

IN THE  
SUPREME COURT OF THE UNITED STATES

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No. \_\_\_\_\_

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MONSANTO COMPANY,  
Applicant,  
v.  
LARRY JOHNSON AND GAYLE JOHNSON,  
Respondents.

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**APPLICATION TO THE HON. ELENA KAGAN  
FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE  
A PETITION FOR A WRIT OF CERTIORARI  
TO THE COURT OF APPEALS OF OREGON**

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Pursuant to Supreme Court Rule 13(5), Monsanto Company hereby moves for an extension of time of 30 days, to and including April 18, 2025, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition is March 19, 2025.

In support of this request, Monsanto states as follows:

1. The Court of Appeals of Oregon issued its decision on July 10, 2024. Ex. 1. The Supreme Court of Oregon denied review on December 19, 2024. Ex. 2. This Court has jurisdiction under 28 U.S.C. § 1257(a).
2. This case implicates the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. §§ 136 *et seq.* In particular, it involves the extent to which FIFRA expressly or impliedly preempts state-law failure-to-warn claims.

3. Alleging that Roundup, a widely used glyphosate-based herbicide manufactured by Monsanto, caused Larry Johnson to contract cancer, Respondents sued Monsanto asserting failure-to-warn and other claims.

4. FIFRA requires that a pesticide be registered by EPA before it may be sold. 7 U.S.C. § 136a(a). For a pesticide to be registered, its manufacturer must submit a proposed warning label to the agency. 7 U.S.C. §§ 136a(c)(1)(C) & (c)(2). EPA may not register a pesticide unless it determines that the proposed label “compl[ies] with the requirements of [FIFRA]” (7 U.S.C. § 136a(c)(5)(B)), including the requirement that it “contain” any “warning or caution statement which may be necessary ... to protect health.” 7 U.S.C. § 136(q)(1)(G). Once EPA registers a pesticide, “any modification” to its labeling “must be approved by the Agency before the product, as modified, may legally be distributed or sold.” 40 C.F.R. § 152.44(a). In short, because “[s]pecific statements pertaining to the hazards of the product and its uses must be approved by the Agency” (40 C.F.R. § 156.70(c)), a manufacturer may sell a pesticide only “with the ... labeling currently approved by the Agency.” 40 C.F.R. § 152.130(a).

5. EPA first registered Roundup in 1974. EPA has never required the Roundup label to carry a cancer warning. To the contrary, the agency has repeatedly rejected any such warning, expressly advising Monsanto and other manufacturers of glyphosate-based pesticides that such a warning would “constitute a false and misleading statement.” EPA, Letter to Glyphosate Registrants, at 1 (Aug. 7, 2019).

6. As relevant to this application, two questions were presented below: First, whether 7 U.S.C. § 136b(v), which provides that states “shall not impose or continue in effect any requirements for labeling” of pesticides that are “in addition to or different from those required under [FIFRA],” expressly preempts Respondents’ failure-to-warn claims. Second, whether FIFRA, which prevents manufacturers from adding health warnings to pesticide labels without prior EPA approval, impliedly preempts those claims.

7. The Court of Appeals of Oregon held that FIFRA neither expressly nor impliedly preempts Respondents’ failure-to-warn claims.

8. That decision reflects one side of a well-established lower-court conflict. While the Ninth and Eleventh Circuits and the California Court of Appeals have reached the same conclusion, the Third Circuit recently held that 7 U.S.C. § 136b(v) expressly preempts claims indistinguishable from those asserted by Respondents. *Compare Carson v. Monsanto Co.*, 92 F.4th 980 (11th Cir. 2024); *Hardeman v. Monsanto Co.*, 997 F.3d 941 (9th Cir. 2021); and *Pilliod v. Monsanto Co.*, 67 Cal. App. 5th 591 (Cal. Ct. App. 2021), *with Schaffner v. Monsanto Corp.*, 113 F.4th 364 (3d Cir. 2024).

9. Resolution of the conflict will have broad practical implications, as thousands of cases involving Roundup are currently pending in federal and state courts across the country and similar cases involving other pesticides could, and very likely will, arise in the future.

10. Monsanto requires more time to prepare the petition in this case and to evaluate whether other cases presenting the same circuit split provide superior vehicles for this Court's review.

11. Accordingly, for good cause shown, Monsanto requests a 30-day extension of time within which to prepare a petition for a writ of certiorari in this case.

Respectfully submitted,

/s/ Andrew Tauber

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