No. 09-297

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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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes and Regulations

Other Authorities

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

INTEREST OF THE *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, Inc. v. Williams*, 129 S. Ct. 1436 (2009) (*per curiam*), *Exxon Shipping Co. v. Baker*, 128 S. Ct. 2605 (2008), *Philip Morris USA, Inc. v. Williams*, 549 U.S. 346 (2007), *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003), *Cooper Indus., Inc. v.*

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* Pursuant to this Court's Rule 37, *amicus* states (1) that it notified the parties of its intent to file this brief and the parties consented, as evidenced by letters filed with the Clerk of this Court, and (2) that no counsel for any party authored this brief in whole or in part, that no such counsel or party made a monetary contribution to fund the preparation or submission of this brief, and that no person other than *amicus curiae* or its counsel made such a monetary contribution.

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.

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 In Determining Whether Particular Conduct Is Subject To Punitive Damages.

If the Due Process Clause of the Fourteenth Amendment means anything, it means that States may not impose arbitrary punishments. *See, e.g.*, *Williams*, 549 U.S. at 352-53; *State Farm*, 538 U.S. at 416-17; *BMW*, 517 U.S. at 568. And there is nothing more arbitrary than punishing someone without providing fair notice of the conduct subject to punishment. *See, e.g.*, *Giaccio v. Pennsylvania*, 382 U.S. 399, 402-04 (1966).

This case, of enormous interest to the American business community, calls upon this Court to reaffirm that basic principle. The California Court of Appeal held below that compliance with federal safety standards is irrelevant in determining whether particular conduct is subject to punitive damages. *See* Pet. App. 56-61a. That approach cannot be squared with basic tenets of due process. The point here is simple: just as due process constrains the *amount* of punitive damages that may

be awarded, *see, e.g.*, *State Farm*, 538 U.S. at 416-17; *BMW*, 517 U.S. at 562, due process also constrains the *conduct* for which punitive damages may be awarded. It is arbitrary and unconstitutional to impose *any* amount of punishment where someone lacked fair notice of the conduct subject to punishment. *See, e.g.*, *State Farm*, 538 U.S. at 417 ("'Elementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice *not only* of the conduct that will subject him to punishment, *but also* of the severity of the penalty that a State may impose.'") (emphasis added; brackets omitted; quoting *BMW*, 517 U.S. at 574).

As this Court has explained, after all, "the point of due process … is to allow citizens to order their behavior." *State Farm*, 538 U.S. at 418 (internal quotation omitted); *see also Exxon*, 128 S. Ct. at 2627 ("[E]ven Justice Holmes's 'bad man' [should be able to] look ahead with some ability to know what the stakes are in choosing one course of action or another."). In determining whether particular behavior is subject to punishment, it is at the very least highly relevant whether that behavior has been deemed acceptable by government regulators. Because applicable federal safety standards provide objective guideposts of reasonable behavior, courts cannot simply ignore compliance with such standards in determining whether punitive damages are available as a matter of law. "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." *State Farm*, 538 U.S. at 418 (internal quotation omitted).

Thus, as many courts and commentators have recognized, compliance with government safety standards 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); *Boyette v. L.W. Looney & Son, Inc.*, 932 F. Supp. 1344, 1347-49 (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 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, 199-200 (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 court below, however, upheld an award of $55 million in punitive damages by insisting that the jury here 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 federal safety standards. Pet. App. 52a, 56-61a. Indeed, the court gave *no weight whatsoever* to compliance with such standards. According to the court, the key point here is that federal safety standards do not preempt state law. *See id.* at 58a. From that point, the court drew the conclusion that compliance with federal safety standards is *irrelevant* in assessing the availability of punitive damages as a constitutional matter. *See id.*; *see also id.* at 57a ("'[G]overnmental safety standards and the criminal law have failed to provide adequate consumer protection against the manufacture and distribution of defective products.'") (quoting *Grimshaw v. Ford Motor Co.*, 119 Cal. App. 3d 757, 810 (1981)); *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).

But that conclusion is a *non sequitur*. Whether a federal statute allows state law to impose punitive damages for conduct that complies with federal safety standards has no bearing on whether the federal Constitution allows States to impose punitive damages for such conduct. Because a federal statute cannot authorize a federal constitutional violation, an absence of federal preemption cannot immunize an award of punitive damages from due process scrutiny. The petitioner here is making a constitutional argument, not a statutory argument. *See* Pet. 18 n.2.

Contrary to the California Court of Appeal's conclusion, the key point here is that compliance with federal safety standards is a crucial consideration in federal due process scrutiny of punitive damages awards, whether with respect to their amount or their availability. As this Court has long recognized, due process limits the extent to which States may abrogate traditional legal protections against punishment, including the imposition of punitive damages. *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 the amount of punitive damages awards, *see id.*, a State may not abrogate traditional limitations on the degree of culpability necessary to justify punitive damages in the first place.

The California Court of Appeal's attempt to cloak the punitive damages award at issue here with the legitimacy of the common law is thus misguided. *See* Pet. App. 58a ("Punitive damages have long been a part of the common law, originating in the 1763 Enlgish case *Huckle v. Money* (1763) 95 Eng. Rep. 768, and finding early acceptance in the United States when the United States Supreme Court upheld their constitutionality in *Day v. Woodworth* (1851) 54 U.S. (13 How.) 363, 370."). 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." *Prosser & Keeton on 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, at common law, 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, 214 (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 indifference to civil obligations.").

The award at issue here cannot remotely survive scrutiny under these traditional common law standards. By refusing to consider Ford's compliance with federal safety standards in determining whether Ford's conduct was subject to punitive damages, the California Court of Appeal effectively drained the "fraud, malice or oppression standard" of its common law 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 federal safety 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 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 the manufacturer was given constitutionally adequate notice that its 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 necessarily 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. 16a ("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. 56-57a. Rather, the court simply insisted that federal motor vehicle safety standards do not preempt state tort law. *See* Pet. App. 58-59a. But, as noted above, that is a *non sequitur*. The issue here is not whether a State may impose *liability* for conduct that complies with all applicable federal safety standards, but

whether a State may *punish* a defendant for manufacturing a motor vehicle that complies with such 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. 60a. 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, 40602 (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, 34866-67 (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 California Court of Appeal's holding that compliance with federal safety standards is irrelevant in determining whether punitive damages are available here cannot withstand constitutional scrutiny. To let that holding stand would be to leave the financial future of the motor vehicle industry (and American business and economic life more generally) at the whim of individual juries. *See*, *e.g.*, *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 federal safety 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 all applicable federal safety standards, this Court should not allow the decision below to stand.

CONCLUSION

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

Respectfully submitted,

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