

# SUPREME COURT OF THE UNITED STATES

No. 93-644

HONDA MOTOR CO., LTD., ET AL, PETITIONERS v. KARL L. OBERG

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF OREGON  
[June 24, 1994]

JUSTICE SCALIA, concurring.

I join the opinion of the Court, but a full explanation of why requires that I supplement briefly the description of what has occurred here.

Before the 1910 Amendment to Article VII, §3 of the Oregon Constitution, Oregon courts had developed and were applying common-law standards that limited the size of damage awards. See, e.g., *Adcock v. Oregon R. Co.*, 45 Ore. 173, 179-182, 77 P. 78, 80 (1904) (approving trial court's decision to grant a remittitur because the jury's damage award was excessive); see also *Van Lom v. Schneiderman*, 187 Ore. 89, 96-98, 112-113, 210 P. 2d 461, 464, 471 (1949). The 1910 Amendment, by its terms, did not eliminate those substantive standards but altered the procedures of judicial review: "*no fact tried by a jury shall be otherwise re-examined in any court of this state, unless the court can affirmatively say there is no evidence to support the verdict*" (emphasis added). The Oregon courts appear to believe that a state-law "reasonableness" limit upon the amount of punitive damages subsists, but cannot be enforced through the process of judicial review. In *Van Lom*, for example, the Oregon Supreme Court had no trouble concluding that the damage award was excessive, see 187 Ore., at 91-93, 210 P. 2d, at 462, but held that the Amendment had removed its "power to correct a miscarriage of justice by ordering a new trial," *id.*, at 112-113, 210 P. 2d, at 471.

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The Court's opinion establishes that the right of review eliminated by the Amendment was a procedure traditionally accorded at common law. The deprivation of property without observing (or providing a reasonable substitute for) an important traditional procedure for enforcing state-prescribed limits upon such deprivation violates the Due Process Clause.