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 OF AMICI CURIAE AGRICULTURAL RETAILERS ASSOCIATION AND NATIONAL AGRICULTURAL AVIATION ASSOCIATION IN SUPPORT OF PETITIONER

ROSS W. JOHNSON
MARTIN J. DEMORET
FAEGRE DRINKER BIDDLE & REATH LLP
801 Grand Avenue
Des Moines, IA 50309

RICHARD D. GUPTON
AGRICULTURAL RETAILERS ASSOCIATION
4201 Wilson Blvd.
Suite 700
Arlington, VA 22203

JOHN L. ROCKENBACH
Counsel of Record
FAEGRE DRINKER BIDDLE & REATH LLP
2200 Wells Fargo Center
90 S. Seventh Street
Minneapolis, MN 55402
(612) 766-7000
John.rockenbach@faegredrinker.com

Counsel for Amici Curiae

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INTERESTS OF THE AMICI CURIAE

Although this case involves a company that makes pesticides, the Court's decision will profoundly affect the people who use them and sell them as well. Like manufacturers, retailers and applicators must obey FIFRA's labeling requirements and must adhere to labels approved by EPA. Like manufacturers, retailers and applicators would suffer under the patchwork labeling regime Plaintiff seeks to erect in the place of the uniform regime Congress chose.[1]

Amici's members include retailers and applicators. They write to offer the perspective of these businesses and individuals to the Court.

The Agricultural Retailers Association (ARA) represents agricultural retailers, distributors, and commercial pesticide applicators. ARA's members supply farmers and ranchers with products that promote American agriculture, including seed, feed, equipment, and technology. Retailers also provide consultative services such as crop scouting, soil testing, and nutrient management and conservation plans.

As part of these efforts, ARA's members supply and apply commercial pesticides that are regulated under FIFRA, including those containing glyphosate. ARA's members operate at the point of sale and use. They distribute products with intact, federally approved labeling. They train employees and customers based on

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[1] No counsel for either party authored this brief in whole or in part, nor did such counsel, any party, or other person other than amici curiae, its members, and its counsel make a monetary contribution intended to fund this brief's preparation or submission.

the label, and they apply pesticides in accordance with label directions.

ARA has a strong interest in preserving FIFRA's nationwide label uniformity. Its members conduct business across many states and rely on clear, nationwide labeling rules that are backed by science, open to notice and comment, and applied prospectively. Permitting state law to retroactively impose conflicting labeling requirements, particularly through tort verdicts based on junk science, would destabilize interstate distribution and application. It would also threaten to take safe and effective pesticides off the market, leaving ARA's members and their customers to rely on less desirable substitutes.

The National Agricultural Aviation Association (NAAA) represents more than 1,500 crewed agricultural aviation businesses, over 2,000 hired agricultural pilots, and over 2,000 uncrewed agricultural aviation businesses throughout the United States licensed as commercial pesticide applicators.

NAAA's members use aircraft to enhance the production of food, protect forestry, protect waterways and ranchland from invasive species, and control mosquitoes and other health-threatening pests. Aerial application is an important method for applying pesticides: it permits large areas to be covered rapidly when it matters most. Although the average aerial application company comprises just six employees and two aircraft, these small businesses treat nearly 127 million acres—28%—of U.S. cropland each season.

Agricultural pilots depend on access to commercial pesticides that are safe and effective for aerial application, including glyphosate. These businesses

frequently send aircraft out of their home states to assist with rapidly developing pest outbreaks, often with little advance notice. Being required to navigate numerous localized labels would hamper their ability to assist growers with these types of pest outbreaks.

SUMMARY OF ARGUMENT

Congress mandated "uniformity" in pesticide labeling requirements nationwide. It did so, in part, by expressly preempting state requirements that differ from or add to requirements "under" the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), a phrase that encompasses requirements directly imposed by the federal statute as well as those imposed by EPA through its statutory authority.

The decision below threatens this uniformity by misinterpreting FIFRA and by misapplying this Court's preemption precedent. Under federal law, Monsanto need not—indeed, must not—include a cancer warning in the labeling of its glyphosate-based products. Missouri therefore cannot require Monsanto to include such a warning through a threat of tort verdicts. If Missouri could do that, as the court below held, FIFRA's uniformity provision would be a nullity. Each state would be free to require any number of additional or conflicting warnings on a pesticide's label. And lay juries would ultimately have veto power over EPA regarding what warnings are required.

For agricultural retailers and commercial pesticide applicators, these non-uniform warning theories have immediate economic consequences: they increase insurance premiums, limit the availability of affordable liability coverage, and raise the cost of providing lawful distribution and application services across state

lines, even when products remain fully registered and approved by EPA.

These businesses operate across many states and depend on uniform, federally approved labels. Retailers must manage inventory, training, and point-of-sale communications under federal labeling constraints. Commercial applicators—ground and aerial—must schedule time-sensitive applications, maintain license compliance, and secure insurance coverage based on uniform label requirements. Non-uniform warning mandates—whether issued by state regulators or produced through tort verdicts—would fragment inventories, complicate training, and increase the risk of inadvertent noncompliance.

Retailers and applicators also depend on the availability of glyphosate and other safe and effective pesticides, which the decision below casts into doubt. If state law says that glyphosate products must carry carcinogen warnings and federal law says that they must not, it will become impossible to sell those products. The only option will be to discontinue them. That will harm the businesses that depend on a tool that EPA has found safe and effective for decades and across administrations. If will also harm the public, which benefits from the food security glyphosate products provide, among other benefits.

Congress wisely determined that the pesticide labeling requirements should be set uniformly, according to the extensive factfinding processes of the FIFRA, rather than piecemeal in the deliberation rooms of thousands of state courts. This Court should respect Congress's expressed will and hold that Plaintiff's claims are preempted.

ARGUMENT

A. FIFRA Creates a Comprehensive Regulatory Regime for Pesticides that Retailers and Applicators Must Follow.

FIFRA establishes a comprehensive federal framework that governs how pesticides may be labeled, sold, advertised, and used throughout the United States. 7 U.S.C. § 136, *et seq*. The statute requires pesticides and their labels to be registered. *Id.* § 136a(a), (c). It prohibits "us[ing] any registered pesticide in a manner inconsistent with its labeling," or "alter[ing] … any labeling required under" the statute. *Id.*

FIFRA also prohibits distributing pesticides that are unregistered or misbranded. *Id.* § 136j(a)(1)(A), (E). Misbranded pesticides include those whose labeling is "false or misleading" and those whose labeling "does not contain a warning … which may be necessary … to protect health and the environment." *Id.* § 136(q)(1)(A), (G). Whether labeling is "false or misleading" and whether it adequately "protect[s] health" present issues of fact and policy judgments that Congress delegated to EPA. *See id.* § 136(x), (bb) (describing what interests EPA must weigh when assessing health risks and benefits); *cf., e.g.*, *Montera v. Premier Nutrition Corp.*, 111 F.4th 1018, 1028 (9th Cir. 2024) ("Whether Premier's statements were misleading was a question of fact decided by the jury at trial."); *Vitamins Online, Inc. v. Heartwise, Inc.*, 71 F.4th 1222, 1235 (10th Cir. 2023) ("Whether a representation is false or misleading is a question of fact, and this determination is therefore reviewed for clear error."); *Johnson v. Enhanced Recovery Co., LLC*, 961 F.3d 975, 980 (7th Cir. 2020) ("[W]hether a communication is

false, deceptive, or misleading under the FDCPA is a question of fact.").

FIFRA's commands fall on more than just manufacturers. FIFRA specifically regulates "retailer[s]" and "commercial applicator[s]," 7 U.S.C. § 136*l*(a)(1), subjecting them to tenfold monetary penalties for violations of the Act's provisions, as compared to "private applicators," *id.* § 136*l*(a)(1).

B. A Key Element of FIFRA's Regulatory Scheme, Expressed Most Clearly in its Preemption Clause, Is that Labeling Requirements Must Be Uniform Nationwide.

In exchange for these stringent requirements and harsh penalties, FIFRA provides for "[u]niformity" in pesticide labeling requirements. 7 U.S.C. § 136v(b). It does so through a number of interrelated provisions, most notably its express preemption clause.

One way that the statute achieves uniformity is through rigorous factfinding procedures that are backed by science and that invite public participation. Before a pesticide can be sold, "EPA performs a rigorous, comprehensive scientific assessment of the product, resulting in a registration decision." EPA, Pesticide Registration Manual: Introduction, https://www.epa.gov/pesticide-registration/pesticide-registration-manual-introduction (May 21, 2025). This process requires gathering scientific "[d]ata in support of registration," including safety data. 7 U.S.C. §§ 136a(c)(1)(F) & (c)(2)(A); 40 C.F.R. § 158.1, *et seq.* Every 15 years, EPA must reevaluate its registration decisions, offering notice and inviting comment. *See* 7 U.S.C. § 136a(g); 40 C.F.R. § 155.50(b). States and members of the public can also petition

EPA to invoke the statute's process for cancelling a registration. EPA Consolidated Opp. at 25–26 & n.9, No. 3:23-cv-02714-SI, *Center for Food Safety* v. *EPA* (N.D. Cal. 2024), *available at* 2024 WL 3970969; *see* 7 U.S.C. §§ 136d, 136n.

Another, more direct, way that FIFRA achieves uniformity is through its express preemption clause. That provision prohibits states from "impos[ing] or continu[ing] in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter." *Id.* § 136v(b).

Yet a third way FIFRA ensures uniformity is by requiring a person who wishes to challenge EPA's determinations to bring an action in federal court, subject to federal procedures. *Id.* § 136n. EPA's decision to register a pesticide after notice and comment, for example, must be challenged in a Court of Appeals. *Id.* § 136n(b); *Nat'l Fam. Farm Coal. v. U.S. Env't Prot. Agency*, 960 F.3d 1120, 1132 (9th Cir. 2020). The agency's decision not to cancel an existing registration is subject to challenge in federal district courts. 7 U.S.C. § 136n(a).

FIFRA's factfinding procedures, express preemption clause, and judicial review provisions work together to create a sound, uniform labeling regime. Regulated entities, members of the public, and state governments can shape FIFRA's requirements on the front end through notice and comment. They can challenge those requirements, as too strict or too lenient, on the back end through judicial review. What states who disagree with EPA cannot do is bypass the process Congress designed and impose different or additional labeling requirements under state law.

C. The Decision Below Misinterprets FIFRA's Preemption Clause, Disrupting Uniformity and Harming Agricultural Retailers and Commercial Applicators.

A proper reading of FIFRA's preemption clause calls for preemption of a label-based failure-to-warn claim where EPA has not required the warning. The clause's plain language requires courts to identify the federal requirements ("those required under this subchapter") and state requirements ("requirements" "impose[d]" or "continue[d] in effect" by a "State"), then to compare the two.

The federal requirements include FIFRA's misbranding provisions but also "any relevant EPA regulations that give content to" those provisions. *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 453 (2005). Correspondingly, the state requirements "reach[] beyond positive enactments," and include "common-law duties" that "set a standard for a product's labeling." *Id.* at 443, 446. State requirements are preempted unless they are "equivalent to, and fully consistent with" the federal requirements, ensuring that labeling requirements across the nation are uniform. *Id.* at 447.

Under these principles, Plaintiff's claims are preempted. Plaintiff claims that Monsanto had a state common law duty to include a cancer warning on its glyphosate-based pesticide. *See* Pet.Br.15. That warning is not required under FIFRA's misbranding provisions and EPA regulations that give them content. Through the rigorous factfinding processes of FIFRA, EPA has determined that glyphosate products are not likely to be carcinogenic to humans. *See id.* at 11–18. Through its registration process, EPA has "weighed

the competing interests," *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 501 (1996), and determined that a cancer warning is not "necessary … to protect health and the environment." 7 U.S.C. § 136(q)(1)(G).

If the state-law requirements Plaintiff seeks to enforce were truly equivalent to the federal requirements, then Monsanto's labels would be allowed under state law just as they are under federal law. That Plaintiff is attempting to produce a different result under state law inescapably shows he is trying to impose different requirements.

The decision below thus rests on an unstated premise: that EPA's factual findings and policy judgments under FIFRA were wrong. After all, if EPA correctly determined that FIFRA did not require a cancer warning, that would prove that the state law requirements Plaintiff seeks to impose differ from the federal requirements.

But a state tort suit against a registrant is not the time or the place to challenge the agency's decisions. *Cohen v. ConAgra Brands, Inc.*, 16 F.4th 1283, 1288 (9th Cir. 2021) (holding that a statute with parallel language expressly preempted state-law claims alleging an agency's "decision to approve the label was wrong"); *see Thornton v. Tyson Foods, Inc.*, 28 F.4th 1016, 1024 (10th Cir. 2022) (similar). A party cannot collaterally assail EPA's findings of fact and policy judgments in a state court proceeding to which EPA is not a party. *See Gardfrey v. Gary Hous. Auth.*, 109 F.R.D. 338, 342 (N.D. Ind. 1986) ("Therefore, since the regulations were being challenged, whether directly or indirectly, HUD, which issues the regulations and to which § 1437 pertains, was a necessary party to the

lawsuit."); *see also Boles v. Greeneville Hous. Auth.*, 468 F.2d 476, 479 (6th Cir. 1972) (HUD was a necessary party to a case that indirectly attacked the agency's approval of an urban plan); *Kizer v. PTP, Inc.*, 129 F. Supp. 3d 1000, 1010 (D. Nev. 2015) (Bureau of Indian Affairs was a necessary party where lawsuit alleged BIA's approval of a lease was unlawful).

The challenge must instead be brought in a federal judicial proceeding, with the agency as a party and with the entire agency record before the court. *See* 7 U.S.C. § 136n. That is the tool Congress provided to those who believe that EPA has failed to properly apply FIFRA's misbranding provisions. Ruling that every state factfinder can veto EPA's determinations about what is "false," "misleading," or "necessary … to protect health," would nullify FIFRA's factfinding procedures, express preemption clause, and judicial review provisions.

It would also lead to disarray within and across states, especially for retailers and commercial applicators.

First, the decision below creates an immediate compliance trap for end users and distributors. Retailers cannot alter, supplement, or detach required labeling. 7 U.S.C. § 136j(a)(2)(A). Applicators likewise may not add their own warning language to product labeling or contradict label directions and precautionary statements. *Id.* § 136j(a)(2)(A), (G). A regime that imposes retroactively announced liability for the absence of additional label warnings therefore might expose retailers and applicators to state-law liability for obeying federal law. In short, retailers and commercial applicators cannot implement jurisdiction-by-

jurisdiction warning language for the same EPA-registered product.

Second, the decision below creates practical uncertainties for the agricultural retail and commercial application industries.

Retailers distribute products with intact labeling, and they train employees and customers based on the label. Can they sell glyphosate products already in their inventories without fear of state tort verdicts? Instead of training employees and customers on the label, will they need to conduct 50 state surveys to determine what other warnings are required?

Commercial applicators operate under layered compliance. They must apply pesticides consistent with EPA-approved label, and they also must comply with state and local use restrictions and licensing conditions that may be more restrictive than the label. *See* 7 U.S.C. § 136v(a); *Wisconsin Pub. Intervenor v. Mortier*, 501 U.S. 597, 613–14 (1991). The existence of state use restrictions underscores rather than undermines the need for a single, uniform federal label: applicators cannot safely navigate jurisdiction-specific warning language without creating conflicts in training, stewardship communications, and multi-state operations built around the label.

Aerial applicators, in particular, often operate across jurisdictional lines and must standardize training, drift-management protocols, and recordkeeping to comply with the label and state use restrictions. Non-uniform, jury-imposed warning theories increase insurance premiums, reduce the availability of affordable liability coverage, and raise the cost of doing business for retailers and applicators. Those cost

pressures can reduce service capacity during narrow agronomic windows and constrain product availability at the farm gate, even where the product remains fully registered and lawful under federal law.

D. The Decision Below Misapplies Impossibility Preemption, Threatening to Force Safe and Effective Products Off the Market.

"Even in the absence of an express pre-emption provision, the Court has found state law to be impliedly pre-empted where it is 'impossible for a private party to comply with both state and federal requirements.'" *Mut. Pharm. Co. v. Bartlett*, 570 U.S. 472, 480 (2013). Under analogous federal regimes, this Court has held that impossibility preemption applies where federal law bars unilateral label changes that state law requires. *PLIVA, Inc. v. Mensing*, 564 U.S. 604, 618–19 (2011); *Bartlett*, 570 U.S. at 486–87.

That is the case here. Not only is a cancer warning not required for glyphosate products under FIFRA, it is not allowed. FIFRA and EPA's regulations generally prohibit registrants from making substantive label changes—including new health warnings—without EPA approval. *See* 7 U.S.C. § 136a(c)(9); 40 C.F.R. §§ 152.44, 152.46. FIFRA also prohibits labeling that is "misleading in any particular." 7 U.S.C. § 136j. Hence, where EPA has found that an active ingredient is not likely to cause cancer and has approved a pesticide's labeling without a cancer warning, federal law doubly bars registrants from unilaterally changing their labels to include such a warning.

For retailers and applicators, the conflict is even more direct: federal law forbids them from altering required labeling at all. 7 U.S.C. § 136j(a)(2)(A). A

state-law duty that requires different warning language would therefore force downstream actors into an impossible position—comply with federal labeling rules or risk state-law liability for selling or using the product exactly as federally labeled.

Rejecting impossibility preemption here, as the court did below, would therefore threaten to take safe and effective products, including glyphosate, off the market. It would do so by creating a critical question: can businesses sell products in reliance on the federal label if state law requires them to carry warnings that federal law prohibits?

Leaving this question unanswered would represent a serious blow to U.S. agriculture. Glyphosate is the "most commonly used agricultural herbicide in the United States." EPA, Glyphosate: Interim Registration Review Decision, Case No. 0178, at 13 (Jan. 2020). Corn, soybean, and cotton, are "three of the most important agricultural commodities in the United States," *Nat'l Fam. Farm Coal.* 966 F.3d at 904, and glyphosate is used to treat about 90 percent of acres growing each crop, Glyphosate Interim Decision at 14.

Glyphosate is ubiquitous because it is "unique." *Id.* at 13. It works by inhibiting an enzyme present in plants, but not people, and is the only known pesticide to work in this way. *Id.*

It is also extremely "versatile." *Id.* at 14. It is effective against a broad spectrum of weeds, but leaves "minimal residual toxicity to crops or non-target vegetation." *Id.* at 13. It can be applied in a variety of agricultural settings and through a variety of equipment, including aerially.

Despite these accolades, glyphosate remains "relatively inexpensive." *Id.* at 14. For most crops, it costs "$1 to $13 per acre" to apply. *Id.* This low cost, and glyphosate's ability to protect and increase crop yield, helps stabilize food prices in the United States.

Glyphosate even has important uses, and public health benefits, beyond agriculture. It is "the most frequently used active ingredient used to control invasive species in the United States" and is used to protect "aquatic systems, pastures/rangelands, public lands, forestry, and rights-of-way." *Id.* It keeps "roadways and railroad tracks safe by protecting the stability of the surface" and by "maintaining visibility for operators." *Id.* It combats weeds that cause water to stagnate and therefore is "important for controlling mosquito-borne diseases." *Id.*

As important as it is, however, glyphosate is just one of many active ingredients assessed by EPA. The agency must review *every* pesticide and determine whether it is safe and effective. Agricultural retailers and commercial applicators depend on this review process to identify safe and effective products to sell and to use in their business. If any one of those products can be forced off store shelves or turned into lurking tort verdicts by state juries, the entire agriculture industry will be thrust into grave uncertainty.

CONCLUSION

For these reasons, this Court should reverse.

Respectfully submitted,

ROSS W. JOHNSON
MARTIN J. DEMORET
FAEGRE DRINKER BIDDLE & REATH LLP
801 Grand Avenue
Des Moines, IA 50309

RICHARD D. GUPTON
AGRICULTURAL RETAILERS ASSOCIATION
4201 Wilson Blvd.
Suite 700
Arlington, VA 22203

JOHN L. ROCKENBACH
Counsel of Record
FAEGRE DRINKER BIDDLE & REATH LLP
2200 Wells Fargo Center
90 S. Seventh Street
Minneapolis, MN 55402
(612) 766-7000
John.rockenbach@faegredrinker.com

Counsel for Amici Curiae

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