

No. _____

In the
Supreme Court of the United States

MONSANTO COMPANY,
Petitioner,

v.

DANIEL ANDERSON, JIMMY DRAEGER AND BRENDA
DRAEGER, AND VALORIE GUNTHER,
Respondents.

**On Petition for Writ of Certiorari to the
Missouri Court of Appeals**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case presents the same question that is presently before the Court in *Monsanto Co. v. Durnell*, No. 24-1068 (cert. granted Jan. 16, 2026), which is set for oral argument on April 27, 2026. This case also carries an additional wrinkle. In addition to receiving an award of \$61.1 million in compensatory damages, the three plaintiffs here were awarded \$549.9 million in punitive damages. That is nine times the already-substantial compensatory damages awards these plaintiffs received, and it was imposed even though juries in prior cases had already awarded plaintiffs billions of dollars—and Monsanto had paid out nearly a hundred million dollars—in punitive damages for the very same conduct.

The questions presented are:

1. Whether the Federal Insecticide, Fungicide, and Rodenticide Act preempts a label-based failure-to-warn claim where EPA has not required the warning. (This is the question presented in *Durnell*.)
2. Whether due process permits the entry of multiplicative nine-figure awards of punitive damages in multiple suits for a single, inseparable act.

PARTIES TO THE PROCEEDING

Petitioner Monsanto Company was the Defendant-Appellant in the Missouri Court of Appeals. Respondents Daniel Anderson, Jimmy Draeger and Brenda Draeger, and Valorie Gunther were Plaintiffs-Respondents in the Missouri Court of Appeals.

CORPORATE DISCLOSURE STATEMENT

Petitioner 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.

STATEMENT OF RELATED PROCEEDINGS

Anderson v. Monsanto Co., No. SC101177 (Mo.)
(application for transfer denied Sept. 30, 2025);

Anderson v. Monsanto Co., No. WD 87059 (Mo. Ct.
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2025);

Anderson v. Monsanto Co., Nos. 22AC-CC00968,
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PETITION FOR WRIT OF CERTIORARI

The Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”) comprehensively regulates the manufacture, labeling, and sale of pesticides in the United States. In order to ensure “[u]niformity” in pesticide labeling, and to prevent a “crazy-quilt” of competing state labeling regimes, FIFRA includes an express preemption provision barring states from “impos[ing] or continu[ing] in effect any requirements for labeling or packaging in addition to or different from those required under” FIFRA. 7 U.S.C. §136v(b); *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 448 (2005). Acting pursuant to the authority FIFRA granted it, the Environmental Protection Agency (“EPA”) has long concluded that glyphosate, the main active ingredient in petitioner’s Roundup herbicide, does not cause cancer, and it has registered hundreds of Roundup product labels bearing no cancer warning, with the effect of prohibiting petitioner from including any such warning on its products.

Despite EPA’s 50-years-long, consistent determination that glyphosate does not cause cancer, 100,000 plaintiffs nationwide have stepped forward to sue on the theory that it does. Some plaintiffs, like respondents here, have found obliging courts: Juries in state and federal courts have found for plaintiffs on state-law failure-to-warn claims alleging that petitioner should have included on its products a cancer warning that EPA has expressly forbidden. This Court has already recognized the growing divide among state and federal courts on whether FIFRA preempts such state-law failure-to-warn claims, and it

has granted review in *Monsanto Co. v. Durnell*, No. 24-1068 (U.S.), to decide that question.

This case presents that question too, so this Court should hold this petition pending the disposition of *Durnell*. If the Court reverses in *Durnell*, it should grant this petition, vacate the judgment below, and remand for further proceedings not inconsistent with its opinion in *Durnell*. But if the Court affirms in *Durnell*, it should grant certiorari in this case, which presents a second question of national importance on which the lower courts are sharply divided.

After a jury found for the four respondents here on their products-liability claims, it granted them \$61.2 million in compensatory damages and a whopping \$1.5 billion in punitive damages, nearly 25 times the value of their already-substantial compensatory damages awards. Even respondents and the trial court recognized the gross excessiveness of that award, hence why the trial court adopted respondents' suggestion of reducing it to \$549 million via remittitur. But while that reduction may have made the problem less glaring, it did not solve it. Even if this were the only case against Monsanto involving Roundup, an award of \$549 million in punitive damages on top of a substantial (to say the least) compensatory award would plainly violate the Due Process Clause and this Court's precedents. But this case hardly stands alone. It is just one of literally thousands of cases involving the same basic conduct, including 10 cases in which punitive damages have been awarded. Taking those other punitive verdicts into account renders the award here grossly excessive by any measure. Refusing to take those awards into

account, as the courts below did, violates the Due Process Clause.

A reversal in *Durnell* will force the Missouri courts to revisit their punitive-damages assessment. But if this Court affirms in *Durnell*, the importance of this issue for Monsanto and other defendants facing mass-tort litigation will only be magnified. In the latter event, this Court should grant certiorari and make clear that this repeated punishment for the same underlying conduct—which would be excessive even were it not multiplicative—cannot be squared with basic principles of constitutional due process.

OPINIONS BELOW

The Missouri Court of Appeals' opinion, 719 S.W.3d 755, is reproduced at App.2-84. The Missouri Supreme Court's unreported order denying petitioner's application for transfer is reproduced at App.1. The trial court's unreported order denying petitioner's motion for judgment notwithstanding the verdict is reproduced at App.85-87.

JURISDICTION

The Missouri Court of Appeals issued its opinion on May 27, 2025, and modified its opinion on the denial of rehearing on June 24, 2025. The Missouri Supreme Court denied petitioner's application for transfer on September 30, 2025. On petitioner's applications, this Court extended the time to file a petition for a writ of certiorari to February 27, 2026. This Court has jurisdiction under 28 U.S.C. §1257(a).

STATUTORY PROVISIONS INVOLVED

The full text of 7 U.S.C. §136v(a)-(b) is reproduced at App.94.

STATEMENT OF THE CASE

A. Legal Background

Since 1947, Congress has regulated the manufacture, labeling, and sale of pesticides at a federal level through FIFRA. Pub. L. No. 80-104, 61 Stat. 163 (1947). As originally enacted, FIFRA required pesticide manufacturers to register their products with the Secretary of Agriculture before sale. *Id.* §4, 61 Stat. at 167-68. But the federal-agency role was still limited: Even if the Secretary refused to register a product on the ground that it was misbranded, a manufacturer could “insist[] that ... corrections are not necessary” and demand “that it be registered” anyway. *Id.* §4(c); 61 Stat. at 168. So while FIFRA originally made it unlawful to sell unregistered pesticides, *id.* §3(a)(1), 61 Stat. at 166, manufacturers could invoke their “absolute right to have [a] product registered under protest,” *Stearns Elec. Paste Co. v. EPA*, 461 F.2d 293, 302 (2d Cir. 1972). To avoid potential gamesmanship by manufacturers, Congress provided that registration may not serve as a defense in a subsequent misbranding enforcement action brought by the government. FIFRA §4(c), 61 Stat. at 168.¹

Both the federal-agency role and its preemptive effect were strengthened over the ensuing decades. By

¹ In 1964, Congress amended FIFRA to eliminate the registration-under-protest regime. Pub. L. No. 88-305, §3, 78 Stat. 190, 191 (1964). Because registration now represented the government’s determination that a pesticide complied with FIFRA, Congress made that registration presumptive proof of compliance in a subsequent misbranding enforcement action. Pub. L. No. 92-516, §3(f)(2), 86 Stat. 973, 982 (1972).

the 1970s, a cacophony of conflicting state pesticide regulations had begun to overwhelm manufacturers. *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 990 n.2 (1984). Those “competing state labeling standards” led to “significant inefficiencies.” *Bates*, 544 U.S. at 453. Some states wanted chemicals to be labeled as “flammable,” while others wanted the same substances labeled as “inflammable”; some states demanded warnings in red, others wanted them in yellow. See Federal Pesticide Control Act of 1971: Hearings before the House Comm. on Agric., 92d Cong. 281-83 (1971). Congress stepped in and amended FIFRA to impose a nationwide “[u]niformity” requirement. Specifically, Congress prohibited states from “impos[ing] or continu[ing] in effect” any labeling or packaging requirement “in addition to or different from those required” under FIFRA. Pub. L. No. 92-516, §24, 86 Stat. 973, 997 (1972) (classified to 7 U.S.C. §136v(b)). Through this “[u]niformity” provision, Congress sought to “completely preempt State authority in regard to labeling and packaging,” H.R. Rep. No. 92-511, at 16 (1971), and thus put an end to the “crazy-quilt” of conflicting state-level pesticide labeling regimes. *Bates*, 544 U.S. at 448, 453 n.26.

Today, FIFRA is “a comprehensive regulatory statute” that regulates “the use, as well as the sale and labeling, of pesticides.” *Ruckelshaus*, 467 U.S. at 991. No pesticide may be sold or distributed domestically unless it has first been registered with EPA pursuant to FIFRA. 7 U.S.C. §136a(a). EPA may register a pesticide “only if” it determines that the pesticide “will perform its intended function without unreasonable adverse effects on the environment,” is “not

misbranded,” and “its labeling and packaging comply with the applicable requirements” of FIFRA. 40 C.F.R. §152.112(e)-(f); *see* 7 U.S.C. §136a(c)(5)(B)-(D). FIFRA deems a pesticide misbranded if, among other things, its label “bears any statement, design, or graphic representation ... which is false or misleading in any particular,” or if its label “does not contain a warning or caution statement which may be necessary and if complied with[] ... is adequate to protect health and the environment.” *Id.* §136(q)(1)(A), (G). In other words, “[w]hen EPA determines that a pesticide product can be registered for use, the Agency has concluded that the use of the pesticide product will not cause unreasonable adverse effects to humans or the environment when applied according to the label directions and restrictions.” EPA, *Pesticide Registration Manual: Chapter 1* (Oct. 30, 2025), <https://perma.cc/GK64-3BUC>.

EPA regulations govern the registration process. *See* 40 C.F.R. pt. 152. Under those regulations, pesticide manufacturers submit voluminous scientific and safety data to the agency, alongside proposed labeling that includes any precautionary statements regarding the potential effect of the pesticide on human health. *E.g.*, 7 U.S.C. §136a(c); 40 C.F.R. §§156.10(a)(1)(vii), 156.60, 158.500. EPA’s regulations specifically instruct EPA to “review all data that are necessary to make the required risk/benefit finding under FIFRA.” 40 C.F.R. §152.85(e). EPA reviews the studies and safety data to verify that the pesticide does not create an unreasonable risk of adverse effects on human health, including cancer. *See, e.g.*, EPA, *Evaluating Pesticides for Carcinogenic Potential* (Oct. 16, 2025),

<https://perma.cc/238Z-3ZAX> (“EPA issued its first set of principles to guide evaluation of human cancer potential in 1976.”). It also reviews the proposed label to ensure that it complies with FIFRA’s requirements before approval, including that it bears all necessary health warnings. *See* 40 C.F.R. §§152.40-.55, .112(f). EPA must review a pesticide’s registration every 15 years. 7 U.S.C. §136a(g)(1)(A)(iii)(II). This process requires EPA to consider whether any “labeling changes” are necessary given new information and whether the product still meets FIFRA’s requirements, including its misbranding prohibition. 40 C.F.R. §155.58(b)(4).

Once EPA approves a label, that label is locked in. As EPA has put it, the “label is the law!” EPA, *Pesticide Registration Manual: Introduction* (May 21, 2025), <https://perma.cc/RRQ4-S928>. The label is an integral part of the balance between safety and efficacy that FIFRA directs EPA to strike. Manufacturers thus cannot distribute pesticides with labels that are substantially different from the label approved by EPA. 7 U.S.C. §136j(a)(1)(B). Indeed, manufacturers must seek EPA approval for virtually any substantive change to that label. *See* 40 C.F.R. §§152.44, 152.46. While the manufacturer may make some “minor modifications” through a streamlined “notification” process, it may not change any “precautionary statements” that way. *See* EPA, Office of Pesticide Programs, *Pesticide Registration Notice 2000-5* (May 10, 2000), <https://perma.cc/ANB4-UGG9>; EPA, Office of Pesticide Programs, *Pesticide Registration Notice 98-10* (Oct. 22, 1998), <https://perma.cc/EZ7M-62MY>; 40 C.F.R. §156.70(c).

Instead, for such changes, manufacturers may proceed only by formal amendment requiring agency approval.

Finally, FIFRA establishes a framework for state-federal cooperation on pesticide regulation. *See Wisc. Pub. Intervenor v. Mortier*, 501 U.S. 597, 601-02 (1991). FIFRA permits states to “regulate the sale or use of any federally registered pesticide,” so long as they do not attempt to “permit any sale or use” that is forbidden under federal law. 7 U.S.C. §136v. States can also grant special, local-use registration to meet unique local needs within the state, so long as EPA has not previously denied a registration for that use. *Id.* §136v(c)(1). But FIFRA expressly cuts states out of some areas of pesticide regulation. In particular, in light of the federal interest in uniformity, FIFRA makes clear that states cannot “impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under” FIFRA. *Id.* §136v(b).

B. Factual Background

Monsanto manufactures and distributes Roundup, a line of herbicides with residential, commercial, and agricultural applications. At all relevant times in this case, Roundup “employ[ed] glyphosate as its active ingredient.” *Schaffner v. Monsanto Corp.*, 113 F.4th 364, 373 (3d Cir. 2024).

Glyphosate is an organophosphorus compound used globally to control pest populations. *See* Graham A. Matthews, *A History of Pesticides* 12-15 (2018). Glyphosate-based herbicides are particularly effective (indeed, they are more effective than anything else) because, when applied to a plant, they are “translocated downwards” to the stem and roots, “as

well as into the foliage.” *Id.* at 103. Glyphosate is so effective that it is estimated to have saved farmers a staggering “\$21 billion” annually, while simultaneously allowing them to use “225 million kg less herbicide” each year. *Id.* at 160; Eva Greenthal, *In the Weeds: Understanding the Impact of GE Crops on Pesticide Use* 3 (2021), <https://perma.cc/3T87-PYWJ>. “Glyphosate is appealing to farmers because it is inexpensive, easy to use, kills a broad spectrum of weeds, and breaks down quickly in the environment.” *In the Weeds, supra*, at 4. At the same time, it “has significantly lower acute and chronic toxicity than many other herbicides on the market.” *Id.* In fact, as the President recently concluded, “[t]here is no direct one-for-one chemical alternative to glyphosate-based herbicides.” Exec. Order No. 14387 §1 (Feb. 18, 2026). “Lack of access to glyphosate-based herbicides would critically jeopardize agricultural productivity.” *Id.*

EPA has registered glyphosate-based pesticides since 1974. See EPA, *Revised Glyphosate Issue Paper: Evaluation of Carcinogenic Potential* 12 (Dec. 12, 2017) (“2017 EPA Paper”), <https://perma.cc/UWM2-6BHB>. Over the ensuing half-century, EPA has repeatedly evaluated (and re-evaluated) whether glyphosate poses adverse health risks for humans, including any risk of cancer. *Id.* For example, in 1986, EPA “requested that the FIFRA Scientific Advisory Panel ... evaluate the carcinogenic potential of glyphosate.” *Id.* That evaluation revealed no evidence that glyphosate causes cancer in humans, and EPA consequently prescribed “Required Labeling” without any cancer warning. *Id.*; see also EPA, *Guidance for the Reregistration of Pesticide Products Containing Glyphosate as the Active Ingredient* 6-8, 20-34 (June

1986), <https://perma.cc/DTH7-FR4V>. EPA again reviewed the potential health effects of glyphosate in 1991, and its Carcinogenicity Peer Review Committee found “evidence of non-carcinogenicity for humans.” 2017 EPA Paper, *supra*, at 13. In 1993, EPA again reviewed glyphosate as a part of its statutory re-registration procedure and again concluded that “glyphosate products, labeled and used as specified [by EPA], will not pose unreasonable risks or adverse effects to humans.” EPA, *Reregistration Eligibility Decision (RED) Glyphosate* 57 (Sept. 1993), <https://perma.cc/528H-F4FN>. EPA again prescribed “labeling requirements,” and those requirements did not include a cancer warning. *Id.* at 71-72.

EPA has come to that same conclusion repeatedly in the years since. *See, e.g.*, 2017 EPA Paper, *supra*, at 12-13; 73 Fed. Reg. 73,586, 73,589 (Dec. 3, 2008). Those conclusions accord with a longstanding global consensus that glyphosate does not cause cancer in humans. *See Nat’l Ass’n of Wheat Growers v. Bonta*, 85 F.4th 1263, 1270-71 (9th Cir. 2023).

In 2015, a working group of the International Agency for Research on Cancer (“IARC”) broke from that global consensus by classifying glyphosate as a “Group 2A” agent, meaning that IARC considers it “probably carcinogenic to humans” based on “limited” evidence of cancer in humans. IARC, *Some Organophosphate Insecticides and Herbicides* 398 (2015), <https://perma.cc/9TPL-278R>. IARC’s classification was a “hazard assessment,” i.e., it was based on a theoretical determination of carcinogenic potential in humans; it did not involve an assessment of the actual risk glyphosate poses under real-world

conditions. *Id.* at 10-11; *see also In re Roundup Prods. Liab. Litig.*, 390 F.Supp.3d 1102, 1108, 1113-14 (N.D. Cal. 2018) (noting IARC’s “limited” and “abstract” assessment). For example, IARC’s view was based on exposure of “experimental animals” to glyphosate, even though “[l]aboratory animals are tested with higher rates of pesticides than used by farmers applying them in their fields.” Matthews, *supra*, at 104-05. And IARC refused to consider multiple studies that directly undermined its carcinogenicity hypothesis. EPA, *Glyphosate: Report of the Cancer Assessment Review Committee* 9 (Oct. 1, 2015) (“2015 CARC Report”), <https://perma.cc/JXM2-6DCW> (“This omission of the negative findings from reliable studies may have had a significant bearing on [IARC’s] conclusion.”). Moreover, the next year, a different WHO agency found “glyphosate was unlikely to pose a carcinogenic risk to humans from exposure through the diet,” 2017 EPA Paper, *supra*, at 13, which was consistent with the earlier findings of two other WHO agencies, WHO & Int’l Programme on Chem. Safety, *Glyphosate* 15 (1994), <https://perma.cc/RGZ9-YHV6>; WHO, *WHO Guidelines for Drinking Water Quality* 379 (3d ed. 2008), <https://perma.cc/89Z2-53FJ>.

IARC released its assessment while EPA’s statutory registration review was already underway. As part of that registration review, EPA commissioned multiple reviews to evaluate IARC’s findings and assess anew the carcinogenic potential of glyphosate. Those reviews culminated in an 87-page report from EPA’s Cancer Assessment Review Committee and a 216-page report from its Office of Pesticide Programs. *See* 2015 CARC Report, *supra*; 2017 EPA Paper, *supra*. To compile those reports, EPA examined all

relevant evidence IARC collected, and numerous studies IARC failed to consider—amounting to hundreds of scientific sources and references. 2017 EPA Paper, *supra*, at 21-22; *see also* EPA, *Glyphosate Proposed Interim Registration Review Decision 7* (Apr. 2019), <https://perma.cc/8K63-HD36> (“IARC only considered a subset of the studies included in the EPA’s evaluation.”). EPA also solicited public comments to consider outside views in its evaluation. *See* EPA, *Response to the Final Report of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) on the Evaluation of the Human Carcinogenic Potential of Glyphosate* (Dec. 12, 2017) (“2017 SAP Response”), <https://perma.cc/P7AT-9QJY>.

Having reviewed all the available scientific literature, and having reconsidered its own views in light of IARC’s findings, EPA concluded that “[t]he strongest support” was for classifying glyphosate as “not likely to be carcinogenic to humans.” 2017 EPA Paper, *supra*, 143. EPA thus rejected IARC’s conclusions and chose to re-register glyphosate for use in pesticides. EPA, *Glyphosate Proposed Interim Registration Review Decision 7-8* (Apr. 2019), <https://perma.cc/8K63-HD36>. EPA did not mince words when it came to its view of IARC’s work: It considered its own study “more robust” than IARC’s—after all, IARC considered only half as many “animal carcinogenicity studies.” *Id.* at 7. IARC relied on studies about carcinogenicity in worms and plants, which EPA excluded as irrelevant to carcinogenicity in *mammals*. *Id.* And EPA viewed its analyses as “more transparent” than IARC’s—EPA’s review underwent “external peer review,” EPA solicited “public

comment,” and EPA’s deliberations and work product were available for public view. *Id.* at 8. By contrast, IARC held closed deliberations, solicited no public comments, and foreswore outside peer review. *Id.* Indeed, after its own “robust” and “transparent” review, EPA noted that “*none* of the panelists” on its external peer review committee supported IARC’s conclusions. *Id.* at 7 (emphasis added); *see also* EPA, *Glyphosate* (May 9, 2025), <https://perma.cc/SXM6-T92Q>.

EPA was hardly the only regulator to reject IARC’s consensus-defying views. A “significant number of international regulatory authorities and organizations disagree with IARC’s conclusion that glyphosate is a probable carcinogen.” *Wheat Growers*, 85 F.4th at 1270. Indeed, “IARC stands essentially alone in its determination that glyphosate is probably carcinogenic to humans.” *Id.* at 1278.

In August 2019, EPA once more rejected a cancer warning for glyphosate in a public letter. App.88-90. The State of California, relying on IARC’s glyphosate classification, listed glyphosate as a potentially carcinogenic substance under its Proposition 65—a designation that would require manufacturers to include a warning that glyphosate is known “to cause cancer” on their labels. App.88. In its letter to glyphosate registrants, EPA reiterated that it “disagrees with IARC’s assessment,” explaining that it had “considered a more extensive dataset than IARC” and determined that glyphosate is “not likely to be carcinogenic to humans.” App.88. Given that determination, EPA explained, including California’s cancer warning would render a pesticide “misbranded

pursuant to section 2(q)(1)(A) of FIFRA.” App.89. That conclusion was consistent with how other states had addressed glyphosate products for decades: Before California, none had attempted to require a cancer warning.

EPA finalized its glyphosate interim registration review process in 2020 and again approved product labels without a cancer warning. After various parties brought suit in the Ninth Circuit to challenge that decision, EPA *again* reviewed its decision and reaffirmed that “glyphosate is not likely to be a human carcinogen and ... it does not pose human-health risks of concern.” EPA.Br.17, *NRDC v. EPA*, Nos. 20-70787, 20-70801 (9th Cir. May 18, 2021). The Ninth Circuit faulted EPA for failing to offer enough “analysis and explanation.” *NRDC v. EPA*, 38 F.4th 34, 52 (9th Cir. 2022). In response, EPA announced that it would “revisit and better explain its evaluation of the carcinogenic potential of glyphosate,” but that its “underlying scientific findings regarding glyphosate, including its finding that glyphosate is not likely to be carcinogenic to humans,” remain unchanged. Memorandum from Cathryn Britton, EPA, to Glyphosate Registration Review Docket (EPA-HQ-OPP-2009-0361) at 5-6 (Sept. 21, 2022), <https://perma.cc/3KDJ-JT2N>; *see also Wheat Growers*, 85 F.4th at 1280 n.14.

Since then, EPA has continued to approve labels of numerous glyphosate-based pesticide products

without cancer warnings. See EPA, *Chemical Name: Glyphosate*, <https://perma.cc/7PHA-8UXP>.²

C. Procedural History

1. After IARC issued its glyphosate classification decision, plaintiffs began filing a flood of lawsuits alleging that their use of Roundup caused them to develop non-Hodgkin’s lymphoma. Several factors drove the massive number of lawsuits. Roundup is an enormously popular product, meaning that there is an extensive user base of would-be plaintiffs. And non-Hodgkin’s lymphoma is a very common and naturally occurring cancer; “the chance that a man will develop NHL in his lifetime is about 1 in 46; for a woman, the risk is about 1 in 55.” Am. Cancer Soc’y, *Key Statistics for Non-Hodgkin Lymphoma* (Jan. 13, 2026), <https://perma.cc/G3GM-QZKN>. That confluence of factors—plus a more-than-\$130-million advertising blitz by plaintiffs’ attorneys, see Tiger Joyce, Am. Tort Reform Ass’n, *When Plaintiffs’ Attorneys Mislead the Public*, Bloomberg Law (Sept. 28, 2022), <https://perma.cc/SV28-9BFW>—resulted in more than 100,000 plaintiffs suing Monsanto alleging that Roundup caused their cancers.

In 2016, the Judicial Panel on Multidistrict Litigation centralized cases alleging that Roundup caused plaintiffs’ non-Hodgkin’s lymphoma in the

² Approximately a decade ago (and before the Ninth Circuit’s decision), EPA approved two labels that included a cancer warning. But EPA has acknowledged that those decisions were the result of an “implementation mistake[.]” U.S.Br.17-19 & n.14, *Monsanto Co. v. Hardeman*, No. 19-16636 (9th Cir. filed Dec. 20, 2019), Dkt.32.

Northern District of California, where several cases were already pending. See *In re Roundup Prods. Liab. Litig.*, 214 F.Supp.3d 1346, 1348 (J.P.M.L. 2016); see also, e.g., *Hardeman v. Monsanto Co.*, No. 3:16-cv-00525 (N.D. Cal. filed Feb. 1, 2016). This tidal wave of litigation forced Monsanto to remove glyphosate from the residential consumer version of Roundup.

That removal—and the ongoing litigation—has sparked fear among American farmers that Monsanto will be forced to remove glyphosate from the agricultural version of Roundup as well. Farmers describe Roundup as “a fabulous tool” and “one of the least harmful chemicals [they] use.” Patricia Cohen, *Roundup Weedkiller Is Blamed for Cancers, but Farmers Say It’s Not Going Away*, N.Y. Times (Sept. 20, 2019), <https://perma.cc/J2LQ-BEKS>. Indeed, farmers “continue to depend on Roundup,” especially given global “increases [in] the demand for food.” *Id.* And while the glyphosate lawsuits have been “a boon to trial lawyers who have made a career and a fortune” off of them, they risk forcing American farmers to return to the “miserable,” “mind-numbing,” and “back-breaking labor” that was necessary before Monsanto introduced glyphosate to the agricultural industry in the 1970s. B. Hurst, *Roundup Lawsuits Pose a Threat to My Missouri Farm*, Wall St. J. (Sept. 13, 2024), <https://perma.cc/M24F-TJTB>. Moreover, removing glyphosate from shelves would force farmers to turn to other herbicides that are “harsher, more toxic[,] and more likely to drift and cause damage to surrounding vegetation.” *Id.*

2. Since removing glyphosate from its consumer version of Roundup, Monsanto has settled many

claims against it.³ But countless Roundup cases remain pending across the country.

This is one of them. In March 2022, Jimmy Draeger sued Monsanto in state court, alleging that his residential use of Roundup caused him to develop non-Hodgkin's lymphoma. App.3. In the same suit, his wife, Brenda Draeger, sued for loss of consortium caused by Jimmy's cancer. App.3. In May 2022, Anderson and Gunther likewise sued Monsanto, also alleging that their residential Roundup use caused them to develop non-Hodgkin's lymphoma. App.3. The trial court consolidated respondents' cases. App.3.

Respondents brought three claims: First, a strict-liability claim alleging that Roundup was defectively designed because the alleged glyphosate-cancer connection rendered it unreasonably dangerous. App.5. Second, a strict-liability claim alleging that Monsanto violated a state-law duty to warn consumers that glyphosate (and, consequently, Roundup) causes cancer in humans. App.5. And third, a negligence claim alleging that Monsanto failed to use reasonable care in either designing a product that does not cause cancer or otherwise informing consumers of the alleged cancer risk. App.5. Brenda Draeger also brought a standalone claim for loss of consortium stemming from the personal injuries to her husband. App.5.

³ Monsanto recently announced a proposed class settlement for a subset of Roundup claims totaling up to \$7.25 billion. That settlement does not affect this case or resolve nearly \$1 billion in liability for pending appeals and other claims that fall outside the settlement.

The jury found for respondents on all their claims. In total, it awarded \$61.2 million in compensatory damages. App.5-6. On top of that, the jury awarded \$1.5 *billion* in punitive damages (\$500 million for each non-derivative plaintiff). App.5-6. Monsanto moved for judgment notwithstanding the verdict or, in the alternative, for a new trial or remittitur, arguing that FIFRA preempted the failure-to-warn claims and that the punitive damages award was unconstitutional. App.6. The trial court largely rejected those arguments, but granted remittitur, reducing the total punitive damages award to \$549 million (a nine-times multiplier). App.7. Monsanto appealed.

On appeal, Monsanto renewed its argument that respondents' claims were preempted by FIFRA. The Court of Appeals summarily rejected that argument under state-court precedent (which is now under review in this Court). *Compare Durnell v. Monsanto Co.*, 707 S.W.3d 828 (Mo. App. E.D. 2025), *with Monsanto Co. v. Durnell*, No. 24-1068 (U.S.).

Monsanto also argued that the jury's award of punitive damages was unconstitutional. In particular, it argued that "the punitive damages awarded to the Plaintiffs were unconstitutionally duplicative of each other and of past awards in other cases because they punished for the same underlying conduct" and that they "impose[d] a grossly excessive penalty out of line with the evidence presented in this case." App.58, 68. The Missouri Court of Appeals rejected these contentions, too. First, it held that the remittitur resolved Monsanto's concerns about the excessiveness of the awards. App.59-60. The court also rejected the argument that the awards of punitive damages, even

as reduced following remittitur, were still unconstitutionally excessive. App.67-68. Finally, the court rejected Monsanto's argument that the punitive damages award was duplicative of the nearly \$100 million in punitive damages that Monsanto had already paid in prior Roundup cases. App.63-67.

REASONS FOR GRANTING THE PETITION

This case presents two recurring issues of exceptional importance that have divided the state and federal courts of appeals. This Court has already granted certiorari to resolve the first of those issues. *See Monsanto Co. v. Durnell*, No. 24-1068 (U.S.). At a minimum, then, the Court should hold this petition pending its resolution of *Durnell*, as it has already done in multiple other cases presenting the same question. *See Monsanto Co. v. Salas*, No. 24-1097 (U.S.); *Monsanto Co. v. Johnson*, No. 24-1098 (U.S.). And if the Court reverses in *Durnell*, it should then grant this petition, vacate the decision below, and remand for further proceedings not inconsistent with *Durnell*.

But if this Court affirms in *Durnell*, then the Court should grant this petition to resolve the second circuit-splitting issue it presents. The Missouri Court of Appeals' holding that it was permissible to award \$549 million in punitive damages atop an already-substantial \$61.1 million compensatory damages award dragged Missouri into a broad and entrenched split over the permissibility of such awards. That split is especially problematic: Because Missouri and the Eighth Circuit find themselves on opposite sides of it, the content of federal constitutional law in the state of Missouri currently depends in large part on whether a

given plaintiff files his suit in state or federal court. At the same time, the Missouri Court of Appeals violated due process a second time over by approving of a punitive damages award that unquestionably duplicated the billions of dollars of punitive damages awards already rendered against Monsanto (and the nearly \$100 million already paid by it) for the same conduct in other cases.

That split is important on its own. But it is especially important given how it interacts with modern mass-tort cases. Mass torts are the perfect petri dish for replicating this exact problem again and again (and again). When mass torts are litigated outside the class-action context, they inevitably involve legions of plaintiffs suing a single defendant over more or less the same (if not *exactly the same*) conduct. When those plaintiffs can also seek punitive damages for the defendant's alleged wrongdoing, the stage is set for an endless chain of duplicative punishments that violate even the most permissive conception of due process. And the Court need not take petitioner's word for it: It has been presented with multiple cases in recent years involving this exact problem in comparable mass-tort settings.

The Missouri Court of Appeals' approach has nothing to commend it. It imposes potentially ruinous liability on defendants like petitioner, who end up facing millions or billions of dollars of duplicative punitive damages liability for the very same conduct. But it reaches further too: Because that liability presents an existential threat to the viability of corporate defendants, it risks pushing them into bankruptcy, with the attendant consequence of

provoking a rush for the courthouse by plaintiffs who fear being left out in the cold if they do not file suit (and reach final judgment) fast enough. While that scenario may inure to the benefit of plaintiffs' attorneys who are able to secure a quick settlement (at discounted rates) to lock in their clients' payments, it benefits few others.

I. The Court Should Hold This Petition Pending Disposition Of *Durnell*.

The Court should hold this petition pending its disposition of *Durnell*, which involves an identical question regarding the scope of preemption under FIFRA and, specifically, whether state-law claims based on failure to warn (like respondents' here) are preempted by it. If this Court resolves *Durnell* in petitioner's favor, that likely would resolve the present case in petitioner's favor, in which case the Court should grant this petition, vacate the decision below, and remand the case for further proceedings not inconsistent with its opinion in *Durnell*.

II. If The Court Affirms In *Durnell*, It Should Grant Certiorari To Review The Court Of Appeals' Punitive Damages Holding.

To the extent this Court does not reverse the judgment in *Durnell* and then GVR this petition, this case provides an opportunity for the Court to provide guidance that the lower courts desperately need on the constitutional limits on punitive damages in cases where a defendant faces multiple sizable awards of punitive damages arising from the same conduct.

A. The Decision Below Entrenches Deep Divisions Among Lower Courts on the Constitutional Limits on Punitive Damages in Cases With Substantial Awards of Compensatory Damages.

Punitive damages “pose an acute danger of arbitrary deprivation of property.” *Honda Motor Co. v. Oberg*, 512 U.S. 415, 432 (1994). To guard against that danger and to ensure that “an award of punitive damages is based upon an ‘application of law, rather than a decisionmaker’s caprice,’” *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 418 (2003) (quoting *Cooper Indus., Inc. v. Leatherman Tool Grp., Inc.*, 532 U.S. 424, 436 (2001)), this Court has held that any award of punitive damages must be proportionally related to the underlying award of compensatory damages. *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 580 (1996); *see also Exxon Shipping Co. v. Baker*, 554 U.S. 471, 502 (2008) (discussing courts’ “responsibility” to review punitive damages “because of the implication of unfairness that an eccentrically high punitive verdict carries in a system whose commonly held notion of law rests on a sense of fairness in dealing with one another”).

In the mine-run case, “awards exceeding a single-digit ratio between punitive and compensatory damages” will almost never “satisfy due process.” *State Farm*, 538 U.S. at 425. “Single-digit multipliers” may pass muster, depending on “the degree of reprehensibility of the defendant’s misconduct.” *Id.* at 418, 425; *see Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 23-24 (1991) (a “punitive damages award” that “is more than 4 times the amount of compensatory

damages” is “close to the line”). But “[w]hen compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee.” *State Farm*, 538 U.S. at 425.

While this Court has not explicated a definite rule for assessing substantiality, it has not been silent. In *Exxon*, for instance, the Court made clear that \$500 million for 32,000 plaintiffs—amounting to \$15,625 apiece—met the threshold of substantiality. 554 U.S. at 479, 515 n.28 (“[A] class recovery of \$500 million is substantial. In this case, then, the constitutional outer limit may well be 1:1.”). And in *State Farm* itself, the Court held that a “compensatory award” of “\$1 million for a year and a half of emotional distress” for two plaintiffs “was substantial.” 538 U.S. at 426.

Despite that guidance, lower courts are all over the map when it comes to what constitutes a “substantial” award of compensatory damages that suffices to trigger *State Farm*’s equal-ratio rule (rather than the single-digit-multiplier standard). Some take a fairly strict view, in line with this Court’s noted concerns about arbitrary deprivations of property. *See, e.g., Méndez-Matos v. Municipality of Guaynabo*, 557 F.3d 36, 55 (1st Cir. 2009) (\$35,000 is “substantial”); *Bridgeport Music, Inc. v. Justin Combs Publ’g*, 507 F.3d 470, 488-89 (6th Cir. 2007) (\$366,939 is substantial); *Williams v. ConAgra Poultry Co.*, 378 F.3d 790, 799 (8th Cir. 2004) (\$600,000 is substantial); *Jones v. UPS, Inc.*, 674 F.3d 1187, 1195, 1207-08 (10th Cir. 2012) (\$630,307 is substantial). Others have been more permissive. *See, e.g., Flax v. DaimlerChrysler Corp.*, 272 S.W.3d 521, 539 (Tenn. 2008) (\$2.5 million

not substantial); *Brewer v. Impact Biomedicines*, 2025 WL 2027269, at *26 (Cal. Ct. App. July 21, 2025) (\$1 million “not substantial”); *Bullock v. Philip Morris USA, Inc.*, 131 Cal.Rptr.3d 382, 399-401 & n.11 (Cal. Ct. App. 2011) (\$850,000 not substantial).

And that is just the tip of the iceberg. Even when the award of punitive damages is indisputably (and undisputedly) “substantial,” courts have diverged on the maximum ratio of punitives to compensatories. Some courts follow *State Farm’s* marching orders. The Seventh Circuit, for instance, has instructed that a “substantial” compensatory “award merits a ratio closer to 1:1.” *Saccameno v. U.S. Bank Nat’l Ass’n*, 943 F.3d 1071, 1090 (7th Cir. 2019); *see also, e.g., Epic Sys. Corp. v. Tata Consultancy Servs. Ltd.*, 980 F.3d 1117, 1143-44 (7th Cir. 2020) (where jury awarded \$140 million in compensatory damages, vacating an award of punitive damages twice that amount). The Tenth Circuit likewise has vacated an award of punitive damages that exceeded “a ratio of 1:1” where the underlying compensatory damages award was substantial. *Lompe v. Sunridge Partners, LLC*, 818 F.3d 1041, 1070, 1075 (10th Cir. 2016).

The First, Second, Third, Sixth, and Eighth Circuits have all held similarly. *See, e.g., Méndez-Matos*, 557 F.3d at 55 (1st Cir. 2009) (affirming “one-to-one ratio between the compensatory damages ... and a \$35,000 punitive damages award”); *Thomas v. iStar Fin., Inc.*, 652 F.3d 141, 149-50 (2d Cir. 2011) (1:1 ratio outer limit with six-figure compensatory award); *Jurinko v. Med. Protective Co.*, 305 F.App’x 13, 30 (3d Cir. 2008) (reducing the punitive award to “reflect a 1:1 ratio” in light of a compensatory award

of \$1.7 million); *Morgan v. N.Y. Life Ins. Co.*, 559 F.3d 425, 443 (6th Cir. 2009) (determining maximum ratio is 1:1 when compensatory damages are \$6 million); *Bach v. First Union Nat'l Bank*, 486 F.3d 150, 156 (6th Cir. 2007) (finding “an award of punitive damages at or near the amount of compensatory damages” to be the constitutional maximum in light of a “substantial” award of “compensatory damages”); *ConAgra Poultry*, 378 F.3d at 799 (reducing a punitive damages award that was “more than ten times the compensatory award” to reflect a 1:1 ratio given the “large compensatory award” of \$600,000); *Boerner v. Brown & Williamson Tobacco Co.*, 394 F.3d 594, 602-603 (8th Cir. 2005) (finding one-to-one ratio appropriate given \$4 million compensatory damages award). *But see Stogsdill v. Healthmark Partners, L.L.C.*, 377 F.3d 827, 833 (8th Cir. 2004) (allowing 4:1 ratio despite “substantial” award of compensatory damages).

States courts in Missouri, however, feel no such compunction to take *State Farm* at its word. Missouri courts have consistently blessed awards of punitive damages far in excess of the value of compensatory damages, even when the compensatory damages are “substantial” (and then some). App.78-79. To take just one example, the Missouri Court of Appeals previously endorsed a 12-times multiplier for punitive damages awards in a case involving a substantial compensatory damages award. *See Poage v. Crane Co.*, 523 S.W.3d 496, 523-24 (Mo. App. 2017).

And as the decision below makes all too clear, Missouri courts show no signs of coming into compliance. The jury here awarded \$61.1 million in compensatory damages for three plaintiffs (removing

Brenda Draeger’s derivative loss-of-consortium award). App.5-6. That is substantial under any meaning of the term. Indeed, eight-figure-per-plaintiff awards easily clear the threshold recognized by this Court in *State Farm* (\$500,000 each for two plaintiffs), and dwarf the per-plaintiff awards in *Exxon* (\$15,625 apiece for 32,000 plaintiffs). See *State Farm*, 538 U.S. at 426; *Exxon*, 554 U.S. at 479, 515 n.28. Perhaps for that reason, the Missouri Court of Appeals did not dispute that the award here was “substantial.” But following in the footsteps of *Crane Co.* and other similar cases, the Court of Appeals simply declared that *State Farm*’s equal-ratio proviso did not apply here, endorsing a punitive award nine times the value of the underlying compensatory damages. App.78-79.

Missouri courts are far from alone in disregarding this Court’s admonition from *State Farm* and rejecting the equal-ratio rule this Court there endorsed. See, e.g., *Brewer*, 2025 WL 2027269, at *26-27 (4:1 award on top of \$1 million in compensatories); *Cote v. Philip Morris USA, Inc.*, 985 F.3d 840, 849 (11th Cir. 2021) (upholding 3.3:1 ratio and dismissing this Court’s statement in *State Farm* that a 1:1 ratio “can reach the outermost limit of the due process guarantee” as “dicta”); *Manor Care, Inc. v. Douglas*, 763 S.E.2d 73, 103, 105 (W. Va. 2014) (approving \$32 million punitive-damages award seven times the compensatory award because “ratio statements by the United States Supreme Court[] do not represent strict standards” but rather “merely provide a guide”); *Wyeth v. Rowatt*, 244 P.3d 765, 781-85 (Nev. 2010) (en banc) (affirming punitive damages award of roughly three times the already-substantial \$23 million

compensatory award); *Hebble v. Shell W. E & P, Inc.*, 238 P.3d 939, 941, 947 (Okla. Civ. App. 2009) (allowing a more-than-four-times award despite a compensatory damages award of \$13.2 million); *Goddard v. Farmers Ins. Co.*, 179 P.3d 645, 667-68, 671 (Or. 2008) (en banc) (holding that a \$691,000 compensatory award was substantial, but applying 4:1 ratio to punitive award); *Seltzer v. Morton*, 154 P.3d 561, 579, 613 (Mont. 2007) (holding that a \$1.1 million compensatory award was substantial, but affirming punitive award at 9:1 ratio); *Planned Parenthood of Columbia/Willamette Inc. v. Am. Coal. of Life Activists*, 422 F.3d 949, 963 (9th Cir. 2005) (addressing compensatory damages ranging from \$375 to \$406,000 and holding that “[m]ost of the compensatory awards are substantial,” but remitting punitive awards at 9:1 ratio); *Rhone-Poulenc Agro, S.A. v. DeKalb Genetics Corp.*, 345 F.3d 1366, 1371-72 (Fed. Cir. 2003) (permitting a more-than-3:1 ratio despite a \$15 million compensatory award); *Bogle v. McClure*, 332 F.3d 1347, 1362 (11th Cir. 2003) (holding that a \$500,000 compensatory award was substantial, but affirming punitive award at 4:1 ratio). Perhaps most remarkably of all, the Utah Supreme Court applied a 9:1 ratio to the punitive damages award where the compensatory award was \$1 million—*on remand from this Court in State Farm*. See *Campbell v. State Farm Mut. Auto. Ins. Co.*, 98 P.3d 409, 417-18 (Utah 2004).

There is thus a clear and well-developed split among appellate courts on the constitutional limits on punitive damages in cases where a jury has already awarded substantial compensatory damages. And this instantiation of the split is especially untenable. The Eighth Circuit (which includes Missouri) has

endorsed the equal-ratio rule for cases involving substantial awards of compensatory damages, but the Missouri courts have rejected it. *Compare ConAgra Poultry*, 378 F.3d at 799, *with App.78-79 and Poage*, 523 S.W.3d at 523-24. There is thus a division of authority *within Missouri itself*. At this very moment, in Missouri, the content of federal constitutional law depends on whether a suit is filed in state or federal court. Plaintiffs can effectively evade *State Farm*'s limits on punitive damages by filing suit in state court, and they will have every incentive to add in-state defendants to prevent removal via diversity. Indeed, Roundup plaintiffs in Pennsylvania have already adopted that exact strategy, based on the Pennsylvania-Third Circuit divide on the FIFRA preemption question this Court is reviewing in *Durnell*. *See generally Caranci v. Monsanto Co.*, 338 A.3d 151 (Penn. Super. Ct. 2025). That state-federal split within the Eighth Circuit is intolerable and illustrative of the broader split, which extends nationwide.

B. The Decision Below Is Untenable.

The decision below cannot be reconciled with this Court's precedents or bedrock principles. To be sure, this Court caveated its one-to-one proviso in *State Farm* by saying "perhaps" one-to-one stood as "the outermost limit of the due process guarantee." 538 U.S. at 425. And this Court has "decline[d]" more generally to "impose a bright-line ratio which a punitive damages award cannot exceed." *Id.* But this Court drew a firmer line in *Exxon*, mandating a 1:1 ratio in a maritime law case involving a \$500 million compensatory damages award. 554 U.S. at 514-15.

And while *Exxon* was obviously a maritime law case, the unfairness concerns that motivated the Court to draw that firm line are not unique to maritime law. Indeed, *Exxon* identified “[t]he real problem” as “the stark unpredictability of punitive [damages] awards” in general. *Id.* at 499. And the Court’s solution to that problem—a 1:1 ratio—was based on the median ratio of *state court* awards, not federal maritime cases. See Jill Wieber Lens, *Procedural Due Process and Predictable Punitive Damage Awards*, 2012 B.Y.U. L. Rev. 1, 25-26 (2012). The due-process problem with inconsistent punitive awards is the same within and without maritime law; the solution should be as well.

In all events, regardless of whether the 1:1 ratio is a firm line or a hazy one, this case is not even close to the line: The more than half a billion dollars in punitives is nine times the multimillion-dollar compensatories, which means it is near the maximum that this Court’s cases tolerate even when the compensatory damages are *not* substantial.

If the Court “intends 1:1 to represent a significant restraint on punitive damages in cases involving ‘substantial’ compensatory damages, that message is not being well received by lower courts.” Laura J. Hines & N. William Hines, *Constitutional Constraints on Punitive Damages: Clarity, Consistency, and the Outlier Dilemma*, 66 *Hastings L.J.* 1257, 1302 (2015). It is time for this Court to step in and either lay down clear markers or simply cut bait. The best course would be to step in and make clear that this Court meant what it said in *State Farm* and that nine-figure awards of punitive damages atop eight-figure awards of compensatory damages are beyond the pale. The

next-best course would be to step in and say something else that at least gives the lower courts a chance to align, which ought to be of paramount importance when it comes to a standard that exists to guard against arbitrary deprivations of property. But the one course with nothing to recommend it is to do nothing and allow this disarray to continue.

Indeed, the need for this Court's intervention is all the more acute here given that this case arises in the mass-tort context—and, as happens all too often in such cases, Monsanto has already been assigned billions of dollars in punitive damages, and has paid out nearly \$100 million worth, for the very same conduct underlying the judgment here. Traditionally, punitive damages were only available in cases where “the number of plaintiffs [was] few,” and where “they w[ould] join, or c[ould] be forced to join, in a single trial.” *Roginsky v. Richardson-Merrell, Inc.*, 378 F.2d 832, 838-39 (2d Cir. 1967) (Friendly, J.). In that circumstance, a single jury could assess the full breadth of the defendant's culpable conduct and peg the total amount of punitive damages to the total amount of compensatory damages in a single suit. But things have changed. Now, “[p]otentially destructive mixes of punitive damages and mass torts have, unfortunately,” become “prevalent.” James A. Henderson, Jr., *The Impropriety of Punitive Damages in Mass Torts*, 52 Ga. L. Rev. 719, 723 (2018). Punitive damages are routinely awarded in mass tort cases where myriad plaintiffs bring independent actions for damages, raising the risk of multiplicative punitive damages awards to a near certainty.

This case typifies the problem. The trial court greenlit \$549 million in punitive damages, notwithstanding the fact that Monsanto had already been forced to pay nearly \$100 million in punitive damages for substantively identical claims out of California. App.58-60. And the punitives upon punitives (upon punitives) only continue to accumulate, with more punitive damages awards, stretching into the hundreds of millions—and beyond—accruing in other cases. *See, e.g., Helena Smolak, Bayer Shares Fall After Jury Orders \$2.25 Billion in Damages in Roundup Case*, Wall St. J. (Jan. 29, 2024), <https://perma.cc/7ZMD-75JH>.

These punitive damages awards are all duplicative of one another. Each of these awards punishes Monsanto for the exact same conduct: its use of glyphosate in its Roundup product line, and its omission (consistent with FIFRA and EPA regulations) of a cancer warning label from its Roundup products. To be sure, some plaintiffs bought and used Roundup at different times than others. But in all Roundup-related product-liability suits, plaintiffs are challenging the same conduct by the same defendant, and yet they routinely are obtaining punitive damages. That means that juries have awarded billions of dollars in overlapping punitive damages awards against Monsanto for the same conduct, and courts have approved the same. This is precisely the type of duplicative and arbitrary deprivation of property that this Court's precedents prohibit. *See State Farm*, 538 U.S. at 423 (warning that the Due Process Clause prohibits “double count[ing]” of punitive damages awards).

And while this problem is present in most, if not all, mass-tort cases, it is especially acute in cases like this one, where mass torts are litigated outside the context of a class action. In a class action, the “touchstone” for punitive damages is the total “class recovery.” *Exxon*, 554 U.S. at 515 n.28. In that setting, the trial court is able to hale all potential plaintiffs into a single forum, resolve the defendant’s aggregate liability for compensatory damages, and then resolve its aggregate liability for punitive damages. That ensures that the aggregate punitive damages award is accurately tied to the aggregate award of compensatory damages, and reduces or eliminates the risk of duplicative and conflicting punitive damages awards for distinct plaintiffs. *Cf. State Farm*, 538 U.S. at 419 (directing courts to assess whether “the defendant’s culpability, after having paid” the aggregate “compensatory damages, is so reprehensible as to warrant the imposition of further sanctions to achieve punishment or deterrence”). In other words, the class action replicates the traditional setting in which punitive damages would be litigated, and thus obviates many of the problems that result from the “destructive mix[] of punitive damages and mass torts” outside that context. Henderson, *supra* at 723; see *Roginsky*, 378 F.2d at 838-839.

But when plaintiffs sue seriatim in multiple courts across the country, there is a high risk that the awards of punitive damages will be duplicative of one another. For one thing, juries will naturally want their punitive damages award to fully deter the defendant’s conduct, and will therefore over-award punitive damages in any given case to fully capture the penal and deterrent nature of the punitive

damages award. For another, the jury's inability to know of and account for the punitive damages awards in prior cases will prevent it from restraining that impulse to avoid double-counting. Some intervention by this Court is needed. Without it, every mass-tort suit will serve as a Sword of Damocles, presenting the lasting specter of bankruptcy for years (if not decades) until the suits are fully resolved.

C. This Issue Is Recurring and Important, And—Assuming This Court Does Not Reverse in *Durnell*—This Case Provides an Excellent Vehicle to Address It.

The Missouri Court of Appeals' Due Process Clause holding is not a one-off. Lower courts—including the court below—have made the same error repeatedly over the past several years. This recurring problem cries out for this Court's review.

The problem of duplicative, excessive punitive damages awards atop substantial compensatory damages awards is a recurring one. It crops up in many (if not most) mass-tort cases, which involve legions of plaintiffs suing a single defendant for the same conduct. Here, for instance, Monsanto is facing suits from over 100,000 plaintiffs nationwide, many of whom are suing in states which permit punitive damages for products-liability suits like these. The consequences of those duplicative suits are dire. The harm to defendants is obvious: Defendants being subject to repeated punitive damages awards for the same conduct (and grossly excessive punitive damages awards, to boot) risks destroying those defendants' businesses and livelihoods when they cannot pay the

pipec for what can amount to billions of dollars in punitive damages awards.

But the perverse consequences of the decision below do not just harm defendants like petitioner. They inure to the detriment of plaintiffs like respondents too. The prospect of enormous punitive damages awards being repeatedly imposed on the same defendant for the same conduct creates a severe risk that defendants in mass-tort suits will be forced into bankruptcy. In that case, plaintiffs will be left recovering only pennies on the dollar, if they manage to file a lawsuit in time at all. That real risk drives plaintiffs to file lawsuits as soon as possible for fear of losing out on recovery in the event of a bankruptcy by the defendant, resulting in a mad dash for the courthouse doors.

That risk is not theoretical; it is exactly what happened in the context of asbestos claims decades ago. Those claims drove over a hundred companies to file for bankruptcy. See U.S. Gov't Accountability Off., GAO-11-819, *Asbestos Injury Compensation: The Role and Administration of Asbestos Trusts 2* (Sept. 2011); *In re Asbestos Prods. Liab. Litig. (No. VI)*, 2014 WL 3353044, at *12 (E.D. Pa. July 9, 2014) (“dozens of [asbestos] companies [have] declare[d] bankruptcy” as “asbestos litigation has ... ballooned to enormous proportions”). And that same pattern can repeat itself in any mass-tort situation where disparate plaintiffs subject a single defendant to seriatim punitive damages awards for the same conduct.

Both this Court and Congress have recognized the undesirability of that state of affairs. This Court proposed, and Congress assented to, Federal Rule of

Civil Procedure 23(b)(1) precisely to resolve the problem of many plaintiffs bringing disparate suits claiming an entitlement to the same limited pot of money. *See Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 834-35 & n.14 (1999). But encouraging the very same problem to persist by permitting seriatim punitive damages awards by different litigants to the point of bankrupting defendants in mass-tort cases will have the twin malign effects of undermining the fundamental purpose of Rule 23(b)(1) and harming mass-tort plaintiffs as well as defendants.

Finally, to the extent *Durnell* does not resolve this case on the merits, this case presents an ideal opportunity to reinforce that 1:1 is indeed the ceiling for the vast majority of punitive damages cases in which the jury has already issued a substantial award, and at the very least for the Court to put an end to the uncertainty that has plagued lower courts addressing these issues for years. This case comes to this Court having proceeded to final judgment, and with a developed evidentiary record. Moreover, because it arises as one of thousands of comparable cases presenting the same theories of liability, the factual premise that the awards of punitive damages are duplicative of one another is beyond serious doubt. Thus, this Court would be able to address the pressing legal issues presented by this case without distractions in the form of factual disputes regarding the precise conduct at issue or whether the damages awards are, in fact, duplicative of one another.

CONCLUSION

The Court should hold this petition pending the disposition of *Monsanto Co. v. Durnell*, No. 24-1068 (U.S.). If the Court affirms in *Durnell*, it should grant this petition to consider the punitive damages issue.

Respectfully submitted,

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February 27, 2026

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Appendix A

SUPREME COURT OF MISSOURI

No. SC101177

DANIEL ANDERSON, JIMMY DRAEGER AND BRENDA
DRAEGER, VALORIE GUNTHER,

Respondents,

v.

MONSANTO COMPANY,

Appellant.

Filed: Sept. 30, 2025

ORDER

Now at this day, on consideration of the Appellant's application to transfer the above-entitled cause from the Missouri Court of Appeals, Western District, it is ordered that the said application be, and the same is hereby denied.

STATE OF MISSOURI-Sct.

* * *

[handwritten: signature],
Clerk

[handwritten: signature],
Deputy Clerk

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Appendix B

MISSOURI COURT OF APPEALS

No. WD87059

DANIEL ANDERSON, JIMMY DRAEGER AND BRENDA
DRAEGER, VALORIE GUNTHER,

Respondents,

v.

MONSANTO COMPANY,

Appellant.

Filed: May 27, 2025
Modified: June 24, 2025

ORDER

Monsanto Company (“Monsanto”) appeals from the trial court’s final judgments in favor of Daniel Anderson (“Anderson”), Jimmy Draeger (“Draeger”), Brenda Draeger (“Mrs. Draeger”), and Valorie Gunther (“Gunther”)¹ following the entry of jury verdicts in favor of the Plaintiffs on claims of strict liability-design defect, strict liability-failure to warn,

¹ Anderson, Draeger, and Gunther are at times collectively referred to as “Plaintiffs.” Mrs. Draeger’s claim in this case was for loss of consortium, which is derivative of Draeger’s personal injury claims. Where it is necessary to discuss Mrs. Draeger’s loss of consortium claim, we refer to her specifically.

and negligence. The central issue in the case was whether glyphosate, an ingredient in Roundup, an herbicide manufactured and sold by Monsanto, caused Plaintiffs to develop non-Hodgkin's lymphoma ("NHL"). Monsanto raises multiple claims of error. After carefully reviewing the voluminous record on appeal and the relevant law, we conclude that Monsanto has not established reversible error with respect to any of its points on appeal. The trial court's judgments are affirmed.

Factual and Procedural History

On March 22, 2022, Draeger and Mrs. Draeger filed a petition against Monsanto in the Circuit Court of Cole County ("trial court") which alleged that Draeger developed NHL as a result of using Roundup to manage the weeds on Draeger's property in Missouri. On May 5, 2022, Anderson and Gunther separately filed petitions against Monsanto in the trial court. Anderson's petition alleged that he was diagnosed with NHL when he was thirty-two after the regular use of Roundup over the course of a decade to prevent weeds on his father's property in California. Gunther's petition alleged that she was diagnosed with NHL after nearly forty years of using Roundup to prevent and kill weeds on various properties she owned in New York.

The Plaintiffs filed a motion to consolidate the cases, which was granted over Monsanto's objection. The cases were set for trial in October 2023.²

² Marty Hay and his wife Lori Hay also filed a petition against Monsanto in the trial court on January 28, 2022, in which they alleged that Hay was diagnosed with NHL after using Roundup

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As trial preparations progressed, the parties filed dozens of pre-trial motions, including numerous motions in limine and motions to exclude expert testimony. On August 8, 2023, Monsanto filed a motion seeking the appointment of special masters to assist the trial court in resolving all of the pre-trial motions, and suggested two individuals with prior experience in Roundup litigation in other Missouri courts. The Plaintiffs did not oppose the appointment of special masters but suggested the appointment of different persons. On September 6, 2023, the trial court entered an order appointing two special masters of its own choosing. Pursuant to Rule 68.01(g), the trial court ordered the special masters to review and hear argument on all pending pre-trial motions, and to issue reports reflecting recommended rulings.³ The special masters ultimately issued ten reports and recommendations.

Trial commenced on October 23, 2023. Following jury selection and opening statements, the trial court heard arguments outside the presence of the jury on the parties' objections to the recommendations set forth in several of the special masters' reports. Despite the objections, the trial court adopted the recommendations set forth in eight of the special masters' reports at that time, and adopted the recommendations in the remaining two special

over thousands of acres of row crops. The Hays' case was also consolidated with the Plaintiffs' cases. However, the Hays voluntarily dismissed their claims against Monsanto without prejudice on July 24, 2023.

³ All rule references are to *Missouri Court Rules, Volume I – State, 2023* unless otherwise indicated.

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masters' reports on the day the consolidated cases were submitted to the jury.

The Plaintiffs' case-in-chief presented evidence to establish three claims: (1) strict liability due to Monsanto's failure to warn customers of the risk of using Roundup because its ingredient, glyphosate, causes cancer; (2) strict liability due to Monsanto's defective design of Roundup because its ingredient, glyphosate, causes cancer; and (3) negligence due to Monsanto's failure to use ordinary care to design Roundup to be reasonably safe or to adequately warn of the risk of harm posed by the use of Roundup given the capability of its ingredient, glyphosate, to cause cancer. In addition, Mrs. Draeger submitted evidence to support her claim for loss of consortium as a result of Draeger's personal injuries.

Monsanto's case-in-chief focused primarily on evidence that glyphosate, the primary active ingredient in Roundup, had been determined by the Environmental Protection Agency ("EPA") not to pose a risk to human health. Following Plaintiffs' rebuttal evidence, and closing arguments, the case was submitted to the jury in the early afternoon on November 17, 2023. The jury returned its verdicts later that same evening after deliberating for less than eight hours.

The jury found in favor of the Plaintiffs and against Monsanto on each of the three personal injury claims submitted, and in favor of Mrs. Draeger on her claim for loss of consortium. The jury assessed damages as follows: (1) with respect to Anderson, \$38 million in compensatory damages and \$500 million in punitive damages; (2) with respect to Draeger, \$5.6

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million in compensatory damages and \$500 million in punitive damages; (3) with respect to Mrs. Draeger, \$100,000 in compensatory damages; and (4) with respect to Gunther, \$17.5 million in compensatory damages and \$500 million in punitive damages. The trial court signed judgments on November 21, 2023,⁴ in accordance with the jury's verdicts, but the signed judgments were not file-stamped and entered into Case.net until December 6, 2023.

On December 21, 2023, Monsanto filed several post-trial motions, including a motion for judgment notwithstanding the verdicts, a motion for new trial, and a motion for remittitur. The trial court ruled on

⁴ “A judgment is entered when a writing signed by the judge and denominated ‘judgment’ . . . is *filed*.” Rule 74.01(a) (emphasis added).

Rule 43.02(b) defines “filing” of pleadings or other papers as to contemplate them being “filed” with a judge, who “shall note thereon the filing date and forthwith transmit them to the office of the clerk.” In *Coffer v. Wasson-Hunt*, 281 S.W.3d 308, 310 (Mo. banc 2009), our Supreme Court concluded a judgment is “filed” when it is signed by a judge and forwarded to the court clerk, because to hold otherwise would conflict with Rule 43.02(b) and the basic principle that a “judgment derives its force from the court’s judicial act and not from the ministerial act of its entry upon the record.” (Quoting *State v. Collins*, 154 S.W.3d 486, 492-293 (Mo. App. W.D. 1989).)

Here, it is not clear from the record whether the judgments in this case were forwarded by the trial court to the court clerk immediately after they were signed. It is thus not clear whether the initial judgments were entered when they were signed by the trial judge, or when they were file-stamped and entered on the docket. See *Kinnaman-Carson v. Westport Ins. Corp.*, 283 S.W.3d 761, 763 n.2 (Mo. banc 2009) (noting, but not resolving, a similar situation).

Monsanto's post-trial motions on March 15, 2024. The trial court denied Monsanto's motion for judgment notwithstanding the verdicts and motion for new trial. With respect to Monsanto's motion for remittitur, the trial court granted the motion in part, remitting the punitive damage awards to \$342 million for Anderson, \$50.4 million for Draeger, and \$157.5 million for Gunther, with the remitted awards representing approximately nine times the amount awarded each Plaintiff in compensatory damages. On that same day, the trial court entered final judgments reflecting the jury's verdicts, with reduced punitive damage awards ("Judgments").

Monsanto appeals. Additional facts and procedural history will be addressed as relevant to the discussion of Monsanto's points on appeal.

Analysis

Monsanto presents seven points on appeal. Three of Monsanto's points challenge the trial court's admission of evidence (Points One, Two, and Three). Three of Monsanto's points challenge the trial court's rulings on Monsanto's post-trial motions involving the amount of the punitive damage awards (Points Four, Five, and Six). Monsanto's remaining point challenges the trial court's rejection of its defense that the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA")⁵ expressly or impliedly preempts the Plaintiffs' claims against Monsanto (Point Seven). We address the points in turn, or collectively where appropriate.

⁵ 7 U.S.C.A. section 136 *et seq.* (Westlaw through Pub. L. No. 119-4).

Point One: The trial court did not abuse its discretion in permitting the Plaintiffs' expert witness to testify about a judicial decision that addressed EPA reports relied on by Monsanto to contend that glyphosate has been scientifically determined not likely to cause cancer because the testimony was not categorically inadmissible or prejudicial as argued by Monsanto, and alternatively, was logically relevant and was not demonstrated to be so prejudicial in its entirety as to render it not legally relevant

Monsanto's first point on appeal asserts that the trial court erred in permitting the Plaintiffs to "introduce expert testimony about a legal decision from the Ninth Circuit[] because judicial opinions and expert testimony about them are plainly inadmissible in Missouri." Monsanto's first point further alleges that the "plainly inadmissible" expert testimony about the Ninth Circuit judicial decision "misled and confused the jury and usurped the trial court's role."

Point One alleges trial court error that is subject to review for abuse of discretion. *Dalbey v. Heartland Reg'l Med. Ctr.*, 621 S.W.3d 36, 45 (Mo. App. W.D. 2021). That is because a trial court has "considerable discretion" in determining whether to exclude or admit evidence. *Marcantonio v. Bd. of Curators of Lincoln Univ.*, 702 S.W.3d 153, 170 (Mo. App. W.D. 2024) (quoting *Rhoden v. Mo. Delta Med. Ctr.*, 621 S.W.3d 469, 484 (Mo. banc 2021)). A trial court abuses its discretion if its ruling "is 'clearly against the logic of the circumstances then before the court and is so unreasonable and arbitrary that it shocks the sense of justice and indicates a lack of careful, deliberate consideration.'" *Dalbey*, 621 S.W.3d at 45-46 (quoting

Cox v. Kansas City Chiefs Football Club, Inc., 473 S.W.3d 107, 114 (Mo. banc 2015)). Not all trial court error in the admission or exclusion of evidence warrants relief, however. *Gordon v. Monsanto Co.*, 702 S.W.3d 506, 510 (Mo. App. E.D. 2024). Even if a trial court abuses its discretion in admitting or excluding evidence, the trial court’s judgment will not be reversed unless the appellant establishes that the error was prejudicial. *Shuttlewagon, Inc. v. Higgins*, 628 S.W.3d 185, 200 (Mo. App. W.D. 2021). To be prejudicial, the error in admitting or excluding evidence must be “outcome determinative” because it “materially affect[ed] the merits of the action.” *Piers v. Dep’t of Corr.*, 688 S.W.3d 65, 73 (Mo. App. W.D. 2024) (quoting *Mansil v. Midwest Emergency Med. Servs., P.C.*, 554 S.W.3d 471, 475 (Mo. App. W.D. 2018)).

Monsanto’s claim of error in Point One involves the testimony of Professor T.M. (“Law Professor”), who was identified as an expert witness by the Plaintiffs on the subject of the EPA’s regulatory process. His anticipated testimony was expected to cover several subjects, including the EPA’s regulatory system, as set forth in FIFRA, for registering herbicides like Roundup; the registration history for glyphosate; the role of the judicial opinion issued in *Natural Resources Defense Council v. U.S. Environmental Protection Agency*, 38 F.4th 34 (9th Cir. 2022) (“NRDC Opinion”) in the EPA’s glyphosate registration process; and the manner in which Monsanto had acted over time to influence the EPA’s glyphosate registration reports.

A. Monsanto's pre-trial efforts to exclude all of Law Professor's testimony and all evidence involving the NRDC Opinion

Prior to trial, Monsanto filed two motions related to the NRDC Opinion and to Law Professor's anticipated testimony. First, Monsanto filed a motion to exclude Law Professor's anticipated testimony in its entirety. The motion to exclude argued that Law Professor was not qualified as an expert with respect to any of the subjects about which he was expected to testify; that even if qualified as an expert, Law Professor's anticipated testimony about the NRDC Opinion was legally and factually wrong and constituted inadmissible legal conclusions masquerading as expert opinions; and that Law Professor's anticipated testimony about products other than Roundup would be irrelevant and unduly prejudicial. The Plaintiffs countered Monsanto's motion to exclude, arguing that Law Professor's testimony provided context for understanding Roundup's current registration status; that Monsanto's experts would not be providing an accurate or complete explanation of the EPA's registration of glyphosate; that expert testimony about complex regulatory matters is routinely permitted; and that Law Professor's opinions about the NRDC Opinion were accurate. In an amended eighth report addressing all pre-trial motions to exclude expert testimony, the special masters recommended the denial of Monsanto's motion to exclude Law Professor's testimony, except with respect to discussion of products other than Roundup. Despite objections filed by Monsanto, the trial court entered an order on October 24, 2023, adopting the

amended special masters' eighth report. During trial, Monsanto repeated its objections relating to the inadmissibility of Law Professor's testimony before Law Professor testified. The trial court denied Monsanto's objections and reiterated its intention to stand by its adoption of the amended special masters' eighth report.

Though Monsanto's motion to exclude Law Professor's testimony raised several arguments, the only argument raised in Point One on appeal is whether, notwithstanding Law Professor's established expertise, Law Professor's testimony about the NRDC Opinion was inadmissible.

Second, Monsanto filed a motion in limine ("motion in limine number 22") that broadly sought to exclude all argument, evidence, or testimony about the NRDC Opinion. Monsanto argued that the NRDC Opinion is a narrow administrative decision that has no bearing on any issue in the case as the decision did not affect Roundup's registration or approval with the EPA; that the NRDC only vacated a single EPA document—the 2020 Glyphosate Interim Registration Decision ("2020 Interim Decision"), which Monsanto did not intend to introduce at trial; and that if admitted, the NRDC decision would mislead the jury and prejudice Monsanto. The Plaintiffs countered Monsanto's motion in limine number 22 by arguing that the NRDC Opinion vacated the 2020 Interim Decision because the decision's finding that glyphosate is "not likely to be carcinogenic" was not supported by substantial evidence as the hazard descriptor was arrived at in a manner that was inconsistent with the EPA's Guidelines for Carcinogen

Risk Assessment (“Cancer Guidelines”); and that prohibiting the Plaintiffs from providing the jury with a complete picture of the glyphosate registration process would prejudice the Plaintiffs. In an amended seventh report addressing all pre-trial motions in limine, the special masters recommended the denial of Monsanto’s motion in limine number 22. Despite objections and an extensive bench brief filed by Monsanto, the trial court entered an order on October 24, 2023, adopting the amended special masters’ seventh report. At trial, Monsanto repeated its arguments about the inadmissibility of any discussion of the NRDC Opinion on multiple occasions. On each occasion, the trial court repeated its intention to stand by its ruling adopting the amended special masters’ seventh report.

Though Monsanto’s motion in limine number 22 objected to the admission of any argument, evidence, or testimony about the NRDC Opinion, the only issue Monsanto raises in its first point on appeal involves Law Professor’s testimony about the NRDC Opinion.

B. Monsanto improvidently argues that judicial opinions are categorically inadmissible

Monsanto’s first point on appeal frames the trial court’s error in admitting Law Professor’s testimony in absolute, categorical terms. Monsanto contends that the trial court abused its discretion in permitting Law Professor to testify about the NRDC Opinion because “judicial opinions and expert testimony about them are plainly inadmissible in Missouri.” Monsanto repeats this categorical contention in the argument portion of its Brief when it claims that “Missouri law

is clear and is consistent with the ‘consensus among courts’ nationwide: Judicial opinions have no place in a jury trial.” [Appellant’s Brief, pp. 37-38] But, Monsanto does not cite a single case that holds that judicial opinions are categorically inadmissible in a jury trial. Instead, as we explain, though judicial opinions and statements have “special potency” which should be considered in determining their admissibility, they are not categorically inadmissible as urged by Monsanto.

We considered the admissibility of judicial writings in *Gamble v. Browning*, 379 S.W.3d 194 (Mo. App. W.D. 2012). In *Gamble*, the plaintiff in a malicious prosecution suit sought to admit a trial court order that set aside his conviction for burglary and permitted the plaintiff to withdraw his guilty plea. *Id.* at 196. The order “made numerous findings which would be helpful to Gamble’s litigation” of the malicious prosecution suit. *Id.* at 198. The trial court excluded the order from evidence and instead read the jury a stipulation indicating that a trial court had permitted the plaintiff to withdraw his guilty plea and that a prosecutor had terminated the prosecution against the plaintiff. *Id.* The plaintiff asserted on appeal that it was error to exclude the trial court order because it was both logically and legally relevant to establish that criminal proceedings had been resolved in the plaintiff’s favor. *Id.* at 201.

We concluded that the trial court did not abuse its discretion in finding that the order, though logically relevant, was not legally relevant and was thus inadmissible. *Id.* at 202. We noted that, with respect

to the admission of judicial opinions or statements, Missouri follows the general consensus:

Courts are generally hesitant to admit other judicial opinions or statements into evidence, even when relevant, because “judicial findings of fact present a rare case where, by virtue of their having been made by a judge, they would likely be given undue weight by the jury, thus creating a serious danger of unfair prejudice.

Id. at 203 (quoting *Cardinal v. Buchnoff*, No. 06CV0072-MMA(BLM), 2010 WL 3339509, at *2 (S.D. Cal. Aug. 23, 2010)). We noted that the jury had already been informed by the trial court’s stipulation that the criminal proceedings had been resolved in the plaintiff’s favor. *Id.* at 202. Under those circumstances, we observed that “admission of [the trial court order allowing the plaintiff to withdraw his guilty plea] would have presented a significant danger that the jury would have abdicated its fact-finding role [on the issue of malicious prosecution], instead deferring to the judge’s findings in the earlier proceeding.” *Id.* at 203.

Contrary to the position taken by Monsanto at trial and in its first point on appeal, *Gamble* did not hold that judicial opinions are “plainly inadmissible,” or that “[j]udicial opinions have no place in a jury trial.” Instead, *Gamble* recognized that judicial opinions and statements are subject to the same logical and legal relevance framework applicable to determining the admissibility of all evidence. *Id.* at 202-03. In other words, just like any other evidence, judicial opinions or statements are admissible if they

are both logically and legally relevant. *Dalbey*, 621 S.W.3d at 46.

Evidence is logically relevant if it makes the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Legal relevance . . . refers to the balance between the probative value and the prejudicial effect of the evidence. That balancing requires the trial court to weigh the probative value, or usefulness, of the evidence against its costs, specifically the dangers of unfair prejudice, confusion of the issues, undue delay, misleading the jury, waste of time, or needless presentation of cumulative evidence. If the prejudicial effect of the evidence outweighs its probative value, then the evidence is not relevant and should be excluded.

Id. (quoting *Brummett v. Burberry, Ltd.*, 597 S.W.3d 295, 303-04 (Mo. App. W.D. 2019)). Certainly, *Gamble* noted the peculiar risk of prejudice that can attach to judicial opinions that may support a trial court's exclusion of a judicial opinion, despite its logical relevance. But *Gamble* did not hold, as Monsanto argues, that judicial opinions have no place in a jury trial and are categorically inadmissible because their admission misleads the jury and usurps the trial court's role.

Gamble is not alone in concluding that judicial opinions are not categorically inadmissible. As recognized by the Tenth Circuit, "[t]he guiding principle . . . in admitting what we might call 'judicial'

evidence is that, notwithstanding its special potency, it must be treated like any other evidence.” *MCC Mgmt. of Naples, Inc. v. Int’l Bancshares Corp.*, 468 F. App’x 816, 824 (10th Cir. 2012). “There is no bright-line rule against its admission.” *Id.* In fact, cases addressing the use or admission of judicial opinions reach varied results, but always after application of the traditional analytical framework for determining whether evidence is logically and legally relevant. *See, e.g., J.C.M. v. J.K.M.*, 573 S.W.3d 672, 688-89 (Mo. App. S.D. 2019) (distinguishing *Gamble* to hold that previously entered dissolution judgments were logically relevant to the issues in an action claiming interference with custodial rights and false imprisonment of children, and were not demonstrated to be so prejudicial as to be not legally relevant); *Williams v. Trans States Airlines, Inc.*, 281 S.W.3d 854, 874 (Mo. App. E.D. 2009) (holding in a retaliatory discharge case that it was not an abuse of discretion for the trial court to exclude a federal court opinion granting summary judgment in favor of the employer on similar claims asserted by another employee, although the employer was permitted to generally introduce evidence that the other employee’s charge of retaliatory discharge had been dismissed by the federal court), *overruled on separate grounds by Wilson v. City of Kansas City*, 598 S.W.3d 888 (Mo. banc 2020); *U.S. Steel, LLC, v. Tieco, Inc.*, 261 F.3d 1275 (11th Cir. 2001) (holding that admission of a state-court opinion dismissing criminal charges against a company into evidence in a federal court malicious prosecution action was unfairly prejudicial because the opinion included factual findings on the essential elements of a malicious prosecution claim,

and thus on the same ultimate facts the jury was charged with deciding).

We therefore reject the essential premise of Monsanto's first point on appeal that Law Professor's testimony about the NRDC Opinion was categorically inadmissible because judicial opinions have no place in a jury trial, a legal contention for which Monsanto cites no authority and that is in diametric opposition to settled authority. Monsanto's reliance on a bright-line rule to urge that the trial court abused its discretion because judicial opinions are categorically inadmissible is at the expense of ignoring the proper analytical framework for determining if evidence is logically relevant, and if so, whether it is nonetheless inadmissible because it is not legally relevant.

It is true that in the argument portion of its Brief, Monsanto summarily alleges that the NRDC Opinion "did not address any issue in this case," and was nothing more than an assessment of whether the EPA "complied with the Administrative Procedure Act . . . with respect to a single document—the [2020 Interim Decision] related to glyphosate in light of earlier agency guidelines." [Appellant's Brief, p. 40] Convinced that its characterization of the NRDC Opinion is unassailable, Monsanto thus argues that Law Professor's testimony about the NRDC Opinion "falsely describ[ed] the scope and impact of that decision on critical defense evidence in the case" and "flatly mischaracterized the scope of that holding." [Appellant's Brief, pp. 41, 44].

However, Monsanto did not advance these arguments tethered to meaningful analysis about whether testimony about the NRDC Opinion was

logically relevant, and if so, whether it should nonetheless be excluded because its probative value was outweighed by its prejudicial effect. Instead, Monsanto's conclusory arguments were advanced to support the other categorical proposition set forth in Monsanto's first point on appeal—that by permitting “plainly inadmissible” testimony about the NRDC Opinion into evidence, the trial court committed reversible error because testimony about judicial decisions misleads the jury and usurps the role of the trial court. But, we have already explained that the admission of judicial opinions is not categorically improper, and thus, that the admission of judicial opinions does not categorically mislead the jury or usurp the trial court's role.

This court's appellate review is necessarily constrained to the claims of error raised in an appellant's points relied on. Rule 84.04(d)(1)(B) required Monsanto to “[s]tate concisely the legal reasons for [its] claim of reversible error” in its first point on appeal. Monsanto's point relied on does not claim trial court error because evidence that was not logically relevant was admitted, or because evidence that was logically relevant should nonetheless have been excluded because it was not legally relevant. Though the 16 argument portion of an appellant's brief cannot permissibly exceed the scope of the point relied on (Rule 84.04(e)), even the argument portion of Monsanto's Brief in support of its first point relied on is devoid of any discussion of the settled framework that should have been applied to determine whether Law Professor's testimony about the NRDC Opinion was logically and legally relevant. Instead, the argument supporting Monsanto's first point on appeal

is primarily generalized, conclusory, and self-prophesizing in nature, replete with self-serving, but not self-proving, statements characterizing the NRDC Opinion to be unrelated to any issue in the case, and declaring Law Professor's testimony to be false and a flat mischaracterization of the NRDC Opinion.

However, even if Monsanto's first point on appeal, and the arguments in support of the point, are generously read to claim trial court error in admitting evidence that was not logically relevant, or that was nonetheless not legally relevant, we would not find, after reviewing the voluminous trial record, that the trial court abused its discretion in permitting Law Professor to testify about the NRDC Opinion.⁶

C. Law Professor's testimony about the NRDC Opinion was logically relevant.

Here, after being certified as an expert witness, Law Professor provided a brief description of the EPA's regulatory system, as set forth in FIFRA, for registering herbicides like Roundup. Law Professor explained that the standard for registration is that the product will not "show unreasonable adverse effects on the environment," which includes human health. Law

⁶ Our ruling is limited to the specific facts and circumstances of this case, and must be viewed through the lens of our appellate review, which requires us to determine whether the trial court abused its discretion in admitting evidence, a determination that is necessarily influenced by the trial record. This Opinion should not be read as a categorical declaration that expert witness testimony about the NRDC Opinion is admissible in similar cases, or as a categorical declaration that a trial court's decision to exclude evidence about the NRDC Opinion is an abuse of discretion.

Professor set forth a timeline of glyphosate's registration history: (1) glyphosate's original registration was approved in 1974; (2) the EPA classified glyphosate as a possible human carcinogen in 1985 after examining two new studies; (3) in 1993, the EPA changed the classification of glyphosate to not likely to be carcinogenic; (4) pursuant to amendments to FIFRA, the EPA initiated a required registration review of glyphosate, a process that can take more than a decade, in 2009; (5) the EPA convened a scientific advisory panel in 2016 to advise the EPA about the registration renewal of glyphosate; (6) on December 12, 2017, the EPA issued a draft human health risk assessment of glyphosate ("2017 Human Health Risk Assessment"), and a revised glyphosate issue paper evaluating glyphosate's carcinogenic potential ("2017 Cancer Paper"); and (7) in early 2020, the EPA issued the 2020 Interim Decision supporting re-registration of glyphosate.⁷ None of this testimony is challenged by Monsanto on appeal. None of this testimony involved the NRDC Opinion.

Later in his testimony, Law Professor expressed opinions based on his experience that the EPA had been heavily influenced by Monsanto over the years in

⁷ The 2020 Interim Decision was not required by FIFRA, which did not require a final decision on registration review to be issued by the EPA until October 1, 2022. However, the revised FIFRA guidelines authorized the EPA to issue an interim decision, which it elected to do in accordance with 40 CFR sections 155.56 and 155.58. An interim review decision, if issued, "may require new risk mitigation measures, impose interim risk mitigation measures, identify data or information required to complete the review, and include schedules for . . . completing the registration review." 40 C.F.R. section 155.56.

reaching the conclusions it had about the appropriateness of registering glyphosate. None of this testimony is challenged by Monsanto on appeal. None of this testimony involved the NRDC Opinion.

Law Professor was asked during his testimony about the NRDC Opinion, though the NRDC Opinion was not itself offered into evidence. Instead, Law Professor was asked to read excerpts from the NRDC Opinion and was then asked questions about the excerpts:

Q. Would you read [the paragraph following III]?

A. We first consider Rural Coalition's challenge to [the] EPA's conclusion that glyphosate poses, quote, no risks to human health, end of quote. That conclusion rests an important part on [the] EPA's determination explaining in [the 2017 Cancer Paper]—that's that paper we talked about, that issue paper. The Court refers to that as a cancer paper. It says, explained in this cancer paper that glyphosate—and this is a quote—that glyphosate is not likely to be carcinogenic to humans, end of quote. Rural Coalition contests the cancer paper's reasoning, primarily arguing that [the] EPA contravened the [Cancer Guidelines]—that's those . . . cancer guidelines—they purported to follow. We agree.

. . . .

Q. Did the [Ninth Circuit] explain why it came to hold that belief?

A. [Law Professor described substantial-evidence review as an evaluation of whether the evidence supports the agency's conclusion and whether the agency's reasoning is coherent and consistent.]

Q. Did the [Ninth Circuit] say anything with respect to the EPA's assessment of the human studies, the epidemiological studies?

A. Yes. It had a problem with the—in [the 2017 Cancer Paper's] assessment. The problem was that the cancer paper ultimately having looked at the epidemiological study that indicated that there was an association or cause-effect relationship between glyphosate exposure and cancer in the people, and in particular [NHL], and of the studies that didn't see that association. And at the end of the day, the [2017 Cancer Paper] said it cannot be determined whether glyphosate causes cancer on the basis of these studies. The [Ninth Circuit] said, well, that's not robust for determining that it's not likely to cause cancer. That's not really a robust—if you just say, we can't decide, that's not robust support for that conclusion.

....

Q. Could you read [the paragraph under section B]?

A. The analysis underpinning [the] EPA's not like—quote, not likely, end of quote, descriptor is also flawed in various other ways. [The] EPA relies on two main propositions to support its chosen hazard

descriptor, but neither withstands scrutiny under the agency's own framework.

Q. So it says [the] EPA relied on two propositions. What was the first of those?

A. Well, it was that these animal studies did not show a relationship between exposure to glyphosate and the—and tumors in the animals. . . .

Q. And what was the second proposition that [the] EPA relied on?

A. . . . [T]his has to do with the maximum tolerated dose. . . .

Q. So you're saying the EPA ignored those altogether?

A. Didn't consider them.

Q. Do the [Cancer Guidelines] require considering it?

A. The [Cancer Guidelines] require considering all of the available evidence. . . .

. . . .

Q. Would you read [the] first two sentences [of section C]?

A. For these reasons [the] EPA's choice of a hazard descriptor is not supported by substantial evidence. Despite [the] EPA's repeated invocation of its cancer guidelines, the interim decision fails to abide by those guidelines. Inconsistent reasoning, quote, is, comma, absent explanation, comma, the hallmark of arbitrary action, end of quote.

. . . .

Q. Would you read the first two sentences [of the third paragraph of section C]?

A. Based on these considerations, we vacate the human health portion of [the 2020 Interim Decision] and remand for further analysis and explanation.

Q. Keep going.

A. The first factor clearly weighs in favor of vacatur.

....

Q. The next sentence, please.

A. [The] EPA's errors in assessing human health risks are serious.

Monsanto's Brief summarily characterizes all of Law Professor's testimony as "false" and a "flat mischaracterization" of the NRDC Opinion. Monsanto's Brief also summarily argues that the NRDC Opinion "did not address any issue in this case," and only evaluated a "single document," the 2020 Interim Decision. However, our review of the NRDC Opinion and the record reveals that Monsanto's conclusory assertions are not accurate. To explain our conclusion, we begin by discussing the NRDC Opinion.

Following the EPA's 2020 Interim Decision, two groups of plaintiffs—one led by Rural Coalition and another led by Natural Resources Defense Council ("NRDC")—filed petitions seeking judicial review. *Nat. Res. Def. Council*, 38 F.4th at 44. Rural Coalition challenged the EPA's conclusion in the 2020 Interim Decision that glyphosate "poses no risks to human

health.”⁸ *Id.* at 45. Rural Coalition asserted that the 2020 Interim Decision’s conclusion regarding the carcinogenic risk of glyphosate is based on reasoning in the 2017 Cancer Paper, which itself did not follow the regulations promulgated by the EPA that delineate the process for reviewing the registration of products subject to the FIFRA (the “Cancer Guidelines”).⁹ *Id.* at 45, 40 (citing 40 C.F.R. sections 155.23- 155.58). Rural Coalition argued that the 2020 Interim Decision was not supported by substantial evidence because the EPA relied on the 2017 Cancer Paper, which itself did not follow the Cancer Guidelines. *Id.* at 40, 44.

⁸ NRDC’s challenges to the EPA’s conclusions related to ecological impacts of glyphosate that are not relevant to the Plaintiffs’ personal injury claims. *See Nat. Res. Def. Council*, 38 F.4th at 44. Law Professor did not testify about the NRDC’s challenges, or about the NRDC Opinion’s resolution of those challenges.

⁹ After explaining that the purpose of the 2005 Cancer Guidelines is to set forth the process by which the EPA is to conduct registration review, the Ninth Circuit described the Cancer Guidelines as follows:

The regulations require [the] EPA to assess any new information regarding risks to human health and the environment that has emerged since [the] EPA last issued a registration decision for a pesticide to verify that the pesticide continues to satisfy the FIFRA safety standard. *See, e.g.*, [40 C.F.R. sections] 155.40, 155.53(a). The process concludes with a registration review decision, which conveys “the Agency’s determination whether a pesticide meets, or does not meet,” the FIFRA safety standard. *Id.* [section] 155.57.

Nat. Res. Def. Council, 38 F.4th at 40.

The NRDC Opinion explained that prior to issuance of the 2020 Interim Decision, the EPA had released “a draft human-health risk assessment [the 2017 Human Health Risk Assessment], and an updated and final paper about glyphosate’s carcinogenic potential [the 2017 Cancer Paper].” *Id.* at 42. The NRDC Opinion explained that “[i]n the draft risk assessment, [the] EPA concluded that glyphosate poses no serious human-health risks,” and that “glyphosate should be classified as ‘not likely to be carcinogenic to humans.’” *Id.* The NRDC Opinion then noted that this conclusion was “explained in the [2017] Cancer Paper.” *Id.* The NRDC Opinion then found the following with respect to the 2020 Interim Decision:

In January 2020, [the] EPA issued an Interim Registration Review Decision for glyphosate [the 2020 Interim Decision]. The [2020] Interim Decision had three main components. First, the [2020] Interim Decision announced that the earlier draft human-health and ecological risk assessments were now final [which included the 2017 Human Health Risk Assessment]—with no changes from those drafts. In summarizing the [the 2017 Human Health Risk Assessment], the [2020] Interim Decision explained that the agency “determined that there are no risks to human health from the current registered uses of glyphosate and that glyphosate is not likely to be carcinogenic to humans.” The [2020] Interim Decision directed readers to the [2017 Human Health Risk Assessment] and the [2017] Cancer Paper for additional information. According to [the] EPA, there

were “[n]o additional human health data needs” for glyphosate’s registration review.

Id. at 43. A plain reading of these observations in the NRDC Opinion establishes that the draft 2017 Human Health Risk Assessment had become final with no changes, and that the conclusion it reached, along with the identical conclusion in the 2017 Cancer Paper, provided the scientific support on which the EPA relied to issue the 2020 Interim Decision, as the EPA stated in the 2020 Interim Decision that there were no additional human health needs required to complete registration review.

The 2017 Cancer Paper concluded that glyphosate is “not likely” to cause cancer, a hazard descriptor that the Cancer Guidelines use when the “available data are considered *robust* for deciding that there is no basis for human hazard concern.” *Id.* at 46 (emphasis added). The NRDC Opinion held that classifying glyphosate as “not likely” to cause cancer in the 2017 Cancer Paper conflicted with an earlier statement made in the same paper that “a conclusion regarding the association between glyphosate exposure and risk of NHL cannot be determined based on the available evidence.” *Id.* The NRDC Opinion concluded that the EPA, according to its own Cancer Guidelines which it purported to follow, “cannot reasonably treat its inability to reach a conclusion about NHL risk as consistent with a conclusion that glyphosate is ‘not likely’ to cause cancer.” *Id.* at 46-47. The NRDC Opinion also concluded that the 2017 Cancer Paper failed to follow the EPA’s Cancer Guidelines in other respects: (1) the EPA used “historical-control data selectively”; (2) the EPA relied on a “lack of pairwise

statistical significance” failing “to account coherently for the evidence of statistical significance from trend tests”; and (3) the EPA “disregard[ed] tumor results occurring at high dosages” that far exceed the “typical human-exposure levels.” *Id.* at 47-50.

Because the EPA did not follow its Cancer Guidelines, the NRDC Opinion deemed the EPA’s description of glyphosate as “not likely” to cause cancer unsupported by substantial evidence. *Id.* at 51. Accordingly, the NRDC Opinion vacated “the human-health portion of [the] EPA’s [2020] Interim Decision and remand[ed] for further analysis and explanation.” *Id.* at 52.

Monsanto claims that the NRDC Opinion does not address any issue in this case. The record belies this assertion. Before Law Professor testified as the Plaintiffs’ *last* witness in their case-in-chief, Dr. D. F., a doctor of philosophy with a discipline in anatomy and cell biology, was called as the Plaintiffs’ *first* witness in their case-in-chief. Dr. D. F. began working at Monsanto in 1991, and was still working for Monsanto at the time of trial.¹⁰ On cross-examination by Monsanto, Dr. D. F. testified that as a part of her job with Monsanto, she stays “abreast of the EPA’s written decisions” on the potential carcinogenicity of glyphosate and Roundup. Dr. D. F. was asked on cross-examination about the draft 2017 Human Health Risk Assessment. She confirmed that the subject of the

¹⁰ Although we do not address Dr. D. F.’s direct examination here, her testimony about Monsanto’s efforts to control the narrative about glyphosate’s association with human health risks is discussed in detail in connection with Monsanto’s fifth point on appeal addressing the punitive damage awards.

2017 Human Health Risk Assessment was “in support of registration review.” At that point, Monsanto’s exhibit 12633, the draft 2017 Human Health Risk Assessment, was admitted into evidence. Dr. D. F. was then asked to read from the 2017 Human Health Risk Assessment, and in particular, to read the EPA’s penultimate conclusion “that glyphosate should be classified as not likely to be carcinogenic to humans.” Plainly, Monsanto was relying on the EPA’s draft 2017 Human Health Risk Assessment to support its contention that it was not liable to the Plaintiffs on their personal injury claims because scientific evidence prepared by the EPA established that glyphosate was not carcinogenic.

On re-direct, the Plaintiffs confronted Dr. D. F. with prior deposition testimony where she admitted that the 2017 Cancer Paper (which explained the 2017 Human Health Risk Assessment and repeated the same conclusion as that reached in the 2017 Human Health Risk Assessment) had been incorporated into the 2020 Interim Decision. Dr. D. F. was then asked to identify Plaintiffs’ exhibit 1454, an authenticated EPA memorandum dated September 21, 2022, addressing the EPA’s withdrawal of the 2020 Interim Decision. Dr. D. F. confirmed that the EPA’s memorandum announced that the NRDC Opinion “vacated and remanded the human health portion of the EPA’s [2020 Interim Decision] for glyphosate.” In a discussion about withdrawal of the 2020 Interim Decision, the EPA’s memorandum noted that:

Although the glyphosate [2020 Interim Decision] is now vacated in part and the remainder withdrawn, that does not

automatically mean that [the] EPA's underlying scientific findings regarding glyphosate, including its finding that glyphosate is not likely to be carcinogenic to humans, are either incorrect or cannot be used as support for a future decision following reconsideration in accordance with the [NRDC Opinion].

That statement is, in fact, consistent with the NRDC Opinion, which made clear that it was vacating the 2020 Interim Decision and "remand[ing] for further analysis and explanation," in part because "no disruptive consequences will result from vacating the human-health portion of the [2022] Interim Decision because that portion simply maintained the status quo," *Nat. Res. Def. Council*, 38 F.4th at 52, and noting that the existing "FIFRA deadline to complete glyphosate's registration review by October 2022 is a sufficient backstop." *Id.* at 59.

During Monsanto's re-cross-examination of Dr. D. F., Monsanto admitted exhibit 13179 into evidence. Dr. D. F. identified exhibit 13179 as a printout from the EPA's website discussing glyphosate, discussing the 2020 Interim Decision's conclusion that glyphosate is unlikely to be a human carcinogen, and discussing the NRDC Opinion's vacatur of the human health portion of the 2020 Interim Decision. And, at the conclusion of Dr. D. F.'s testimony, Defendant's exhibit 12637, the 2017 Cancer Paper, was also admitted into evidence.

Though Monsanto objected at trial to the admission of Plaintiffs' exhibit 1454 and to Dr. D. F.'s testimony about the exhibit, it has not claimed trial

court error related to the admission of either on appeal. Nor could it have effectively done so. Once Dr. D. F. testified about the conclusion reached in the 2017 Human Health Risk Assessment, the scientific integrity of the conclusion became eligible for attack.

In light of Dr. D. F.'s testimony, and the exhibits admitted into evidence during Dr. D. F.'s testimony, it is plain that the aforesaid testimony by Law Professor was logically relevant to an issue in this case. Monsanto introduced the 2017 Human Health Risk Assessment and the 2017 Cancer Paper during Dr. D. F.'s cross-examination in order to rely on the conclusion reached by the EPA about glyphosate's carcinogenic properties in an effort to shield itself from liability for the Plaintiffs' claims that their use of Roundup caused NHL. The NRDC Opinion vacated the 2020 Interim Decision because it relied on the scientific conclusion reached by the EPA in the 2017 Human Health Risk Assessment and in the 2017 Cancer Paper, and because that scientific conclusion was not supported by substantial evidence, as it was arrived at in a manner that did not align with the EPA's Cancer Guidelines. The scientific integrity of the EPA's glyphosate hazard descriptor was squarely at issue in this case.

We conclude that even if Monsanto's point on appeal is generously interpreted to claim trial court error in admitting evidence that was not logically relevant, we would not find the contention to be meritorious.

D. The prejudicial impact of Law Professor's testimony about the NRDC Opinion did not so outweigh the probative value of the testimony as to render the testimony not legally relevant

We reach the same conclusion with respect to legal relevance. Even if Monsanto's point on appeal is generously interpreted to claim trial court error in admitting otherwise logically relevant evidence that was nonetheless not legally relevant, we would not find the contention to be meritorious.

In its first point on appeal, Monsanto argues that admission of Law Professor's testimony about the NRDC Opinion constituted reversible error because the testimony misled the jury and usurped the trial court's role. In developing this contention in the argument portion of its Brief, Monsanto first emphasizes the importance to its defense of the EPA's scientific conclusions regarding the lack of an association between glyphosate and human carcinogenic risk, and complains that "[a]ll of that evidence was undercut by [the Plaintiffs'] use of a purported 'expert' to testify about a judicial decision from another court." [Appellant's Brief, p. 40] This argument ignores that, for the reasons we have already explained, the propriety of Monsanto's reliance on the conclusions expressed by the EPA in the 2017 Human Health Risk Assessment and the 2017 Cancer Paper was at issue. Those conclusions, which served as the foundational underpinning for the 2020 Interim Decision, were declared to be not supported by substantial evidence because they were

reached after the EPA disregarded protocols and parameters in the EPA's Cancer Guidelines. Though Monsanto repeatedly and correctly emphasizes that the NRDC Opinion did not foreclose the EPA from publicly assuring that it continued to possess confidence in the conclusion expressed in the 2017 Human Health Risk Assessment and the 2017 Cancer Paper, that argument misses the point. The NRDC Opinion concluded that *as of the time of the 2020 Interim Decision*, the EPA's conclusion in the 2017 Human Health Risk Assessment and the 2017 Cancer Paper was not supported by substantial evidence. The NRDC Opinion thus remanded the registration process to permit the EPA, to the extent it intended to incorporate the same conclusion in the final registration review due to be filed by October 2022, to better demonstrate that the conclusion is supported by substantial evidence. Though Law Professor's testimony about the NRDC Opinion undercut Monsanto's reliance on the EPA's 2017 Reports to deny liability, that does not render the testimony inadmissible because its prejudicial impact outweighed its probative value. Prejudicial impact for purposes of determining admissibility explores whether evidence is unfairly prejudicial, would confuse or mislead, would waste time, or would be unduly cumulative, and not whether the evidence is effective for the purpose for which it is being offered.

Moreover, by the time Law Professor testified, the jury had already heard about the NRDC Opinion, about the NRDC Opinion's vacatur of the 2020 Interim Decision, about the 2020 Interim Decision's incorporation of, at a minimum, the 2017 Cancer Paper, and about the EPA's withdrawal of the 2020

Interim Decision because of its vacatur. Monsanto did not argue at trial that because the import of the NRDC Opinion was already in evidence through the testimony of Dr. D. F., Law Professor's testimony on the same subject should be excluded as unduly cumulative. *See, e.g., MCC Mgmt. of Naples, Inc.*, 468 F. App'x at 824 (noting that where possible the "preferable method of introducing [judicial evidence] is through one familiar with the . . . litigation"). Having failed to make that objection, Monsanto cannot now complain that it was prejudiced by that portions of Law Professor's testimony that were cumulative of Dr. D. F.'s testimony. *Martin v. Mercy Hosp. Springfield*, 516 S.W.3d 403, 406 (Mo. App. S.D. 2017) (holding that prejudicial error does not exist when the complained-of evidence was cumulative to other properly admitted evidence).

Monsanto also argues that Law Professor "falsely describe[ed] the scope and impact of [the NRDC Opinion] on critical defense evidence in the case." [Appellant's Brief, p. 41] Monsanto complains in particular about the following testimony from Law Professor:

Q. Can you tell us the result of this decision as it relates to the 2017 Human Health Risk Assessment?

A. Well, along with the vacation or vacating of the interim regulatory review decision, it's vacating the documents we relied on.

.....

Q. What did [the] EPA do as a result of the [NRDC Opinion]?

A. It withdrew the human health aspect of the interim regulatory review decision and it decided to go ahead and withdraw[] all of it. And—

Q. When you say all of it, all of the portions of the registration?

A. Including the endangered species aspects of it and environmental aspects, as well as the human health aspects of it.

....

Q. Do you have any reaction to the suggestion to this jury that they should rely on one of the papers or decisions that was rendered during this registration review?

....

A. I don't think you can rely on it. It's been vacated. Basically what the [Ninth Circuit] has told [the] EPA to do is go back and start over again. You need to look at the science. You need to compare it with the 2005 cancer [guidelines]. You need to go back to square zero and redo this.

....

Q. Professor, you've stated that your opinion is that in light of the Ninth Circuit's opinion, that all of the documents that were part of this 2009 registration review have been voided. Do you hold that opinion to a reasonable degree of professional certainty regarding regulatory processes?

A. Yes.

It is generally true that a legal expert will not be permitted to give legal opinions that are based on an incorrect understanding of the law. *See, e.g., Loeffel Steel Prods., Inc. v. Delta Brands, Inc.*, 387 F. Supp. 2d 794, 806 (N.D. Ill. 2005) (“Expert opinions that are contrary to law are inadmissible. They cannot be said to be scientific, to be reliable, or to be helpful to the trier of fact.”) (citations omitted), *order amended on separate grounds* in No. 01 C 9389, 2005 WL 8178971 (N.D. Ill. Sept. 8, 2005). However, the majority of the aforesaid testimony is not legally false or a factual mischaracterization. Law Professor accurately explained that vacatur of the 2020 Interim Decision was based on a finding that the human health risk conclusions reached by the EPA (that were set forth in the 2017 Human Health Risk Assessment and the 2017 Cancer Paper) were not supported by substantial evidence because the Cancer Guidelines were not followed. And, Law Professor accurately explained that in response, the EPA withdrew its 2020 Interim Decision.

Monsanto places extreme emphasis on Law Professor’s statement that by vacating the 2020 Interim Decision, the NRDC Opinion also “vacated” or “voided” the documents the 2020 Interim Decision relied on. We agree that there is no express statement to this effect in the NRDC Opinion. But, we fail to see how Law Professor’s characterization of the impact of the NRDC Opinion could have had an outcome determinative impact on the jury. The unassailable essence of the NRDC Opinion was that the EPA’s conclusion in the 2017 Human Health Risk Assessment and in the 2017 Cancer Paper that glyphosate was not likely to be carcinogenic to humans

was not supported by substantial evidence. As a result, the NRDC Opinion remanded the registration process to permit the EPA the opportunity to bolster its scientific conclusion, if it could, in a manner that complied with the EPA's Cancer Guidelines before restating that conclusion in the final registration review submission due in October 2022. *Nat. Res. Def. Council*, 38 F.4th at 52 (noting that “[i]t is possible that [the] EPA could come to the same human-health conclusion on remand, but the agency’s explanation would need to be so different that we cannot make a confident prediction . . .”). Whether the NRDC Opinion “vacated” or “voided” the 2017 Human Health Risk Assessment and the 2017 Cancer Paper or simply rejected the conclusion each Report reached as not supported by substantial evidence is a feud over semantics that could not, in our view, have misled or confused the jury. In any event, Law Professor’s “sloppy” vocabulary choices would not have warranted characterizing the entirety of Law Professor’s testimony as legally irrelevant, and thus inadmissible. Instead, Law Professor’s use of the words “vacate” and “voided” to characterize the impact of the NRDC Opinion on the 2017 Human Health Risk Assessment and the 2017 Cancer Paper could have been the subject of discrete objections, though none were made. Otherwise, Law Professor’s alleged mischaracterization of the impact of the NRDC Opinion on the 2017 Human Health Risk Assessment and the 2017 Cancer Paper is the kind of alleged error in expert testimony that is more appropriately subject to attack on cross-examination. *See Lamar Advert. Co. v. Zurich Am. Ins. Co.*, 533 F. Supp. 3d 332, 344 (M.D. La. 2021) (holding that “[e]rroneous assumptions

made by an expert ordinarily do not disqualify him from testifying but are more appropriately addressed on cross[-]examination”). That is exactly what occurred in this case, as Law Professor was vigorously cross-examined about whether the NRDC Opinion expressly “vacated” or “voided” the 2017 EPA Reports, requiring Law Professor to concede that the NRDC Opinion did not include that specific language.

We reach the same conclusion with respect to Monsanto’s complaint about Law Professor’s testimony that “all” steps taken by the EPA in connection with the registration review process it began in 2009 were effectively wiped out by the NRDC Opinion. Though there is no express statement to this effect in the NRDC Opinion, we once again fail to see how Law Professor’s characterization of the impact of the NRDC Opinion could have had an outcome determinative impact on the jury. After all, the only post-2009 steps in the registration review process meaningfully addressed in the evidence and in the NRDC Opinion were the 2017 Human Health Risk Assessment, the 2017 Cancer Paper, and the 2020 Interim Decision, all of which were undeniably impacted by the NRDC Opinion.¹¹ Though Law Professor’s use of the word “all” arguably implied that the NRDC Opinion had a broader impact, the objectionable nature of this testimony would not have supported declaring the entirety of Law Professor’s

¹¹ In generally describing the registration review process required by the 2009 amendment to FIFRA, Law Professor did note that the EPA appointed a scientific advisory panel in 2016 to advise the EPA about the registration renewal of glyphosate. But, there was no other discussion about the work of this panel.

testimony not legally relevant and thus inadmissible. Monsanto's concern about Law Professor's use of the word "all" could have been addressed by a specific objection, though no such objection was made. In the absence of an objection, Law Professor's characterization of the NRDC Opinion is the kind of error that is best addressed by cross-examination. *Id.*

Finally, Monsanto argues in its Brief that Law Professor's "testimony left the jury with the false impression that the second-highest court in the country has unanimously decided once and for all that glyphosate is dangerous." [Appellant's Brief, p. 45] Monsanto similarly argues that Law Professor's testimony encouraged the jurors to incorrectly conclude that the NRDC Opinion invalidated Roundup's registration in the United States. Monsanto correctly argues that the NRDC Opinion did neither. But, beyond its bare assertions that the jury was misled to these "false" beliefs, Monsanto does not explain why or how that could have happened. Law Professor never testified that the NRDC Opinion held glyphosate to be dangerous, and admitted during cross-examination that the NRDC Opinion did not make a finding that glyphosate is carcinogenic.¹² Law

¹² Although the NRDC Opinion expresses no scientific opinion or determination as to whether glyphosate causes cancer; and although Law Professor did not testify that the NRDC Opinion held that glyphosate causes cancer and in fact expressly disclaimed that holding during cross-examination; and although the Plaintiffs emphasize in their Respondents' Brief that Law Professor never testified that the NRDC Opinion held that glyphosate causes cancer; we note that Law Professor's testimony was misrepresented by the Plaintiffs during their closing argument. The Plaintiffs argued:

Professor never testified that the NRDC Opinion invalidated Roundup's registration, and in contrast the jury heard uncontested evidence to the contrary from Dr. D. F. and from admitted EPA documents that noted that withdrawal of the 2020 Interim Decision did not affect Roundup's registration status, and that the EPA remained confident in the scientific integrity of its conclusion that glyphosate is not likely to be carcinogenic to humans. In fact, the NRDC Opinion explained that vacatur of the 2020 Interim Decision was a proper remedy because the effect was to maintain the status quo—which was glyphosate registration. *Nat. Res. Def. Council*, 38 F.4th at 52.

In summary, though an ultimate issue for the jury to decide in this case was whether glyphosate caused the Plaintiffs' NHL, Law Professor's testimony about

The EPA, let's talk briefly about them. . . . ***If they would've followed their own cancer guidelines, they never would have reached the determination.***

And, ladies and gentlemen, that's exactly what the evidence ultimately showed when the Ninth Circuit got to review their work. They ultimately had—that's the nice thing about this country, is you ultimately have to show your work. And when they had to show their work, it got invalidated.

This argument is not supported by the NRDC Opinion or by Law Professor's testimony. The NRDC Opinion plainly left open the possibility that the EPA could reach the same human health risk determinations on remand, and never held that had the EPA followed its Cancer Guidelines, the agency would not have found glyphosate to be unlikely to cause cancer. *Nat. Res. Def. Council*, 38 F.4th at 52. However, Monsanto did not object to the Plaintiffs' suspect closing argument, and raises no claim of error relating to the closing argument on appeal.

the NRDC Opinion was not offered to prove that glyphosate causes cancer, or that Roundup was no longer registered, and was instead offered to discredit Monsanto's reliance on the EPA's 2017 scientific conclusion that glyphosate is not likely to be carcinogenic to humans. In other words, Law Professor's testimony about the NRDC Opinion was logically relevant because it tended to discredit Monsanto's evidence offered in defense, and not because the NRDC Opinion tended to affirmatively establish that glyphosate causes NHL, an essential element of the Plaintiffs' case.

If Monsanto was nonetheless concerned about the legal relevance of Law Professor's testimony because the jury might misinterpret the NRDC Opinion as a judicial determination that glyphosate causes cancer or that Roundup's registration had been invalidated, then Monsanto could have sought a limiting instruction to prevent that misinterpretation. *See MCC Mgmt. of Naples, Inc.*, 468 F. App'x at 824 (noting that court decisions should be admitted as substantive evidence "only in the rarest of cases" and then "only with detailed limiting instructions") (quoting *Johnson v. Colt Indus. Operating Corp.*, 797 F.2d 1530, 1534 n.4 (10th Cir. 1986)). Monsanto did not do so. Alternatively, Monsanto could have sought a stipulation in lieu of Law Professor's testimony that advised the jury that the EPA's 2020 Interim Decision had been withdrawn after a court determined the glyphosate conclusion in the 2017 Human Health Risk Assessment and in the 2017 Cancer Paper had been reached by the EPA without fully complying with the EPA's Cancer Guidelines. *See, e.g., Gamble*, 379 S.W.3d at 201-02 (noting that because the jury was

informed of the essential relevant essence of a prior judicial opinion in a stipulation, it was not an abuse of discretion for the trial court to exclude the opinion itself from evidence). Monsanto did not do so. It was not, however, an abuse of discretion under the circumstances in this case for the trial court to reject Monsanto's effort to wholesale exclude all of Law Professor's logically relevant testimony based on broad assertions that admission of the testimony would be unduly prejudicial.

For the reasons explained, we conclude that the trial court did not abuse its discretion in permitting Law Professor to testify about the NRDC Opinion.

Point One is denied.

Point Two: The trial court did not commit error in permitting expert testimony expressing the Plaintiffs' exposure to glyphosate in terms of intensity-weighted lifetime days because Monsanto's objection that this testimony was not disclosed by the expert was not timely raised, and in any event, Monsanto has not demonstrated unfair surprise supporting a finding of reversible error.

In its second point on appeal, Monsanto argues that the trial court committed error by permitting one of the Plaintiffs' experts to offer opinions expressing the Plaintiffs' exposure to glyphosate in terms of intensity-weighted lifetime days ("IWLD") because those calculations were not disclosed prior to trial and because this method of calculating the Plaintiffs' exposure was expressly disclaimed by the expert prior to trial. We conclude that Monsanto's objection was

waived, and that in any event, Monsanto has not demonstrated unfair surprise warranting reversal.

As with Point One, our standard of review for a claim of error relating to a trial court's decision to admit or exclude evidence is for abuse of discretion resulting in prejudicial error. *Dalbey*, 621 S.W.3d at 45-46.

Dr. J. M. was one of several experts who testified on the Plaintiffs' behalf in an effort to establish a causal relationship between their use of Roundup and their development of NHL. Before Dr. J. M. testified, Dr. T. testified about a number of epidemiological¹³ studies noting a statistical association between certain levels of exposure to glyphosate and the development of NHL, but did not testify about specific causation connecting each Plaintiffs' NHL with that Plaintiffs' use of Roundup. Dr. J. M. testified about the specific glyphosate exposure history of each of the Plaintiffs, and that the calculated exposure exceeded the exposure for which epidemiological studies found a statistical association with the development of NHL. After Dr. J. M. testified, Dr. S. testified about specific causation connecting each Plaintiffs' NHL to that Plaintiffs' use of Roundup based on Dr. S.'s exposure calculations.

Monsanto's counsel was provided with a slide deck the Plaintiffs intended to use during Dr. J. M.'s testimony in advance of his testimony. Before Dr. J. M. took the stand, Monsanto expressed an objection to

¹³ 13Epidemiology refers to the study of patterns of disease and potential contributing risk factors over time and between populations.

the final slide in that slide deck. The slide noted Dr. J. M.'s conclusion that the exposure histories of the Plaintiffs were at levels that exceeded those shown by epidemiological studies to be statistically associated with developing NHL. Monsanto argued that this "associational" testimony constituted a general or specific causation opinion. Monsanto further argued that the special masters had denied Monsanto's motion to exclude Dr. J. M.'s expert testimony, but only because Dr. J. M. said in his deposition that he was not going to give any testimony regarding whether the Plaintiffs' cancers were caused by glyphosate. Monsanto also argued that Dr. J. M.'s final slide would require Dr. J. M. to give testimony about the epidemiological studies he had reviewed that would be cumulative of Dr. T.'s testimony about the same studies. The trial court took these objections under advisement so it could review the motion to exclude Dr. J. M.'s expert testimony and the Plaintiffs' response to same. During this bench conference, Monsanto did not object that Dr. J. M. was intending to testify about the Plaintiffs' glyphosate exposure levels using undisclosed IWLD calculations, even though Monsanto had the entire slide deck Dr. J. M. intended to use during his testimony, and even though, as we explain, *infra*, that slide deck included IWLD calculations.

Dr. J. M. then took the stand. Immediately after introducing himself, and before explaining his credentials and background, Dr. J. M. confirmed that he had prepared slides to help him give his testimony. Dr. J. M. explained that human exposure and absorption of chemicals like glyphosate can occur by inhalation, ingestion, or dermal absorption, and that

dermal absorption is the most significant source of exposure. After providing detailed testimony about how dermal absorption occurs and diffuses to the bloodstream and various organs and tissue, Dr. J. M. then generally testified about environmental, skin condition, and chemical factors that influence how much of a chemical is absorbed through the skin.

Dr. J. M. was then asked to explain the concept of intensity-weighted lifetime days. Dr. J. M. explained that IWLD is one way to conduct a retrospective exposure assessment by looking at the time frame of exposure (in total years), the frequency of exposure (the number of days per year), the duration of exposure (the number of hours per day), and the magnitude (intensity) of exposure. Dr. J. M. explained that the intensity score is influenced by factors like whether a person mixed the pesticide; the method of application; whether equipment being used required repair during application; and whether and to what extent personal protective equipment was used. Dr. J. M. then discussed a study called Coble 2011, and testified about a table in the Coble 2011 study titled "AHS Pesticide Exposure Algorithm Weighting Factors," explaining how the intensity factors he had described could be assigned scores to yield an overall intensity score.

Dr. J. M. then applied his explanatory testimony about IWLD calculations, and in particular, the manner of calculating the intensity factor, to explain the overall intensity score he had assigned to Anderson based on the sub-scores assigned for intensity factors. Dr. J. M. then explained that the calculated intensity score would be multiplied by the

lifetime days (the number of years and the days per year) of exposure to arrive at an IWLD calculation. Dr. J. M. confirmed that he would later explain his lifetime days calculations for Anderson and the other Plaintiffs. Dr. J. M. then walked through the same process to explain the intensity score he had assigned to Draeger and to Gunther.

Monsanto did not object to any of this testimony. However, at this point in Dr. J. M.'s testimony, Monsanto approached the bench believing it to be an appropriate time to revisit the objections it had previously raised about Dr. J. M.'s anticipated causation testimony. The trial court explained that, based on its review of the pre-trial pleadings submitted to the special masters, it was known that Dr. J. M. would be testifying that the level of the Plaintiffs' exposure to glyphosate exceeded the levels found in epidemiological studies to bear a statistical association with the development of NHL, and observed that the special masters denied Monsanto's motion to exclude Dr. J. M.'s testimony notwithstanding this anticipated testimony.

The trial court was prepared to overrule Monsanto's objections to Dr. J. M.'s testimony regarding a "causation" opinion. Before officially making its ruling, the trial court asked Monsanto to "state what your objection is" for the record. In response, Monsanto said "it's an undisclosed opinion" (referring, as noted above, to the causation opinion), and it is cumulative (referring to the anticipated duplicative discussion of studies already addressed by Dr. T.). Monsanto then added, for the first time, the following objection:

The intensity weighted average that he just went through was also not disclosed. I let him go through it. Because I don't—I mean, it's—that was an undisclosed opinion. He did that [in his deposition] with respect to one plaintiff, Mr. Hay, [who later voluntarily dismissed his claims], but not the other people.

Separate counsel for Monsanto chimed in that Dr. J. M. was asked in his deposition whether he intended to calculate an IWLD for the other Plaintiffs, and that his answer was “no.” The trial court overruled all of Monsanto's objections.

Dr. J. M.'s testimony continued, and included considerable additional testimony about the calculation of the Plaintiffs' lifetime days, and the combination of each Plaintiffs' lifetime days and intensity score, using IWLD. No further objections were made by Monsanto to this testimony. Ultimately, **Monsanto** introduced defense exhibit 14280-F, one of the slides in Dr. J. M.'s slide deck, which was a summary of Dr. J. M.'s IWLD exposure calculations for the Plaintiffs. Monsanto argued that the exhibit “should come into evidence. The expert agreed this is a fair and accurate summary of his calculations.” The exhibit was admitted.

Monsanto now claims that the trial court abused its discretion by permitting Dr. J. M. to testify about undisclosed IWLD exposure calculations. “When an expert provides different testimony from that disclosed in discovery, a [trial] court has broad discretion as to its course of action.” *Williams v. Mercy Clinic Springfield Cmtys.*, 568 S.W.3d 396, 417 (Mo.

banc 2019) (citing *Beverly v. Hudak*, 545 S.W.3d 864, 870 (Mo. App. W.D. 2018)). Here, Dr. J. M. spent a considerable amount of time testifying about what IWLD is, how it is calculated, and how the intensity factor for each of the Plaintiffs had been calculated, with no objection from Monsanto, and despite the fact that Monsanto had access to the slide deck used during Dr. J. M.'s testimony before Dr. J. M. ever took the stand. Given Monsanto's failure to timely object to Dr. J. M.'s IWLD testimony, we cannot find that the trial court abused its discretion in overruling the objection, even if we assume the IWLD testimony was undisclosed. "It is consistently held that a party waives an objection if it is not timely made." *Seabaugh v. Milde Farms, Inc.*, 816 S.W.2d 202, 209 (Mo. banc 1991) (citing *Galovich v. Hertz Corp.*, 513 S.W.2d 325, 336 (Mo. 1974)); *see also K.B. v. Oasis Foot Spa & Massage, LLC*, 703 S.W.3d 606, 614 (Mo. App. E.D. 2024) (holding that to properly preserve for appeal a claim of error relating to the admission of evidence the "objection at trial must be specific and made contemporaneously with the purported error") (quoting *Brock v. Shaikh*, 689 S.W.3d 792, 795-96 (Mo. App. E.D. 2024)).

In any event, it is not enough to establish that an expert has testified beyond opinions disclosed in discovery. Instead, the duty imposed by Rule 56.01(b)(6)¹⁴ on a party intending to use an expert

¹⁴ At the time *Williams v. Mercy Clinic Springfield Communities* was handed down in 2019, the general provisions governing discovery related to expert witnesses were set forth in Rule 56.01(b)(4). The rule has since been amended, and now these provisions are set forth in Rule 56.01(b)(6).

witness to disclose new information to his or her adversary “is not intended as a mechanism for contesting every variance between discovery and trial testimony,” but instead to “relieve a party who is genuinely surprised at trial.” *Williams*, 568 S.W.3d at 417 (quoting *Shallow v. Follwell*, 554 S.W.3d 878, 881 (Mo. banc 2018)). When Monsanto delinquently objected to Dr. J. M.’s IWLD testimony at trial, it made no argument that it was unfairly surprised by the undisclosed testimony, and even acknowledged that for one plaintiff who had since dismissed his case (Hay), an IWLD calculation had been made by Dr. J. M. and was discussed during his deposition. In the absence of a contemporaneous argument of unfair surprise, we cannot find that the trial court abused its discretion in overruling Monsanto’s delinquent objection.

It is true that Monsanto alleges unfair surprise on appeal. Monsanto’s rationale for doing so is a summary assertion that it had no opportunity in advance of trial to probe or test the limits of Dr. J. M.’s IWLD opinions, and that it had wasted substantial time preparing for Dr. J. M.’s trial testimony focused on methodologies he originally used to calculate glyphosate exposure for the Plaintiffs as disclosed in his expert report.

These assertions are not self-proving and are belied by the record. Dr. J. M. was extensively and effectively cross-examined by Monsanto’s counsel about his IWLD calculations, including securing Dr. J. M.’s admission that he had not previously calculated an IWLD for the Plaintiffs because an IWLD calculation presumes an agricultural scenario that is

not relevant to the Plaintiffs, who were not farmers. Dr. J. M. admitted that in advance of his deposition, he had used two computer programs known as UK POEM and Euro POEM to calculate absorbed doses of chemicals for the Plaintiffs, and acknowledge that he was confronted during his depositions with concerns that the computer models had not been validated. Dr. J. M. was confronted during cross⁴³ examination with other studies conducted after the Coble 2011 study, and acknowledged that the more recent studies would not support his opinion of an associational relationship between IWLD's calculated for the Plaintiffs and the development of NHL. Monsanto's counsel then vigorously cross-examined Dr. J. M. about some of the factual assumptions relied on to calculate the IWLD for each of the Plaintiffs, leading Dr. J. M. to admit that the IWLD's he had calculated for the Plaintiffs, who were not farmers, were inexplicably and substantially higher than IWLD's calculated for farmers who use glyphosate nearly every day. The Plaintiffs did not conduct re-direct examination of Dr. J. M. after Monsanto's blistering cross-examination.

Monsanto has not identified any aspect of Dr. J. M.'s IWLD testimony as to which its purported "lack of preparedness" precluded effective cross-examination. Though Monsanto argues that prejudice from the undisclosed IWLD calculations is self-evident because the jury asked for Dr. J. M.'s charts and testimony during its deliberations, we do not agree that the jury's request establishes that Monsanto was unfairly surprised by Dr. J. M.'s undisclosed IWLD calculations.

The trial court did not abuse its discretion in permitting Dr. J. M. to testify about IWLD calculations of the Plaintiffs' glyphosate exposure despite Monsanto's assertion that the testimony involved undisclosed expert opinions.

Point Two is denied.

Point Three: The trial court did not commit error in permitting the Plaintiffs to introduce evidence of the billed amount of their medical expenses

In its third point on appeal, Monsanto alleges that the trial court committed error by permitting the Plaintiffs to introduce evidence of the "billed" amounts of their medical expenses because the "relevant" law only permitted the Plaintiffs to recover the amounts actually paid by them or on their behalf for medical expenses, and that admission of evidence of the amounts billed for medical care dramatically inflated the jury's compensatory damage awards. We disagree.

Monsanto's point on appeal challenges the admission of evidence. As we have previously explained, our review of a trial court's decision to admit or exclude evidence is for an abuse of discretion resulting in prejudicial error. *Dalbey*, 621 S.W.3d at 45-46.

Despite the relative simplicity of Monsanto's point on appeal, the argument portion of the Brief is multifaceted. First, Monsanto notes that the "relevant law" in Missouri is section 490.715.5(1),¹⁵ which addresses the evidence that can be admitted regarding

¹⁵ 15All statutory references are to RSMo 2016 as amended through the dates of trial, October 23, 2023, to November 17, 2023, unless otherwise indicated.

the cost of medical care or treatment, and which Monsanto acknowledges was construed in *Brancati v. Bi-State Development Agency*, 571 S.W.3d 625 (Mo. App. E.D. 2018), to permit the admission into evidence of “billed” or “charged” amounts for medical care or treatment. Monsanto thus concedes that the trial court followed the “relevant law” in Missouri when it permitted the admission of evidence of amounts the Plaintiffs were billed for their medical care. We will not find that a trial court has abused its discretion in admitting evidence when it does so consistent with the relevant and controlling law.

Second, Monsanto argues that we should revisit *Brancati* and find that it was wrongly decided. This is not the claim of error raised in Monsanto’s point on appeal, which claimed that the trial court did not follow the relevant law. It is instead a contention that even though the trial court followed the controlling relevant law, we should nonetheless re-evaluate that precedent and remand for a new trial. Monsanto’s argument exceeds its point relied on and is not preserved. Rule 84.04(e). Moreover, we are not inclined to revisit the holding in *Brancati*. Monsanto offers no compelling reason to do so beyond expressing disagreement with the holding and a self-serving assertion that the decision is not consistent with legislative intent underlying the amendment of section 490.715 in 2017.

Third, Monsanto argues that even if the trial court followed relevant Missouri law, Missouri law only applied to Draeger, who lives in Missouri, and not to Anderson and Gunther, who reside in California and New York, respectively, and as to whom the

admissibility of evidence relating to medical expenses should be controlled by their home state's law. Monsanto's point on appeal does not claim trial court error in failing to make proper choice-of-law decisions. Monsanto's vague contention that the "relevant law" did not permit the admission of evidence of billed amounts for medical care is insufficient to put this court or Monsanto's adversary on notice that Monsanto claims trial court error related to choice-of-law decisions. Rule 84.04(d)(1)(B) (requiring a point relied on to "[s]tate concisely the legal reasons for the appellant's claim of reversible error"). For that reason, we do not find Monsanto's choice-of-law arguments to be preserved, as they exceed the scope of its point relied on. Rule 84.04(e) (providing that "[t]he argument [in an appellant's brief] shall be limited to those errors included in the "Points Relied On").

Even if Monsanto's reference to the "relevant law" in its third point on appeal is deemed sufficient to preserve Monsanto's choice-of-law contentions, we would not find them to be meritorious as they were delinquently and inconsistently asserted, and were never ruled on by the trial court as to support a claim of trial court error.

Monsanto filed a bench brief seeking the trial court's ruling on the admissibility of evidence of amounts billed for medical care a few days before Anderson, one of the Plaintiffs, testified. The bench brief argued that section 490.715.5 controlled the admissibility of evidence to establish medical expenses for all three Plaintiffs, and only allowed evidence of amounts actually paid to be admitted. The bench brief did not raise choice-of-law issues, and

instead, urged the application of Missouri law to all three Plaintiffs.

Monsanto did not raise the California choice-of-law issue with respect to Anderson until deep into Anderson's testimony *after* he had already testified about incurring \$5.1 million in medical bills. Monsanto did not raise the New York choice-of-law issue with respect to Gunther until she testified and was preparing to answer a question about the amount of medical bills she had incurred. Monsanto's bench brief, which requested a ruling from the trial court that section 490.715 applied to all three Plaintiffs and limited the admissibility of evidence about medical expenses to evidence of amounts actually paid, was still pending when both of these choice-of-law arguments were first raised. Given the inconsistent position taken by Monsanto in its bench brief, and the untimely injection of choice-of-law questions in the middle of trial while the bench brief remained unruled, the trial court did not abuse its discretion in applying Missouri law to determine the evidence that was admissible to establish the Plaintiffs' medical expenses. *See Foreman v. AO Smith Corp.*, 477 S.W.3d 649, 651 n.2 (Mo. App. E.D. 2015) (holding that Missouri law applies when a defendant does not timely move to apply another state's laws).

In addition, Monsanto's choice-of-law contentions were never ruled on by the trial court before the Plaintiffs' claims were submitted to the jury. When Monsanto raised the California choice-of-law issue during Anderson's testimony and cited a California case for the proposition that amounts billed for medical care are inadmissible, the Plaintiffs noted

that this was the first they had heard of any argument about California law applying. The trial court did not rule on the choice-of-law issue at that time. When the choice-of-law issue was revisited later during Anderson's testimony, the trial court again deferred ruling the issue to give the Plaintiffs time to research whether Missouri law would control, notwithstanding the California case, because the admissibility of evidence involves procedural and not substantive law. Monsanto has not directed us to any further discussion in the record about the California choice-of-law issue before the Plaintiffs' claims were submitted to the jury.

The same is true with the New York choice-of-law issue first raised by Monsanto during Gunther's testimony. Monsanto argued that under New York law, the amounts billed for medical expenses are to be admitted at trial, subject to a post-trial hearing to reduce any medical expense award for medical write-offs. The Plaintiffs expressed disagreement that this was the law in New York. The trial court did not rule the issue. Instead, it noted that because Missouri law permits both the amount billed and the amount paid to be admitted into evidence, so long as both numbers come into evidence, choice-of-law issues could be later determined. Monsanto has not directed us to any further discussion in the record about the New York choice-of-law issue before the Plaintiffs' claims were submitted to the jury.¹⁶

¹⁶ Ironically, Monsanto's argument at trial was that New York law required evidence of the amounts billed for medical care to be admitted. Yet, in its third point relied on, Monsanto argues that the trial court committed error because the relevant law

“A blanket challenge that does not identify a specific [trial] court ruling or action being challenged does not comply with Rule 84.04(d)(1)(A).” *Mansfield v. Horner*, 443 S.W.3d 627, 653 (Mo. App. W.D. 2014) (quoting *Eagle Star Grp., Inc. v. Marcus*, 334 S.W.3d 548, 554 (Mo. App. W.D. 2010)). In the absence of a ruling on Monsanto’s choice-of-law contentions, there is no basis to claim trial court error, and there is nothing for us to review. We cannot assume from a silent record that the trial court overruled Monsanto’s choice-of-law contentions before the Plaintiffs’ claims were submitted to the jury, as the silence of the record would be equally consistent with Monsanto electing to abandon its choice-of-law contentions.

Apropos of this possibility, Monsanto stipulated to the medical expenses, and the Plaintiffs’ attorney read into evidence a statement with the aid of a chart. The chart listed the Plaintiffs in one column, the total amounts billed each Plaintiff for medical care under a second column labeled “billed,” and the total amounts paid for each Plaintiffs’ medical care under a third column labeled “paid by Plaintiff or on his/her behalf.” The chart was shown to the jury near the close of the Plaintiffs’ case-in-chief, and a stipulation was read to the jury by Plaintiffs’ counsel with the following proviso by the trial court: “Ladies and gentleman, plaintiffs’ counsel will read some evidence into the record. ***This is evidence that the parties have agreed as [sic] accurate and that you may consider together with other evidence you have heard in this case.***” Though Monsanto claims in its

does not permit the admission into evidence of the amounts billed for medical bills.

Reply Brief that it only entered into this stipulation after the trial court ruled that evidence of the amounts billed and paid for medical care would be admissible pursuant to Missouri law, Monsanto has not directed us to any place in the record where that ruling was made as to reject Monsanto's choice-of-law contentions. *See Rinehart v. Mo. Dep't of Corr.*, 669 S.W.3d 679, 685 (Mo. App. W.D. 2023) (holding that when "a party affirmatively indicates in the trial court that it has no objection to [a] trial court ruling, it may be found to have intentionally abandoned the issue, waiving even plain-error review") (quoting *Gray v. Mo. Dep't of Corr.*, 635 S.W.3d 99, 103 (Mo. App. W.D. 2021)).

Finally, though Monsanto's point on appeal claims that the admission of evidence of the amounts billed for medical expenses resulted in prejudicial error demonstrated by "dramatically inflated" compensatory damage awards, that claim is speculative. There is no way to know the amount of medical expenses included in the jury's compensatory damage awards, or whether the jury relied on amounts billed or paid for medical expenses to calculate the compensatory damage awards. Monsanto notes in a footnote that it sought a modification to the verdict forms to separate compensatory damages into two lines for "past medical expenses" and "other compensatory damages." However, the trial court refused this modification, a decision Monsanto has not challenged on appeal.

For all of the reasons explained, Monsanto's third point on appeal is without merit. Point Three is denied.

Points Four and Six: The trial court did not commit error in denying Monsanto's posttrial motion to further reduce or apply credits against the jury's punitive damage awards on the basis that the awards were duplicative and improperly punished Monsanto for the same underlying conduct

In their fourth point on appeal, Monsanto argues that the punitive damages awarded to the Plaintiffs were unconstitutionally duplicative of each other and of past awards in other cases because they punished for the same underlying conduct. In their sixth point on appeal, Monsanto argues that the trial court erred in denying their motion for a statutory credit against the Plaintiffs' punitive damage awards for amounts paid for punitive damages awarded in other cases for the same conduct. Given the similarity of these points on appeal, we address the points together.

Monsanto argues that both of these points on appeal require *de novo* review because Point Four addresses the constitutionality of a punitive damage award, and Point Six requires us to engage in statutory construction. We disagree. The constitutional and statutory construction arguments advanced in these points first depend on whether Monsanto has established the factual proposition that the punitive awards in favor of the Plaintiffs were duplicative of each other, or of awards in other cases, because they were awarded for the same underlying conduct. The determination of whether punitive

awards are unconstitutionally duplicative as to require a credit thus presents a mixed question of law and fact. *See, e.g., Dixon v. Mo. Dep't of Corr.*, 586 S.W.3d 816, 823 (Mo. App. W.D. 2019) (holding that “[t]he determination of whether the [defendant] is entitled to a credit under [s]ection 510.263.4 presents a mixed question of fact and law, as the [trial] court was required to assess the facts to determine whether the statutory credit applied”). “When reviewing mixed questions of fact and law, we defer to [trial] court in its assessment of the facts and then apply *de novo* review in determining how the law applies to those facts.” *Id.* (citing *Rhea v. Sapp*, 463 S.W.3d 370, 375 (Mo. App. W.D. 2015)).

The essence of Monsanto’s arguments in Points Four and Six is that punitive damages cannot be awarded multiple times for the same conduct. Monsanto relies on *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 423 (2003), for the proposition that due process prohibits punishment “of multiple punitive damages awards for the same conduct.”

In its fourth point on appeal, Monsanto claims this constitutional prohibition was violated in two ways: (i) because massive punitive awards in favor of the Plaintiffs punished Monsanto three times for the same underlying conduct; and (ii) because Monsanto has already paid out just under \$100 million in punitive damages in other cases for the same underlying conduct.

With respect to the first contention, Monsanto first raised its concern that the Plaintiffs’ punitive damage awards punished Monsanto three times for the same underlying conduct in its post-trial motion

for remittitur. It noted that the jury awarded three separate \$500 million punitive damage verdicts in the same case based on the same purchases of the same product, and based on the same evidence regarding Monsanto's alleged conduct. Monsanto urged that the cumulative awards were unconstitutional under *State Farm* and "should be remitted in full." However, Monsanto alternatively argued that "at a minimum, the [trial court] should significantly reduce the punitive damage awards in this case because of their cumulative nature."

The alternative relief Monsanto sought is precisely the relief the trial court afforded. Although the jury originally awarded each Plaintiff punitive damages in the amount of \$500 million, the trial court remitted these awards to \$50.4 million for Draeger, \$157.5 million for Gunther, and \$342 million for Anderson. The total punitive award was just under \$550 million, an amount very close to the amount originally awarded each Plaintiff. Monsanto cannot claim trial court error in failing to remediate duplicative punitive damage awards to the Plaintiffs when the trial court did exactly what Monsanto asked it to do to remediate that concern.

Moreover, Monsanto could have addressed (and avoided) this concern before the Plaintiffs' cases were submitted to the jury. In *Elam v. Alcolac, Inc.*, 765 S.W.2d 42, 230 (Mo. App. W.D. 1988), a case Monsanto cited in its motion for remitter and cited again in its Brief, this court remanded a toxic chemicals case with thirty-one plaintiffs for re-adjudication of compensatory and punitive damages, and noted that because a defendant should not "be required to pay

redundant punitive damages based on the same conduct,” the trial court could “under Rule 66.01(b) submit to the jury for verdict the common issue of the sum that will serve to punish and deter [the defendant] and others from like conduct rendered as a single sum and apportioned separately by verdict to each plaintiff.” (Citation omitted.) Nothing prevented Monsanto from requesting the trial to submit a single verdict on the common issue of punitive damages, with that sum being apportioned separately to each of the Plaintiffs. Monsanto did not do so, and we will not fault the trial court for failing to do so *sua sponte*.

Monsanto’s contention that the punitive damage awards to the Plaintiffs were unconstitutionally duplicative of one another is denied.

The second contention raised in connection with Monsanto’s fourth point on appeal is Monsanto’s concern that it has already paid duplicative punitive awards in other cases. The potential for duplicative punitive damage awards in other cases is expressly contemplated and addressed by section 510.263.4. The application of section 510.263.4 is the subject of Monsanto’s sixth point on appeal.

Section 510.263.4 provides as follows:

Within the time for filing a motion for new trial, a defendant may file a post-trial motion requesting the amount awarded by the jury as punitive damages be credited by the court with amounts previously paid by the defendant for punitive damages arising out of the same conduct on which the imposition of punitive damages is based. At any hearing, the burden on all issues relating to such a

credit shall be on the defendant and either party may introduce relevant evidence on such motion. Such a motion shall be determined by the trial court within the time and according to procedures applicable to motions for new trial. If the trial court sustains such a motion the trial court shall credit the jury award of punitive damages by the amount found by the trial court to have been previously paid by the defendant arising out of the same conduct and enter judgment accordingly. If the defendant fails to establish entitlement to a credit under the provisions of this section, or the trial court finds from the evidence that the defendant's conduct out of which the prior punitive damage award arose was not the same conduct on which the imposition of punitive damages is based in the pending action, or the trial court finds the defendant unreasonably continued the conduct after acquiring actual knowledge of the dangerous nature of such conduct, the trial court shall disallow such credit

Section 510.263.4. "After the defendant files a motion requesting credit, the court may, but is not required to, hold a hearing." *Dixson*, 586 S.W.3d at 823 (citing section 510.263.4). "The defendant has the burden to establish that it is entitled to a credit." *Id.* (citing section 510.263.4).

Here, Monsanto asserts in the required preservation statement in its Brief that it preserved its claim for a statutory credit "with respect to each [of the Plaintiffs'] punitive damages judgments," and

cites to pages 22-26 of document 1556, its post-verdict motion for remittitur. [Appellant’s Brief, p. 79] In this motion for remittitur, the *only* statutory offset urged by Monsanto is against the punitive damages awarded to Draeger. On January 5, 2024, Monsanto filed a supplemental motion for remittitur, and sought to expand the claim for a statutory credit under section 510.263.4 to include Anderson and Gunther. The supplemental motion for remittitur is not cited by Monsanto in the preservation statement of its Brief as required by Rule 84.04(e). However, the trial court’s order addressing post-trial motions acknowledged the filing of both the original and the supplemental motions for remittitur.¹⁷

With respect to Draeger’s punitive damages award, Monsanto argued in its motion for remittitur that it has paid just under \$100 million in punitive damages in three separate cases in California arising out of the same conduct at issue in Draeger’s case. Monsanto pointed to nearly identical allegations of misconduct in the complaints in the three California cases when compared to Draeger’s petition as the basis for contending that the punitive awards were for the same underlying conduct. The “same underlying conduct” highlighted by Monsanto included shared

¹⁷ The trial court’s initial judgments were signed on November 21, 2023, and were file-stamped on December 6, 2023. We explain in footnote 4, *supra*, why it is unclear from the record which of these dates should be viewed as the date on which the initial judgments were “filed.” If the date the initial judgments were signed controls, the supplemental motion for remittitur was not timely filed. We need not resolve this issue, however, as the trial court did not error in failing to afford a statutory credit under section 510.263.4.

allegations that despite scientific evidence that Roundup was carcinogenic, Monsanto continued to sell Roundup, and failed to warn of the dangerous effects of using Roundup. In its supplemental motion for remittitur, and on appeal, Monsanto argues that the identical assertions of conduct in the three California cases and in Draeger's case, render it "undisputed" that Monsanto has paid nearly \$100 million in punitive damages in three prior Roundup cases for the same conduct at issue in Draeger's, Anderson's, and Gunther's cases.

Monsanto cites no authority for the proposition that similar or identical assertions of misconduct in complaints or petitions is sufficient to permit the conclusion that punitive damages awarded in those cases are duplicative as a matter of law. Even assuming this to be the case (an issue we need not and do not decide), Monsanto acknowledges that section 510.263.4 does not require a credit for previously paid punitive damage awards if "the trial court finds the defendant unreasonably continued the conduct after acquiring actual knowledge of the dangerous nature of such conduct." In fact, section 510.263.4 directs that in the event of such a finding, "the trial court ***shall disallow*** such credit." (Emphasis added.)

In an effort to dispel applicability of this express limitation on a trial court's authority to apply a credit against a punitive damage award, Monsanto alleged in its motion for remittitur that "as of October 2023,"¹⁸

¹⁸ The Plaintiffs' trial began on October 23, 2023. Though Monsanto alleges it paid punitive damages awarded in the three California cases by that time, the date the awards were paid in

following entry of the punitive damage judgments in [the three California cases], Monsanto ceased production of glyphosate-based products for the United States consumer lawn and garden market.” Monsanto claimed that it had therefore “discontinued the alleged conduct that purports to give rise to the punitive damages award[] in this case.” Monsanto’s assertion was supported by the declaration of J. G., the Global Commercial Lead for the Roundup Consumer Lawn & Garden Business.¹⁹ In that declaration, J. G.

the California cases is not set forth in Monsanto’s motion for remittitur.

¹⁹ The Plaintiffs filed a Motion to Strike Monsanto’s Brief in part, arguing that the declaration from J. G. was an “untested declaration . . . well after cross-examination was available.” However, section 510.263.4 expressly provides that the trial court can, but is not required, to conduct a hearing on a post-trial motion for a punitive damages credit, and imposes the burden to establish the right to same on the party requesting the credit. It is thus obvious that any request for a statutory credit pursuant to section 510.263.4 will need to be accompanied by evidence, as a hearing is not assured. That evidence must be submitted by a declaration under penalty of perjury. *See* Rule 55.28 (providing that “[w]hen a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties”); Rule 78.05 (providing that an after-trial motion “based on facts not appearing of record” may include affidavits filed with the motion). Monsanto had every right to attached declarations to its motion for remittitur in support of its request for a section 510.263.4 credit. If the Plaintiffs wanted to “test” J. G.’s declaration by cross-examination, nothing prevented them from requesting a hearing to do so. Moreover, nothing prevented them from attaching their own declarations to their response to Monsanto’s motion for remittitur to contest Monsanto’s claimed right to a statutory credit.

However, there is no provision in section 510.263 permitting any party to supplement, *on appeal*, the evidentiary record

declared under penalty of perjury that **production** of glyphosate-based products for the United States consumer lawn and garden market ceased as of October 2023. However, J. G. also declared under penalty of perjury that “its remaining inventory of glyphosate-based products will be sold off by the end of Q2 2024.” J. G.’s declaration then confirmed that from and after October 2023, Monsanto continued to **sell** glyphosate-based Roundup, and that it would continue to do so until its remaining inventory was sold. J. G.’s declaration was silent with respect to whether any effort had been made by Monsanto as of October 2023 to enhance or modify the warnings provided to consumers about the dangerous effects of Roundup. To the contrary, J. G.’s declared that “Monsanto ceased production not because of any concern about potential carcinogenicity of [glyphosate-based Roundup], but instead to manage litigation risk spurred by the large punitive awards issued against Monsanto in jury trials in the United States.”

The misconduct complained about in the complaints in the three California cases Monsanto relies on, and in Draeger’s petition, includes allegations that despite scientific evidence that Roundup was carcinogenic, Monsanto continued to **sell** Roundup, and that Monsanto **failed to warn** of

relevant to determining whether a **trial court** committed error in ruling on a request for a statutory punitive damage credit. We have completely disregarded the new evidence improvidently tendered by the Plaintiffs as a part of their Motion to Strike in ruling on Monsanto’s sixth point on appeal.

The Plaintiffs’ Motion to Strike Monsanto’s Brief in part is denied.

the dangerous effects of using Roundup. J. G.'s declaration establishes that the sale of glyphosate-based Roundup did not cease as of October 2023, and in fact continued for at least so long as it took for Monsanto's existing glyphosate-based Roundup inventory to be sold. J.G.'s declaration failed to address, let alone establish, that Monsanto modified the warnings on the glyphosate-based Roundup that remained in inventory as of October 2023.

The trial court granted the motion for remittitur and the supplemental motion for remittitur in part to reduce the punitive damages awarded the Plaintiffs, as noted above. The trial court's order was silent with respect to Monsanto's request for a statutory credit against the punitive damage awards, making it unclear the extent to which, if at all, the request for a statutory credit played a role in the remitted amount of punitive damages. But, even accepting Monsanto's contention that the trial court did not afford a section 510.263.4 statutory credit against the punitive damage awards, we cannot find that the trial court committed error. The declaration attached to Monsanto's motion for remittitur does not establish that by the time trial commenced in the Plaintiffs' cases, Monsanto had discontinued the conduct giving rise to the punitive damage awards in the three California cases on which they rely, and instead supports the conclusion that Monsanto continued the misconduct alleged in the three California cases on which it relies after acquiring actual knowledge of the dangerous nature of such conduct.

For the reasons explained, Monsanto's assertions in its fourth and sixth points relied on that the

Plaintiffs' punitive damages awards were unconstitutionally duplicative and were not reduced by a required statutory credit for amounts previously paid for duplicative punitive damage awards in other cases are without merit.

Points Four and Six are denied.

Point Five: The Plaintiffs' punitive damage awards, which were significantly reduced by the trial court, are not grossly excessive as to violate Monsanto's due process rights

Monsanto's fifth point on appeal contends that "[t]he trial court erred in denying Monsanto's post-trial motions to eliminate or, at a minimum, to significantly reduce the punitive damages awarded[] because those awards violate Monsanto's due process rights in that they impose a grossly excessive penalty out of line with the evidence presented in this case." Monsanto's contention is facially without merit because it challenges a trial court ruling that never occurred. The trial court did **not** deny Monsanto's motion for remittitur alleging that the Plaintiffs' punitive damage awards were grossly excessive in violation of Monsanto's due process rights. Instead, the trial court **granted** Monsanto's motion for remittitur in part, and substantially reduced each Plaintiff's \$500 million punitive damage award as follows: (1) with respect to Anderson, the award was reduced to \$342 million; (2) with respect to Draeger, the award was reduced to \$50.4 million; and (3) with respect to Gunther, the award was reduced to \$157.5 million.

Though Monsanto's fifth point on appeal is facially without merit, as stated, it is plain from the

argument following the point that Monsanto's position is that the Plaintiffs' punitive awards, though reduced, remain grossly excessive in violation of its right to due process. We gratuitously address Monsanto's point on appeal as reframed by its argument.

It is within the jury's purview to assess damages, whether compensatory or punitive. *Crowder v. Ingram Barge Co.*, 681 S.W.3d 641, 649 (Mo. App. E.D. 2023). While compensatory damages are designed "to redress the concrete loss that the plaintiff has suffered by reason of the defendant's wrongful conduct," "punitive damages serve a broader function," particularly deterring unlawful conduct and providing retribution. *State Farm*, 538 U.S. at 416. "The decision to punish a tortfeasor through an award of punitive damages is an exercise of state power that must comply with the Due Process Clause of the Fourteenth Amendment' of the United States Constitution and with Article I, section 10 of the Missouri Constitution." *Mansfield v. Horner*, 443 S.W.3d 627, 643 (Mo. App. W.D. 2014) (quoting *Krysa v. Payne*, 176 S.W.3d 150, 155 (Mo. App. W.D. 2013)). "Elementary notions of fairness enshrined in . . . constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose." *Lewellen v. Franklin*, 441 S.W.3d 136, 145-46 (Mo. banc 2014) (quoting *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 574-75 (1996)). The trial court's evaluation of whether an award of punitive damages comports with due process guarantees is a question of law that we review the *de novo*. *Mansfield*, 443 S.W.3d at 643; *see also State Farm*, 538 U.S. at 418 ("Exacting

appellate review ensures that an award of punitive damages is based upon an ‘application of law, rather than a decisionmaker’s caprice.’”) (quoting *Cooper Indus., Inc. v. Leatherman Tool Grp., Inc.*, 532 U.S. 424, 436 (2001)).

The constitutional due process guarantee “prohibits the imposition of grossly excessive or arbitrary punishments on a tortfeasor.” *State Farm*, 538 U.S. at 416. Such a standard is easily stated, but determining the point at which punitive damages crosses “the relevant constitutional line is ‘inherently imprecise’” and cannot be determined using “‘a simple mathematical formula.’” *Cooper Inds., Inc.*, 532 U.S. at 434-35 (quoting *United States v. Bajakajian*, 524 U.S. 321, 336 (1998), and *BMW of N. Am., Inc.*, 517 U.S. at 582). Instead, there are three “guideposts” that the Supreme Court of the United States has instructed courts to use when reviewing punitive damage awards to determine whether they violate due process guarantees: “(1) the degree of reprehensibility of the defendant’s misconduct; (2) the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.” *State Farm*, 538 U.S. at 418.

A. The Degree of Reprehensibility

The first guidepost—the degree of reprehensibility of the defendant’s misconduct—is the most important factor. *Id.* at 419. Compensatory damages are presumed to make the plaintiff whole for his injuries, so that punitive damages are appropriate only “if the defendant’s culpability, after having paid

compensatory damages, is so reprehensible as to warrant the imposition of further sanctions to achieve punishment or deterrence.” *Id.* In determining the degree of reprehensibility of the defendant’s misconduct, we consider the following factors: (1) whether “the harm caused was physical as opposed to economic;” (2) whether “the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others;” (3) whether “the target of the conduct had financial vulnerability;” (4) whether “the conduct involved repeated actions or was an isolated incident;” and (5) whether “the harm was the result of intentional malice, trickery, or deceit, or [was] mere accident.” *Id.* While absence of evidence supporting any one of these factors does not automatically render a punitive damages award grossly excessive or arbitrary, “the absence of all of them renders any award suspect.” *Id.*

Our review of the five factors for determining reprehensibility set forth in *State Farm* causes us to conclude that Monsanto’s degree of reprehensibility was high. First, each of the Plaintiffs’ use of glyphosate-based Roundup resulted in serious physical harm, as each developed NHL, and in significant economic harm. The economic and noneconomic damages suffered by the Plaintiffs sprang from Monsanto’s sale of Roundup, a product that the jury found suffered from a design defect that rendered it unreasonably dangerous when used as reasonably anticipated; from Monsanto’s failure to warn Roundup purchasers of the unreasonably dangerous risks associated with reasonably anticipated use of the product; and from Monsanto’s negligence in failing to design Roundup to be

reasonably safe or to adequately warn of Roundup's capability to cause cancer in humans.

Second, the tortious conduct found by the jury demonstrated Monsanto's "reckless disregard of the health or safety of others." The evidence established that, while the EPA has continuously registered Monsanto for sale since 1974, Monsanto has been aware since 1985 that glyphosate, the active ingredient in Roundup, has the potential to cause cancer. On March 4, 1985, the EPA released a memorandum that indicated "a group of toxicology branch personnel met [on February 11, 1985,] to evaluate and discuss the database on glyphosate, and in particular the potential oncogenic response of glyphosate." The memorandum provided that, after considering all information available to the EPA, including a letter from Monsanto rebutting the significance of studies demonstrating the connection between glyphosate and renal mouse tumors, and in accordance with EPA guidelines, "the panel [of toxicology branch personnel] classified glyphosate as a Class C oncogene." Dr. D. F. admitted during the Plaintiffs' redirect examination of her that, even after Monsanto received the EPA's 1985 memorandum, Monsanto did not warn customers about the EPA's 1985 conclusion regarding the active ingredient in Roundup and continued to sell the product.

Dr. D. F. also testified that she was aware that, between 1993 and 1999, four peer-reviewed studies concluded that glyphosate was capable of producing genotoxicity—in other words, capable of causing damages to DNA and to the structure of chromosomes—in live animals through a process

called “oxidative stress.” Dr. D. F. then admitted that, by 1999, Monsanto had evidence that “glyphosate was cable of producing genotoxicity.”

Dr. E. T.—a medical doctor and the director of the Institute for Translational Epidemiology at Icahn School of Medicine at Mount Sinai in New York City, as well as a member of the EPA’s scientific advisory panel (“SAP”) tasked with advising the EPA during the review of chemicals—testified during the Plaintiffs’ case-in-chief as an expert witness on the general causation of cancer risk assessment. In December 2016, Dr. E. T. served on the EPA’s SAP related to the re-registration of glyphosate, and in conjunction with that role, Dr. E. T. reviewed all of the then-available epidemiological studies related to the association between glyphosate and NHL. The papers reviewed by Dr. E. T. included five epidemiological studies conducted between 1999 and 2008, all of which found a statistically significant positive association between glyphosate and NHL. Dr. D. F. conceded during direct examination that the epidemiological studies reviewed by Dr. E. T. showed a positive association between glyphosate and NHL. Dr. D. F. testified that Monsanto was aware of these studies, as demonstrated by email chains among Monsanto employees, including Dr. D. F., discussing the studies.²⁰ Dr. D. F. admitted that despite being aware

²⁰ Two emails were particularly probative. After the 1999 study was published, Dr. D. F. sent an email to a fellow Monsanto employee that stated, “Regarding business, unfortunately we feel that [the 1999 study] is just the tip of the iceberg for these type of association epi-studies.” After a 2001 epidemiological study was published, Dr. D. F. sent an email to a fellow Monsanto employee that stated, “[W]e don’t know yet what it says in the

of these studies, Monsanto did not conduct its own epidemiological study regarding a possible link between Roundup and NHL. Dr. E. T. testified that post-2008 epidemiological studies regarding a connection between glyphosate and NHL also found a statistically significant positive association.

Dr. D. F. testified that, even though it had knowledge of peer-reviewed studies of animal exposure to glyphosate and epidemiological studies demonstrating a possible link between glyphosate and NHL, Monsanto did not reformulate Roundup to remove glyphosate; did not provide a warning label addressing the risk of cancer, particularly NHL, posed by Roundup; and did not remove Roundup from the marketplace.

On September 24, 1998, Monsanto convened a meeting of its employees, including Dr. D. F., in order to “develop a more comprehensive, robust genetic toxicology defense,” including “[d]evelop[ing] an external global network of experts to manage allegations of potential genotoxicity.”²¹ Following that meeting, Dr. D. F. contacted Dr. P., a world-renowned toxicologist based in the United Kingdom. Ultimately Monsanto engaged Dr. P. to evaluate the peer-review studies regarding the potential genotoxicity of glyphosate in Roundup. Dr. P. concluded in a 1999 letter to Monsanto that “the overall data provided by

small print, but the fact that glyphosate is no longer mentioned in the abstract is a huge step forward. It removes it from being picked up by abstract searches!”

²¹ The purpose for the meeting was included in the minutes, which was admitted into evidence during Dr. D. F.’s direct examination testimony.

the four [genotoxicity] publications provide evidence to support a model that glyphosate is capable of producing genotoxicity both in vivo and in vitro by a mechanism based upon the production of oxidative stress.” In response to Dr. P.’s letter, Monsanto employees, including Dr. D. F., had a meeting in February 1999. Dr. D. F. wrote the meeting minutes, which included the statement that “data that Dr. [P.] evaluated is limited and is not consistent with other better conducted studies.” The meeting minutes continue, “[i]n order to move Dr. [P.] from his position, we will need to provide him with that additional information, as well as asking him to critically evaluate the quality of all data, including the open literature studies.” Monsanto ultimately asked Dr. P. to perform a second evaluation during which he was given access to Monsanto’s proprietary studies of the safety of glyphosate after he signed a confidentially agreement. After the second review, Dr. P. concluded that “glyphosate could be clastogenic,” meaning that glyphosate could have an effect on the structure of chromosomes, which may result in cancer.

Dr. D. F. testified that Monsanto disagreed with Dr. P.’s conclusion following his second review of the data. Dr. D. F. testified that she received an email in September 1999 from a fellow Monsanto employee that stated, “We want to find/develop someone who is comfortable with the genotox profile of glyphosate and Roundup, and who can be influential with regulators and scientific research operations when genotox issues arise. . . . My read is that [Dr. P.] is not currently such a person, and it would take quite some time and money/studies to get him there.” Dr. D. F. testified that Dr. P. never wrote a third report.

In 2000, a paper titled “Safety Evaluation and Risk Assessment of the Herbicide Roundup and Its Active Ingredient Glyphosate for Humans” was published in *Regulatory Toxicology and Pharmacology*. Monsanto funded the paper, and the authors credited Monsanto and “key personnel . . . who provided scientific support.” Dr. D. F. testified that Monsanto used that paper to respond to various regulatory agencies. In a February 19, 2015 email sent to Dr. D. F. ahead of the International Agency for Research on Cancer’s (“IARC”) 2015 determination that glyphosate is a class 2A probable human carcinogen, a toxicologist employed by Monsanto wrote, “[an] approach might be to involve experts only for the areas of contention . . . depending on what comes out of the IARC meeting, and then we’d ghostwrite the exposure tox and genotox sections.” That email stated “recall how we handled [the authors of the 2000 paper],” referencing allowing those authors to “have their names on the publication, but [Monsanto] would be keeping the cost down by . . . doing the writing [itself] and [the authors] would just edit and sign their names.” Dr. D. F. testified that, following the IARC’s 2015 determination, Monsanto employees considered activities the company could take to support glyphosate. Dr. D. F. testified that Monsanto ultimately funded an animal study with a consultant for litigation matters regarding glyphosate credited as the author. Dr. D. F. acknowledged that three other papers funded by Monsanto—a genotoxicity paper, an exposure paper, and an epidemiology paper, all of which were written by scientists who had previously been affiliated with Monsanto—were published in

Critical Reviews in Toxicology. The journal ultimately published an addendum indicating that the authors of those three papers had not fully disclosed their relationship with Monsanto.

Monsanto's awareness of studies demonstrating the possibility of a causal relationship between glyphosate, the active ingredient in Roundup, and cancer, particularly NHL, and then its decision to double down on its defense of Roundup in lieu of changing the product's formulation or adding a warning label regarding the risk posed by Roundup demonstrates, at best, Monsanto's indifference to or reckless disregard of the health of its customers.

The third factor—the financial vulnerability of the Plaintiffs—has no application to this case. However, the fourth and fifth factors do. The fourth factor requires us to consider whether Monsanto's misconduct was isolated or repeated. As described in our discussion of the second factor, Monsanto engaged in a pattern of behavior designed to represent to the public that Roundup posed no risk to its users, regardless of independent peer-reviewed studies suggesting otherwise. The fifth factor requires us to examine the evidence to determine whether the Plaintiffs' damages were the result of intentional malice, trickery, or deceit. The evidence presented at trial, and summarized above, demonstrates that Monsanto affirmatively adopted a strategy to defend the safety of Roundup, regardless of evidence suggesting otherwise.

B. The disparity between the actual or potential harm suffered and the punitive damages award

The second guidepost requires consideration of “the ratio between harm, or potential harm, to the plaintiff and the punitive damages award.” *State Farm*, 538 U.S. at 424. While there is no bright-line ratio that the award of punitive damages may not exceed, the United States Supreme Court’s “jurisprudence . . . demonstrate . . . that, in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.” *Id.* at 425. “Single-digit multipliers are more likely to comport with due process, while still achieving the State’s goals of deterrence and retribution, than awards with [greater] ratios . . .” *Id.*

Here, the Judgments awarded the following: (1) to Anderson, \$38 million in compensatory damages and \$342 million in punitive damages, a ratio of 9 to 1; (2) to Draeger, \$5.6 million in compensatory damages and \$50.4 million in punitive damages, a ratio of 9 to 1; and (3) to Gunther, \$17.5 million in compensatory damages and \$157.5 million in punitive damages, a ratio of 9 to 1. While the ratio of punitive to compensatory damages is in the single digits, Monsanto nonetheless argues that, because the compensatory damages awards are substantial, the ratio should not exceed 1 to 1. But, when considering the evidence, we conclude that ratio of 9 to 1 is not grossly excessive.

Throughout the trial, the jury heard about Monsanto’s adoption of a strategy to defend the safety

of Roundup to the public and to the EPA, despite independent analyses of glyphosate that demonstrated the possibility of a causal link between glyphosate and cancer, particularly NHL. Despite knowing about the possibility of this causal link since 1985, Monsanto made no effort to either alter the composition of Roundup to remove glyphosate or to place a warning label on Roundup detailing the possible risk of use of the product. Instead, it pursued profit at the expense of the health of its customers. Given the reprehensibility of Monsanto's misconduct as well as the goal to deter Monsanto from continuing its strategy of pursuing profit at the expense of the health of Roundup users, a 9 to 1 ratio of punitive damages to compensatory damages was appropriate. "A much larger amount of punitive damages is required to have a deterrent effect on a multi-billion dollar corporation than a smaller business" *Poage v. Crane Co.*, 523 S.W.3d 496, 523-24 (Mo. App. E.D. 2017) (affirming a punitive damage award in a mesothelioma case where the ratio of punitive damages to compensatory damages equaled just under 7 to 1, and approximately 12 to 1 using the jury's net award of compensatory damages). As was the case in *Poage*, "in this case, a larger punitive damages award is justified to promote Missouri's legitimate interest of deterring companies from putting unreasonably dangerous products into our State's stream of commerce." *Id.* at 524.

C. The difference between the punitive damages awarded by the jury and any civil penalties authorized or imposed

The third guidepost requires consideration of the “disparity between the punitive damages award and the ‘civil penalties authorized or imposed in comparable cases.’” *State Farm*, 538 U.S. at 428 (quoting *BMW of N. Am., Inc.*, 517 U.S. at 575). “Civil penalties” refer to those sanctions that have been created by the legislature. *See BMW of N. Am., Inc.*, 517 U.S. at 583 (“[A] reviewing court engaged in determining whether an award of punitive damages is excessive should ‘accord substantial deference to legislative judgments concerning appropriate sanctions for the conduct at issue.’”) (quoting *Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 301 (1989) (O’Connor, J., concurring in part and dissenting in part)). Monsanto does not cite to any civil penalty authorized by either the United States Congress or the Missouri General Assembly. Thus, this guidepost is not material to our analysis.

Though Monsanto does not identify any civil penalties assessed against it by any government authority, to address the third guidepost, Monsanto relies on two California Roundup decisions and one Ninth Circuit Roundup decision where the ratio of punitive damages to compensatory damages was lower than a 9 to 1 ratio. In *Johnson v. Monsanto Co.*, 266 Cal. Rptr. 3d 111, 135 (Cal. Ct. App. 2020), the court rejected the plaintiff’s assertion that the trial court’s decision to remit the punitive damage award to reflect a 1 to 1 ratio was error, emphasizing that “*in*

this case . . . a one-to-one limit was appropriate.” The *Johnson* case was filed in January 2016, and tried in the summer of 2018. *Id.* at 117. In *Pilliod v. Monsanto Co.*, 282 Cal. Rptr. 3d 679, 725 (Cal. Ct. App. 2021), the court concluded that a 4 to 1 ratio, while substantial, did not exceed constitutional limits. The *Pilliod* case was filed in 2017 and tried in the spring of 2019. *Id.* at 693-94. The Ninth Circuit determined in *Hardeman v. Monsanto Co.*, 997 F.3d 941, 976 (9th Cir. 2021), that a 3.8 to 1 damages ratio is “close to the line of constitutional impropriety,” but ultimately found it comported with due process. The Ninth Circuit then recognized that “a smaller punitive damages award in other cases [concerning Roundup] may safely satisfy due process concerns by still imposing the appropriate punishment and achieving the goals of deterrence and retribution.” *Id.* at 976. The *Hardeman* case was filed in 2016. *Id.* at 952.

It is not possible to know whether the evidence presented in these cases that would have been relevant to evaluating the *State Farm* guideposts was the same as the evidence presented in the Plaintiffs’ cases. However, since the Plaintiffs’ cases were not filed until 2022, and were tried in 2023, it is highly likely that the evidence presented at trial in the Plaintiffs’ cases benefited from the discovery of additional relevant evidence that postdated the California cases. Certainly, as explained in our discussion of Monsanto’s sixth point on appeal, Monsanto continued to produce glyphosate-based Roundup until October 2023, well after the disposition of the California cases. And, Monsanto continued to sell glyphosate-based Roundup without modifying warning labels to advise consumers of the risk of

developing cancer even after it ceased production of glyphosate-based Roundup in October 2023, intent on ensuring all product in the pipeline was first sold. Monsanto made these choices after being ordered to pay comparatively smaller punitive damage awards in the California cases. And, Monsanto continued to rely on the EPA's 2017 Human Health Risk Assessment and the 2017 Cancer Paper to declare, without equivocation, that glyphosate is not likely to be carcinogenic to humans, even though the efficacy of the scientific rationale for reaching that conclusion was found in 2022 to be not supported by substantial evidence. Under the circumstances, we do not believe that the California cases require the conclusion that a 9 to 1 ratio of punitive damages to compensatory damage in the Plaintiffs' cases violates due process.

After considering the guideposts set forth in *State Farm* for reviewing whether a punitive damage award is grossly excessive or arbitrary in violation of a defendant's due process rights, we conclude that the Judgments' awards of punitive damages to Anderson, Draeger, and Gunther pass constitutional muster.

Point Five is denied.

Point Seven: The Plaintiffs' claims are not expressly or impliedly preempted by FIFRA

In its seventh point on appeal, Monsanto argues that the Plaintiffs' claims for strict liability based on a design defect, strict liability based on a failure to warn, and for negligence are expressly federally preempted by FIFRA. They cite to *Schaffner v. Monsanto Corp.*, 113 F.4th 364, 398-99 (3d Cir. 2024), for the proposition that failure-to-warn claims involving glyphosate-based Roundup are preempted

by FIFRA. They extrapolate from this holding without citation to any authority that the same conclusion must be reached with respect to the Plaintiffs' design defect and negligence claims.

Monsanto also argues all of the Plaintiffs' failure-to-warn claims are impliedly preempted by federal law, an assertion that imposes an exacting burden on Monsanto to show that it fully informed the EPA of the nature of the warning Missouri law would have required, that the EPA informed Monsanto that it would not approve changing the label on Roundup accordingly, and that the EPA undertook its action pursuant to authority that carries the force of law. *See Carson v. Monsanto Co.*, 92 F.4th 980, 986 (11th Cir. 2024).

These exact arguments were recently made by Monsanto in *Durnell v. Monsanto Co.*, 707 S.W.3d 828 (Mo. App. E.D. 2025), *transfer denied*, No. SC100975 (Mo. banc Apr. 1, 2025), *petition for cert. filed*, No. 24-1068 (Apr. 4, 2025). When Monsanto filed its opening Brief in the instant appeal, it noted that the aforesaid case was pending in the Eastern District, and that in lieu of full briefing of the issue here, it would be relying on the full briefing of the preemption issues it had filed in the Eastern District case.

Subsequent to briefing, *Durnell* was decided, and the Eastern District rejected Monsanto's express and implied preemption arguments in a sound and reasoned opinion. The Eastern District concluded that FIFRA does not apply to preempt the Plaintiffs' strict liability failure-to-warn claims, and to conclude that Monsanto has not established an irreconcilable conflict between FIFRA and Missouri failure-to-warn

law as to impliedly preempt the Plaintiffs' strict liability failure to warn claims. *Id.* at 833-34. We agree with the reasoned analysis set forth by the Eastern District in *Durnell*. That analysis is adopted by our court without further discussion.

Point Seven is denied.

Conclusion

The Judgments are affirmed.

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Cynthia L. Martin,
Presiding Judge

All concur.

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Appendix C

CIRCUIT COURT OF MISSOURI

No. 22AC-CC00968

DANIEL ANDERSON,
Plaintiff,

v.

MONSANTO COMPANY,
Defendant.

No. 22AC-CC00137

JIMMY DRAEGER AND BRENDA DRAEGER,
Plaintiffs,

v.

MONSANTO COMPANY,
Defendant.

No. 22AC-CC00965

VALORIE GUNTHER,
Plaintiff,

v.

MONSANTO COMPANY,
Defendant.

Filed: Mar. 15, 2024

ORDER ON POST TRIAL MOTIONS

On March 6, 2024, the Court takes up Monsanto Company's Motion for Judgment Notwithstanding the Verdict, Monsanto Company's Motion for New Trial, Monsanto Company's Motion for Remittitur and Supplemental Motion for Remittitur, and Monsanto's Notice of Evidence to be Introduced Pursuant to Mo. Rev. Stat. § 510.263.4. After due consideration of all evidence and arguments presented, the Court hereby rules as follows:

Monsanto Company's Motion for Judgment Notwithstanding the Verdict is DENIED.

Monsanto Company's Motion for New Trial is DENIED.

Monsanto Company's Motion for Remittitur is GRANTED IN PART as to the punitive damages assessed by the jury which shall be remitted to \$342,000,000 for Plaintiff Daniel Anderson, \$50,400,000 for Plaintiff Jimmy Draeger, and \$157,500,00 for Plaintiff Valorie Gunther. Monsanto's Company's Motion for Remittitur is DENIED in all other respects.

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The Court considered Monsanto Company's request pursuant to § 510.263.4, RSMo and Monsanto Company's argument and proffered evidence and the same is DENIED.

SO ORDERED:

Date: [handwritten:
3/15/24]

[handwritten: signature]

The Honorable Daniel R. Green
Circuit Judge

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Appendix D

**Letter from United States Environmental
Protection Agency re: Glyphosate (Aug. 7, 2019)**

Dear Registrant,

We are writing to you concerning label and labeling requirements for products that contain glyphosate.

On July 7, 2017, California listed glyphosate as a substance under Proposition 65¹, based on the International Agency for Research on Cancer's (IARC's) classification of the pesticide as "probably carcinogenic to humans." EPA disagrees with IARC's assessment of glyphosate. EPA scientists have performed an independent evaluation of available data since the IARC classification to reexamine the carcinogenic potential of glyphosate and concluded that glyphosate is "not likely to be carcinogenic to humans." EPA considered a more extensive dataset than IARC, including studies submitted to support registration of glyphosate and studies identified by EPA in the open literature as part of a systematic review. For more detailed information on this evaluation, please see the 2017 Revised Glyphosate

¹ California's Safe Drinking Water and Toxic Enforcement Act of 1986 (also known as Proposition 65) requires businesses to inform Californians about significant exposures to chemicals that, under the terms of Proposition 65, are believed to cause cancer, birth defects or other reproductive harm. See California Office of Environmental Health Hazard Assessment, "Proposition 65," at <https://oehha.ca.gov/proposition-65>.

Issue Paper: Evaluation of Carcinogenic Potential². Further, EPA's cancer classification is consistent with other international expert panels and regulatory authorities, including the Canadian Pest Management Regulatory Agency, Australian Pesticide and Veterinary Medicines Authority, European Food Safety Authority, European Chemicals Agency, German Federal Institute for Occupational Safety and Health, New Zealand Environmental Protection Authority, and the Food Safety Commission of Japan.

On February 26, 2018, the United States District Court for the Eastern District of California issued a preliminary injunction enjoining California from enforcing the state warning requirements involving the pesticide glyphosate's carcinogenicity, in part on the basis that the required warning statement is false or misleading³.

Given EPA's determination that glyphosate is "not likely to be carcinogenic to humans," EPA considers the Proposition 65 warning language based on the chemical glyphosate to constitute a false and misleading statement. As such, pesticide products bearing the Proposition 65 warning statement due to the presence of glyphosate are misbranded pursuant to section 2(q)(1)(A) of FIFRA and as such do not meet the requirements of FIFRA. In registering pesticides, EPA must determine that the labeling complies with the requirements of FIFRA including that the product

² <https://www.regulations.gov/document?D=EPA-HO-OPP-2009-0361-0073>

³ National Association of Wheat Growers, et al. v. Zeise, 309 F.Supp.3d 842 (E.D.Cal.)

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not be misbranded. See FIFRA (3)(c)(5)(B). Therefore, EPA will no longer approve labeling that includes the Proposition 65 warning statement for glyphosate-containing products. The warning statement must also be removed from all product labels where the only basis for the warning is glyphosate, and from any materials considered labeling under FIFRA for those products.

For any pesticide product that currently contains Proposition 65 warning language exclusively on the basis that it contains glyphosate, EPA requests the submission of draft amended labeling that removes such language within ninety (90) days of the date of this letter.

Sincerely,

[handwritten: signature]

Michael L. Goodis, P.E.

Director, Registration Division

Office of Pesticide Programs

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Appendix E

**Letter from United States Environmental
Protection Agency to Lauren Zeise, Office
of Environmental Health Hazard Assessment,
California Environmental Protection
Agency (Apr. 8, 2022)**

Dear Dr. Zeise:

Thank you for your letter of March 21, 2022, to the U.S. Environmental Protection Agency (EPA) regarding glyphosate and California's Safe Drinking Water and Toxics Enforcement Act of 1986, also known as Proposition 65.

Your letter proposes a revision to previously proposed safe harbor language that businesses could use to satisfy California's notification requirements for certain glyphosate products under Proposition 65. It further requested that EPA provide input on whether the newly proposed language could be approved, if requested by a pesticide registrant, for inclusion on pesticide labels for products containing glyphosate as an active ingredient and sold in California. As explained below, EPA could approve the newly proposed language.

The Agency continues to stand behind its robust scientific evaluation of the carcinogenic potential of glyphosate. Furthermore, EPA's conclusion remains consistent with many international expert panels and regulatory authorities (<https://www.regulations.gov/document/EPA-HQ-OPP-2009-0361-0073>).

Nonetheless, EPA recognizes that the revised safe harbor language proposed by the Office of Environmental Health Hazard Assessment (OEHHA)

acknowledges the EPA position: CALIFORNIA PROPOSITION 65 WARNING: Using this product can expose you to glyphosate. The International Agency for Research on Cancer classified glyphosate as probably carcinogenic to humans. US EPA has determined that glyphosate is not likely to be carcinogenic to humans; other authorities have made similar determinations. A wide variety of factors affect your potential risk, including the level and duration of exposure to the chemical. For more information, including ways to reduce your exposure, go to www.P65Warnings.ca.gov/glyphosate.

The letter from OEHHA further requests that EPA clarify its position as previously stated in its August 7, 2019, letter to registrants regarding products that contain glyphosate. That 2019 letter focused on the application of the default Proposition 65 safe harbor warning language to products containing glyphosate and advised that EPA would no longer approve glyphosate labeling containing that statement because it was in conflict with the Agency's scientific conclusions regarding glyphosate. The Agency concluded that the standard warning language for products containing glyphosate was false or misleading and therefore, any glyphosate products bearing the statement would be considered misbranded.

While EPA's scientific conclusions regarding the glyphosate cancer classification have not changed since the August 7, 2019, letter to glyphosate registrants, it has determined that the new glyphosate-specific safe harbor language proposed in OEHHA's recent letter is sufficiently clear regarding

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EPA's position and thus would not be considered false and misleading. Therefore, this revised language could be approved by EPA if pesticide registrants requested it for inclusion on glyphosate product labels, and the products would not be considered misbranded. As stated in OEHHA's letter, EPA notes that inclusion on the product label is one of several methods that companies can use to satisfy California's notification requirements under Proposition 65.

EPA appreciates the constructive approach that California is pursuing to address this matter and looks forward to further strengthening our relationships with our stakeholders as we forge ahead together in our work. We thank you for taking the time to write on this important matter.

Sincerely,

Michal Freedhoff, Ph.D

Assistant Administrator

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Appendix F

RELEVANT STATUTORY PROVISION

7 U.S.C. §136v(a)-(b)

(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.