 F.4th 1261, 1267 (11th Cir. 2023); *Medicaid & Medicare Advantage Prods. Ass'n of P.R., Inc. v. Emanuelli Hernández*, 58 F.4th 5, 11–12 (1st Cir. 2023); *Dialysis Newco, Inc. v. Cmty. Health Sys. Grp. Health Plan*, 938 F.3d 246, 258–59 (5th Cir. 2019); *Air Evac EMS, Inc. v. Cheatham*, 910 F.3d 751, 761–62 & n.1 (4th Cir. 2018); *Watson v. Air Methods Corp.*, 870 F.3d 812, 817 (8th Cir. 2017) (en banc); *EagleMed LLC v. Cox*, 868 F.3d 893, 903 (10th Cir. 2017); *Atay v. County of Maui*, 842 F.3d 688, 699 (9th Cir. 2016).

[7] *See Council for Responsible Nutrition v. James*, 159 F.4th 155, 171 & n.8 (2d Cir. 2025); *Shuker v. Smith & Nephew, PLC*, 885 F.3d 760, 771 & n.9 (3d Cir. 2018).

context of bankruptcy, not a case involving a "historic police power." *Shuker*, 885 F.3d at 771 n.9. State courts, for their part, often ignore the teaching of *Franklin* and liberally apply the presumption against preemption to narrow the reach of federal statutes.[8] Circuit judges have pointed out the doctrinal disarray in *Franklin*'s wake.[9]

2. In implied preemption cases, some courts are "unable to assess the current scope or existence of the presumption against preemption." *Lofton v. McNeil Consumer & Specialty Pharms.*, 672 F.3d 372, 378 (5th Cir. 2012). Other courts continue applying the presumption, despite the Court's decadelong silence on the issue and the *Mensing* plurality repudiating the presumption.[10]

---

[8] *See, e.g.*, *Happel v. Guilford Cnty. Bd. of Educ.*, 913 S.E.2d 174, 203–04 (N.C. 2025) (Riggs, J., dissenting) (pointing out that the majority ignored *Franklin*); *see also Kaipust v. Echo Glob. Logistics, Inc.*, 271 N.E.3d 1066, 1073 (Ill. App. Ct. 2025) (acknowledging *Franklin* but insisting that "courts should defer to the presumption that Congress did not intend" to displace state law).

[9] *See Cal. Rest. Ass'n*, 89 F.4th at 1110 (O'Scannlain, J., concurring) (noting that "the [*Franklin*] Court … left much room for confusion"); *Cheatham*, 910 F.3d at 762 n.1 (Wilkinson, J.) (noting this Court's "somewhat varying pronouncements on presumptions in express preemption cases").

[10] *See, e.g.*, *Fenner v. Gen. Motors, LLC*, 113 F.4th 585, 593–94 (6th Cir. 2024); *Mont. Med. Ass'n v. Knudsen*, 119 F.4th 618, 623 (9th Cir. 2024); *Marrache v. Bacardi U.S.A., Inc.*, 17 F.4th 1084, 1094–95 (11th Cir. 2021); *Bedoya v. Am. Eagle Express Inc.*, 914 F.3d 812, 817–18 (3d Cir. 2019).

3. The inconsistencies across lower courts in applying the presumption against preemption are in full display in this case and parallel litigation.

In the decision below, the Missouri Court of Appeals relied upon the presumption to hold that FIFRA does not preempt a failure-to-warn claim alleging that Monsanto should have warned about the risk of cancer. Pet. App. 4. So has the Ninth Circuit. *See Hardeman v. Monsanto Co.*, 997 F.3d 941, 958 (9th Cir. 2021) (favorably citing *Bates*'s invocation of the presumption). Yet, the Ninth Circuit has repeatedly jettisoned the presumption in express preemption cases after *Franklin*.[11]

Meanwhile, in another parallel case, the Third Circuit did not rely upon the presumption against preemption when it held that FIFRA preempts a Pennsylvania failure-to-warn claim. *See Schaffner*, 113 F.4th 364.[12] But ironically, the Third Circuit ad-

---

[11] *See, e.g.*, *Int'l Bhd. of Teamsters, Loc. 2785 v. Fed. Motor Carrier Safety Admin.*, 986 F.3d 841, 853 (9th Cir. 2021); *Nat'l R.R. Passenger Corp. v. Su*, 41 F.4th 1147, 1153 n.1 (9th Cir. 2022); *R.J. Reynolds Tobacco Co. v. County of Los Angeles*, 29 F.4th 542, 553 n.6 (9th Cir. 2022); *Connell v. Lima Corp.*, 988 F.3d 1089, 1097 (9th Cir. 2021); *Atay*, 842 F.3d at 699.

[12] Although the Eleventh Circuit concluded that FIFRA did not preempt Georgia state-law failure-to-warn claims, the panel at least properly chose to employ "ordinary principles of statutory interpretation" instead of the presumption against preemption. *See Carson v. Monsanto Co.*, 92 F.4th 980, 989 (11th Cir. 2024) (cleaned up).

heres to the view that the presumption continues to apply in express preemption cases.[13]

This case is therefore an ideal vehicle to clarify that *Franklin* abrogated the presumption against preemption in express preemption cases. But the Court should go further and abandon the presumption in *all* preemption cases because the presumption lacks a basis in the Constitution, principles of statutory interpretation, or early judicial methods of interpreting the Clause. Abrogating the presumption would help clear up the "muddle" of preemption doctrine, Nelson, *supra*, at 232, for "the lower courts, which depend on this Court's guidance, and to litigants, who must conform their actions to the Court's interpretation of federal law," *Altria Grp.*, 555 U.S. at 98 (Thomas, J., dissenting).

II. THE PRESUMPTION AGAINST PREEMPTION DEFIES THE CONSTITUTION, TEXTUALISM, AND HISTORY

1. As Professor Nelson has persuasively argued, the presumption against preemption has no basis in the U.S. Constitution. *See* Nelson, *supra*, at 293–94. To the contrary, the Supremacy Clause "instructs courts that in the absence of other indications, they should *not* automatically assume that Congress in-

---

[13] *See, e.g.*, *Shuker*, 885 F.3d at 771 & n.9; *Lupian v. Joseph Cory Holdings, LLC*, 905 F.3d 127, 132 (3d Cir. 2018); *Klotz v. Celentano Stadtmauer & Walentowicz LLP*, 991 F.3d 458, 463 (3d Cir. 2021).

tends to avoid contradicting state laws." *Id.* at 294 (emphasis added).

The Supremacy Clause provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. art. VI, cl. 2.

The Supremacy Clause is a decidedly pro-nationalist clause. As Professor Nelson has explained, and Members of this Court have recognized, the phrase "any [state law] to the Contrary notwithstanding" is a *non obstante* clause. Nelson, *supra*, at 238–40 nn.43–44; *Mensing*, 564 U.S. at 621–22. At the Founding, such a provision meant "that the statute might contradict prior law and instructed courts not to apply the general presumption against implied repeals." *Mensing*, 564 U.S. at 622 (cleaned up). Thus, "[r]ather than straining the new statute in order to harmonize it with" state law—a feature of the presumption against preemption—courts should "give the [federal] statute its natural meaning and [] let the chips fall where they may." Nelson, *supra*, at 242.

2. The presumption against preemption is also "in significant tension with textualism" because it "in-

struct[s] a court to adopt something other than the statute's most natural meaning." *Biden v. Nebraska*, 600 U.S. 477, 509 (2023) (Barrett, J., concurring) (cleaned up).

This is no less true in implied preemption cases, *see Wyeth*, 555 U.S. at 624 & n.14 (Alito, J., dissenting), than in express preemption cases, *Franklin*, 579 U.S. at 125. Whatever the scope of implied preemption, courts should use "the accepted methods of interpretation" in all preemption cases. *Kansas*, 589 U.S. at 214 (Thomas, J., concurring).

3. Historical support for the presumption against preemption is also lacking in early judicial methods of interpreting the Clause. This Court did not invoke the presumption in its earliest preemption cases. *See, e.g.*, *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824); *Mayor of New York v. Miln*, 36 U.S. (11 Pet.) 102 (1837). Nor is there a "discussion of any canon applicable to questions of preemption in nineteenth century legal treatises." Barrett, *supra*, at 153 n.211; *see also* Viet D. Dinh, *Federal Displacement of State Law: The Nineteenth Century View*, *in Federal Preemption: States' Powers, National Interests* 27 (Richard A. Epstein & Michael S. Greve eds., 2007) (explaining the early history).

Justice Barrett has suggested that perhaps *Cohens v. Virginia* "can be read as an early statement of the presumption against preemption." Barrett, *supra*, at 153. But that is not the best reading. In *Cohens v. Virginia*, the Court addressed whether a District of Columbia lottery law vested the District of Columbia

Corporation with power to sell lottery tickets in Virginia despite a law prohibiting lotteries in Virginia. 19 U.S. (6 Wheat.) 264, 441 (1821). The Court said no, because presuming that Congress vested a local municipal corporation with extraterritorial authority to displace penal laws in neighboring states would be surprising, and such a surprising delegation would be "clearly and unequivocally expressed." *Id.* at 443. This reflects not a general presumption against preemption of historic police powers, but rather the more modest principle "that a reasonable speaker would not understand Congress to confer an unusual form of authority without saying more." *Nebraska*, 600 U.S. at 519 (Barrett, J., concurring).

The modern presumption against preemption instead originates in the New Deal's "proregulatory bias," favoring "the authority of *regulators* and their clientele" at every level of government, federal and state. Greve, *supra*, at 211–12. The Court first announced the presumption in *Mintz v. Baldwin*, 289 U.S. 346 (1933), as "a reaction to the increased exercise of existing federal legislative authority." Gardbaum, *supra*, at 537. The presumption against preemption continues to be justified largely on those policy grounds. *See, e.g.*, *Lohr*, 518 U.S. at 485; *Wyeth*, 555 U.S. 565 n.3. Political scientists may debate whether this kind of New Deal "federalism" protecting states as regulators, rather than their citizens, is a good idea. But a court's "job is to interpret Congress's decrees of pre-emption neither narrowly nor broadly, but in accordance with their apparent meaning." *Cip-*

ollone, 505 U.S. at 544 (Scalia, J., concurring in the judgment in part and dissenting in part).

* * *

The judge-made presumption against preemption has no basis in the Constitution or early caselaw and hamstrings courts, forcing them to give federal statutes unnatural, cramped readings at the expense of ordinary principles of statutory interpretation. That is true in both express and implied preemption cases. Common sense may sometimes counsel against implying preemption in particular cases, as in *Cohens*, but that doesn't justify a normative judge-made canon that cuts across the broad domain of concurrent powers. This Court should categorically abandon the presumption.[14]

III. MISSOURI RULE'S CONTRADICTS FIFRA

Ending the confusing presumption against preemption from precedent is a good start, but only a start. The Court must still analyze the conflict. Here, the conflict is straightforward because "federal law and state law are in logical contradiction." *Glacier Nw., Inc. v. Int'l Bhd. of Teamsters Loc. Union No. 174*, 598 U.S. 771, 788 (2023) (Thomas, J., concurring

[14] This change need not unsettle prior cases. If this Court abrogates the presumption, the Court could make clear that "[t]he holdings of" prior "cases that specific [state requirements] are lawful" would still be "subject to statutory *stare decisis* despite [the Court's] change in interpretive methodology." *Loper Bright*, 603 U.S. at 412.

in the judgment) (cleaned up); *see also* Nelson, *supra*, at 260–61.

1. "Sometimes … the federal statute is meant to establish a *maximum* standard or requirement on which everyone can rely, so that, for example, manufacturers serving a national market will not be compelled to comply with the law of the most restrictive state." Scalia & Garner, *supra*, at 290. FIFRA is such a law for pesticide labeling. Under FIFRA, EPA must weigh the health risks and benefits of a label, to ensure that the label is "just right." *See* 7 U.S.C § 136(q)(1)(G), (x). Additional labeling requirements are logically inconsistent with such a Goldilocks balancing scheme. *See* Robert R. Gasaway & Ashley C. Parrish, *The Problem of Federal Preemption: Toward a Formal Solution*, *in Federal Preemption*, *supra*, at 219.

FIFRA's text confirms this logic by forbidding state laws that impose "any requirements for labeling or packaging in addition to or different from those required under" FIFRA. 7 U.S.C. § 136v(b). That text resolves this case. Durnell's failure-to-warn claim imposes "requirements for labeling," and the label he seeks would be different from Monsanto's EPA's-approved label "under" FIFRA, which contains no such warning. Pet. Br. 26–27.

Durnell, like some lower courts, tries to make this case more complicated than it really is. Durnell claims that EPA's-approved label is not a "requirement" under FIFRA because the label is not a regulation or a complete defense in a misbranding enforcement pro-

ceeding. Br. in Opp. 25–27. That argument fails. EPA's registration is a binding licensing order, and the label is a condition of the license: selling the product without the label would make the product misbranded. U.S. Br. 13–14. It doesn't matter that this labeling requirement is necessary, but not sufficient, to prove compliance with FIFRA. What matters is that the label is a requirement.

Equally unavailing is the reasoning of the Missouri Court of Appeals. The Missouri Court of Appeals oddly reasoned that Missouri law is no different from FIFRA because FIFRA and Missouri law share the same general purpose: adequately warning the public about health risks. Pet. App. 6–7.

But of course, that Missouri law shares the same general purpose is quite different from imposing the same specific requirements on regulated parties. The Missouri Court of Appeals' preemption analysis is the flipside of the kind of "freewheeling" obstacle preemption routinely condemned by some Members of this Court: The Missouri Court of Appeals focused on the broad purpose of federal and state law to avoid a conflict, rather than to create one. *Kansas*, 589 U.S. at 214 (Thomas, J., concurring). Virtually any statute can be recast in vague generalities to avoid a conflict, so this Court should reject this flawed framing tactic.

CONCLUSION

Missouri's failure-to-warn claim is "repugnant to a law of the United States, made in pursuance of the constitution, and, therefore, void." *Osborn v. Bank of the United States*, 22 U.S. (9 Wheat.) 738, 868 (1824). This Court should reverse.

Respectfully submitted,

Michael Buschbacher
James R. Conde
Counsel of Record
Walker Fortenberry
BOYDEN GRAY PLLC
800 Connecticut Ave. NW
Suite 900
Washington, DC 20006
(202) 955-0620
jconde@boydengray.com

March 2, 2026