

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
Court of Appeals of Missouri,
Eastern District**

**BRIEF OF AMICI CURIAE NEBRASKA,
IOWA, MISSOURI, AND 12 OTHER STATES
IN SUPPORT OF PETITIONER**

MICHAEL T. HILGERS
Nebraska Attorney
General

ZACHARY B. POHLMAN
Deputy Solicitor General

NEBRASKA DEP'T OF JUSTICE
1445 K Street, Room 2115
Lincoln, NE 68509
(402) 471-2683

cody.barnett@nebraska.gov

CODY S. BARNETT
Solicitor General
Counsel of Record

ZACHARY A. VIGLIANCO
Principal Deputy
Solicitor General

ETHAN C. TREACY
Kingstreet Legal, PLLC

Counsel for Amici State of Nebraska
*(Additional Counsel Listed on Inside Cover
And at End of Brief)*

BRENNA BIRD
Attorney General of
Iowa
ERIC WESSAN
Solicitor General

OFFICE OF IOWA
ATTORNEY GENERAL
1305 E Walnut Street
Des Moines, IA 50319

CATHERINE L. HANAWAY
Attorney General of
Missouri
LOUIS J. CAPOZZI III
Solicitor General

OFFICE OF MISSOURI
ATTORNEY GENERAL
815 Olive Street, Suite 200
St. Louis, MO 63101

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
STATEMENT OF INTEREST	1
SUMMARY OF ARGUMENT	6
ARGUMENT.....	7
I. FIFRA expressly preempts Respondent’s state law failure-to-warn claim.....	7
A. FIFRA comprehensively regulates pesticide labels.	7
B. FIFRA expressly preempts contrary state law labeling requirements.	10
II. FIFRA’s express preemption clause ensures a uniform regulatory scheme that protects amici states’ sovereign prerogatives.....	13
A. Multifarious labeling requirements would cause perverse results.	14
B. FIFRA’s express preemption clause prevents these perverse results.	16
C. Preemption protects the states’ equal and independent sovereign interests.....	18
CONCLUSION	22

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>American Libraries Ass’n v. Pataki</i> , 969 F. Supp. 160 (S.D.N.Y. 1997)	14
<i>Bates v. Dow Agrosciences LLC</i> , 544 U.S. 431 (2005)	4, 7, 10, 12, 14
<i>Carson v. Monsanto Co.</i> , 92 F.4th 980 (11th Cir. 2024)	5
<i>Coyle v. Smith</i> , 221 U.S. 559 (1911)	18, 19
<i>Durnell v. Monsanto Co.</i> , 707 S.W.3d 828 (Mo. Ct. App. 2025).....	4, 11
<i>Hardeman v. Monsanto Co.</i> , 997 F.3d 941 (9th Cir. 2021)	5
<i>Loper Bright Enters. v. Raimondo</i> , 603 U.S. 369 (2024)	4
<i>Merit Mgmt. Group, LP v. FTI Consulting, Inc.</i> , 583 U.S. 366 (2018)	17
<i>Mutual Pharm. Co. v. Bartlett</i> , 570 U.S. 472 (2013)	11
<i>Nat’l Pork Producers Council v. Ross</i> , 598 U.S. 356 (2023)	13

<i>Schaffner v. Monsanto Corp.</i> , 113 F.4th 364 (3d Cir. 2024).....	4 7–8,11–13, 17, 20–21
<i>Schoenhofer v. McClaskey</i> , 861 F.3d 1170 (10th Cir. 2017).....	11
<i>Shelby County v. Holder</i> , 570 U.S. 529 (2013)	6
<i>Skidmore v. Swift & Co.</i> , 323 U.S. 134 (1944)	4
<i>Stearns v. Minnesota</i> , 179 U.S. 223 (1900)	19
<i>Taylor v. JBS Foods USA</i> , No. 3:23-cv-03031, 2025 WL 102450 (D.S.D. Jan. 15, 2025)	3
<i>Texas v. White</i> , 74 U.S. 700 (1869)	19
<i>Virginia v. West Virginia</i> , 246 U.S. 565 (1918)	19
Statutes & Regulations	
7 U.S.C. 136a	3, 7, 8
7 U.S.C. 136v(a).....	5, 10, 13
7 U.S.C. 136v(b)	4–5, 10–13, 17–18, 20
40 C.F.R. 152.44(a)	9

40 C.F.R. 155.40–155.58	3
40 C.F.R. 156.10	8
40 C.F.R. 156.70	8
California Health and Safety Code §§ 25249.5–25249.14	20
Other Authorities	
Anthony J. Bellia, Jr. & Bradford R. Clark, <i>The International Law Origins of American Federalism</i> , 120 Colum. L. Rev. 835, 937–38 (2020).....	19
Anneliese Abbot, <i>Alternatives to Glyphosate Are Even Worse</i> , Acres USA (July 8, 2025).....	16
<i>The Declaration of Independence</i> (United States 1776)	19
EPA, Glyphosate: Response to Comments on the Human Health Draft Risk Assessment (2018)	3
EPA, Proposed Interim Registration Review Decision, Case No. 0178 (2019).....	2
EPA, Interim Registration Review Decision, Case No. 0178 (2020).....	18

EPA, Revised Glyphosate Issue Paper: Evaluation of Carcinogenic Potential (2017)	17
EPA, Withdrawal of the Glyphosate Interim Registration Review Decision (2022)	18
Executive Order, <i>Promoting the National Defense by Ensuring an Adequate Supply of Elemental Phosphorous and Glyphosate-Based Herbicides</i> , 91 Fed. Reg. 8703 (Feb. 18, 2026)	1, 15
Michael Grunwald, <i>Sparing Roundup on Crops Is Fine. Really.</i> , New York Times (Sept. 28, 2025).....	16
James Otis, <i>The Rights of the British Colonies Asserted and Proved</i> (1763).....	19
University of Arkansas Division of Agriculture, Economic Impact of Agriculture: California.....	20
University of Arkansas Division of Agriculture, Economic Impact of Agriculture: Nebraska	20

STATEMENT OF INTEREST¹

American agriculture feeds the world. Farming is both essential to the national interest and a major economic engine in the Amici States. In Nebraska, for example, farms and ranches cover 92 percent of the State's total land area. Together, Nebraska, Iowa and Missouri have hundreds of thousands of farms and ranches, which contribute billions of dollars to the United States economy. In 2023 alone, Nebraska and Iowa's farms produced over 4.2 billion bushels of corn and over 800 million bushels of soybeans.

This verdant productivity would be impossible without safe, effective, and economical herbicides and pesticides. Glyphosate, the herbicide² at issue in this lawsuit, is crucial to Amici States' agricultural industries and to our nation's economy.³ Glyphosate is the most commonly used agricultural herbicide in the

¹ Under Supreme Court Rule 37.6, amici curiae state that no counsel for any party authored this brief in whole or in part and no entity or person, aside from amici and their counsel, made any monetary contribution toward the preparation or submission of this brief.

² Functionally, glyphosate is a "a non-selective, systemic herbicide," not a pesticide. Pet.App.32. Nevertheless, it is regulated as a "pesticide" under the Federal Insecticide, Fungicide, and Rodenticide Act. *See* 7 U.S.C. 136(u), (v). This brief uses the statutory term "pesticide" interchangeably with the more functionally precise "herbicide."

³ As President Trump recently recognized, "glyphosate-based herbicides ... play a critical role in maintaining America's agricultural advantage." *Promoting the National Defense by Ensuing an Adequate Supply of Elemental Phosphorous and Glyphosate-Based Herbicides*, 91 Fed. Reg. 8703, 8703 (Feb. 18, 2026).

United States. EPA, Proposed Interim Registration Review Decision, Case No. 0178 (2019), at 34.⁴ That is for good reason; farmers use what works. Glyphosate controls hundreds of different weeds with minimal residual toxicity to crops and other vegetation. *Ibid.* Glyphosate’s use increases crop yields at minimal expense—between \$1 and \$13 per acre for many crops. *Ibid.* Glyphosate is also easy to administer. It can be sprayed directly on glyphosate-tolerant crops with little to no effect on their sensitivity to sunlight. As a result, roughly 90 percent of all corn, cotton, soybean, and sugar beet crops are treated with glyphosate. *Id.* at 34.

Glyphosate also has environmental benefits. It is less toxic than many other herbicides on the market. Glyphosate’s use also incentivizes conservation tillage—the practice of minimizing the frequency and intensity of tillage operations. In turn, conservation tillage reduces soil erosion and run-off from fields into surface waters. *See* Br. of Amicus Curiae American Farm Bureau Federation, *Monsanto v. Durnell*, No. 24-1068 (2025), at 10 (“Tilling the soil is the equivalent of an earthquake, hurricane, tornado, and forest fire occurring simultaneously to the world of soil organisms.”) (citation and quotation marks omitted).

Glyphosate’s uses are not limited to commercial agriculture. Glyphosate is used to control invasive weeds in many contexts, including aquatic systems, public lands, parks, and forests. EPA, Proposed Interim Review Decision, at 34. Its aquatic uses help

⁴ Available at <https://perma.cc/A6XT-X5EF>.

reduce mosquito populations, thus mitigating the spread of deadly diseases like malaria. *Ibid.* It is also used to keep roadways, railroads, and other rights-of-way free from obstructions, facilitating the distribution of goods, services, and utilities. *Ibid.*

In the United States, chemicals like glyphosate are federally regulated. Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, “no person ... may distribute or sell ... any pesticide that is not registered” by EPA. 7 U.S.C. 136a(a). A pesticide like glyphosate must undergo an extensive regulatory process before EPA approves it for registration. See, *e.g.*, 40 C.F.R. 155.40–155.58. For decades, Monsanto has manufactured and sold glyphosate products (including its well-known “Roundup” brand) with EPA’s approval. See, *e.g.*, EPA, Glyphosate: Response to Comments on the Human Health Draft Risk Assessment (2018) at 2 (reiterating EPA’s longstanding conclusion that “glyphosate ... does not result in human health risk”).⁵

FIFRA—and EPA regulations promulgated under its auspices—govern the content of the label appended to a glyphosate-containing product.⁶

⁵ Available at <https://perma.cc/66PU-2NQU>.

⁶ This does not mean all federally approved labels are beyond reproach. Indeed, many of the Amici States are also *amici* in *Taylor v. JBS Foods USA*, No. 25-1986 (8th Cir.), which concerns a challenge to the content of a federally approved label. The label there was approved under the Federal Meat Inspection Act (FIMA), not FIFRA. And, critically, the label in *Taylor* does not comply with FIMA’s statutory commands; it is, instead, purportedly consistent *only* with non-binding “guidance” from the relevant agency. See *Taylor v. JBS Foods USA*, No. 3:23-cv-

Indeed, FIFRA expressly preempts any state labeling requirement that is “in addition to or different from those required” by FIFRA. 7 U.S.C. 136v(b). Because state law failure-to-warn claims challenge the adequacy of a federally approved label, such claims may be preempted under FIFRA’s express preemption provision. See *Bates v. Dow Agrosiences LLC*, 544 U.S. 431, 446 (2005) (“[N]egligent-failure-to-warn claims are premised on common-law rules that qualify as requirements for labeling or packaging.”) (quotation marks omitted); *Schaffner v. Monsanto Corp.*, 113 F.4th 364, 389–93 (3d Cir. 2024) (holding that a state law failure-to-warn claim is expressly preempted by FIFRA).

Here, Respondent’s failure-to-warn claim sought to impose a cancer warning despite EPA’s conclusion that glyphosate is not likely to be carcinogenic to humans and that any warning to that effect would constitute misbranding. Despite this clear case of federal preemption, a Missouri court permitted Respondent to recover under that theory. *Durnell v. Monsanto Co.*, 707 S.W.3d 828, 832–35 (Mo. Ct. App.

03031, 2025 WL 102450, at *3–9 (D.S.D. Jan. 15, 2025). While a federal regulator’s assessment and determinations should not be discounted or ignored, its mere stamp of approval cannot override the textual command of a pertinent federal statute. See generally *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024). That said, in cases like this one, where an agency’s determination is *faithful* to the statutory text, its views can (and often should) inform a court’s understanding of the statute’s scope and application. See *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944). As discussed below, labelling uniformity is central to FIFRA’s structure and scheme. See pp. 16–17, *infra*. The need for uniformity gives EPA’s conclusions regarding glyphosate’s carcinogenicity heightened relevance here.

2025). That recovery is unlawful under FIFRA and it threatens glyphosate's availability and affordability to farmers in Amici States. Indeed, Nebraska and 10 other States recently petitioned EPA to clarify its regulations and remove any doubt that warning labels which contradict EPA's conclusions constitute misbranding under FIFRA. Nebraska, et al., Petition for Rulemaking to Clarify Section 24 of the Federal Insecticide, Fungicide, and Rodenticide Act (Aug. 7, 2024).⁷

Amici States submit this brief to underscore that many States value their access to affordable glyphosate products, and it is neither appropriate nor lawful to permit other States' laws to jeopardize that access. Congress has already drawn the line between permissible and impermissible state regulation of glyphosate. States can choose to regulate glyphosate within the confines of FIFRA, including prohibiting or restricting its sale or use within their borders. 7 U.S.C. 136v(a) (empowering States to "regulate the sale or use of any federally registered pesticide" so long as the "regulation does not permit any sale or use prohibited" by FIFRA). But States may not impose bespoke labeling requirements that defeat Congress's intent of creating a uniform body of pesticide label regulations. 7 U.S.C. 136v(b). Doing so inflicts one

⁷ Available at <https://perma.cc/Q2U9-ZVXD>. The requested clarification would be helpful in light of the contrary conclusion of two federal courts of appeals. See *Hardeman v. Monsanto Co.*, 997 F.3d 941, 955–58 (9th Cir. 2021); *Carson v. Monsanto Co.*, 92 F.4th 980, 989–96 (11th Cir. 2024). However, Amici States maintain that FIFRA's preemptive effect is evident on the face of the statute and the accompanying regulations. See Argument § I.A, *infra*.

State's policy judgment on other States, in violation of FIFRA and contrary to the bedrock principle of equal state sovereignty. *See Shelby County v. Holder*, 570 U.S. 529, 544 (2013). FIFRA's express preemption provision protects against such an invasion of Amici States' sovereign prerogatives, and Amici States have a strong interest in its enforcement.

SUMMARY OF ARGUMENT

I. FIFRA expressly preempts state laws that impose labeling requirements "in addition to or different from" those required by FIFRA. EPA has already approved the warnings and other information that must appear on the label of a glyphosate-containing product. Additions or subtractions therefrom directly conflict with the federally prescribed label. Yet an addition is what Missouri's common law now demands. Undisturbed, that holding allows a State to mandate labeling content that is diametrically opposed to EPA's longstanding conclusion that glyphosate does not pose human health concerns. And it does so without any input from EPA. FIFRA does not permit such a result.

II. Permitting States to impose bespoke labeling requirements on glyphosate products will have disastrous consequences for Amici States' farmers and their agricultural industries. Prices will increase, discouraging use of the best and safest product and causing deleterious downstream effects on consumers and the environment. Additionally, excessive tort liability could drive manufacturers (like Petitioner) to stop marketing and producing glyphosate-containing products entirely, outright depriving Amici States' farmers of their safest and most effective herbicide.

Allowing other States' laws to work such perverse results within Amici States' borders would offend a bedrock principle of our federal system: equal state sovereignty. Different States have different policy priorities with respect to glyphosate. California, for example, believes glyphosate is a carcinogen despite EPA's longstanding conclusion otherwise. FIFRA allows California (or any other like-minded State) to regulate or even outlaw the use of glyphosate within its own borders. But California may not prejudice other States' policy prerogatives by implementing a labeling requirement that has a substantial extraterritorial effect. Because the holding below threatens to do exactly that, this Court should reverse.

ARGUMENT

I. FIFRA expressly preempts Respondent's state law failure-to-warn claim.

Respondent's lawsuit sought to impose state law tort liability on Monsanto despite Monsanto's compliance with federal pesticide labeling requirements. FIFRA expressly prohibits that result.

A. FIFRA comprehensively regulates pesticide labels.

FIFRA is a "comprehensive regulatory statute" that regulates "the sale and labeling[] of pesticides." *Schaffner v. Monsanto Corp.*, 113 F.4th 364, 372 (3d Cir. 2024) (quoting *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 991–92 (1984)). See also *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 437 (2005). Under FIFRA, a pesticide "that is not registered" by EPA

may not be distributed or sold. 7 U.S.C. 136a(a). A pesticide may only be registered—and thus may only be distributed or sold—if EPA determines that “it will perform its intended function without unreasonable adverse effects on the environment.” 7 U.S.C. 136a(c)(5)(C), (D). Those “adverse effects” include “any unreasonable risk to man ... taking into account the economic, social, and environmental costs and benefits of” its use. 7 U.S.C. 136(bb).

FIFRA also requires that a pesticide comply with the statute’s labeling requirements. 7 U.S.C. 136a(c)(5)(B). Those requirements include “a warning or caution statement ... adequate to protect health and the environment.” 7 U.S.C. 136(q)(1)(G). Once EPA approves a pesticide for registration, the label must include all FIFRA-required precautions. 40 C.F.R. 156.10(a)(1) (“Every pesticide product shall bear a label containing the information specified by the Act and the regulations in this part.”).

A registered product’s label may not include unapproved content. Even “minor modifications” to the approved label require EPA involvement before they may be made. 40 C.F.R. 152.46(a)(1) (permitting minor modifications only after an EPA determination that such modifications may be made). See also *Schaffner*, 113 F.4th at 383 (Section 152.46 “[a]t most” authorizes the “EPA to permit . . . modification to be made by notification.”).

More significant modifications—such as those to “precautionary statements” like warnings—also require EPA approval. 40 C.F.R. 156.70(c) (“Specific statements pertaining to the hazards of the product and its uses must be approved by the Agency.”). See

also 40 C.F.R. 152.44(a) (“Except as provided by § 152.46, any modification in the ... labeling, or packaging of a registered product must be submitted with an application for amended registration.”). Thus, neither Monsanto nor any State may unilaterally alter the content of the EPA-approved label.

Indeed, EPA has previously admonished Monsanto that it may not unilaterally add a non-EPA approved label warning. In 2019, EPA issued a letter to industry specifying that “EPA scientists have ... concluded that glyphosate is not likely to be carcinogenic to humans.” Pet.App.38 (quotation marks omitted). In that letter, EPA expressly disagreed with a California statute that listed glyphosate as a carcinogen and noted a federal court injunction prohibiting California “from enforcing the state warning requirements involving ... glyphosate’s carcinogenicity, in part on the basis that the required warning statement is false or misleading.” Pet.App.39. As a result, any glyphosate-containing products bearing the statement that California law required “are misbranded ... and as such do not meet the requirements of FIFRA.” *Ibid.* EPA further stated that it would “no longer approve labeling that includes” California’s state law warning and instead required that the “warning statement must also be removed from all product labels where the only basis for the warning is glyphosate, and from any materials considered labeling under FIFRA for those products.” Pet.App.40.

Here, Respondent’s failure-to-warn claim imposes effectively the same warning that EPA has already

rejected. FIFRA does not permit state laws to have that effect.

B. FIFRA expressly preempts contrary state law labeling requirements.

Congress expressly placed FIFRA's labeling requirements beyond the reach of state laws. To ensure national "[u]niformity," no State may "continue in effect any requirements for labeling or packaging in addition to or different from those required" by FIFRA. 7 U.S.C. 136v(b). This express preemption provision "pre-empts any statutory or common-law rule that would impose a labeling requirement that diverges from those set out in FIFRA and its implementing regulations." *Bates*, 544 U.S. at 452. Thus, a "manufacturer should not be held liable under a state labeling requirement ... unless the manufacturer is also liable for misbranding as defined by FIFRA." *Id.* at 454.

While FIFRA prohibits States from regulating label warnings, it nevertheless maintains their significant regulatory authority over pesticides in other respects. See *Bates*, 544 U.S. at 452 (observing that Section 136v(b) plays a "narrow, but still important, role"). For example, States may "regulate the sale or use of any federally registered pesticide" as long as "the regulation does not permit any sale or use prohibited by" FIFRA. 7 U.S.C. 136v(a). States may also impose any rule "that [is] fully consistent with federal requirements." *Bates*, 544 U.S. at 452.

So States may, in their discretion, outright prohibit the sale or use of glyphosate within their borders. But States may not impose divergent labeling requirements "that would create significant

inefficiencies for manufacturers.” *Ibid.* (“[I]magine 50 different labeling regimes prescribing the color, font size, and wording of warnings.”). See also *Schoenhofer v. McClaskey*, 861 F.3d 1170, 1174 (10th Cir. 2017) (“The reason for requiring uniformity in labeling, but not in other subjects of regulation, is a pragmatic one. State-by-state variation in how a pesticide is sold or used does not create any significant inconvenience. But not so for labeling requirements.”) (citing *Bates*, 544 U.S. at 452).

Missouri’s courts thus have permitted precisely what federal law prohibits: a labeling requirement that is “in addition to or different from those required” by FIFRA. See *Durnell*, 707 S.W.3d at 835 (holding that “[Respondent]’s failure to warn claim is not expressly or impliedly preempted by federal law”); 7 U.S.C. 136v(b). Respondent alleged that Monsanto’s glyphosate products are “unreasonably dangerous to consumers ... because they do not contain adequate warnings or instructions.” *Durnell*, 707 S.W.3d at 832 n.3. Respondent’s lawsuit thus sought to impose new label content that is not EPA approved, in violation of 7 U.S.C. 136v(b). See *Schaffner*, 113 F.4th at 393 (holding that Section 136v(b) expressly preempts state law failure-to-warn claim). See also *Mutual Pharm. Co. v. Bartlett*, 570 U.S. 472, 491 (2013) (finding impossibility preemption where “[f]ederal law requires a very specific label ... and state law forbids the use of that label”).

FIFRA’s “parallel requirements” exception to preemption does not change that conclusion. See *Schaffner*, 113 F.4th at 393 (holding that the “parallel requirements” exception does not save a state law

failure-to-warn claim from preemption). It is true that both FIFRA and common-law failure-to-warn claims seek to “adequately warn users of the potential dangers of using” a product. *Durnell*, 707 S.W.3d at 833.

But as the Third Circuit has held, framing a State’s regulations at such a high level of generality does not necessarily render the state-law requirement fully consistent with the federal requirement, as is required to survive preemption. *Schaffner*, 113 F.4th at 390 (reasoning that a “state-law duty cannot survive preemption simply because its standard of liability is equivalent to the broad statutory definition of misbranding”); *Bates*, 544 U.S. at 447 (“[A] state-law labeling requirement is not pre-empted by § 136v(b) if it is equivalent to, and fully consistent with, FIFRA’s misbranding provisions.”).

That is because FIFRA’s misbranding provision incorporates related EPA regulations that give the misbranding provision content. *Schaffner*, 113 F.4th at 381 (“[S]tate-law requirements must ‘be measured against any relevant EPA regulations that give content to FIFRA’s misbranding standards.’”) (quoting *Bates*, 544 U.S. at 453)). Thus, “[i]f EPA regulations specifically identify the contents required to be included on a pesticide label, a state-law requirement is preempted unless it is *equivalent* to that specific regulatory requirement.” *Id.* at 390 (emphasis added).

Here, EPA’s registration process has specifically identified the precise content that a glyphosate label must include. *See* pp. 8–9, *supra*. Because EPA has concluded that glyphosate does not pose a human health risk, EPA has never endorsed or permitted a

warning label that suggests glyphosate is carcinogenic to humans. *Ibid.* But Respondent’s failure-to-warn claim would require just that. *Ibid.* That is, Missouri’s common law would *mandate* what a federal statute *forbids*. It is hard to imagine a more clear-cut case of preemption. See *Schaffner*, 113 F.4th at 379; 7 U.S.C. 136v(b).

II. FIFRA’s express preemption clause ensures a uniform regulatory scheme that protects Amici States’ sovereign prerogatives.

Amici States permit the sale and use of glyphosate within their own borders. That policy judgment is consistent with EPA’s longstanding conclusions regarding glyphosate’s safety and efficacy, and it is well within the regulatory authority preserved for States by FIFRA.

Other States (like California) are free to come to a different conclusion. 7 U.S.C. 136v(a) (vesting States with broad authority to regulate pesticides in a manner consistent with FIFRA). What they may not do, however, is prejudice other States’ sovereign prerogatives by imposing label requirements that would extraterritorially intrude into the Amici States. 7 U.S.C. 136v(b). See also Argument § I.B, *supra*. In addition to being preempted by FIFRA, such extraterritorial effects may well raise constitutional concerns. See *Nat’l Pork Producers Council v. Ross*, 598 U.S. 356, 370–71 (2023); *id.* at 403–410 (Kavanaugh, J., concurring in part and dissenting in part).⁸ See also, *e.g.*, *American Libraries Ass’n v.*

⁸ As Justice Kavanaugh aptly noted in his separate *Pork Producers* writing, one “State’s effort to regulate farming ... practices in another State (in a manner different from how that

Pataki, 969 F. Supp. 160, 174 (S.D.N.Y. 1997) (noting that this Court has indicated that “the Commerce Clause precludes a state from enacting legislation that has the practical effect of exporting that state’s domestic policies”).

A. Multifarious labeling requirements would cause perverse results.

A disjointed patchwork of labeling regulations will have dire consequences for Amici States’ agricultural industries and their farmers. Such a patchwork scheme “would create significant inefficiencies for manufacturers.” *Bates*, 544 U.S. at 452. Glyphosate manufacturers would have to redesign their labels and supply chains to market certain labels in some States but not in others. *Ibid.* (“[I]magine 50 different labeling regimes prescribing the ... wording of warnings.”). See also *id.* at 452 n.26 (highlighting Congressional hearing testimony about the “industry’s need for uniformity” in pesticide labelling).

Nor is the alternative—manufacturers attempting to satisfy divergent state labelling requirements by defaulting to the most restrictive or onerous label—any better. It would allow the most glyphosate-averse State to displace EPA as the nationwide arbiter of what label warning is justified. That would obviously upend the regulatory scheme Congress has crafted. See Argument § 1.A, *supra*. Beyond that, an overly rigorous (and thus misleading)

other State’s laws regulate those practices)” prompts numerous constitutional questions. *Pork Producers*, 598 U.S. at 409 (Kavanaugh, J. concurring in part, dissenting in part).

warning would likely chill glyphosate use, disrupting agricultural markets nationwide and causing cascading downstream effects.

Ultimately, both paths impose inefficiencies and higher costs on Amici States' farmers, and in turn, raise prices for end-consumers of agricultural products—that is, *everyone*. Indeed, even marginally higher per-acre herbicide prices—caused by either an increase in glyphosate production costs or the inefficiency that results from a switch to less effective chemicals—will have a material negative impact on Amici States' agricultural industries, as well as a similar effect on the many other industries that rely on agricultural products. See p. 2, *supra* (noting the near-ubiquitous use of glyphosate on billions of bushels of staple agricultural products). See also Br. of Amicus Curiae American Farm Bureau Federation, *Monsanto v. Durnell*, No. 24-1068 (2025), at 7 (“If farmers cannot use glyphosate, food yields in the next growing season will drop precipitously.”). As a recent executive order succinctly states: Reduced access to glyphosate-based herbicides “would result in economic losses for growers” and “critically jeopardize agricultural productivity.” 91 Fed. Reg. at 8703.

Nor will the deleterious effects be purely economic. Erroneous cancer warnings could (and likely will) mislead at least some of Amici States' farmers into choosing products that are both less environmentally friendly and pose a greater danger to the public health. See pp. 2–3, *supra* (describing the environmental and health-related advantages to glyphosate as compared to other herbicides). This danger is all too real because, simply put, “most of the

alternatives to glyphosate are much more toxic — both to people and to plants.”⁹

Finally, if faced with exposure to sufficiently onerous tort judgments, manufacturers like Monsanto might choose to stop marketing glyphosate entirely. That would leave Amici States’ farmers with no choice but to use an inferior, likely more toxic, chemical alternative or employ less conservation-friendly tillage practices. This danger, too, is no mere hypothetical: Monsanto’s parent company, Bayer, has already removed glyphosate from some products due to litigation risk. Bayer.com, *Managing the Roundup Litigation, New Lawn and Garden (L&G) formulations for the U.S.*,¹⁰ (explaining that Bayer has removed glyphosate from certain residential products “exclusively to manage litigation risk and not because of any safety concerns”). It would certainly be perverse if one State’s unfounded concerns about glyphosate and cancer ultimately caused the overall cancer-risk related to herbicide use to rise.

B. FIFRA’s express preemption clause prevents these perverse results.

Fortunately, FIFRA does not permit state laws to cause such perverse results. Establishing a

⁹ Anneliese Abbot, *Alternatives to Glyphosate Are Even Worse*, Acres USA (July 8, 2025), <https://perma.cc/P69H-UP9L>. See also Michael Grunwald, *Spraying Roundup on Crops Is Fine. Really*, New York Times (Sept. 28, 2025), <https://perma.cc/X6CW-LQER> (noting that “glyphosate has significantly lower acute and chronic toxicity than many other herbicides on the market” and opining that “the most pressing glyphosate danger is that it could be replaced by much nastier chemicals”).

¹⁰ Available at <https://perma.cc/U8E2-2HEH>.

“[u]niform” body of pesticide regulations was Congress’s express purpose in including a preemption clause in FIFRA. Congress included the preemption clause under a header titled “Uniformity.” 7 U.S.C. 136v(b); 102 Stat. 2654 § 801(m)(2). Thus, “Congress enacted section 136v(b) to ensure that pesticide labeling requirements would be uniform across the nation.” *Schaffner*, 113 F.4th at 392. See also *Merit Mgmt. Group, LP v. FTI Consulting, Inc.*, 583 U.S. 366, 380 (2018) (section headings can “supply cues as to what Congress intended”) (quotation marks and citation omitted). And as the Third Circuit has reasoned, courts should “interpret [section 136v(b)] to realize the purpose that animates it”—national uniformity of pesticide label content. *Ibid.*

EPA has already provided for the required uniformity through its longstanding conclusion that glyphosate does not pose a health risk to humans. See, e.g., EPA, Revised Glyphosate Issue Paper: Evaluation of Carcinogenic Potential (2017), at 12 (“Glyphosate was initially registered in 1974.”)¹¹ That conclusion was reached following a lengthy and robust scientific process. Br. of Amicus Curiae CropLife America, *Monsanto v. Durnell*, No. 24-1068 (2025), at 2 (explaining that pesticide manufacturers invest, on average, \$300 million and 12 years on research, development, and registration before a pesticide receives federal approval).

EPA’s conclusion reflects the weight of the scientific evidence. See, e.g., Pet.App.41 (EPA letter noting that “EPA’s conclusion remains consistent with

¹¹ Available at <https://perma.cc/M8D9-YJC5>.

many international expert panels and regulatory authorities”) (citation omitted). And EPA has maintained its conclusion since glyphosate’s initial registration over 50 years ago. See, e.g., EPA, Interim Registration Review Decision, Case No. 0178 (2020)¹² at 9 (“The EPA thoroughly assessed risks to humans from exposure to glyphosate from all registered uses and all routes of exposure and did not identify any risks of concern.”).¹³ See also Pet. 7–12 (detailing EPA’s repeated evaluation of glyphosate and its repeated conclusion that glyphosate does not pose cancer risk). State-law failure-to-warn claims are, at a minimum, a collateral attack on those conclusions. But the States are not as well positioned as EPA to evaluate the safety of glyphosate, nor are they permitted to impose their evaluation in place of EPA’s on a product’s label. 7 U.S.C. 136v(b).

C. Preemption protects the States’ equal and independent sovereign interests.

Congress’s preference for a uniform labeling regime also reflects a fundamental tenet of our federal system: equal state sovereignty. The United States is a “union of states, equal in power, dignity and authority.” *Coyle v. Smith*, 221 U.S. 559, 567 (1911). All States that have entered the Union did so “in full

¹² Available at <https://perma.cc/A6ML-HR7D>.

¹³ Though EPA recently withdrew this interim decision following a Ninth Circuit opinion vacating it, EPA clarified that its withdrawal “does not automatically mean that EPA’s underlying scientific findings ... are either incorrect or cannot be used as support for a future decision.” EPA, Withdrawal of the Glyphosate Interim Registration Review Decision (2022) at 5, available at <https://perma.cc/T4ZL-LXZN>.

equality with all the others,” *Stearns v. Minnesota*, 179 U.S. 223, 245 (1900), and no State has “fewer sovereign rights” than any other, Anthony J. Bellia, Jr. & Bradford R. Clark, *The International Law Origins of American Federalism*, 120 Colum. L. Rev. 835, 937–38 (2020). That equal sovereignty is so self-evident that this Court has treated it as a “truism.” *Virginia v. West Virginia*, 246 U.S. 565, 593 (1918). Indeed, the “constitutional equality of the States is essential to the harmonious operation of the scheme upon which the Republic was organized.” *Coyle*, 221 U.S. at 580. See also *Texas v. White*, 74 U.S. 700, 725 (1869) (“The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States.”).

Equal sovereignty principles are implicated here. When one State’s regulations have significant extraterritorial effect, those regulations impact (and often control) behavior in another State despite no in-state legislator ever considering, debating, or voting for them. In turn, affected in-state citizens are deprived of the usual levers of political accountability with respect to those regulations; they have no practical way to seek to influence or change a policy they disagree with. Such a state of affairs transgresses the most fundamental principle of representative democracy. See *The Declaration of Independence* ¶19 (United States 1776).¹⁴

¹⁴ See also James Otis, *The Rights of the British Colonies Asserted and Proved* (1763) (“The very act of taxing, exercised over those who are not represented, appears to me to be depriving them of one of their most essential rights, as freemen.”).

Extraterritorial effects are particularly problematic where, as here, individual States have considerably different policy priorities when it comes to glyphosate use. Consider Nebraska and California. In Nebraska, farms make up 89% of the state’s total land area and the average farm is nearly 1,000 acres in size.¹⁵ By contrast, in California, farms make up just 24% of the State’s total land area and the average farm is less than 400 acres in size.¹⁶ It is unsurprising, then, that agriculture made up 10.6% of Nebraska’s total gross domestic product in 2022, but just 2.5% of California’s total gross domestic product in the same year.

There is no reason to think that such differently situated States would have compatible policy preferences with respect to glyphosate. And indeed, they do not. Nebraska, Iowa, and the other Amici States encourage glyphosate use, whereas California has broken with EPA and has listed glyphosate as a carcinogen. California Health and Safety Code §§ 25249.5–25249.14. And that difference of opinion is not necessarily limited to California—“disagreement has persisted for decades over whether [a] Cancer Warning is necessary to protect Roundup users’ health.” *Schaffner*, 113 F4th at 392. That is precisely why Congress left labeling regulation to EPA, not the States. 7 U.S.C. 136v(b) (ensuring a

¹⁵ University of Arkansas Division of Agriculture, Economic Impact of Agriculture: Nebraska, available at <https://perma.cc/4P6J-2SR6>.

¹⁶ University of Arkansas Division of Agriculture, Economic Impact of Agriculture: California, available at <https://perma.cc/S6LY-6T5J>.

“[u]niform” regulatory scheme for pesticide labels). If States were empowered to impose their own labeling requirements via tort law, as the decision below permits, “different factfinders deciding different individual cases might reasonably disagree about whether a particular warning was necessary to protect health.” *Schaffner*, 113 F.4th at 393. That would create “considerable heterogeneity, not uniformity, in the labels that pesticides are required to bear.” *Ibid.* Such heterogeneity would wreak havoc on Amici States’ farmers, and the agricultural industry more broadly.

Amici States’ pro-glyphosate posture reflects their agreement with EPA that glyphosate safely increases their farmers’ crop yields because glyphosate is one of the least toxic herbicides currently available. That is why Amici States encourage glyphosate’s use within their own borders. It is up to Amici States, not other States, to set those policy priorities unencumbered by the extraterritorial reach of other States’ tort laws, and it is FIFRA’s express preemption clause that protects those sovereign prerogatives. This Court should hold that FIFRA preempts contrary state laws, thus ensuring the national uniformity in labeling requirements that Congress intended.

CONCLUSION

For the reasons above, the Court should reverse.

Respectfully submitted,

MICHAEL T. HILGERS
Attorney General of
Nebraska

ZACHARY A. VIGLIANCO
Principal Deputy
Solicitor General

ZACHARY B. POHLMAN
Deputy Solicitor
General

BRENNA BIRD
Attorney General of
Iowa

ERIC WESSAN
Solicitor General

OFFICE OF IOWA
ATTORNEY GENERAL
1305 E Walnut Street
Des Moines, IA 50319

CODY S. BARNETT
Solicitor General
Counsel of Record

NEBRASKA DEPARTMENT
OF JUSTICE
1445 K Street, Room 2115
Lincoln, NE 68509
(402) 471-2683
cody.barnett@nebraska.gov

ETHAN C. TREACY
Kingstreet Legal, PLLC

CATHERINE L. HANAWAY
Attorney General of
Missouri

LOUIS J. CAPOZZI III
Solicitor General

OFFICE OF MISSOURI
ATTORNEY GENERAL
815 Olive Street, Suite 200
St. Louis, MO 63101

Additional Counsel

STEVE MARSHALL
Attorney General of Alabama

CHRIS CARR
Attorney General of Georgia

KRIS KOBACH
Attorney General of Kansas

RUSSELL COLEMAN
Attorney General of Kentucky

LIZ MURRILL
Attorney General of Louisiana

AUSTIN KNUDSEN
Attorney General of Montana

DREW WRIGLEY
Attorney General of North Dakota

GENTNER DRUMMOND
Attorney General of Oklahoma

DAVID SUNDAY
Attorney General of Pennsylvania

ALAN WILSON
Attorney General of South Carolina

MARTY JACKLEY
Attorney General of South Dakota

DEREK BROWN
Attorney General of Utah