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 FOR *AMICI CURIAE* STATES OF TEXAS, FLORIDA, AND OHIO IN SUPPORT OF RESPONDENT AND AFFIRMANCE

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INTRODUCTION AND INTERESTS OF THE AMICUS CURIAE

Amici curiae are the States of Texas, Florida, and Ohio. *Amici* States take no position on the merits of the underlying claims, including whether exposure to glyphosate caused respondent's cancer and whether the use of glyphosate-based pesticides is desirable as a matter of policy.

Amici States write instead to emphasize that these decisions should be made under state law, not by a federal agency. State tort law is the traditional regulatory scheme for poisonous substances, and it serves vital compensatory and deterrent purposes.

In our federalist system, "both the Federal Government and the States wield sovereign powers." *Murphy* v. *Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453, 470 (2018). The States "retai[n] 'a residuary and inviolable sovereignty.'" The Federalist No. 39, p. 245 (C. Rossiter ed. 1961) (J. Madison). One key aspect of this sovereignty is protecting state citizens from, and remedying harms by, dangerous products through state tort suits. See, *e.g.*, *Medtronic, Inc.* v. *Lohr*, 518 U.S. 470, 475 (1996) ("Throughout our history the several States have exercised their police powers to protect the health and safety of their citizens."). The erroneous preemption of state law represents an intrusion on state sovereignty in violation of our constitutional structure.

Preemption through federal agency action poses particular threats to state sovereignty: "Federal administrative action is, in important ways, considerably more threatening to state autonomy than legislation is." Ernest A. Young, *Executive Preemption*, 102 Nw. U. L. Rev. 869 (2008). "When executive actors add preemptive

mandates not clearly set forth in the underlying statute, the notice and deliberation facilitated by clear textual statement is lacking." *Id.* at 878.

When this Court last addressed the preemptive effects of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136 *et seq.*, it recognized an important and ongoing role for "common-law suits to enforce the [federal] prohibition on misbranding." *Bates* v. *Dow Agrosciences LLC*, 544 U.S. 431, 451 (2005). FIFRA "authorizes a relatively decentralized scheme that preserves a broad role for state regulation." *Id.* at 450. Where, as in this case, state law is equivalent to the federal prohibitions on misbranding, it is not preempted.

This Court should adhere to that understanding of FIFRA's regulatory scheme, which respects the balance struck by Congress between state and federal authority.

SUMMARY OF THE ARGUMENT

1. Preemption analysis concerns the proper division of authority between the Federal Government and the States. This Court should be particularly hesitant to find preemption through EPA's registration of a pesticide—the independent action of a federal agency that does not go through notice-and-comment rulemaking. Such decisions by an agency are not subject to the ordinary "political and procedural constraints." Young, *supra*, at 896.

The regulation of the distribution of poisonous substances falls squarely within the historic police powers of the States. "Prior to 1910 the States provided the primary and possibly the exclusive source of regulatory control over the distribution of poisonous substances." *Bates*, 544 U.S. at 437.

As our federal system permits and encourages, States have separately developed their product liability laws according to their own policy preferences. Texas, for example, applies a rebuttable presumption that a product manufacturer or seller is not liable if its label complies with safety regulations promulgated by the federal government. Tex. Civ. Prac. & Rem. Code § 82.008(a). Other States account for compliance with federal standards in different ways, such as making compliance a factor in determining whether a product is defective. Ohio Rev. Code § 2307.75(B)(4). And more recently, some States have adopted laws immunizing registered pesticides from failure-to-warn claims if their labels were approved by EPA. This Court should permit this development of state law to continue.

2. In *Bates*, this Court correctly interpreted FIFRA to allow for state-law claims that are substantially equivalent to federal misbranding standards. FIFRA "does

not . . . pre-empt any state rules that are fully consistent with federal requirements." 544 U.S. at 452. And under federal law, a pesticide is misbranded if its label "does not contain a warning or caution statement which may be necessary . . . to protect health." 7 U.S.C. § 136(q)(1)(G).

Critically, a registered pesticide sold with a label approved by EPA can still be misbranded in violation of federal law. Congress provided, "In no event shall registration of an article be construed as a defense for the commission of any offense under this subchapter." 7 U.S.C. § 136a(f)(2). Monsanto suggests that this provision narrowly applies only to "an allegation that a product violates the terms of that registration," Pet'r Br. 39, but this is textually untenable: "any offense" means "any offense," including misbranding.

As this Court explained in *Bates*, liability under state tort law has the salutary effect of encouraging manufacturers to change their labels. FIFRA "contemplates that pesticide labels will evolve over time," and state tort suits "can serve as a catalyst in this process." 544 U.S. at 451. State tort actions could "aid in the exposure of new dangers associated with pesticides" and might "lead manufacturers to petition EPA to allow more detailed labelling of their products" or prompt EPA to "decide that revised labels are required." *Id.* (quoting *Ferebee* v. *Chevron Chem. Co.*, 736 F.2d 1529, 1541 (D.C. Cir. 1984)). This could not occur if these suits were preempted by EPA registration of a pesticide.

3. Not only does state tort law provide important incentives for manufacturers to comply with federal prohibitions on misbranding, but it compensates victims of dangerous products and properly shifts costs. *Bates* rejected concerns raised about the risk of inconsistent jury

verdicts: Although "properly instructed juries might on occasion reach contrary conclusions on a similar issue of misbranding, there is no reason to think such occurrences would be frequent or that they would result in difficulties beyond those regularly experienced by manufacturers of other products that every day bear the risk of conflicting jury verdicts." *Id.* at 452.

To the extent that such verdicts have negative policy results, the proper solution is the political process. Congress has considered—but has not enacted—amendments that would broaden the preemptive effect of EPA's registration of pesticides. And at least two States, North Dakota and Georgia, have adopted laws in which EPA labeling provides a defense to failure-to-warn claims for pesticide manufacturers. This Court should continue to allow the States to develop their own laws based on their own views of what will best protect their citizens, and it should reaffirm *Bates*'s view of the broad role that state tort litigation plays in FIFRA's regulatory scheme.

ARGUMENT

I. States Have Historically Protected Their Citizens from Poisonous Substances.

A. The adoption of the Constitution "split the atom of sovereignty" between the federal government and the States, *Gamble* v. *United States*, 587 U.S. 678, 688 (2019) (internal quotation marks omitted), which "retai[n] a residuary and inviolable sovereignty." The Federalist No. 39, p. 245 (C. Rossiter ed. 1961) (J. Madison).

In contrast to our National Government of limited powers, the States "have broad authority to enact legislation for the public good." *Bond* v. *United States*, 572 U.S. 844, 854 (2014). "[D]iscerning the proper division of authority between the Federal Government and the States" presents "perhaps our oldest question of constitutional law." *New York* v. *United States*, 505 U.S. 144, 149 (1992).

This Court frequently confronts the division of authority between state and federal authority in the context of preemption. Although the Supremacy Clause provides that when state and federal law conflict, the federal law prevails as the "supreme Law of the Land," U.S. Const. art. VI, cl. 2, "preemption of state laws represents 'a serious intrusion into state sovereignty.'" *Va. Uranium, Inc.* v. *Warren*, 587 U.S. 761, 773 (2019) (lead opinion of Gorsuch, J.) (quoting *Medtronic, Inc.* v. *Lohr*, 518 U.S. 470, 488 (1996) (plurality opinion)).

Preemption must rest on the intent of Congress, not on the policy preferences of executive officers. *Kansas* v. *Garcia*, 589 U.S. 191, 212 (2020). Permitting independent agency action to preempt state laws "is extremely problematic for reasons that should be obvious." Young, *Executive Preemption*, *supra*, at 895. "When the agency

has independent preemptive authority, the preemption decision is made outside the political and procedural constraints in which modern federalism doctrine places its primary hope." *Id.* at 896. As Professor Young suggests, this Court should require even greater clarity from Congress before permitting independent agency decisions—such as registration of a pesticide by EPA—to preempt state law.

B. As this Court recognized in *Bates* v. *Dow Agrosciences LLC*, 544 U.S. 431 (2005), the regulation of the distribution of poisonous substances falls squarely within the historic police powers of the States to enact regulations for the public good. "Prior to 1910 the States provided the primary and possibly the exclusive source of regulatory control over the distribution of poisonous substances." *Id.* at 437.

"[State] [c]ourts entertained tort litigation against pesticide manufacturers since well before the passage of FIFRA in 1947." *Id.* at 440–441 (citing *Mossrud* v. *Lee*, 157 N.W. 758 (Wis. 1916); *W. Disinfecting Co.* v. *Plummer*, 44 App. D.C. 345 (1916); *McCrossin* v. *Noyes Bros. & Cutler, Inc.*, 173 N.W. 566 (Minn. 1919); *White* v. *Nat'l Bank of Com.*, 278 P. 915 (Cal. App. 1929)).

One of the earliest product liability cases, *Thomas* v. *Winchester*, 6 N.Y. 397 (1852), concerned a jar of belladonna, a deadly poison, erroneously labeled and sold as a jar of dandelion. *Id.* at 405. The New York Court of Appeals rejected the requirement of privity of contract, holding that the manufacturer of the mislabeled product could be liable to a remote purchaser: "The defendant's duty arose out of the nature of his business and the danger to others incident to its mismanagement. Nothing but mischief like that which actually happened could

have been expected from sending the poison falsely labeled into the market; and the defendant is justly responsible for the probable consequences of the act." *Id.* at 410.

In the following years, the law of product liability developed state by state, with different States adopting different rules over time. See generally David G. Owen, *The Evolution of Products Liability Law*, 26 Rev. Litig. 955 (2007); William L. Prosser, *The Assault Upon the Citadel (Strict Liability to the Consumer)*, 69 Yale L.J. 1099 (1960). As our federal structure contemplates, each State has been free to develop its product liability laws based on its own view of the public good, including its own view of the appropriate effect to be given to compliance with federal regulations and safety standards.

Under Texas law, for example, there is "a rebuttable presumption that the product manufacturer or seller is not liable for any injury" caused by labeling "if the product manufacturer or seller establishes that the product's . . . labeling . . . complied with mandatory safety standards or regulations adopted and promulgated by the federal government . . . that were applicable to the product at the time of manufacture and that governed the product risk that allegedly caused harm." Tex. Civ. Prac. & Rem. Code § 82.008(a).

A plaintiff can rebut this presumption "by establishing that: (1) the mandatory federal safety standards or regulations applicable to the product were inadequate to protect the public from unreasonable risks of injury or damage; or (2) the manufacturer, before or after marketing the product, withheld or misrepresented information or material relevant to the federal government's or

agency's determination of adequacy of the safety standards or regulations at issue in the action." *Id.* § 82.008(b).

As the Texas Supreme Court explained, determining whether the presumption applies requires "interpret[ing] a government agency's regulation in order to determine its relation to the relevant product risk." *Am. Honda Motor Co., Inc.* v. *Milburn*, 696 S.W.3d 612, 623 (Tex. 2024). And if the presumption applies, it can be overcome with evidence of a "comprehensive review of the various factors and tradeoffs [the agency] considered in adopting that safety standard" or, potentially, evidence that "the standard was no longer adequate to protect the public from unreasonable risks of injury at the time of the compliant product's manufacture." *Id.* at 631; see also *id.* at 632 ("[N]o evidence was presented that NHTSA engaged in an improper or erroneous decision-making process in approving the regulation . . . , and no evidence was presented of post-approval developments that call the regulation's adequacy into question."). This burden-shifting scheme represents "a policy decision" by the Texas Legislature. *Id.* at 631.

Other States have made different policy decisions. Several States employ a presumption similar to that of Texas without stating precisely how it can be rebutted. *Id.* at 626 n.16 (citing statutes). Kansas creates a presumption that can be rebutted with evidence "that a reasonably prudent product seller could and would have taken additional precautions." Kan. Stat. § 60-3304(a). Ohio, in contrast, considers "[t]he extent to which [a product's] design or formulation conformed to any applicable public or private product standard that was in effect when the product left the control of its manufacturer" as part of determining whether a product is defective. Ohio Rev. Code § 2307.75(B)(4). And recently, as

detailed below, some States have concluded that manufacturers of pesticides should be immune from failure-to-warn claims if their labels were approved by EPA in registering the pesticide.

Each State is free to adopt a role for federal standards in its product liability laws consistent with its own views and policy preferences. The development of state tort law in this area exemplifies the laboratories of democracy experimenting as the Framers intended.

II. Congress Did Not Preempt State Tort Claims that Are Equivalent to Federal Misbranding Prohibitions.

This Court's analysis in *Bates* recognized that Congress did not intend to deprive the States of their historic role in regulating dangerous poisons. See 544 U.S. at 449 (noting "[t]he long history of tort litigation against manufacturers of poisonous substances"). This Court concluded that Congress did not intend to "deprive injured parties of a long available form of compensation" through state tort litigation. *Id.*

Consistent with a posture of cooperative federalism, FIFRA contains a "narrow" provision that preempts state-law "requirements for labeling or packaging" that are "in addition to or different from those required under" the statute. *Id.* at 443, 452 (quoting 7 U.S.C. § 136v(b)). Section 136v(b) applies if a State attempts to "prescrib[e] the color, font size, and wording of warnings" or when a state "statutory or common-law rule . . . impose[s] a labeling requirement that diverges from those set out in FIFRA and its implementing regulations." *Id.* at 452. "For example, a 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 because it is inconsistent with" EPA regulations that "specifically assign[] these warnings to particular classes of pesticides based on their toxicity." *Id.* at 453. But as *Bates* recognized, FIFRA "does not, however, pre-empt any state rules that are fully consistent with federal requirements." *Id.* at 452.

As the Missouri state court held, Missouri law is substantively identical to the federal standard. *Durnell* v. *Monsanto Co.*, 707 S.W.3d 828, 832–833 (Mo. Ct. App. 2025) (citing *Moore* v. *Ford Motor Co.*, 332 S.W.3d 749 (Mo. 2011)). "Missouri's strict liability failure to warn cause of action is fully consistent with federal requirements under section 136(q)(1)(G) of FIFRA." Pet. App. 6. "A claim for strict liability failure to warn under Missouri law requires a plaintiff to prove, inter alia, that a defendant did not give adequate warning of the danger of a product[.]" Pet. App. 6 (internal quotation marks omitted).This requirement is substantively equivalent to FIFRA's requirement that a pesticide is misbranded if its label "does not contain a warning or caution statement which may be necessary . . . to protect health." 7 U.S.C. § 136(q)(1)(G). Any failure to label a pesticide that gives rise to a claim under state law would also mean that the pesticide violated federal law. Because Missouri law is "fully consistent with federal requirements," it is not preempted. *Bates*, 544 U.S. at 452.

Rather than the federal misbranding standard, Monsanto's argument focuses on EPA's registration of a pesticide: "[T]he relevant federal 'requirements' are not merely the general misbranding standards set out in FIFRA. They include the Roundup-specific labeling requirements imposed as part of the pesticide registration process." Pet'r Br. 37. This registration, Monsanto

contends, preempts any state law claim based on the inadequacy of the label.

Monsanto's argument assumes that a pesticide registered with EPA and bearing the approved label is, necessarily, not "misbranded" under FIFRA. But that assumption cannot be harmonized with the text of the statute or with this Court's decision in *Bates*.

Congress made clear the limited effect of registration by EPA:

> In no event shall registration of an article be construed as a defense for the commission of any offense under this subchapter. 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 the subchapter.

7 U.S.C. § 136a(f)(2). This provision prevents registration from being treated as a defense to misbranding. In other words, it is perfectly consistent for a pesticide simultaneously (1) to bear the label registered by EPA; and (2) to violate the federal prohibition against misbranding. And if the pesticide violates the federal prohibition against misbranding, then a substantively equivalent state tort claim is not preempted.

Monsanto contends that section 136a(f)(2) "merely 'stands for the unremarkable proposition that a registration is not a defense against an allegation that a product violates the terms of that registration.'" Pet'r Br. 39 (quoting *Reckitt Benckiser, Inc.* v. *Jackson*, 762 F. Supp. 2d 34, 45 (D.D.C. 2011)); see also Gov't Br. 26 (same). But giving the provision this limited effect would conflict with the statute's plain text, which provides that registration is not a defense to "*any offense* under this subchapter."

7 U.S.C. § 136a(f)(2) (emphasis added). Registration is a defense to an allegation that a product violates the terms of that registration; not a defense to misbranding; and not a defense to any other offense.

FIFRA's criminal prohibitions confirm the distinction between registration and misbranding. It is unlawful to distribute or sell "any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration." 7 U.S.C. § 136j(a)(1)(B). According to Monsanto, this provision "makes it illegal to distribute a pesticide with labeling substantially different from the EPA approved label." Pet'r Br. 25.

But FIFRA contains a separate prohibition on selling "any pesticide which is . . . misbranded." 7 U.S.C. § 136j(a)(1)(E). If a pesticide bearing the EPA-approved label could not be "misbranded," then this separate prohibition would be surplusage because a pesticide would be misbranded if and only if its label did not match the registered label. The separate criminal prohibitions confirm that a product can be misbranded, regardless of registration.

To the extent that there is a conflict between state law and a federal duty to use the label approved by EPA as part of a pesticide's registration, there is an identical conflict in the federal law's requirement that a pesticide "contain a[ny] warning or caution statement which may be necessary . . . to protect health and the environment." 7 U.S.C. § 136(q)(1)(G). Because registration by EPA shall not "be construed as a defense" to any offense, including misbranding, 7 U.S.C. § 136a(f)(2), any pesticide with a label that does not contain these necessary

warnings violates federal law, regardless of registration by EPA, and state tort litigation applying the substantively equivalent standards as federal misbranding law is not preempted.

This aspect of federal law answers Monsanto's impossibility preemption argument. Even if implied preemption operates differently in other contexts, *PLIVA, Inc.* v. *Mensing*, 564 U.S. 604 (2011), in this context, federal law imposes precisely the same allegedly "impossible" duty as state law: not to sell a misbranded pesticide. That is, to sell a pesticide with any warning labels necessary to protect users' health. 7 U.S.C. § 136(q)(1)(G). State tort law that applies a standard substantively equivalent to FIFRA's misbranding standard does not impose any duty that is not already imposed by federal law.

A contrary holding would be inconsistent with *Bates*, which recognized that FIFRA "authorizes a relatively decentralized scheme that preserves a broad role for state regulation." *Bates*, 544 U.S. at 450. FIFRA preemption is "narrow." *Id.* at 452.

Although "[s]tate-law requirements must also be measured against any relevant EPA regulations that give content to FIFRA's misbranding standards," *id.* at 453, registration of a pesticide is not a "regulation." See also *id.* at 452 ("[Section 136v(b)] pre-empts any statutory or common-law rule that would impose a labeling requirement that diverges from those set out in FIFRA and its implementing regulations."); *id.* at 455 (Thomas, J., concurring in the judgment in part and dissenting in part) ("States are free to impose liability predicated on a violation of the federal standards set forth in FIFRA and in any accompanying regulations promulgated by the Environmental Protection Agency[.]").

If pesticide registrations constitute regulations that refine FIFRA's misbranding standards and preempt contrary state law, then *Bates* was incorrect when it stated that "there appear to be relatively few regulations that refine or elaborate upon FIFRA's broadly phrased misbranding standards." *Id.* at 453 n.28. Far from there being a few refinements of the broad misbranding standards, every registration of every pesticide would constitute such a "refinement."

Nor would Monsanto's rule leave room for the broad exercise of state tort power recognized in *Bates.* This Court recognized that "[p]rivate remedies that enforce federal misbranding requirements" would aid "the functioning of FIFRA." *Id.* at 451. State tort actions could "aid in the exposure of new dangers associated with pesticides" and might "lead manufacturers to petition EPA to allow more detailed labelling of their products" or prompt EPA to "decide that revised labels are required in light of the new information that has been brought to its attention through common law suits." *Id.* (quoting *Ferebee* v. *Chevron Chem. Co.*, 736 F.2d 1529, 1541 (D.C. Cir. 1984)). FIFRA "contemplates that pesticide labels will evolve over time," and state tort suits "can serve as a catalyst in this process." *Id. Bates* specifically contemplated that manufacturers with registered pesticides might face liability for misbranding under state tort law and that this liability might prompt a change in the label. Adopting Monsanto's interpretation would prevent state tort law from serving these purposes.

Statutory *stare decisis* should prevent this Court from altering the interpretation of FIFRA adopted in *Bates* and eliminating the role of state tort law recognized in that decision.

Preemption concerns are particularly heightened because this case involves alleged preemption by a federal agency rather than a federal statute. "Federal administrative action is, in important ways, considerably more threatening to state autonomy than legislation is." Young, *Executive Preemption*, *supra*, at 869. The Court should therefore be skeptical of requests to allow agency action to preempt state law and remedies that have been part of the regulatory scene for more than a century.

The Supremacy Clause "confers supremacy over state law only on '[t]his Constitution, and the Laws of the United States[,] which shall be made in Pursuance thereof'—not on administrative actions taken pursuant to procedures that do not appear in the founding document." *Id.* at 895 (quoting U.S. Const. art. VI, cl. 2). The agency actions that Monsanto relies on to support its express and implied preemption arguments are not formal regulations or determinations and thus lack "the force of law" needed to preempt state law. See *Merck Sharp & Dohme Corp.* v. *Albrecht*, 587 U.S. 299, 315–316 (2019). EPA has *not* issued a regulation rejecting proposed cancer warnings on glyphosate labels.

Although EPA is authorized to review and approve pesticide labels, 7 U.S.C. § 136a(a), Congress has not expressly given EPA power to preempt state law, cf., *e.g.*, 49 U.S.C. § 5125(d) (authorizing the Secretary of Transportation to issue decisions preempting state laws regarding transportation of hazardous materials). EPA's approval of a pesticide's label is neither a defense to misbranding, 7 U.S.C. § 136a(f)(2), nor an impediment to a State's right to "regulate the sale or use" of glyphosate within its borders, 7 U.S.C. § 136a(a). This Court should be reluctant to find preemption from these decisions.

Preempting state common law through EPA's registration and labeling decisions would present significant federalism concerns. "Federal agencies, after all, have no mandate to represent state interests and possess strong countervailing incentives to maximize their own power and jurisdiction." Young, *Executive Preemption*, *supra*, at 878. Further, "[t]he states have no direct role in the composition and selection of federal administrative agencies, and much of the point of such agencies is to be more efficient lawmakers than Congress." *Id.* at 869–870 (internal quotation marks and footnote omitted). "Agency action thus evades both the political and the procedural safeguards of federalism." *Id.* at 870.

Indeed, FIFRA contemplates that EPA's registration and labeling determinations will be incomplete. That is why registration is no defense to misbranding. 7 U.S.C. § 136a(f)(2). The manufacturer drafts the label. 7 U.S.C. § 136a(c)(1)(C); 40 C.F.R. § 152.50(e). It is also why FIFRA imposes a duty on manufacturers to report information regarding adverse effects to EPA. 7 U.S.C. § 136d(a)(2). In contrast to agency rules or regulations that set forth fixed standards or statements of policy, "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. It makes little sense to displace state tort remedies simply because a product's label complies with what the agency approved—particularly when a jury has been presented with compelling evidence that, in the time since the label was approved, a plaintiff has been harmed by a failure to warn of a hidden danger.

EPA's own view on whether a cancer warning is consistent with FIFRA's labeling standards has oscillated. Since the issuance of the 2015 report by the International

Agency for Research on Cancer concluding that glyphosate is "probably carcinogenic to humans," EPA appears to have switched its position with each change in administration. In response to a court order regarding California Proposition 65 warnings, the first Trump administration issued a letter taking the position that such a warning would be "false or misleading" and thus misbranded under FIFRA. See Ltr. from Michael Goodis, Dir., Registration Division, Office of Pesticide Programs, EPA (Aug. 7, 2019), https://www.epa.gov/sites/default/files/2019-08/documents/glyphosate_registrant_letter_-_8-7-19_-_signed.pdf. Under the Biden administration, EPA took the opposite view, issuing a letter stating that a certain formulation of one such warning "would not be considered false and misleading." See Ltr. from Michael Freedhoff, Assistant Administrator, Office of Chemical Safety and Pollution Prevention, EPA (Apr. 8, 2022), https://oehha.ca.gov/sites/default/files/media/downloads/crnr/usepaaafreedhofftooehhadirzeiseglyphosate40822.pdf. The second Trump administration withdrew the Biden administration's letter. EPA, *Letter to California's Office of Environmental Health Hazard Assessment on California Proposition 65* (May 9, 2025), https://www.epa.gov/ingredients-used-pesticide-products/letter-californias-office-environmental-health-hazard. This vacillation reinforces that preemption should arise from statute or regulations, not from agency decisions that lack the force of law. As this Court recognized, "[t]he Supremacy Clause gives priority to 'the Laws of the United States,' not the criminal law enforcement priorities or preferences of federal officers." *Garcia*, 589 at 212.

III. Preserving State Tort Law Serves Important Public Policy.

Bates correctly recognized that continued operation of state tort law in this area serves valuable public policy goals. "Private remedies that enforce federal misbranding requirements would seem to aid, rather than hinder, the functioning of FIFRA," 544 U.S. at 451, including by "aid[ing] in the exposure of new dangers associated with pesticides," encouraging "manufacturers to petition EPA to allow more detailed labelling of their products," and "provid[ing] manufacturers with added dynamic incentives to continue to keep abreast of all possible injuries stemming from use of their product so as to forestall such actions through product improvement." *Id.* (quoting *Ferebee*, 736 F.2d 1541–1542).

A. Unlike enforcement by EPA, state tort law provides a remedy to an injured individual. "Compensation of persons injured by wrongdoing is one of the generally accepted aims of tort law." Dan B. Dobbs, *The Law of Torts* § 13 (2d ed.). EPA is authorized to stop sales of and seize pesticides, 7 U.S.C. § 136k, and to impose penalties for a FIFRA violation, 7 U.S.C. § 136*l*. But FIFRA and EPA do not provide redress to persons injured by a manufacturer's failure to warn. FIFRA does not authorize private remedies, and a private person cannot sue EPA for a defective label on a pesticide. See *Voss* v. *Saint Martin Co-op.*, 376 Fed. Appx. 662, 663 (8th Cir. 2010) (per curiam) (FTCA claim barred by discretionary-function exception). Without a state tort remedy, a victim of a product misbranded in violation of federal law could go entirely uncompensated.

Tort law ensures proper cost-shifting. As every law student learns, one goal of tort law is to ensure that the

party responsible for the harm, not the party who was harmed, is the one that pays for that harm. Between the two—a company that sells a product known to cause cancer, and an individual who uses that product unaware of the danger—tort law lays the bill at the foot of the one who is also in the best position to prevent the harm: the manufacturer who drafts the label. In contrast, "[f]ederal lawmaking culture is oriented to regulation, not to private tort rights." Dobbs, *The Law of Torts* § 474. "In many instances when state tort rights are displaced, no new comparable federal tort right is substituted. Instead, the manufacturer is subjected to regulation without being subjected to liability." *Id.*

As this Court noted in *Bates*, state tort law often creates a greater deterrent than federal regulatory oversight. A warning from a regulator or even a penalty, see 7 U.S.C. § 136*l*, pales in comparison to the potential for a "nuclear" verdict by a jury, see Richard Vanderford, *'Nuclear' Jury Verdicts Rise Alongside American Anger*, Wall St. J. (July 8, 2024). And a public jury trial is often riskier to a company's reputation than private negotiations with the regulatory agency.

State tort law creates incentives for manufacturers to quickly disclose information about dangerous products. Although manufacturers have an ongoing duty to alert EPA to any "additional factual information regarding unreasonable adverse effects," 7 U.S.C. § 136d(a)(2), a formal review of FIFRA registration is required only every 15 years, 7 U.S.C. §§ 136a(g)(1)(A)(iii)(II) & (iv). Even then, the registration and label-approval process largely depends on information supplied by the manufacturer, see 40 C.F.R. § 152.50(e), which has an incentive not to probe too deeply into possible product defects. Industry members largely control the data submitted to

regulators like EPA. See Teresa Moran Schwartz, *The Role of Federal Safety Regulations in Products Liability Actions*, 41 Vand. L. Rev. 1121, 1147 (1988). Federal agencies often "ha[ve] limited resources to monitor" all regulated products in the market, "especially in the post-marketing phase as new risks emerge." *Wyeth* v. *Levine*, 555 U.S. 555, 578–579 (2009). "State tort suits uncover unknown . . . hazards and provide incentives for . . . manufacturers to disclose safety risks promptly." *Id.* at 579.

"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. State failure-to-warn actions "aid in the exposure of new dangers associated with pesticides . . . [and] may lead manufacturers to petition EPA to allow more detailed labelling of their products." *Id.* (quoting *Ferebee*, 736 F.2d at 1541). "[T]he specter of damages actions may provide manufacturers with added incentives to continue to keep abreast of all possible injuries stemming from use of their product so as to forestall such [tort] actions through product improvement." *Id.* (quoting *Ferebee*, 736 F.2d at 1541–1542). In sum, "state law offers an additional, and important, layer of consumer protection that complements [federal] regulation." *Wyeth*, 555 U.S. at 579.

B. This Court considered and rejected contrary policy arguments in *Bates*, noting that "Dow and the United States exaggerate the disruptive effects of using common-law suits to enforce the prohibition on misbranding." 544 U.S. at 451. There was no evidence that "tort suits led to a 'crazy-quilt' of FIFRA standards or otherwise created any real hardship for manufacturers or for EPA." *Id.* at 451–452. And although "properly instructed juries might on occasion reach contrary conclusions on a

similar issue of misbranding, there is no reason to think such occurrences would be frequent or that they would result in difficulties beyond those regularly experienced by manufacturers of other products that every day bear the risk of conflicting jury verdicts." *Id.* at 452.

C. Any policy concerns are more properly addressed through the political process. The future of glyphosate remains an ongoing topic of political discussion. Several amici have filed briefs urging the importance of glyphosate and Monsanto to our country's agricultural industry. President Trump has issued an executive order declaring glyphosate to be essential to national security. See Executive Order No. 14387, *Promoting the National Defense by Ensuring an Adequate Supply of Elemental Phosphorus and Glyphosate-Based Herbicides* (Feb. 18, 2026).

Monsanto is actively engaged in lobbying at the state and federal level. As part of several "measures to manage and mitigate the risks of Roundup™ litigation," Monsanto's parent company, Bayer, has joined a "coalition . . . to advocate for the uniformity of labeling laws" and "achieve legislative certainty around the force of labeling regulations" at the federal and state level. Bayer, *Managing the Roundup™ Litigation*, https://www.bayer.com/en/managing-the-roundup-litigation (last accessed Mar. 31, 2026).

Recent congressional activity confirms that efforts to expand EPA preemption are ongoing. In July 2025, an appropriations bill was introduced in the House containing a provision that no appropriated funds "may be used to issue or adopt any guidance or any policy, take any regulatory action, or approve any labeling or change to such labeling that is inconsistent with or in any respect

different from the conclusion of—(a) a human health assessment performed pursuant to [FIFRA]; or (b) a carcinogenicity classification for a pesticide." See H.R. 4754, 119th Cong. § 453 (July 24, 2025); H.R. Rep. No. 119–215 (July 24, 2025). A coalition founded by Bayer, Modern Ag Alliance, published a vigorous defense of Section 453. See Modern Ag Alliance, *Myth-Fact: Section 453 of the Interior Appropriations Bill* (Oct. 24, 2025), https://modernagalliance.org/news-resources/myth-fact-section-453. Legislators ultimately removed the provision when the bill passed in January 2026. See Rachel Frazin, *Funding Bill Excludes Controversial Pesticide Provision Hated by MAHA*, The Hill (Jan. 5, 2026), https://thehill.com/policy/energy-environment/5673246-maha-pesticide-epa-section-453.

In February 2026, another attempt was made to pass a "uniformity" provision. Section 10205 of the Farm, Food, and National Security Act of 2026 provides for "uniformity in pesticide labeling nationally" and aims to "prohibit any State . . . or a court from directly or indirectly imposing . . . any requirements for, . . . or hold liable any entity for failing to comply with requirements that would require labeling or packaging that is in addition to or different from [that] approved by [EPA]." See H.R. 7567, 119th Cong. § 10205 (Feb. 13, 2026). The Farm Bill, if enacted, would also completely preempt local regulation of pesticides. See *id.* § 10206. On March 4, 2026, the Farm Bill passed the House Committee on Agriculture with bipartisan support. The bill remains pending in the House.

Similarly, at the state level, North Dakota and Georgia recently passed laws establishing EPA labeling compliance as a defense to failure-to-warn claims against pesticide manufacturers. See Act of Apr. 23, 2025, ch.

308, 2025 N.D. Laws 1063 (H.B. 1318) (*codified at* N.D. Cent. Code § 28-01.3-11) ("[A]ny pesticide . . . which displays a label approved by [EPA] in registering the pesticide . . . is sufficient to satisfy any requirement for warning or labeling regarding health or safety under this chapter and any other provision or doctrine of state law concerning the duty to warn or label, or any other common law duty to warn."); Act of May 9, 2025, Act 94, 2025 Ga. Laws 387 (S.B. 144) (*codified at* Ga. Code § 2-7-171 (similar)).

Several other States are considering similar legislation. See Brigit Rollins, *2026 Update on State Pesticide Liability Limitation Bills*, Nat'l Agric. L. Ctr. (Feb. 17, 2026), https://nationalaglawcenter.org/2026-update-on-state-pesticide-liability-limitation-bills.

These state laws exemplify how federalism should operate. Some States have been persuaded, as a matter of policy, that pesticides displaying labels approved by EPA should satisfy any duty to warn under their state laws. Other States have chosen to continue to allow claims based on failure to warn that are consistent with federal misbranding requirements, as this Court permitted in *Bates*. Congress has not enacted a statute that would give registration by EPA the preemptive effect urged by Monsanto, and this Court should continue to allow these experiments to be conducted in the laboratories of democracy.

CONCLUSION

For the reasons above, this Court should affirm.

Respectfully submitted,

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