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 *AMICUS CURIAE* UNITED STATES SENATOR CORY BOOKER IN SUPPORT OF RESPONDENT

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INTEREST OF THE *AMICUS CURIAE*

Amicus Curiae is a United States Senator and a member of the Senate Committee on Agriculture, Nutrition, and Forestry, on which he has served since January 2021. *Amicus* has firsthand knowledge of the ongoing legislative deliberations over the relationship between FIFRA and state-law tort claims that are at the center of this case, and a strong interest in preserving the separation of powers between the legislative and judicial branches. He submits this brief to urge the Court to adhere to the settled principle that federal preemption of state law must rest on the intent of Congress as expressed in the text and structure of its enactments, not on the advocacy of regulated parties who have been unable to obtain their desired result from the legislature.[1]

INTRODUCTION AND SUMMARY OF THE ARGUMENT

In our system of cooperative federalism, state laws are preempted only when the democratically elected Congress says so, either expressly or by creating a regulatory scheme so comprehensive or so specific that state law is invariably boxed out (field or conflict preemption). In the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), Congress did neither of these; instead, as this Court has repeatedly recognized, it reserved to the states the power to

[1] No counsel to a party authored this brief in whole or in part. No party, or party's counsel, or any person or entity, other than the *Amicus Curiae* and its counsel, contributed money to fund preparing or submitting the brief.

enforce their own regulations on pesticide use as part of a deliberate legislative judgment intended to better ensure public safety. *See Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 444–51 (2005); *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 607 (1991). The statute's plain language does not preempt state tort law claims, nor does its text demand such a forced reading—which is disfavored even if plausible, especially where health and safety are concerned, *CTS Corp. v. Waldburger*, 573 U.S. 1, 19 (2014).

Yet ever since some Americans suffering from non-Hodgkin lymphoma became aware that their disease is linked to long-term use of Petitioner's flagship product Roundup, Monsanto has sought a broad federal shield from liability for pesticide injuries that juries nationwide have found the company knew, and misled or failed to warn consumers, about. It has repeatedly lobbied for consideration of this result in Congress, and its efforts so far have failed following vigorous bipartisan debate. Even as this Court sits, FIFRA preemption language is once again under consideration in Congress, where this debate belongs.

Petitioner explains that it comes to this Court facing significant and mounting liability that threatens its continuing use. Pet. Br. at 52–53. This Court, however, is not best suited to solve that thorny problem. While "it can be tempting to bypass Congress when some pressing problem arises," "the deliberative nature of the legislative process was the whole point of its design." *Learning Resources, Inc. v. Trump*, 607 U.S. ---, 146 S. Ct. 628, 672 (2026) (Gorsuch, J., concurring). This Court should reject Petitioner's latest bid to get from the judiciary what it has repeatedly failed to obtain from elected representatives.

ARGUMENT

Petitioner says FIFRA is an elaborate and "comprehensive" scheme that by its text plainly prohibits the kind of state tort law judgments Mr. Durnell obtained below, or at least renders simultaneous compliance with both FIFRA and basic common-law duties impossible. Pet. Br. at 6, 10, 43. But as this Court has already held, the statute does not require preemption of state tort law. And Petitioner has spent years lobbying Congress in vain for just the rule it asks this Court to adopt. In the legislature, as *Amicus* knows firsthand, the appropriate scope of available redress for pesticide injuries is a question currently undergoing significant bipartisan debate.

Petitioner seeks to pervert FIFRA by recasting the statute not as the one Congress actually wrote—a floor for what pesticide manufacturers must do to register pesticides with the federal government—but rather the one Petitioner *wishes* it had written: a (largely Petitioner-controlled) ceiling on consumer safety that bars state tort actions. Such a reading was neither contemplated nor intended by Congress and undermines the symbiotic role of state tort-law actions in serving as a backstop on FIFRA's self-reported, once-every-15-years reregistration structure. Petitioner's proposed reading contravenes the text and structure of the statute and thus undermines the interest of *Amicus*.

I. Petitioner asks this Court to deliver what Congress is currently considering and has repeatedly declined to enact.

Over the last several years, Congress has more than once considered amending FIFRA to preempt state-law claims involving pesticide injuries. It has considered the question in various forms across multiple legislative sessions and is currently considering the question once again. These bills have attracted significant attention and spurred ongoing and bipartisan debate in Congress—where the question whether to amend FIFRA's preemption clause belongs.

The most recent efforts to amend Section 136v(b) come on the heels of a flood of cases responsive to emerging science about the health risks of glyphosate and Roundup. Versions of Petitioner's favored legislation have been introduced in Congress at least five times in the last three years alone. On June 22, 2023, the Agricultural Labeling Uniformity Act was introduced in the House. H.R. 4288, 118th Cong. (2023). The stated intent of the bill was "[t]o clarify the application of a certain provision of the Federal Insecticide, Fungicide, and Rodenticide Act with respect to the uniformity of pesticide labeling":

> (a) In general.—Section 24(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136v(b)) shall be applied to require uniformity in national pesticide labeling, and prohibit any State, instrumentality or political subdivision thereof, or a court from directly or indirectly imposing or

> continuing in effect any requirements for, or penalize or hold liable any entity for failing to comply with requirements with respect to, labeling or packaging that is in addition to or different from the labeling or packaging approved by the Administrator under such Act (7 U.S.C. *et seq*.) (*sic*), including any requirements relating to warnings on such labeling or packaging.
>
> (b) Prohibition.—The Administrator may not issue or adopt any guidance or any policy, take any regulatory action, or approve any labeling (or change to such labeling) that is inconsistent with or in any respect different from the conclusion of—
>
> (1) a human health assessment performed pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq*.); or
>
> (2) a carcinogenicity classification for a pesticide performed pursuant to such Act (7 U.S.C. 136 *et seq*.).

H.R. 4288, 118th Cong. (2023). Subsection (a) would have extended section 136v(b) beyond state regulatory requirements to reach courts and to impose liability protections, encompassing failure-to-warn claims of the kind at issue here. Subsection (b) would have tied EPA's labeling authority to its existing health assessments and carcinogenicity classifications, effectively preventing any label change that diverges from EPA's current scientific conclusions. Together,

the provisions would have given Petitioner substantially the result it now seeks from this Court. Congress did not enact the bill.

The next year, the same[2] language appeared in the Farm, Food, and National Security Act of 2024, H.R. 8467, Sec. 10204, 118th Cong. (2024). That bill was introduced in the House on May 21, 2024, and was ordered to be reported as amended by the House Committee on Agriculture. The language appeared yet again in December 2024 in the Prioritizing American Farmers and Agricultural Industry Over Bureaucracy Act. H.R. 10529, Sec. 9204, 118th Cong. (2024). Neither bill was enacted.

In the 119th Congress, a different approach emerged. Section 453 of a House appropriations bill, H.R. 4754, 119th Cong. (2025), provided:

> None of the funds made available by this or any other Act may be used to issue or adopt any guidance or any policy, take any regulatory action, or approve any labeling or change to such labeling that is inconsistent with or in any respect different from the conclusion of—
>
> (a) a human health assessment performed pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.); or

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[2] The new bill corrected a citation error in the first bill and clarified the definition of Administrator. The two proposals contain otherwise identical language.

> (b) a carcinogenicity classification for a pesticide.

H.R. 4754, Sec. 453, 119th Cong. (2025). This provision, like the others, would still require preemption of any state-law injury claims based on the link between cancer and long-term use of glyphosate and Roundup, including Respondent's. Section 453 was removed from the appropriations bill in January 2026 following significant debate voiced by both sides of the aisle. *See* Rachel Frazin, *Funding bill excludes controversial pesticide provision hated by MAHA*, The Hill (Jan. 5, 2026), https://thehill.com/policy/energy-environment/5673246-maha-pesticide-epa-section-453/ [https://perma.cc/8W87-CQPN].

The debate continues. The current farm bill—the Farm, Food, and National Security Act of 2026, H.R. 7567, 119th Cong. (2026)—returns to the direct approach of amending section 136v(b). Section 10205 would prohibit any state, political subdivision, or court from "directly or indirectly imposing or continuing in effect any requirements for, or penalize or hold liable any entity for failing to comply with requirements" related to labeling or packaging that differs from EPA-approved labeling, "including any requirements relating to warnings." *Id.* § 10205(a).

Section 10207 of the bill would also amend section 136a(f) (currently providing that registration shall not "be construed as a defense," 7 U.S.C. § 136a(f)(2)), to declare that use of a registered pesticide "consistent with its labeling" shall be "considered lawful." *Id.* § 10207. The bill was reported by the House Committee on Agriculture on March 5, 2026, and is currently pending before the House. H.R. 7567, 119th

Cong. (2026), https://www.congress.gov/bill/119th-congress/house-bill/7567 (Actions).[3]

These legislative efforts are backed by significant industry support. In April 2024, Bayer, Petitioner's parent company (Pet. Br. at iii), launched the Modern Ag Alliance, a pesticide preemption lobby that, by its own description, exists solely to "work[] with federal and state policymakers to advance legislative solutions" to ensure "that any pesticide registered with the EPA" is deemed to "satisfy health and safety warning requirements." Modern Ag Alliance, *About Us*, https://modernagalliance.org/about-us/ [https://perma.cc/D6Y4-F3NG]; *see also* Modern Ag Alliance, *Bayer Leads New Coalition to Advocate for Farmers' Access to Glyphosate and Other Crop Protection Tools*, AGRIBUSINESS GLOBAL (Apr. 5, 2024), https://www.agribusinessglobal.com/agrochemicals/herbicides/bayer-leads-new-coalition-to-advocate-for-u-s-farmers-access-to-glyphosate-and-other-crop-protection-tools/ [https://perma.cc/DE4U-F9ZA].

Amicus, a member of the Senate Committee on Agriculture, Nutrition, and Forestry, can attest that Congress's repeated decision not to enact legislation expanding FIFRA's preemptive scope to reach state tort claims like Petitioner's reflects deliberative legislative judgment, not oversight.

Congress has also considered legislation that would provide a private right of action for pesticide injuries. In the 117th and 118th Congresses, *Amicus* introduced the Protect America's Children from Toxic

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[3] The bill also contains additional provisions amending FIFRA that are beyond the scope of this brief. *See id.* §§ 10201–10204, 10206.

Pesticides Act, S. 3283, 117th Cong. (2021); S. 269, 118th Cong. (2023)—comprehensive FIFRA reform legislation that would have, among other things, repealed section 136v(b). A companion bill was introduced in the House. H.R. 5085, 118th Cong. (2023). None were enacted. In the 119th Congress, *Amicus* introduced the Pesticide Injury Accountability Act, S. 2324, 119th Cong. (2025), which would amend FIFRA to create a federal private right of action for injuries caused by pesticides.

Congress, in short, is aware of the question Petitioner presents and has so far answered it differently than Petitioner would like. As it has repeatedly declined to do, this Court should not now read into section 136v a result that Congress has considered and declined to enact.

II. Preemption is a question of Congressional intent, and Congress has never intended FIFRA to displace state tort law.

Whether a federal statute preempts state law "turn[s] on congressional intent." *Mortier*, 501 U.S. at 604. The text of section 136v is "wholly inadequate to convey an express preemptive intent on its own." *Id.* at 607. The statutory structure and legislative history confirm that Congress did not intend to preempt state tort law claims in enacting section 136v(b).

a. Petitioner's unnatural read of the statute would undermine FIFRA's purpose by giving regulated parties a path to avoid accountability for known risks in use of its products, a consequence that would directly undermine Congressional objectives. Besides, the statutory structure confirms Congress's intent not

to preempt state tort law. Section 136v of FIFRA reads in relevant part:

> (a) In general
>
> A State may 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.
>
> (b) Uniformity
>
> Such State shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this subchapter.

7 U.S.C. § 136v.

In considering whether Congress intended this language to supplant state law, the text points the other way. First, Section 136v(a) grants states the authority to regulate *above*, but not below, the floor that Congress has set in FIFRA. *Mortier*, 501 U.S. at 607 n.4 (noting that Section 136v(a) "is written exclusively in terms of a grant" of state authority). Next, Section 136v(b) restricts states from imposing labeling or packaging requirements that differ from those required under FIFRA. Together, Sections 136v(a) and 136v(b) reflect a deliberate judgment by Congress to coregulate pesticides with states subject only to certain labeling requirements that state law claims sounding in tort simply do not implicate in every case. That a successful state action alleging failure to warn or misleading advertising might induce a manufacturer to change its label does not

preemption make. *See Bates*, 544 U.S. at 449; *see also, e.g.*, *CTS Corp.*, 573 U.S. at 19 (collecting cases).

Petitioners ask this Court for a FIFRA-specific carveout of the bedrock principle that preemption is disfavored. But "consistent with both federalism concerns and the historic primacy of state regulation of matters of health and safety," courts "ordinarily accept the reading that disfavors pre-emption," and this rule is especially primary when the question involves the preemption of state tort law. *CTS Corp.*, 573 U.S. at 19 (internal quotation marks and citations omitted).

The history of overlapping state tort litigation over pesticides confirms this reading of the statute. As this Court has noted, through years of debate and multiple rewrites, FIFRA and state tort law claims relating to products registered under the statute coexisted without so much as an argument. *See, e.g.*, *Bates*, 544 U.S. at 441 ("[F]or at least a decade after [FIFRA's preemption language was first enacted], arguments that such tort suits were pre-empted by § 136v(b) either *were not advanced* or were unsuccessful." (emphasis added)).

b. That intuitive reading of the statutory structure is confirmed by Congress's past decisions to leave Sections 136v(a) and 136v(b) alone. Section 136v was first enacted in 1972. Fed. Env. Pesticide Control Act of 1972, Pub. L. No. 92-516, 86 Stat. 973 (1972). In considering amendments to FIFRA over years of agonizing debates in the 1970s and 1980s, Congress has repeatedly considered and rejected as overbroad various—and significantly narrower—amendments to Section 136v than the ones it is considering today. See Sections I and IIa *supra*.

The appropriate scope of FIFRA preemption and liability continued to be a prominent feature of the debate when Congress took up amending the statute in the 1980s.[4] Throughout these debates, members of Congress confirmed with witnesses on both sides their understanding that state-law personal injury claims were still available. Consumer and environmental advocates supported an amendment to include a private right of action for FIFRA violations. Meanwhile, industry advocates continued to press Congress to amend Section 136v to prohibit localities from regulating pesticides.[5] These central questions

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[4] In a 1983 hearing on a proposed bill amending FIFRA, a consumer advocate witness testified about the lobbying dynamic before a House subcommittee:

> Year after year [industry advocates] … come in here and say we want longer extension of exclusive use, *we want to preempt*, the states want to do more than EPA wants to do.
>
> They have got a very good hearing from the subcommittee and they have gotten many of the changes, or at least they have gotten the committee to vote for the changes they want even if the full Congress didn't go along with it.

Hrgs. on H.R. 3254 and H.R. 3818 before Comm. On Ag., Subcomm. on Dept. Ops., Research, and Foreign Ag., at 30 (statement of Jacqueline M. Warren, Natural Resources Defense Council) (emphasis added).

[5] As they had advocated in the legislative process for what would become the 1972 iteration of FIFRA, industry advocates pushed Congress for the same rule this Court rejected in *Mortier*. Mateo Forero, *In the Shadow of the Supremacy Clause: How a "Logical-Contradiction" Test Can Resolve the Debate Over Legislative History in FIFRA Preemption*, 43 RUTGERS L. REC. 184, 190–91 (2015-2016); *Federal Insecticide, Fungicide, and*

about the appropriate scope of FIFRA preemption and liability held up the passage of major reforms of FIFRA for *years*, as Senator Patrick Leahy noted in an address near the debate's long conclusion in 1988:

> The good news is that the bill we seek to pass today does not include any of those provisions that troubled this body when FIFRA legislation passed the Senate in 1986—and which ultimately prevented its enactment. For example, this bill does not include any form of State preemption, regarding uniformity of tolerances or State testing requirements.

134 Cong. Rec. S.13444-59, S. 659 (1988) (statement of Sen. Leahy).

In 1985, the proposed private right of action prompted detailed discussion of what remedies for pesticide injury were already available. In a prescient exchange, Representative George E. Brown Jr. and Mark Maslyn of the American Farm Bureau Federation discussed that organization's risks and benefits in advocating to preserve the status quo: tort suits in state court.

> Mr. BROWN. The issue of the private

Rodenticide Reform Act and Pesticide Import and Export Act of 1983: Hearings on H.R. 3254 and H.R. 3818 Before the Comm. on Ag., Subcomm. on Dept. Ops., Research and Foreign Ag., 98th Cong. 1st Sess. 38 (1983) (statement of Ralph Engel, President, Chemical Specialties Manufacturers Association). Industry strongly opposed consumer and environmental advocates' push to include in FIFRA a private right of action. *See, e.g.*, statement of William H. Houston, Delegate, Nat'l Cotton Council, *id.* at 82.

right to sue is going to give us a big headache. It has come up before and we recognize the issues that are involved here. If I understand correctly, what this really means is that the person desiring to sue must have recourse to the State courts under the general tort laws or whatever rather than having it written into the Federal law that they would have a Federal court recourse. Is that correct?

Mr. MASLYN. Yes.

Mr. BROWN. What bothers me a little bit here is that your position may be one of temporary expediency. It seems to me fairly conceivable that under some circumstances you might get a situation where a widespread public concern about some of these issues might create a climate in the State court level which would be the reverse of what it is now, where currently I think the State courts tend to be somewhat more sympathetic to the problems of the local citizens and the local farmers and so on, but that situation might be overcome, and I can envision the possibility of your coming back here and saying, why can't we have a Federal provision that preempts the State provision as we are saying now with regard to some other parts of the bill, where you don't want chaotic State and local regulations and saying that you would rather have this handled on a

uniform basis at the Federal level.

Has that thought occurred to the Farm Bureau and have they considered the merits of that possibility?

Mr. MASLYN. Obviously it has. I think it is a very valid point. Even more so, I think farmers generally feel that they would like some provision in Federal statute that said if they follow the label that is approved by the Federal Government in more than one agency, then they should be absolved from any liability, barring gross negligence.

We don't want to be in a position of defending an applicator who has no regard for the law. That is not in anyone's best interest. But what we want to do is protect the family farmer, the mom and pop farmer who has very little reresources [sic] to fight a nuisance suit, let alone any suit for significant damages.

Mr. BROWN. Well, what you are really saying is you want fair equitable an[d] uniform legal standards that the farmers and others using the chemicals can live with.

Mr. MASLYN. That is correct.

Mr. BROWN. And not be subject to the chaos that you might otherwise get, which is a very reasonable position. The question is whether you get it better from leaving the existing situation,

> which very frankly, gives you different results in different places, and I think you are probably aware of examples of that. But you still prefer that situation and for the time being to rewriting the statute to give a private right to sue in Federal court.
>
> Mr. MASLYN. This was a policy that was surfaced at the grassroots level and was approved and voted on all the way through the county, State, and national annual meeting by the farmers that make up this organization, and that at the present time is their feeling.

Hearings on H.R. 1416, H.R. 1910, and H.R. 2482, *Before the Comm. on Ag., Subcomm. on Dept. Ops., Research and Foreign Ag.,* 99th Cong., 1st Sess. 166–67 (1985).[6]

That understanding was not limited to industry advocates. Representative Berkley Bedell and Nancy Drabble of the consumer advocacy organization Public Citizen confirmed the same premise—that injured parties could already bring tort actions in state court:

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[6] The American Farm Bureau Federation's representative told Congress in 1985 that the organization's membership had voted to preserve state tort remedies rather than seek a federal substitute. Today, the Farm Bureau, *amicus* for Petitioner, complains of the effects of a "patchwork of state labeling requirements." Am. Farm Bureau Am. Br. 18. And State Farm Bureau organizations, *amici* for Petitioner, worry that, "[i]n light of the interconnected nature of interstate commerce in the modern era, manufacturers like Monsanto will have no choice but to conform to the most demanding state-law requirements." Farm Bureau Org. of Cali., et al. Am Br. 15.

> REP. BERKLEY BEDELL: Right now you can bring suit if you feel you have been harmed, as has already happened. What is it that you would like to see different about the opportunity to sue?
> …
> NANCY DRABBLE: You can only bring an action for damages if you feel that your property has been damaged or you have been personally injured. You can bring a personal injury action against whoever you feel has harmed you. But what you cannot do is bring an action saying that that corporation or that person has disobeyed [FIFRA] and has failed to comply with [FIFRA].

Hearings on H.R. 1416, H.R. 1910, and H.R. 2482, *Before the Comm. on Ag., Subcomm. on Dept. Ops., Research and Foreign Ag.,* 99th Cong., 1st Sess. 332–33 (1985). Charles Horwitz of the Farmworker Justice Committee independently confirmed the point later in the same hearing: "It is true … that victims can go into court and sue on tort damages if they are injured, but they cannot go into Federal court now unless they have diversity of citizenship." *Id.* at 347.

As Congress chose to again reject the industry-backed language preempting localities' regulation of pesticides, the same fight was being waged in the courts. Industry *amici* advocated for a broad reading of the preemptive force of Section 136v before this Court in *Mortier*, but did not obtain their desired result.

III. Congress preserved state tort law as a necessary backstop in a manufacturer-driven regulatory system.

FIFRA's mutually reinforcing construct allows state tort law claims to reinforce EPA registration. *Bates*, 544 U.S. at 451 ("Private remedies that enforce federal misbranding requirements would seem to aid, rather than hinder, the functioning of FIFRA."). It puts cops on the beat in the states to provide, given the EPA's information and resources, a means for consumers and an incentive for manufacturers to disclose any newly uncovered risks of the product to the EPA and update their labels in the EPA registration process. Petitioner proposes a new rule that would remove the stick that makes the statutory regime work for Americans.

a. By design, FIFRA's enforcement scheme puts on the pesticide manufacturer the lion's share of responsibility for providing accurate data to the EPA in registration, reregistration, and the provision of long-term health effects data. For example, manufacturers initiate their own registrations, 40 C.F.R. § 152.42; draft their own labels, 7 U.S.C. § 136a(c), 40 C.F.R. §§ 152.50(e), (f)(3); and may modify aspects of their registrations by notification alone without agency approval, 40 C.F.R. § 152.46(a). Once the agency has the information it requires, manufacturers' pesticides typically proceed through the registration process and return for reregistration only if their underlying data change in a manner that requires manufacturers to update the agency or if another 15 years pass. *See Bates*, 544 U.S. at 438; 7 U.S.C. § 136d(a)(2) (manufacturers update EPA about "unreasonable effects" they may uncover); 40 C.F.R.

§ 159.152–159.195 (detailing reporting requirements for registrants). This process is revisable and does not represent any definitive judgment that consumers have been adequately warned of any risks. *See id.*; *see also* Resp. Br. at 37–45.

EPA review reflects the manufacturer-supplied evidence available at the time of approval, any incomplete or contested scientific records, and the limits of a prospective risk assessment in evaluating a pesticide's potential to affect human health. So FIFRA's ongoing post-registration reporting requirement tasks manufacturers with providing the EPA with any "additional factual information regarding unreasonable adverse effects on the environment," 7 U.S.C. § 136d(2), and, pursuant to the statute's regulations, tell the agency when it learns about toxic or adverse effects, including "delayed or chronic" ones, 40 C.F.R. § 159.155(b); 40 C.F.R. § 159.184(a).

In a registration process required to be updated once every 15 years, permitting state tort claims at common-law allows science to catch up with pesticide labeling with no intermittent intervention from Congress or the EPA required. FIFRA's manufacturer-led system is imperfect, and Congress has so far chosen to preserve state tort law as a backstop. Consumer claims provide a way for manufacturers to remain accountable and retain adequate incentive to keep Americans safe when evidence developed over time reveals risks not fully appreciated during the regulatory process. When state common-law causes of action permit a person to recover for an injury they sustain due to a manufacturer's proven negligence, it should prompt the manufacturer to cancel the

registration (permitted under FIFRA) or ask for a change to the label (permitted under FIFRA). Resp. Br. at 39–43. This is generally not an impossible task.

As Monsanto's own witness testified at trial below: "Monsanto is the one that initiates changes to its labels." Resp. Supp. Br. at 3 (quoting 4 Tr. 2430:1-2). Had Congress known that this method would be the *exclusive* means by which consumers might be alerted to pesticide dangers, something with which the text of Section 136v makes clear the legislature was concerned, *supra* Section IIb, these provisions would not stand up to the task. Petitioner's favored rule would remove the inducement to manufacturer safety that state tort liability provides and thus undermine FIFRA's purpose and design.

b. FIFRA was enacted with the understanding that scientific knowledge evolves, particularly with respect to chronic health risks and long-latency diseases like the blood cancer Mr. Durnell developed. If science were static, or if Congress didn't *know* that science evolves, pesticides wouldn't need to be reregistered at all—much less just once every 15 years. EPA Administrator Lee M. Thomas said as much after President Ronald Reagan signed into law the reregistration requirement in 1988, noting it would "go a long way toward assuring safer pesticide use."[7]

The history of glyphosate and Roundup research illustrates the point. In 1974, Monsanto brought to market Roundup, a pesticide formulation containing glyphosate and other ingredients. In 1985, the EPA

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[7] EPA, *EPA History: FIFRA Amendments of 1988,* (Oct. 26, 1988),https://www.epa.gov/archive/epa/aboutepa/epa-history-fifra-amendments-1988.html [https://perma.cc/2KY6-4KP6].

classified glyphosate as a "possible carcinogen," then reversed that classification in 1991.[8] What followed was two decades of exposure to glyphosate amid its increased use due in part to the popularization by Monsanto of its "Roundup Ready" crops.[9] It wasn't until the late 2000s that studies on long-term exposure to Roundup and glyphosate surfaced the link to non-Hodgkin lymphoma, a blood cancer; in 2015, in response to new data, the IARC classified glyphosate as "probably carcinogenic."[10]

The effects of chronic, cumulative exposure to a chemical necessarily take time to uncover, and "society depends upon toxicological science to discover these harmful effects and on regulators and responsible parties to prevent human exposure to a harmful level or to ensure that the agent is not produced." Fed. Jud. Ctr., *Reference Manual on Scientific Evidence* 1047

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[8] EPA, Office of Pesticide Programs, *Glyphosate Issue Paper: Evaluation of Carcinogenic Potential*, 12–13 (Sept. 12, 2016), https://www.epa.gov/sites/default/files/2016-09/documents/glyphosate_issue_paper_evaluation_of_carcincogenic_potential.pdf [https://perma.cc/YL9S-WYBK]

[9] *See* Charles M. Benbrook, *Trends in Glyphosate Herbicide Use in the United States and Globally*, ENV'T. SCIS EUR. (2016), https://pmc.ncbi.nlm.nih.gov/articles/PMC5044953/ [https://perma.cc/R2SW-DKEU] ("[G]lyphosate use has risen almost 15-fold since so-called 'Roundup Ready,' genetically engineered glyphosate-tolerant crops were introduced in 1996. Two-thirds of the total volume of glyphosate applied in the U.S. from 1974 to 2014 has been sprayed in just the last 10 years.").

[10] IARC Monographs Vol. 112: *evaluation of five organophosphate insecticides and herbicides*, WORLD HEALTH ORGANIZATION (March 20, 2015), https://www.iarc.who.int/wp-content/uploads/2018/07/MonographVolume112-1.pdf [https://perma.cc/YSH4-GN3S].

(4th ed. 2025).[11] FIFRA and state law work together to ensure that juries have time to evaluate developing scientific evidence and hold manufacturers accountable for harm their products caused.

It is difficult to square the position of Petitioner and its *amici* that FIFRA preempts claims like Respondent's with the decades of coexistence of such claims and FIFRA; prior decisions on the meaning of Section 136v(b) by this Court; and the depth and breadth of Petitioner's efforts aimed at obtaining from Congress the very rule it now asks this Court to adopt. It is Congress that is appropriately positioned to act on these issues, not the judiciary.

CONCLUSION

For the foregoing reasons, *Amicus* respectfully requests that the decision of the court below be affirmed.

Respectfully submitted,

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[11] Available at https://www.nationalacademies.org/read/26919/chapter/14#1046 [https://perma.cc/U63X-VAYM]. *See also* Curtis D. Klaasen, *Casarett & Doull's Toxicology: The Basic Science of Poisons*, 33 (9th ed. 2018) ("For many chemicals, the toxic effects that follow a single exposure are quite different from those produced by repeated exposure. For example, the primary, acute toxic manifestation of benzene is CNS depression, but repeated exposures can result in … an increased risk for leukemia.").