

No. 21-1272

IN THE
Supreme Court of the United States

MONSANTO COMPANY,
Petitioner,

v.

ALBERTA PILLIOD AND ALVA PILLIOD,
Respondents.

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

BRIEF IN OPPOSITION FOR RESPONDENTS

JEFFREY A. TRAVERS
THE MILLER FIRM, LLC
108 Railroad Avenue
Orange, Virginia 22960
(540) 672-4224

DAVID C. FREDERICK
Counsel of Record
DEREK C. REINBOLD
KELLOGG, HANSEN, TODD,
FIGEL & FREDERICK,
P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 326-7900
(dfrederick@kellogghansen.com)

May 20, 2022

QUESTIONS PRESENTED

In *Bates v. Dow AgroSciences LLC*, 544 U.S. 431 (2005), this Court held that the Federal Insecticide, Fungicide, and Rodenticide Act preempts only state-law labeling requirements that are broader than the statute’s misbranding standard. State-law claims “that require manufacturers to design reasonably safe products” are not preempted because they impose no labeling requirements. *Id.* at 444. The same is true of claims that target product marketing, because they do not “require[] that manufacturers label or package their products in any particular way.” *Id.*

Respondents developed non-Hodgkin lymphoma after long exposure to petitioner Monsanto Company’s weedkiller, Roundup. A jury found that Roundup caused respondents’ cancer and held Monsanto liable in strict liability and negligence for designing a defective product and failing to warn of its danger in off-label marketing. Because Monsanto knew, but concealed, that Roundup was carcinogenic, the jury awarded punitive damages. Based on that reprehensible conduct, the California Court of Appeal held that reduced punitive damages of four times compensatory damages were within constitutional limits.

The questions presented are:

1. Whether the California Court of Appeal correctly applied *Bates* in holding respondents’ failure-to-warn claims were not preempted when they were equivalent to the statute’s misbranding standard.
2. Whether this Court should adopt a new constitutional rule limiting the ratio between compensatory and punitive damages to 1:1 when compensatory damages are substantial, no matter how reprehensible the defendant’s conduct.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iv
INTRODUCTION	1
STATEMENT.....	3
A. Statutory and Regulatory Background	3
B. Factual Background	4
C. Procedural History	11
REASONS FOR DENYING THE PETITION	15
I. The Preemption Issue Does Not Warrant Review	15
A. The Pilliods’ Claims Are Not Expressly Preempted.....	15
1. The Pilliods’ design-defect and off-label failure-to-warn claims imposed no labeling or packaging requirements	15
2. The Pilliods’ label-based failure- to-warn claims track FIFRA	18
3. Monsanto’s express-preemption arguments lack merit.....	20
B. The Pilliods’ Claims Are Not Impliedly Preempted	24
C. The Petition Does Not Meet The Traditional Criteria For Certiorari.....	27
II. The Punitive-Damages Awards Do Not Warrant Review	30

A. The Court Of Appeal’s Decision Was
Correct..... 30

B. Monsanto’s Proposed Rule Lacks
Merit, And Its Purported Circuit
Split Is Illusory 33

CONCLUSION..... 36

APPENDIX 1a

TABLE OF AUTHORITIES

	Page
CASES	
<i>Arnold v. Dow Chem. Co.</i> , 110 Cal. Rptr. 2d 722 (Cal. Ct. App. 2001)	16
<i>Bates v. Dow AgroSciences LLC</i> , 544 U.S. 431 (2005)	2, 3, 4, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 29, 29
<i>BMW of N. Am., Inc. v. Gore</i> , 517 U.S. 559 (1996)	30, 31, 32, 33, 34, 35
<i>Boerner v. Brown & Williamson Tobacco Co.</i> , 394 F.3d 594 (8th Cir. 2005)	34, 35
<i>Brooke Grp. Ltd. v. Brown & Williamson Tobacco Corp.</i> , 509 U.S. 209 (1993)	4, 9
<i>Cote v. Philip Morris USA, Inc.</i> , 985 F.3d 840 (11th Cir. 2021).....	35-36
<i>Ferebee v. Chevron Chem. Co.</i> , 736 F.2d 1529 (D.C. Cir. 1984).....	24
<i>Hardeman v. Monsanto Co.</i> , 997 F.3d 941 (9th Cir. 2021), <i>petition for cert. pending</i> , No. 21-241 (U.S. Aug. 18, 2021).....	1, 20, 27
<i>Hubbard v. United States</i> , 514 U.S. 695 (1995).....	28
<i>Huber v. New Jersey Dep't of Env't Prot.</i> , 562 U.S. 1302 (2011)	30
<i>Johnson & Johnson v. Ingham</i> , 141 S. Ct. 2716 (2021)	33
<i>Lompe v. Sunridge Partners, LLC</i> , 818 F.3d 1041 (10th Cir. 2016).....	34, 35

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.