

No.

IN THE
Supreme Court of the United States

GIVAUDAN FLAVORS CORP.,

Petitioner,

v.

JAMES J. GRAHAM,

Respondent.

On Petition for a Writ of Certiorari to the
Missouri Court of Appeals, Eastern District

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996), and *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003), this Court held that the Due Process Clause of the Fourteenth Amendment prohibits arbitrary and excessive punitive damages awards. The Court set markers beyond which punitive awards cannot constitutionally go without special justification, warning that “few awards exceeding a single-digit ratio between punitive and compensatory damages” comply with the Fourteenth Amendment; that a punitive damages award four times a compensatory award “might be close to the line of constitutional impropriety”; and that “[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.

In this otherwise unremarkable product liability case, a divided Missouri jury held petitioner Givaudan Flavors Corp. liable for selling food flavoring products that allegedly caused a factory worker’s lung disease. The jury awarded substantial compensatory damages—\$2 million—and \$56 million more in punitive damages. The question presented is:

Whether an appellate court may affirm a punitive damages award that is 28 times a large compensatory award, without finding a compelling reason to depart from the presumption that punitive damages should not exceed the amount of a substantial compensatory award, or at least the historical limit of quadruple damages.

PARTIES TO THE PROCEEDING BELOW

Petitioner Givaudan Flavors Corp. was the appellant in the Missouri Court of Appeals. Respondent James J. Graham was the appellee.

CORPORATE DISCLOSURE STATEMENT

Petitioner Givaudan Flavors Corp. is an indirect, wholly owned subsidiary of Givaudan SA. Givaudan SA trades on the SIX Swiss Exchange under the symbol GIVN. No other publicly held company owns more than 10% of Givaudan SA's stock.

RELATED PROCEEDINGS

Graham v. Givaudan Flavors Corp., No. SC101678 (Mo.) (application to transfer denied July 7, 2026).

Graham v. Givaudan Flavors Corp., No. ED113318 (Mo. App.) (opinion and judgment issued April 22, 2026) (application for transfer and motion for rehearing denied May 19, 2026).

Graham v. Brolite Prods., et al., No. 20MM-CV00011 (Mo. Cir. Ct. of Marion Cnty.) (amended judgment entered December 31, 2024).

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INTRODUCTION

More than two decades ago, this Court held that the Due Process Clause bars punitive damages awards so arbitrary and excessive that they deprive defendants of fair notice. *See State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003); *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559 (1996). The Court laid down clear markers to ensure serious and consistent scrutiny of punitive awards no matter the courthouse. Drawing on a history “dating back over 700 years,” the Court observed that “sanctions” were generally limited to “double, treble, or quadruple damages,” and admonished that awards four times compensatory damages may be “close to the line of constitutional impropriety.” *State Farm*, 538 U.S. at 425. Rarely, the Court further warned, could punitive awards exceeding ten times compensatory damages satisfy due process. *Id.* And although punitive damages might outpace compensatory damages where “a particularly egregious act has resulted in only a small amount of economic damages,” the Court held that “[t]he converse is also true”: when compensatory damages are “substantial,” punitive damages equaling compensatory damages “can reach the outermost limit of the due process guarantee.” *Id.*

These markers give courts flexibility to respond to particular facts in exceptional cases. But courts are not free to disregard this Court’s guidance. Courts reviewing substantial punitive damages awards must begin where history directs them: with the assumption that only awards not exceeding “double, treble, or quadruple” compensatory damages comport with due process. *State Farm*, 538 U.S. at 425. And when a

plaintiff has received “substantial” compensatory damages, due process requires a limit at the lower end of that range. Only backed by extraordinary justification can an award above such limits satisfy constitutional constraints.

Some lower and state courts have gotten the message, at least in part. One group—including three federal Circuits and Arizona’s courts—starts by assuming that punitive damages should not exceed compensatory damages when the latter is high, and demands special justification to deviate from that default. Another group of two Circuits starts with the assumption that a punitive award may not exceed four times compensatory damages, and similarly requires special justification to depart from that framework. While the former approach is most faithful to the Constitution, both approaches find grounding, to a greater or lesser extent, in this Court’s precedent and the Nation’s legal tradition.

But in many recalcitrant state court systems, the Court’s guideposts are either ignored or treated as malleable enough to countenance virtually any award with a single-digit ratio to compensatory damages, disregarding both this Court’s directions and the history that grounds them.

And the courts of Missouri are in a league of their own, routinely blessing awards well into double-digit territory, as in this case. The intolerable result is that two juries may impose identical punitive awards based on identical conduct, yet appellate review may yield punitive awards tens of millions of dollars or more apart, depending on the courthouse.

That is what happened here. In this run-of-the-mill product liability case, three members of a Missouri state-court jury did not even vote to impose liability. The other nine, however, awarded respondent not only \$2 million in compensatory damages, but also \$56 million in punitive damages—a 28:1 ratio.

That remarkable award, in this unremarkable case, is flatly unconstitutional. The judges in the federal courthouse a few towns over doubtless would have said so: the Eighth Circuit falls into the group of courts most faithfully applying this Court's precedents and conducting serious constitutional scrutiny of punitive damages awards. But respondent chose his venue wisely: the Missouri Court of Appeals waved the award through with little worry. Indeed, it nowhere grappled with this Court's guidance that an award four times compensatory damages edges toward the constitutional line and that few awards exceeding a single-digit ratio are constitutional. Moreover, rather than seriously wrestle with the possibility that a substantial \$2 million award limits punitive damages to the same amount, the court simply offered the non sequitur that the compensatory award was justified. And one will search its opinion in vain to find *any* attempt to justify a punitive damages award *28 times* compensatory damages.

Unfortunately, this comes as no surprise. Missouri has become a poster child for arbitrary and excessive punitive awards—a State where plaintiffs' lawyers know eye-popping verdicts will evade meaningful appellate review and will not be reviewed by the state Supreme Court at all. It is thus among the handful of jurisdictions that have become magnets for product

liability and mass tort litigation—and factories for punitive awards that would be swatted down most everywhere else—because of judicial rejection of this Court’s precedents.

Enough is enough. If twenty-three years have dulled the force of this Court’s instructions, it is time for a reminder. And there is no better vehicle than this case. Few cases involve more egregious disregard of the constitutional guardrails this Court has identified. And this case contains none of the vehicle complications that have plagued recent petitions seeking review of punitive awards. This Court should therefore grant certiorari and set the case for argument or, alternatively, summarily reverse the Missouri Court of Appeals’ ruling affirming the punitive damages award.

OPINIONS BELOW

The opinion of the Missouri Court of Appeals is reported at 737 S.W.3d 176 and reproduced at Pet.App.1a. The order of the state trial court awarding \$56,631,960 in punitive damages and \$1,529,500 in compensatory damages (after setting off \$470,500 from the compensatory award of \$2,000,000) is unreported and reproduced at Pet.App.27a. The orders of the Missouri Court of Appeals denying petitioner’s motion for rehearing and transfer application are unreported and reproduced at Pet.App.35a and Pet.App.36a. The Missouri Supreme Court’s order denying further review is unreported and reproduced at Pet.App.37a.

JURISDICTION

The Missouri Court of Appeals entered judgment on April 7, 2026, and denied petitioner’s timely motion for rehearing and transfer application on May 19, 2026. The Missouri Supreme Court denied petitioner’s timely application for transfer on July 7, 2026. This Court has jurisdiction under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Due Process Clause of the Fourteenth Amendment, U.S. Const. amend. XIV, §1, provides:

[N]or shall any State deprive any person of life, liberty, or property, without due process of law.

STATEMENT OF THE CASE

Petitioner Givaudan Flavors Corp. (“Givaudan”) is an Ohio-based company that creates flavors for use in food. Givaudan produces food flavorings using government-approved ingredients and sells them for use in foods and beverages. Pet.App.2a.

Respondent James Graham worked for General Mills at a food manufacturing plant in Hannibal, Missouri from 2005 to 2011. Pet.App.2a. During that time, the plant purchased more than 10 million pounds of flavoring from more than 30 different manufacturers. R.2562-63. At least seven of those manufacturers (including Givaudan) supplied flavors containing small amounts of two government-approved ingredients: diacetyl and 2,3-pentanedione. R.2564-65. An FDA regulation allows the use of

diacetyl, which has a buttery flavor, “with no limitation” because it is “generally recognized as safe” as “a flavoring agent.” 21 C.F.R. §184.1278. Another regulation provides that 2,3-pentanedione “may be safely used in food” as a flavoring if “used in the minimum quantity required to produce [the] intended effect.” *Id.* §172.515.

In 2020, respondent sued 47 defendants in Missouri court alleging that workplace exposure to various flavorings caused him to develop lung disease. Am. Pet. ¶¶7-44. He did not sue General Mills, which was responsible for controlling his exposure to the flavorings; under Missouri law, a statutory worker’s compensation scheme supplies the exclusive remedy for “occupational disease.” Mo. Rev. Stat. §287.120.2. All defendants other than Givaudan settled or were otherwise dismissed before trial. *See* Pet.App.2a.

In late 2024, the court held a bifurcated trial. After an 8-day liability phase, nine of twelve jurors found that diacetyl and 2,3-pentanedione caused respondent’s lung disease and that Givaudan was liable for selling flavorings containing those ingredients. Pet.App.2a; Pet.App.27a-29a. The jury awarded \$2 million in compensatory damages, including to account for pain and suffering. *See* Pet.App.2a. (The award was reduced to \$1,529,500 to offset payments from defendants who settled before trial.) *Id.*

In the subsequent punitive damages phase, respondent’s only additional evidence was a stipulation to Givaudan’s net worth of \$1,415,799,000. R.3505-06. The jury, again dividing nine to three, awarded exactly 4% of that amount as punitive damages: \$56,631,960, a 28-times multiple of the compensatory award. Pet.App.29a. Givaudan sought judgment

notwithstanding the verdict, arguing the punitive award was excessive and violated due process. Pet.App.39a. The trial court denied that motion in a short email to counsel. Pet.App.31a.

On appeal, the Missouri Court of Appeals rejected Givaudan's argument that the punitive award violates due process. The court began by rehashing its reasons for holding that punitive damages were available at all. The court never acknowledged this Court's guidance that a punitive award exceeding four times compensatory damages is unlikely to be constitutional, or that only rarely may punitive awards exceed ten times compensatory damages. Instead, it zeroed in on Givaudan's argument that punitive damages could not constitutionally exceed compensatory damages. On that point, the court acknowledged that the compensatory award is "significant," but rejected Givaudan's argument because the compensatory award was not "excessive." Pet.App.20a.

The court did not attempt to explain why a 28-to-1 ratio was constitutionally permissible. All it relied on were statements from the Missouri Supreme Court that it is "within a jury's discretion to" exceed "the usual single-digit ratio." Pet.App.21a (quoting *Lewellen v. Franklin*, 441 S.W.3d 136, 148 (Mo. 2014)). The court also rejected Givaudan's argument that the jury had impermissibly treated Givaudan's net worth as dispositive, offering only that net worth could be relevant. Pet.App.22a.

The court rejected Givaudan's rehearing motion and original transfer petition, and the Missouri Supreme Court denied Givaudan's motion for transfer. Pet.App.35a-37a.

REASONS FOR GRANTING THE PETITION

I. There Is a Deep Conflict of Authority Concerning How to Apply the Due Process Limits on Excessive Punitive Damages.

In *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003), *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996), and companion cases, this Court held that “grossly excessive” punitive damages awards violate the Due Process Clause of the Fourteenth Amendment. The Court’s basic instruction was that “courts must ensure that the measure of punishment is ... proportionate to the amount of harm to the plaintiff and to the general damages recovered.” *State Farm*, 538 U.S. at 426. And although the Court did not impose a one-size-fits-all bright line, it provided concrete guidance to structure constitutional scrutiny of punitive awards.

“In practice,” the Court warned, “few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process.” *Id.* at 425. The Court further explained—drawing on centuries of English and American practice limiting monetary “sanctions” to “double, treble, or quadruple damages”—that awards greater “than four times the amount of compensatory damages might be close to the line of constitutional impropriety.” *Id.* And, finally, the Court instructed that “[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.” *Id.*

Despite these instructions, lower courts are hopelessly and openly divided about what framework to employ in reviewing punitive awards, undermining the predictability that due process requires. Shortly after *Gore* and *State Farm*, this Court observed that judicial review of punitive awards has been marked by “stark unpredictability.” *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 500 (2008). In the 18 years since, the divergence in courts’ approaches has only deepened. This is not a matter of different facts leading to different results—courts are applying a “variety of approaches” to determining the “constitutional boundary.” *Lompe v. Sunridge Partners, LLC*, 818 F.3d 1041, 1090 (10th Cir. 2016) (Bacharach, J., concurring in part and dissenting in part).

Courts have split into four camps. *First*, a group comprising mostly federal appeals courts has taken to heart this Court’s directive and the history from which it stems. This group demands special justification for (and generally prohibits) punitive awards larger than substantial compensatory awards. And it altogether refuses to countenance punitive damages more than approximately four or five times the size of compensatory damages. *Second*, a competing group of federal courts reserves more searching scrutiny for awards approaching or exceeding quadruple damages, while effectively capping awards at single-digit ratios. *Third*, a broad segment of state courts say anything goes, provided the ratio of punitive to compensatory damages stays under tenfold—even in cases with multi-million dollar compensatory awards. *Fourth* and finally, there is Missouri: an exceptional outlier whose appellate courts—at most—pay lip service to constitutional constraints, and whose Supreme Court

refuses to intervene, abdicating constitutional review to a jury's "discretion" to exceed "the usual single-digit ratio." *Lewellen*, 441 S.W.3d at 148.

1. The Sixth, Eighth, and Tenth Circuits, as well as Arizona's state courts, follow an approach most faithful to this Court's precedents. As the Tenth Circuit summarized, "since the Supreme Court's decision in *State Farm*, many federal appellate courts have imposed a 1:1 ratio where ... the compensatory damages exceed \$1 million." *Lompe*, 818 F.3d at 1073 (citing decisions of the Sixth and Eighth Circuits). These courts hold unconstitutional punitive awards exceeding compensatory awards absent the most reprehensible conduct and some further special justification. Even then, these courts never countenance awards exceeding, at most, five times compensatory damages, and usually less.

Chief among these courts is the Eighth Circuit. Exemplifying its approach, the court recognized that the Constitution capped punitive damages at a ratio of "approximately 1:1" when the plaintiff received a \$4 million compensatory award against a tobacco company in a product liability suit. *Boerner v. Brown & Williamson Tobacco Co.*, 394 F.3d 594, 603 (8th Cir. 2005). The court of appeals explained that this Court has urged "caution" when a compensatory award is "substantial," observing that in such cases, due process may not allow a punitive award larger than the compensatory award. *Id.* at 603. Given the substantial compensatory award, the court thus inquired whether any aspect of the case "justif[ied] a higher ratio, such as the presence of an 'injury that is hard to detect' or a 'particularly egregious act [that] resulted

in only a small amount of economic damages.” *Id.* Finding such factors “absent”—even though the manufacturer had “exhibited a callous disregard for the adverse health consequences of smoking” and “actively misled consumers about the health risks associated with smoking”—it held that a punitive award three times the compensatory award violated due process. *Id.*

The Eighth Circuit has consistently followed that approach, permitting larger multiples only when justified by extraordinary circumstances and still within history-informed bounds. For instance, in a case of “intentional[],” “exceptionally reprehensible,” and “monstrous” conduct, that court rejected a \$30 million punitive award atop \$3 million in compensatory damages. It concluded that “it would be unconstitutional to let the punitive damages—and their 10:1 ratio to compensatory damages—stand.” *Ondrisek v. Hoffman*, 698 F.3d 1020, 1029-30 (8th Cir. 2012). And it held that, given the “large[] compensatory damage award,” “the punitive damages should not exceed a 4:1 ratio to maintain the notions of fundamental fairness and due process.” *Id.* at 1031 (citing *State Farm*, 538 U.S. at 425); see *id.* at 1030 (noting “4.8:1 ratio ... marks this court’s constitutional boundary when multi-million dollar compensatory damages award are involved”).

The Sixth and Tenth Circuits likewise start from this Court’s instruction regarding “substantial” compensatory damages. Citing the Eighth Circuit and this Court’s “clear” direction in *State Farm*, the Sixth Circuit limits punitive awards to compensatory damages when “the compensatory damage award itself is

very large.” *Bridgeport Music, Inc. v. Justin Combs Pub.*, 507 F.3d 470, 488 (6th Cir. 2007); *see also, e.g., Morgan v. N.Y. Life Ins. Co.*, 559 F.3d 425, 442-43 (6th Cir. 2009) (reducing punitive damages award 1.67 times a \$6,000,000 compensatory award). Citing the Sixth and Eighth Circuits, the Tenth Circuit similarly holds that where “compensatory damages exceed \$1 million,” “deviat[ing] upwards from a 1:1 ratio” requires exceptional circumstances—for example, that “the defendant has either intended to cause the substantial compensatory damages or engaged in particularly egregious behavior.” *Lompe*, 818 F.3d at 1073. Applying that rule where a property manager had ignored a recurring “dangerous condition” (a tenant’s carbon monoxide poisoning), the Tenth Circuit concluded that “an award of punitive damages equal to the compensatory award [of] \$1,950,000” was all due process allowed. *Id.* at 1057, 1073 (10th Cir. 2016).

The courts of at least one State follow the same approach. Arizona courts have repeatedly reduced substantial punitive awards to equal compensatory damages—even in cases involving “intentional malice” and “trickery and deceit.” *Sec. Title Agency v. Pope*, 200 P.3d 977, 999-1001 (Ariz. App. 2008); *see also id.* at 1001 (citing Sixth Circuit for support); *Nardelli v. Met. Grp. Prop. & Cas. Ins. Co.*, 277 P.3d 789, 806 (Ariz. App. 2012). But state-court decisions applying *State Farm* in that manner are few and far between.

2. The Ninth and Eleventh Circuits similarly demand special justification for higher multiples, but their default starting point is four times

compensatory damages. Unlike the Eighth Circuit, these courts do not believe special “caution is required,” *Boerner*, 394 F.3d at 603, when punitive damages exceed a substantial compensatory award. To the contrary, the Eleventh Circuit has repeatedly minimized “as dicta” this Court’s instruction to that effect in *State Farm*, which the Sixth, Eighth, and Tenth Circuits have taken to heart. *Cote v. Philip Morris USA, Inc.*, 985 F.3d 840, 849 (11th Cir. 2021) (citing *McGinnis v. Am. Home Mortg. Serv., Inc.*, 901 F.3d 1282, 1290 (11th Cir. 2018)).

The Eleventh Circuit instead begins with the historical touchstone of “double, treble, or quadruple damages,” and deems awards greater “than four times the amount of compensatory damages” suspect. *Id.* at 848-49 (quoting *State Farm*, 538 U.S. at 425). Employing that framework, the Eleventh Circuit affirmed a punitive damages award that was 3.3 times a \$6.25 million compensatory award, reasoning that because the award was “less than four times the amount of compensatory damages,” “the ratio guidepost indicate[d] that [it] is not unconstitutionally excessive.” *Id.* at 849. In unusual cases, that approach has led the Eleventh Circuit to approve significant punitive awards atop substantial compensatory damages, but never anything exceeding ten times a clearly substantial compensatory award. See *Action Marine, Inc. v. Cont’l Carbon Inc.*, 481 F.3d 1302, 1323 (11th Cir. 2007) (affirming \$17.5 million punitive award over \$3.2 million in compensatory damages—a ratio of 5.5:1—against a repeat polluter); *Faulk v. Dimerco Express USA Corp.*, 172 F.4th 844, 865 (11th Cir. 2026) (“[W]e have made clear that a substantial compensatory damages award may

support an even higher punitive damages award when a defendant's misconduct is exceedingly reprehensible.”).

The Ninth Circuit also follows a general rule that “where there are significant economic damages and punitive damages are warranted but behavior is not particularly egregious, a ratio of up to 4 to 1 serves as a good proxy for the limits of constitutionality.” *Planned Parenthood of Colum./Willamette, Inc. v. Am. Coalition of Life Activists*, 422 F.3d 949, 962 (9th Cir. 2005) (citing *State Farm*, 538 U.S. at 425). Conversely, this “general guideline allow[s] for a single-digit ratio greater than 4:1 in cases involving ‘significant economic damages and more egregious behavior.’” *Planned Parenthood*, 422 F.3d at 962. Applying that rule, the Ninth Circuit held that a 3.8:1 ratio marked the constitutional limit where a defendant “downplayed and ignored calls to test” an allegedly carcinogenic product, conduct the court viewed as “reprehensible” but “not ‘particularly egregious.’” *Hardeman v. Monsanto Co.*, 997 F.3d 941, 972-76 (9th Cir. 2021) (“little trouble holding that the jury’s 14.2 to 1 ratio violated due process”); *but see id.* at 981-82 (N.R. Smith, J., dissenting) (citing *Boerner*, 394 F.3d at 603) (given “relatively low reprehensibility” and “substantial past and future noneconomic damages,” “punitive damages should be reduced to a 1:1 ratio”).

3. Despite their differences, the federal courts of appeals generally restrict punitive awards in cases involving million-dollar-plus awards to at most quadruple compensatory damages. *See Lompe*, 818 F.3d at 1090 (appendix to opinion of Bacharach, J.,

concurring in part and dissenting in part). The courts of several States have an entirely different conception of the constitutional limits. These courts treat this Court’s reference to single-digit ratios as the only real limit, and so reflexively approve punitive awards far exceeding anything that would pass muster in federal court.

The Supreme Judicial Court of Massachusetts recently stated its rule in stark terms: any punitive damages award “within [a] single-digit ratio” is “generally treated as constitutional.” *Fontaine v. Philip Morris USA Inc.*, 277 N.E.3d 585, 604 (Mass. 2026) (affirming punitive award “seven times” \$8 million compensatory award). That rule adheres to the approach that court announced in *Aleo v. SLB Toys USA, Inc.*, which affirmed an \$18 million punitive award against a retailer that sold a defective pool slide—an amount roughly seven times the \$2.64 million compensatory award. 995 N.E.2d 740, 756 (Mass. 2013). Although the court acknowledged the retailer’s conduct was “only grossly negligent”—“the least blameworthy conduct triggering punitive liability”—“rather than malicious or wilful,” it blessed the award because it was “within the single digit range.” *Id.* (quoting *Exxon*, 554 U.S. at 512).

The Supreme Court of Pennsylvania takes a similarly lax approach. It recently reduced this Court’s “concern in *State Farm*” to nothing more than awards exceeding a “single-digit ratio.” *Bert Co. v. Turk*, 298 A.3d 44, 77 (Pa. 2023). Indeed, it has announced that even where a ratio “exceeds a single-digit ratio to a ‘significant degree,’” that “may trigger judicial suspicion,” but “not a presumption of unconstitutionality.”

Id. at 82. Taking the hint, the Commonwealth’s intermediate appellate court recently rubber-stamped a punitive award six times a solely non-economic \$25 million compensatory award. *Caranci v. Monsanto Co.*, 338 A.3d 151, 174 (Pa. Super. 2025). Its lone justification was that “single-digit multipliers ... are more likely to comport with due process than multiple-digit multipliers”—no special circumstances needed. *Id.* (quoting *State Farm*, 538 U.S. at 410).

The highest courts of several other States likewise greenlight most any punitive award short of ten times compensatory damages. For instance, the Mississippi Supreme Court has concluded—based on this Court’s denial of certiorari in *State Farm* after the Utah Supreme Court imposed a 9:1 ratio on remand—that awards under 10:1 are virtually always allowed. *United Servs. Auto Ass’n v. Est. of Minor*, 418 So. 3d 1173, 1187 (Miss. 2024) (affirming \$10 million punitive award atop \$1.5 million compensatory award). The Tennessee Supreme Court likewise allowed a \$13.3 million punitive award atop a \$2.5 million compensatory award, deeming the ratio “not clearly impermissible because it does not exceed a single digit ratio.” *Flax v. DaimlerChrysler Corp.*, 272 S.W.3d 521, 539 (Tenn. 2008). And the Montana Supreme Court has reasoned that when a compensatory award is “substantial,” a “single-digit ratio, although not compulsory, is more likely to comport with due process.” *Seltzer v. Morton*, 154 P.3d 561, 613 (Mont. 2007) (affirming \$9.9 million punitive award in addition to \$1.1 million compensatory award).

4. And then there is Missouri. Following the Missouri Supreme Court’s emphasis on the primacy of the

“jury’s discretion” to ignore “the usual single-digit ratio,” *Lewellen*, 441 S.W.3d at 148, the Missouri Court of Appeals has repeatedly affirmed gargantuan punitive damages awards atop undeniably substantial compensatory awards—each time without seriously grappling with this Court’s guidance in *State Farm*, and each time without provoking any interest from the Missouri Supreme Court to course correct.

The Missouri Court of Appeals here affirmed a punitive award *28 times* a large compensatory damages award in a routine product liability case, based on nothing more than the lowest level of culpability required for any punitive damages at all, plus the defendant’s net worth. The court did not even mention *State Farm*’s admonition that “few awards” significantly exceeding a single-digit ratio will satisfy due process, nor this Court’s guidance that historical practice indicates that punitive awards should not be greater than “double, treble, or quadruple” damages.

This case marks the nadir of a longstanding trend. In *Ingham v. Johnson & Johnson*, for example, the Missouri Court of Appeals allowed more than \$700 million in punitive damages against a single defendant—an amount reflecting, by the most conservative calculation in that complex, multiparty case, nearly six times a 9-digit compensatory damages award. 608 S.W.3d 663, 722 (Mo. App. 2020). Despite acknowledging contrary authority from the Sixth, Eighth, and Tenth Circuits, the court deemed that ratio “well within the limits of punitive damages consistently upheld.” *Id.* And its justification turned simply on the fact that the defendants were “large, multi-billion dollar corporations.” *Id.* at 723; *see also, e.g., Gill v.*

Abbott Labs., Inc., 2026 WL 1217659 (Mo. App. May 5, 2026) (Mem.) (affirming final judgment awarding plaintiff \$95 million in compensatory damages and \$400 million in punitive damages).

Similarly, in another product liability case, the Missouri Court of Appeals affirmed an award that was—depending on the calculation method—either twelve or seven times a \$1.5 million compensatory award. *Poage v. Crane Co.*, 523 S.W.3d 496, 523 (Mo. App. 2017). The court’s justification was just the broad-strokes impression that “[h]igh-ratio punitive-damage awards” are “necessary” to deter “large corporation[s].” *Id.* (citations omitted). And in yet another case, the same court upheld an “11 to 1 ratio,” “even considering the substantial compensatory damages awarded.” *Mansfield v. Horner*, 443 S.W.3d 627, 646 (Mo. App. 2014).¹

This conflict in authority is not abstract; it dictated the outcome of this case, and it will not resolve on its own.

Had the trial in this case taken place up the road at the U.S. District Court for the Eastern District of Missouri, the \$56 million punitive award doubtless would have failed appellate review, and it would almost certainly have been reduced to \$2 million. The

¹ Only a handful of other courts have affirmed comparable awards. See *Bullock v. Philip Morris USA, Inc.*, 198 Cal.App.4th 543, 558-75 (2011) (affirming \$13.8 million award atop \$850,000); but see *id.* at 574-81 (Kitching, J., dissenting); see also *Williams v. Philip Morris USA*, 176 P.3d 1255, 1257 (Or. 2008) (reaffirming \$79.5 million award atop \$821,485).

Missouri Court of Appeals found the award consistent with due process because Givaudan “exhibited a conscious disregard for the health” of those “who came into contact with its products,” was “unwilling to modify its business practice,” and “conceal[ed] ... information.” Pet.App.19a-20a. The Eighth Circuit used almost identical language to describe the misconduct in *Boerner* before reducing the punitive award to match compensatory damages. See *supra* pp.10-11. Indeed, *Boerner* involved evidence of especially reprehensible conduct absent here: the manufacturer made false, affirmative representations that smoking was safe, despite knowing otherwise. 394 F.3d at 602.

The Sixth and Tenth Circuits also likely would have reduced the award here to match compensatory damages. The Ninth and Eleventh Circuits, for their part, would also have found the punitive award unconstitutional, even if not reducing it as much. The Massachusetts Supreme Judicial Court, among others, would likely have treated \$18 million as the constitutional maximum. And in the Supreme Court of Pennsylvania, the 28:1 ratio would at least have raised a “judicial eyebrow.” *Bert*, 298 A.3d at 82. Only in Missouri is the rule that in issuing such an award, a jury acts “within its discretion.” *Lewellen*, 441 S.W.3d at 148 (quoting *Overbey v. Franklin*, 361 S.W.3d 364, 374 (Mo. 2012)).

It is untenable for the same Due Process Clause of the same Constitution to mean so many different things, with sharp dividing lines among federal courts, an even greater gulf between federal and state courts, and one State all on its own. Nor is there any

meaningful possibility the confusion will resolve itself. Take just the federal-state divide within Missouri. The Eighth Circuit has repeatedly rejected punitive awards bearing much lower ratios than what the Missouri Court of Appeals approved here. *Supra* pp.10-11. Yet the Missouri Court of Appeals has now affirmed ratios exceeding or approaching double digits in a half-dozen cases with substantial compensatory awards. And since these courts are following the Missouri Supreme Court's instructions, it has repeatedly denied discretionary review. Even more strikingly, when the legislature capped punitive damages at five times the judgment, Mo. Rev. Stat. §510.265, the Missouri Supreme Court struck much of the law down, *Lewellen*, 441 S.W.3d at 142-45—foreclosing any avenue for change without this Court's intervention.

II. The Decision Below Flouts This Court's Precedents and the Constitution's Limits on Arbitrary and Excessive Punitive Awards.

Not only is the decision below tangled in a thicket of lower court divisions, but it is also just plain wrong. The Missouri Court of Appeals blew past Givaudan's argument that punitive damages should not exceed the compensatory award. And rather than consider whether the jury was limited to effectively doubling, tripling, or quadrupling its compensatory damages award, the court approved an award *28 times* compensatory damages in this mine-run product liability case. One could scour this Court's precedent and never find *any* indication that such an award is near the constitutional ballpark. And it is certainly out of bounds in this case, where the Missouri court

identified no especially “reprehensible” conduct beyond what is necessary, in any product liability case, to trigger punitive damages. Givaudan did not, for example, perform a fatal botched home surgery, *see Mansfield*, 443 S.W.3d at 642; nor did it repeatedly beat teenage victims until they “vomited” and “blacked out,” *Ondrisek*, 698 F.3d at 1029-30. Yet the ratio of punitive to compensatory damages the court upheld here outstrips the ratios in cases involving such outrageous conduct.

In allowing this punitive award to stand, the Missouri Court of Appeals failed to honor the Constitution’s limits and this Court’s instructions. Accordingly, although Givaudan primarily requests that the Court grant plenary review and set the case for argument, the Court could also summarily reverse the Missouri Court of Appeals’ judgment affirming the punitive damages award.

A. Vindicating Principles of Fair Notice, the Due Process Clause Bars Arbitrary and Excessive Punitive Awards.

Gore and *State Farm* are, of course, precedents of this Court. That is reason enough to ensure state and lower federal courts faithfully follow them: “As a matter of vertical *stare decisis*, the lower courts have no choice but to follow [this Court’s] lead.” *Trump v. Cook*, 146 S.Ct. 2234, 2253 (2026); *see also NIH v. Am. Pub. Health Ass’n*, 145 S.Ct. 2658, 2663 (2025) (Gorsuch, J., concurring in part and dissenting in part) (“Lower court judges may sometimes disagree with this Court’s decisions, but they are never free to defy

them.”). But that is not the only reason. Those decisions also vindicate basic principles of fair notice foundational to the Court’s due process cases. And in doing so, they build on a centuries-long legal tradition indicating that punishment exceeding the markers the Court has identified is unlikely to serve legitimate purposes and thus demands special justification.

The requirement of fair notice is central to this Court’s due process jurisprudence across contexts. Indeed, “fair notice” is “[p]erhaps the most basic of due process’s customary protections.” *Sessions v. Dimaya*, 584 U.S. 148, 177 (2018) (Gorsuch, J., concurring in part and concurring in judgment). In the context of vagueness challenges, for instance, “the ‘first essential of due process of law’” is that persons and entities receive “fair notice of what the law demands of them,” *United States v. Davis*, 588 U.S. 445, 451 (2019) (quoting *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926)), enabling them to “act accordingly” and thus preventing “arbitrary or discriminatory” enforcement, *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). In the personal jurisdiction context, too, a would-be defendant must receive “‘fair warning’ ... that ‘a particular activity may subject [it] to ... jurisdiction’”; otherwise, it cannot “‘structure [its] primary conduct’ to lessen or avoid exposure to a given State’s courts.” *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 360 (2021) (alteration in original) (first quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985); then quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 360 (1980)). And in the punitive-damages context itself, due process bars States from punishing defendants for harms allegedly inflicted upon nonparties, which

denies them fair notice and the “opportunity to defend” themselves and invites arbitrary enforcement. *Philip Morris USA v. Williams*, 549 U.S. 346, 353-54 (2007).

The constitutional limits on arbitrary and excessive punitive awards this Court identified in *Gore* and *State Farm* vindicate the same principle, by affording defendants “fair notice not only of the conduct that will subject [one] to punishment, but also of the severity of the penalty that a State may impose.” *State Farm*, 538 U.S. at 417 (quoting *Gore*, 517 U.S. at 574). Such notice provides the predictability and consistency necessary for defendants to “order their behavior” accordingly. *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 59 (1991) (O’Connor, J., dissenting); cf. *Ford Motor*, 592 U.S. at 361. For businesses, for example, it facilitates informed decisions about where to operate and what precautionary measures to implement. And because a defendant cannot reasonably be said to have fair notice of punishment serving no legitimate purpose, it also guards against punishment so irrational that it is the product “not of law and legal processes, but of arbitrary coercion.” *Gore*, 517 U.S. at 587 (Breyer, J., concurring); see also *Fox*, 567 U.S. at 253. As the Court explained in *State Farm*, “[t]o the extent an award is grossly excessive, it furthers no legitimate purpose and constitutes an arbitrary deprivation of property” that violates due process. 538 U.S. at 417.

The specific contours of that constitutional prohibition, as laid out in *Gore* and *State Farm*, are firmly grounded in history. In particular, the quantitative markers the Court identified in those cases reflect the

“principle that exemplary damages must bear a ‘reasonable relationship’ to compensatory damages,” which “has a long pedigree,” *Gore*, 517 U.S. at 580 & n.32 (collecting cases). Indeed, that pedigree “date[s] back over 700 years.” *State Farm*, 538 U.S. at 425. “The modern Anglo-American doctrine of punitive damages dates back at least to 1763.” *Exxon*, 554 U.S. at 490. But its roots run much deeper: “legal codes from ancient times through the Middle Ages ... called for multiple damages for certain especially harmful acts.” *Id.* at 491; see also D. Owen, *A Punitive Damages Overview: Functions, Problems and Reform*, 39 Vill. L. Rev. 363, 368 (1994) (the “early ancestor” of punitive damages “was the doctrine of multiple damages”). And as the Court observed in *Gore*, “[s]ome 65 different enactments” in England “between 1275 and 1753 provided for double, treble, or quadruple damages” for serious wrongs. 517 U.S. at 581 & n.33; see also *State Farm*, 538 U.S. at 425 (referring to this “long legislative history”). That tradition crossed the Atlantic with the colonists and carries “forward to today,” as multiplied damages statutes continue to dot the federal and state statute books. *State Farm*, 538 U.S. at 425.²

² See, e.g., 40 U.S.C. §123(a)(1) (double damages plus \$2,000 for procurement fraud); 31 U.S.C. §3729(a)(1)-(2) (double to treble damages under the False Claims Act); 42 Pa. Cons. Stat. §8311(a)(2)(i)-(iii) (single damages for non-negligent timber cutting; double for negligent; treble for deliberate); Fla. Stat. §545.11 (double damages for anticompetitive conduct relating to automobile financing); 15 U.S.C. §15(a) (treble damages for antitrust violations); 18 U.S.C. §1964(c) (treble damages for civil RICO violations); 35 U.S.C. §284 (up to treble damages for patent infringement); Ind. Code Ann. §24-1-3-4(a) (treble damages for state antitrust violations); Okla. Stat. Ann. tit. 47, §1506(C) (treble damages for injuries resulting from operation of automobile

This lengthy tradition provides ample grounding for the quantitative markers the Court has recognized. Across the better part of a millennium, Anglo-American legislatures have enacted multiplied damages statutes to advance the same punitive and deterrent functions as punitive damages. *See id.*; *Cooper Indus., Inc. v. Leatherman Tool Grp., Inc.*, 532 U.S. 424, 432 (2001). Yet in doing so, they have consistently declined to stray beyond authorizing quadruple damages (*i.e.*, one part compensatory, three parts punitive), reflecting a durable consensus that more is rarely, if ever, necessary or appropriate to punish and deter. And because compensatory damages often “already contain [a] punitive element,” namely damages for non-economic harms like emotional distress, *State Farm*, 538 U.S. at 426, this tradition also supports a ratio at the lower end of the historic multiplied damages range—*i.e.*, the 1:1 ratio *State Farm* cited—when compensatory awards are “substantial” and thus already do much to punish and deter. *Id.* at 425; *see Exxon*, 554 U.S. at 511.

Nor is there any “historic practice” supporting massive punitive awards into the millions, tens of millions, or beyond—*i.e.*, the sort most likely to yield ratios far exceeding the default outer limits the Court’s precedents highlight. *Gore*, 517 U.S. at 594 (Breyer, J., concurring). The English exemplary damages awards sometimes held up as historical analogues of modern punitive awards amounted to, at most, around \$150,000 in 1996 dollars (about \$320,000 today). *See id.* at 594-95. Indeed, even into

“chop shops”); Mo. Rev. Stat. §49.490 (fourfold damages for waste or trespass on county property).

the 1960s, “punitive damages awards were ‘rarely assessed’ and usually ‘small in amount.’” *TXO Prod. Corp. v. All. Res. Corp.*, 509 U.S. 443, 500 (1993) (O’Connor, J., dissenting) (quoting D. Ellis, *Fairness and Efficiency in the Law of Punitive Damages*, 56 S. Cal. L. Rev. 1, 2 (1982)); *see also* J. Jeffries, *A Comment on the Constitutionality of Punitive Damages*, 72 Va. L. Rev. 139, 141-47 (1986).

Once enormous punitive awards began emerging in the mid-twentieth century, so did laws capping them. Such laws are now common.³ As this Court documented nearly two decades ago, state caps generally take the “form of absolute monetary caps,” “a maximum ratio of punitive to compensatory damages,” or “some combination of the two.” *Exxon*, 554 U.S. at 496.⁴ And the maximum ratios permitted under these caps range “from 5:1 to 1:1,” roughly consistent with the ancient tradition of multiplied damages statutes out of which punitive damages arose. *Exxon*, 554 U.S. at 496.

³ *See, e.g.*, Ala. Code §6-11-21; Alaska Stat. §09.17.020(f); Ark. Code Ann. §16-55-208; Conn. Gen. Stat. §52-240b; Fla. Stat. §768.73(1)(a); Idaho Code §6-1604(3); Nev. Rev. Stat. §42.005(1); N.J. Stat. Ann. §2A:15-5.14(b); N.C. Gen. Stat. §1D-25(b); N.D. Cent. Code §32-03.2-11(4); Ohio Rev. Code Ann. §2315.21(D)(2)(a); S.C. Code Ann. §15-32-530(A); Tenn. Code Ann. §29-39-104(a)(5); Tex. Civ. Prac. & Rem. Code §41.008; Va. Code Ann. §8.01-38.1; W. Va. Code §55-7-29(c); Wis. Stat. §895.043(6).

⁴ Certain state caps also take into account the defendant’s financial status, but none would permit the result in this case. *See, e.g.*, Kan. Stat. Ann. §60-3701(e)-(f) (generally lesser of annual gross income or \$5 million, or in certain circumstances 1.5 times wrongful gain); Mont. Code Ann. §27-1-220(3) (lesser of 3% of defendant’s net worth or \$10 million, unless class action).

In short, the constitutional boundaries the Court surveyed in *Gore* and *State Farm* rest on bedrock due process principles and find ample support in a deep-rooted and durable legal tradition that continues today. The markers this Court has drawn from that tradition—beyond which awards may not go without special and exceptional justifications—guard against the arbitrary deprivations of property without fair notice that the Due Process Clause forbids and instead ensure the “fairly consistent results in cases with similar facts” the rule of law demands. *Id.* at 500; *see also id.* at 503-09.

B. The Decision Below Disregarded This Court’s Guidance in Upholding a Flatly Unconstitutional 28:1 Award.

Here, a non-unanimous jury returned a punitive award against Givaudan exceeding \$56 million—more than 28 times respondent’s compensatory award of \$2 million, and 37 times the portion of the compensatory award Givaudan must pay. Assuming an award so large is ever constitutional, it cannot be without exceedingly special justification. Yet the Missouri Court of Appeals did not find or require one, and none exists. The court instead effectively abdicated its responsibility to scrutinize the award to ensure it is “reasonable and proportionate to the amount of harm to the plaintiff and to the general damages recovered.” *State Farm*, 538 U.S. at 426.

Had the Missouri Court of Appeals hewed to this Court’s precedent and to historical tradition, it would have first identified the relevant presumptive

constitutional limit: that is, whether a 1:1 or 4:1 ratio was the starting point. Because the compensatory award was \$2 million—an award covering non-economic damages and substantial enough to incentivize litigation—the lower end of that range, a 1:1 ratio, should have been the beginning point.

After identifying the presumptive limit, the Missouri Court of Appeals should have inquired whether any special circumstances justify exceeding that limit. But the lower court did not even ask that question. The court began by concluding that “Givaudan exhibited a conscious disregard for ... health and safety.” Pet.App.19a. Givaudan disagrees, but that conclusion is also legally insufficient. It reflects Missouri’s standard for making a submissible case for *any* punitive damages, *see* Pet.App.16a-17a—not the federal constitutional standard for exceptional circumstances justifying an award above this Court’s historically-grounded markers. If those two standards were the same, the exceptional would become the routine. The Missouri Court of Appeals did not purport to find the kind of uniquely egregious conduct that might justify an award above compensatory damages, let alone miles above.

Although the court attempted to explain why an award exceeding compensatory damages was warranted, it failed to provide any account for the next 27 multiples. *See* Pet.App.20a-22a. It did not mention this Court’s guidance that “few” awards exceeding single-digit ratios will comply with due process; that a 4:1 ratio is already constitutionally suspect; and that for centuries, legislatures have capped multiple-damages statutes at “quadruple” damages (*i.e.*, 3:1 ratios).

State Farm, 538 U.S. at 425. Even if a punitive award exceeding compensatory damages were justified, that would not justify exceeding compensatory damages ten, four, or even three times over, much less *28 times* over. The court’s decision to reflexively hold the award within a jury’s discretion, Pet.App.21a-22a (citing *Lewellen*, 441 S.W.3d at 148), reflects anything but the “independent” *de novo* appellate review the Due Process Clause demands, *Cooper Indus.*, 532 U.S. at 436.

Moreover, to the extent the court attempted to supply reasons for exceeding compensatory damages, it veered badly off course. *First*, the court drew a semantic distinction between “significant” and “substantial” compensatory damages. Pet.App.20a-21a. The court accepted that respondent’s \$2 million compensatory award was “significant,” but declared it “fair to say” it was not “substantial.” Pet.App.20a-21a. The court further dwelled on the non sequitur that “the compensatory damages were not excessive.” Pet.App.20a. And it posited that “the seriousness of Graham’s injuries, and his compensation for them, does not mitigate Givaudan’s punitive damage liability.” Pet.App.22a.

Under this Court’s precedents, all of this is beside the point. Compensatory damages are just that: *compensatory*. As *State Farm* instructs, “[i]t should be presumed a plaintiff has been made whole for his injuries by compensatory damages” in the amount the factfinder awards. 538 U.S. at 419. A non-excessive compensatory award is a foregone conclusion in every case—an *excessive* damages verdict would be set aside before the due process inquiry even begins. And ultimately, the reason to allow greater punitive damages

“when the value of [the] injury and the corresponding compensatory award are small” is ensuring adequate “incentives to sue” and thus meaningful deterrence—not compensating the plaintiff. *Exxon*, 554 U.S. at 494. The Missouri Court of Appeals’ musings about large awards not “mitigating” the need for punishment turns upside down this Court’s recognition that smaller damages justify greater ratios—and vice versa. *State Farm*, 538 U.S. at 425.

In contrast to the decision here, most courts properly approach substantiality by looking at the amount of the compensatory award: \$2 million is substantial, full stop. See, e.g., *Williams v. ConAgra Poultry Co.*, 378 F.3d 790, 799 (8th Cir. 2004) (invoking substantiality because “[s]ix hundred thousand dollars is a lot of money”); *Seltzer*, 154 P.3d at 613 (“The compensatory damages of \$1.1 million awarded in this case can fairly be characterized as ‘substantial,’ as was the compensatory award of \$1 million in *Campbell*.”). The notion that a “significant” \$2 million award could “fair[ly]” be deemed “not substantial” simply because it is “not excessive,” Pet.App.20a-21a, is plainly wrong.

Second, the court pointed to Givaudan’s net worth. Indeed, that was the only new fact respondent introduced during the trial’s punitive damages phase. R.3505-06. And the amount nine jurors imposed as punitive damages was *exactly* 4% of that net worth. The Missouri Court of Appeals thought it “self-evident” that net worth was “a relevant consideration.” Pet.App.22a. Perhaps—when it is truly just one consideration alongside others. *State Farm*, 538 U.S. at 427-28. But it appears to have been the *only* driving

factor here. That is flatly impermissible under this Court’s precedents: because wealth is “an open-ended basis for inflating awards” beyond constitutional limits, *id.* (internal quotation marks omitted) (quoting *Gore*, 517 U.S. at 591 (Breyer, J., concurring)), it “cannot justify an otherwise unconstitutional punitive damages award,” *id.* at 427.

To make clear that judges and juries do not enjoy limitless power to impose arbitrary and excessive punitive awards, and to ensure that the precedents of this Court cannot be rendered meaningless in some jurisdictions, this Court should grant plenary review. Alternatively, given the egregious errors—the latest in a long line of similar errors by the Missouri Court of Appeals which the Missouri Supreme Court refuses to correct, *see supra* pp.16-18, 20—the Court should summarily reverse.

III. This Case Is an Ideal Vehicle to Address a Serious and Recurring Problem.

A. The Question Presented Is Exceptionally Important.

“Punitive damages pose an acute danger of arbitrary deprivation of property.” *Honda Motor Co. v. Oberg*, 512 U.S. 415, 432 (1994). For that reason, this Court has emphasized the “fundamental due process concerns” raised by punitive awards, including the “risks of arbitrariness, uncertainty, and lack of notice.” *Philip Morris*, 549 U.S. at 354. The problem is not merely that different juries reach divergent outcomes. It is that constitutional limits on punitive

damages become meaningless when materially identical conduct can subject a defendant to radically different punishments based solely on the plaintiff's chosen forum. A defendant who may face punitive damages only equal to the harm he has caused in a federal court in Kansas City, Kansas, and 28 times that amount in a state court in Kansas City, Missouri, has no meaningful notice of the potential penalties governing his conduct. Such a system licenses the arbitrary deprivation of property the Due Process Clause forbids.

Excessive awards also seriously harm not just business, but consumers. Punitive damages are both commonly awarded and, in product liability cases, commonly quite large. In 2005, for instance, punitive damages were awarded in 700 state-court trials involving tort and contract disputes, equal to 30% of plaintiff verdicts where punitive damages were sought. T. Cohen & K. Harbacek, *Special Report: Punitive Damages Awards in State Courts, 2005*, Bureau of Just. Stat. (Mar. 2011), <https://bjs.ojp.gov/sites/bjs/files/media/document/pdasc05.pdf> [<https://perma.cc/SBD3-WCYQ>]. A survey of 569 awards in product liability cases, spanning 1991 to 2024, found the inflation-adjusted median award was \$11,675,372—an (unadjusted) increase of 18 times over a similar survey spanning 1965 to 1990. M. Rustad, *Punitive Damages in Product Liability Revisited (1991-2024)*, 24 U.N.H. L. Rev. 165, 193 (2025). The availability of such enormous awards inflates the settlement value of all litigation, which occurs in the shadow of potential trial outcomes. These excessive litigation burdens raise the cost of living: the typical American household loses \$4,000 a

year because of runaway tort litigation. See U.S. Chamber of Com. Inst. for Legal Reform, *Tort Costs in America: An Empirical Analysis of Costs and Compensation of the U.S. Tort System* 8 (Nov. 2024), https://instituteforlegalreform.com/wp-content/uploads/2024/11/2024_ILR_USTorts-CostStudy-FINAL.pdf [<https://perma.cc/CLJ4-Q3LE>].

The availability of enormous verdicts in some jurisdictions, but not others, has also distorted the legal system. Missouri, for example, has become a litigation magnet. Advised by lawyers attuned to the prospect of multiplying their recoveries by five, ten, or even 28 times, tort plaintiffs with thin connections to Missouri invoke the jurisdiction of its courts. See, e.g., *Ingham*, 608 S.W.3d at 690 (17 of 22 plaintiffs in consolidated trial were non-residents). It is even a revenue-raiser for Missouri, which collects half of the net punitive awards after attorney’s fees. Mo. Rev. Stat. §537.675. Small wonder that only the Nation’s three largest States have issued more product liability punitive awards than Missouri in recent decades. Rustad, *supra*, at 188-89. And the split between the Missouri courts and the Eighth Circuit presents an especially intolerable invitation for federal-state forum shopping and the sharp litigation tactics that often accompany it: improper joinder, snap removals, and attendant remand fights. See *Hannah v. Plumer*, 380 U.S. 460, 468 (1965) (emphasizing “discouragement of forum-shopping and avoidance of inequitable administration of the laws”); see also, e.g., *Ingham v. Johnson & Johnson*, 2017 WL 3034696 (E.D. Mo. July

18, 2017) (rejecting misjoinder argument and remanding).⁵

Many States, recognizing the problem, have capped punitive awards. *See supra* p.26 & nn.3-4. But although these solutions reduce variability within States, they cannot resolve variability among them. Indeed, they exacerbate it by fostering a two-track system in which some States—careening untethered from both legislative caps and this Court’s guardrails—dole out the overwhelming majority of constitutionally suspect punitive awards. And given the judicial closure of the political process to punitive damages reform in certain States, including Missouri, *see supra* p.20, only this Court’s intervention will trigger a course correction.

B. This Run-of-the-Mill Product Liability Case Is the Optimal Vehicle for Reaffirming the Constitutional Limits on Arbitrary and Excessive Punitive Awards.

This case is a prime vehicle for revitalizing and ensuring consistent application of the important constitutional limits on arbitrary and excessive punitive awards. It is a routine product liability case, free from the complications that have marred recent petitions presenting similar issues.

⁵ Had this case initially been brought as it was ultimately tried—between respondent (a citizen of Missouri) and Givaudan (a citizen of Delaware and Ohio)—it doubtless would have been removed to a district court within the Eighth Circuit. *See* 28 U.S.C. §1441.

The recent petitions this Court has denied that raised punitive damages issues have involved awards with ratios below or near the tenfold marker this Court identified as constitutionally salient in *State Farm*. See Pet. for Cert. at 5, *Tata Consultancy Servs. Ltd. v. Comput. Scis. Corp.*, No. 25-1107 (Fifth Circuit) (2:1); Pet. for Cert. at 18, *Monsanto Co. v. Anderson*, No. 25-1042 (Missouri Court of Appeals) (9:1); Pet. for Cert. at 11, *Monsanto Co. v. Pilliod*, No. 21-1272 (California Court of Appeal) (4:1); Pet. for Cert. at 4-5, *Epic Sys. Corp. v. Tata Consultancy Servs. Ltd.*, No. 20-1426 (Seventh Circuit) (2:1, reduced by Seventh Circuit to 1:1); Pet. for Cert. at 8-10, *Johnson & Johnson v. Ingham*, No. 20-1223 (Missouri Court of Appeals) (11.5:1 and 2.1:1 or 5.7:1 and 1.8:1, depending on calculation method); Pet. for Cert. at 4, *TransUnion LLC v. Ramirez*, No. 20-297 (Ninth Circuit) (4:1); Pet. for Cert. at 5, *Crane Co. v. Poage*, No. 17-900 (Missouri Court of Appeals) (12:1). Those petitions arguably presented edge cases: awards with similar ratios could conceivably be constitutional under the Court's precedents.

Not here. The \$56 million-plus award the Missouri courts upheld—28 times a substantial compensatory award of \$2 million—dwarfs anything recently put before this Court. And even if some set of facts could justify surpassing historically justified ratios, it is not these. Givaudan was held liable for a widely used product it sold to downstream food manufacturers, which the jury found harmed respondent through workplace exposure. That is an ordinary product liability case of the sort courts around the country routinely confront, and a close one at that, as the non-unanimous verdict reflects. See *supra* p.6.

Nor must the Court sort through any ancillary questions to reach the constitutional issue. As this case comes to the Court, Givaudan raises only the question whether the punitive award violates the Constitution. Unlike awards challenged in other recent petitions, the award here was not based on a statute reflecting legislative judgments about appropriate punishment; the underlying damages are compensatory rather than statutory; and there is no fight about how to calculate the ratio, which outpaces single digits by several multiples no matter how calculated. *See, e.g.*, Pet. for Cert. at 1-2, 4, *Tata Consultancy*, No. 25-1107 (punitive damages statutorily authorized and capped at 2:1; underlying damages based solely on unjust enrichment, not compensable harm); Pet. for Cert. at i, *Anderson*, No. 25-1042 (plaintiffs' claims preempted, as this Court ultimately held in then-pending *Monsanto Co. v. Durnell*, 609 U.S. 371 (2026)); Pet. for Cert. at i, *Pilliod*, No. 21-1272 (4:1) (same); Pet. for Cert. at i, *Epic Sys.*, No. 20-1426 (punitive damages statutorily capped at 2:1); Pet. for Cert. at i, 10, 27-28, *Ingham*, No. 20-1223 (questions regarding constitutionality of consolidated trial process, personal jurisdiction, and calculation of punitive ratio in case of joint-and-several liability); Pet. for Cert. at i, *TransUnion*, No. 20-297 (Article III standing issue, as the Court ultimately held, *see TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021)); Pet. for Cert. at i, 17-21, *Crane*, No. 17-900 (multiple suits stemming from same course of conduct).

Here, the *only* question presented is whether courts, like the Missouri Court of Appeals, remain bound by this Court's due process precedents. If this Court's constitutional guideposts are to remain

meaningful safeguards against the arbitrary deprivation of property without fair notice or historical grounding, rather than merely hortatory suggestions, plenary review or summary reversal is warranted.

CONCLUSION

The Court should grant the petition and set the case for argument or, alternatively, summarily reverse the Missouri Court of Appeals' ruling affirming the punitive damages award.

Respectfully submitted,

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