

No. \_\_A-\_\_\_\_

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**In the Supreme Court of the United States**

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**MONSANTO COMPANY,**  
*Applicant,*

v.

**JOHN D. CARSON,**  
*Respondent.*

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**APPLICATION FOR AN EXTENSION OF TIME IN WHICH  
TO FILE A PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**

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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Supreme Court Rule 29.6, Applicant discloses the following:

Monsanto Company is an indirect, wholly owned subsidiary of Bayer AG, a publicly held corporation. No other publicly held corporation owns 10% or more of Monsanto's stock.

To the Honorable Clarence Thomas, Circuit Justice for the United States Court of Appeals for the Eleventh Circuit:

Pursuant to Rules 13.5, 22, and 30.2 of the Rules of this Court, Applicant Monsanto Co. (“Monsanto”) respectfully requests that the time to file a petition for writ of certiorari in this matter be extended for 60 days to, and including, October 7, 2024.

The Eleventh Circuit entered its judgment and issued an opinion in support of the judgment on February 5, 2024. Monsanto timely petitioned for rehearing *en banc* on February 26, 2024. The Eleventh Circuit denied the petition on May 8, 2024. Unless extended, the time for filing a petition for writ of certiorari will expire on August 6, 2024. This Application is filed more than ten days prior to that date.

The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1). Attached are copies of the Eleventh Circuit’s panel opinion (Exhibit 1) and its order denying Monsanto’s petition for rehearing *en banc* (Exhibit 2).

## **BACKGROUND**

Acting pursuant to its congressionally-delegated authority under the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), the Environmental Protection Agency (“EPA”) has studied the extensive body of science on glyphosate and repeatedly found that it is not likely to be carcinogenic. Consistent with this determination, EPA has approved scores of labels bearing no cancer warning for Monsanto’s Roundup®-branded glyphosate products. By law, EPA could only approve those Roundup® labels after determining that they included all necessary health warnings.

Plaintiff John Carson nonetheless maintains that a jury applying state law can hold Monsanto liable for failing to provide a cancer warning that EPA determined is not required under FIFRA. Congress enacted a preemption provision that bars this claim. Titled “Uniformity,” FIFRA’s express-preemption provision provides that a “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,” i.e., under FIFRA. 7 U.S.C. § 136v(b). The Supreme Court has interpreted that provision to mean that no state labeling requirement may be enforced unless it is “genuinely equivalent” to federal labeling requirements. *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 454 (2005). And the Court has interpreted a similarly-worded preemption provision to mean that when an agency conducts a product-specific safety review and approves that product’s labeling, that regulatory action “imposes ‘requirements’ under” the statute. *Riegel v. Medtronic, Inc.*, 552 U.S. 312, 322-23 (2008).

The district court ruled that FIFRA preempts Plaintiff’s Georgia-law failure-to-warn claim. *Carson v. Monsanto Co.*, 508 F. Supp. 3d 1369, 1376–77 (S.D. Ga. 2020) (“*Carson I*”). An Eleventh Circuit panel reversed on the ground that EPA’s labeling approvals lacked the “force of law.” *Carson v. Monsanto Co.*, 51 F.4th 1358, 1362–64 (11th Cir. 2022) (“*Carson II*”). The full court of appeals granted rehearing en banc, vacated that decision, held that a force-of-law analysis is “usually irrelevant” to express preemption, and remanded to the panel. *Carson v. Monsanto Co.*, 72 F.4th 1261, 1267–68 (11th Cir. 2023) (en banc) (“*Carson III*”). The panel then rejected

preemption again. *Carson v. Monsanto Co.*, 92 F.4th 980, 992 (11th Cir. 2024) (“*Carson IV*”).

### REASONS FOR GRANTING AN EXTENSION OF TIME

A 60-day extension of time is necessary and appropriate for Monsanto to determine whether to file a petition for writ of certiorari, and to prepare and file any such petition.

1. This case presents an important and recurring question of federal preemption. This Court previously called for the views of the Solicitor General in a case raising similar issues. *See Order, Monsanto Co. v. Hardeman*, No. 21-241 (U.S. Dec. 13, 2021), *cert. denied*, 142 S. Ct. 2834 (Mem.) (2022). Although the United States recommended denying certiorari at that time, it recognized that “similar claims may arise in other circuits” due to multidistrict litigation concerning Roundup®. Br. for *Amicus Curiae* United States at 19, *Monsanto Co. v. Hardeman*, No. 21-241 (U.S. May 10, 2022). Indeed, more than 100,000 plaintiffs have filed cases against Monsanto, and tens of thousands remain pending.

2. Additional time is needed because Monsanto’s counsel have had and continue to have other significant obligations in the time period leading up to and following the current deadline, including: (1) *TikTok Inc. v. Garland*, No. 24-1113 (D.C. Cir.) (opening brief filed June 20, reply brief due August 15); (2) *Mia v. Kimberly-Clark Corp.*, No. 1:22-cv-02353 (D.D.C.) (motion to dismiss due June 24, reply brief due August 21); (3) *Watkins v. Mohan*, No. 24-1151 (7th Cir.) (opening brief due July 31, reply brief due September 20); (4) *Caranci v. Monsanto Co.*, No. 993 EDA 2024 (Pa. Super. Ct.) (opening brief due August 19); (5) *Martel v. Monsanto Co.*,

No. 1259 EDA 2024 (Pa. Super. Ct.) (opening brief due August 19, extension motion to be filed); (6) *Engilis v. Monsanto Co.*, No. 23-4201 (9th Cir.) (answering brief due August 30).

3. The requested 60-day extension would impose no additional burden or prejudice on the parties.

### CONCLUSION

Accordingly, Monsanto respectfully requests that the time within which it may file a petition for a writ of certiorari be extended for 60 days, to and including October 7, 2024.

Respectfully submitted,



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