No. 24-1098

In the
Supreme Court of the United States

MONSANTO COMPANY,
Petitioner,
v.
LARRY JOHNSON and GAYLE JOHNSON,
Respondents.

On Petition for Writ of Certiorari to the Oregon Court of Appeals

REPLY BRIEF FOR PETITIONER

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July 23, 2025

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This case presents the same question that is presently before the Court in *Monsanto Co. v. Durnell*, No. 24-1068 (docketed Apr. 9, 2025), in which the Court recently called for the views of the Solicitor General. The Court should grant review in *Durnell* and hold this petition pending the Court's resolution of that case. The jury in that case ruled against the plaintiff on every claim other than his failure-to-warn claim. Thus, *Durnell* has the benefit of a well-developed record and a single, dispositive failure-to-warn claim. If this Court determines, however, that it prefers an alternative or additional vehicle to review an important question on which the lower courts are divided, it should grant review either in this case or in *Monsanto Co. v. Salas*, No. 24-1097 (docketed Apr. 22, 2025), both of which present the same question as *Durnell*. Either way, the Court should not leave unreviewed the acknowledged conflict over whether FIFRA preempts state-law failure-to-warn claims based on the content of pesticide product labels.

Contrary to respondents' assertions, this case presents a clean vehicle to resolve that question. Respondents do not suggest there is any jurisdictional obstacle to this Court's review. Nor do they dispute that resolving the question presented in Monsanto's favor will spell the end of their failure-to-warn claim. And while they insist that their "design-defect and negligence claims … present an alternative basis to affirm the Oregon Court of Appeals," BIO.5, that is incorrect. If this Court ultimately agrees with Monsanto that FIFRA preempts respondents' failure-to-warn claim, the status of respondents' design-defect

and negligence claims would provide no justification for *affirming* the decision below. Additionally, the Oregon Court of Appeals acknowledged Monsanto's "conten[tion] that plaintiff's other claims—which are based on defendant's alleged tortious design and testing of Roundup—are 'disguised labeling claims that are also preempted,'" and assumed that was the case in analyzing and deciding the preemption issue. App.30-31; *see also Hardeman v. Monsanto Co.*, 2019 WL 3219360, at *3 (N.D. Cal. July 12, 2019) (*Hardeman* trial court noting that "the evidence showed no greater defect than the absence of a warning").

In any event, the fact that further proceedings on remand may be necessary is not an obstacle to this Court's review of whether FIFRA preempts respondents' failure-to-warn claim, which is an important question on which federal and state courts are deeply divided. After all, this Court routinely grants review of questions even when plaintiffs have additional claims pending in the lower courts. *See, e.g.*, *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024) (reviewing First Amendment question even though the plaintiffs had preemption and vagueness arguments pending in district court).

Moreover, the failure-to-warn theory is the underpinning of plaintiffs' claims in the Roundup litigation. Thus, as the *Durnell* verdict underscores, even if multiple theories ultimately go to the jury, the failure-to-warn theory could very well end up being case-dispositive. No matter what the fate of alternative theories on remand, however, the mere

possibility of other claims available on remand presents no obstacle to this Court's review.

CONCLUSION

For the foregoing reasons, this Court should hold the petition for certiorari pending the Court's resolution of *Durnell* or, in the alternative, grant it.

Respectfully submitted,

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