Supreme Judicial Court

FOR THE COMMONWEALTH OF MASSACHUSETTS
SJC-13741

PHYLLIS CARDILLO,
Plaintiff-Appellant,

v.

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

On Direct Appellate Review of Partial Summary Judgment in the Essex Superior Court

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AMICI BRIEF OF MASSACHUSETTS ACADEMY OF TRIAL ATTORNEYS, AMERICAN ASSOCIATION FOR JUSTICE, AND PUBLIC JUSTICE

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STATEMENT OF INTEREST OF *AMICI CURIAE*

The Massachusetts Academy of Trial Attorneys (Academy), the American Association for Justice (AAJ), and Public Justice offer this *amici curiae* brief in the above-captioned case.

The Academy is a voluntary, non-profit, Commonwealth-wide professional association of lawyers. The Academy's purpose is to uphold and defend the Constitutions of the United States and the Commonwealth of Massachusetts; to promote the administration of justice; to uphold the honor of the legal profession; to apply the knowledge and experience of its members so as to support the public good; to reform the law where justice so requires; to advance the cause of those who seek redress for an injury; and to help them enforce their rights through the courts and other tribunals in all areas of law. The Academy has been actively addressing various areas of the law in the courts and the Legislature of the Commonwealth since 1975.

AAJ is a national, voluntary bar association established in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those who have been wrongfully injured. With members in the United States, Canada, and abroad, AAJ

is the world's largest plaintiff trial bar. AAJ members primarily represent plaintiffs in personal injury actions, employment rights cases, consumer cases, and other civil actions, including products liability cases. Throughout its 79-year history, AAJ has served as a leading advocate for the right of all Americans to seek legal recourse for wrongful conduct.

Public Justice is a national public interest advocacy organization that specializes in precedent-setting and socially significant civil litigation and is dedicated to preserving access to the civil justice system. Consistent with that aim, Public Justice has long fought excessive federal preemption of state-law claims in cases involving dangerous products. As part of that work, Public Justice was co-lead appellate counsel in *Hardeman v. Monsanto Co.*, 997 F. 3d 941 (9th Cir. 2021), *cert. denied*, 142 S. Ct. 2834 (2022), which affirmed a $25 million judgment in favor of a man who contracted non-Hodgkin's lymphoma from Roundup.

The Academy, AAJ, and Public Justice urge this Court to reverse the judgment of the Superior Court and remand the case for trial.

RULE 17(c)(5) DECLARATION

Pursuant to Mass. R. App. P. 17(c)(5), amici state that no party or party's counsel authored this brief, in whole or in part, and that no party, party's counsel, or other person or entity, other than amici, their members, or their counsel, contributed money that was intended to fund preparation or submission of the brief. Neither amici nor counsel of record for amici have represented any of the parties to the appeal in any proceedings involving similar issues, nor have they been a party or represented a party in a proceeding or transaction that is at issue in the present appeal.

STATEMENT OF THE ISSUE

Federal law permits States to regulate pesticides and to provide remedies for injuries caused by their use, subject to a limited preemption of labeling requirements that are in *addition* to or *different* from federal regulations. Did the trial court err in holding that the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) preempts common-law failure-to-warn claims that *parallel* FIFRA's misbranding requirements?

STATEMENT OF THE CASE

Amici accept the Statement of the Case in the brief of Plaintiffs-Appellees.

STATEMENT OF THE FACTS

Amici accept the Statement of Facts in the brief of Plaintiffs-Appellees.

SUMMARY OF THE ARGUMENT

Federal preemption is disfavored in areas of traditional State police power, absent a clear and manifest purpose of Congress to displace State law (pp. 11–16). Regulation of dangerous products and providing a remedy for the injured fall squarely within that historic authority. FIFRA's text and structure reflect Congress's decision to preserve a complementary role for State regulation and common-law enforcement, subject only to a narrow limitation on State labeling requirements that are in addition to or different from federal law. State failure-to-warn claims that parallel FIFRA's misbranding provisions, therefore, are not preempted. Interpreting the statute to bar such claims would convert a federal regulatory baseline into *de facto*

immunity from accountability for manufacturers of dangerous products (p. 17-18).

Courts across the country have accordingly recognized that FIFRA does not foreclose State failure-to-warn claims that are equivalent to federal misbranding requirements. Reading the statute otherwise would depart from settled preemption principles, disrupt the federal-state balance which Congress intended, and undermine the Commonwealth's authority to protect the health and safety of its residents (p. 19-21).

ARGUMENT

I. Introduction.

Long established law, including Supreme Court precedent on the scope of a State's rights in this regard, authorizes each State to apply its tort laws to certain claims arising out of the use of pesticides and agricultural chemicals, including those for domestic use such as Roundup, subject to a limited scope of preemption regarding labeling products under certain circumstances. *See Bates v. Dow Agrosciences LLC*, 544 U.S. 431 (2005). The Superior Court's decision extends the scope of preemption beyond that required by existing law, including relevant Supreme Court precedent.

Simultaneously, some actors in the chemical, pesticide, and agricultural industries have urged interpretations of federal law that would displace States' retained authority to regulate and control pesticide and agricultural chemical use within their borders. A pending petition for certiorari to the Supreme Court presents this very issue. *See, e.g.,* Petition for Writ of Certiorari, *Monsanto Company v. Durnell*, No. 24-1068 (U.S. filed April 4, 2025 , relisted for January 16, 2026 Conference).

Moreover, Bayer, which acquired Monsanto, is engaged in ongoing legislative efforts in the United States Congress to restrict state-law tort claims of the kind the Superior Court's decision would foreclose. *See* Carey Gillam, *Outrage Mounts as Republicans in Congress Move to Protect Pesticide Makers from Lawsuits*, The Guardian (Sept. 27, 2025), https://perma.cc/DW8W-QVGJ; Krissy Kasserman & Kat Ruane, *Inside Bayer's Cancer Gag Act Push*, Food & Water Watch (Aug. 8, 2025), https://perma.cc/58LC-LXCB.

The Superior Court's decision, if affirmed, would effectively restrict or eliminate a right in the Commonwealth which currently exists but is being challenged both judicially and legislatively—namely,

the authority of States to protect citizens against the dangers posed by chemicals such as those contained in Roundup. Current law does not require the Commonwealth to unilaterally abandon its longstanding right to apply certain aspects of its tort law to control the use of such chemicals within its borders and to provide remedies for injuries arising from their use. The Commonwealth should not do so now, just as other States have declined to do so.

II. FIFRA'S structure intentionally preserves a complementary role for State tort law.

A. Absent clear congressional intent, federal law does not supplant States' traditional police powers or common-law tort remedies.

Massachusetts has long used the common law as a means of promoting the health, safety, and welfare of its residents. That system operates alongside legislative and regulatory action, functioning as a mechanism by which the Commonwealth deters negligent conduct, compensates the injured, and highlights risks that might otherwise remain hidden. *See, e.g.*, *Back v. Wickes Corp.*, 375 Mass. 633, 640–41 (1978) (accepting product liability principles are grounded in consumer protection); *Uloth v. City Tank Corp.*, 376 Mass. 874, 878–79 (1978) (acknowledging safety incentives furthered by potential tort liability).

Regulation of dangerous products and providing remedies for injured plaintiffs are traditional exercises of States' police powers. *See Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 536 (2012); *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996) (recognizing regulation of health and safety as an area of historic State police power). In this context, tort liability functions as an enforcement mechanism, operating alongside regulatory regimes. Common-law liability plays a critical gap-filling role by addressing risks that federal regulatory agencies cannot fully anticipate or police. Thomas O. McGarity, *The Preemption War* 237 (2008). It deters misconduct that might evade administrative oversight and brings to light hazards not yet identified by regulators. *See Wyeth v. Levine*, 555 U.S. 555, 578–79 (2009). There is a rich history of tort litigation exposing dangerous products, often prompting regulatory reassessment, label changes, or product withdrawal. *See, e.g.*, *In re Takata Airbag Products Liab. Litig.*, 193 F. Supp. 3d 1324 (S.D. Fla. 2016) (Takata airbag defects); *In re Silicone Gel Breast Implants Products Liab. Litig.*, 887 F. Supp. 1455 (N.D. Ala. 1995) (Dow Corning silicone breast implant leakage); *Grimshaw v. Ford Motor Co.*, 119 Cal. App. 3d 757 (1981) (Ford Pinto fuel-tank explosions).

Accordingly, federal preemption analysis begins with a presumption that federal regulations do not displace State law in areas of historic police power absent a clear indication that Congress intended to do so. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947); *Wyeth*, 555 U.S. at 565; *N.Y. State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 654 (1995); *Puerto Rico Dep't of Consumer Affs. v. Isla Petroleum Corp.*, 485 U.S. 495, 500 (1988). The Supreme Court has forcefully applied this presumption to State common-law claims. *See Medtronic, Inc.,* 518 U.S. at 485. Reading FIFRA to extinguish this traditional role of the States in protecting their residents would significantly alter the balance of federal and State authority in a manner not clearly intended by Congress.

B. FIFRA's text and structure reflect a congressional intent to preserve State-law remedies.

FIFRA's text and structure hardly convey a congressional intent to displace State tort remedies. Instead, the statute establishes what the Supreme Court has described as a "relatively decentralized scheme that preserves a broad role for state regulation." *Bates*, 544 U.S. at 450. FIFRA expressly preserves States' authority over the sale and use of pesticides, allowing them to provide additional protection for their

residents so long as they do not sanction conduct prohibited by federal law. *See* 7 U.S.C. § 136v(a). This preservation of State authority is incompatible with a reading of FIFRA that would eliminate common-law remedies addressing the very risks those regulatory powers exist to prevent.

FIFRA's preemption provision is quite narrow. *See Bates*, 544 U.S. at 452. Section 136v(b) provides that "State[s] 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(b). Consequently, a common-law duty which is equivalent to and fully consistent with FIFRA's misbranding requirements is not preempted. *Bates*, 544 U.S. at 447. FIFRA prohibits labels that are false or misleading, including labels that omit warnings necessary to protect health. 7 U.S.C. § 136(q)(1)(A), (F), & (G). Failure-to-warn claims premised on the *absence* of material risk information do not impose "additional or different" requirements; instead, they enforce FIFRA's substantive obligation through a traditional State remedy. *Bates*, 544 U.S. at 447.

Nor does the imposition of tort liability transform those shared obligations into additional or different requirements. *See Bates*, 544 U.S. at 443–45. Civil liability is not inherently prescriptive; damage awards are a consequence of misconduct yet leave the choice to conform, or not, squarely with manufacturers. *See id.* (rejecting the view that tort claims are preempted merely because a jury verdict might induce manufacturers to change their labels); *Medtronic, Inc.*, 518 U.S. at 513 (O'Connor, J., concurring in part and dissenting in part) ("[T]he threat of a damages remedy will give manufacturers an additional cause to comply, but the requirements imposed on them under state and federal law do not differ."); William Funk et al., *The Truth About Torts: Using Agency Preemption to Undercut Consumer Health and Safety* 4 (Ctr. for Progressive Reform 2007).

Preserving State tort remedies under FIFRA reinforces federal regulatory objectives. Federal agencies operate with finite resources and depend substantially on information supplied by the regulated entities; as a practical matter, they cannot continuously monitor every product nor anticipate every risk associated with the products' use. *Wyeth*, 555 U.S. at 578. The EPA relies on registrants to submit

accurate and complete data to inform its decisions. When that process fails, State tort law is among the few mechanisms available to expose unknown risks and protect the public from harm.

Interpreting § 136v(b) to bar State failure-to-warn claims would confer virtual immunity on pesticide manufacturers, remove a critical safeguard against dangerous products, and undermine the rights of States to protect their citizens. *See Medtronic, Inc.*, 518 U.S. at 487; *Bates*, 544 U.S. at 450–51; *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 251 (1984). Congress's decision to preserve the States' authority to ban a pesticide outright is irreconcilable with a reading of FIFRA that would prohibit States from authorizing less restrictive, FIFRA-consistent remedies. *Bates*, 544 U.S. 446; 7 U.S.C. § 136v(a); *see also Silkwood*, 464 U.S. at 251 (1984) ("It is difficult to believe that Congress would, without comment, remove all means of judicial recourse for those injured by illegal conduct."). "The purpose of Congress is the ultimate touchstone" in any preemption analysis. *Wyeth*, 555 U.S. at 565 (quoting *Medtronic*, *Inc.*, 518 U.S. at 485). Nothing in FIFRA's text or structure indicates an intention to strip injured people of traditional State-law remedies. The statute reflects a deliberate choice: a federal

regulatory baseline supplemented by State regulation and common-law enforcement. Preserving that balance honors congressional intent and the Commonwealth's sovereign authority to protect the health and safety of its residents.

III. When FIFRA is implicated, other States have recognized and maintained a right to relief for breach of a duty to warn.

State courts that have considered this issue since FIFRA have consistently found that States retain the power to regulate and impose liability for labeling by means of common law duty-to-warn claims. Last year, a California appellate court held that FIFRA did not preempt claims that Monsanto failed to warn a consumer of a cancer risk from his use of a pesticide because California law paralleled FIFRA's misbranding standards. *Dennis v. Monsanto Co.*, 116 Cal. App. 5th 322 (2025). The Court expressly addressed the point that States retain the right to police and regulate mislabeling in the context of pesticides under certain circumstances, so long as they do not impose additional requirements beyond those imposed by FIFRA. *Id.* at 335–36. As the Court noted, FIFRA "expressly allows states to continue their own regulatory efforts." *Id.* at 333.

Several months before *Dennis*, the Missouri Court of Appeals likewise held that FIFRA did not preempt a state-law claim for breach of warranty in *Durnell v. Monsanto Co.*, 707 S. W. 3d 828 (Mo. Ct. App. 2025). The *Durnell* Court explained that Missouri's strict liability cause of action for failure to warn was consistent with the labeling requirement of FIFRA and, therefore, was not preempted. *Id.* at 833. The Court explained that the "'practical effect' of both FIFRA's prohibition on misbranding under section 136(q)(1)(G) and a strict liability failure-to-warn claim in Missouri are the same: both require a pesticide manufacturer to adequately warn users of the potential dangers of using its product, regardless of the manufacturer's knowledge or intent," and that as a result, "a strict liability failure to warn claim in Missouri does not impose a requirement 'in addition to or different from' the requirements of FIFRA." *Id.* at 833. The Court held the State law warning claim was thus not preempted by, and remained enforceable despite, FIFRA. *Id.*

Similarly, in the same year as *Dennis* and *Durnell*, a Pennsylvania court reached the same conclusion, holding that duty-to-warn claims are not preempted by FIFRA. *Caranci v. Monsanto Co.*,

2025 Pa. Super. 101, 338 A. 3d 151, 168 (2025). The Court explained that "FIFRA does not preempt a Pennsylvania failure to warn claim" because "a Pennsylvania failure to warn claim imposes a requirement on manufacturers of pesticides to provide a label that warns of health risks and FIFRA requires manufacturers of pesticides to include on their labels a 'warning or caution statement [that is] adequate to protect health and the environment,'" making the requirements sufficiently similar that the Pennsylvania cause of action cannot be preempted. *Id.*

The Oregon Court of Appeals likewise held that FIFRA does not bar all State law duty-to-warn claims, explaining that "'a state-law labeling requirement is not pre-empted . . . if it is equivalent to, and fully consistent with, FIFRA's misbranding provisions'—i.e., where a 'violation of the state law is also a violation of FIFRA.'" *Johnson v. Monsanto Co.*, 333 Or. App. 678, 700, 554 P. 3d 290, 306–07 (2024).

CONCLUSION

The Commonwealth retains authority under FIFRA to protect its citizens and control distribution of harmful pesticides by means of common law tort liability, and specifically, duty-to-warn claims. Several other States have reached the same conclusion and authorized duty-to-warn claims related to pesticides regulated under FIFRA. The Superior Court erred when it held to the contrary, and this Court should reverse the judgment of the Superior Court, reaffirm the continued applicability of duty-to-warn claims in this context, and remand this case for trial.

Respectfully submitted,

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Dated: January 14, 2026

CERTIFICATE OF COMPLIANCE

I, Thomas M. Bond, hereby certify that the forgoing brief complies with the rules of court, including, but not limited to:

Mass. R. App. P. 16(a)(13) (addendum);

Mass. R. App. P. 16(e) (references to the record);

Mass. R. App. P. 17 (brief of an amicus curiae);

Mass. R. App. P. 18 (appendix to the briefs);

Mass. R. App. P. 20 (form and length of briefs, appendices, and other documents); and

Mass. R. App. P. 21 (redaction).

I further certify, pursuant to Mass. R. App. P. 16(k), that the forgoing brief complies with the length limitation in Mass. R. App. P. 20 because it is printed in a proportional spaced font, Book Antiqua, at size 14 point, and contains 2,803 words in Microsoft Word 2007.

/s/ Thomas M. Bond
Thomas M. Bond

Date: January 14, 2026

CERTIFICATE OF SERVICE

I certify that on the 14th day of January, 2026, I served the foregoing brief on the parties in this matter by electronic delivery via the efileMA system to their attorneys of record or, if such attorneys are not registered with efileMA or if such parties are *pro se* and not registered with efileMA, via e-mail. The attorneys served are:

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