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, Eastern District

BRIEF OF THE LOCAL GOVERNMENT LEGAL CENTER, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL LEAGUE OF CITIES, AND INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION AS AMICI CURIAE IN SUPPORT OF RESPONDENT

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INTEREST OF AMICI CURIAE[1]

The Local Government Legal Center ("LGLC") is a coalition of government organizations formed in 2023 to provide education to local governments regarding the Supreme Court and its impact on local governments and officials and to advocate for local government positions at the Supreme Court in ap-propriate cases. The National Association of Counties, the National League of Cities, and the International Municipal Lawyers Association are the founding members of the LGLC.

The National Association of Counties ("NACo") is the only national organization that represents county governments in the United States. Founded in 1935, NACo provides essential services to the nation's 3,069 counties through advocacy, education, and research.

The National League of Cities ("NLC"), founded in 1924, is the oldest and largest organization representing U.S. municipal governments. NLC works to strengthen local leadership, influence federal policy, and drive innovative solutions. In partnership with 49 state municipal leagues, NLC advocates for over

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[1] Pursuant to Rule 37.6, amici affirms that no counsel for any party authored this brief in whole or in part and no person or entity, other than amicus, its members, or its counsel has made a monetary contribution to its preparation or submission.

19,000 cities, towns, and villages where more than 218 million Americans live.

The International Municipal Lawyers Association ("IMLA") is the nation's largest organization devoted solely to local government law. Founded in 1935, IMLA is a nonpartisan, nonprofit, professional association of counsel encompassing more than 2,500 local government entities (including cities, counties, and subdivisions thereof), represented through their chief legal officers, state municipal leagues, and individual attorneys. IMLA advocates for the responsible development of municipal law and presents the collective viewpoint of local governments around the country in lawsuits before the United States Supreme Court, federal courts of appeal, and state supreme and appellate courts.

Local governments have an overarching interest in assuring the well-being of their residents. Whether responsible for urban areas, where more than 80 percent of Americans live, or for sparsely populated rural and agricultural communities, local governments play a critical role in protecting the health and safety of those in their jurisdictions. It is at the local level that residents most expect government to be working on their behalf, a role assuredly encompassing healthcare, where localities provide a broad spectrum of services, from emergency response to medical centers and hospitals to rehabilitative and recovery care, and much more. Behind that reactive mission is the forward-thinking responsibility to avert potential

harms: as much as proactively preventing crime or damage to property is the duty to avoid toxic and dangerous instrumentalities likely to injure constituents. On that score, many localities operate environmental and health departments that identify and track contaminants, including substances requiring urgent and unmistakable warnings–such as those which cause cancer.

These units, along with law departments, discharge local government responsibilities in enforcing environmental laws, including laws concerning pesticide usage. And with good reason: most local governments operate hospitals and health clinics that heavily serve uninsured, underinsured, and underserved populations. When products contain carcinogens and adversely affect the local population, it is the municipalities and counties that often feel the brunt of addressing their consequences. Ignoring their role and preempting legal efforts to address products with undisclosed inherent dangers can result in unwarranted burdens on local government finances and infrastructure, while heavily increasing residents' tax load, because it often falls to local government to remediate the harmful consequences.

This litigation presents a paradigmatic example of such a scenario, with a federal law which accommodates additional protections at the state and local level being wielded to override that prerogative. The result sought by the Petitioner will limit localities and their residents from recourse against a known carcinogen.

That stance not only disrespects congressional intent but relies on the profound failure of a federal agency to discharge its duties in protecting the health of Americans, resulting in more than 60,000 cases of cancer, included the Lou Gehrig's Disease that is afflicting Respondent. As the representatives of thousands of communities nationwide, and their many millions of residents who rely on local government to safeguard them, Amici urge the Court to avoid such a miscarriage.

While this case involves one carcinogen, one federal statute, and one federal agency, the implications of a decision favoring the Petitioner go far beyond those particulars. There are numerous Congressional measures that decline to force a one-size-fits-all national mandate and fully anticipate state and local input, whether for air and water quality, minimum wage, occupational health standards, floodplain management, disability access, and more. That approach properly accommodates America's massive dimensions, changing topography, varied climates, and heterogeneous populations, and recognizes that states and localities have superior knowledge of local conditions. A decision here diluting the well-defined criteria for proving federal preemption will no doubt be wielded to undermine other state and local protective measures which fit comfortably within federal law. And it will justify the refusal to allow accurate labeling which would apprise consumers of danger—a lapse perhaps most emphatically exemplified in the federal and corporate failure to require accurate labeling of

opioids, which have killed hundreds of thousands, addicted millions, and to this day continues to devastate the resources and finances of many localities around the nation.

Declining to validate the State's common sense and permissible labeling requirements in this case not only imposes unfair costs but casts a much larger constitutional shadow. Zooming out, Amici have a significant interest in ensuring this Court's preemption jurisprudence considers the careful balance between federal and state/local power inherent in our constitutional structure and in this Court's precedents. The Framers of our Constitution sought to protect the liberty interests of the people being governed not just through horizontal separation of powers, but also by dividing authority into our dual system of sovereignty amongst the federal government and the States. *See generally* The Federalist No. 45 (J. Madison), 51 (J. Madison). *Amici* stress the importance of considering that historical framework when assessing the preemptive reach of federal statutes.

INTRODUCTION AND SUMMARY OF ARGUMENT

State and local governments have historically and traditionally regulated pesticides. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), both acknowledges that authority and accommodates it, setting up overlapping and shared authorities between federal, state, and local regulators.

The statute allows the Environmental Protection Agency (EPA) to approve labels on pesticides that include warnings, but its authority to do so does not limit State and local governments in their authority to devise their own regulations, which can include outright bans on otherwise approved pesticides. That authority is both necessary and prudent because a national standard cannot consider local soil, climate, population, and environmental conditions that might warrant different rules on the use of any particular pesticide.

In tune with that authority, many state and local governments have exercised their authority to do so. Among the regulations some have enacted are bans on the use of pesticides containing glyphosate, the chemical at issue before this Court. Others have restricted its use. While manufacturers may seek to overcome those restrictions by adopting, with EPA's approval, additional labeling warnings, these economic inducements have never been considered the types of "state requirements" that FIFRA deems preempted.

By the same token, jury verdicts based on failure to warn of health and safety dangers, which FIFRA deems a form of misbranding, should not be considered preempted requirements, which is consistent with this Court's holding in *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597 (1991). FIFRA's statutory scheme is unlike the Medical Device Act reviewed in *Riegel v. Medtronic, Inc.*, 552 U.S. 312 (2008), where this Court found a tort verdict to interfere with the

Food and Drug Administration's authority and thus was preempted. FIFRA, on the other hand, explicitly states that registration and labeling is not a defense and thus anticipated tort liability that is consistent with what the Act describes as misbranding. FIFRA thus provides no reason for this Court to revisit or reconsider its determination in *Mortier*.

At bottom, the Question Presented is controlled by this Court's earlier decisions that recognize a jury's judgments are not preemptable requirements, and FIFRA plenary recognition of continuing authority in State and local governments confirms the validity of that view.

ARGUMENT

I. STATE AND LOCAL GOVERNMENTS RETAIN AND EXERCISE SUBSTANTIAL AUTHORITY OVER PESTICIDES.

A. State and Local Authorities Have Traditionally Exercised Relevant Authority over Pesticides, and FIFRA Preserves Much of that Authority.

1. State and local governments have primary responsibilities over public health and safety, including the regulation of pesticides.

Every level of "government is vested with the responsibility of protecting the health, safety, and welfare of its citizens." *United Haulers Ass'n, Inc. v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 342 (2007); *see also id.* at 343 (noting that public health, safety, and welfare "responsibilities set state and local government apart from a typical private business."). Localities have long enjoyed primacy in providing for the health and welfare of its citizens, which "primarily, and historically, [is] a matter of local concern," *Hillsborough Cnty. v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, 719 (1985).

To discharge this solemn duty, state and local governments maintain "great latitude under their police powers to legislate as to the protection of the lives,

limbs, health, comfort, and quiet of all persons." *Metropolitan Life Ins. Co. v. Massachusetts,* 471 U.S. 724, 756 (1985) (cleaned up). This is true as to pesticides, the subject before this Court, because States traditionally had "primary and possibly exclusive" responsibility over the "the distribution of poisonous substances." *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 437 (2005).

2. FIFRA creates a cooperative system that still recognizes that state and local governments may regulate, and even ban, pesticides.

While the Supremacy Clause enables the federal government, largely through congressional enactments, to displace State authority, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136 *et seq*., does not seek to do so. It does not convert health, environmental, and safety concerns into an area of overriding national concern. Instead, FIFRA largely "leaves the allocation of regulatory authority to the 'absolute discretion' of the States themselves, including the option of leaving local regulation of pesticides in the hands of local authorities." *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 608 (1991). In fact, "[p]roperly read, the statutory language tilts in favor of local regulation." *Id*. *Mortier* further held that, however comprehensive the federal regulatory scheme established by its 1972 amendments might appear, FIFRA did not intend to preempt

the field of pesticide regulation because it "leaves substantial portions of the field vacant." *Id.* at 612–13.

Rather, FIFRA set up a cooperative scheme requiring manufacturers to produce records for inspection not just at the EPA's request but at the request of any State or political division. *Id.* at 608 (citing 7 U.S.C. § 136u(a)(1)). The requirement is consistent with Congress's sensible judgment that both the effectiveness and the harmfulness of a pesticide cannot be a matter of a one-size-fits-all formula, but must reflect the environmental and geographic conditions at the place where the pesticide was to be applied. Thus, having been vested with the right to determine whether to permit use of a pesticide locally, States and local governments require access to the best information available to inform their judgments.

Petitioner inaptly argues otherwise by quoting EPA to the effect that its registration program definitively establishes the safety of a pesticide, telling this Court:

> [W]hen EPA determines that a pesticide product can be registered for use, the Agency has concluded that the use of the pesticide product will not cause unreasonable adverse effects to humans or the environment when applied according to the label directions and restrictions.

Pet. Br. 7 (quoting EPA, Pesticide Registration Manual: Chapter 1 (Oct. 30, 2025), https://perma.cc/GK64-

3BUC. Yet, FIFRA allows States and localities to override that judgment, which means that EPA's conclusion is neither binding on States and localities nor definitive.

FIFRA explicitly authorizes States (and by implication, localities)[2] to "regulate the sale or use of any federally registered pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this subchapter." 7 U.S.C. § 136v(a). By its terms, this provision allows States and local governments to place further restrictions on the use of pesticides, even if the statute precludes greater liberality in their usage. A pesticide that fails to meet EPA standards may not be used, but an EPA-approved pesticide can still be banned locally.

The provision operates as a savings clause against preemption. Thus, localities may prohibit use of an EPA-approved pesticide altogether without running afoul of federal authority – and a number of communities have done so with respect to glyphosate, the pesticide ingredient at issue here. *See, e.g.,* Balt. City Health Code §§ 19-101 & 19-303; Skagway, Alaska Ordinance 14-15 (2014); Bernalillo Cnty., N.M. Glyphosate Moratorium, https://tinyurl.com/4hc3bfvs.

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[2] *Mortier* held "it is doubtful that Congress intended to exclude localities from the scope of § 136v(a)'s authorization." *Id*. at 613.

Through this savings clause, FIFRA plainly provides that it "does not equate [federal] registration and labeling requirements with a general approval to apply pesticides throughout the Nation without regard to regional and local factors like climate, population, geography, and water supply." *Mortier*, 501 U.S. at 613–14. It instead accommodates these differences and recognizes local authority to take them into account. FIFRA does not create that authority but "acts to ensure that the States could continue to regulate use and sales even where, such as with regard to the banning of mislabeled products, a narrow pre-emptive overlap might occur." *Id.* at 614. In fact, *Mortier* observed that FIFRA "leaves ample room for States and localities to supplement federal efforts even absent the express regulatory authorization of § 136v(a)." *Id.* at 613.

Subsequently, *Bates*, taking note of geographic differences that affect the toxicity and usefulness of pesticides, reaffirmed FIFRA's commitment to the States' and localities' "broad authority to regulate the sale and use of pesticides." 544 U.S. at 446. In *Bates*, farmers brought suit over a pesticide, originally labeled and marketed, with the EPA's approval, as "recommended in all areas where peanuts are grown." *Id.* at 435. The farmer-plaintiffs used the pesticide but discovered it was both ineffective against indigenous weeds and damaged their peanut crop because the soil in their west Texas region had pH levels greater than 7.2. *Id.* Dow, the manufacturer of the pesticide, subse-

quently reregistered its product with a specialized version of the label that advised against using the pesticide in soil that alkaline and attached the new label only to the pesticide when distributed in New Mexico, Oklahoma, and Texas. *Id*.

The practical reality of that lesson is that uniformity across the nation is inconsistent with the bar on misbranding as defined locally, rather than nationally. When Petitioner and the United States assert that uniformity is FIFRA's goal before this Court, they repeat an argument this Court rejected in *Bates*. *See id*. at 450 ("Dow and the United States greatly overstate the degree of uniformity and centralization that characterizes FIFRA. In fact, the statute authorizes a relatively decentralized scheme that preserves a broad role for state regulation."). It should not receive any more traction today than it has in the past.

Although the inaccurate labeling at issue in *Bates* provided the basis for the damage the farmers suffered, this Court adopted a delicate balance in weighing the EPA labeling determinations against the statutory bar on misbranding. It held EPA's positive labeling requirements should be substantially followed, even if the language required by States and localities was not identical though substantively similar. However, misbranding, while informed by the label, had broader scope. For that reason, juries should be instructed on the distinct "FIFRA misbranding standards, as well as any regulations that add content to those standards." *Id*. at 454.

3. FIFRA's recognition of state and local authority allows inducements to labeling changes without treating them as impermissible requirements.

Because misbranding is not solely defined by EPA-approved labels, this Court did not equate a jury verdict with a state requirement different from the approved label and thus preempted. It should not change that stance. *Bates* acknowledged the "supplementary role" and "ample authority" States and localities have "to review pesticide labels to ensure that they comply with both federal and state labeling requirements." *Id.* at 443 (footnote omitted). It further recognized that a jury verdict "might 'induce' a pesticide manufacturer to change its label, as Dow did for the peanut farmers in west Texas, but that inducement does not equate to an impermissible additional requirement. *Id.*; *see also id.* at 445 ("an event, such as a jury verdict, that merely motivates an optional decision is not a requirement" and it is speculative whether "a jury verdict will prompt the manufacturer to take any particular action").

While some may argue, as Monsanto and its *amici* do, that this Court adopted a different approach to tort verdicts in *Riegel v. Medtronic, Inc.*, 552 U.S. 312 (2008), important distinctions make that too broad a reading of *Riegel*. *Riegel* distinguished and left undisturbed the preemption analysis from *Medtronic, Inc. v. Lohr*, 518 U.S. 470 (1996). It justified *Lohr's* no-

preemption holding as a product of a "careful comparison between the state and federal duties at issue." *Riegel*, 552 U.S. at 322 (citing *Lohr*, 518 U.S. at 500–501)). The analysis in *Lohr* noted that the federal regulation at issue limited preemption to conflict with "specific counterpart regulations or … other specific requirements applicable to a particular [medical] device." *Id*. (citing 21 CFR § 808.1(d)). It contrasted that federal regulatory framework with the pre-market approval "requirements" in the Medical Device Amendments (MDA), which did not countenance material deviations from specifications approved. *Id*. at 322–24.

FIFRA has more in common with *Lohr* than *Riegel*. The pesticide statute specifically looks to state and local regulation as supplementing its efforts, acknowledges that products approved by the EPA can be taken off the market by States and localities, defines misbranding broadly, and acknowledges the different local conditions that might warrant non-uniform regulation. In that respect, uniform national requirements would be inconsistent with the congressional design, rather than a key feature of it.

While FIFRA expressly does not allow a State to "impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this Act," 7 U.S.C. § 136v(b), it also limits the import of registration and labeling. Registration is a necessary precondition for marketing a pesticide but it is only "prima facie evidence" that the pesticide's "labeling and packaging comply with

the registration provisions of the Act." 7 U.S.C. § 136a(f)(2)). Prima facie evidence is not conclusive, but subject to rebuttal evidence. *See, e.g., Watson v. Fort Worth Bank & Tr.*, 487 U.S. 977, 986 (1988).

Here, it has less traction than under other circumstances because FIFRA explicitly states that "in no event shall registration be construed as a defense for the commission of any offense under the Act." *Id.* No equivalent limiting language applied to the MDA examined in *Riegel*.

The Ninth Circuit engaged in a similar analysis and also relied on statutory language that limited the effect of registration and labeling with respect to the very product at issue before this Court. *See Hardeman v. Monsanto Co.*, 997 F.3d 941, 956 (9th Cir. 2021), *cert. denied*, 142 S. Ct. 2834 (2022).

A yet more recent decision of the Third Circuit, impossible to reconcile with its earlier holding that found jury verdicts were not preempted forms of state requirements, *see Indian Brand Farms, Inc. v. Novartis Crop Prot. Inc.*, 617 F.3d 207, 222 (3d Cir. 2010), holds preemption applies. It faulted *Indian Brand Farms* for reading 7 U.S.C. § 136a(f)(2) in isolation. *Schaffner v. Monsanto Corp.*, 113 F.4th 364, 394 (3d Cir. 2024). Asserting that it was respecting the principle enunciated in *Indian Brand Farms* that "state law may, in some circumstances, require a pesticide's label to bear particular contents that were excluded from its Preapproved Label," the panel nonetheless concluded that

the Preapproval Regulation renders Pennsylvania's duty to warn preempted. The decision's purported agreement with principles articulated in *Indian Brand Farms* seems pretextual and treatment of FIFRA's language in 7 U.S.C. § 136a(f)(2), which bars the label from serving as a defense, is rendered a nullity. It should be read as compatible with the Act's labeling requirements and effectively foreclose preemption.

Instead, *Amici* commend to this Court the Eleventh Circuit's decision in *Carson v. Monsanto Co.*, 92 F.4th 980 (11th Cir. 2024), which respects the nuances in FIFRA that *Bates* discussed and does not treat a jury verdict as a state requirement. It noted that FIFRA imposes a "strict-liability standard" for misbranding that applies when the pesticide's label omits a "necessary" warning "to protect health and the environment." *Id.* at 991–92 (citing 7 U.S.C. § 136(q)(1)(G)). The relevant Georgia law requires "an adequate warning of the product's potential risks." *Id.* at 992 (citations omitted). The court then concluded that, "[i]f anything, Georgia common law about failure-to-warn claims imposes less of a duty on pesticide manufacturers than FIFRA." *Id.*

Ultimately, because FIFRA recognizes that states and localities may make independent determinations that a pesticide fails to protect the local health and the environment, liability for that failure based on a jury's determination is not a conflicting "requirement" and should not be preempted.

B. State and Local Governments Play a Significant Role in Pesticide Regulation.

As contemplated by FIFRA, state and local governments play an outsized role in pesticide regulation. At a practical level, state and local governments boast advantages in assessing the impact of pesticides on the specific geographic climate, soil acidity, and other conditions within the locale. They operate environmental, health, and, sometimes, agricultural departments to address local issues.

For example, the Nation's largest agricultural state, California, has a statewide Department of Pesticide Regulation (DPR). *See* California DPR, www.cdpr.ca.gov. To address "California-specific conditions to protect human health and the environment," the Department "evaluates all pesticides before they can be sold or used in California." DPR, Our Evaluation Process, https://www.cdpr.ca.gov/how-pesticides-are-evaluated/. Department "scientists evaluate submitted data on toxicity and exposure, available literature, and monitoring data to model how a product would behave under California-specific conditions once it has been applied." *Id*. Registered products will change their label in response to California determinations, specifying "drift reduction instructions, reduced application amounts, and changes to use patterns." *Id*. Products deemed to have too great an adverse effect on health or the environment will not be registered in California and cannot be sold. *Id*. Be-

cause FIFRA provides States with authority to prohibit pesticides, manufacturers would rather change the label to warn of hazards that States identify, rather than suffer a complete prohibition. In this fashion, state agencies may induce label changes to a far greater extent than jury verdicts do and yet preemption does not enter the calculus.

Local governmental units also have significant roles to play in California's pesticide regulations. For example, Sacramento County places responsibility for enforcement of state and federal pesticide regulations in the office of the Agricultural Commissioner. *See* Sacramento County Agricultural Commissioner, Pesticide Use Enforcement, https://tinyurl.com/39pmmav5. Although the commissioner has statutory authority to levy administrative fines for violations, district attorneys throughout the State can bring civil cases against manufacturers that may result in substantial monetary penalties. *See, e.g.*, "Sacramento County District Attorney Thien Ho Announces Civil Case for Pesticide Violations, Unfair Business Practices," https://tinyurl.com/yr83xxt7.

Other localities in other States have also implemented their own pesticide regulations. For example, Montgomery County, Maryland, in legislative findings, found that:

> pesticide regulations at the federal and State level, and the risk assessments that inform

> them, do not mimic real world exposure scenarios and fail to account for synergistic or cumulative effects of multiple chemicals acting on the same pathway; do not include sufficient evaluation of a pesticide's "inert" ingredients and the pesticide formulations that are sold to consumers; and often fail to take sensitive populations like children and pollinators into account.

Montgomery Cnty., Md., Code § 33B-1(a)(7).[3] Under the law only organic and minimum-risk pesticides, with some exemptions, may be used on lawns, playgrounds, mulched recreation areas, and childcare facilities, as well as requires retailers to make certain notice signs and county-approved materials that "explain both the potential dangers of pesticide use and the availability of alternative products. *Montgomery Cnty. v. Complete Lawn Care, Inc.*, 207 A.3d 695, 700 (Md. Ct. of Spcl. App. 2019) (citing Montgomery Cnty., Md., Code § 33B-3(a)).

The city of Baltimore subsequently enacted an ordinance modeled on the Montgomery County law. *See* Balt. City Health Code §19-101 *et seq*. Notably, Baltimore's ordinance generally prohibits use of glyphosate, *id*. at §19-303, due to its link to cancer. *Id*. at §19-

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[3] The ordinance was originally struck as preempted in *Maryland Pest Control Ass'n. v. Montgomery Cnty.*, 646 F. Supp. 109 (D.Md., 1986), *aff'd summarily*, 822 F.2d 55 (4th Cir. 1987, but that decision was abrogated by *Mortier*. *See* 501 U.S. at 604.

102(5) (citing the unanimous conclusion of the International Agency for Research on Cancer (IARC), which it describes as "the world's leading authority on cancer" and which undertook a "rigorous assessment").

According to Beyond Pesticides, a nonprofit that has worked since 1981 on national, state, and local pesticides policy, more than 150 communities in 23 states have enacted pesticide laws. Beyond Pesticides, "Baltimore Becomes Latest Maryland Locality to Restrict Toxic Pesticides on Public and Private Property," Daily News Blog (Oct. 7, 2020), https://tinyurl.com/2vvmc9zx. Monsanto's complaints about the "crazy quilt" of differing state and local regulatory requirements for pesticides, which it asserts is what Congress attempted "to stamp out," Pet. Br. 2, 6, misreads the regulatory scheme. Local needs and diversity in the treatment of pesticides is part of the core design of FIFRA. *See Bates*, 544 U.S. at 448 (rejecting the argument) & 448 n.26 (noting that "the lengthy legislative history [of FIFRA] is barren of any indication that Congress meant to abrogate most of the common-law duties long owed by pesticide manufacturers.").

That Congress has not acted to amend FIFRA to express disagreement with this Court's well-known holdings in *Mortier* and *Bates* provides weight to the validity of those interpretations. *See* 2B Sutherland Statutory Construction, Legislative inaction following contemporaneous and practical interpretation, § 49:9

(7th ed.*); but see Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 186 (1994) (acknowledging its limitations as a reflection of congressional intent).

II. AN EPA LABEL IS NOT "THE LAW."

Monsanto repeatedly tells this Court that EPA's approved label is the "law." Pet. Br. 8, 26, 45 (each time quoting EPA, Pesticide Registration Manual: Introduction (May 21, 2025), https://perma.cc/RRQ4-S928. But that agency characterization of a label lacks the attributes that would make it law. To be sure, a pesticide label that substantially departs from the approved language is subject to deregistration and may not legally sell the product. 7 U.S.C. § 136a(a). But that consequence reflects the statutory language, and EPA's determinations about labeling are quite different from being the "law." As FIFRA itself states, labeling is only "prima facie evidence" of compliance with the registration provisions of the Act. 7 U.S.C. § 136a(f)(2).

The fact that a locality may still prohibit use of the pesticide with an EPA-approved label based on the agency's determination that it meets safety standards renders it less than "law."

Moreover, a declaration in an agency manual, like the one cited, itself lacks the force and effect of law. It is owed no deference. Even before this Court's recent decision in *Loper Bright Enters. v. Raimondo*, 603 U.S.

369 (2024), this Court declared that "policy statements, agency manuals, and enforcement guidelines, all of which lack the force of law—do not warrant Chevron-style deference." *Christensen v. Harris Cnty.*, 529 U.S. 576, 587 (2000); *see also Shalala v. Guernsey Memorial Hosp.*, 514 U.S. 87, 99 (1995) ("Interpretive rules do not require notice and comment, … do not have the force and effect of law and are not accorded that weight in the adjudicatory process."); *Reno v. Koray*, 515 U.S. 50, 6 (1995) (holding same with respect to internal agency guidelines).

Relatedly, EPA's determinations that glyphosate is unlikely to be carcinogenic to humans, *see* EPA, Letter to Glyphosate Registrants Regarding Labeling Requirements (Aug. 7, 2019), "did not carry the force of law because it neither reflected sufficient formality, nor created "a rule of law that must be obeyed." *Carson*, 92 F.4th at 996 (citing *United States v. Mead Corp.*, 533 U.S. 218, 230 (2001), and *Bates*, 544 U.S. at 445.

The fact remains that "Monsanto did not request—and the Agency did not consider, much less reject—a cancer warning at all." *Carson*, 92 F.4th at 998. There is no basis to conclude that EPA would have rejected such a request despite its own review of the science. *See Merck Sharp & Dohme Corp. v. Albrecht*, 587 U.S. 299, 313 (2019).

While Monsanto denigrates the findings of the IARC and portrays it as less compelling than a fair

reading would show, states and localities have found it both rigorous and persuasive, either prohibiting its use or endorsing findings about its linkage to cancer. A sampling of examples includes:

- California – "pursuant to Proposition 65, California law categorized glyphosate as a chemical known to the state to cause cancer." *Hardeman*, 997 F.3d at 951–52 (citation omitted);
- Burbank Unified School District – The school district announced it would discontinue using Glyphosate. Kelly Corrigan and Anthony Clark Carpio, "Burbank Unified discontinues use of weed killer Roundup amid concerns of cancer risks," Burbank Leader (Mar. 20, 2017), https://tinyurl.com/4y3y464f.
- Norwalk, CT – Norwalk banned the use of non-organic pesticides on city property. Abigail Brone, "Norwalk bans pesticides on public land—with a few exceptions," The Hour (Jul. 1, 2022), https://tinyurl.com/mv4vrrbn.
- Key West, FL – The city commission banned the use of glyphosate on public property. Gwen Filosa, "Key West just banned the herbicide that is costing Monsanto big bucks at jury trials," Miami Herald (May 24, 2019), https://tinyurl.com/mprfapyc.
- Chicago Park District – The park district has adopted organic pesticides in its parks to avoid use of glyphosate. Chicago Park Dist., "Chicago Park District Partners with Midwest Grows Green to Continue to Limit Use of Pesticides in

Parks (May 22, 2023), https://tinyurl.com/4p7vs7x8.

- Portland, ME – Portland adopted an ordinance to ban the use of synthetic pesticides like glyphosate on public and private property. Dennis Hoey, "Portland council votes 9-0 to ban synthetic pesticides in city," Portland Press Herald (Jan. 3, 2018), https://tinyurl.com/45bfr29c.
- Baltimore – Baltimore prohibits use of its unapproved pesticides, including glyphosate, except for certain special uses. Balt. City Health Code §§19-302, 19-303.
- Warwick, MA – Warwick banned the use of glyphosate. "Weed killer RoundUp banned in Warwick (Oct. 24, 2017), https://tinyurl.com/3znxr74s.
- Montclair, NJ – Montclair adopted an ordinance prohibiting synthetic pesticides on public property. Montclair, N.J., Ord. O-25-22, available at https://ecode360.com/MO0769/laws/LF2437264.pdf.
- South Euclid, OH – An ordinance bars pesticides on city-owned properties. South Euclid, Ohio, Ord. 22-17 (Sept. 11, 2017), https://tinyurl.com/33hzmmvm.
- Seattle, WA – Seattle banned the use of neonicotinoid pesticides in 2015. Seattle City Resolution 31548 (Sept. 23, 2014), https://clerk.seattle.gov/search/results?sl=&s3=31548&s.

If the EPA labels were the "law," many of these State and local enactments could not validly reach different conclusions and provide for prohibitions on use. It is apparent that the "law" under FIFRA varies from community to community – and liability pursuant to state law should not be deemed a requirement contrary to EPA's labeling determinations.

CONCLUSION

For the foregoing reasons, *Amici* respectfully ask this Court to affirm the judgment of the Missouri Court of Appeal in this case.

April 1, 2026

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