No. 25-1042

IN THE

Supreme Court of the United States

MONSANTO COMPANY,

Petitioner,

v.

DANIEL ANDERSON, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MISSOURI, WESTERN DISTRICT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Monsanto v. Durnell (No. 24-1068) differs from this case in a critical respect: here, the jury additionally found Monsanto strictly liable for its defective design of glyphosate-based Roundup. Monsanto does not challenge that judgment on certiorari here and could not in *Durnell*. As Monsanto conceded in the *Durnell* oral argument, *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 444 (2005), remains the law in its holding that design-defect claims are not preempted by the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"). Because resolution of the federal question in *Durnell* cannot affect the design-defect liability judgments in *Anderson*, there is no jurisdictional basis for review of the liability judgments in this matter. *See Coleman v. Thompson*, 501 U.S. 722, 730 (1991).

Monsanto also asks the Court to adopt a rigid 1:1 ratio of punitive to compensatory damages as the outer reaches of substantive due process. Monsanto's proposed standard would effectively overrule *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003). Degrees of reprehensibility, devastating human injury, and recidivist conduct would no longer be relevant factors.

The questions presented are:

1. Whether FIFRA preempts a label-based failure-to-warn claim where EPA has not required the warning. (This is the question presented in *Durnell*).

2. Whether substantive due process requires that punitive damages be limited to a 1:1 ratio when compensatory damages are substantial, even when the defendant is a recidivist that has knowingly inflicted grave bodily harm on the Respondents.

TABLE OF CONTENTS

Table of Contents

TABLE OF CITED AUTHORITIES

Page

Cases

Cited Authorities

Page

Cited Authorities

Page

Page

Cited Authorities

Page

Statutes and Other Authorities

INTRODUCTION

Under Missouri law, strict liability for design defect is a stand-alone claim for which a party can be liable, irrespective of any warnings given. *Moore v. Ford Motor Co.*, 332 S.W.3d 749 (Mo. 2011). In this case, unlike *Durnell*, the trial court separately instructed the jury on Respondents' claims of strict liability for design defect, and the jury found in favor of all Respondents on those claims. Missouri law is equally clear that the damages awarded to Respondents are fully and independently supported by the design-defect findings, regardless of what happens to any other claim on appeal. *Carrillo v. Dep't of Corrections*, 712 S.W.3d 892, 899 (Mo. Ct. App. 2025). Notably, Monsanto did not challenge on appeal below or in its petition here the jury instruction or submissibility of the design-defect claims.

To the contrary, Monsanto's petition is specific and limited to whether FIFRA preempts a state-law label-based failure-to-warn claim. While Monsanto is incorrect that FIFRA preempts such a claim for the reasons set forth in the briefing in *Durnell*, particularly the amicus brief of the Roundup and Paraquat MDL Leadership, resolution of that question will not affect the judgment below in this case. *See Bates*, 544 U.S. at 444. Rather, because the judgment below is supported by a separate state-law claim that is undisputedly not preempted by FIFRA, there is no federal question sufficiently implicated in this case that would give the Court jurisdiction to consider the jury's findings on design defect or the compensatory award supported by those findings. *See Coleman*, 501 U.S. at 730 ("When this Court reviews a state court decision on direct review pursuant to 28 U.S.C. § 1257, it is reviewing the

judgment; if resolution of a federal question cannot affect the judgment, there is nothing for the Court to do.").

That leaves Monsanto's second question presented regarding punitive damages. As to the punitive damages issue, Monsanto asks the Court to decree, as a matter of substantive due process, a 1:1 limit on state punitive damages that would require courts and juries to ignore reprehensible, decades-long wrongdoing and, here, Monsanto's recidivist conduct.

The "conflict" identified by Monsanto—the differing ratios of punitive damages to compensatory damages awarded by different courts in different cases—is no conflict at all. It is the expected, contextually based range of decisions that application of the *State Farm* guideposts produces to guarantee due process.

Further review is not warranted.

STATEMENT OF THE CASE

Factual Background

Monsanto began selling Roundup with glyphosate in 1974. At that time, the only carcinogenicity studies conducted on glyphosate were rodent studies that Monsanto commissioned. Indeed, FIFRA only requires the submission of two rodent studies to register an herbicide as it relates to whether a substance might cause cancer. 40 C.F.R. § 158.500(d) (Table, Guideline No. 870.4200). Those original studies, however, were not properly conducted, and new studies had to be submitted in the early 1980s. Tr. 2850:9-15. In 1985, a decade after

Monsanto placed glyphosate-based Roundup on the market, EPA released a memorandum from its toxicology branch analyzing the carcinogenic potential of glyphosate based on the new rodent studies. Pet. App. 20, 72. EPA, after considering all the information available to it, including a letter from Monsanto defending glyphosate, classified glyphosate as a Class C oncogene. Pet. App. 72. In doing so, EPA characterized Monsanto's arguments to the contrary as having little merit. Tr. 1128:25-1129:5. In response, Monsanto did nothing to make Roundup safer for end users. Pet. App. 72.

On the heels of that determination from EPA, scientists around the world began to investigate whether glyphosate could produce genotoxicity—i.e., the alteration of DNA that is a key characteristic in cancer development. Consistent with EPA's 1985 determination, numerous peer-reviewed, published studies from 1993–1999 all concluded that glyphosate and glyphosate-based Roundup were capable of causing genotoxicity. Pet. App. 72-73; Ex. 396. Monsanto was fully aware of those studies. In fact, Monsanto has conceded that (1) peer-reviewed, published studies are the most trustworthy; and (2) the majority of those studies through the time of the underlying trial concluded that glyphosate is, in fact, genotoxic. Tr. 845:11-17. Respondents' general causation expert at trial, Dr. Emanuela Taioli, a world-renowned epidemiologist, further confirmed that 84% of the peer-reviewed literature have positively shown that glyphosate and glyphosate-based Roundup cause genotoxicity of the type that leads to cancer development. Tr. 1692:3-9. Monsanto, with full knowledge of these scientific results, did not do anything to reformulate Roundup or make it safer in any way for end users. Pet. App. 73-74.

Also in the 1990s, scientists from around the world began conducting human epidemiological studies to determine the association between exposure to glyphosate and glyphosate-based Roundup, on the one hand, and development of non-Hodgkin lymphoma ("NHL") on the other. The first of these was published in 1999, and it concluded that there was a statistically significant association between exposure to glyphosate and NHL development. Pet. App. 73. In response, Monsanto acknowledged internally that this study "is just the tip of the iceberg for these type of association epi-studies." Pet. App. 73 n.20. Indeed, Dr. Taioli testified that, at the time of trial, the vast majority of human epidemiological studies conducted showed a positive or statistically significant association between glyphosate exposure and NHL development. Pet. App. 73-74; Tr. 1694:2-9. Indeed, while Monsanto paints as an outlier IARC's 2015 determination that glyphosate is a probable human carcinogen, IARC's determination is entirely consistent with the overwhelming body of scientific evidence on the subject. Monsanto itself, when it learned that IARC was reviewing glyphosate, acknowledged that Monsanto was vulnerable in the areas that IARC would consider, such as "epidemiology," "exposure," "genetox," and "mode of action." Tr. 736:2-6; Ex. 314. This acknowledgment came decades after selling glyphosate-based Roundup to end users like Respondents without any effort to make the product safer.

Monsanto has at all relevant times been fully aware of these studies and their results, and tellingly, in the nearly 50 years that it has sold glyphosate-based Roundup, Monsanto has never conducted a human epidemiological study on glyphosate or glyphosate-based Roundup. Pet.

App. 73-74. Yet, Monsanto has acknowledged repeatedly in its own correspondence that "you cannot say that Roundup does not cause cancer . . . we have not done carcinogenicity studies with Roundup." Tr. 872:15-17; Ex. 5281.

Rather than make Roundup safer in any way, Monsanto has considered itself at "war" with any "detractors" and implemented a plan to defend the product—a product that was bringing in billions of dollars in revenue annually. Tr. 772:15-17, 728:10-13; Exs. 370, 4519, 5295, 5801, at 17:08-19. To implement this plan, Monsanto sought to develop a group of paid experts that would support glyphosate-based Roundup. Tr. 791:19-23. Monsanto paid one such expert, Dr. Parry, a world-renowned toxicologist, to review the genotoxic literature and provide his evaluation. Tr. 792:18-1794:12. Dr. Parry wrote two reports for Monsanto based on his review of both the public, peer-reviewed literature, as well as Monsanto's database of internal studies. Tr. 794:22-799:19, 803:3-809:16. In both reports, Dr. Parry determined that glyphosate and glyphosate-based Roundup were capable of causing cancer. *Id.* Monsanto kept those reports confidential, required Dr. Parry to sign a secrecy agreement, and never disclosed those conclusions to EPA or anyone else. Monsanto's internal correspondence acknowledged that Dr. Parry had put Monsanto into a "genotox hole." Tr. 809:19-810:10; Ex. 60. William Heydens, a senior scientist at Monsanto and chief safety strategist, acknowledged that Monsanto was very vulnerable in the area of genotoxicity, but made clear, "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. Parry is not currently such a person." Tr. 813:5-815:4; Ex. 627.

Monsanto next resorted to paying experts who would be complicit in Monsanto's plan to ghostwrite favorable scientific literature. For example, in April 2000, an influential journal published an article that concluded that glyphosate does not cause cancer. Gary M. Williams, Robert Kroes, Ian C. Munro, *Safety evaluation and risk assessment of the herbicide roundup and its active ingredient, glyphosate, for humans*, 31 Regul. Toxicol. Pharm. 117-165 (April 2000) (the "Williams Paper"). Monsanto employees—not the purported authors—were responsible for the content of the paper. Heydens approved the final manuscript and stated that he would "strangle" Kroes or Williams if they asked for any rewrites. Ex. 5801, at 196:22-200:18, 207:10-222:05; Ex. 4544. In a later email written as part of the strategy to counteract a negative determination from IARC, Heydens said: "A less expensive, more palatable approach might be to involve experts only for the areas of contention . . . and ***we ghostwrite*** the exposure tox and genotox sections. ***Recall that is how we handled Williams, Kroes and Munro***." Ex. 5802, at 414:12-417:03 (emphases added).

In December 2025, the journal that published the Williams Paper issued a full retraction. *See* Regul. Toxicol. Pharm. 165 (2026).[1] The retraction cited the paper's "status as a cornerstone in the assessment of glyphosate's safety." *Id.* ¶ 7. According to the journal, the retraction was necessary to "preserve the scientific integrity of the journal." *Id.* Further, the editor stated, "The scientific concerns regarding the lack of carcinogenicity only derived from Monsanto studies, concerns regarding

1. Available at https://www.sciencedirect.com/science/article/pii/S0273230025002387.

(ghost-) authorship(s) and potential conflicts of interest, none of which have been responded to, are sufficient to warrant this action." *Id.* ¶ 8.

Monsanto's witness confirmed at trial that Monsanto used this now-retracted Williams Paper to rebut concerns from various regulatory agencies about Roundup's potential as a carcinogen. Tr. 824:15-825:1. In particular, EPA's Office of Pesticide Programs expressly relied on the Williams Paper in its Revised Glyphosate Issue Paper: Evaluation of Carcinogenic Potential, EPA's Office of Pesticide Programs (December 12, 2017) (the "2017 Cancer Paper") that classified Roundup as not likely to be carcinogenic. Tr. 2910:24-2911:12. Not surprisingly, the 2017 Cancer Paper's "not likely to be carcinogenic" determination was found contrary to the EPA's own Cancer Guidelines and not supported by substantial evidence by the Ninth Circuit. *NRDC v. United States EPA*, 38 F.4th 34, 51 (9th Cir. 2022). Remarkably, Monsanto continued to rely on the 2017 Cancer Paper at trial, even representing to the jury that it confirmed the safety of the product. *See* Pet. App. 28-29.

While Monsanto spent decades ignoring and concealing scientific results showing that glyphosate and glyphosate-based Roundup cause NHL, Respondents used glyphosate-based Roundup that Monsanto knew to be unsafe. The results were devastating.

At age 32, after using and being exposed to Roundup since he was a teenager, Daniel Anderson learned that he had Stage IV NHL. Tr. 2002. Since then, he has suffered and will continue to suffer life-long side effects and permanent damage. Tr. 2002-26. His treatments included

chemotherapy, radiation, multiple stem-cell transplants, several hospitalizations, and six surgeries, including one that removed 30% of his tongue. Tr. 1998-99, 2037. Excruciating pain would cause him to "literally fall to [his] knees." Tr. 1941. NHL-related cancerous eruptions have affected over 80% of his body's surface. Tr. 2023. To this day, the pain is unpredictable and ever-present. Tr. 2071.

Valorie Gunther, after using and being exposed to Roundup for decades, was diagnosed with Stage IV NHL in 2017. Tr. 2222-24. Ms. Gunther has fought her NHL virtually every day since her diagnosis. She endured multiple rounds of chemotherapy given through a port implanted in her chest, a stem-cell transplant, and CAR-T cell therapy. Tr. 2226-67. These debilitating treatments caused brain spasms, rendered her unable to speak for long periods, and depleted her immune system to the point that a simple paper cut turned septic and caused a two-week hospitalization. *Id.* She now suffers permanent side effects, including memory loss and the inability to work or continue to be an active member of the community she loved. Tr. 2213, 2309-13. In her words, she is now isolated in her home. *Id*.

Jimmy Draeger used and dermally absorbed concentrated Roundup for 25 years until 2017, when he was diagnosed with NHL. Tr. 1350-53. Mr. Draeger received chemotherapy through a port implanted in his chest that remained there five years. Tr. 1355-56. He also underwent multiple surgeries to remove cancerous tumors and his lymph nodes. Tr. 1357-58. These treatments left him with permanent scars, both physically and mentally, including: insulin dependent diabetes, Tr. 1363; loss of toes, Tr. 1396; painful neuropathy, Tr. 1352; mental anguish, Tr. 1362;

Charcot foot, which causes imbalance, Tr. 1363; likely blindness in his left eye, Tr. 1364; brain fog, when thoughts go into "outer space," Tr. 1270; and inability to hold small things, such as eating utensils, or to button his shirt, Tr. 1189-92. Sometimes his constant pain and reduced quality of life left him wishing he would die. Tr. 1361.

Procedural Background

Plaintiffs asserted three claims against Monsanto: (1) strict liability due to Monsanto's defective design of Roundup because its ingredient, glyphosate, causes cancer; (2) strict liability due to Monsanto's failure to warn customers of the risk of using 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. Pet. App. 5.

The trial court instructed the jury on each of those three causes of action—set forth as Part A, Part B, and Part C, respectively—without objection. Tr. 3728-29, 3732-34, 3737-38. Consistent with Missouri law, the design-defect claims did not rely on or include claims that glyphosate-based Roundup was defectively designed because its label misspeaks or because the label is silent as to the dangers of an inherently dangerous product. Rather, the jury was instructed that it must find in favor of the Plaintiff on the claim for "damages based on strict liability—design defect" (Part A) if it found the following ultimate facts:

> First, Defendant Monsanto Company sold Roundup in the course of defendant's business, and
>
> Second, Roundup was then in a defective condition unreasonably dangerous when put to a reasonably anticipated use, and
>
> Third, Roundup was used in a manner reasonably anticipated, and
>
> Fourth, such defective condition as existed when Roundup was sold directly caused or contributed to cause damage to Plaintiff [name].

Tr. 3728, 3732-33, 3737. The jury found in favor of each Respondent, concluding that Monsanto was, among other things, strictly liable for design defect.

Further, pursuant to Missouri law, the trial court submitted, without objection, a general verdict form to the jury that explained to the jurors that they could award damages "if one or more of the above findings [for Part A, B, or C] is in favor of Plaintiff [name]." Tr. 3732, 3736-37, 3741-42.

The jury's verdict was as follows: (A) Jimmy Draeger: $5.6 million in compensatory damages; (B) Brenda Draeger: $100,000 for loss of consortium; (C) Valorie Gunther: $17.5 million in compensatory damages; (D) Daniel Anderson: $38 million in compensatory damages. Pet. App. 5-6. The jury also awarded punitive damages of $500 million each to Jimmy Draeger, Gunther, and Anderson. Pet. App. 6. The trial court granted Monsanto's

motion for remittitur in part and remitted the punitive-damages awards to reflect a single-digit compensatory-to-punitive ratio as discussed in *State Farm.* 538 U.S. at 425. Pet. App. 7.

The Missouri Court of Appeals for the Western District affirmed in all regards. Pet. App. 84. With respect to the punitive damages awarded, Monsanto's point of error contended that the trial court erred by not granting Monsanto's motion for remittitur in full. The Court of Appeals held, however, that "Monsanto's contention is facially without merit" because the trial court did not deny Monsanto's motion for remittitur. Pet. App. 68-69. The Court of Appeals, nonetheless, "gratuitously" addressed Monsanto's argument that even the remitted punitive damages awards were excessive. *Id.* After a full review of the record below and analysis of the guideposts set by this Court, the Court of Appeals determined that the awards passed constitutional muster, Pet. App. 81, holding that "Monsanto's degree of reprehensibility was high." Pet. App. 71.

The Missouri Supreme Court denied discretionary review. *Anderson v. Monsanto Co.*, No. SC101177, 2025 LX 421006 (Sept. 30, 2025). Monsanto filed its Petition for Writ of Certiorari to this Court, asking the Court to: (1) hold this Petition pending the Court's disposition of *Durnell*, and, alternatively, (2) grant review to correct the Missouri court's application of the *State Farm* factors and impose a novel compensatory-to-punitive damages ratio.

REASONS FOR DENYING REVIEW

Neither of the issues presented in Monsanto's Petition warrants this Court's review.

As to the first, there is no basis to hold the Petition pending *Durnell* as Monsanto requests because the limited question presented there will not have any impact on the final design-defect judgments entered in this matter.[2]

As to the second, Monsanto requests that this Court impose a strict 1:1 ratio in any case where compensatory damages were determined to be substantial. In an effort to manufacture a conflict, Monsanto argues that some courts apply this strict 1:1 ratio as an unbending rule while other courts do not. Even a cursory read of the opinions Monsanto cites, however, makes clear that there is no purported conflict requiring this Court's review. Rather, those courts considered this Court's guideposts

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2. Moreover, any alleged "exceptional importance" tied to the outcome in *Durnell* has been substantially reduced (if not eliminated) by Monsanto's proposed nationwide settlement binding all persons who bought, applied, or even witnessed Roundup being applied anywhere in the United States, but excluding anyone with a judgment now on appeal. Pet. 17 n.3; Class Action Settlement Agreement §§ 2.1, 2.1(b)(iii), *King v. Monsanto Co.*, No. 2622-CC00325 (Mo. Cir. Ct. Feb. 17, 2026). In fact, Bayer (Monsanto's parent) conceded that this Court's review would affect only outstanding damage awards subject to pending appeals, which are not covered by the settlement. That universe consists of two cases—*Durnell* and *Anderson*. Because of the mass settlement, the Court may wish to reconsider its grant of certiorari. *See*, *e.g.*, *Pub. Emps. Ret. Sys. of Miss. v. IndyMac MBS, Inc.*, 573 U.S. 988 (2014) (dismissing writ as improvidently granted in similar circumstances).

and reached different conclusions depending on the unique facts of each case. These variations in punitive damages awards are signs of health, not disease. They are simply within the expected range in the application of necessarily generalized criteria that are designed to account—in individual cases—for the reprehensibility of the defendant's conduct, the individual's injury variation, and whether the defendant is, as here, an unrepentant recidivist. This Court has repeatedly denied requests such as Monsanto's to deviate from that framework, and the same result is warranted here.

I. This is not a hold case because the Court's decision in *Durnell* will not alter the enforceability of the judgments below.

Monsanto asks the Court to hold this petition until the decision in *Durnell*, and, then, if *Durnell* goes Monsanto's way, enter a GVR. But the question presented in *Durnell* is "Whether the Federal Insecticide, Fungicide, and Rodenticide Act preempts a label-based failure-to-warn claim where EPA has not required the warning." Unlike *Durnell*, the *Anderson* judgment does not hinge on the viability of the jury's finding on a label-based failure-to-warn claim. Rather, as explained further below, the jury's verdict is supported by a stand-alone cause of action—defective design.

Indeed, Monsanto does not ask the Court to review the jury's defective-design finding, nor was any such request preserved for this Court's review. Therefore, the resolution of the federal question in *Durnell* cannot affect the *Anderson* judgment. Under these circumstances, the Court has held that there is "nothing for the Court to do,"

"jurisdiction fails," and the Court should deny review. *Coleman*, 501 U.S. at 730; *McGirt v. Oklahoma*, 591 U.S. 894, 974, (2020) (Thomas J., dissenting).

A. Missouri law draws sharp distinctions between claims of strict liability for design defect and strict liability for failure to warn.

Missouri recognizes a cause of action imposing strict liability for defective design that applies when the product is inherently unreasonably dangerous. "[T]he primary inquiry in a design defect case is whether the product—*because of the way it is designed*—creates an unreasonable risk of danger . . . when put to normal use." *Nesselrode v. Exec. Beechcraft, Inc.*, 707 S.W.2d 371, 375 (Mo. 1986) (emphasis added). "[D]esign defect theories address the situation in which a design is itself inadequate, rendering the product unreasonably dangerous without regard to whether a warning is given—such as a lawn mower designed without a guard or deflector plate." *Moore v. Ford Motor Co.*, 332 S.W.3d 749, 760 (Mo. 2011) (citation omitted). Conversely, "[f]ailure to warn claims are concerned with how a lack of warning about a product, and the user's resultant lack of knowledge about the product's dangers or safe use, may give rise to an unreasonable danger to the consumer." *Id.*[3]

The record belies any argument that Respondents' design-defect claims were "masqueraded" failure-to-

3. This is consistent with this Court's holding in *Bates*, which similarly recognized the distinction between claims for failure to warn, on the one hand, and defective design, defective manufacture, negligent testing, and breach of express warranty on the other. 544 U.S. at 444.

warn claims. Respondents presented evidence that the design of Roundup rendered the product unreasonably dangerous. Respondents presented expert testimony from epidemiologists, an occupational environmental medicine physician, and an industrial hygienist who each explained that, when glyphosate-based Roundup is used as designed, it penetrates the user's skin and leads to the development of NHL. Pet. App. 43-45, 73; Tr. 1694:2-9, 2405:17-22, 2536:11-16, 2590:8-20, 2601:25-2602:8.

Respondents also presented evidence that Monsanto internally recognized this defective design, including the fact that you "cannot say Roundup does not cause cancer." Tr. 872:15-17; Ex. 5281. Respondents also presented evidence that a surfactant ingredient in Roundup has been associated with tumor development. In internal correspondence, a Monsanto employee asked: "[T]here are nonhazardous formulations, so why sell a hazardous one?" Ex. 5801, at 266:16-19; Ex. 4554. The answer: profitability. Ex. 5801, at 269:01-11; Ex. 4555.

Further, while not a required element under Missouri law, Respondents presented additional evidence that Monsanto did, in fact, design a safer alternative that included ingredients not linked to cancer. Tr. 863:21–864:5, 867:15–20. The jury further heard evidence that Monsanto obtained EPA approval of that safer design. Tr. 868:1–5. Despite the availability of a safer alternative, Monsanto continued to sell the defective version. Monsanto's counsel, in fact, announced during opening statements that the Roundup linked to cancer could still be purchased at local retailers. Tr. 610:8-10.

The jury instructions here resolve any doubt as to the independence of Respondents' design-defect claims. As shown above, the instructions on Respondents' design-defect claims contained no reference to failure to warn or to the label at all. Monsanto made no objection. Any post-trial argument that design-defect clams were not independent of the separate failure-to-warn claims fails on its face. Moreover, the instructions were consistent with the Missouri Supreme Court's mandate to use approved jury instructions if an approved instruction applies to a cause of action. Mo. Sup. Ct. R. 70.02.

The jury found that the following ultimate facts were supported by a preponderance of the evidence: (1) Defendant Monsanto Company sold Roundup in the course of its business; (2) Roundup was then in a defective condition unreasonably dangerous when put to a reasonably anticipated use; (3) Roundup was used in a manner reasonably anticipated; and (4) such defective condition as existed when Roundup was sold directly caused or contributed to cause damage to each Respondent. Appeal Docs. 1476, 1477, 1478; *see also Newell Rubbermaid, Inc. v. Efficient Sols., Inc.*, 252 S.W.3d 164, 174 (Mo. Ct. App. 2007) ("A proper instruction submits only the ultimate facts, not evidentiary details, to avoid undue emphasis of certain evidence, confusion, and the danger of favoring one party over another.") (citation omitted). Again, notably absent is any reference to a warning, which is simply irrelevant to the success of those design-defect claims. Monsanto did not challenge this instruction, the sufficiency of the evidence, or the jury's separate findings that Monsanto was strictly liable for design defect on appeal.

Further, consistent with Missouri law, the trial court submitted a general verdict form. Mo. Sup. Ct. R. 71.02. That verdict form—unchallenged on appeal—explained to the jurors that they could award damages "if one or more of the above findings [for Part A, B, or C] is in favor of Plaintiff [name]." Part D, Appeal Docs. 1476, 1477, 1478. The "above findings [for Part A, B, or C]" were the three liability submissions for strict liability-design defect, strict liability-failure to warn, and negligent design or failure to warn. Because the jury's damages awards did not differentiate between the three causes of action under the general verdict form the trial court submitted to it, 100% of the damages are due even if only one of the causes of action is affirmed. To make the point, if the jury had found for Respondents solely on the design-defect submissions—and for Monsanto on the failure-to-warn submission—the entire damages award would stand. *See Carrillo*, 712 S.W.3d at 899 (holding that appellant "cannot succeed on appeal without prevailing on Points of Appeal defeating all the theories of liability upon which the [general] verdict was based"); *Mathes v. Sher Express, L.L.C.*, 200 S.W.3d 97, 107 (Mo. Ct. App. 2006) (noting that a single verdict form used to submit multiple theories of liability "would also have the potentially salutary purpose of avoiding a retrial in the event that some error or insufficiency of evidence was found in only one of the verdict directing theories"). Said differently and apropos here, these Respondents prevail under Missouri law even if this Court in *Durnell* holds that FIFRA preempts a label-based failure-to-warn claim where EPA has not required a warning.

B. *Bates* controls the finality of the independent design-defect judgments affirmed below.

The question presented in *Bates* was "whether [FIFRA] pre-empts [plaintiffs'] state-law claims for damages." 544 U.S. at 434. There, the Court held: "Rules that require manufacturers to design reasonably safe products . . . plainly do not qualify as requirements for 'labeling or packaging.'" *Id.* at 444. "*Thus, petitioners' claims for defective design, defective manufacture, negligent testing, and breach of express warranty are not pre-empted.*" *Id.* (emphasis added). Indeed, the continued vitality of non-label design-defect claims is an important part of the way new scientific understandings make their way to EPA. Monsanto's counsel conceded this point during oral argument in *Durnell*: "[Y]ou can still have design defect claims [and this] is important because that could be part of the process where additional information is generated and ultimately brought to the—the attention of the agency." Oral Arg. Tr. 40:25-41:5.

Justice Thomas, proceeding from an abundance of caution in *Bates*, was unwilling to assume that the design-defect claim pleaded in *Bates* under Texas law was not label-based. This was because plaintiffs in *Bates* had not advanced a failure-to-warn claim, and "the Court of Appeals treated petitioners' claims for negligent testing and defective design and manufacture as 'disguised claim[s] for failure to warn.'" *Bates*, 544 U.S. at 457 (citation omitted) (Thomas, J. concurring in the judgment in part and dissenting in part).

That is not the case here. Rather, as shown above, according to controlling Missouri law, Respondents'

design-defect claims were separately presented to the jury, and the jury found that each element had been satisfied—a finding that Monsanto has never challenged on appeal. The result is a now final and immutable judgment under Missouri law on Monsanto's liability for strict liability-defective design.

C. Because *Bates* governs and because the liability judgments stand irrespective of *Durnell*, there is no controlling federal question presented on this point.

It is well settled that the Court will not review a state-court decision that rests on adequate and independent state-law grounds. *Glossip v. Oklahoma*, 604 U.S. 226, 242 (2025). This Court has "long recognized that 'where the judgment of a state court rests upon two grounds, one of which is federal and the other non-federal in character, [its] jurisdiction fails if the non-federal ground is independent of the federal ground and adequate to support the judgment.'" *McGirt*, 591 U.S. at 974 (Thomas J., dissenting). "When this Court reviews a state court decision on direct review pursuant to 28 U.S.C. § 1257, it is reviewing the *judgment;* if resolution of a federal question cannot affect the judgment, there is nothing for the Court to do." *Coleman*, 501 U.S. at 730.

Again, Monsanto does not ask this Court to disturb the verdict on design defect or negligent design. Instead, Monsanto argues: "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." Pet. 21 (emphasis added).

The Court should immediately deny certiorari here because the design-defect judgments in these cases are beyond the reach of any decision in *Durnell* regarding label-based preemption. *See Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 580 U.S. 405, 413 (2017) (citations omitted) ("We generally do not entertain arguments that were not raised below and that are not advanced in this Court by any party, because it is not the Court's usual practice to adjudicate either legal or predicate factual questions in the first instance. . . .").[4]

4. While the Court need not reach this point to deny Monsanto's petition, its first question presented also fails because, as the Missouri court of appeals held in rejecting the argument, Monsanto failed to cite any authority supporting its claim that Respondents' design-defect claims were preempted. Pet. App. 83. Decades of Missouri precedent firmly establishes that the failure to cite to any legal authority amounts to abandoning the argument. *Eagle v. Redmond*, 80 S.W.3d 920, 926 (Mo. Ct. App. 2002) ("The failure of the appellant to cite applicable authority in support of his argument is basis alone for us to find that his point is abandoned."); *Wright v. Barr*, 62 S.W.3d 509, 528 (Mo. Ct. App. 2001) ("However, appellants arrive at this legal conclusion without showing how the principles of law and the facts of the case interact, and, therefore, they have failed to develop this line of argument. Accordingly, this portion of appellants' second point is deemed abandoned because it is not supported by argument and not preserved for appellate review."). Thus, Monsanto's violation of "firmly established and regularly followed state rules" is adequate to foreclose review of the federal claim. *Lee v. Kemna*, 534 U.S. 362, 376 (2002).

II. The punitive-damages judgments below are fully consistent with the Court's precedents.

Punitive damages impose punishment where the gravity of the wrong is great and deter similar wrongful conduct. *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 15 (1991). From this settled rationale for punitive damages the Court developed an atextual substantive due-process rubric for review of punitive-damages judgments aimed at two things: achieving "fairness" on the one hand, *TXO Prod. Corp. v. All. Res. Corp.*, 509 U.S. 443, 467 (1993) (Kennedy, J. concurring in judgment), and avoiding "grossly excessive judgments" on the other. *State Farm*, 538 U.S. at 418.

State Farm announced three guideposts to achieve those purposes: (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. *See BMW of N. Am. v. Gore*, 517 U.S. 559, 574-75 (1996).

These criteria are necessarily flexible to account for the unique facts of each case. But they are cabined by a presumption: "Single-digit multipliers are more likely to comport with due process, while still achieving the State's goals of deterrence and retribution." *State Farm*, 538 U.S. at 426. Said differently, a single-digit multiplier is presumptively within due process, unless application of the three *State Farm* guideposts rebuts that presumption. This was the basis for the trial court's remittitur of the punitive damages in these cases to reflect

a 9:1 ratio in accordance with the *State Farm* guideposts and Monsanto's recidivist conduct.

Monsanto's Petition barely mentions the *State Farm* guideposts and fails to acknowledge the reprehensibility evidence adduced at trial. Small wonder. Nor does Monsanto say out loud what it seeks here—a total unwinding of the *Gore/State Farm* line of cases to be replaced with a rigid, atextual 1:1 punitive damages ratio that simply cannot account for the differences in each case, cannot measure the wantonness of a particular defendant's mental state as a tortfeasor, nor account for a thrice-punished company's blatant unwillingness to change its behavior. In Monsanto's view, due process in its substantive incarnation leaves no room for differing judgments that span the variety of human wantonness, the agony of injury, or the human drama produced by unbridled avarice in a world of economic competition.

Here, the Court of Appeals carefully reviewed the record below and applied this Court's guideposts. The Court of Appeals began with reprehensibility, "'[t]he most important indicium of the reasonableness of a punitive damages award.'" *State Farm*, 538 U.S. at 419. Applying the five reprehensibility factors, the court concluded that the evidence showed clearly and convincingly that Monsanto's conduct caused serious physical injuries, not just economic harm. Each Respondent now has Roundup-caused NHL and the attendant excruciating pain, suffering, and diminished life expectancy and enjoyment of what is left of his or her life. The economic and non-economic damages suffered by the Respondents "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. . . ." Pet. App. 71. The evidence "demonstrated Monsanto's 'reckless disregard of the health or safety of others.'" Pet. App. 72.

The court then recited (a) more than two decades of Monsanto's knowledge of the carcinogenicity of glyphosate, (b) the ever-growing peer-reviewed scientific evidence of the dangers of Roundup, (c) Monsanto's plan to obfuscate and contradict the peer-reviewed scientific evidence through a program of ghostwriting articles and scientific misdirection, and (d) its severing of a relationship with a contract expert and its attempt to muzzle him because the expert believed that Roundup was related to cancer—all leading to the conclusion that "Monsanto affirmatively adopted a strategy to defend the safety of Roundup, regardless of evidence suggesting otherwise." Pet. App. 77.

The second *State Farm* guidepost, the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award, also received careful application. The injuries suffered by the Respondents were horrific. The jury carefully weighed each Respondent's case and reached a different compensatory-damages amount for each. The court concluded that Monsanto:

> 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.

Pet. App. 79. Indeed, "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*.

The third *State Farm* guidepost required the court to consider the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. It did so carefully. Here, the presence of recidivist conduct is important. In fact, this Court's holdings that "a recidivist may be punished more severely than a first offender recognize that repeated misconduct is more reprehensible than an individual instance of malfeasance." *State Farm*, 538 U.S. at 423 (citing *Gore*, 517 U.S. at 577).

Beginning five years before these verdicts, three juries imposed punitive-damages awards on Monsanto for Roundup-caused NHL. Those affirmed-on-appeal punitive-damages judgments followed *State Farm*-based remittiturs but nevertheless increased from 1:1 to 3.8:1 to 4:1—ultimately totaling nearly $100 million—likely to reflect the fact that Monsanto "made no effort to alter the composition of Roundup to remove glyphosate[.]" Pet. App. 79.[5] Despite this, Monsanto continued to produce

5. *Johnson v. Monsanto*, No. CGC-16-550128 (San Francisco Cnty., Cal. Aug. 10, 2018) ($10,253,209.32, 1:1 ratio in punitive damages affirmed), 52 Cal. App. 5th 434 (2020)—more than 5 years before this verdict.

glyphosate-based Roundup until October 2023, well after the prior punitive-damages awards. Pet. App. 81. In fact, Monsanto boasted to the *Anderson* jury that the defective Roundup was still available for purchase at local retail stores. Tr. 610:8-10.

"Monsanto made these choices after being ordered to pay comparatively smaller punitive damage awards in the California cases." Pet. App. 82. "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." Pet. App. 82. In view of the entire record, the Court of Appeals rightly concluded that, given "the reprehensibility of Monsanto's conduct," the trial court's awards of nine times the compensatory damages "pass constitutional muster." Pet. App. 79, 82.

At bottom, the lower courts properly applied this Court's precedent when determining the constitutionality of the punitive-damages award against a proud recidivist,

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Hardeman v. Monsanto, No. 3:16-cv-00525 (N.D. Cal. 2019) (Monsanto Mot. Remittitur Ex. 12) ($20,000,000, 3.8:1 ratio in punitive damages affirmed), 997 F.3d 941 (9th Cir. 2021)—more than 4.5 years before this verdict, *cert. denied*, No. 21-241 (June 21, 2022).

Pilliod v. Monsanto, No. RG17862702 (Alameda Cnty., Cal. 2019) ($44,804,664 and $24,589,184.04, 4:1 ratio in punitive damages affirmed), 67 Cal. App. 5th 591 (2021)—more than 4 years and 5 months before this verdict, *cert. denied*, No. 21-1272 (June 27, 2022).

and did so in a manner that is entirely consistent with courts across the country. *See Poage v. Crane Co.*, 523 S.W.3d 496, 523 (Mo. Ct. App. 2017) (wrongful death case; finding constitutional just under 7:1 ratio or 12:1 using the jury's net award of compensatory damages), *cert. denied*, 584 U.S. 903 (2018); *Aleo v. SLB Toys USA, Inc.*, 466 Mass. 398, 417-20, 995 N.E.2d 740 (Mass. 2013) (wrongful death case; finding constitutional a 7:1 ratio); *Ragland v. DiGiuro*, 352 S.W.3d 908, 924 (Ky. Ct. App. 2010) (wrongful death case; finding constitutional an almost 9:1 ratio); *Grassie v. Roswell Hosp. Corp.*, 258 P.3d 1075, 1089 (N.M. Ct. App. 2010) (wrongful death case; finding constitutional a more than 10:1 ratio); *Boeken v. Philip Morris Inc.*, 26 Cal. Rptr. 3d 638, 683-87 (Cal. Ct. App. 2005) (personal injury case; finding constitutional a 9:1 ratio), *cert. denied*, 547 U.S. 1018 (2006); *Union Pac. R.R. Co. v. Barber*, 356 Ark. 268, 303, 149 S.W.3d 325 (Ark. 2004) (personal injury case; finding constitutional a 5:1 ratio), *cert. denied*, 543 U.S. 940 (2004); *CSX Transp., Inc. v. Palank*, 743 So. 2d 556, 558 (Fla. Ct. App. 1999) (wrongful death case; finding constitutional an 8:1 ratio), *cert. denied*, 531 U.S. 822 (2000).

To the extent Monsanto is asking this Court to substitute it's analysis of the *State Farm* guideposts for the lower court's analysis in hopes of a different result, that is not a proper basis for review. *See* Sup. Ct. R. 10; *NLRB v. Pittsburgh S.S. Co.*, 340 U.S. 498, 503 (1971) ("This is not a place to review a conflict of evidence nor to reverse a Court of Appeals because were we in its place we would find the record tilting one way rather than the other, though fair-minded judges could find it tilting either way.").

A. Monsanto's request that the Court adopt a rigid 1:1 rule lacks merit.

This Court has "'consistently rejected the notion that the constitutional line is marked by a simple mathematical formula.'" *State Farm*, 538 U.S. at 424 (quoting *Gore*, 517 U.S. at 582); *see also TXO Prod.*, 509 U.S. at 460 (plurality); *Haslip*, 499 U.S. at 18. In *State Farm*, the Court "decline[d] *again* to impose a bright-line ratio which a punitive damages award cannot exceed." 538 U.S. at 425 (emphasis added). Despite those clear holdings, Monsanto, ignoring this Court's clear precedent, seizes on a single non-categorical statement in *State Farm*. *See id.* ("When compensatory damages are substantial, then a lesser ratio, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee."). Using that statement out of context, Monsanto now argues that this Court's contextual rule, under which a punitive damages award "must be based upon the facts and circumstances of the defendant's conduct and the harm to the plaintiff," *State Farm*, 538 U.S. at 425, should be replaced with a rigid mathematical formula limiting punitive damages to the amount of compensatory damages whenever the latter are "substantial." Pet. 35.

For good reason, this Court has repeatedly rejected the application of a rigid formula. For example, a 1:1 cap is a wide-angle constitutional sprayer offering no warning that repeat conduct will result in greater punishment. Such rigidity might very well serve to encourage highly profitable enterprises (as here) to feel neither punished nor be deterred. Even an atextual constitutional standard requires a tool that will serve to punish and deter wanton

behavior and, in this case, repeated and continuing wanton behavior.

Monsanto's proposed rule would apply equally to minor economic injuries inflicted with a fraudulent motive and to, as here, a carefully constructed plan to maximize profits by obfuscating a growing scientific consensus that the product sold will expose millions of people to horrible injury and death. Too small a punitive damages award would denigrate human life and defeat the law's policy that punitive damages serve to punish and deter. It would encourage what happened here—the continued elevation of the pursuit of profit over the protection of people. It would adopt a rule that *State Farm* rejects: "Due process does not permit courts, in the calculation of punitive damages, to adjudicate the merits of other parties' hypothetical claims against a defendant. . . ." *Id.* at 421.

And as Monsanto has proved here, it would not deter continued injurious conduct. *Johnson v. Monsanto*, 52 Cal. App. 5th 434 (2020), shows that, as to Monsanto, a 1:1 ratio is no deterrent at all—and neither was the 3.8:1 in *Hardeman v. Monsanto*, 997 F.3d 941 (9th Cir. 2021), nor was the 4:1 ratio in *Pilliod v. Monsanto*, 67 Cal. App. 5th 591 (2021). A 9:1 ratio is the next logical and legally necessary step in at least an attempt to punish and deter. But if punitive damages were capped at a judicially imposed 1:1 ratio, Monsanto would have no reason to change anything since its billions in annual profit could well handle judgments so limited.

Moreover, the Missouri legislature has enacted a statute to protect defendants against multiple punitive damage awards, with one important exception. Specifically, under Missouri law, defendants have a right to a credit for any previously paid punitive damages under limited circumstances, but not if the defendant unreasonably continued the conduct after acquiring actual knowledge of the dangerous nature of such conduct. Mo. Rev. Stat. § 510.263.4.

The Court of Appeals concluded that Monsanto was not entitled to the credit because "Monsanto continued the misconduct alleged in the three California cases on which it relies [for entitlement to the statutory credit] after acquiring actual knowledge of the dangerous nature of such conduct." Pet. App. 68. The court reasonably concluded that a lesser ratio or even a credit would fail to deter such profitable misconduct by a multi-billion-dollar company. *See* Pet. App. 79; *Gore*, 517 U.S. at 582; *TXO Prod.*, 509 U.S. at 462 & n.28 (plurality) (considering defendant's wealth in upholding punitive damages). Monsanto has not given any reason for this Court to substitute a firm mathematical rule for the protections already put in place by the Missouri legislature.

B. The purported circuit split alleged in Monsanto's petition is illusory.

As the rationale for a proposed 1:1 rule, Monsanto incorrectly claims that courts have divided over whether "punitive damages should be limited to a 1:1 ratio" in cases involving a substantial compensatory award. Each decision the company cites limited punitive damages only after applying all the *State Farm* factors, starting with

reprehensibility.[6] Most expressly disavowed applying any mathematical formula.[7] In fact, the cases Monsanto cites to support its proposed bright-line rule illustrate how courts use the degree of reprehensibility to decide when a higher ratio is permissible.

Monsanto further asserts that "the Eighth Circuit has endorsed the equal ratio rule." Pet. 28. Monsanto cites *Williams v. ConAgra Poultry Co.*, 378 F.3d 790, 797 (8th Cir. 2004), where the court applied the *State Farm* guideposts to a set of facts that only included economic harm. But Monsanto fails to mention *Eden Electrical, Ltd. v. Amana Co.*, 370 F.3d 824, 829 (8th Cir. 2004), decided in the same year as *Williams*, where the Eighth Circuit approved a 4.5:1 ratio where a defendant had devised a scheme to hide dangers. Monsanto's claim that the Eighth Circuit would have applied a 1:1 ratio to this case is nothing more than unsupported speculation.

Monsanto's argument is principally flawed because it ignores the distinction between cases involving economic injuries and those involving injuries that maim and kill human beings. Courts almost uniformly treat those cases

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6. *See*, *e.g.*, *Saccameno v. U.S. Bank Nat'l Ass'n*, 943 F.3d 1071, 1086 (7th Cir. 2019); *Lompe v. Sunridge Partners, LLC*, 818 F.3d 1041, 1073 (10th Cir. 2016); *Thomas v. iStar Fin., Inc.*, 652 F.3d 141, 148 (2d Cir. 2011) (per curiam); *Morgan v. New York Life Ins. Co.*, 559 F.3d 425, 443 (6th Cir. 2009); *Boerner v. Brown & Williamson Tobacco Co.*, 394 F.3d 594, 603 (8th Cir. 2005); *Williams v. ConAgra Poultry Co.*, 378 F.3d 790, 796-97 (8th Cir. 2004).

7. *See*, *e.g.*, *Saccameno*, 943 F.3d at 1088; *Lompe*, 818 F.3d at 1068; *Thomas*, 652 F.3d at 149; *Boerner*, 394 F.3d at 603; *Williams*, 378 F.3d at 798.

differently when it comes to the proper application of the *State Farm* guideposts. Indeed, physical injury is one of the distinguishing elements of reprehensibility. *State Farm*, 538 U.S. at 419. Approbation of judgments punishing companies that hurt people is one of the law's important roles.

The cases Monsanto cites generally limit a punitive-damages award to the amount of compensatory damages because there is no physical harm to the plaintiff, a low degree of culpability for the defendant, or both. In *Saccameno*, for example, the defendant's conduct "caused no physical injuries and did not reflect any indifference to [the plaintiff's] health or safety." 943 F.3d at 1088. In *Lompe*, the plaintiff suffered only minor physical injuries because of her landlord's failure to maintain carbon-monoxide detectors. *See Lompe*, 818 F.3d at 1066. And in *Boerner*, the court disclaimed any "simple formula or bright-line ratio" and acknowledged that "a higher ratio" than 1:1 could be "justif[ied]" in cases with "[f]actors . . . such as the presence of an 'injury that is hard to detect.'" 394 F.3d at 603.[8]

On the other hand, cases upholding higher ratios resemble this one, involving egregious misconduct, serious

8. Monsanto also cites these economic-only damages cases: *Mendez-Matos v. Mun. of Guaynabo*, 557 F.3d 36, 53 (1st Cir. 2009) (Méndez–Ayala suffered no physical injuries); *Bridgeport Music, Inc. v. Justin Combs Pub.*, 507 F.3d 470, 486 (6th Cir. 2007) (the harm in this case (copyright infringement) was purely economic); *Jurinko v. Med. Protective Co.*, 305 F. App'x 13, 25-26 (3d Cir. 2008) (there is no evidence that Dr. Marcincin suffered physical harm); *Bach v. First Union Nat'l Bank*, 486 F.3d 150, 152 (6th Cir. 2007) (economic injury for violation of Fair Credit Reporting Act).

physical injury, or both. *See Planned Parenthood of Columbia/Willamette Inc. v. Am. Coal. of Life Activists*, 422 F.3d 949, 958 (9th Cir. 2005) (credible death threats); *Cote v. Philip Morris USA, Inc.*, 985 F.3d 840, 847-48 (11th Cir. 2021) (defendant concealed dangers of smoking, contributing to plaintiff's death); *see also Haslip*, 499 U.S. at 23-24 (4.2:1 ratio in financial fraud case did not "cross the line").

The variation in ratios between these cases does not reflect a split. It reflects courts' considered application of this Court's precedent, allowing higher ratios only in cases involving more reprehensible conduct, particularly conduct putting profits over safety and exposing consumers to life-threatening risks. The trial court remitted the judgments in these cases to comport with that teaching and did so in the face of grievous injury, extreme reprehensibility, and remorseless recidivism.

Notably, in *TransUnion LLC v. Ramirez*, 141 S. Ct. 972 (2020) (rejecting question presented); *Johnson & Johnson v. Ingham*, 141 S. Ct. 2716 (2021) (denying certiorari); and *Monsanto v. Pilliod*, 142 S. Ct. 2870 (2022) (denying certiorari), the Court has recently declined to create the type of rigid rule sought by Monsanto. It should continue to do so.

C. Punitive damages continue to serve an important role in incentivizing responsible behavior.

Monsanto asserts that the current (and historical) role of punitive damages no longer serves, particularly where a company is exposed to mass tort liability because

it physically harmed and even killed thousands rather than just a few. The "logic" of the idea that deterring widespread human injury by approving early, sufficiently harsh punishment is the proper policy of the law does not warrant serious consideration.

Exxon Shipping Co. v. Baker, 554 U.S. 471 (2008), is Monsanto's lynchpin case. Yet that decision is limited to maritime law and, by extension, federal common law, and proceeds from an acknowledgement that the problem of excessive punitive-damages awards is not widespread. The traditional approach "has not mass-produced runaway awards." *Id.* at 498 n.15. Further, *State Farm* cabins punitive-damages awards at the constitutional level. *Id.* at 501. Indeed, the *Gore/State Farm* guideposts serve significantly to constrain a court's, and hence a jury's, discretion in making a punitive-damages award and prevent grossly excessive awards in light of the State's legitimate punitive-damages objectives. *Gore*, 517 U.S. at 595 (Breyer, J. concurring). Moreover in *Exxon*, the Court expressly noted: "Today's enquiry differs from due process review because the case arises under federal maritime jurisdiction, and we are reviewing a jury award for conformity with maritime law, rather than the outer limit allowed by due process. . . ." *Exxon Shipping Co.*, 554 U.S. at 501-02. This distinction is important, and, as this Court made clear, it is not applicable to the review here.

Monsanto's suggestion that the Court has been dancing around this issue and it is time to "fish or cut bait" is not only inaccurate but also certainly not a credible rationale when one is dealing with a nation's organic document and its application to its states, which have legitimate interests in protecting their citizens. *See Gore*, 517 U.S. at 568 ("In

our federal system, States necessarily have considerable flexibility in determining the level of punitive damages that they will allow in different classes of cases and in any particular case.").

What Monsanto refuses to acknowledge is that three appellate courts affirmed punitive damages against Monsanto before trial of the present cases for continuing this same kind of misconduct and those awards did nothing to change Monsanto's conduct. The annual billions in profit generated by the entire Roundup-resistant-seed-based universe was apparently too valuable to risk, and human injury was simply calculated as a cost of doing business. Monsanto now caterwauls at what its own business judgment has brought it.

Ultimately, Monsanto's exposure to and resulting financial consequences from punitive damages was self-inflicted. It wants the Court to rescue it from the condemnation meted out by a jury in a rural county not known for large verdicts—a condemnation based on avarice that produced horrific human toll. That jury never knew what the Court of Appeals knew and this Court now knows—that Monsanto is a recidivist for which previous punitive damages judgments changed nothing. And it is for that reason, and others set out here, that the *State Farm* guideposts should remain unchanged. They admirably serve the causes of punishment and deterrence.

Respectfully, the Court's review is unwarranted.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

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