COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

No. SJC-13741

PHYLLIS CARDILLO,
Plaintiff-Appellant,

v.

MONSANTO COMPANY, ROCKY'S HARDWARE BUSINESS TRUST, ROCKY'S HARDWARE, INC.,
Defendants-Appellees,

On Appeal from an Interlocutory Order of the
Superior Court for Essex County

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* SUPPORTING DEFENDANTS-APPELLEES

Of Counsel:

WILLIAM M. JAY (*pro hac vice pending*)
CASSANDRA M. SNYDER (*pro hac vice pending*)
GOODWIN PROCTER LLP
1900 N Street, NW
Washington, DC 20036
(202) 346-4000
wjay@goodwinlaw.com
cassiesnyder@goodwinlaw.com

KEVIN P. MARTIN (BBO #655222)
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, MA 02210
(617) 570-1000
kmartin@goodwinlaw.com

Counsel for Amicus Curiae

January 15, 2026

CORPORATE DISCLOSURE STATEMENT

Pursuant to Mass. R. App. P. 17(c)(1) and Supreme Judicial Court Rule 1:21, *Amicus Curiae* Chamber of Commerce of the United States of America, by its undersigned counsel, hereby discloses the following:

1. Parent Corporation(s) of Chamber of Commerce of the United States of America: None.

2. Publicly Held Corporation(s) Owning More Than 10% of Chamber of Commerce of the United States of America: None.

/s/ *Kevin P. Martin*
Kevin P. Martin

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules & Regulations

Other Authorities

ISSUE PRESENTED

Where a plaintiff alleges injury caused by the harmful effects of a pesticide, does the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.* ("FIFRA"), preempt common-law tort claims against the manufacturer based on the manufacturer's negligent or intentional failure to warn of the product's harmful effects?

INTEREST OF *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America ("the Chamber") is the world's largest business federation. The Chamber directly represents approximately 300,000 members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs

[1] The Chamber declares, in accordance with Mass. R. App. P. 17(c)(5), that no party or counsel for a party authored this brief in whole or in part, and no person or entity—other than the Chamber, its members, or its counsel—has contributed money that was intended to fund preparing or submitting this brief. The Chamber and its counsel further declare that neither the Chamber nor its counsel represents or has represented any of the parties to this case in another proceeding involving similar issues, nor have they been a party or represented a party in a proceeding or legal transaction that is at issue in the present appeal.

in cases, like this one, that raise issues of concern to the nation's business community. The Chamber has a strong interest in ensuring that the preemptive force of federal laws is fully recognized—thus alleviating the need for businesses to navigate a patchwork of inconsistent state regulations.

INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiff articulates a theory of preemption that would disregard United States Supreme Court precedent, nullify an express federal preemption provision, and impose massive liability on businesses *for adhering to federal law*. Adopting this theory would leave regulated businesses subject to a patchwork of different state labeling requirements—despite Congress's explicit determination that FIFRA imposes a ceiling, not a floor, for state regulatory structures that pertain to the labeling of pesticides.

Under Plaintiff's misguided approach, state labeling laws governing pesticides (no matter how disparate) would survive preemption so long as they share FIFRA's *general* purpose of ensuring adequate warnings. That is wrong. Preemption does not turn on whether a state law has its heart in the right place; it turns on what the state law requires. Rewriting FIFRA's preemption provision to look at nothing but the most general purpose would destroy it—and similar preemption provisions across other federal statutes. Regulated businesses must follow federal labeling law; state labeling requirements must yield. Accordingly,

the Superior Court correctly held that FIFRA preempts Plaintiff's state-law failure-to-warn claim.

I. FIFRA mandates that a state may not adopt labeling requirements that are "in addition to or different from" those required under FIFRA's regulatory framework. 7 U.S.C. § 136v(b). That language "sweeps widely," *Nat'l Meat Ass'n v. Harris*, 565 U.S. 452, 459 (2012) (considering materially identical preemption language in the Federal Meat Inspection Act), and gives express preemptive force not only to the text of FIFRA itself, but also to the contents of a label that the Environmental Protection Agency ("EPA") approves for a pesticide as part of FIFRA's mandatory registration process. As the EPA has made clear, "[t]he label is the law," EPA, *Pesticide Registration Manual* at 3 (last updated May. 21, 2025), https://perma.cc/QG93-V9GJ, and a pesticide manufacturer may not unilaterally depart from it by adding warnings that the EPA has not endorsed—including the carcinogen warning for glyphosate that Plaintiff seeks to force upon Monsanto's Roundup label.

Plaintiff's approach would circumvent the clear language of FIFRA's express preemption provision by defining the federal labeling "requirements" at an absurdly high level of generality. That approach would allow any state-law labeling requirements as long as they are generally directed to adequately warning a product's users. But that reasoning zooms out so far that the federal preemption provision

disappears. This approach would strip FIFRA's preemption provision, and the Supreme Court's preemption precedent, of any force in a substantial number of cases.

II. Even setting aside FIFRA's express preemption provision, Plaintiff's state failure-to-warn claim is preempted for the independent reason that it requires what federal law prohibits—a clear case in which compliance with both regimes is an impossibility. The Supreme Court has made clear that a state labeling requirement is impliedly preempted if federal law prohibits the regulated entity from unilaterally altering its label to conform to a state requirement. *See PLIVA, Inc. v. Mensing*, 564 U.S. 604, 616–18 (2011). That is exactly the case here, as the EPA's regulations make abundantly clear. *See infra* p. 14–15. And not just its regulations: the EPA has explicitly told manufacturers of products containing glyphosate that it would deny any request to alter those products' labels to include a warning that glyphosate is a carcinogen. It would be simply impossible for manufacturers to adhere to the EPA-approved label, as required, *and* to add the warning Plaintiff argues state law requires. And in that scenario, federal law prevails.

III. Plaintiff's approach would fatally undermine Congress's repeated decisions to require nationwide uniformity in major areas of economic regulation. Many federal statutes that create labeling standards for varied industries—from medical devices and cosmetics to pork and dairy—employ the exact (or nearly exact)

express preemption language used in FIFRA. Should Plaintiff's approach prevail, courts throughout Massachusetts—and beyond—could similarly gut statutory preemption across several other federal regulatory regimes. And if federal preemption is discarded in cases like this one, state-court juries could impose potentially crushing liability on manufacturers under *state* law for failing to give warnings that *federal* law forbids.

This Court should affirm the decision of the Superior Court and preserve the efficacy of federal preemption in this and other contexts.

ARGUMENT

I. FIFRA expressly preempts liability from state labeling requirements that differ from federal law.

FIFRA prohibits states from imposing or enforcing labeling requirements "in addition to or different from" those imposed under FIFRA's regulatory framework, 7 U.S.C. § 136v(b), and that framework mandates that a pesticide manufacturer adhere to the label that the EPA approves for a given pesticide. "[T]he label," in other words, "is the law." *Pesticide Registration Manual* at 3, *supra*. A state failure-to-warn cause of action requiring Monsanto to add a carcinogen warning to the Roundup label that the EPA has declined to require is the paradigmatic example of a state labeling requirement that is "in addition to or different from" the federal requirement. 7 U.S.C. § 136v(b). Indeed, Plaintiff's position would effectively gut FIFRA's express preemption provision and disregard the Supreme Court's case law

in the process.

A. An EPA-approved pesticide label imposes "requirements" for labeling for purposes of FIFRA's preemption provision.

1. As amended in 1972, FIFRA created a "comprehensive regulatory statute" to govern the "labeling" of pesticides as well as their "use" and "sale." *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 991–92 (1984). With this new regulatory regime came a recalibration of the division of responsibility between states and the federal government. FIFRA allowed states to continue to "regulate the *sale or use* of any federally registered pesticide or device in the State," subject to any prohibitions on sale or use imposed by FIFRA itself. 7 U.S.C. § 136v(a) (emphasis added). But labeling is different. To prevent a confusing and unworkable patchwork of 50 different labeling requirements, the statute does what other federal statutes on labeling rules do: it "sweeps widely," *Nat'l Meat Ass'n*, 565 U.S. at 459, to preempt divergent state-law labeling requirements. Specifically:

> [A] State shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under [FIFRA].

7 U.S.C. § 136v(b).

This language means exactly what it says: a state's "requirement[] for labeling" that is "in addition to or different from" a "requirement[] for labeling" under FIFRA is preempted—period. *Id*. For example, a state "failure-to-warn claim alleging that a given pesticide's label should have stated 'DANGER' instead of the

more subdued 'CAUTION' would be pre-empted" if the EPA regulations mandated the more subdued label, some other warning(s), or even no warning at all. *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 453 (2005). It is not necessary that "the federal Act requires what the state law forbids (or forbids what the state law requires)"; mere disagreement is sufficient. *Nat'l Meat Ass'n*, 565 U.S. at 460–61.

2. FIFRA's preemption provision grants preemptive force not only to FIFRA's statutory requirements, but also to requirements resulting from FIFRA's regulatory regime. No one would dispute that, if the contents of the EPA's currently approved label for Roundup were written word-for-word into FIFRA, a lawsuit identical to this one plainly would be preempted. A Massachusetts-law duty to add a carcinogen warning to the Roundup label would indisputably be "in addition to or different from" a "requirement[] for labeling . . . required under [FIFRA]," 7 U.S.C. § 136v(b), and therefore preempted. Requirements resulting from FIFRA's regulatory regime carry the same preemptive force: they are "required under" FIFRA even if not set out verbatim *in* FIFRA.

"[A] requirement" encompasses any "rule of law that must be obeyed." *Bates*, 544 U.S. at 445. A pesticide label that was approved by the EPA as part of the registration process FIFRA requires for every pesticide easily satisfies this definition. *See* Defs.' Br. at 11–14 (explaining registration process); 7 U.S.C. § 136a(a). Although the statute allows the pesticide manufacturer to propose

labeling as part of that registration process, the EPA may approve the proposed labeling (and grant registration) only if the labeling "compl[ies] with the requirements" of FIFRA, 7 U.S.C. § 136a(c)(5)(B), (c)(9)—including the requirement that the proposed labeling not be "false or misleading" and not omit "warning or caution statement[s] which may be necessary and . . . adequate to protect health and the environment," *id*. § 136(q)(1)(A), (G); *id*. § 136j(a)(1)(B), (E); *accord* 40 C.F.R. § 152.112(f). And once the EPA has approved proposed labeling, the manufacturer cannot depart from it. 7 U.S.C. § 136j(a)(1)(B); 40 C.F.R. §§ 152.44, 152.46, 156.70(c); *accord id*. § 152.130(a).[2] At that point, "[t]he label is the law," *Pesticide Registration Manual* at 3, *supra*—it sets the "rule of law that must be obeyed," *Bates*, 544 U.S. at 445. Thus, a state-law failure-to-warn claim that required pesticide manufacturers to include a carcinogen warning that the EPA has declined to require would necessarily impose a requirement that is "in addition to or different from" the federal requirement. *Bates*, 544 U.S. at 447 (quoting

---

[2] FIFRA does allow manufacturers to alter certain aspects of pesticide labeling without prior agency approval (and subject to agency reapproval), *see* 7 U.S.C. § 136a(c)(9)(C), but this exception is not relevant here. Pursuant to this exception, manufacturers may add information on "product efficacy, product composition, container composition or design, or other characteristics," but only if that information "do[es] not relate to any pesticidal claim or pesticidal activity." *Id*.; *see also* EPA, *P.R. Notice 98-10: Notifications, Non-Notifications and Minor Formulation Amendments* at 1 (Oct. 22, 1998), https://perma.cc/JG7C-HK3K (describing this exception as applying to "minor, low risk" information).

7 U.S.C. § 136v(b)).

3. The Supreme Court's decision in *Riegel v. Medtronic, Inc.*, 552 U.S. 312 (2008), all but decides this case. There, the Court considered whether the preemption provision in the Medical Device Amendments of 1976 to the Federal Food, Drug, and Cosmetic Act ("FDCA") barred state-law strict-liability and negligence claims based on, among other things, a medical device's labeling. *Id*. at 315, 316, 320–21. The relevant preemption provision in the FDCA closely resembles the FIFRA provision at issue in this case; it prohibits states from imposing "any requirement—'. . . which is different from, or in addition to, any requirement applicable under this chapter to the device.'" *Id*. at 316 (quoting 21 U.S.C. § 360k(a)(1)). The Court concluded that the FDCA's extensive pre-approval process, which included review of a device's proposed labeling, "imposed . . . 'requirements'" for purposes of the preemption provision. *Id*. at 318, 322. In particular, the Court explained that "[o]nce a device has received premarket approval, the [statute] forbids the manufacturer to make, without FDA permission, changes in design specifications, manufacturing processes, labeling, or any other attribute." *Id*. at 319; *see id*. at 323 ("[T]he FDA requires a device that has received premarket approval to be made with almost no deviations from the specifications in its approval application"); *accord Altria Grp., Inc. v. Good*, 555 U.S. 70, 86 (2008) ("The plaintiffs' products [in *Riegel*] fell within the core of the [statute's] pre-

emption provision because they sought to impose different requirements on precisely those aspects of the device that the FDA had approved.").

The same goes here. A company may market a pesticide only upon completing a thorough registration process and obtaining the EPA's approval of, among other things, the pesticide's label. *See supra* p. 15 (describing same). And the company is forbidden by law from altering that label without EPA approval, except in circumstances not present here. *See Schaffner v. Monsanto Corp.*, 113 F.4th 364, 382–85 (3d Cir. 2024); *supra* note 2. The fact that *the EPA* has authority to approve changes to a pesticide's label does not make the existing label any less a "requirement" for purposes of FIFRA. After all, the statute in *Riegel* allowed for post-approval labeling changes to be made with FDA approval, but the Court still held that "[p]remarket approval . . . impose[d] 'requirements'" for purposes of preemption. 552 U.S. at 322–23.

B. Plaintiff's position disregards both Supreme Court precedent and the EPA-approved labels that manufacturers are compelled by law to follow.

The Superior Court properly held that § 136v(b) expressly preempts Plaintiff's state-law failure-to-warn claim, and Plaintiff's argument to the contrary ignores both Supreme Court precedent and the compulsory nature of the EPA-approved label. Relying on *Bates*, the Superior Court correctly explained that

Plaintiff's state-law failure-to-warn claim was "inconsistent with"—and therefore preempted by—FIFRA's implementing regulations.

In doing so, the Superior Court recognized that the federal courts of appeals are split on this issue, and that the split comes down to "the level[] of generality at which FIFRA's labeling requirements are articulated."[3] Pl.'s Addendum to Op. Br. at 95. In other words, "[w]hen state tort law and a federal statute seem to impose equivalent requirements, but a federal regulation gives different content to that apparently equivalent requirement, should a court articulate the Federal Comparator at the broader statutory level of generality or the more specific regulatory level of generality?" *Id.* (quoting *Schaffner*, 113 F.4th at 390). The Superior Court determined that only the latter position was "consistent with *Bates*, which held 'that a state-law duty is preempted if "relevant EPA regulations that *give content to* FIFRA's misbranding standards[]" . . . would prohibit adding the warning that state law requires.'" Pl.'s Addendum to Op. Br. at 92, 96 (quoting *Schaffner*, 113 F.4th at 391 (in turn quoting *Bates*, 544 U.S. at 453)).

---

[3] The Supreme Court will soon decide whether to review this split of authority in *Monsanto Co. v. Durnell*, No. 24-1068. The Solicitor General recently recommended that the Supreme Court grant review and resolve the split by adopting the interpretation Monsanto advances here. *See* Br. for the U.S. as Amicus Curiae, *Monsanto Co. v. Durnell*, No. 24-1068 (filed Dec. 1, 2025).

Plaintiff's approach follows the other side of the split, which would ignore the "relevant EPA regulations" in considering whether state law is consistent with FIFRA. *Id*. (quoting *Schaffner,* 113 F.4th at 391). Plaintiff would have this Court compare the Massachusetts failure-to-warn cause of action only with FIFRA's broad prohibition on marketing misbranded pesticides, without considering any requirements arising from the regulatory regime promulgated under FIFRA. *See* Pl.'s Br. at 48 (characterizing FIFRA as requiring only "a warning 'necessary' and 'adequate to protect health'").

But that approach defies the Supreme Court's direction in *Bates* and nullifies Congress's decision to bar state-law labeling requirements that are additional or different. "[A] state-law labeling requirement must *in fact* be equivalent to a requirement under FIFRA in order to survive pre-emption." *Bates*, 544 U.S. at 453–54 (emphasis added). It is not enough that federal and state requirements share the same general purpose. What matters is that the two be "*genuinely* equivalent," *id*. at 454—a standard that must factor in *all* the "requirements for labeling or packaging" that are imposed "*under*" FIFRA (not just "by" FIFRA), including its regulatory regime. *See, e.g.*, *Nat'l Meat Ass'n*, 565 U.S. at 460 (recognizing that requirements "under" the relevant statute include those imposed by both "the [Federal Meat Inspection Act] and its regulations"). Thus, the Supreme Court made clear in *Bates* that the preemption analysis must consider "the relevant FIFRA

misbranding standards, *as well as any regulations that add content to those standards*." 544 U.S. at 454 (emphasis added); *see also id.* at 453 (in preemption analysis, "[s]tate-law requirements must . . . be measured against any relevant EPA regulations that give content to FIFRA's misbranding standards"). A state law that imposes labeling requirements on a pesticide manufacturer that differ from those imposed by the EPA-approved label cannot plausibly be said to be "genuinely" equivalent to labeling "requirements" under FIFRA.

Indeed, Plaintiff's approach would render FIFRA's preemption provision a dead letter even as to requirements explicitly written into regulations imposed under FIFRA. Taken to its logical end, Plaintiff's position would uphold a state failure-to-warn claim seeking warnings different from the federal labeling requirements for glyphosate even if those federal requirements were explicitly written into an EPA regulation. In either circumstance, Plaintiff's theory would deem the state-law failure-to-warn claim to be "the same" as FIFRA's requirements, in this general sense: they would both "require[] a warning 'necessary' and 'adequate to protect health.'" Pl.'s Br. at 48. That broad alignment cannot be enough to deem the requirements the same—which shows that Plaintiff's theory cannot be correct. As the Tenth Circuit explained in finding preemption under a similarly worded statute, framing the preemption analysis at such a high level of generality misses the "critical feature"—how both requirements apply in a particular case. *Thornton v. Tyson*

Foods, Inc., 28 F.4th 1016, 1025 (10th Cir. 2022) (construing the Federal Meat Inspection Act). If a label is permitted under a federal law prohibiting deceptive labeling but prohibited under state law, the assertion that the two laws "require[] exactly the same thing . . . plainly fails." *Id*.

Plaintiff cannot escape this result by relying on a "Miscellaneous" provision of FIFRA that has no bearing on preemption. A subsection of FIFRA's registration provision, entitled "Miscellaneous," includes the following provision:

> In no event shall registration of an article be construed as a defense for the commission of any *offense under [FIFRA]*. As long as no cancellation proceedings are in effect registration of a pesticide shall be prima facie evidence that the pesticide, its labeling and packaging comply with the registration provisions of [FIFRA].

7 U.S.C. § 136a(f)(2) (emphasis added). This provision is irrelevant to the preemption analysis. Plaintiff rightfully does not claim here that Monsanto committed an "offense" *under FIFRA*. *Id*. And there is no dispute here regarding whether Monsanto otherwise "complied" with "the registration provisions of" FIFRA. *Id*. Rather, the sole question in this case is whether Monsanto may be held liable under *state law* because it did not add a warning to its EPA-approved label. As the Third Circuit correctly recognized, the fact that "section 136a(f)(2) indicates that registration cannot itself be a defense to a charge of misbranding" does not mean "that the registration process cannot play any role in determining the content of a requirement imposed under FIFRA." *Schaffner*, 113 F.4th at 397.

The Superior Court correctly held that FIFRA preempts Plaintiff's state-law failure-to-warn claim, as required by FIFRA's express preemption provision and Supreme Court precedent. The Superior Court's reading of FIFRA's preemption provision preserves the statute's vitality; Plaintiff's reading would render it void.

II. A state-law claim is impliedly preempted if the regulated party cannot simultaneously comply with both federal and state law.

Plaintiff's failure-to-warn claim is preempted twice over. Even absent express preemption, a state-law claim is impliedly preempted if, as here, "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) (citation and internal quotation marks omitted); *see Geier v. Am. Honda Motor Co.*, 529 U.S. 861, 869 (2000) (holding that neither an express preemption provision nor a savings clause limiting express preemption "bar[s] the ordinary working of conflict pre-emption principles").

A. The Supreme Court's decision in *PLIVA*, 564 U.S. 604, resolves the implied preemption question against Plaintiff. In *PLIVA*, the Court held that a state-law failure-to-warn claim against a generic drug manufacturer was impliedly preempted by the FDCA's provisions governing the approval and marketing of generic drugs. *Id*. at 610–11. The Court explained that generic manufacturers cannot simply change their labels at will: the FDCA requires generic labels to be "the same as" the FDA-approved label for the brand-name drug. *Id*. at 612–13 (citing 21 U.S.C. § 355(j)(2)(A)). Although the Court assumed that federal law

requires generic manufacturers "that become aware of safety problems [to] ask the agency to work toward strengthening the label that applies to both generic and brand-name equivalent drug[s]," the FDCA still "prevented [generic m]anufacturers from *independently* changing their generic drugs' safety labels." *Id*. at 616–17 (emphasis added). This, the Court held, was sufficient for implied preemption:

> [S]tate law imposed on the [generic] Manufacturers a duty to attach a safer label to their generic [drug]. Federal law, however, demanded their generic drug labels be the same at all times as the corresponding brand-name drug labels. Thus, it was impossible for the Manufacturers to comply with both their state-law duty to change the label and their federal-law duty to keep the label the same.

Id. at 618 (citation omitted).

That reasoning applies with full force here. FIFRA and its implementing regulations forbid pesticide manufacturers like Monsanto from "independently" changing the content of the EPA-approved label for a registered pesticide. *See* Defs.' Br. at 24, 52; *see also supra* p. 15. Instead, "any modification in the . . . labeling . . . of a registered product must be submitted with an application for amended registration" to the EPA, and "the application must be approved by the Agency before the product, as modified, may legally be distributed or sold." 40 C.F.R. § 152.44(a); *see also id*. § 156.70(c) ("Specific statements pertaining to the hazards of the product and its uses must be approved by the Agency."); *Schaffner*, 113 F.4th at 382–85. Nor can pesticide manufacturers "independently" add carcinogen claims to their television advertisements that "substantially differ" from the EPA-approved

label. 7 U.S.C. § 136j(a)(1)(B); *see supra* p. 15. In either circumstance, a pesticide manufacturer could not simultaneously comply with the EPA-approved label and with the tort-law duty contained within Plaintiff's state-law failure-to-warn claim as alleged.

Plaintiff dismisses *PLIVA* as distinguishable because it involved generic-drug manufacturers, who must "keep the [generic] label the same" as the brand-name drug label, whereas "pesticide manufacturers 'have a continuing obligation to adhere to FIFRA's labeling requirements.'" Pl.'s Br. at 69. But that is no answer to the key similarity between the FIFRA regulatory regime and that in *PLIVA*: under both regimes, manufacturers cannot "independently chang[e]" their labels. *PLIVA*, 564 U.S. at 617. They cannot sell their products with any label other than the federally approved one. State law, therefore, may not require manufacturers to stop selling the product with the federally approved label. *Mut. Pharm. Co*., 570 U.S. at 488 ("[A]n actor seeking to satisfy both his federal- and state-law obligations is not required to cease acting altogether in order to avoid liability. Indeed, if the option of ceasing to act defeated a claim of impossibility, impossibility pre-emption would be 'all but meaningless.'" (quoting *PLIVA*, 564 U.S. at 621)).

It makes no difference that pesticide manufacturers can *ask* the EPA to approve a new label. That exact argument was made in *PLIVA* and the Court "reject[ed] it," because it would "make most conflicts between state and federal law

illusory." 564 U.S. at 620–21. It is "certainly possible" that a manufacturer could obtain approval for a new label, just as it is *possible* that a manufacturer could convince the EPA "to rewrite" its regulations to allow unilateral label changes, or "talk[] Congress into amending" FIFRA to allow the same. *Id*. But those far-flung "conjectures" do not preclude implied preemption, because the relevant inquiry is whether the regulated party *can now* "independently do under federal law what state law requires of it." *Id*.

B. Even if FIFRA and its regulations allowed pesticide manufacturers to unilaterally alter the content of an EPA-approved label, that still would not defeat implied preemption, because the EPA has been "fully informed" of the claimed reasons for adding a carcinogen warning to the Roundup label, and "there is 'clear evidence'" that the agency would reject such a warning. *Merck Sharp & Dohme Corp. v. Albrecht*, 587 U.S. 299, 310, 313–14 (2019) (citation omitted). Indeed, the EPA has done so explicitly.

Since the EPA originally registered glyphosate under FIFRA in 1974, the agency has gathered, assessed, and reassessed copious scientific evidence and studies as to whether the compound causes cancer in humans and has consistently concluded that it likely does not. *See* Defs.' Br. at 14–18. For example, in its 1993 FIFRA reregistration for glyphosate, the EPA designated glyphosate a Group E carcinogen, denoting "evidence of non-carcinogenicity in humans." EPA,

Reregistration Eligibility Decision (RED) – Glyphosate, at viii (Sept. 1993), https://perma.cc/GZM7-4696. More than two decades later—after the International Agency for Research on Cancer ("IARC") released its 2015 report asserting that glyphosate may cause cancer in humans—the EPA completed another exhaustive reexamination of all then-current data, research, and literature as part of its FIFRA registration review of the compound. Again, the EPA concluded that glyphosate was likely not a human carcinogen, noting that its review was "more robust" and "more transparent" than IARC's, and that its conclusion was "consistent with other regulatory authorities and international organizations." EPA, *Glyphosate: Proposed Interim Registration Review Decision Case Number 0178*, at 7–8 (Apr. 2019).[4]

Consistent with these conclusions, the EPA has stated that it would not approve a label for glyphosate warning that it is a carcinogen. In August 2019, the EPA sent a letter to glyphosate registrants in response to a March 2017 California ordinance mandating a cancer warning on labels of Roundup and other glyphosate products in the wake of IARC's 2015 report asserting that glyphosate may cause cancer in humans. *See* Letter from Michael L. Goodis, EPA, Office of Pesticide Programs, to Registrant, at 1–2 (Aug. 7, 2019), https://perma.cc/TK6P-KJ6X. In

[4] https://www.regulations.gov/document/EPA-HQ-OPP-2009-0361-2344 (select "Download" to view).

that letter, the EPA explained that it "disagrees with IARC's assessment," because "EPA scientists have performed an independent evaluation of available data since the IARC classification" and determined that glyphosate is "not likely to be carcinogenic to humans." *Id.* And that position was consistent with "other international expert panels and regulatory authorities." *Id.* The EPA explicitly cautioned that a warning on glyphosate-based herbicides suggesting that glyphosate may cause cancer would be "false and misleading," and would render any product so labeled "misbranded pursuant to section 2(q)(1)(A) of FIFRA." *Id.* (citing 7 U.S.C. §136(q)(1)(A)).

To be sure, the EPA suggested in a 2022 letter that it might approve a label that includes a statement that IARC "classified glyphosate as probably carcinogenic to humans." Letter from Michal Freedhoff, EPA, Office of Chemical Safety and Pollution Prevention, to Dr. Lauren Zeise, California EPA, at 1 (Apr. 8, 2022), https://perma.cc/LRD4-XWG4. But the EPA did not retract its established position that glyphosate is not a carcinogen; rather, it said that the warning might be approved because it does not actually represent that glyphosate *is* a carcinogen, and also includes the statement that the "US EPA has determined that glyphosate is not likely to be carcinogenic to humans." *Id*. And the EPA later withdrew that 2022 letter, *see id.* (noting "[w]ithdrawn"), following the Ninth Circuit's decision enjoining

California from enforcing its labeling requirements with respect to glyphosate, *see Nat'l Ass'n of Wheat Growers v. Bonta*, 85 F.4th 1263, 1283 (9th Cir. 2023).

The EPA's message is unmistakably clear: it will not approve a change to labels for FIFRA-covered glyphosate herbicides to warn that they are carcinogenic to humans. *Cf.* 40 C.F.R. § 152.112(f) (prohibiting the EPA from approving a label that it views as false or misleading). This is far more than the mere "possibility of impossibility" that does not suffice for implied preemption. *PLIVA*, 564 U.S. at 624 n.8 (emphasis omitted). It is impossible for pesticide manufacturers to both comply with federal law and avoid state-law liability under Plaintiff's theory.

III. Plaintiff's position would undermine uniformity under several important federal statutes, impede nationwide marketing, and allow for crushing liability against businesses that comply with federal law.

Not only is Plaintiff's rationale patently incorrect, it presents a genuine threat to the nationwide market—not just for pesticides but for products in many industries throughout Massachusetts and beyond. In zones of regulation like this one—for which Congress has specified that states cannot impose different or additional labeling requirements—federal law is not just a floor. Federal law is also a ceiling: the authoritative measure of a regulated business's labeling obligations. Plaintiff's rationale, by contrast, threatens to leave federal requirements as merely the first hurdle that a regulated business must clear. Every state could have its own requirements—meaning that *juries* in every jurisdiction could set their own

standards, after the fact, on a case-by-case basis. And failing to anticipate the preferred standards of just one jury could result in crippling liability.

Businesses are already subject to comprehensive regulatory schemes under both federal and state law, which impose significant costs on their operations to the tune of hundreds of billions of dollars annually. *See, e.g.*, U.S. Chamber of Com. Found., *The Regulatory Impact on Small Business: Complex. Cumbersome. Costly*., at 4 (Mar. 2017), https://perma.cc/6DVW-8MY3; Nicole V. Crain & W. Mark Crain, *The Cost of Federal Regulation to the U.S. Economy, Manufacturing & Small Business*, Nat'l Ass'n of Mfrs., 4–5 (Oct. 2023), https://perma.cc/88NS-KNAT. Allowing each of the 50 states to adopt its own unique rulebook for pesticide labeling promises to compound those existing burdens by subjecting businesses to a patchwork of different state common-law labeling requirements. As the Supreme Court recognized, allowing "50 different labeling regimes prescribing the color, font size, and wording of warnings . . . would create significant inefficiencies for manufacturers" and deprive them of the "uniformity" they "need" to operate. *Bates*, 544 U.S. at 452 & n.26 (citation omitted). The inevitable consequence of that regulatory morass will be to drive up the cost of operations, stifle competition, and constrain employment opportunities—with severe impacts on downstream business enterprises and ordinary consumers, who will face higher prices and have access to fewer valuable goods and services.

The harmful effects of denying preemption here would not be confined to FIFRA. Many federal statutes employ express preemption language that is identical (or virtually identical) to the operative language in FIFRA, preempting state-law labeling requirements in a host of industries precisely because Congress recognized that the ability to market a product throughout the country with a single label is essential to maintaining an efficient nationwide market. For example, the Medical Device Amendments bar states from "establish[ing] or continu[ing] in effect . . . any requirement . . . which *is different from, or in addition to*, any" requirement under that law. 21 U.S.C. § 360k(a) (emphasis added). Once the FDA "approves a device's label," "the manufacturer usually may not alter the label's warnings without prior agency approval." *Caplinger v. Medtronic, Inc.*, 784 F.3d 1335, 1341 (10th Cir. 2015) (citing 21 U.S.C. § 360e(d)). Similarly, the Federal Meat Inspection Act prohibits states from imposing any "[m]arking, *labeling*, packaging, or ingredient requirements *in addition to, or different than*, those made under this [Act]." 21 U.S.C. § 678 (emphasis added). Other examples abound. *See, e.g.*, *id*. § 1052(b) (for egg products, prohibiting "[l]abeling . . . requirements, in addition to or different than those made under [the Egg Products Inspection Act], the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act"); *id*. § 467e (same for labeling of poultry and poultry products); *id*. § 379s(a) (prohibiting states from "establish[ing] or continu[ing] in effect any requirement for labeling or packaging

of a cosmetic that is different from or in addition to, or that is otherwise not identical with" federal labeling standards); *id*. § 379r(a)(2) (similar for non-prescription drug labeling); *id*. § 387p(a)(2)(A) (same for tobacco products).[5] Adopting Plaintiff's improper interpretation of FIFRA could well lead courts to transplant the same misguided reasoning into the many similarly worded preemption provisions—neutering their preemptive force.

This Court should prevent that result. Ignoring the preemptive force of federal labeling requirements would force businesses like Monsanto into a vise: they would be required to adhere to the federally approved label, but face crippling liability in doing so from state failure-to-warn claims ordering them to depart from it, potentially in 50 different ways. Preventing that from happening is exactly why Congress wrote an express preemption provision into this statute and others, barring any state law that imposes obligations different from federal law. This Court should remove the threat and follow Congress's clear directive: differing state laws are preempted.

---

[5] Moreover, while labeling is one particularly important area in which Congress has repeatedly acted to ensure that products can be marketed nationwide with a single label, other federal statutes use the same preemption language for state requirements outside the labeling context. 21 U.S.C. § 379aa(h) (serious adverse event reports for non-prescription drugs); *id*. § 379aa-1(h) (serious adverse event reports for dietary supplements); 7 U.S.C. § 4817(b) (promotion and consumer education regarding pork); 15 U.S.C. § 78o(i) (regulation of brokers and dealers).

CONCLUSION

The Court should affirm the judgment of the Superior Court.

Respectfully submitted,

/s/ *Kevin P. Martin*
KEVIN P. MARTIN (BBO #655222)
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, MA 02210
(617) 570-1000
kmartin@goodwinlaw.com

Of Counsel:

WILLIAM M. JAY (*pro hac vice pending*)
CASSANDRA M. SNYDER (*pro hac vice pending*)
GOODWIN PROCTER LLP
1900 N Street, NW
Washington, DC 20036
(202) 346-4000
wjay@goodwinlaw.com
cassiesnyder@goodwinlaw.com

Counsel for Amicus Curiae

January 15, 2026

CERTIFICATE OF COMPLIANCE

I, Kevin P. Martin, counsel for *Amicus Curiae*, certify pursuant to Rule 17(c)(9) of the Massachusetts Rules of Appellate Procedure, that this brief complies with the rules of court that pertain to the filing of briefs, including but not limited to Mass. R. App. P. 16, 17 and 20. This brief contains 5,706 words, excluding the parts of the brief exempted by Mass. R. App. P. 20(a)(2)(D). The brief has been prepared in a proportionally spaced typeface, 14-point Times New Roman font, using Microsoft Word 2016.

/s/ Kevin P. Martin
Kevin P. Martin (BBO # 655222)

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

CERTIFICATE OF SERVICE

I, Kevin P. Martin, counsel for *Amicus Curiae*, hereby certify this 15th day of January, 2026, that I have served a copy of this Brief of the Chamber of Commerce of the United States of America as *Amicus Curiae* Supporting Defendants-Appellees in *Phyllis Cardillo v. Monsanto Company* for the Commonwealth of Massachusetts Supreme Judicial Court, Case Number SJC-13741, by causing it to be delivered by eFileMA.com to counsel of record who are registered users of eFileMA.com. All counsel who are not registered users of eFileMA.com have been served via Email pursuant to Mass. Rules of Civil Procedure 5(b)(1):

David C. Frederick, Esq.
Derek C. Reinbold, Esq.
Kellogg, Hansen, Todd, Figel &
Frederick, P.L.L.C.
1615 M St. NW, Ste. 400
Washington, DC 20036
(202) 326-7951
dfrederick@kellogghansen.com
dreinbold@kellogghansen.com
Admitted Pro Hac Vice

Kevin J. Powers, Esq.
Law Offices of Kevin J. Powers
P.O. Box 1212
Mansfield, MA 02048
(508) 216-0268
kpowers@kevinpowerslaw.com
BBO No. 666323

Andrew F. Kirkendall, Esq.
Kirkendall Dwyer LLP
4343 Sigma Rd., Ste. 200
Dallas, TX 75244
(214) 271-4027
akirkendall@kirkendalldwyer.com

Admitted Pro Hac Vice

January 15, 2026

/s/ Kevin P. Martin

KEVIN P. MARTIN (BBO # 655222)
GOODWIN PROCTER LLP
100 Northern Avenue
Boston, MA 02210
(617) 570-1000
kmartin@goodwinlaw.com