

No. 24-1068

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IN THE  
**Supreme Court of the United States**

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MONSANTO COMPANY,  
*Petitioner,*

v.

JOHN L. DURNELL,  
*Respondent.*

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**On Writ of Certiorari  
to the Missouri Court of Appeals**

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**BRIEF FOR 36 STATE LEGISLATORS AS *AMICI  
CURIAE* IN SUPPORT OF RESPONDENT**

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**BRIEF FOR 36 STATE LEGISLATORS AS *AMICI  
CURIAE* IN SUPPORT OF RESPONDENT**

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**INTEREST OF *AMICI CURIAE*<sup>1</sup>**

Amici are state legislators—Republican, Democrat, Independent—who represent constituents that have been deeply impacted by Monsanto’s Roundup litigation. Many of their districts include large numbers of farms and see widespread glyphosate use. Amici include: Senators Nick Schroer and Rick Brattin of Missouri; Representatives Mazzie Christensen, Jeff Coleman, Michael Davis, Tricia

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<sup>1</sup> Pursuant to this Court’s Rule 37.6, *amici* state that no counsel for a party authored this brief in whole or in part, that no such counsel or party made a monetary contribution intended to fund the preparation or submission of the brief, and that no person other than *amici* and their counsel made such a monetary contribution.

Byrnes, Ben Keathley, Burt Whaley, Bob Titus, Keith Elliott, and Lisa Durnell of Missouri; Representative Carolyn Hugley of Georgia; Senator James Ruchti of Idaho; Senator Art Staed of Iowa; Representative Bill Pluecker of Maine; Senator Sara N. Love of Maryland; Delegates Jen Terrasa, Ryan Spiegel, and Sheila Ruth of Maryland; Representatives Veronica Paiz and Carrie Rheingans of Michigan; Senators John Marty and Jennifer McEwen of Minnesota; Representatives David Gottfried, Ned Carroll, Bianca Virnig, Rick Hansen, Kristi Pursell, and Sydney Jordan of Minnesota; Representative Pricey Harrison of North Carolina; Senators Ellie Boldman and Andrea Olsen of Montana; Senator Margo Juarez of Nebraska; Representative Angelica Rubio of New Mexico; Representative Liz Berry of Washington; and Senator Brad Pfaff of Wisconsin.

Collectively, amici have many decades of experience drafting and passing important legislation on the topics of public health, safety, and welfare. For example, in Missouri alone, amici have sponsored, considered, and enacted legislation relating to (among other topics) hazardous waste disposal, see H.B. 516, 103d Gen. Assemb., 1st Reg. Sess. (Mo. 2025); newborn health screening, see S.B. 230, 97th Gen. Assemb., 1st Reg. Sess. (Mo. 2013); and veterans' mental health, see H.B. 262, 103d Gen. Assemb., 1st Reg. Sess. (Mo. 2025); H.B. 1495, 102d Gen. Assemb., 2d Reg. Sess. (Mo. 2024).

Given their expertise in crafting legislation responsive to health and safety issues, amici believe that state legislatures play a critical role in addressing the important public policy issues that affect Americans' everyday lives. As state lawmakers, amici acutely understand—and have experienced—the benefits that flow from localized debate and decisionmaking. They correspondingly understand

that their federal counterparts do not lightly—and should not be taken to lightly—displace state law through preemption, much less make preemption depend on administrative agencies’ or executive officials’ decisions rather than statutory text. Although amici may disagree on some policy questions, all agree that state legislatures are best situated to consider the claims and remedies available to their citizens for any injuries arising from glyphosate.

### INTRODUCTION AND SUMMARY OF ARGUMENT

This Court has described federalism as one of the “basic principles \* \* \* embodied in the Constitution.” *Bond v. United States*, 572 U.S. 844, 859 (2014). In our federalist system, the States have expansive sovereign authority, but federal authority is limited to enumerated areas. Recognizing the States’ longstanding role, this Court will not lightly assume that Congress has displaced state authority—much less assume that Congress has made preemption rest on decisions by executive branch officials. To that end, the Court frequently applies what it sometimes calls a “federalism canon,” requiring a “clear and manifest” expression of congressional intent to displace the “historic police powers of the States.” *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947); see *West Virginia v. EPA*, 597 U.S. 697, 744 (2022) (Gorsuch, J., concurring).

This Court recognized a considerable expansion of federal authority during the mid-20th century. But the Court paired that expansion with continued scrutiny of claims that the exercise of federal powers somehow truncates historic state authority. The Court thus “start[s] with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of

Congress.” *Wyeth v. Levine*, 555 U.S. 555, 565 (2009). Just as this Court will not lightly assume Congress has delegated breathtaking authority to federal agencies, *West Virginia*, 597 U.S. at 721, the Court will not lightly assume that Congress has chosen to displace (rather than complement) the States’ broad, historic police powers. That is especially true in traditional areas of state concern, like health and safety, *De Buono v. NYSA-ILA Med. & Clinical Servs. Fund*, 520 U.S. 806, 814 (1997), and state common law, *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996).

Even Monsanto recognizes the significant role of state authority in such areas. In recent years, Monsanto has engaged in an extensive, nationwide lobbying campaign encouraging States to adopt pesticide labeling legislation that would effectively immunize Monsanto (and other pesticide manufacturers) from liability for the failure-to-warn claims like those at issue here. The debate over that legislation has been considerable and heated. Two States have passed such laws; many more have not. Regardless of the outcome, those decisions reflect the considered judgment of the people, exercised through their democratically elected, local representatives. Absent good reason to believe that Congress deliberately terminated that state-level process through statutory text, those decisions must be respected.

Here, federal law prohibits States from “impos[ing] \* \* \* any requirements for labeling or packaging in addition to or different from those *required under this subchapter*.” 7 U.S.C. § 136v(b) (emphasis added). That prohibition is, by its terms, limited to labeling requirements that add to or depart from what the *federal statute itself*—what the specified subchapter—requires. Consequently, so long as state law replicates or is consistent with

federal statutory requirements, it is not preempted. And here, both the federal statute and state common law prohibit the failure to identify the significant cancer risks found by the jury here. Federal law bars it as “misbranding,” while state common law makes it actionable as a tort.

The problem with petitioner’s position is that, rather than compare the federal statute to the requirements of state law, it invokes a *federal agency’s* approval of a label petitioner itself proposed, and *federal agency* assertions about the pesticide’s risks. But Congress did not make federal agency approval of a manufacturer-proposed label preemptive. The meaning and requirements of federal statutes are decided by courts, not the executive branch. Traditional state police powers thus are preempted only if they do not reflect the requirements of the federal *statute*. Here, jury after jury has found that Monsanto failed to disclose a significant risk in its products. Because federal law no more tolerates such omissions than state law, the claim of preemption falls short.

### ARGUMENT

To better protect liberty, the Constitution consistently diffuses power. It establishes a national government of limited powers, while preserving the States as the primary source of governance. “The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.” *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991) (quoting *The Federalist* No. 45, at 292-293 (James Madison) (Clinton Rossiter ed., 1961)). Even within the new national government, the Framers again diffused powers, separating power among three branches—a legislature to make law, an executive branch to implement it, and a judiciary to say what the law is. See

*Hamdan v. Rumsfeld*, 548 U.S. 557, 591 (2006); *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803).

That fundamental design affects this Court’s approach when addressing the argument that a federal law shifts the balance of authority from the States to the national government. For more than a century, this Court has employed a “presumption against preemption” that presumes Congress has not chosen to displace States from their historic police powers, particularly when it comes to matters of health and safety, and state common law. That presumption has particular force where, as here, a party argues that preemption flows not from the text of a statute enacted by Congress—the body that makes the law—but from executive branch officials with authority to implement, but not change, the statute’s meaning.

**I. THE STATES HAVE PRIMARY RESPONSIBILITY FOR ADDRESSING PUBLIC POLICY ISSUES RELATED TO HEALTH, SAFETY, AND WELFARE**

**A. The Framers Recognized the Significant Benefits of Dual Sovereignty**

The Framers understood that preserving state governments as independent sovereigns was necessary to protect individual liberty. Their “unique insight” was that “freedom is enhanced by the creation of two governments, not one.” *Alden v. Maine*, 527 U.S. 706, 758 (1999). They envisioned a “compound republic” with power “divided between two distinct governments.” The Federalist No. 51, at 323 (James Madison) (Clinton Rossiter ed., 1961). Further, it was “of great importance \* \* \* to guard one part of the society against the injustice of the other part.” *Ibid.* Through this division of power, “a double security arises to the rights of the people.” *Ibid.* “By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the

individual from arbitrary power.” *Bond v. United States*, 564 U.S. 211, 222 (2011).

The Framers also limited federal powers to those enumerated in the Constitution. As James Madison observed, “[t]he powers delegated by the proposed Constitution to the federal government are few and defined,” while “[t]hose which are to remain in the State governments are numerous and indefinite.” The Federalist No. 45, at 292 (James Madison) (Clinton Rossiter ed., 1961). In particular, “[t]he powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people.” *Id.* at 292-293. By contrast, the “[t]he Constitution created a Federal Government of limited powers” with the States “retain[ing] substantial sovereign authority.” *Gregory*, 501 U.S. at 457; see also *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 533 (2012). And “[b]ecause the police power is controlled by 50 different States instead of one national sovereign, the facets of governing that touch on citizens’ daily lives are normally administered by smaller governments closer to the governed,” not by a distinct federal entity. *Sebelius*, 567 U.S. at 536.

The design “allows States to respond, through the enactment of positive law, to the initiative of those who seek a voice in shaping the destiny of their own times without having to rely solely upon the political processes that control a remote central power.” *Bond*, 564 U.S. at 221. It also “allows local policies ‘more sensitive to the diverse needs of a heterogeneous society,’ permits ‘innovation and experimentation,’ enables greater citizen ‘involvement in democratic processes,’ and makes government ‘more responsive by putting the States in competition for a mobile citizenry.’” *Ibid.* (quoting *Gregory*, 501 U.S. at

458). As Justice Brandeis memorably put it, federalism allows States to serve as “laborator[ies]” for “novel social and economic experiments without risk to the rest of the country.” *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

Policy experimentation within and among the States does not merely create a laboratory for competing ideas. It also increases competition for business, which may respond differently to varied state economic policies. In other words, “[f]ederalism sets the stage for competition, which facilitates economic growth.” Frank H. Easterbrook, *Federalism and Commerce*, 36 Harv. J.L. & Pub. Pol’y 935, 937 (2012). In short, federalism promotes democratic engagement from individuals and businesses alike. And given state governments’ closer proximity to the public, States can be more innovative than the federal government in responding to localized and heterogenous needs.

Consequently, “the regulation of health and safety matters is primarily, and historically, a matter of local concern” that is governed by the States. *Hillsborough County v. Automated Med. Labs., Inc.*, 471 U.S. 707, 719 (1985). This Court has repeatedly so recognized. 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.”); *Metro. Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 756 (1985) (“The States traditionally have had great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons.” (internal quotation marks and citation omitted)). Likewise, the content of state common law—the vast tapestry of judge-created rules of liability—is a matter for state judiciaries (subject always to potential

statutory intervention by state legislatures). See *Fidelity Union Tr. Co. v. Field*, 311 U.S. 169, 178 (1940).

In *Hillsborough County*, for example, this Court considered whether federal regulations setting minimum standards for the collection of blood plasma preempted local ordinances requiring testing for hepatitis and blood alcohol. 471 U.S. at 710. In finding no preemption, the Court recognized “the presumption that state or local regulation of matters related to health and safety is not invalidated \* \* \* ‘unless that was the clear and manifest purpose of Congress.’” *Id.* at 715. The Court made a similar observation in *Lohr*, where it held that federal law did not preempt state-law tort claims for defective design, manufacturing, and labeling of medical devices. 518 U.S. at 474. While acknowledging the “increasingly significant role” in protecting public health the federal government has played in “recent decades,” the Court again emphasized “the prominence of the States in matters of public health and safety.” *Id.* at 475.

### **B. The Longstanding Presumption Against Preemption Requires Congress To Speak Clearly in Displacing State Law**

Given the States’ historic and predominant role in our federal system, this Court has long applied a “federalism canon”—and a corollary presumption against preemption—when construing federal statutes that touch on traditional areas of State regulation. “[B]ecause the States are independent sovereigns in our federal system,” *Lohr*, 518 U.S. at 485, this Court requires a “clear and manifest” expression of congressional intent to displace the “historic police powers of the States,” *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947); see also *West Virginia v. EPA*, 597 U.S. 697, 744 (2022) (Gorsuch, J., concurring). “To preserve the ‘proper balance between the States and

the Federal Government,’ and enforce limits on Congress’s Commerce Clause power,” courts require themselves to “‘be certain of Congress’s intent’ before finding that [Congress] ‘legislate[d] in areas traditionally regulated by the States.’” *West Virginia*, 597 U.S. at 744 (Gorsuch, J., concurring) (quoting *Gregory*, 501 U.S. at 459-460) (internal quotation marks omitted); see also *Med. Marijuana, Inc. v. Horn*, 604 U.S. 593, 635 (2025) (Kavanaugh, J., dissenting) (“The federalism canon directs courts not to significantly alter the federal-state balance absent ‘exceedingly clear language’ from Congress.” (quoting *Sackett v. EPA*, 598 U.S. 651, 679 (2023)); *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 518 (1992).

Consistent with that, this Court also employs a “presumption against preemption.” “[B]ecause the States are independent sovereigns in our federal system, [courts] have long presumed that Congress does not cavalierly preempt state-law causes of action.” *Lohr*, 518 U.S. at 485. Thus, “[i]n all pre-emption cases, and particularly in those in which Congress has ‘legislated . . . in a field which the States have traditionally occupied,’” the Court “start[s] with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.” *Wyeth v. Levine*, 555 U.S. 555, 565 (2009) (quoting *Lohr*, 518 U.S. at 485); see Robert S. Peck, *A Separation-of-Powers Defense of the “Presumption Against Preemption,”* 84 Tul. L. Rev. 1185, 1195 (2010) (the “presumption [against preemption] comports with the fundamental principles of federalism articulated by the Supreme Court”).

1. The presumption against preemption—and the corresponding requirement that Congress clearly express any intent to displace state law—have deep, historic roots.

This Court's 1821 decision in *Cohens v. Virginia* "can be read as an early statement of the presumption against preemption." Amy Coney Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. Rev. 109, 153 (2010). In *Cohens*, the Court held that a federal statute regulating lotteries did not preempt a state law prohibiting the sale of lottery tickets. Chief Justice Marshall's opinion for the Court explained that "interfer[ing] with the penal laws of a State \* \* \* is a very serious measure, which Congress cannot be supposed to adopt lightly, or inconsiderately." *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 443 (1821). Had Congress intended that result, Chief Justice Marshall reasoned, "the intention would be clearly and unequivocally expressed." *Ibid.* While *Cohens* predates the phrase "presumption against preemption," it reflects the same "impulse" that has always driven the presumption: "to proceed cautiously \* \* \* when a federal statute arguably displaces a state's historic police power." Barrett, *supra*, at 153.

Since *Cohens*, the Court has repeatedly reiterated the rule that state law will not be held displaced absent clear statutory text so directing. In 1902, the Court explained that "[i]t should never be held that Congress intends to supersede, or by its legislation suspend, the exercise of the police powers of the states, even when it may do so, unless its purpose to effect that result is clearly manifested." *Reid v. Colorado*, 187 U.S. 137, 148-150 (1902); see also, e.g., *Savage v. Jones*, 225 U.S. 501, 537-539 (1912) (holding a state statute requiring disclosure of ingredients in medicines for domestic animals was "not in any way in conflict with the provisions" of a federal law regulating the adulteration and misbranding of drugs); *Wyeth*, 555 U.S. at 581 (applying presumption to hold that federal regulation of drug labeling did not preempt state-law failure-to-

warn claims). In sum, this Court “has long recognized the presumption as a feature of our federal system.” Peck, *supra*, at 1194.

Those principles have particular force in fields “traditionally occupied” by the States. That includes health and safety regulation. *Rice*, 331 U.S. at 230; see *Hillsborough County*, 471 U.S. at 716 (showing of implied preemption must be “strong enough to overcome the presumption that state and local regulation of health and safety matters can constitutionally coexist with federal regulation”); *Lohr*, 518 U.S. at 485 (explaining that presumption against preemption is “consistent with both federalism concerns and the historic primacy of state regulation of matters of health and safety”). This Court routinely applies the presumption to the health and safety context. See, e.g., *Hillsborough County*, 471 U.S. at 723 (blood plasma testing); *Lohr*, 518 U.S. at 503 (medical devices); *Altria Grp., Inc. v. Good*, 555 U.S. 70, 91 (2008) (cigarette labeling and advertising); *Wyeth*, 555 U.S. at 581 (drug labeling). And it has special force when it comes to the displacement of state common law as well. See *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 449 (2005).<sup>2</sup>

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<sup>2</sup> There is a “long tradition” of protecting health and safety through “tort law developed and administered at the state level.” Gary T. Schwartz, *Considering the Proper Federal Role in American Tort Law*, 38 Ariz. L. Rev. 917, 922 (1996). “Tort law, since the founding of the Republic, has been an area almost exclusively reserved to the states.” Robert M. Ackerman, *Tort Law and Federalism: Whatever Happened to Devolution?*, 14 Yale L. & Pol’y Rev. 429, 430 (1996). That reflects the Framers’ design: They expected the “administration of tort law” to “take place at the local level.” John C. Toro, *Why Principles of Federalism and Communitarianism Demand That Tort Law Be Left Up to the States*, 7 Geo. J.L. & Pub. Pol’y 655, 658 (2009). And the “long history of tort litigation against manufacturers

2. To dismiss rules of construction governing federal preemption as recent innovations would require overlooking historic roots that span more than two centuries.

Those canons, of course, have been invoked with greater frequency since the 1940s. But that corresponds with the enormous expansion of federal power that occurred during that era. That expansion of federal authority, far beyond anything the Framers could have imagined, makes the canons more important, not less. It is one thing for federal statutes to reach into area after area formerly reserved exclusively to the States. But it is another to lightly infer that Congress has displaced the States from the areas of law that were long reserved for them exclusively. Where Congress intends such a departure from historic practice, it says so clearly. Just as courts presume that Congress does not hide elephants in mouseholes, see *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001), they presume Congress does not fundamentally invert bedrock federalism principles in ambiguous text.

This Court's recent jurisprudence on the major questions doctrine reinforces that conclusion. Under the major questions doctrine, this Court "expect[s] Congress to speak clearly when authorizing an agency to exercise powers of 'vast economic and political significance.'" *Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 594 U.S. 758, 764 (2021) (quoting *Utility Air Regul. Grp. v. EPA*, 573 U.S. 301, 324 (2014)) (internal quotation marks

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of poisonous substances," this Court has explained, "adds force to the basic presumption against pre-emption." *Bates*, 544 U.S. at 449. If Congress "intended to deprive injured parties of a long available form of compensation," it "surely" would express that position "clearly." *Ibid.*

omitted); see *West Virginia*, 597 U.S. at 724 (demanding “clear congressional authorization” before executive branch agencies can wield “highly consequential power”); *id.* at 735 (Gorsuch, J., concurring). That requirement derives from “separation of powers principles.” *West Virginia*, 597 U.S. at 723; *id.* at 737 (Gorsuch, J., concurring) (noting major questions doctrine “protect[s] the Constitution’s separation of powers”). As Justice Gorsuch has explained, “the major questions doctrine and the federalism canon often travel together. When an agency claims the power to regulate vast swaths of American life, it not only risks intruding on Congress’s power, it also risks intruding on powers reserved to the States.” *Id.* at 744 (Gorsuch, J., concurring).

The States’ predominant role in health and safety carries with it myriad benefits. See Michael W. McConnell, *Federalism: Evaluating the Founders’ Design*, 54 U. Chi. L. Rev. 1484, 1493 (1987) (discussing the benefits of decentralized decisionmaking, including a better ability to reflect a diversity of interests and increased innovation arising from competition among States). This Court has appropriately rejected concerns that States’ involvement through tort law would produce an impractical patchwork of standards for businesses. Addressing the same statute at issue here, this Court in *Bates* saw “no evidence that such tort suits led to a ‘crazy-quilt’ of FIFRA standards or otherwise created any real hardship for manufacturers or for EPA.” 544 U.S. at 451-452. That insight remains true today. Whatever marginal compliance burdens might exist, they are a small price to pay to preserve federalism and its vital benefits.

This Court’s decision in *Puerto Rico v. Franklin California Tax-Free Trust*, 579 U.S. 115 (2016), in no way undermines the federalism canon. *Franklin* declined to

“invoke any presumption against pre-emption” because the statute “contain[ed] an express pre-emption clause.” *Id.* at 125 (quoting *Chamber of Com. of U.S. v. Whiting*, 563 U.S. 582, 594 (2011)). But *Franklin* did not overrule prior cases that applied the federalism canon to preemption questions or that considered the presumption against preemption. See *Cal. Rest. Ass’n v. City of Berkeley*, 89 F.4th 1094, 1110 (9th Cir. 2024) (O’Scannlain, J., concurring). Instead, *Franklin* utilized the ordinary tools of statutory construction—a toolbox that includes canons of construction and clear-statement rules. See *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 434 (2024) (Gorsuch, J., concurring) (explaining that “‘textualism’ \* \* \* constrains judges to a lawfinding rather than lawmaking role by focusing their work on the statutory text, its linguistic context, and various canons of construction”). Far from rejecting the federalism canon, *Franklin* simply found no need to consider it given the “plain wording” of statutory text. 579 U.S. at 125.

Birthered from the values underlying our constitutional order, the federalism canon—including its presumption against preemption—serves critical constitutional values. It recognizes that, under the Constitution, the States are uniquely responsible for protecting public health and safety and that displacing the States’ authority to do so, absent an unmistakable expression of congressional intent, would improperly disrupt the delicate federal-state balance.

### **C. Monsanto’s Extensive State Lobbying Campaign Highlights the States’ Role in Health and Safety Regulation**

Monsanto understands the significant role the States play in health and safety regulation. In the face of billion-dollar jury verdicts, and mounting legal costs, Monsanto

(and its parent company Bayer) mounted an extensive, nationwide lobbying campaign. Targeting state lawmakers, they advocated for state-level “uniformity of labeling laws” that would effectively immunize Monsanto from suit for injuries arising from Roundup use.<sup>3</sup>

State legislators in Idaho, Iowa, and Missouri introduced the first such bills in 2024.<sup>4</sup> Legislators in eleven States considered similar legislation in 2025.<sup>5</sup> Nearly all of those States have economies that heavily depend on agriculture.<sup>6</sup> Those States have correspondingly seen

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<sup>3</sup> See Bayer Global, *Managing the Roundup Litigation* (last updated Mar. 4, 2026), <https://tinyurl.com/mj4em7uz>.

<sup>4</sup> See S.B. 1245, 2024 Legis., Reg. Sess. (Idaho 2024); S.F. 2412, 90th Gen. Assemb., Reg. Sess. (Iowa 2024); S.B. 1416, 102d Gen. Assemb., 2d Reg. Sess. (Mo. 2024); H.B. 2763, 102d Gen. Assemb., 2d Reg. Sess. (Mo. 2024).

<sup>5</sup> See H.B. 129, 2025 Legis., Reg. Sess. (Fla. 2025); S.B. 992, 2025 Legis., Reg. Sess. (Fla. 2025); S.B. 144, 158th Gen. Assemb., Reg. Sess. (Ga. 2025); H.B. 303, 2025 Legis., Reg. Sess. (Idaho 2025); S.F. 394, 91st Gen. Assemb., Reg. Sess. (Iowa 2025); H.B. 1221, 2025 Legis. Reg. Sess. (Miss. 2025); S.B. 2472, 2025 Legis., Reg. Sess. (Miss. 2025); S.B. 14, 103d Gen. Assemb., 1st Reg. Sess. (Mo. 2025); H.B. 544, 103d Gen. Assemb., 1st Reg. Sess. (Mo. 2025); H.B. 522, 2025 Legis., Reg. Sess. (Mont. 2025); H.B. 1318, 69th Legis. Assemb., Reg. Sess. (N.D. 2025); H.B. 1755, 60th Legis., Reg. Sess. (Okla. 2025); S.B. 1078, 60th Legis., Reg. Sess. (Okla. 2025); H.B. 809, 114th Gen. Assemb., 1st Reg. Sess. (Tenn. 2025); S.B. 527, 114th Gen. Assemb., 1st Reg. Sess. (Tenn. 2025); H.B. 285, 2025 Legis., Gen. Assemb. (Wyo. 2025); Nat’l Agric. L. Ctr., *Update on State Pesticide Liability Limitation Bills*, Univ. of Ark. (Apr. 15, 2025), <https://tinyurl.com/2ccn3fzx>.

<sup>6</sup> Mariah Squire, *Farming Across America: A State-by-State Breakdown of Farms, Farmland, and Ag Income*, SuccessfulFarming (May 2, 2025), <https://tinyurl.com/48jb5h76>; Shelly West, *Florida’s Agricultural Powerhouse*, Bradenton Mag. (Spring 2025), <https://tinyurl.com/4ed8pkms>; Ga. Dep’t of Econ. Dev., *Agribusiness & Agriculture in Georgia*, <https://georgia.org/industries/agribusiness> (last visited Mar.

glyphosate litigation against Monsanto, given the product's effect on agricultural workers.<sup>7</sup>

Monsanto has intensified its lobbying campaign. In 2022, Monsanto registered its first lobbyist in Iowa, reporting \$20,000 in lobbying expenditures. By 2024—the year Iowa legislators first considered immunity legislation—Monsanto's lobbying expenditures had quadrupled, rising above \$86,000.00.<sup>8</sup> Spending rose again in 2025. With the legislature still debating immunity legislation, Monsanto spent nearly \$125,000 lobbying Iowa lawmakers that year.<sup>9</sup> Similarly, Monsanto's lobbying expenditures in Mississippi more than tripled from \$37,000 in 2023 to \$113,500 in 2025, the year Mississippi legislators considered immunity legislation.<sup>10</sup> In North Dakota, Monsanto's Medical Affairs Lead for Crop Science testified before the State House of Representatives in support of North Dakota's iteration of an immunity law.<sup>11</sup> Monsanto has

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12, 2026); Miss. Dev. Auth., *Agribusiness*, <https://tinyurl.com/22h3vxah> (last visited Mar. 12, 2026).

<sup>7</sup> Monsanto is currently defending a class action lawsuit in the Circuit Court of the City of St. Louis, Missouri. Bayer Global, *Missouri Court Grants Preliminary Approval of Roundup Class Settlement To Resolve Current and Future Claims* (Mar. 4, 2026), <https://tinyurl.com/bdfxt3ra>.

<sup>8</sup> Cami Koons, *Pesticide Manufacturer Spent More than \$200K Lobbying in Iowa*, Iowa Cap. Dispatch (Jul. 31, 2025), <https://tinyurl.com/35k5v9rc>.

<sup>9</sup> *Ibid.*

<sup>10</sup> Miss. Sec'y of State, *Lobbying*, <https://tinyurl.com/3vxv4bx> (last visited Mar. 12, 2026).

<sup>11</sup> *A Bill for an Act To Create and Enact as a New Section to Chapter 28-01.3 of the North Dakota Century Code, Relating to Pesticide Labeling: Hearing on H.R. 1318 Before the H. Comm. on Agric.*, 2025 Legis., 69th Sess. (N.D. 2025) (statement of Eliza Lockwood, Medical Affairs Lead, Bayer).

been similarly aggressive in other States, too, employing dozens of lobbyists across the country to influence the debate around immunity legislation.<sup>12</sup>

In 2024, Monsanto also created, and now leads, the Modern Ag Alliance (“Modern Ag”), a coalition of more than 110 agricultural organizations that promotes industry-protective pesticide labeling laws. Modern Ag “works with federal and state policymakers” to enact pesticide labeling laws under which “any pesticide registered with the EPA—and sold under a label consistent with the EPA’s own determinations—[would be] sufficient to satisfy [state and federal] health and safety warning requirements.”<sup>13</sup> In its first year, Modern Ag received \$15.6 million in contributions and spent \$13 million on advertising and consulting—nearly all of it paid to a single public relations firm.<sup>14</sup> Like Monsanto, Modern Ag has

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<sup>12</sup> Monsanto employed: eight lobbyists in Missouri, Mo. Ethics Comm’n, *Bayer U.S. LLC*, <https://tinyurl.com/53avweva> (last visited Mar. 12, 2026); one in Florida, Fla. H.R., *Lobbyist Disclosure & Information*, <https://tinyurl.com/wrmx9xez> (last visited Mar. 11, 2026); four in Iowa, Iowa Leg., *Lobbyist Information*, <https://tinyurl.com/434ach79> (last visited Mar. 12, 2026); four in Mississippi, Miss. Sec’y of State, *Lobbying* (on file with counsel); two in North Dakota, N.D. Sec’y of State, *Registered Lobbyists* (on file with counsel); seven in Tennessee, Tenn. Bureau of Ethics & Campaign Fin., *Tennessee Ethics Commission* (on file with counsel); and two in Wyoming, Wyo. Sec’y of State, *Lobbyist Search*, <https://tinyurl.com/54raaxmt> (last visited Mar. 11, 2026). Georgia and Oklahoma are not yet reporting data for the relevant time period.

<sup>13</sup> Modern Ag Alliance, *About Us*, <https://tinyurl.com/5n7fvz8> (last visited Mar. 11, 2026); Nathan Owens, *Bayer Leads New Group to Defend Herbicide Glyphosate*, *AgricultureDive* (Apr. 15, 2024), <https://tinyurl.com/4enk54bf>.

<sup>14</sup> Modern Ag Alliance, *Return of Organization Exempt from Income Tax [Form 990] (2024)*, available at <https://tinyurl.com/45593rkk> (last visited Mar. 31, 2026).

lobbied state legislatures in favor of immunity legislation,<sup>15</sup> and its executive director appeared before the North Dakota House of Representatives alongside Monsanto’s Medical Affairs Lead.<sup>16</sup>

Monsanto’s lobbying campaign has seen some success. Georgia and North Dakota have enacted laws that effectively immunize Monsanto from Roundup-related liability. Ga. Code Ann. §2-7-171; N.D. Cent. Code §28-01.3-11. And similar legislation is on legislative agendas in several other States this year.<sup>17</sup> Lobbying is, of course, lawful and often beneficial; “corporate communications with elected officials occur on a regular basis.” *Citizens United v. FEC*, 558 U.S. 310, 355 (2010). Indeed, such communications are vital to a healthy democracy. See, e.g., U.S. Const. amend. I; Mo. Const. art. I, §§8-9.

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<sup>15</sup> Fla. H.R., *Lobbyist Disclosure & Information*, <https://tinyurl.com/3m68pr4j> (last visited Mar. 17, 2026); Fla. H.R., *Lobbyist Disclosure & Information*, <https://tinyurl.com/bddm6yez> (last visited Mar. 17, 2026); Iowa Leg., *Lobbyist Information*, <https://tinyurl.com/zzev5tp> (last visited Mar. 17, 2026); Mo. Ethics Comm’n, *Modern Ag Alliance*, <https://tinyurl.com/3dywaxy3> (last visited Mar. 17, 2026); N.D. Sec’y of State, *Registered Lobbyists* (on file with counsel); Tenn. Bureau of Ethics & Campaign Fin., *Tennessee Ethics Comm’n* (on file with counsel); Wyo. Sec’y of State, *Lobbyist Search*, <https://tinyurl.com/52sskrxp> (last visited Mar. 17, 2026).

<sup>16</sup> *A Bill for an Act To Create and Enact as a New Section to Chapter 28-01.3 of the North Dakota Century Code, Relating to Pesticide Labeling: Hearing on H.R. 1318 Before the H. Comm. on Agric.*, 2025 Legis., 69th Sess. (N.D. 2025) (statement of Elizabeth Burns-Thompson, Executive Director, Modern Ag Alliance).

<sup>17</sup> See, e.g., H.B. 443, 2026 Legis., Reg. Sess. (Fla. 2026); S.B. 518, 2026 Legis., Reg. Sess. (Fla. 2026); H.B. 2476, 2025-2026 Legis., Reg. Sess. (Kan. 2026); S.B. 199, 144th Gen. Assemb., Reg. Sess. (Ky. 2026); H.B. 2712, 103d Gen. Assemb., 2d Reg. Sess. (Mo. 2026); S.B. 527, 114th Gen. Assemb., Reg. Sess. (Tenn. 2026); H.B. 809, 114th Gen. Assemb., Reg. Sess. (Tenn. 2025) (carried over into the 2026 legislative session).

But the federalism canon and its accompanying presumption against preemption protect those principles. By requiring Congress to speak clearly before displacing state law, the canon and its presumption ensure that the democratic process functions properly. It allows local leaders, who are closest to the people they represent, to make decisions for their own communities. And if that authority is to be withdrawn, it ensures that Congress does so in express terms, so that voters can hold their representatives accountable. As Thomas Jefferson wrote, “the States can best govern our home concerns, the general government our foreign ones. I wish, therefore \* \* \* never to see all offices transferred to Washington, where, further withdrawn from the eyes of the people, they may more secretly be bought and sold as at market.” Letter from Thomas Jefferson to William Johnson (June 12, 1823).

## **II. THIS CASE MUST BE DECIDED BASED ON FIFRA’S EXPRESS TERMS**

The Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”) prohibits States from “impos[ing] \* \* \* any requirements for labeling or packaging in addition to or different from those required *under this subchapter*.” 7 U.S.C. § 136v(b) (emphasis added). Thus, FIFRA declares that it displaces state laws that supplement or depart from the labeling requirements imposed by FIFRA itself—by the statute.

Any issue of preemption thus must compare what FIFRA says to what state tort law requires. FIFRA prohibits the sale of pesticides that are “misbranded.” 7 U.S.C. § 136j(a)(1)(E). Pesticides are misbranded when, among other things, the label is “false or misleading” or “does not contain a warning or caution statement which may be necessary and if complied with \* \* \* is adequate to

protect health and the environment.” 7 U.S.C. § 136(q)(1)(A), (G); *Bates*, 544 U.S. at 438. “[M]anufacturers have a continuing obligation to adhere to FIFRA’s labeling requirements.” *Bates*, 544 U.S. at 438.

Missouri’s failure-to-warn claim is entirely consistent with those federal requirements. Under Missouri law, a pesticide manufacturer is liable when it sells a product that is “unreasonably dangerous \* \* \* when used as reasonably anticipated” and the manufacturer “d[oes] not give adequate warning of the danger.” *Moore v. Ford Motor Co.*, 332 S.W.3d 749, 756 (Mo. 2011). Those elements track FIFRA’s own labeling requirements: A label that triggers failure-to-warn liability under Missouri law is also misbranded under FIFRA. Compare *ibid.*, with 7 U.S.C. § 136j(a)(1)(E); see *Bates*, 544 U.S. at 454 (state-law requirements survive preemption if they “are *genuinely* equivalent,” even if not “*identical*”).

The problem with Monsanto’s contrary argument is that, rather than resting on the text of federal law—what Congress enacted—Monsanto directs this Court to *the EPA’s* “pesticide-specific labeling mandates.” Pet. Br. 26. In registering a pesticide, Monsanto urges, *the EPA* has determined that the product is not misbranded. Pet. Br. 23, 26. But FIFRA declares that state law cannot impose labeling requirements that add to or differ from those *required by the statute*; it says nothing about giving agency decisions the effect of displacing state law.

Allowing the EPA’s interpretation of FIFRA’s labeling requirements to control preemption here would also contravene separation-of-powers principles. Under this Court’s decision in *Loper Bright*, 603 U.S. 369, the judicial branch—not federal agencies—is responsible for interpreting the law. “It is emphatically the province and duty of the judicial department to say what the law is.” *Mar-*

*bury*, 5 U.S. (1 Cranch) at 177. It cannot be that Congress has preempted Missouri’s law if an executive branch agency signs off on a Monsanto-proposed label that omits warnings, but Congress has not preempted state law if the agency approves labels with warnings. The law, and any preemptive effect, come from the statute, not the agency. At the very least, if Congress had intended to vest the EPA with vast authority to “deprive injured parties” of “long available” remedies under state law, “it surely would have expressed that intent more clearly.” *Bates*, 544 U.S. at 449; see also *Learning Res., Inc. v. Trump*, 146 S. Ct. 628, 638 (2026) (recognizing long-established “reluctan[ce]” to read “extraordinary delegations of Congress’s powers” into “‘ambiguous statutory text’”).

#### CONCLUSION

The Court should resolve this case consistent with the longstanding presumption against preemption of historic state police powers. It should not lightly infer that Congress has displaced state authority, much less that Congress has made preemption depend not on statutory text, but on the ad hoc choices of executive branch agencies.

Respectfully Submitted.

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