

No. 25-919

In the
Supreme Court of the United States

—◆—
UNION CARBIDE CORPORATION, ET AL.,
Petitioners,

v.
LEE ANN SOMMERVILLE,
Respondent.

—◆—
**On Petition for Writ of Certiorari to the United
States Court of Appeals for the Fourth Circuit**

—◆—
**BRIEF OF THE CHAMBER OF COMMERCE OF
THE UNITED STATES OF AMERICA,
AMERICAN TORT REFORM ASSOCIATION,
AMERICAN CHEMISTRY COUNCIL, NATIONAL
ASSOCIATION OF MANUFACTURERS,
AMERICAN FUEL & PETROCHEMICAL
MANUFACTURERS, CROPLIFE AMERICA,
PHARMACEUTICAL RESEARCH AND
MANUFACTURERS OF AMERICA, AMERICAN
PETROLEUM INSTITUTE, ADVANCED
MEDICAL TECHNOLOGY ASSOCIATION, AND
BUSINESS ROUNDTABLE AS *AMICI CURIAE* IN
SUPPORT OF PETITIONERS**

—◆—
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INTEREST OF *AMICI CURIAE*¹

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

The American Tort Reform Association (ATRA) is a national, nonpartisan, nonprofit coalition of large and small businesses, trade associations, and professional firms. ATRA is dedicated to improving the civil justice system with a focus on promoting fairness, balance, efficiency, and predictability in civil litigation. In addition to legislative efforts and public education outreach, one of ATRA's important functions is to file *amicus curiae* briefs in cases involving important civil justice issues.

The American Chemistry Council (ACC) represents more than 190 of the leading companies

¹ In accordance with Rule 37.6, *amici curiae* state that no counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amici curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief. Counsel of record received timely notice of *amici's* intent to file this brief under this Court's Rule 37.2.

engaged in the business of chemistry—an innovative economic growth engine that is helping to solve the biggest challenges facing our country and the world. Its members are companies of all sizes. In the United States, the business of chemistry generates \$673 billion annually, and employs 547,000 Americans with average wages of over \$100,000 annually. The business supports another 3.2 million jobs and 25% of the U.S. GDP. ACC's members are the people and companies creating the groundbreaking products that improve the world all around us by making it healthier, safer, more sustainable and more productive. From consumer products like lotions and deodorants to safety equipment like helmets and eyewear, chemistry plays an essential role in products and technologies used by people every day. The American Chemistry Council's mission is to advocate for the people, policy, and products of chemistry that make the United States the global leader in innovation and manufacturing. It supports common sense and science-based approaches to major public policy issues.

The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in all fifty states and in every industrial sector. Manufacturing employs nearly 13 million people, contributes \$2.9 trillion to the economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in the nation, fostering the innovation that is vital for this economic ecosystem to thrive. The NAM is the voice of the manufacturing community and leading advocate for a policy agenda

that helps manufacturers compete in the global economy and create jobs across the United States.

American Fuel & Petrochemical Manufacturers (AFPM) is a national trade association representing nearly all U.S. refining and petrochemical manufacturing capacity. AFPM members support more than three million quality jobs, contribute to our economic and national security, and enable the production of thousands of vital products used by families and businesses throughout the U.S.

CropLife America is the national trade association for the pesticide industry, representing developers, manufacturers, formulators, and distributors of pesticides for agriculture and pest management solutions. CropLife America's members—ranging from small companies to large corporations—produce, sell, and distribute virtually all pesticide products used by American farmers. Member companies have invested billions of dollars in research and testing of their pesticide products to help ensure their safety when used as directed on the federally required label.

The Pharmaceutical Research and Manufacturers of America (PhRMA) represents the country's leading innovative biopharmaceutical research companies, which are focused on developing innovative medicines that transform lives and create a healthier world. Together, PhRMA's members are fighting for solutions to ensure patients can access and afford medicines that prevent, treat, and cure disease. PhRMA member companies have invested more than \$850 billion in the search for new treatments and cures over the last decade, supporting nearly five million jobs in the United States.

The American Petroleum Institute (API) represents all segments of America's natural gas and oil industry, which supports nearly 11 million U.S. jobs and is backed by a growing grassroots movement of millions of Americans. API's approximately 600 members produce, process and distribute the majority of the nation's energy. API was formed in 1919 as a standards-setting organization and has developed more than 800 standards to enhance operational and environmental safety, efficiency and sustainability.

The Advanced Medical Technology Association (AdvaMed) is the world's largest medical-technology association representing device, diagnostics, imaging, and digital technology manufacturers that are transforming healthcare through earlier disease detection, less-invasive medical procedures, and more-effective treatments. Its 650-plus member companies span every field of medical science, and range from cutting-edge startups to multinational manufacturers. AdvaMed's members are dedicated to advancing clinician and patient access to safe, effective medical technologies. AdvaMed has participated as amicus curiae in numerous cases involving the admissibility of expert testimony, scientific reliability, and the proper enforcement of Rule 702 because these issues directly affect the medical technology ecosystem and the patients it serves. A legal regime that tolerates unreliable expert opinions threatens not only due process for defendants, but also the innovation pipeline that produces safer, more effective medical care.

Business Roundtable represents more than 200 chief executive officers of America's leading companies. Business Roundtable CEOs lead U.S.-

based companies that support one in four American jobs and almost a quarter of U.S. gross domestic product. Business Roundtable was founded on the belief that businesses should play an active and effective role in the formulation of public policy, and Business Roundtable members develop and advocate for policies to promote a thriving U.S. economy and expanded opportunity for all. Business Roundtable participates in litigation as *amicus curiae* when important business interests are at stake.

INTRODUCTION AND SUMMARY OF ARGUMENT

Under Federal Rule of Evidence 702, “[a] witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise *if* the proponent demonstrates to the court that it is more likely than not that,” among other things, the expert’s testimony (1) is “based on sufficient facts or data,” (2) is “the product of reliable principles and methods,” and (3) “reflects a reliable application of the principles and methods to the facts of the case.” Fed. R. Evid. 702(b)–(d) (emphasis added). The “overarching subject” of Rule 702’s requirements “is the scientific validity—and thus the evidentiary relevance and reliability—of the principles that underlie” the proposed expert testimony. *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 594–95 (1993).

In *Daubert*, this Court explained that the task of evaluating the reliability of expert testimony—as Rule 702 requires—falls within the province of the *district judge*. *Id.* at 597 (“Rule 702 . . . assign[s] to the trial judge the task of ensuring that an expert’s

testimony both rests on a reliable foundation and is relevant to the task at hand.”). In doing so, the Court recognized that Rule 702 requires district judges to perform a “gatekeeping” function to “ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable.” *Id.* at 589, 597. Following *Daubert*, this Court has repeatedly confirmed that a district court’s responsibility to shield juries from unreliable expert testimony includes refusing to admit it in the first instance. *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 141–42 (1999); *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 142 (1997).

Even so, “many courts have held that the critical questions of the sufficiency of an expert’s basis, and the application of the expert’s methodology, are questions of weight” to be resolved by juries—“not [questions of] admissibility” to be resolved by the district court. Fed. R. Evid. 702 advisory committee’s notes to 2023 amendments. Among those errant decisions is the Fourth Circuit’s in *Bresler v. Wilmington Trust*, 855 F.3d 178 (4th Cir. 2017). There, the Fourth Circuit held that “questions regarding the factual underpinnings of [an] expert witness’ opinion affect the weight and credibility of the witness’ assessment, not its admissibility.” *Id.* at 195 (cleaned up). That holding “effectively vitiated the application of Rule 104(a) to Rule 702(b)”² and

² Under Federal Rule of Evidence 104(a), “the proponent has the burden of establishing that the pertinent admissibility requirements are met by a preponderance of the evidence.” Fed. R. Evid. 702 advisory committee’s notes to 2000 amendments (citing *Bourjaily v. United States*, 483 U.S. 171 (1987)); see also Fed. R. Evid. 104(a).

“[a]bdicat[ed] [courts’] charge under the Federal Rules of Evidence and *Daubert* and its progeny to make the hard call on admissibility.” Thomas D. Schroeder, *Toward a More Apparent Approach to Considering the Admission of Expert Testimony*, 95 Notre Dame L. Rev. 2039, 2043, 2049–50 (2020).³

Bresler and decisions like it “are an incorrect application of Rules 702 and 104(a).” Fed. R. Evid. 702 advisory committee’s notes to 2023 amendments. That is why, in 2023, the Advisory Committee on Evidence Rules amended Rule 702 to confirm that a district court’s gatekeeping function includes the obligation to determine whether the proponent of expert testimony has demonstrated by a preponderance of the evidence that the testimony is sufficiently reliable to be considered by a jury.⁴ The Advisory Committee explained that the need to “emphasiz[e] the preponderance standard in Rule 702 specifically was made necessary by the courts”—like the Fourth Circuit in *Bresler*—“that have failed to apply correctly the reliability requirements of that rule.” Fed. R. Evid. 702 advisory committee’s notes to 2023 amendments. And it rejected the notion “that arguments about the sufficiency of an expert’s basis always go to weight and not admissibility.” *Ibid.*

³ Judge Schroeder chaired the Subcommittee of the Advisory Committee on Evidence Rules that spearheaded the 2023 amendments to Rule 702.

⁴ See H.R. Doc. No. 118-33, at 18 (2023) (adding clause to Rule 702 to clarify that an expert witness may testify “if the proponent demonstrates to the court that it is more likely than not that” Rule’s requirements are met), available at <https://tinyurl.com/vjhtk46x>.

But in the decision below, the Fourth Circuit eschewed the Advisory Committee’s guidance and this Court’s clear direction and instead applied *Bresler*’s outdated and incorrect approach to Rule 702. The district court excluded an expert’s opinion on ethylene oxide emissions from petitioners’ plant because the expert had, among other things, “commingled results from both” the at-issue plant and another plant “not at issue in this case,” “treated data from a single year as representative of . . . the entire 36-year period,” and used contradictory sets of meteorological data from non-representative locations. Pet. at 7–9 (cleaned up). But the Fourth Circuit faulted the district court for excluding the expert’s opinion, holding that the exclusion was inconsistent with *Bresler*’s mandate that juries, not the district court, resolve “questions regarding the factual underpinnings of the [expert] opinion” as a matter of “weight and credibility of the witness’ assessment.” Pet.App.20a–27a (citing *Bresler*). In doing so, the Fourth Circuit became the second circuit (after the First Circuit)⁵ to reaffirm incorrect “weight not admissibility” jurisprudence in the wake of the 2023 amendments to Rule 702. Those two circuits stand opposite the five circuits that have heeded the 2023 amendments and expressly confirmed that each of Rule 702’s requirements must be satisfied by a

⁵ See also *Rodríguez v. Hosp. San Cristobal*, 91 F.4th 59, 70 (1st Cir. 2024) (“When the factual underpinning of an expert’s opinion is weak, it is a matter affecting the weight and credibility of the testimony and thus a question to be resolved by the jury” (cleaned up)); *Doucette v. Jacobs*, 106 F.4th 156, 169 (1st Cir. 2024).

preponderance of the evidence for expert testimony to be admissible.⁶

That trend is troubling. A district court’s gatekeeping function under *Daubert* and Rule 702 is critical to modern litigation. *United States v. Frazier*, 387 F.3d 1244, 1260 (11th Cir. 2004) (“The importance of *Daubert*’s gatekeeping requirement cannot be overstated.”); accord, e.g., *Dodge v. Cotter Corp.*, 328 F.3d 1212, 1226 (10th Cir. 2012) (noting “the fundamental importance of properly performing the gatekeeper function”). Advances in technology, science, business, and other areas of society following Rule 702’s adoption over fifty years ago have made expert testimony more important as litigants seek to marshal evidence in increasingly complex disputes. Today’s litigants—and factfinders too—increasingly turn to expert testimony to help prove and resolve these matters. See Jed S. Rakoff, *Science and the Law: Uncomfortable Bedfellows*, 38 Seton Hall L. Rev. 1379, 1379 (2008) (“[S]cience in all its forms . . . has in recent years invaded the courtroom to an unparalleled extent.”).

Accordingly, “expert evidence can be . . . powerful.” *Daubert*, 509 U.S. at 595 (citation omitted). Yet at the same time, it can also be “quite misleading because of the difficulties in evaluating it.” *Ibid.* Indeed, an

⁶ *Engilis v. Monsanto Co.*, 151 F.4th 1040, 1047–50 (9th Cir. 2025); *In re Onglyza (Saxagliptin) & Kombiglyze (Saxagliptin & Metformin) Prods. Liab. Litig.*, 93 F.4th 339, 348 n.7 (6th Cir. 2024); *EcoFactor v. Google*, 137 F.4th 1333, 1339 (Fed. Cir. 2025) (en banc); *Williams v. BP Expl. & Prod., Inc.*, 143 F.4th 593, 601 (5th Cir. 2025); *Nairne v. Landry*, 151 F.4th 666, 697–98 (5th Cir. 2025); *Sprafka v. Medical Device Bus. Servs.*, 139 F.4th 656, 660–61 (8th Cir. 2025).

“expert’s testimony often will rest ‘upon an experience confessedly foreign in kind to [the jury’s] own.’” *Kumho Tire*, 526 U.S. at 149 (quoting Learned Hand, *Historical and Practical Considerations Regarding Expert Testimony*, 15 Harv. L. Rev. 40, 54 (1901)). When a district court shirks its gatekeeping duties—or, as in the case below, is prohibited altogether from exercising them—it risks admitting unreliable evidence that may mislead and even sway the jury.

That poses problems for litigants—particularly defendants. Without assurance that only expert testimony that satisfies Rule 702’s threshold reliability requirements will be admitted, defendants may be forced to proceed to trial and risk being subjected to liability based on plainly unreliable expert testimony. Defendants may also face prolonged litigation and higher litigation costs if unreliable expert testimony revives a plaintiff’s otherwise weak or speculative claims. And on top of that, the Fourth Circuit’s exacerbation of the split between federal circuits regarding the proper application of Rule 702, as amended in 2023, invites inconsistent verdicts and forum shopping, undermines the weight of the Advisory Committee’s guidance, and delegitimizes the Rules of Evidence themselves. Together, this reduces confidence in our judicial system and can call its fairness into question.

This Court’s review is necessary to resolve the circuit split. Although some courts may be unwilling to heed the Advisory Committee’s guidance, they are bound to accept this Court’s rulings. *See Hutto v. Davis*, 454 U.S. 370, 375 (1982) (“[U]nless we wish anarchy to prevail within the federal judicial system,

a precedent of this Court must be followed by the lower federal courts no matter how misguided the judges of those courts may think it to be.”). And if the Fourth Circuit’s decision is any indication, some courts will refuse to reverse course even following the 2023 amendments until this Court intercedes. This Court can and should take this opportunity to confirm the district courts’ duty to gatekeep expert testimony admitted for juries’ consideration by carefully applying Rule 702’s reliability requirements and the burden of proof to show their satisfaction.

ARGUMENT

I. RULE 702’S GATEKEEPING FUNCTION IS GROUNDED IN THE NEED TO PROTECT JURIES FROM UNRELIABLE EVIDENCE.

Rule 702 charges district courts with “gatekeeping” any expert testimony admitted into evidence. *See Daubert*, 509 U.S. at 597; *Kumho Tire*, 526 U.S. at 141; Fed. R. Evid. 702 advisory committee’s notes to 2000 amendments. The Rule’s delegation of the gatekeeping function to the district court as a threshold matter is confirmed by Federal Rule of Evidence 104, which provides that “[t]he court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible.” Fed. R. Evid. 104(a). District courts discharge their gatekeeping duties by admitting expert testimony only if the proponent can show, by a preponderance of the evidence, that the testimony meets four requirements: (1) it is helpful to the trier of fact, (2) it has a sufficient factual basis, (3) it is based on reliable principles and methods, and (4) it

reflects a reliable application of the methodology to the facts of the case. Fed. R. Evid. 702. It is only *after* the district court makes such a finding that any remaining disputes go to the jury for resolution as issues of weight. Thus, when a dispute regarding the facts, principles, or methods underlying an expert's testimony bears on whether Rule 702's requirements are satisfied in the first instance, those disputes are questions of admissibility.

Rule 702's gatekeeping function serves to "ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable." *Daubert*, 509 U.S. at 589. It reflects a balancing of the value of helpful expert testimony against the danger of unreliable and misleading expert testimony. For litigants to realize the benefit of that balance, courts must carefully leverage their legal expertise to apply Rule 702's substantive requirements and the burden of proof that the Rule imposes on the proponent of the testimony offered. That exercise does not require district courts to ensure that expert testimony is unassailable as a scientific or evidentiary matter before admitting the testimony into evidence—it merely requires them to ensure that the testimony is based on sufficiently reliable facts and methods, such that the jury's conclusion about the testimony's weight (whatever it may be) can be trusted.

District courts' obligation to evaluate expert testimony and screen out that which is irrelevant or unreliable is a matter of critical significance to the proper functioning of the federal judicial system. And this obligation cannot be passed along to jurors:

Judicial gatekeeping is essential because . . . jurors may be unable, due to lack of specialized knowledge, to evaluate meaningfully the reliability of scientific and other methods underlying expert opinion, [and] may also lack the specialized knowledge to determine whether the conclusions of an expert go beyond what the expert's basis and methodology may reliably support.

Fed. R. Evid. 702 advisory committee's notes to 2023 amendments; *see also Kumho Tire*, 526 U.S. at 149 (an “expert’s testimony often will rest upon an experience confessedly foreign in kind to [the jury’s] own” (cleaned up)). It is thus plainly wrong for a district judge to mischaracterize potential flaws of an expert’s methodology as merely matters of evidentiary weight exclusively for the jury to assess.

Indeed, as this Court has acknowledged, “[e]xpert evidence can be both powerful and quite misleading because of the difficulty in evaluating it.” *Daubert*, 509 U.S. at 595 (citation omitted). Without district courts’ gatekeeping unreliable expert testimony, juries—and the verdicts they reach—are susceptible to influence by “expertise that is *fausse* and science that is junky.” *Kumho Tire*, 526 U.S. at 158–59 (Scalia, J., concurring). On the other hand, when district courts faithfully carry out their gatekeeper function, they enable juries to resolve cases “finally and quickly,” free from reliance on expert testimony “that [is] probably wrong.” *Daubert*, 509 U.S. at 597. Such testimony is “of little use . . . in the project of reaching a quick, final, and binding legal judgment—

often of great consequence—about a particular set of events in the past.” *Ibid.*

II. THE DECISION BELOW REPUDIATES DISTRICT COURTS’ GATEKEEPING ROLE IN CONTRAVENTION OF THIS COURT’S AND THE ADVISORY COMMITTEE’S CLEAR INSTRUCTION.

In the decision below, the Fourth Circuit reversed the district court’s exclusion of an expert’s testimony regarding ethylene oxide emissions. The district court issued a reasoned opinion determining that the data inputs and methodology used by the expert to model the emissions were fundamentally flawed and unreliable. The Fourth Circuit disagreed, finding that the district court “violated *Bresler*’s holding that ‘questions regarding the factual underpinnings of the [expert witness] opinion affect the weight and credibility of the witness’ assessment, not its admissibility.” Pet.App.20a–22a; *see also id.* at 24a–25a (“The district court again conflated admissibility with the weight a factfinder might attribute [the expert’s] testimony based on his choice of data.”). But the notion that “district courts may not decide that an expert’s opinion lacks sufficient support in the record . . . or conclude ‘that there is simply too great an analytical gap between [an expert’s data] and the opinion proffered’” conflicts with Rule 702 and this Court’s jurisprudence. *Id.* at 36a (Diaz, C.J., dissenting) (citing Fed. R. Evid. 702(b) and quoting *Gen. Elec. Co.*, 522 U.S. at 146).

The Fourth Circuit’s decision also flouts the 2023 amendments to Rule 702. When the Advisory Committee on Evidence Rules began the proceedings

leading to the 2023 amendments, it set out to correct decisions like *Bresler* that stubbornly adhered to the notion that questions about the reliability of expert testimony always go only to the *weight* of the testimony—and thus, should be resolved by the jury. Fed. R. Evid. 702 advisory committee’s notes to 2023 amendments (“[M]any courts have held that the critical questions of the sufficiency of an expert’s basis, and the application of the expert’s methodology, are questions of weight and not admissibility. These rulings are an incorrect application of Rules 702 and 104(a).”). Indeed, in its comment to the Advisory Committee regarding the Rule 702 amendments, Lawyers for Civil Justice identified hundreds of courts of appeals decisions between 2015 and 2021 suggesting (incorrectly) that questions regarding the factual bases or foundations of expert opinions go to the weight of the experts’ opinions and are, therefore, merely for cross-examination and jury resolution.⁷ The Advisory Committee’s reporter explained the same in the Committee’s official agenda book: “Many opinions can be found with broad statements such as ‘challenges to the sufficiency of an expert’s basis raise questions of weight and not admissibility’—a *misstatement made by circuit courts and district courts in a disturbing number of cases.*”⁸

⁷ See Lawyers for Civil Justice, Comment to the Advisory Committee on Evidence Rules at 2 (Sep. 1, 2021), <https://tinyurl.com/mutwkrmv>.

⁸ Memorandum from Daniel J. Capra, Reporter, Advisory Committee on Evidence Rules, to Advisory Committee on Evidence Rules, Possible Amendment to Rule 702 (Apr. 1, 2021) at 11, in Advisory Committee on Evidence Rules Agenda Book

To prevent those misstatements from multiplying, the Advisory Committee amended Rule 702 to “clarify and emphasize that expert testimony may not be admitted unless the proponent demonstrates *to the [district] court* that it is more likely than not that the proffered testimony meets the admissibility requirements set forth in the rule.” Fed. R. Evid. 702 advisory committee’s notes to 2023 amendments (emphasis added). It did so by adding a clause to note that expert testimony may be admitted “if the proponent demonstrates to the court that it is more likely than not that” Rule 702’s requirements are met. See H.R. Doc. No. 118-33, at 18.

The 2023 amendment was not intended to (and did not) change Rule 702’s requirements. Rather, as the Advisory Committee’s chair explained:

[T]he Committee resolved to respond to the fact that many courts have declared that the reliability requirements set forth in Rule 702(b) and (d)—that the expert has relied on sufficient facts or data and has reliably applied a reliable methodology—are questions of weight and not admissibility, and more broadly that expert testimony is presumed to be admissible. *These statements misstate Rule 702, because its admissibility requirements must be established to a*

90, 100 (Apr. 30, 2021), <https://tinyurl.com/mw4u4wum> (emphasis added).

court by a preponderance of the evidence.^[9]

In the official notes to the amended Rule, the Advisory Committee doubled down in explaining that “weight not admissibility” jurisprudence—including the Fourth Circuit’s—conflicts with the Federal Rules:

[M]any courts have held that the critical questions of the sufficiency of an expert’s basis, and the application of the expert’s methodology, are questions of weight and not admissibility. These rulings are an incorrect application of Rules 702 and 104(a). . . . Some challenges to expert testimony will raise matters of weight rather than admissibility even under the Rule 104(a) standard. . . . But this does not mean, as certain courts have held, that arguments about the sufficiency of an expert’s basis always go to weight and not admissibility.

Fed. R. Evid. 702 advisory committee’s notes to 2023 amendments; *see also ibid.* (“The Committee concluded that emphasizing the preponderance standard in Rule 702 specifically was made necessary

⁹ Memorandum from Patrick J. Schiltz, Chair, Advisory Committee on Evidence Rules, to John D. Bates, Chair, Standing Committee on Rules of Practice and Procedure, Report of the Advisory Committee on Evidence Rules (May 15, 2022) at 6, in Committee on Rules of Practice and Procedure Agenda Book 866, 871 (June 7, 2022), <https://tinyurl.com/52edk2e2> (emphasis added).

by the courts that have failed to apply correctly the reliability requirements of that rule.”).

Since the Advisory Committee issued that clarification, many circuits have correctly followed the 2023 amendments. *See, e.g., Engilis*, 151 F.4th at 1047–50 (the 2023 amendments “sought to ‘clarify and emphasize’ that proffered expert testimony must meet the admissibility requirements of Rule 702 by a preponderance of the evidence,” and “that challenges to an expert’s opinion go to the weight of the evidence *only if* a court *first* finds it more likely than not that an expert has a sufficient basis to support an opinion” (emphasis added) (citing Fed. R. Evid. 702 advisory committee’s note to 2023 amendments)); *In re Onglyza*, 93 F.4th at 348 n.7 (“Indeed, Rule 702’s recent amendments were drafted to correct some court decisions incorrectly holding ‘that the critical questions of the sufficiency of an expert’s basis, and the application of the expert’s methodology, are questions of weight and not admissibility.’ (quoting Fed. R. Evid. 702 advisory committee’s note to 2023 amendments)); *EcoFactor*, 137 F.4th at 1339 (similar); *Williams*, 143 F.4th at 601 (calling into question whether expert opinion was “reliably ‘based on sufficient facts or data’ under Rule 702(b)”); *Nairne*, 151 F.4th at 697–98; *Sprafka*, 139 F.4th at 660–61 (“[A]fter Rule 702’s recent amendment courts continue to have a gatekeeping role to assure that evidence admitted in a case is both relevant and reliable.”).

Yet the Fourth Circuit has refused to follow suit. (So too has the First Circuit.¹⁰) In the decision below, the Fourth Circuit stayed its wrongheaded course and reasserted *Bresler*'s continuing viability in at least nine federal districts spanning five states. It did so despite the Advisory Committee's guidance and criticism of *Bresler*, not to mention the text of Rule 702 itself. *See also* 28 U.S.C. § 2072(a)–(b) (establishing the primacy of the Federal Rules of Evidence themselves as the primary authority for their own interpretation). It even chastised the district court for performing the very gatekeeping function that it was *required* to perform under Rule 702. If a district court cannot perform its gatekeeping function, then it cannot protect juries from unreliable expert testimony. And if district courts cannot screen unreliable expert testimony from juries, a daisy chain of harms will follow. This circuit split is entrenched, and this Court's review would not benefit from further percolation. It should grant certiorari now to resolve the split.

III. ONGOING WEAKENING OF DISTRICT COURTS' GATEKEEPING ROLE HARMS LITIGANTS AND THE JUDICIAL SYSTEM.

The decision below conflicts with Rule 702's text, defies the 2023 amendments, and stands on the

¹⁰ Two years ago, the First Circuit made the same mistake, reaffirming *Milward v. Acuity Specialty Products Group, Inc.*, 639 F.3d 11 (1st Cir. 2011)—its own version of *Bresler*—and thus ensuring that the “weight not admissibility” principle also remains law in the five federal districts in that circuit. *Rodríguez*, 91 F.4th at 70.

wrong side of a circuit split. But ultimately and most practically, it dangerously weakens district courts' gatekeeping role under Rule 702. The harmful consequences of such weakening will be felt most keenly by litigants like *amici* and their members, which are often defendants in complex civil litigation involving expert testimony on both sides.

Because expert testimony can disproportionately influence juries, the admission of unreliable expert testimony can unfairly dictate the rest of the litigation. Defendants that confront adverse expert rulings may be compelled to settle, rather than take their chances with a jury, even when there are real doubts about the science involved. See Margaret A. Berger, *The Admissibility of Expert Testimony*, in Fed. Jud. Ctr., Reference Manual on Scientific Evidence 11, 19 (3d ed. 2011) (“[A]n inability by the defendant to exclude plaintiffs’ experts undoubtedly affects the willingness of the defendant to negotiate a settlement.”); Rakoff, *supra*, at 1391 (recounting that in a mass pharmaceutical products-liability action, “shortly after my [*Daubert*] decision came down, most of the 800 cases settled, for amounts that seemingly reflected the mid-point nature of what I allowed in the way of expert testimony”). This dynamic serves only to perversely incentivize litigants to continue to proffer speculative and questionable science in federal courts, contrary to Rule 702’s intention.

In toxic-tort and product-liability cases in particular, if a plaintiff’s expert testimony is admitted, “a defendant often feels irresistible pressure to settle the action rather than risk a battle of the experts at trial that, if the defendant loses, can cost exponentially more than the settlement cost of

the action.” Christopher R.J. Pace, *Admitting and Excluding General Expert Testimony: The Eleventh Circuit Construct*, 37 Am. J. Trial Advoc. 47, 48 (2013). Those “plaintiffs’ likelihood of success is commonly driven by the admissibility of their experts’ general causation testimony under Rule 702 of the Federal Rules of Evidence and *Daubert*.” *Ibid*.

The circuit split over the proper application of Rule 702 also creates the risk of inconsistent verdicts and encourages forum shopping—particularly in the mass-tort context. Indeed, following *Daubert*, the senior counsel of the Association of Trial Lawyers of America recommended that, “because it’s difficult to see light at the end of the *Daubert* tunnel, plaintiffs must take another tunnel.” Victor E. Schwartz & Cary Silverman, *The Draining of Daubert and the Recidivism of Junk Science in Federal and State Courts*, 35 Hofstra L. Rev 217, 269 (2006) (quoting Ned Miltenberg, *Out of the Fire and Into the Fryeing Pan or Back to the Future*, Trial, Mar. 2001, at 24).

But by admitting expert testimony *only* when it is shown by a preponderance of the evidence to be sufficiently reliable to be considered by a jury, district courts ensure fundamental fairness and bolster public confidence in our adversarial system of justice. It is more crucial than ever that district courts carry out that gatekeeping role with unflinching consistency because “science in all its forms . . . has in recent years invaded the courtroom to an unparalleled extent.” Rakoff, *supra*, at 1379. Indeed, “[s]cientific issues” now “permeate the law.” Stephen Breyer, *Introduction*, in Fed. Jud. Ctr., Reference Manual on Scientific Evidence 1, 3 (3d ed. 2011); *see also Gen. Elec. Co.*, 522 U.S. at 148–49 (Breyer, J., concurring)

(given the proliferation in manufactured products, it is “particularly important to see that judges fulfill their *Daubert* gatekeeping function, so that they help assure that the powerful engine of tort liability . . . points toward the right substances and does not destroy the wrong ones”). And yet, as the use of expert testimony in litigation has proliferated, so too has “expertise that is *fausse* and science that is junky.” *Kumho Tire*, 526 U.S. at 158–59 (Scalia, J., concurring); Joseph M. Price & Gretchen Gates Kelly, *Junk Science in the Courtroom: Causes, Effects and Controls*, 19 Hamline L. Rev. 395, 398 (1996); Schwartz & Silverman, *supra*, at 224; Peter Huber, *Junk Science and the Jury*, 1990 U. Chi. Legal F. 273, 276–77 (1990). When a district court fails to screen such unreliable evidence from the jury, it allows false and misleading evidence to determine real—and often expensive—outcomes for the litigants.

The Fourth Circuit’s willingness to discard the gatekeeping function and to punt unreliable expert testimony to juries undermines the judicial system and harms litigants (including but not limited to business defendants) who depend on that system for fair and accurate determinations of legal liability. The Fourth Circuit’s defiance of the 2023 amendments to Rule 702 signals that a deep fissure has opened in this area of the law—one that is unlikely to close without this Court’s intervention. Indeed, district courts are already following the decision below down a path that further conflicts with Rule 702’s text. *See, e.g., In re Camp Lejeune Water Litig.*, 2025 WL 3565850, at *14–25 (E.D.N.C. Dec. 12, 2025) (same and reasoning that “[t]o accept this argument [for exclusion] would

require the court to impermissibly weigh the experts' methodological inputs rather than the methodology itself"); *Alford v. NFL Player Disability & Survivor Benefit Plan*, 2025 WL 3274428, at *3 (D. Md. Nov. 24, 2025) ("Nevertheless, 'questions regarding the factual underpinnings of the [expert witness] opinion affect the weight and credibility of the witness' assessment, not its admissibility.' The Fourth Circuit recently held that a trial court committed reversible error when it 'waded into credibility determinations' that were 'framed as a 'reliability' question.' (first quoting *Bresler*, 855 F.3d at 195, and then quoting Pet.App.26a)); *R&J Components Corp. v. Centimark Corp.*, 2025 WL 3732157, at *6 (D.S.C. Nov. 18, 2025) (refusing to exclude expert testimony and citing to *Bresler* and the decision below); *Michael's Fabrics, LLC v. Donegal Mut. Ins. Co.*, 2025 WL 2624280, at *4 (D. Md. Sep. 11, 2025) (rejecting challenge "to the reliability of [expert's] methodology and resulting opinion" because "[q]uestions regarding the factual underpinnings of the [expert witness] opinion, which are what Defendant raises here, affect the weight and credibility of the witness' assessment, not its admissibility" (cleaned up) (citing *Bresler* and Pet.App.27a n.7)); *Mincey v. Se. Farm Equip.*, 2025 WL 2450913, at *10 (D.S.C. Aug. 26, 2025) ("The Fourth Circuit has repeatedly explained that 'questions regarding the factual underpinnings of the expert witness' opinion affect the weight and credibility of the witness' assessment, *not its admissibility.*'" (quoting Pet.App.20a–21a)).

CONCLUSION

No circuit should be allowed to flout this Court's and the Advisory Committee's uniform interpretation of Rule 702 without swift correction by this Court. This critical issue deserves review by this Court to confirm the importance of district courts' gatekeeping function and the proper evaluation of the reliability of expert testimony under Rule 702.

The Court should grant the petition for writ of certiorari.

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