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 COURT OF APPEALS OF MISSOURI, EASTERN DISTRICT

BRIEF OF AMICI CURIAE NEW MEXICO AND SEVENTEEN OTHER STATES IN SUPPORT OF RESPONDENT

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INTERESTS OF AMICI CURIAE

Private rights of action under state common law are a form of state police power to protect human and environmental health. Amici States have a strong interest in preserving their constitutional police power and ensuring that principles of federalism are adequately considered in preemption cases.

Almost all states allow common law failure to warn claims against pesticide manufacturers. Two states, North Dakota and Georgia, expressly prohibit manufacturer liability for failure to warn. Most states have no official policy on glyphosate's carcinogenicity but do not prevent municipalities from establishing their own glyphosate bans or use restrictions. No state has a uniform ban on glyphosate use or sale.

These views reflect state choices over how best to regulate glyphosate products like Monsanto's Roundup to promote the health and welfare of their respective people. Though relevant state law—and jury verdicts in Roundup cases—vary to some extent, inconvenience to Monsanto is no reason to preempt state law where federal law allows considerable latitude.

The Federal Insecticide Fungicide and Rodenticide Act, 7 U.S.C. §§ 136-136y (FIFRA) is Congress' attempt to balance the economic benefits of pesticides[1] with inherent risks to human and environmental health. FIFRA's prohibition of misbranding leaves

[1] Roundup is an herbicide but is classified as a pesticide under 7 U.S.C. § 136(t) and (u).

ample room for states to allow recovery from pesticide manufacturers that do not adequately warn of dangers that could be caused by their products. It follows that § 136v(b) of FIFRA—which preempts certain state label requirements that are "in addition to or different from" those "required" by FIFRA—cannot be read as broadly preempting state law claims for failure to warn, such as Respondent's. The Environmental Protection Agency's (EPA) registration of glyphosate and approval of Roundup's labeling without a cancer warning do not change that outcome.

Amici States support Respondent John L. Durnell in his efforts to uphold state law.

SUMMARY OF ARGUMENT

FIFRA does not expressly preempt state failure to warn claims such as Respondent's. First, *Bates v. Dow Agrosciences LLC*, 544 U.S. 431 (2005), permits parallel failure to warn claims, and FIFRA's prohibition of misbranding is consistent with such claims, especially considering that EPA's evaluations do not consider all evidence material to misbranding. Second, EPA's registration decisions do not create a substantive "requirement" under FIFRA. Indeed, registration is only prima facie evidence that a product is not misbranded. Third, Monsanto's expansive reading of EPA's power does not meaningfully further FIFRA's purpose of uniformity but instead hinders FIFRA's balancing of health and economy. Fourth, Congress has made an informed decision not to amend FIFRA to preempt claims such

as Respondent's, and this Court should defer to the democratic process.

FIFRA also does not impliedly preempt state failure to warn claims. Monsanto's impossibility preemption arguments lack merit because federal law does not prohibit Monsanto from including a warning on Roundup that satisfies state common-law standards. Federalism concerns animating the presumption against preemption also counsel against implied preemption. Alternatively, if the Court is inclined to find preemption, any such ruling should be narrow and limited only to label-based failure to warn theories. And either way, the Court should also consider the extent to which causation and jury instructions mitigate or cure Monsanto's grievances.

Finally, Nebraska and fourteen other states support Monsanto and argue that allowing other states' common law to survive preemption will disrupt their farming industries and thereby undermine equal state sovereignty. But they identify no evidence that could even remotely demonstrate a burden on equal state sovereignty. And their sky-is-falling arguments are belied by Monsanto's significant market share and enduring demand for glyphosate products despite billions of dollars in Roundup judgments and settlements to date. In any event, *Bates* counsels against considering market reactions to state tort liability in the preemption analysis, and Monsanto's arguments sound in the "inducement test" this Court has already rejected.

ARGUMENT

I. FIFRA DOES NOT EXPRESSLY PREEMPT STATE LAW FAILURE TO WARN CLAIMS.

A. Failure to warn theories are consistent with FIFRA's misbranding provision.

Bates v. Dow Agrosciences LLC, 544 U.S. 431 (2005), controls. There, this Court recognized § 136v(b) as "narrow" and set forth a two-part test to decide whether a state law claim is expressly preempted. First, the state law must be a requirement for "labeling or packaging." 544 U.S. at 444. Second, the "state-labeling requirement is not preempted by § 136v(b) if it is equivalent to, and fully consistent with, FIFRA's misbranding provisions." *Bates*, 544 U.S. at 447. In other words, *Bates* provides that a manufacturer cannot be held liable for failure to warn under a state labeling requirement unless the manufacturer is also liable for misbranding. *Id*. at 454. In considering whether a failure to warn claim is preempted by § 136v(b), *Bates* tells courts to measure any state requirements against FIFRA's text or relevant EPA regulations. *Bates*, 544 U.S. at 453. *But see* Resp. Br. at 4-7. Lower courts have come to recognize this test as a "parallel claim" requirement. *See, e.g.*, *Hardeman v. Monsanto Co.*, 997 F.3d 941, 955 (9th Cir. 2021).

In pertinent part, FIFRA provides that a pesticide is "misbranded" if its label "is false or misleading in

any particular" or if the label "does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with . . . are adequate to protect health." § 136(q)(1)(A), (F).

This broad language ensures that claims like Respondent's are not preempted. A label that does not warn of increased cancer risk is inherently "false or misleading" if chronic use of the product increases cancer risk, and a product's directions cannot be "adequate to protect health" if following them leads to increased cancer risk. *Cf. Bates*, 544 U.S. at 447-48 n.23; *Hardeman*, 997 F.3d at 954-55 ("FIFRA's requirement that a pesticide not be misbranded is consistent with, *if not broader than*, California's common law duty to warn." (emphasis added)); *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 495 (1996) (noting that state requirements that are "narrower" than federal requirements are not preempted because they "duplicate the federal rule" (cleaned up)). Given that the core components of failure to warn claims are relatively uniform across states,[2] it is unremarkable

[2] While state law varies to some extent in evidentiary burdens and available defenses, common law failure to warn claims generally ask the same question: was a warning inadequate, and if so, did that cause the plaintiff's injuries? *See, e.g.*, *Baksic v. Ethicon Inc.*, 659 F.Supp.3d 763, 769 (W.D. Tx. 2023); *Burton v. Am. Cyanamid*, 334 F.Supp.3d 949, 962 (E.D. Wisc. 2018); *Higgins v. E.I. DuPont de Nemours & Co.*, 671 F.Supp. 1055, 1060 (D. Md. 1987); *Sluis v. Ethicon, Inc.*, 529 F.Supp.3d 1004, 1009-10 (D. S.D. 2021); *Roley v. Am. Honda Motor Co.*, 259 Mont. 128, 129, 856 P.2d 196, 198 (S. Ct. Mont.

that *Bates*' parallel claim requirement will often be satisfied.

EPA registration and label approval do not change that outcome. There are at least two reasons why, among others covered here and in Respondent's brief.

First, EPA considers criteria and evidence narrower than the wide range of real-world evidence that could otherwise satisfy FIFRA's broad definition of "misbranded." For example, labeling regulations require a "precautionary statement for human hazard" when a product presents *acute* health risks, but they do not compel such statement when *chronic* health risks may still be present. *See* 40 C.F.R. § 156.70; *see also* 40 C.F.R. § 158.130(d)(1) ("Data from acute studies serve as a basis for classification and precautionary labeling."); *Data Requirements for Pesticide Registration*, U.S. ENV'T PROT. AGENCY, https://www.epa.gov/pesticide-registration/data-requirements-pesticide-registration (last updated Jan. 14, 2026) ("acute toxicity data are used . . . to develop precautionary label statements pertaining to protective clothing requirements for applicators.").

1993); *Wright v. Ryobi Techs., Inc.*, 175 F.Supp.3d 439, 455 (E.D. Penn. 2016); *Town of Bridport v. Sterling Clark Lurton Corp.,* 166 Vt. 304, 307-08, 693 A.2d 701, 704 (S. Ct. Vt. 1997); *Motor Coach Indus., Inc. v. Khiabani ex rel. Rigaud*, 137 Nev. 416, 419-20, 493 P.3d 1007, 1011-12 (S. Ct. Nev. 2021); *Corrigan v. Covidien LP*, 748 F.Supp.3d 1, 11-12 (D. Mass. 2024); *Primal Vantage Co., Inc. v. O'Bryan*, 677 S.W.3d 228, 245-46 (S. Ct. Ky. 2022); *Gareis v. 3M Co.*, 9 F.4th 812, 818-19 (8th Cir. 2021). *See generally* Allan E. Korpela, *Failure to warn as basis of liability under doctrine of strict scrutiny in tort*, 53 A.L.R.3d 239 (Originally published in 1973).

Data requirements for registration also may not guarantee that chronic health risks will be adequately considered in EPA's evaluation. Although relevant regulations perhaps encourage EPA to consider subchronic and chronic studies to some extent, *e.g.*, 40 C.F.R. § 158.130(d)(2), (3), such regulations do not mandate any "study protocols, methodology, or standards for conducting or reporting test results" nor do they "describe how [EPA] uses or evaluates the data and information in its risk assessment[.]" 40 C.F.R. § 158.1(b)(3). Finally, registration occurs only once every fifteen years, leaving room for development of both scientific and real-world evidence relevant to misbranding in the interim. § 136a(g)(1)(A).

Given limitations like these, along with the plain, broad meaning of language defining "misbranded" (§ 136(q)(1)(A), (F)), a product is naturally "misbranded" if chronic exposure increases cancer risk—even where EPA has made some preliminary judgment suggesting otherwise. It follows that a jury's conclusion in cases like Respondent's are fully consistent with FIFRA.

Even assuming EPA's evaluations of glyphosate or Roundup's labeling were thorough and completely accurate,[3] EPA does not consider the entire universe

[3] As Respondent and other amici observe, the thoroughness of EPA's glyphosate evaluation is undermined by the Ninth Circuit's vacatur of the human health portion of EPA's 2022 glyphosate registration decision. *See NRDC v. EPA*, 38 F.4th 34, 51-52 (9th Cir. 2022) (holding that EPA's determination that glyphosate was "not likely to be carcinogenic to humans" was not

of information relevant to a pesticide's impact on human and environmental health. That is precisely why EPA determinations cannot foreclose the possibility of misbranding—FIFRA "contemplates that pesticide labels will evolve over time, as manufacturers gain more information about their products' performance in diverse settings." *Bates*, 544 U.S. at 451 (citing *Ferebee v. Chevron Chem. Co.*, 736 F.2d 1529, 1541-42 (D.C. Cir. 1984)); *Hardeman*, 997 F.3d at 955-57.

Second, the result in *Bates* works against Monsanto's arguments by showing that a label-based failure to warn claim can continue despite EPA registration and approval of a label without that warning. *See Bates*, 544 U.S. at 434-35. If registration precluded misbranding, *Bates* would not have resulted in remand because EPA registration would have simply foreclosed any possibility of liability. Like the manufacturer in *Bates*, Monsanto asks the Court to adopt an overbroad and atextual reading of § 136v(b). *See* 544 U.S. at 448-49 (describing the manufacturer's "amputated" reading of § 136v(b)).

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supported by substantial evidence). Further, in 2015, the World Health Organization's International Agency for Research on Cancer (IARC) classified glyphosate as a probable human carcinogen, and more recent studies also suggest carcinogenicity. *See* Resp. Br. at 14-15; *see also* Simona Panzacchi et al., *Carcinogenic Effects of Long-Term Exposure from Prenatal Life to Glyphosate and Glyphosate-Based Herbicides in Sprague–Dawley Rats*, 24 ENV'T HEALTH 1187 (2025), https://doi.org/10.1186/s12940-025-01187-2 (finding "robust evidence" supporting IARC's 2015 conclusion).

By submitting that EPA's determinations automatically preempt state law, Monsanto's arguments depart from *Bates* and constructively narrow FIFRA's definition of "misbranded." The Court should reject such arguments.

B. EPA registration does not create a "requirement" under FIFRA.

Bates provides that a "requirement" under FIFRA is a "rule of law that must be obeyed." 544 U.S. at 445. Here, Monsanto and the federal government[4] argue that EPA's decision to register glyphosate and approve Roundup without a cancer warning create a "requirement" under FIFRA that has preemptive effect under § 136v(b).

That cannot be right. Nothing in FIFRA's plain text or EPA's current regulations bridge the gap between preemption under § 136v(b) and EPA's determinations. *See Hardeman*, 997 F.3d at 957-58. There is no "rule of law" that could preempt state law here. *Bates*, 544 U.S. at 445.

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[4] Given the federal government's historic inconsistency on § 136v(b)'s preemptive breadth, its arguments here are entitled to little weight. *See Monsanto Co. v. Hardeman*, No. 21-241 (U.S. May 10, 2022), Br. for the United States as Amicus Curiae; *Bates*, 544 U.S. at 449 ("[The United States' preemption arguments are] particularly dubious given that just five years ago the United States advocated the interpretation that we adopt today."); *cf. Wyeth v. Levine*, 555 U.S. 555, 580 n.13 (2009) (giving little weight to the United States' brief because of inconsistent positions).

In rejecting the same arguments Monsanto makes here, the Ninth and Eleventh Circuits persuasively reasoned that EPA's determinations regarding glyphosate did not carry "force of law" and thus created no "requirement" under FIFRA because those actions were not subject to rulemaking process required by the Administrative Procedures Act (APA). *Hardeman*, 997 F.3d at 957-58; *Carson v. Monsanto Co.*, 92 F.4th 980, 993-94 (2024); *Schoenhofer v. McClaskey*, 861 F.3d 1170, 1175 n.4 (10th Cir. 2017). That is also dispositive in this case. *See Bates*, 544 U.S. at 453 (citing 40 C.F.R § 156.64 (2004) as an example of a rule with preemptive effect). *But see* Resp. Br. at 4-7, 20-26 (arguing that even some EPA rules may not have preemptive effect). While Monsanto relies on EPA letters, publications, and a vacated interim decision[5] to support its arguments, *Bates* requires more.

Even discounting the "force of law" analysis, FIFRA's plain text provides that registration is merely prima facie evidence that a product is not misbranded. *Bates*, 544 U.S. at 438-39 (citing § 136a(f)(2)). Like any prima facie evidence, it can be rebutted. *See Virginia v. Black*, 538 U.S. 343, 369-70 (2003). The jury's verdict in Respondent's case is but one of many showing that EPA's determinations are often not conclusive of misbranding.

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[5] *See* BIO at 24-25 (citing *NRDC v. EPA*, 38 F.4th 34, 51 (9th Cir. 2022) (vacating EPA's 2020 finding that glyphosate is not carcinogenic)).

§ 136v(b) cannot be read to vest in EPA the power to decide that manufacturers are immunized from certain forms of state tort liability. *Cf. Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001) ("Congress does not hide elephants in mouseholes" (cleaned up)). EPA does not make its own substantive law. That is Congress' job.

C. Monsanto's positions do not further uniformity and instead hinder other objectives of FIFRA.

Monsanto, the federal government, and supporting amici insist that preemption would further FIFRA's purpose of uniformity by creating a national standard that manufacturers, farmers, and consumers can rely on. That is not true, and the ruling Monsanto asks for would undermine other objectives of FIFRA.

If EPA's registration and label approval themselves create substantive statutory "requirements," then national policy on glyphosate, and any impacts it could have on state tort law, agriculture practices, food prices, or manufacturer risk profiles, could easily change from one administration to another—or even within an administration that changes its mind on registration decisions—all without any input from Congress or state legislatures. Monsanto's uniformity arguments are overstated.

Indeed, the status quo does not materially impede uniformity. Monsanto argues that varying jury verdicts impose a patchwork of duties to warn and

thereby undermine FIFRA's purpose of uniformity. But that argument cannot carry the day because this Court recognizes that varying outcomes in jury trials do not impose difficulties "beyond those regularly experienced by manufacturers of other products that every day bear the risk of conflicting jury verdicts." *Id.* at 452.

State common law furthers FIFRA's objective of balancing health and economy by allowing tort suits to serve as a "catalyst" for new information relevant to the "health" side of that equation. *Cf. Bates*, 544 U.S. at 451 ("Private remedies that enforce federal misbranding requirements would seem to aid, rather than hinder, the functioning of FIFRA."). Ruling for Monsanto would significantly frustrate FIFRA's balancing purposes while providing no meaningful uniformity gains.

Finally, Monsanto suggests that state duties to warn create a "crazy-quilt" of standards that go against Congress' intent in passing § 136v(b) with FIFRA's 1972 amendments. Pet. Br. at 2-3. But Monsanto's "crazy-quilt" characterization is exaggerated—common law duties to warn are more or less the same across states, as all share the same roots in basic negligence principles. *See supra* n.2. Moreover, FIFRA's 1972 amendments were not intended to preempt state tort law; they were intended to make labeling easier with respect to logistics like the color of "lettering," the size of labels, and more general state label requirements such as whether the product is referred to as "flammable" or

"inflammable." *Bates*, 544 U.S. at 452 n.26. "[T]he lengthy legislative history is barren of any indication that Congress meant to abrogate most of the common-law duties long owed by pesticide manufacturers." *Id*. This history confirms that § 136v(b) does preempt certain state rules, reinforcing that Respondent's arguments against preemption have reasonable limits. *See* Resp. Br. at 26.

D. The Court should defer to the democratic process.

If Congress in any way disagreed with *Bates*' parallel claim requirement, *Bates*' treatment of EPA's registration power, or how *Bates* has been applied by all but one court since, Congress could have amended FIFRA to preempt *all* state requirements concerning labeling. *See* 544 U.S. at 449. Congress also could have narrowed the definition of "misbranding," declared EPA's registration and labeling approval as preempting state common law duties to warn, or perhaps made express findings regarding glyphosate's carcinogenicity. But Congress has not done so. That inaction is "worth something" where Congress is "clearly aware" that states traditionally control private recovery. *See Wos v. E.M.A. ex rel. Johnson*, 568 U.S. 627, 652-53 (2013) (Roberts, C.J., dissenting); *see also Ziglar v. Abbasi*, 582 U.S. 120, 123 (2017).

To that end, this Court can also infer from recent events that Congress' inaction is well-informed.

First, Monsanto has extensively lobbied both Congress and state legislatures to amend or enact statutes that would shield it from liability. In 2025 alone, Monsanto spent over nine million dollars lobbying Congress, two million of which was spent in the last quarter of 2025 while the petition was pending.[6] *See also* Resp. Br. at 27-28. Despite Monsanto's invitations, Congress has thus far declined to amend FIFRA to preempt claims like Respondent's.[7]

Second, recent state choices also undermine Monsanto's reading of § 136v(b) and counsel deference to the democratic process.

States like North Dakota and Georgia have passed legislation to cut off both label-based and off-label failure to warn liability.[8] Georgia's legislative findings provide that its statute was enacted to "clarify[] regulatory authority of pesticide labeling[.]" *Supra* n.8. That would be unnecessary if FIFRA already did that work. And the Georgia statute's text exemplifies what Congress could have done, but chose not to, any

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[6] *Political Disclosures*, BAYER UNITED STATES (Feb. 20, 2026), https://www.bayer.com/en/us/political-disclosures. Bayer-Monsanto also founded and sponsors the Modern Ag Alliance, which funds advocacy across federal and state legislatures. *See About Us*, MODERN AG ALLIANCE, https://modernagalliance.org/about-us/ (last visited Mar. 22, 2026).

[7] There is pending legislation to amend § 136v(b), reinforcing that Congress knows how to preempt state failure to warn claims but has chosen not to. *See* Farm, Food, and National Security Act of 2026, H.R. 7567, 119th Cong. (2026).

[8] SB144 (Georgia) and HB1318 (North Dakota)

time after *Bates*. *See* O.C.G.A. § 2-7-171(b) (2025) (providing that any label approved by EPA "shall be deemed a sufficient warning label . . . under any provision of state law concerning the duty to warn or label, or any other common law duty to warn").

Most states have thus far declined to enact statutes that would shield Monsanto from liability.[9] That Monsanto has been mostly unsuccessful in obtaining relief through democratic means—even in many agrarian states—is telling. The Court should decline Monsanto's invitation to undermine the policy choices of Congress and state legislatures.

II. FIFRA DOES NOT IMPLIEDLY PREEMPT STATE FAILURE TO WARN CLAIMS.

A. Monsanto can comply with both FIFRA and state duties to warn.

Federal law impliedly preempts state law when "it is impossible for a private party to comply with both state and federal law" or when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372-73 (2000) (cleaned up).

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[9] In 2025, the legislatures of Iowa (SB394), Florida (HB129), Idaho (HB303), Mississippi (HB1221), Missouri (HB544), Montana (HB522), Oklahoma (HB1755), Tennessee (HB809), and Wyoming (HB285) rejected bills that would shield Monsanto, in whole or in part, from failure to warn liability. Other state legislatures did not even consider such legislation.

Monsanto makes no obstacle or field preemption arguments (Pet. Br. at 43-50), so the Court should not consider any implied preemption theory other than impossibility. *See Clark v. Sweeny*, 607 U.S. ___ (2025) (per curiam) (citing *United States v. Sineng-Smith*, 590 U.S. 371, 375 (2020)).

The burden to show impossibility is daunting and cannot be met by showing the mere "possibility" of impossibility. *PLIVA, Inc. v. Mensing*, 564 U.S. 604, 625 n.8 (2011).

First, Monsanto's impossibility arguments lack merit. Monsanto relies on a 2019 EPA letter and EPA's 1993 glyphosate registration. Pet. Br. at 48-49. The 2019 letter does not "carry force of law," and in any event, EPA backed off its 2019 position in its April 2022 letter, saying that a proposed label identifying IARC's 2015 glyphosate classification "could be approved[.]" *See* BIO at 32-33. Further, even if the 1993 registration were not outdated, it is only prima facie evidence against misbranding. *See* Resp. Br. at 29-31. In short, Monsanto's implied preemption arguments fail for the same reasons its express preemption arguments do.

Second, it is possible to comply with federal and state law because FIFRA does not prevent Monsanto from submitting, or EPA from approving, a label consistent with both EPA's decisions and state duties to warn. But Monsanto has not even gotten that far, as it has never formally submitted a cancer warning label to EPA for approval. *See* BIO at 4. That itself is dispositive to impossibility. However, even if EPA

rejected a proposed cancer warning label in the future, that still would not necessarily prove impossibility because EPA could instead approve a more qualified or informative warning that nevertheless satisfies state duties to warn. *See, e.g.*, *Monsanto Co. v. Hardeman*, No. 21-241 (U.S. May 10, 2022), Brief for the United States as Amicus Curiae at 10-13, 15-16 (discussing potential alternatives to overt cancer warnings and relevant law); *see also* Resp. Br. at 39-43 (arguing that Monsanto could unilaterally change its label to comply with state law).

Instead of finding ways to comply with federal and state law, Monsanto decided to live with the risk of state tort liability. That risk management decision does not show impossibility, and it certainly does not justify a bailout from this Court.

B. Federalism weighs against implied preemption.

As this Court has long recognized, federalism is an important factor in preemption cases, especially those implicating "the historic primacy of state regulation of matters of health and safety." *Lohr*, 518 U.S. at 475 (citing *Metro. Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 756 (1985)); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). And in cases where regulations are relied on for preemption, state interests matter even more. *See Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 907-08 (2000) (Stevens, J., dissenting). Thus, where Monsanto argues that state law requirements are impliedly preempted, the presumption against preemption ensures that

federalism is adequately considered in the preemption analysis. *See id.*; Erwin Chemerinsky, *Empowering States When It Matters: A Different Approach to Preemption*, 69 BROOKLYN L. REV. 1313 (2004) (discussing the importance of federalism in preemption disputes and collecting cases).

Indeed, this Court starts its implied preemption analysis "with the assumption that the historic police powers of the States were not to be superseded . . . unless that was the clear and manifest purpose of Congress." *Wyeth v. Levine*, 555 U.S. 555, 565 (2009). And it is not inconsistent with any mode of statutory interpretation to employ the presumption where state tort law is at issue. *See Montgomery v. Caribe Transp. II, LLC., et al.*, No. 24-1238 (U.S. Dec. 8, 2025), Preemption Scholars Amicus Br. at 20-29.

To be sure, *Bates* itself provides that federalism has a part to play in the FIFRA preemption analysis. 544 U.S. at 449-50. Although Monsanto falls far short of showing implied preemption, if the Court disagrees and sees the issue as a close call, then federalism easily tips the scales.

C. Alternatively, any preemption should be narrow.

If the Court is persuaded by Monsanto's arguments, the scope of preemption should be narrow because the question presented implicates only aspects of a failure to warn claim that are based on a product's label. *See Monsanto Co. v. Durnell*, No. 24-

1068 (U.S. Jan. 16, 2026) (granting certiorari but narrowing the issue to "label-based" conduct).

Respondent's case demonstrates why a narrow ruling would be an appropriate alternative. Respondent alleged that Monsanto's glyphosate products are "unreasonably dangerous to consumers . . . because they do not contain adequate warnings or instructions." *Monsanto Co. v. Durnell*, 707 S.W.3d 828, 832 n.3 (Mo. Ct. App. 2025). It is common sense that "adequate warning or instruction" can come from more than just a product's label—if that were not the case, *Bates*' two-part test would not include its first half. 544 U.S. at 444. Instructions or warnings on a manufacturer's website, shelf signs at a store, or fine text in television or print marketing, are all examples of off-label opportunities to comply with state law duties to warn.[10] To the extent state common law imposes such duties, they are not inconsistent with FIFRA.

The Court should also consider the extent to which a broad ruling would invade the jury's province to decide causation. Indeed, many of Monsanto's arguments sound in causation rather than preemption. *See, e.g.*, Pet. Br. at 13, 17, 20, 52. Causation protects against the purportedly unjust

[10] Monsanto is incorrect that "California's Proposition 65 required manufacturers to include a warning that glyphosate is known 'to cause cancer' on their labels." Br. at 17. Proposition 65 identifies several non-labeling mechanisms through which a required warning may be provided. Cal. Health & Safety Code § 25249.11(f) (2006).

verdicts Monsanto complains of because it gives manufacturers an opportunity to prove that even an inadequate warning did not cause the harm at issue. *See supra* n.2. And depending on what a product's label allegedly fails to warn of (*i.e.*, efficacy, carcinogenicity, etc.), there may not always be on-point EPA regulations or FIFRA provisions to "measure" any state duty against. *See Bates*, 544 U.S. at 453. In other words, there is often no need to reach for preemption where an issue may be resolved on causation. *See, e.g.*, *Dunn v. Astaris*, LLC, 292 Fed.Appx. 525, 526-27 (8th Cir. 2008) (per curiam) (citing *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 405-06 (1989)); *Gaetano v. Gilead Scis., Inc.*, 529 F.Supp.3d 333, 343 (D.N.J. 2021) (speculation about FDA approval of a safer drug "go[es] primarily to causation; the specific connection to preemption is less clear"); *Hogan v. Novartis Pharms. Corp.*, 2011 WL 1533467 (E.D.N.Y. 2011) (unpublished) ("[The manufacturer's] defenses . . . are based on causation rather than any contention that the FDA regulations forced defendant to discharge its common law duty in a way that made it impossible to comply with state law" (citing *Wyeth*, 555 U.S. at 555)).

Monsanto's concerns could also be mitigated (if not cured) by jury instructions distinguishing between any preempted on-label conduct and any off-label conduct, or instructions describing the EPA's registration and label approval decisions and processes. *See Bates*, 544 U.S. at 454 (discussing jury instructions that give effect to the parallel claim requirement).

If the Court is inclined to preempt state law, it should do so carefully and with an eye to these concerns.

III. EQUAL SOVEREIGNTY CONCERNS ARE UNFOUNDED.

Nebraska and fourteen other states (Nebraska et al.) support Monsanto and argue that states that allow failure to warn claims impose some extraterritorial detriment on their farming industries and thereby undermine equal state sovereignty. *See Monsanto Co. v. Durnell*, No. 24-1068 (U.S. Mar. 2, 2026), Br. of Amici Curiae Nebraska, Iowa, Missouri, and 12 Other States in Support of Petitioner. They are wrong for two reasons.

First, Nebraska et al. identify no evidence that demonstrates a causal (or even correlational) nexus between failure to warn claims in other states and any economic detriment in their states. But even if they could, that still would be unlikely to prove any material burden on equal state sovereignty. As this Court has recognized, there are many "state laws with extraterritorial effects." *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 388 (2023). It would not make sense for the Constitution to grant the judiciary "a roving license to reassess the wisdom of state [law] in light of any conceivable out-of-state interest, economic or otherwise." *Id.* at 388-89 (cleaned up).

If anything, Nebraska et al.'s contentions are antithetical to equal state sovereignty because they suggest that some states should have a say in other

states' tort law anytime they vaguely allege "far flung" implications. *See id*. at 388. If the bar were that low, a single aggrieved state could impose *de facto* tort reform on forty-nine other states that had not chosen such reform democratically.

Second, even if relevant, the economic havoc Nebraska et al. warn of has yet to occur despite Roundup judgments and settlements to date. Monsanto continues to enjoy a significant share of the domestic foundational herbicide market,[11] and glyphosate use has only increased despite Roundup judgments and settlements. According to the federal government, glyphosate's global and domestic use increased fifteen-fold between 1996 and 2014.[12] In California, the latest data show that glyphosate use increased through 2023, and glyphosate was the top applied ingredient per acres treated.[13] These examples suggest there is no credible evidence that glyphosate demand or production will slow or cease—let alone that a mere warning label could have that effect.

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[11] According to the Department of Justice in 2018, and prior to the Bayer-Monsanto merger, Monsanto controlled 53% of the domestic foundational herbicide market (which includes both glyphosate and glufosinate products). *See* 83 Fed. Reg. 27652 (June 13, 2018).

[12] C. M. Benbrook, *Trends in glyphosate herbicide use in the United States and globally*. 28(1) ENVIRONMENTAL SCIENCES EUROPE 3 (2016), https://doi.org/10.1186/s12302-016-0070-0

[13] CAL. DEP'T OF PESTICIDE REGUL., *Pesticide Use Annual Report 2023 Data Summary* (2025), https://files.cdpr.ca.gov/pub/outgoing/pur/data/2023_pur_report_textfiles/annual_report/2023_pur_annual_report.pdf

Nebraska et al. (and other amici supporting Monsanto) may be concerned that any losses or operational challenges Monsanto might experience as a result of Roundup litigation will be passed on to farmers or consumers. But those amici fail to consider that normal market conditions like increased competition, not Roundup suits, are a likely culprit of Monsanto's purported troubles (among more obvious causes like poor risk management). Indeed, increased competition is a natural byproduct of Monsanto's relevant patents expiring in 2000 (glyphosate) and 2014 (Roundup Ready seeds), respectively. And it is axiomatic that competition is a good thing for consumers in the long term, especially in a market that has historically been (and may still be) significantly noncompetitive. *See supra* n.11.

In any event, *Bates* counsels against considering market speculation or how companies might react to legal risk in the preemption analysis. 544 U.S. at 444-48. The sky-is-falling arguments submitted by Monsanto and supporting amici bear striking resemblance to the "inducement test" this Court rejected in *Bates*. *Id*. at 445-46. There, this Court declined to adopt the lower court's reasoning that preemption could be inferred where state tort law could induce a manufacturer to alter its label. *Id*. Here, arguments alleging downstream effects of litigation have no place in the preemption analysis because they are not "supported by either the text or the structure" of FIFRA. *Id*.

CONCLUSION

The Missouri Court of Appeals' judgment should be affirmed.

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