No. 26-468

IN THE

Supreme Court of the United States

GIVAUDAN FLAVORS CORPORATION,

Petitioner,

v.

JAMES J. GRAHAM,

Respondent.

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

BRIEF OF ATLANTIC LEGAL FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

LAWRENCE S. EBNER
Counsel of Record
ATLANTIC LEGAL FOUNDATION
1701 Pennsylvania Avenue, NW
Washington, DC 20006
(202) 729-6337
lawrence.ebner@atlanticlegal.org

SARAH ELIZABETH SPENCER
ATLANTIC LEGAL FOUNDATION
215 S. State Street, Suite 700
Salt Lake City, UT 84111
(801) 346-8120
sarah.spencer@atlanticlegal.org

Counsel for Amicus Curiae

121369

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INTEREST OF THE *AMICUS CURIAE*[1]

Established in 1977, the Atlantic Legal Foundation (ALF) is a national, nonprofit, nonpartisan, public interest law firm. ALF's mission is to advance the rule of law and civil justice by advocating for individual liberty, free enterprise, property rights, limited and responsible government, sound science in judicial and regulatory proceedings, and effective education, including parental rights and school choice. With the benefit of guidance from the distinguished legal scholars, former government officials, corporate legal officers, private practitioners, business executives, and prominent scientists who serve on its Board of Directors and Advisory Council, ALF pursues its mission by participating as *amicus curiae* in carefully selected appeals before the Supreme Court, federal courts of appeals, and state supreme courts. *See* atlanticlegal.org.

* * *

ALF has a longstanding interest in the constitutional limits on punitive damages. Those limits protect free enterprise without excusing harmful conduct. They require a lawful measure of punishment, even when the conduct deserves condemnation. The question is not merely whether a

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[1] Counsel of record for all parties received timely notice of the intent to file this brief, as required by Rule 37.2. No counsel for a party authored this brief in whole or part, and no party, counsel for a party, or person other than the *amicus curiae* and its counsel made a monetary contribution intended to fund preparation or submission of this brief.

defendant should be punished. It is whether the amount imposed is constitutionally permissible.

The petition explains why a $56 million punitive damages award on a $2 million compensatory verdict cannot be squared with this Court's precedents. In this brief ALF addresses how the court below somehow reached that result while quoting those precedents. Its analysis substituted state-law measures of jury discretion, substantiality, wealth, and comparable penalties for an independent judgment about proportionality. This brief explains why those substitutions not only are impermissible, but also matter beyond this case.

SUMMARY OF ARGUMENT

This Court should grant review to make clear that a court reviewing a punitive damages award must independently justify the amount of punishment, not merely the decision to punish. A reason to punish is not a measure of punishment. *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408, 425–26 (2003), requires a punitive damages award to be reasonable and proportionate to the harm and the compensatory recovery. The court below—a Missouri intermediate state appellate court—sustained a $56 million punitive damages award on a $2 million compensatory verdict without independently justifying that disparity. The seriousness of the conduct does not answer the question of amount.

Missouri's statutory cap does not apply to the common-law claims here. Pet.App.23a–25a. State-law remittitur remains available, but it does not displace the federal constitutional limit. Mo. Rev. Stat.

§ 510.263.6; *Cooper Indus., Inc. v. Leatherman Tool Grp., Inc.*, 532 U.S. 424, 433 (2001). The Missouri Supreme Court denied Givaudan's application for transfer. Pet.App.37a. The lower state court panel therefore was required to perform the constitutional work. That panel failed to conduct the independent constitutional review that *Cooper* requires.

Instead, the panel recited this Court's punitive damages guideposts and then displaced them in four ways: (i) it invoked a jury's discretion to exceed single digits without independently justifying the ratio; (ii) it measured whether the compensatory award was substantial against other Missouri verdicts; (iii) it treated net worth as the scale of the penalty, the jury having set the award at exactly 4% of that figure; and (iv) it borrowed a daily federal penalty that accrues against an employer after a citation and an unmet correction deadline. Together, these factors explain why the panel affirmed imposition of punitive damages. But they do not explain how punitive damages 28 times the compensatory award were in any way proportionate.

The panel identified what it regarded as reasons to punish. But even a reason to permit a higher ratio does not justify every departure. The question is whether the actual disparity is constitutionally supportable, not whether the opinion follows a prescribed form. This Court should grant review to enforce that distinction.

ARGUMENT

I. Without an Applicable Statutory Cap, Independent Review Must Enforce the Constitutional Limit on the Amount of Punitive Damages

A. Missouri's statutory cap does not apply to these claims

Many states limit punitive damages by statute, whether through dollar caps, maximum ratios to compensatory damages, or caps that combine the two. *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 495–96 (2008). Missouri tried. Section 510.265 of the Missouri Revised Statutes capped punitive damages at the greater of $500,000 or five times the net judgment. The Missouri Supreme Court held, however, that the cap "necessarily infringes on the right to a trial by jury when applied to a cause of action to which the right to jury trial attaches at common law," because article I, section 22(a) of the Missouri Constitution preserves that right as it existed in 1820. *Lewellen v. Franklin*, 441 S.W.3d 136, 145 (Mo. 2014) (quoting *Watts ex rel. Watts v. Lester E. Cox Med. Ctrs.*, 376 S.W.3d 633, 640 (Mo. 2012)); *see id.* at 142–45. The court below applied that holding here. It reasoned that an 1820 plaintiff could have sued a supplier who delivered a "dangerous or noxious" article without notice of its qualities, and that § 510.265 therefore could not apply. Pet.App.23a–25a.

This Court need not disturb *Lewellen*'s state-law holding. Nor does the absence of a statutory cap leave Missouri courts powerless to reduce excessive awards. That State expressly applies remittitur to punitive

damages based on the trial judge's assessment of the surrounding circumstances. Mo. Rev. Stat. § 510.263.6. Petitioner Givaudan Flavors Corp. sought that relief, and the trial court left the punitive damages award unchanged. Pet.App.29a, 31a, 57a. These safeguards matter. But they do not replace the separate judicial duty to enforce the Fourteenth Amendment's due process limit.[2]

The absence of an applicable numerical cap does not itself make the award here unconstitutional. But it does make independent constitutional review especially important: No statutory reduction relieved the state appellate court of its duty to determine the constitutionality of the punitive damages amount. The reviewing court must decide whether the award is proportionate under federal law, not merely whether state law permits the jury to impose it.

B. The panel's review must itself enforce the constitutional limit on the amount

This Court has made appellate review the constitutional safeguard against arbitrary punitive damages awards. "Judicial review of the size of punitive damages awards has been a safeguard against excessive verdicts for as long as punitive damages have been awarded." *Honda Motor Co. v. Oberg*, 512 U.S. 415, 421 (1994). "Punitive damages

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[2] Missouri also holds a lien on 50% of the punitive damages final judgment after attorney's fees and expenses, for deposit in the Tort Victims' Compensation Fund. Mo. Rev. Stat. § 537.675.3; Pet.App.25a–26a. The State's financial stake underscores the public character of the punishment. This Court, however, need decide only the due process question in the petition.

pose an acute danger of arbitrary deprivation of property." *Id.* at 432. Evidence of a defendant's net worth "creates the potential that juries will use their verdicts to express biases against big businesses." *Id.* And judicial review of the amount "was one of the few procedural safeguards which the common law provided against that danger." *Id.*

Cooper makes that review independent. It holds that "courts of appeals should apply a de novo standard of review when passing on district courts' determinations of the constitutionality of punitive damages awards." 532 U.S. at 436. The guideposts announced in *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996), "will acquire more meaningful content through case-by-case application at the appellate level," *Cooper*, 532 U.S. at 436, because, as the Court had explained in another setting, "[i]ndependent review is therefore necessary if appellate courts are to maintain control of, and to clarify, the legal principles," *id.* (quoting *Ornelas v. United States*, 517 U.S. 690, 697 (1996)).

A jury's punitive damages award, unlike its assessment of compensatory damages, "is not really a 'fact' 'tried' by the jury." *Id.* at 437 (quoting *Gasperini v. Ctr. for Humanities, Inc.*, 518 U.S. 415, 459 (1996) (Scalia, J., dissenting)). Two years later, reviewing a judgment of the Utah Supreme Court, this Court described the same requirement as "[e]xacting appellate review," which "ensures that an award of punitive damages is based upon an 'application of law, rather than a decisionmaker's caprice.'" *State Farm*, 538 U.S. at 418 (quoting *Cooper*, 532 U.S. at 436); *Gore*, 517 U.S. at 587 (Breyer, J., concurring).

Cooper requires independent judgment, not more layers of appeal. Its holding does not depend on the availability of en banc rehearing or a second appellate merits decision. A state may make further review discretionary. But the court deciding the constitutional question must itself apply the guideposts to the amount imposed. It cannot leave that judgment to the jury. *Cooper*, 532 U.S. at 436–37.

This is the practical importance of Missouri's review structure here. Transfer to the Missouri Supreme Court is discretionary. Mo. Sup. Ct. R. 83.04. The panel affirmed the award, the court of appeals denied rehearing and transfer, and the Missouri Supreme Court denied transfer as well. Pet.App.26a, 35a–37a. Those ordinary features of appellate design are not constitutional defects. They mean that the panel's judgment about proportionality must stand on its own. It cannot depend on another court later supplying the independent review.

II. The Decision Below Shows How a State Framework Can Recite This Court's Guideposts But Then Displace Them

The state appellate court recited this Court's precedents. It listed the three guideposts and the *State Farm* reprehensibility factors. *See* Pet.App.18a–19a. The question, however, is whether the reasons given justify the amount imposed. The opinion attempts to answer that question with four inadequate substitutions for an independent judgment about proportionality:

A. The panel did not independently justify the ratio

The opinion never states the ratio. That omission is evidence of the problem, not the constitutional violation by itself. The panel addressed Givaudan's argument that a one-to-one ratio should apply and declared each of its premises "incorrect." Pet.App.20a. It then sustained the award on the following ground: "It is within a jury's discretion to determine that 'the usual single-digit ratio may not be an appropriate measure of the limits of due process' when an egregious act was committed, which resulted in a relatively low amount of economic damages." Pet.App.21a–22a (quoting *Lewellen*, 441 S.W.3d at 148). The opinion never quotes or cites *State Farm*'s caution that four-to-one "might be close to the line," or its instruction that substantial compensatory damages may make a one-to-one ratio the outer limit. 538 U.S. at 425. The petition makes this point. Pet. 7, 28–29. The deeper defect is the panel's reliance on jury discretion where independent constitutional judgment was required.

The opinion is also silent about the standard it applied. The only de novo standard it identifies governs submissibility: whether the evidence permitted any punitive damages award at all. Pet.App.16a. The excessiveness analysis that follows states no standard of review and does not cite *Cooper*. Pet.App.18a–23a. It describes the ratio once, as "high," but never as a number. Pet.App.23a. The panel leaves the departure from single digits to the jury's discretion. It does not attempt to independently justify the extent of that departure.

A jury's discretion to impose punishment does not determine the constitutional limit. *Cooper* held that a punitive damages award is not a fact found by the jury for purposes of constitutional review. 532 U.S. at 437. The reviewing court must independently decide whether the amount is permissible. Invoking the jury's discretion to depart from single digits applies the wrong standard to that question. The issue is not whether the panel recited a particular number. It is whether the panel applied its own constitutional judgment to the disparity that number measures.

B. The panel measured "substantial" against other Missouri verdicts

State Farm instructs 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." 538 U.S. at 425. The compensatory award there was $1 million "for a year and a half of emotional distress," and the Court called it substantial. *Id.* at 426. Here the jury awarded $2 million for a permanent, progressive lung disease, reduced to $1,529,500 by settlement credits. Pet.App.2a.

The panel held that this award was "significant" but "fair to say" not "substantial." Pet.App.20a–21a. Its method was comparison. It treated Givaudan's decision not to contest the compensatory award as a concession that the award was not excessive. Pet.App.20a. It then listed other Missouri judgments, including $38 million to one of four plaintiffs in *Anderson v. Monsanto Co.*, 719 S.W.3d 755 (Mo. Ct. App. 2025), $500 million to twenty plaintiffs in

Ingham v. Johnson & Johnson, 608 S.W.3d 663 (Mo. Ct. App. 2020), and $15 million in *Barron v. Abbott Laboratories, Inc.*, 529 S.W.3d 795 (Mo. 2017), and concluded that Graham's $1,529,500 award was "unremarkable given the extent of his injuries." Pet.App.20a–21a. It added that any assessment of whether damages are substantial "must be made in context." Pet.App.21a.

Context matters. But comparing awards does not by itself answer whether the compensatory damages award here was substantial for purposes of *State Farm*. Nor does the absence of a challenge to the award: A compensatory verdict that is not excessive can still be substantial. One week before the Missouri Supreme Court denied transfer here, this Court vacated the *Anderson* judgment the panel had used as its first benchmark. *Monsanto Co. v. Anderson*, No. 25-1042 (U.S. June 30, 2026) (granting certiorari, vacating, and remanding in light of *Monsanto Co. v. Durnell*, 609 U.S. 371 (2026)). That disposition concerned preemption, not the value of the injuries, and the panel could not have anticipated it. The broader problem is the moving benchmark. As other verdicts increase, the same compensatory recovery becomes less substantial under the panel's method. A federal constraint on proportionality cannot depend on that comparison alone.

The panel said that Graham's disease "was misdiagnosed and progressively impairs his ability to function," and it invoked "a relatively low amount of economic damages." Pet.App.21a. This Court has posited that "a higher ratio might be necessary where 'the injury is hard to detect or the monetary value of

noneconomic harm might have been difficult to determine.'" *State Farm*, 538 U.S. at 425 (quoting *Gore*, 517 U.S. at 582). But the panel did not explain how detection or valuation difficulty applied to a $2 million verdict. Nor did it explain how either could support the ratio it sustained.

The small-economic-damages example has a premise. *Gore* says low compensatory awards may support a higher ratio, and its example is an egregious act that causes only a small amount of economic damages. 517 U.S. at 582. *Lewellen* applied that reasoning to a $25,000 compensatory award. *See* 441 S.W.3d at 142, 148. The panel borrowed that formulation for a multimillion-dollar verdict. Pet.App.21a–22a. A small economic component does not make the whole award small. Detection and valuation difficulties may bear on the ratio. But they must justify the disparity actually imposed.

The panel described serious injuries that the jury had valued in a substantial compensatory verdict. It did not explain how diagnostic delay or difficulty valuing the injury warranted punitive damages 28 times that verdict. The seriousness of a permanent injury does not make a multimillion-dollar verdict nominal. Even when a court finds reasons for a higher ratio, it must still decide whether the extent of the departure is proportionate.

C. The panel treated net worth as the measure of punishment

The only additional evidence Respondent offered in the punitive phase was a stipulation that Givaudan's net worth was $1,415,799,000. Pet. 6

(citing R.3505–06). The jury returned $56,631,960: 4% of that figure, to the dollar. Pet.App.29a. The appellate court held that net worth is "a valid consideration." Pet.App.22a. It reasoned that the threat of a punitive damages award "needs to be substantial enough to create a negative value proposition for the company," *id.* (quoting *Poage v. Crane Co.*, 523 S.W.3d 496, 524 (Mo. Ct. App. 2017)), and that "[i]t is self-evident that the financial disincentive provided by a punitive damage award is, in part, a function of the defendant's net worth." *Id.*

Wealth is not irrelevant. This Court has approved punitive damages review that takes into account a defendant's "financial position," *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 21–22 (1991). But *State Farm* drew the line that the opinion below crossed: "The wealth of a defendant cannot justify an otherwise unconstitutional punitive damages award," because wealth "provides an open-ended basis for inflating awards." 538 U.S. at 427–28 (quoting *Gore*, 517 U.S. at 591 (Breyer, J., concurring)). *Oberg* identified the same danger as the reason judicial review of the amount exists. 512 U.S. at 432. Wealth may calibrate a penalty within the constitutional range. It cannot define the range. The passage *State Farm* quoted says so in its next sentence: Wealth cannot make up for the failure of the other factors to constrain the award. *Gore*, 517 U.S. at 591 (Breyer, J., concurring). A method under which the punishment is a percentage of the balance sheet, and the ratio to the harm is beside the point, has no ceiling by construction: The larger the enterprise, the larger the permissible fine, and the compensatory award is reduced to an afterthought.

D. The panel borrowed a comparable penalty that does not fit

The third *Gore* guidepost asks a reviewing court to compare the award with "the civil or criminal penalties that could be imposed for comparable misconduct," giving "'substantial deference' to legislative judgments concerning appropriate sanctions for the conduct at issue." *Gore*, 517 U.S. at 583 (quoting *Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 301 (1989) (O'Connor, J., concurring in part and dissenting in part)). The court below called this factor the least persuasive but then relied on it: "While Givaudan was not Graham's employer, OSHA currently is authorized to impose a $16,550 daily penalty for an employer who fails to correct a serious workplace violation." Pet.App.22a–23a.

Deference to a legislative judgment means deference to the judgment the legislature actually made, including the conditions on which the sanction depends. The daily penalty the court cited is the inflation-adjusted form of the one Congress authorized for "[a]ny employer who fails to correct a violation for which a citation has been issued . . . within the period permitted for its correction," a period that, when the employer contests the citation in good faith, does not begin to run until the date of the final order on review. 29 U.S.C. § 666(d); *see id.* §§ 658(a), 659. Congress separately provided per-violation penalties for willful, repeated, and serious violations. *Id.* § 666(a)–(b). The daily sanction addresses failure to meet an abatement obligation after a citation. The conduct the panel described was

withholding information "as required by OSHA's Hazard Communication Standard." Pet.App.17a. The Act distinguishes a violation of a standard from a failure to correct a cited violation within the permitted period. Givaudan was not Graham's employer, and the opinion identifies no citation and no abatement deadline. But the issue here is not whether Givaudan violated OSHA. The question is what, if anything, the analogy can prove about the amount.

This Court already has observed that it matters how a comparable penalty is counted. In *Cooper*, the respondent argued that a $25,000-per-violation state penalty supported the award because "each of the thousands of pieces of promotional material" was a separate violation; the Court found the lower court's account of the facts "more consistent with the single-violation theory" and left the question for remand. 532 U.S. at 442–43. *State Farm* added that a criminal penalty "does have bearing on the seriousness with which a State views the wrongful action," but that "[w]hen used to determine the dollar amount of the award, however, the criminal penalty has less utility." 538 U.S. at 428. The same is true of a civil penalty whose statutory conditions are absent. A per-day penalty that accrues only after a citation, borrowed where the opinion identifies none, does not supply legislative support for a particular amount. It supplies a large number.

* * *

Reciting this Court's guideposts is not the same as applying them. The panel considered reprehensibility, the compensatory recovery, wealth, and a statutory

analogy. But the analysis must do more than establish that serious misconduct warrants a penalty that a company will feel. Instead, a court must independently test whether the actual amount is constitutionally proportionate. The four substitutions above did not supply that judgment.

III. The Court Should Grant Review to Make Clear That Independent Review Must Justify the Amount, Not Merely the Decision to Punish

The rule Petitioner Givaudan correctly asks this Court to enforce concerns the amount of punishment. "[C]ourts must ensure that the measure of punishment is both reasonable and proportionate to the amount of harm to the plaintiff and to the general damages recovered." *State Farm*, 538 U.S. at 426. A court reviewing an award far outside the markers identified in *State Farm* must decide whether the facts justify the extent of that departure. The inquiry allows for difficult-to-detect injuries, low economic losses, and hard-to-value noneconomic harm. *Id.* at 425. It does not stop when the court finds a reason to exceed an ordinary ratio. A reason to permit some departure is not a justification for the amount imposed.

This rule requires no new tier of review or particular form of opinion. It prescribes no numerical formula. An opinion does not become constitutionally sufficient merely by spelling out the ratio, and a longer explanation cannot make a disproportionate award valid. The requirement is substantive: The reviewing court must exercise independent judgment,

and the punishment must be reasonable and proportionate. *Cooper*, 532 U.S. at 436–37; *State Farm*, 538 U.S. at 426. The opinion below embodies the problem because its analysis substitutes jury discretion and other measures for that judgment.

The consequences are practical. The petition describes the Eighth Circuit's rule that a substantial compensatory award confines punitive damages to a low single-digit multiple, and often to the compensatory amount itself. Pet. 10–11. Here, the Missouri appellate court sustained a ratio of 28 to 1. The same federal guarantee governs both forums. A defendant is entitled to fair notice "not only of the conduct that will subject [it] 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). Uncertainty about that protection affects litigation and settlement, not just final judgments.

The class of affected cases is larger than the appellate docket. In one study of state civil trials on appeal, fewer than two-thirds of the adverse appeals filed culminated in a merits decision. Theodore Eisenberg & Michael Heise, *Plaintiphobia in State Courts Redux? An Empirical Study of State Court Trials on Appeal*, 12 J. Empirical Legal Stud. 100, 108–11 & tbl.1 (2015). The study does not isolate punitive damages appeals. But a published decision shapes settlement in the cases that never reach a merits ruling, and this one lets jury discretion substitute for independent review of the amount. Pet.App.21a–22a.

This case squarely presents the constitutional issue that the lower court failed to adequately address. This Court's review is needed to clarify how its punitive damages guideposts constrain the amount when findings of serious injury and reprehensible conduct do not by themselves resolve proportionality. The Court should reinforce, or at least clarify, the distinction between a reason to punish and a justification for the amount.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

LAWRENCE S. EBNER
Counsel of Record
ATLANTIC LEGAL FOUNDATION
1701 Pennsylvania Ave., NW
Washington, D.C. 20006
(202) 729-6337
lawrence.ebner@atlanticlegal.org

SARAH ELIZABETH SPENCER
ATLANTIC LEGAL FOUNDATION
215 S. State Street, Suite 700
Salt Lake City, UT 84111
(801) 346-8120
sarah.spencer@atlanticlegal.org

Counsel for Amicus Curiae

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