No. 06-1068

IN THE
Supreme Court of the United States

FORD MOTOR COMPANY,

Petitioner,

v.

BENETTA BUELL-WILSON, ET AL.,

Respondents.

On Petition for Writ of Certiorari to the California Court of Appeal

BRIEF OF *AMICUS CURIAE* CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF PETITIONER

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Pursuant to this Court's Rule 37.2, *amicus curiae* respectfully files this brief in support of the petition for certiorari.*

INTEREST OF *AMICUS CURIAE*

The Chamber of Commerce of the United States of America is the Nation's largest federation of business companies and associations, with an underlying membership of more than 3,000,000 business and professional organizations of every size and in every sector and geographic region of the country. One of the Chamber's most important functions is to represent its members' interests by filing *amicus curiae* briefs in cases involving issues of concern to American business.

There are few issues of greater concern to American business than arbitrary punitive damages awards. For this reason, the Chamber has filed *amicus curiae* briefs in all of the leading punitive damages cases in this Court, including *Philip Morris USA v. Williams*, 127 S. Ct. 1057 (2007), *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003), *Cooper Indus., Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424 (2001), *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559 (1996), *Honda Motor Co. v. Oberg*, 512 U.S. 415 (1994); *TXO Prod. Corp. v. Alliance Res. Corp.*, 509 U.S. 443 (1993); *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991); *Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257 (1989). For the reasons stated below, the Chamber believes that the issues presented in this case also warrant review.

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* Pursuant to this Court's Rule 37.6, *amicus* states that no counsel for a party authored this brief in whole or in part, and no person or entity other than *amicus* has made a monetary contribution to the preparation or submission of this brief. All parties have consented to the filing of this brief *amicus curiae*, and their consent letters are on file with the Clerk's Office.

REASON FOR GRANTING THE WRIT

The California Court of Appeal Erred, And Destabilized The Law, By Holding That Compliance With Federal Safety Standards Is Irrelevant To Determining Whether Punitive Damages Are Warranted.

Petitioner Ford Motor Company presents three constitutional questions relating to the award of $55 million in punitive damages in this case. *See* Pet. i. *Amicus* here addresses only the first of those questions, and specifically focuses on whether the Federal Constitution allows the imposition of punitive damages in *any* amount based on conduct that complies with relevant government and industry standards.

The answer to that question is presumptively no. This Court has made it clear that the Due Process Clause protects against arbitrary punishment, including the arbitrary imposition of the quasi-criminal (and explicitly extra-compensatory) penalty of punitive damages. *See*, *e.g.*, *Philip Morris*, 127 S. Ct. at 1062; *State Farm*, 538 U.S. at 416-17; *Gore*, 517 U.S. at 559. It is nothing if not arbitrary for the law to impose punishment based on conduct that a reasonable person would not believe is subject to punishment.

The guiding principle here is simple: a person is entitled to fair notice of conduct subject to punishment. *See, e.g.*, *Philip Morris*, 127 S. Ct. at 1062; *Giaccio v. Pennsylvania*, 382 U.S. 399, 402-04 (1966). In the absence of such notice, a person has no way to steer clear of punishment. As this Court has explained, "the point of due process … is to allow citizens to order their behavior." *State Farm*, 538 U.S. at 418 (internal quotation omitted). Where citizens abide by objective guideposts of reasonable behavior, it is at least presumptively arbitrary for the law to punish them. "A State can have no legitimate interest in deliberately making the law so arbitrary that citizens will be unable to avoid punishment based solely upon bias

or whim." *Id.* at 418 (internal quotation omitted); *see also id.* at 417 ("[E]lementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice … of the conduct that will subject him to punishment.") (internal quotation omitted).

Government and industry safety standards provide precisely such objective guideposts of reasonable behavior. It follows, as many courts and commentators have recognized, that compliance with such guideposts presumptively negates the requisite culpability for punitive damages. *See, e.g.*, *Satcher v. Honda Motor Co.*, 52 F.3d 1311, 1316-17 (5th Cir. 1995) (applying Mississippi law); *Richards v. Michelin Tire Corp.*, 21 F.3d 1048, 1058 n.20 (11th Cir. 1994) (applying Alabama law); *Drabik v. Stanley-Bostitch, Inc.*, 997 F.2d 496, 510 (8th Cir. 1993) (applying Missouri law); *Alley v. Gubser Dev. Co.*, 785 F.2d 849, 856 (10th Cir. 1986) (applying Colorado law); *Boyette v. L.W. Looney & Son, Inc.*, 932 F. Supp. 1344, 1347-48 (D. Utah 1996) (applying Utah law); *Sloman v. Tambrands, Inc.*, 841 F. Supp. 699, 703 n.8 (D. Md. 1993) (applying Maryland law); *Miles v. Ford Motor Co.*, 922 S.W.2d 572, 589-90 & n.7 (Tex. Ct. App. 1996), *aff'd in part, rev'd in part on other grounds*, 967 S.W.2d 377 (Tex. 1998); *Stone Man, Inc. v. Green*, 435 S.E.2d 205, 206 (Ga. 1993); *American Cyanamid Co. v. Roy*, 498 So. 2d 859, 862-63 (Fla. 1986); W. Page Keeton *et al.*, *Prosser & Keeton on The Law of Torts* § 36, at 233 n.41 (5th ed. 1984) (compliance with a safety standard should presumptively bar punitive damages); Paul Dueffert, Note, *The Role of Regulatory Compliance in Tort Actions*, 26 Harv. J. Legis. 175, 200 (1989) (same); David G. Owen, *Problems in Assessing Punitive Damages Against Manufacturers of Defective Products*, 49 U. Chi. L. Rev. 1, 41-42 & n.196 (1982) (same). Were the law otherwise, persons would lack constitutionally adequate notice that their conduct was subject to punishment, and any ability to "order their behavior" to avoid punishment. *State Farm*, 538 U.S. at 418 (internal quotation omitted).

The California Court of Appeal, however, declared that the jury in this case could have found "by clear and convincing evidence that [Ford] acted with fraud, malice or oppression" in manufacturing the popular 1997 Explorer 4x4 regardless of whether that vehicle complied with relevant government and industry safety standards. Pet. App. 43a, 46-50a. Indeed, the court gave *no weight whatsoever* to compliance with government and industry standards. According to the court, "'governmental safety standards and the criminal law have failed to provide adequate consumer protection against the manufacture and distribution of defective products.'" *Id.* at 47a (quoting *Grimshaw v. Ford Motor Co.*, 119 Cal. App. 3d 757 (1981)); *see also id.* ("'Punitive damages … remain as the most effective remedy for consumer protection against defectively designed mass produced articles.'") (quoting *Grimshaw*, 119 Cal. App. 3d at 810).

The Court of Appeal thereby missed the point. There is no question, and Ford did not deny below, that States may impose liability for *compensatory* damages notwithstanding compliance with federal motor vehicle safety standards. *See* 49 U.S.C. § 30103(e) ("Compliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law."). But that does not mean that States may *punish* motor vehicle manufacturers notwithstanding compliance with federal motor vehicle safety standards. To the contrary, as noted above, government safety standards provide objective guideposts of reasonable behavior, and compliance with such standards presumptively negates the requisite culpability for punitive damages. The California Court of Appeal thus started its analysis from the wrong presumption: rather than presuming that compliance with relevant government standards forecloses punitive damages, the court breezily dismissed compliance with relevant government standards as irrelevant to the analysis.

That approach cannot be squared with the Due Process Clause of the Federal Constitution. As this Court has recognized, that Clause limits the extent to which States may abrogate traditional legal protections from punishment. *See, e.g.*, *Oberg*, 512 U.S. at 430; *see also id.* at 436 (Scalia, J., concurring). Just as a State may not abrogate traditional judicial review of punitive damages awards, *see id.*, a State may not abrogate traditional limitations on the degree of culpability necessary to justify punitive damages.

At common law, punitive damages were strictly reserved for a narrow class of cases—torts involving "intentional and deliberate [misconduct], and ha[ving] the character of outrage frequently associated with crime." William Prosser, *Law of Torts* § 2, at 9; *see also Lake Shore & M.S. Ry. Co. v. Prentice*, 147 U.S. 101, 111 (1893) ("[C]riminal intent [is] necessary to warrant the imposition of [punitive] damages."), *id.* at 114 ("unlawful and criminal intent" required for punitive damages); *Smith v. Wade*, 461 U.S. 30, 78-79 n.12 (1983) (Rehnquist, J., dissenting) (describing the highly culpable state of mind required for punitive damages at common law). Accordingly, courts submitted the issue of punitive damages to a jury only in extraordinary cases, and appellate courts were not hesitant to reverse based on insufficient evidence of the requisite extreme culpability (even where the jury in fact had awarded punitive damages). *See, e.g.*, *Philadelphia, Wilmington & Baltimore R.R. Co. v. Quigley*, 62 U.S. (21 How.) 202, 213-14 (1859) ("[T]he malice [necessary to sustain a punitive damages award] is not merely the doing of an unlawful or injurious act. The word implies that the act complained of was conceived in the spirit of mischief, or of criminal indifferent to civil obligations.").

Where, as here, a defendant's challenged conduct complies with relevant government and industry safety standards, the defendant presumptively did not display the requisite extreme culpability necessary to justify

punishment. By refusing to give Ford's compliance with relevant government safety standards any weight in determining whether punitive damages were available here as a matter of law, the California Court of Appeal effectively drained the "fraud, malice or oppression standard" of meaning. It is one thing to say that California may compel Ford to compensate the plaintiff for her injuries; it is another thing altogether to say that California may punish Ford for manufacturing a motor vehicle that complied with relevant government and industry standards. Under federal law, "[t]he Secretary of Transportation shall prescribe motor vehicle safety standards" that "shall … meet the need for motor vehicle safety." 49 U.S.C. § 30111. If the Secretary has concluded that a particular motor vehicle satisfies the safety standards enacted pursuant to this statutory mandate, it is hard to see how a manufacturer can be deemed to have acted with the requisite extreme culpability by concluding likewise, or how manufacturers were given constitutionally adequate notice that their conduct was subject to punishment.

Plaintiffs here allege that the 1997 Ford Explorer was defective in two interrelated respects. According to plaintiffs, the vehicle was insufficiently stable (and thus prone to rollover), and its roof was insufficiently strong (and thus prone to allow injuries in the event of a rollover). Plaintiffs' theory of defect encompasses *both* of these allegations—an insufficiently stable vehicle *per se* would not be defective, if the vehicle were otherwise strong enough to prevent injuries. *See, e.g.*, Pet. App. 13a ("The Wilsons presented evidence that rollovers are relatively nonviolent events for the occupants when they are properly restrained and there is minimal roof intrusion, and occupants are killed or disabled only when the roof crushes inward.").

With respect to roof strength, the California Court of Appeal did not deny that the 1997 Ford Explorer's roof met or exceeded the relevant federal safety standard,

Federal Motor Vehicle Safety Standard ("FMVSS") 216. *See* Pet. App. 49-50a. Rather, the court simply insisted that federal motor vehicle safety standards do not preempt state tort law. *See* Pet. App. 47-49a. But that is a non sequitur. As noted above, the issue here is not whether a State may impose *liability* for conduct that complies with relevant federal safety standards, but whether a State may *punish* a defendant for manufacturing a motor vehicle that complies with relevant safety standards. Under traditional common-law norms underlying federal due-process protection, it may not. *See, e.g., Brand v. Mazda Motor Corp.*, 978 F. Supp. 1382, 1394-95 (D. Kan. 1997); *Welch v. General Motors Corp.*, 949 F. Supp. 843, 844-46 (N.D. Ga. 1996); *Chrysler Corp. v. Wolmer*, 499 So. 2d 823, 826 (Fla. 1986); *Miles*, 922 S.W.2d at 589-90 & n.7; *see also* Owen, *Problems*, 49 U. Chi. L. Rev. at 42 n.196.

With respect to vehicle stability, the California Court of Appeal asserted that "there are no federal standards for stability of vehicles." Pet. App. 49-50a. That assertion is disingenuous at best. The Federal Government carefully studied the issue for three decades and decided *not* to impose a federal safety standard, on the ground that any such standard would compromise a vehicle's safety in other ways. *See* 52 Fed. Reg. 49033, 49036 (Dec. 29, 1987). Thus, rather than imposing a rollover standard, the Federal Government since 1984 instead has required manufacturers to provide consumers with information and warnings on rollover risk. *See* 49 Fed. Reg. 20016 (May 11, 1984); *see also* 66 Fed. Reg. 3388, 3403 (January 12, 2001); 49 C.F.R. Part 575. And the Federal Government has specifically rejected the very stability tests on which plaintiffs relied below (the so-called "stability index test" and "Consumers Union test"). *See* 62 Fed. Reg. 40602, 40639 (July 29, 1997); 59 Fed. Reg. 33254, 33258-59 (June 28, 1994); 57 Fed. Reg. 242, 248 (Jan. 3, 1992); 61 Fed. Reg. 28550, 28553 (June 5, 1996); 53 Fed. Reg. 34866, 49037 (Sept. 8, 1988); 53 Fed.

Reg. 12218, 12219-20 (April 13, 1988). The decision to provide a warning and information on rollover risk, rather than a safety standard, thus represents a clear policy choice; contrary to the Court of Appeal's suggestion, this is not a situation involving a regulatory void, but rather a situation involving a deliberate regulatory choice.

Under these circumstances, the Court of Appeal's conclusion that an award of $55 million in punitive damages is warranted cannot withstand constitutional scrutiny. Given the Federal Government's conclusion that FMVSS 216 roof strength regulations and stability warnings and information were adequate to address the very "defects" that plaintiffs allege, Ford presumptively cannot be punished for complying with these safety standards. Indeed, allowing a defendant to be punished for conduct that complies with such standards would leave the financial future of the motor vehicle industry (and American business more generally) at the whim of individual juries. *See Liesener v. Weslo, Inc.*, 775 F. Supp. 857, 861-62 (D. Md. 1991) ("It would be intolerable to hold that a manufacturer must, to escape punitive damages, follow the path of timidity and greatest caution … shaped by the most pro-plaintiff result possible, especially where the manufacturer's conduct conforms to widely-recognized industry standards."). As Maryland's highest court noted in a similar context:

> Punitive damage awards can only affect behavior if an actor is able to conform to established standards of conduct. If the standards are constantly changing, the actor may be unable to predict accurately the line that separates desirable from undesirable conduct. A potential defendant will either become too cautious, refusing to engage in socially beneficial behavior or will follow a course of behavior that imposes more harm on society than benefit.

Owens-Illinois, Inc. v. Zenobia, 601 A.2d 633, 652 n.19 (Md. 1992) (internal quotations omitted).

It goes without saying that the American business community has an acute interest in preventing the arbitrary imposition of punitive damages based on conduct that complies with reasonable objective guideposts for appropriate behavior, including government and industry standards. At the end of the day, when a manufacturer relies "in good faith on the current state of the art in safety concerns, and on conclusions by the governmental agencies charged with administering safety regulations in the area of its product that the product is not unreasonably dangerous, it cannot be said to have acted with an entire want of care showing conscious indifference to the safety of product users." *Miles*, 922 S.W.2d at 589. Because the 1997 Ford Explorer complied with relevant governmental and industry standards, this Court should not allow the award of punitive damages here to stand.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for writ of certiorari.

Respectfully submitted,

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