No. 07-1216

IN THE

Supreme Court of the United States

PHILIP MORRIS USA,
Petitioner,

v.

MAYOLA WILLIAMS,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Oregon

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

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QUESTION PRESENTED

This brief addresses the first question presented in the petition for a writ of certiorari:

Whether, after this Court has adjudicated the merits of a party's federal claim and remanded the case to state court with instructions to "apply" the correct constitutional standard, the state court may interpose—for the first time in the litigation—a state-law procedural bar that is neither firmly established nor regularly followed.

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

The Chamber of Commerce of the United States of America ("the Chamber") respectfully submits this brief as *amicus curiae* in support of the petition for a writ of certiorari in this case.[1]

INTEREST OF AMICUS CURIAE

The Chamber is the nation's largest federation of business companies and associations. The Chamber represents 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. An important function of the Chamber is to represent the interests of its members by filing *amicus curiae* briefs in cases involving issues of national concern to American business.

The Chamber is filing this brief in support of the petition for a writ of certiorari because the rational and equitable administration of punitive damages is a matter of profound concern to the Chamber's members. The Chamber's members welcomed this Court's decision in *Philip Morris USA v. Williams*, 127 S. Ct. 1057 (2007) ("*Williams I*"), as providing a

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[1] Pursuant to Rule 37.2(a), the Chamber provided timely notice of its intent to file this brief, and the parties have given their written consent to its filing. Pursuant to Rule 37.6, counsel for *amicus curiae* state that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity other than *amicus curiae*, its members, or its counsel has made a monetary contribution to the preparation or submission of this brief.

much-needed bar to the use of punitive damages to punish defendants for harm caused to nonparties to litigation. The Chamber is concerned, however, that a number of state courts have misunderstood or failed to faithfully enforce the prohibition and procedural protections set forth in *Williams I*. The decision that the petition for a writ of certiorari asks this Court to review—the ruling of the Oregon Supreme Court on remand from this Court's decision in *Williams I*—is illustrative of the problem. The Oregon court ignored this Court's mandate to apply the constitutional standard set forth in *Williams I* and instead applied a novel state procedural bar to "affirm [the judgment against petitioner] without reaching the federal question." Pet. App. 13a. A number of other state courts have taken similar approaches. Unless this emerging trend is stopped now, other courts will likewise be emboldened to disregard *Williams I*, seriously undermining the effect of that important precedent on the administration of punitive damages in the lower courts.

Because the Chamber's members appear repeatedly before this Court and lower courts at both the state and federal levels, the Chamber also has a significant interest in the predictability afforded by the duty of lower courts to reach the merits of federal claims that are fairly presented, especially those that have been the subject of rulings by this Court. Decisions like that of the Oregon Supreme Court threaten the fair enforceability of federal rights. A decision by this Court reaffirming *Williams I* and condemning the Oregon Supreme Court's effort to evade it can simultaneously secure the important due process rights protected by that decision and re-

inforce the duty of lower courts to comply with this Court's mandates.

The Chamber therefore respectfully submits this brief urging the Court to grant the petition and ensure the integrity of this Court's mandate in *Williams I*.

REASONS FOR GRANTING THE WRIT

This case presents an issue of exceptional importance to the institutional authority of this Court: whether a lower court may, for the first time on remand, invent a state procedural obstacle to avoid applying federal constitutional law as mandated by this Court. That issue is of critical importance to American businesses, which routinely appear in state courts and frequently find themselves before local juries eager to punish out-of-state defendants and appellate courts unwilling to correct that bias. *See Honda Motor Co. v. Oberg*, 512 U.S. 415, 432 (1994) (punitive damages entail "grave risk" that juries "will use their verdicts to express biases against big businesses, particularly those without strong local presences"). As repeat players, those businesses rely on the predictability afforded by the requirement that lower courts comply with the mandates of this Court and the courts of appeals, and on the right to have their federal claims heard when fairly presented.

This Court's decision in *Williams I*, which held that "the Constitution's Due Process Clause forbids a State to use a punitive damages award to punish a defendant for injury that it inflicts upon nonparties," 127 S. Ct. at 1063, provided American businesses with much-needed protection against global punish-

ment in individual cases, at the same time reaffirming the bedrock principle that defendants cannot be punished without first receiving "'an opportunity to present every available defense.'" *Williams I*, 127 S. Ct. at 1063 (quoting *Lindsey v. Normet*, 405 U.S. 56 (1972)). But that decision may be in danger. In the fifteen months since *Williams I* was decided, a number of state courts have issued decisions that signal a growing movement to disregard the lessons of that case. *See infra* at 5-9.

Unfortunately, the lower courts' treatment of *Williams I* is symptomatic of the disregard that some state courts show for precedents of this Court that protect the rights of locally unpopular defendants against arbitrary punitive damages awards. The subsequent history of this Court's decision in *State Farm Mutual Automobile Insurance Company v. Campbell*, 538 U.S. 408 (2003), demonstrates how quickly disregard for a decision of this Court can dilute the force of that precedent. The courts that have been hesitant to apply *Williams I* fully and faithfully will likely be watching the Court's decision in this case very closely. By granting review, this Court can efficiently and effectively ensure the continued force of *Williams I* and make clear that the Court will not tolerate efforts to evade its decisions.

ARGUMENT

I. A Number Of State Courts Have Failed To Apply The Principle Laid Down In *Williams I*

Like a number of state courts, the Oregon Supreme Court in this case failed to follow the directive of this Court in *Williams I* fully and faithfully.

When this Court remands a case to a state or lower federal court for further proceedings, that court "has no power or authority to deviate from the mandate issued by" this Court. *Briggs v. Pennsylvania R.R. Co.*, 334 U.S. 304, 306 (1948). The court may not "reconsider questions which the mandate has laid at rest," *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 140 (1940), and it may not "give any other or further relief . . . than to settle so much as has been remanded," *In re Sanford Fork & Tool Co.*, 160 U.S. 247, 255 (1895). The requirement that lower courts comply with the directives issued by this Court ensures that lower courts will predictably apply the decisions that this Court announces and that litigants will be able to rely on those decisions as issued.

The Oregon Supreme Court's decision on remand in this case does not adhere to the directive issued by this Court in *Williams I*. This Court's decision addressed only one question: whether "Oregon had *unconstitutionally* permitted [petitioner] to be punished for harming nonparty victims." 127 S. Ct. at 1062 (emphasis added). Because this Court "believe[d] that the Oregon Supreme Court applied the wrong constitutional standard"—a rule that allowed defendants to be punished for any harm caused by conduct similar to the conduct that harmed the plaintiff—it "remand[ed] th[e] case so that the [state court] c[ould] apply the standard" set forth in *Williams I*. *Id.* at 1065. Instead of doing so, the Oregon court applied an "independent state law standard" under which it affirmed the judgment against petitioner "without reaching the federal question." Pet. App. 13a. As the petition explains, that was error. Pet. 13-20.

The Oregon Supreme Court is not alone, however, in failing to apply *Williams I* fully and faithfully. In the less than fifteen months since *Williams I* was decided, a number of state courts have failed to give effect to the full force of the decision, even when directly ordered by this Court to reconsider an opinion in light of the case. In *Buell-Wilson v. Ford Motor Co.*,[2] for example, the California Court of Appeal concluded that *Williams* "d[id] not require that [it] change any of the holdings in its original opinion." 73 Cal. Rptr. 3d 277, 290 (Cal Ct. App.), *modified on other grounds and reh'g denied*, 2008 Cal. App. LEXIS 515 (Cal. Ct. App. 2008). Like the Oregon Supreme Court, the California court in *Buell-Wilson* concluded that the defendant had not properly preserved its argument against punishment for non-party harm under state law and thus forfeited it. The court in *Buell-Wilson* went further, however, and determined that *Williams I* was inapplicable because "there was no evidence or argument at trial that created a significant risk that the jury, in deciding the amount of punitive damages to award, punished [the defendant] for harm it caused to third parties." *Id.*

That conclusion is baffling. The court itself recognized that plaintiffs had introduced evidence of the defendant's "reckless disregard for the safety of others," the "repeated nature of [the defendant's] conduct," and "serious injuries to [drivers of the] Bronco II," even though that was not the type of ve-

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[2] On remand from *Ford Motor Co. v. Buell-Wilson*, 127 S. Ct. 2250 (2007) (granting certiorari, vacating lower court decision, and remanding for further consideration ("GVR") in light of *Williams I*).

hicle driven by the plaintiff. *Id.* at 312, 319. It further recognized that plaintiff's counsel had reminded the jurors during closing argument that they "ha[d] heard of others in California" who had been hurt, that defendant "had had the same problem before," and that defendant "chose to put people in wheelchairs, brain damaged or death" through its "[w]illful disregard of the health and safety of [plaintiff] and those like her." *Id.* at 341-42. If that evidence and argument does not pose a "significant" or "unreasonable and unnecessary risk" that a defendant will be punished for harm caused to nonparties, *Williams I*, 127 S. Ct. at 1065, it is difficult to imagine in what circumstances California courts will conclude that *Williams I* does apply in the future.

The analysis of the Louisiana Court of Appeal in *Grefer v. Alpha Technical*, 965 So. 2d 511 (La. Ct. App. 2007), *cert. denied sub nom. Exxon Mobil Corp. v. Grefer*, ___ S. Ct. ___, 2008 WL 1775070 (2008), reflects similar unwillingness to fairly implement this Court's decision. On remand from this Court in light of *Williams I*, *see Exxon Mobil Corp. v. Grefer*, 127 S. Ct. 1371 (2007), the Court of Appeal held that it would "stand by [its] initial decree" affirming an award of $112 million in punitive damages in a case involving the contamination of land with radioactive waste. The plaintiffs' only claim was for property damage; they did not live or work on the property and were not exposed to the contamination. 965 So. 2d at 526. Yet plaintiffs' counsel urged the jury to award punitive damages based on the health risks that the contamination of their property allegedly posed to the public and to employees who cleaned pipes on plaintiffs' land—individuals who could, and

did, bring their own lawsuits against the defendants. *See infra* at 15. After the GVR from this Court, the Louisiana Court of Appeal affirmed as "both permissible and constitutional" (965 So. 2d at 517) jury instructions that made the sole predicate for punitive damages harm to the public, rather than the plaintiffs. *See id.* at 516-17 ("[Y]ou may award exemplary damages against a defendant when the plaintiff shows that the defendants were wanton or reckless in their disregard for public safety."). Under the guise of analyzing "reprehensibility," the Court of Appeal also justified the punitive damages award on the ground that the defendant, upon recognizing the possibility of contamination, *stopped* sending contaminated pipes to plaintiffs' land, because the court believed that decision put a *third*, "financially vulnerable" party out of business. *Id.* at 522. The court insisted that its decision "afforded [the defendant] all of the constitutional protections available under the Due Process Clause of the U.S. Constitution." *Id.* at 518.

The Supreme Court of West Virginia has ignored the dictates of *Williams I* as well. In *State ex rel. Chemtall Inc. v. Madden*, 655 S.E.2d 161 (W. Va. 2007), *cert. denied*, ___ S. Ct. ___, 2008 WL 355214 (Mar. 31, 2008), the court affirmed as facially consistent with *Williams I* a lower court's decision to have a trial, before the plaintiff class was certified, on "whether the Defendants' actions and/or inactions justify punitive damages, and if so, what multiple of general damages will be assessed as a punitive damage multiplier." *Id.* at 164-165. As the *Chemtall* dissent objected, however, a court that determines punitive damages before it determines the set of

plaintiffs involved certainly contravenes the mandate in *Williams I*. A defendant cannot possibly present "every available defense" to the charges against it when the defendant does not know who is making the charges or the number of charges being brought. *Id.* at 170 (Benjamin, J., dissenting in part); *see also Amicus Curiae* Br. of the Chamber in Support of Petitioners, *Philip Morris USA Inc. v. Accord*, No. 07-806, at 2-3 (Jan. 16, 2008) (describing West Virginia Supreme Court of Appeals' approval of similar procedure in another case), *cert. denied*, 128 S. Ct. 1447 (2008).

As these cases indicate, this Court's decision in *Williams I* is at risk. Lower courts are likely to follow the outcome of this case very closely, to see how much latitude they have to distinguish away or altogether disregard this important precedent. As explained below, *infra* at 13-14, a denial of certiorari here could have enormous implications for future cases. By granting certiorari in the very case in which it articulated the prohibition against punishment for nonparty harm, this Court can forcefully reject past efforts to evade *Williams I*, prevent future courts from following the same unlawful course, and reinforce a level of predictability in the application of its mandate that will benefit all litigants.

II. The Treatment Of *State Farm* In Lower Courts Confirms That Review Is Warranted In This Case

The experience following this Court's decision in *State Farm* confirms that the Court's review is necessary here. Even before courts began evading the principle of *Williams I* as described above, a number

of state courts were rejecting the holding and analysis of this Court's decision in *State Farm*. The subsequent history of that case provides a disturbing glimpse into the likely future of *Williams I*, should the Oregon Supreme Court's refusal to follow this Court's instructions go unchecked.

In *State Farm* this Court provided detailed guidance to state and lower federal courts on how to review punitive damages awards to ensure that they are not excessive and that defendants have fair notice of the potential awards to which they might be subject. The Court elaborated on each of three guideposts that it had previously instructed reviewing courts to consider: (1) the reprehensibility of the defendant's misconduct; (2) the ratio between the punitive damages and harm suffered by the plaintiff; and (3) the civil penalties authorized or imposed in comparable cases. *See* 538 U.S. at 418. With respect to ratio, the Court instructed that, "[w]hen compensatory damages are substantial," an award "equal to compensatory damages" will often "reach the outermost limit of the due process guarantee." *Id.* at 425. The Court then concluded that applying "the *Gore* guideposts to the facts of [*State Farm* itself] . . . likely would justify a punitive damages award at or near the amount of compensatory damages." *Id.* at 429.

Despite that clear guidance, the Utah Supreme Court on remand held that due process permitted a punitive award *nine times* the size of the compensatory damages awarded. *See Campbell v. State Farm Mut. Auto. Ins. Co.*, 98 P.3d 409, 410-11 (Utah 2004). The court reasoned that this Court had erred in con-

cluding that the compensatory award for emotional distress already contained a punitive element and decided instead that the damages for emotional distress actually justified a higher punitive award because conduct that causes emotional harm is "markedly more egregious" than conduct that causes economic harm. *Id.* at 418; *see id.* at 413. That reasoning turned the guidance provided by this Court in *State Farm* on its head.

A number of courts unfortunately followed Utah's lead, ignoring the Court's teaching and affirming punitive awards in ratios much greater than 1:1 where there were undeniably "substantial" compensatory damages. *See, e.g., Union Pac. R.R. Co. v. Barber*, 149 S.W.3d 325 (Ark. 2004) (4.9:1 ratio based on $5.1 million compensatory verdict); *Henley v. Philip Morris Inc.*, 9 Cal. Rptr. 3d 29 (Cal. Ct. App. 2004) (6:1 ratio based on $1.5 million compensatory verdict), *cert. denied*, 544 U.S. 920 (2005); *Bocci v. Key Pharms., Inc.*, 79 P.3d 908 (Or. App. 2003) (7:1 ratio based on $5.5 million in compensatory damages). Indeed, Justices of the West Virginia Supreme Court of Appeals have expressed open hostility toward *State Farm*'s important pronouncement concerning permissible ratios,[3] and that court has

[3] *See, e.g., In re Tobacco Litig.*, 624 S.E.2d 738, 749 (W. Va. 2005) (Starcher, J., concurring) ("As the members of this Court have noted before, *State Farm v. Campbell* . . . was nothing more than a summary, a collation, of prior case law.") (citing cases); *Jackson v. State Farm Mut. Auto. Ins. Co.*, 600 S.E.2d 346, 367 (W. Va. 2004) (McGraw, J., concurring) (opining that in *State Farm*, "the majority of the nine justices did not focus on 'the degree of reprehensibility of the defendant's conduct,' but instead chose to substitute the jury's judgment with their own.") (citation omitted); *see also id.* at 366 (Maynard, C.J.,

refused to instruct a trial court on remand that "single-digit multipliers are more likely to comport with due process" or even that, to be probative, out-of-state lawful conduct "must have a nexus to the specific harm suffered by the plaintiff." *Jackson v. State Farm Mut. Auto. Ins. Co.*, 600 S.E.2d 346, 364-65 (W. Va. 2004) (Maynard, C.J., concurring in part and dissenting in part).

A number of courts have recognized that the Court's teaching in *State Farm* does not permit those results. *See, e.g., Bridgeport Music, Inc. v. Justin Combs Publ'g*, 507 F.3d 470, 489 (6th Cir. 2007) (citing *State Farm* and ordering district court to impose ratio between 1:1 and 2:1 because "a substantial compensatory damages award means that a lower ratio is needed to satisfy the requirements of due process"); *Williams v. ConAgra Poultry Co.*, 378 F.3d 790, 799 (8th Cir. 2004) (quoting *State Farm* and "[a]ccordingly" reducing punitive damages to amount of compensatory damages); *see also Willow Inn, Inc. v. Pub. Serv. Mut. Ins. Co.*, 399 F.3d 224, 235 (3d Cir. 2005) (affirming award that "result[ed] in approximately a 1:1 ratio, which is indicative of constitutionality under *Gore* and *Campbell*").

But lacking further guidance or reaffirmation of

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concurring in part and dissenting in part) ("I fervently hope that the next time a punitive damages award is reviewed by this Court, the majority will abide by the United States Supreme Court's decision in *Campbell*, even if it does not like or agree with *Campbell*'s holdings. . . . *Campbell* is the law of the land, and it must be applied everywhere in the United States, including in West Virginia.").

State Farm from this Court, other courts have continued to affirm increasingly higher ratios, citing as precedent not only early decisions that disregarded *State Farm* but also the Court's denial of certiorari after remand in *State Farm* itself. For example, in *Seltzer v. Morton*, 154 P.3d 561, 611-612 & n.32 (Mont. 2007), the court cited the Utah Supreme Court's decision on remand, and this Court's subsequent denial of State Farm's petition for certiorari, to justify a ratio of over 18:1 based on $1.1 million in compensatory damages for abuse of process and malicious prosecution. Similarly in *Goddard v. Farmers Insurance Co. of Oregon*, 120 P.3d 1260, 1281 & n.24, 1284 (Or. Ct. App. 2005), the court decided upon a 3:1 ratio after noting the 9:1 ratio on remand in *State Farm* and the denial of certiorari. And the Oregon Supreme Court in this very case affirmed a punitive damages award of 97 times the amount of the compensatory damages—a ratio with absolutely no basis in the precedent of this Court. *See* Pet. 31-34.

When *State Farm* was decided, it was hailed as a watershed decision that promised at last to bring order and rationality to judicial review of punitive damages awards.[4] Despite that initial promise, how-

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[4] *See, e.g.*, David G. Savage, *Justices Act to Restrict Punitive Damage Awards: The Supreme Court Ruling is a Move to Control "Irrational and Arbitrary" Verdicts*, L.A. Times, Apr. 8, 2003, at 1 ("The . . . ruling sends a stern warning to state judges and juries to rein in excessive awards."); Editorial, *Punitive Damages on Trial*, Chi. Trib., Apr. 12, 2003, at C26 ("The high court drew some badly needed guidelines on what is reasonable when the courts award punitive damages in civil cases."); Lorraine Woellert & Mike France, *Tort Reform Has Friends in High Places*, Bus. Wk., Apr. 21, 2003, at 78 (arguing

ever, its force has diminished as lower courts increasingly ignore or evade its principles. A similar destiny may await *Williams I* if this Court does not correct the Oregon Supreme Court's blatant failure to heed its directive. Although it is well established that a denial of certiorari creates no legal precedent, *see, e.g.*, *Missouri v. Jenkins*, 515 U.S. 70, 85 (1995), the history of *State Farm* in the lower courts demonstrates that a denial can have practical impact—particularly in a case as closely watched as this one. *Cf.* Robert L. Stern et al., Supreme Court Practice 308-09 (8th ed. 2002) (noting improper tendency of lower courts to attach significance to denials of certiorari). A failure by this Court to take action here could unfortunately be viewed by some courts as acquiescence in the Oregon Supreme Court's decision—or in any other decision contrary to *Williams I*. And it could be misinterpreted by some courts as a signal that this Court is not committed to the principles that the Court laid down in *Williams I*. The Court should make clear that is not so, by granting the petition for a writ of certiorari and reversing the judgment of the Oregon Supreme Court.

III. Failure To Reaffirm The Procedural Protections Of *Williams I* Will Have Significant Adverse Consequences For Defendants In Punitive Damages Cases

Granting the petition in this case is also necessary because of the importance of the *Williams I* decision to the fair administration of punitive damages procedures in the lower courts. Absent the protec-

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that "[t]he ruling should inject a level of predictability into high-stakes litigation").

tion extended by *Williams I*, defendants are subject to multiple punishments for causing the same harm. This Court explained as early as *State Farm* that "[d]ue process does not permit courts, in the calculation of punitive damages, to adjudicate the merits of other parties' hypothetical claims against a defendant under the guise of the reprehensibility analysis" because "in the usual case nonparties are not bound by the judgment some other plaintiff obtains" and "[p]unishment on these bases creates the possibility of multiple punitive damages awards for the same conduct." 538 U.S. at 423. The decisions that refuse to apply *Williams I* make concrete the risk of multiple punishment. In *Grefer*, for example, the trial court instructed the jury that it could award punitive damages based upon risk to the public health, and the court of appeal relied upon the harm to a third-party contractor and employees to justify the award. Yet those employees and members of the public had already filed their own suits against the defendant, seeking their own damages for the claimed health effects of the alleged contamination. *See, e.g., In re Harvey TERM Litigation*, No. 01-8708 (La. Dist. Ct. Parish of Orleans, Div. D); *Warner v. ExxonMobil Corp.*, No. 02-19657 (Civ. Dist. Ct., Parish of Orleans, La. Aug. 18, 2005).

In addition to the serious risk of double punishment, the state courts' failure to follow *Williams I* violates the very essence of due process: the right to be heard before a judgment may be entered for or against a party. *See Boddie v. Connecticut*, 401 U.S. 371, 377 (1971) ("due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their

claims of right and duty through the judicial process must be given a meaningful opportunity to be heard"). A lower court that does not protect against the possibility of punishment for nonparty harm effectively turns the individual case into a *de facto* class action, without the *de jure* procedural protections deemed essential to the fair deployment of the class action device. *See, e.g.*, Pet. App. 55a (referring to the "broader *class* of Oregonians" addressed by the litigation) (emphasis added).

The due process risk inherent in such a proceeding is self-evident: if the class representative's claim is not typical of the other claims or if the class members' claims differ materially among themselves, proceeding on a representative basis will almost certainly deny the defendant its right to mount a full and fair defense against each individual claim. *See Broussard v. Meineke Disc. Muffler Shops, Inc.*, 155 F.3d 331, 345 (4th Cir. 1998); *see also Morgan v. United States*, 304 U.S. 1, 18 (1938) ("The right to a hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing party and to meet them."). For example, the defendants in *Buell-Wilson* could not prove that the ostensibly injured nonparties who had driven the Bronco II or had suffered accidents similar to that of the plaintiff would be unable "to establish specific elements" of their claims "or that the defendant [itself could have] establish[ed] unique affirmative defense[s]" to those claims. Thomas B. Colby, *Beyond the Multiple Punishment Problem: Punitive Damages as Punishment for Individual, Private Wrongs*, 87 Minn. L. Rev. 583, 601 (2003). And the defendants in *Chemtall* could not even begin

to attack plaintiffs' claims against them because they did not know who the plaintiffs would be. *Chemtall*, 655 S.E.2d at 164.

In short, the Court's decision in *Williams I* is of critical importance in protecting against arbitrary punitive damages awards, and the lower courts' failure to follow the procedural requirements of the decision severely dilutes that protection. In order to ensure the continued force of the safeguards provided by *Williams I*, and to make clear that this Court's decisions must be followed by lower courts, this Court should grant certiorari and reverse the decision of the Oregon Supreme Court.

CONCLUSION

For the foregoing reasons, and for the reasons stated by petitioner, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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