Nos. 19-368 & 19-369

In the Supreme Court of the United States

FORD MOTOR COMPANY,

Petitioner,

v.

MONTANA EIGHTH JUDICIAL DISTRICT COURT, *et al.*,

Respondents.

(Caption continued on inside cover)

On Writs of Certiorari to the Supreme Courts of Montana and Minnesota

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, THE NATIONAL ASSOCIATION OF MANUFACTURERS, AND THE AMERICAN TORT REFORM ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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FORD MOTOR COMPANY,

Petitioner,

v.

ADAM BANDEMER,

Respondent.

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INTEREST OF THE *AMICI CURIAE*

The Chamber of Commerce of the United States of America is the world's largest business federation, representing approximately 300,000 direct members and indirectly representing 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. The Chamber represents the interests of its members in matters before the courts, Congress, and the Executive Branch. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of concern to the Nation's business community, and has participated as *amicus curiae* in numerous cases addressing personal jurisdiction, including *Bristol-Myers Squibb Co.* v. *Superior Court*, 137 S. Ct. 1773 (2017) (*BMS*), and *Walden* v. *Fiore*, 571 U.S. 277 (2014).[1]

The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 States. Manufacturing employs more than 12 million men and women, contributes $2.25 trillion to the U.S. economy annually, has the largest economic impact of any major sector and accounts for more than three-quarters of all private-sector research and development in the nation. The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the

[1] Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici*, their members, and their counsel made a monetary contribution to its preparation or submission. All parties consented to the filing of the brief.

global economy and create jobs across the United States.

The American Tort Reform Association (ATRA) is a broad-based coalition of businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil justice system with the goal of ensuring fairness, balance, and predictability in civil litigation.

Many of *amici*'s members conduct business in States other than their State of incorporation and State of principal place of business (the forums in which they are subject to general personal jurisdiction, see *Daimler AG* v. *Bauman*, 571 U.S. 117, 137 (2014)). They therefore have a substantial interest in the rules governing the extent to which a State can subject nonresident corporations to specific personal jurisdiction.

Subjecting corporations to specific jurisdiction for claims that lack the requisite relation to the forum State would eviscerate the due process limits on personal jurisdiction recognized by this Court in numerous cases over the eight decades since *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945)—and could well expose corporations that do business nationwide to what amounts to general personal jurisdiction in all fifty States.

Amici file this brief to explain that the decisions below should be reversed because they are irreconcilable with this Court's precedents and would have harmful consequences for companies that conduct activities or have relationships with entities in many States.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court has consistently restrained lower courts' expansive views of general personal jurisdiction. It held in *Daimler* that general jurisdiction is available only when a "corporation's 'affiliations with the State are so "continuous and systematic" as to render it "essentially at home in the forum State," which ordinarily restricts general jurisdiction to a corporation's State of incorporation and State of principal place of business. 571 U.S. at 127 (quotation marks and alterations omitted). And it reaffirmed that holding in *BNSF Railway Co.* v. *Tyrrell*, 137 S. Ct. 1549 (2017), overturning the Montana Supreme Court's narrow interpretation of *Daimler*.

The Court's rejection of efforts to "stretch general jurisdiction beyond limits traditionally recognized" means that "general jurisdiction has come to occupy a less dominant place in the contemporary [personal jurisdiction] scheme." *Daimler*, 571 U.S. at 132-33. Specific jurisdiction typically provides the basis for lower courts' adjudicatory power.

The post-*Daimler* focus on specific jurisdiction has led some courts to adopt impermissibly expansive views of specific jurisdiction that require essentially no connection between the defendant's activities within the State and the particular claims asserted in the litigation—transmogrifying specific jurisdiction into a chimera of general jurisdiction. Thus, for example, the courts below allowed respondents to maintain lawsuits against Ford even though *all* of the conduct that allegedly gave rise to respondents' claims—the design, manufacturing, and sale of the vehicles at issue—occurred outside of the respective forum States.

The linchpin of specific jurisdiction is "the 'relationship among the defendant, the forum, and the litigation.'" *Daimler*, 571 U.S. at 133. "For a State to exercise jurisdiction consistent with due process, the defendant's *suit-related* conduct must create a *substantial* connection with the forum State." *Walden*, 571 U.S. at 284 (emphases added; quotation marks omitted). That standard must be applied on a claim-by-claim basis: the defendant's suit-related conduct must create a connection with the forum State for "the specific claims at issue." *BMS*, 137 S. Ct. at 1781.

The requirement of a suit-related connection between the defendant and the forum protects the defendant against the unfair and unpredictable assertion of state authority. It also furthers important federalism values, ensuring that "the States through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns" by intruding impermissibly on the authority of sister States. *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 292 (1980).

A causal connection between the defendant's in-forum activity and the plaintiff's claim is essential to establish the necessary substantial relationship between the dispute and the forum. Indeed, this Court has consistently rejected specific jurisdiction where, as in this case, there is no such causal link.

But the existence of some causal connection is not by itself sufficient. A court must assess the substantiality of the connection between the forum State and the defendant's claim-related conduct relative to the connections to other States. If some States have a more substantial connection—and the forum State's less-substantial connection is one present in numerous other States—federalism values preclude the

State with a less-substantial connection from displacing the authority of States with a significantly more substantial relationship to the claim.

The impermissibly sweeping approach to specific personal jurisdiction applied below does not merely contradict this Court's precedents. It also imposes new and unwarranted burdens on businesses, the courts, and the federal system. If permitted to stand, companies that do business in a large number of States would have no ability to predict where, and to what extent, they might be haled into court. States would be empowered to regulate conduct that occurred entirely outside their borders—contrary to the principles of federalism that undergird this Court's personal jurisdiction precedents.

For all of these reasons, the Court should hold that specific jurisdiction is not available where there is no causal connection between the defendant's in-forum activities and the plaintiff's claim.

ARGUMENT

I. Specific Personal Jurisdiction Requires A Substantial Causal Connection Between The Defendant's Forum Contacts And The Asserted Claim.

These cases present a question that this Court did not answer in *BMS*: what standard should courts apply to determine whether contacts between a defendant and the forum State are sufficiently related to a claim to support the exercise of specific jurisdiction.

While the Court has not squarely addressed that question, its precedents mark a clear path to the answer. A claim has the necessary "substantial connection" to the forum, when the defendant purposefully

engaged in forum activity that both is a cause of the asserted claim and also establishes a sufficiently significant relationship between the defendant, the asserted claim, and the forum State. The facts of these cases fall far short of satisfying that requirement.

A. Specific Jurisdiction Rests On The Forum's Legitimate Interest In Regulating The Defendant's Conduct Underlying The Asserted Claim.

BMS was not the first decision of this Court to recognize that specific jurisdiction rests on the connection between the defendant's forum contacts and the plaintiff's claim. The Court articulated that requirement more than seventy years ago in its seminal decision in *International Shoe*.

Explaining why specific jurisdiction comports with due process, the *International Shoe* Court observed that where "a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state." 326 U.S. at 319. "The exercise of that privilege," the Court reasoned, "may give rise to obligations; and, so far as those obligations arise out of or are *connected with* the *activities within the state*, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue." *Ibid.* (emphases added).

The Court went on to conclude that Washington's exercise of specific jurisdiction over the defendant was permissible because the defendant had engaged in activities within the State and "[t]he obligation which is here sued upon arose out of *those very activities*," making it "reasonable and just * * * to permit the state to

enforce *the obligations which [the defendant] ha[d] incurred there*." 326 U.S. at 320 (emphases added).

The *International Shoe* framework thus rests on the principle that due process permits a defendant to be haled into court on a specific jurisdiction theory only for claims that arise out of "the very activities" that the defendant engaged in within the forum State, or that enforce the "obligations" that the defendant incurred in the State—because of the forum's legitimate interest in regulating a corporation's activities within the forum.

This Court has repeatedly reaffirmed that basic rationale for specific jurisdiction. In *J. McIntyre Machinery, Ltd.* v. *Nicastro*, for example, the plurality opinion contrasted specific jurisdiction with general jurisdiction. It explained that general jurisdiction allows a State "to resolve both matters that originate within the State and those based on activities and events elsewhere." 564 U.S. 873, 881 (2011) (plurality opinion). By contrast, specific jurisdiction involves a "more limited form of submission to a State's authority," whereby the defendant subjects itself "to the judicial power of an otherwise foreign sovereign *to the extent that power is exercised in connection with the defendant's activities touching on the State*." *Ibid.* (emphasis added).

In *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*, the Court explained that specific jurisdiction "depends on an affiliation between the forum and the underlying controversy." 564 U.S. 915, 919 (2011) (alterations and quotation marks omitted). Thus, specific jurisdiction exists only where a defendant engages in continuous activity in the State "and *that activity gave rise to the episode-in-suit*," *id.* at 923, or where the defendant commits "'single or occasional acts' in a State

[that are] sufficient to render [it] answerable in that State with respect to those acts, though not with respect to matters unrelated to the forum connections," *ibid.* (quoting *Int'l Shoe*, 326 U.S. at 318).

Most recently, in *BMS,* the Court emphasized that "a defendant's general connections with [a] forum are not enough" to support specific jurisdiction. 137 S. Ct. at 1781. Rather, the Court explained, "[i]n order for a court to exercise specific jurisdiction over a claim, there must be an 'affiliation between the forum and the underlying controversy.'" *Ibid.* (quoting *Goodyear,* 564 U.S. at 919). "When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." *Ibid.*

In sum, specific jurisdiction is justified by the forum State's relationship to the controversy between the parties, because that is what gives the forum a legitimate interest in regulating the actions by the defendant that gave rise to the plaintiff's claim.

B. The Relationship Between The Defendant's Forum Activity And The Asserted Claim Must Be Sufficiently Significant To Create A Substantial Connection With The Forum State.

For the reasons just discussed, specific jurisdiction is permissible only when "the defendant's *suit-related* conduct * * * create[s] a *substantial connection* with the forum State." *Walden*, 571 U.S. at 284 (emphasis added). This substantial connection ensures that the forum State has the legitimate interest required to regulate the conduct on which the claim is based.

To satisfy the "substantial connection" requirement, there must be (1) a causal connection between the defendant's forum activity and the asserted claim that (2) is substantial relative to other States' connections to the controversy.

A court analyzing the permissibility of exercising specific jurisdiction should therefore proceed as follows:

- Identify the *defendant's* purposeful claim-related activity within the forum;[2]
- Determine whether that in-forum activity gave rise to the asserted claim (*i.e.*, caused the injury that is the subject of the claim); and
- Assess whether the causal connection between the in-forum activity and the claim is sufficiently substantial to ensure that the forum's exercise of jurisdiction will not impermissibly intrude on the authority of other States.

Each step in the analysis is essential in order for a court to exercise specific jurisdiction consistent with due process.

1. The defendant's forum activity must be causally connected to the plaintiff's claim.

Due process requires, at a minimum, *some* causal connection between the defendant's in-forum activity and the asserted claim.

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[2] As this Court explained in *Walden*, the "defendant *himself*" (571 U.S. at 284) (quotation marks omitted) must be the one who "form[s] the necessary connection with the forum State" (*id.* at 285).

The Court has held repeatedly that specific jurisdiction requires "a connection between the forum and the *specific claims* at issue." *BMS*, 137 S. Ct. at 1781 (emphasis added). As the Court put it in *Walden*, in order for a court to exercise specific jurisdiction, the asserted claims "must *arise out of* contacts that the defendant *himself* creates with the forum State." 571 U.S. at 284 (first emphasis added; quotation marks omitted). And as petitioner details (Br. 21-22), *every one* of this Court's cases upholding the exercise of specific jurisdiction since *International Shoe* has pointed to a contact by the defendant in the forum State giving rise to the asserted claims.

In other words, specific or "case-linked" jurisdiction is proper only when the forum State's legitimate interest is established with respect to the "underlying controversy" (*Walden*, 571 U.S. at 283 n.6 (quotation marks omitted))—*i.e.*, the particular transaction or occurrence by the defendant in the forum giving rise to the asserted claim. As discussed above (at 7-8), that is what distinguishes specific from general jurisdiction, which instead relies on the forum's authority over a defendant "based on a forum connection unrelated to the underlying suit." *Walden*, 571 U.S. at 283 n.6.

Respondents invoke the Court's sometimes-disjunctive phrasing of this test, arguing that the Court's use of the terms "connected with" or "related to" in addition to "arise out of," when describing the requisite relationship between the defendant's in-forum activity and the plaintiff's claim, relaxes the requirement that the defendant's in-forum conduct cause the plaintiff's claim. No. 19-368 (Gullett) Br. in Opp. 24-25. In respondents' view, as long as the defendant's in-forum

activity is somehow similar to the out-of-forum conduct that allegedly harmed the plaintiff, specific jurisdiction is permissible.

That approach is flawed for three reasons.

First, this Court squarely rejected the identical argument in *BMS*. The plaintiffs there included both California and non-California residents who sued a drug company in California on product liability claims. There was no question that the company sold significant quantities of the drug (Plavix) in California—over $900 million in the six-year period preceding the lawsuit. But the Court held that the out-of-State plaintiffs could not invoke specific jurisdiction, because "all the conduct giving rise to [their] claims occurred elsewhere." 137 S. Ct. at 1782. The Court explained that specific jurisdiction requires a substantial connection between the plaintiff's claims and the defendant's conduct in the forum and that, "*[w]hen there is no such connection*, specific jurisdiction is lacking regardless of the extent of a defendant's *unconnected activities* in the State." *Id.* at 1781 (emphases added). Moreover, this rule applies "even when third parties," such as the other plaintiffs residing in California, "can bring claims similar to those brought by the nonresidents" based on injuries allegedly caused by the same product. *Ibid.*

Respondents' argument here is indistinguishable from the one rejected in *BMS*: that in-forum sales of a product to third parties subjects the product manufacturer to specific jurisdiction regarding claims arising out of sales to other parties in other States. The Court's holding—that specific jurisdiction is available only when the defendant engaged in suit-related activity within the forum that is alleged to have caused

the specific plaintiff's injury—requires rejection of respondents' argument here.

Second, respondents' argument separates the standard for specific jurisdiction from the principles set forth in *International Shoe*. *International Shoe* makes clear that in order for specific jurisdiction to attach, a company's forum activities must "give rise to obligations"—*i.e.*, legal claims. *Int'l Shoe*, 326 U.S. at 319. Where, as here, the same claims could be asserted against the company if the company had never engaged in any in-forum conduct at all, then the asserted claim is not based on any "obligations" that the defendant has incurred in the forum, and specific jurisdiction is improper. See also pages 6-8, *supra*.

Third, respondents' approach is standardless. When is in-forum conduct sufficiently "related" to the plaintiff's claim? Here, respondents point to the Ford's sales and advertising of the same car model. *E.g.*, Gullett Br. in Opp. 13. Must that occur at the same time as the sale of the car involved in the plaintiff's claim? What if the in-forum sales occurred only before or after the sale of that vehicle? What if the in-forum sales involved different Ford models, but the different models used some of the same parts as the car involved in the plaintiff's claim? What if the different models sold in the forum were designed by the same team and/or manufactured at the same plaint? What if Ford only advertises in the forum but does not make sales there?

The possibilities regarding the potential scope of "related" are unlimited—and that is the point. "[A]s many a curbstone philosopher has observed, everything is related to everything else." *California Div. of Labor Standards Enf't* v. *Dillingham Const., N.A., Inc.*, 519 U.S. 316, 335 (1997) (Scalia, J., concurring) (citing *New York State Conference of Blue Cross &*

Blue Shield Plans v. *Travelers Ins. Co.*, 514 U.S. 645, 655 (1995)).

If the requirement of a causal connection to the plaintiff's claim were eliminated, lower courts would have no guidance regarding the scope of specific jurisdiction. And specific jurisdiction would, at least in some jurisdictions, very quickly become the equivalent of general jurisdiction. Instead of referring to the "sizable" volume of overall sales in the forum—the approach rejected in *Daimler*, 571 U.S. at 139—plaintiffs will refer instead to sales or marketing of specific products. That is a distinction without a difference: companies that do business nationwide will still be subject to suit on the overwhelming majority of claims in each of the 50 States.

Precedent, principle, and administrability therefore all demonstrate that specific jurisdiction requires a causal link between the defendant's in-forum activity and the plaintiff's claim.

2. The defendant's forum activity must also bear a sufficiently significant relationship to the claim to create a substantial connection with the forum State.

A causal connection is a necessary, but not sufficient, for specific jurisdiction. In addition, the forum's connection to the controversy must be "substantial." *Walden*, 571 U.S. at 284.

The substantiality requirement ensures respect for each State's "sovereign power to try causes in their courts" recognizing that "[t]he sovereignty of each State . . . implie[s] a limitation on the sovereignty of all its sister States." *BMS*, 137 S. Ct. at 1780 (quoting *World-Wide Volkswagen*, 444 U.S. at 293) (alterations in original). Requiring a defendant to "submit[] to the

coercive power of a State that may have little legitimate interest in the claims in question," *ibid.*, would allow "the States[,] through their courts," to "reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system," *World-Wide Volkswagen*, 444 U.S. at 292.

As petitioner explains (Br. 42), the Court need not decide in this case the nature of the required causal connection, because here there is *no* causal connection between petitioner's in-forum activity and respondents' claims. But if the Court does reach the issue, then certainly the proximate-cause standard advocated by petitioner (Br. 42-45) would ensure the substantial relationship necessary to protect the fairness and federalism interests.

For example, if the defendant sold a product in the forum State to a plaintiff who was injured by the product in the forum State, specific jurisdiction is proper. Similarly, where the plaintiff alleges a manufacturing or design defect, courts in the State of manufacture or design will be able to exercise specific jurisdiction. In such situations, there will be a strong causal link between the claim and the defendant's in-forum activity. And a court moving to the final step of the analysis described above would likely find that the forum's connection to the defendant's claim-related conduct is substantial relative to other States.

This Court's decision in *Burger King Corp.* v. *Rudzewicz* provides another example. The dispute in that case arose out of a contract in which the defendant's counterparty (the plaintiff in the lawsuit) was located in the forum. The Court observed that the defendant negotiated the agreement by reaching out to the forum, the contract itself indicated that the plaintiff was located in the forum, and "the parties' actual

course of dealing repeatedly confirmed that [the plaintiff's] decisionmaking authority" resided in the forum. 471 U.S. 462, 480-81 (1985). The defendant's purposeful interaction with the forum resident plainly constituted a cause of the plaintiff's claim. And given these facts, the forum had a substantial connection with the dispute, such that there could be no doubt that the forum State's assertion of jurisdiction would not interfere with the sovereignty of other States that might have a connection to the claim.

To the extent that the Court chooses not to adopt a proximate-cause requirement in this case, it should make clear that the existence of some causal relationship is not sufficient, and a court must assess whether the defendant's in-forum activity provides a sufficiently substantial connection to permit the exercise of jurisdiction.

That is because some quantum of causal relationship, without more, does not protect the federalism values underlying specific jurisdiction. For example, one Illinois court permitted nonresident plaintiffs to bring product liability claims against a drug manufacturer because the manufacturer conducted clinical trials for the drug in Illinois—as well as in 44 other States. *M.M. ex rel. Meyers* v. *GlaxoSmithKline LLC*, 61 N.E.3d 1026, 1037-39 (Ill. Ct. App. 2016), *cert. denied*, 138 S. Ct. 64 (2017). Even assuming there were some causal connection between the clinical trials and the claim, the claim had no more to do with Illinois than it did with any of the other 44 States in which clinical trials were conducted. And under that logic, product manufacturers would be subject to specific jurisdiction in every State in which they engage in even de minimis design, testing, or production activities. Indeed, if a plaintiff from one

State can choose to sue a company in any of 45 different States (the situation in *M.M.*), then the specific-jurisdiction inquiry is rendered toothless.

Other examples are not hard to imagine. For instance, it is common for companies to have some employees who work remotely. Suppose a large team of employees living and working in a number of different States contribute to a product's design, with most located at the defendant's headquarters but with a handful of remote employees in other States being the only connection between the defendant, the product at issue, and those States. Plaintiffs alleging a design-defect claim might note a but-for causal connection between the remote employees' actions and their tort claim and argue that they could sue the company in any one of the States where just a small number of employees work remotely. But under such circumstances, other States—such as the State in which the company's headquarters is located and the State in which the product is manufactured—would have a much stronger interest in adjudicating that claim.

3. The stream-of-commerce metaphor does not support a different specific jurisdiction standard.

This Court has on occasion referred to the "stream-of-commerce" in connection with specific jurisdiction. Those references provide no basis for dispensing with the requirement of a substantial causal connection between the defendant's forum contacts and the plaintiff's claim.

The phrase first appeared in *World-Wide Volkswagen*, where the Court suggested that a forum State may "assert[] personal jurisdiction over a corporation that delivers its products into the stream of

commerce with the expectation that they will be purchased by consumers in the forum State." 444 U.S. at 298. As petitioner explains (see Br. 33-36), that discussion addressed the circumstances in which a defendant can be found to have purposefully availed itself of the forum, not the distinct question of whether the defendant's in-forum conduct is sufficiently related to the asserted claim to support the exercise of specific jurisdiction.

To date, the Court has not found personal jurisdiction over any defendant using the stream-of-commerce rationale. See Todd David Peterson, *Categorical Confusion in Personal Jurisdiction Law*, 76 Wash. & Lee L. Rev. 655, 714 (2019). Disagreement over the stream-of-commerce theory's scope produced dueling opinions in *Asahi Metal Industry Co.* v. *Superior Court*, where Justice O'Connor, writing on behalf of four justices, stated that a manufacturer's knowledge that its product was sold in a forum State, without more, was insufficient to hale it into court there (480 U.S. 102, 112 (1987)), while Justice Brennan, also writing on behalf of four justices, disagreed, asserting that a "regular and anticipated flow" of products to a State could form the basis for specific jurisdiction there (*id.* at 117). Neither opinion upheld personal jurisdiction over the defendant. *Id.* at 113 (O'Connor, J.) (plurality opinion); *id.* at 116 (Brennan, J., concurring); see also *Nicastro*, 564 U.S. at 881-83 (Kennedy, J.) (plurality opinion) (describing the conflict created by the *Asahi* opinions).

Most recently, a plurality of this Court has underscored that regardless of its disputed contours, the stream-of-commerce doctrine "does not amend the general rule of personal jurisdiction" (*Nicastro*, 564

U.S. at 882 (Kennedy, J.) (plurality opinion)), including the requirement that there be *some* causal connection between the defendant's in-forum activity and the plaintiff's claim. Simply put, "the stream-of-commerce metaphor cannot supersede either the mandate of the Due Process Clause or the limits on judicial authority that Clause ensures." *Id.* at 886.

In the product liability context, *World-Wide Volkswagen* itself made clear that the stream-of-commerce rationale assumes that the product at issue is "purchased by consumers in the forum State" *and* "has there been the source of injury to its owner or to others." 444 U.S. at 297-98. This Court clarified in *BMS* that distinct sales of the same product within the forum cannot support specific jurisdiction, holding that the act of selling an allegedly defective product in a forum State is insufficient when the specific unit that caused the alleged harm was purchased somewhere else. *BMS*, 137 S. Ct. at 1778, 1781-82.

In short, when a substantial causal connection between the defendant's in-forum conduct and the plaintiff's claim is missing, specific jurisdiction is unavailable.

4. Respondents' policy arguments in favor of a broad specific jurisdiction standard are unpersuasive.

The policy arguments offered by respondents are inconsistent with this Court's precedents and provide no support for adopting a watered-down test for specific jurisdiction.

Respondents assert that it is "arbitrary" (Gullett Br. in Opp. 26) or "illogical" (No. 19-369 (Bandemer) Br. in Opp. 26) to have a test for specific jurisdiction

that requires a plaintiff to sue a defendant outside of the forum where she lives and was injured.

To begin with, in a very large class of cases, the plaintiff will be able to file suit in her home State, because the requisite causal connection will be present—for example, the defendant will have sold the product in that State. The claims of the California plaintiffs in *BMS* provide an example of this typical reality.

Where the causal connection is not present, the preclusion of specific jurisdiction, far from being "arbitrary," follows naturally from this Court's precedents, which establish that personal-jurisdiction standards protect the *defendant*'s due-process rights and federalism values, not the "the convenience of plaintiffs or third parties." *Walden*, 571 U.S. at 284. As *Walden* and *BMS* make clear, "the 'minimum contacts' inquiry principally protects the liberty of the nonresident defendant, not the interests of the plaintiff." *Walden*, 571 U.S. at 290 n.9; see *BMS*, 137 S. Ct. at 1779 ("The primary focus of [the] personal jurisdiction inquiry is the defendant's relationship to the forum State"). In *Walden*, the plaintiffs were thus required to sue the defendant in Georgia, across the country from their home in Nevada. See 571 U.S. at 279.

In addition, respondents' assumption that a "distant forum" where the vehicle at issue was designed, manufactured, or originally sold has "no interest in the controversy" because the injury did not occur there (Gullett Br. in Opp. 26-27) is simply incorrect. Those are the States in which the defendant engaged in conduct that gave rise to the respondents' claims—conduct that those States have an interest in regulating.

Respondents also take issue with the possibility that plaintiffs seeking to bring claims against multiple defendants in a single action—as respondent Bandemer did here, suing the driver, owner, and manufacturer of the vehicle that injured him—will be unable to bring those claims in a single forum that can exercise personal jurisdiction over all of the defendants. Bandemer Br. in Opp. 26-27.

But that concern too is foreclosed by precedent. This Court has long held that personal jurisdiction must be established "as to each defendant." *Rush* v. *Savchuk*, 444 U.S. 320, 332 (1980). And it reaffirmed that long-standing rule in *BMS*, explaining that plaintiffs' ability to sue a California-based distributor of the drug at issue did not establish personal jurisdiction over the drug's manufacturer. 137 S. Ct. at 1783.

Because the constitutional limit on state power applies with respect to each individual over whom the forum seeks to exercise its adjudicatory authority, and defendants' forum contacts inevitably will differ, all defendants will not always be amenable to suit in a single forum. But that possibility does not support abandoning bedrock principles of due process. Nor does it have anything to do with the level of connection required between the defendant's in-forum conduct and the asserted claim: proceeding in multiple forums against multiple defendants always will be a potential result in a defendant-centered personal jurisdiction analysis. Moreover, any inconvenience to the plaintiff in proceeding in multiple forums would be ameliorated by the more ready availability of evidence and witnesses in the forum where the defendant's allegedly tortious conduct actually occurred.

And respondents' dire prediction that "[t]ying a court's jurisdiction to causation" principles "is a recipe

for disaster" (Gullett Br. in Opp. 28) is overstated. The majority of lower courts already require some form of causal connection between a defendant's in-forum conduct and the asserted claim. See Pet. Br. 44-45. But respondents have not—and cannot—demonstrate that the requirement of a causal connection has hamstrung personal-jurisdiction doctrine or caused widespread hardship in those jurisdictions.

* * *

In sum, specific jurisdiction depends on a substantial causal connection between a claim, the defendant, and the forum State—meaning that there is both a causal relationship between the defendant's in-forum activity and the asserted claim, and that the defendant's forum activity bears a significant enough relationship to the claim to create a substantial connection with the forum State relative to other States.

C. The Expansive Standard Applied Below Extended The Forum States' Authority Far Beyond The Bounds Permitted By The Constitution.

A key reason for a rigorous specific jurisdiction standard is preventing illegitimate exercises of a State's authority. The facts of these cases provide clear examples of States reaching out to decide claims in which they lack a legitimate interest.

The cars involved in the accidents that are the subjects of these lawsuit were not designed, made, sold, or serviced by Ford in Minnesota or Montana. Respondents' claims thus relate entirely to Ford's *out-of-State* conduct—and therefore fail to satisfy the constitutional requirement of a substantial connection

between the defendant's in-State activities and the claims in the lawsuit.

The Minnesota Supreme Court held that specific jurisdiction was proper because Ford *generally* markets its vehicles and "collected data on how its cars performed" in Minnesota. Bandemer Pet. App. 17a. The Montana Supreme Court similarly concluded that because Ford "advertises, sells, and services vehicles in Montana" (Gullett Pet. App. 17a), it could be haled into court there.

But Ford's marketing conduct in Minnesota and Montana had nothing to do with the claims in these lawsuits. Respondents' claims sound in product liability: They allege that Ford was negligent in its manufacturing and design of the cars in which they were injured and that Ford failed to warn consumers about the cars' alleged defects. Even if these claims arguably had some connection to Ford's advertising—and they do not—respondents did not (and likely could not) allege that the advertising in the forum States is relevant to *their own* claims. In short, Ford's in-State marketing did not give rise to respondents' claims in any way.

The same is true of Ford's purported collection of data from Minnesota drivers and of Ford's sales and servicing of vehicles in Montana. Ford took no action in Minnesota or Montana involving the respondents or the actual vehicles at issue in these cases. See *BMS*, 137 S. Ct. at 1781 (holding that the fact that defendant "conducted research in California on matters unrelated" to plaintiff's claims did not support specific jurisdiction, even when the allegedly defective product was sold in California).

Indeed, large companies like Ford do business in many States—likely all of them. Subjecting them to "specific" jurisdiction in each one of those States would effectively create a new form of general jurisdiction, undermining decisions like *Daimler* that hold that general jurisdiction should be limited to the fora in which a defendant is truly at home. See, *e.g.*, *Adv. Tactical Ordnance Sys., LLC* v. *Real Action Paintball, Inc.*, 751 F.3d 796, 803 (7th Cir. 2014) (noting that finding specific jurisdiction over a company based on contacts that exist in every State "would violate the principles on which *Walden* and *Daimler* rest").

Respondents' approach would mean that a company selling a product nationwide can be sued on all claims related to that product in all fifty States—effectively recreating the unduly expansive approaches to general jurisdiction that preceded *Daimler* by setting the bar for specific jurisdiction far too low. See Linda J. Silberman, *The End of Another Era: Reflections on* Daimler *and Its Implications for Judicial Jurisdiction in the United States*, 19 Lewis & Clark L. Rev. 675, 687 (2015).

That result would also permit a "State that may have little legitimate interest in the claims in question" to overturn the greater interests of other States in regulating the defendants' conduct that gave rise to the asserted claim based on the defendants' contacts with those forums. *BMS*, 137 S. Ct. at 1780. As *BMS* made clear, this "federalism interest may be decisive," trumping any concerns of convenience. *Ibid.* That is because "restrictions on personal jurisdiction 'are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective

States.'" *Ibid.* (quoting *Hanson* v. *Deckla*, 357 U.S. 235, 251 (1958)).

To be sure, in *BMS* the nonresident plaintiffs' injuries had occurred outside of the forum State, whereas here, the vehicle collisions were in Minnesota and Montana, respectively. But the location of the injury on its own is not a basis for exercising specific jurisdiction when the injury was not allegedly inflicted there by the defendant; the *BMS* Court's observation that the nonresidents had been injured outside the forum only underscored that the case for specific jurisdiction was "even weaker" than in *Walden*, where the effects of the alleged misconduct were felt by plaintiffs in the forum. *BMS*, 137 S. Ct. at 1782. Indeed, *Walden* makes clear that the location where a plaintiff suffered "an injury is jurisdictionally relevant only insofar as it shows that the *defendant* has formed a contact with the forum State." 571 U.S. at 290 (emphasis added). In other words, the specific jurisdiction inquiry focuses on the *defendant*'s contacts with the forum State, as those contacts alone may make the defendant answerable to the State's authority. *Id.* at 284.

Here, the relevant vehicles were in the forum States—and the accidents happened there—because of the acts of third parties. And because the vehicle accidents had no connection to Ford's in-State conduct, permitting the exercise of specific jurisdiction by the forum States violates the federalism principles underlying specific jurisdiction by intruding on the States with a greater connection to the defendant's suit-related conduct, such as where the allegedly defective vehicles were designed, manufactured, and sold.

Moreover, Ford could not structure its conduct to avoid being haled into court in *any* forum where an accident happens to occur. See also pages 26-28, *infra*. Accordingly, the fact that the accidents occurred in Minnesota and Montana does not cabin the overbroad approach to specific jurisdiction reflected in the decisions below.

It is also not enough that Ford could foresee a vehicle it sold traveling into those States. See, *e.g.*, Gullett Pet. App. 17a; Gullett Br. in Opp. 20. This Court has already rejected the notion, also in the context of automobiles, that "foreseeability" of travel "because an automobile is mobile by its very design and purpose" is "a sufficient benchmark for personal jurisdiction under the Due Process Clause." *World-Wide Volkswagen*, 444 U.S. at 295. More broadly speaking, the Court also rejected the notion that a product manufacturer in effect "appoint[s] the chattel his agent for service of process," subjecting the manufacturer to specific jurisdiction wherever the product may possibly travel, foreseeable or not. *Id.* at 296.

In short, the in-State activities of Ford upon which the courts below relied lacked the requisite connection to respondents' claims, and thus do not permit the Minnesota or Montana courts to exercise specific personal jurisdiction over those claims. The Court should therefore repudiate the overly expansive approach to specific jurisdiction adopted by the courts below.

II. Exercising Specific Jurisdiction Over Matters That Lack A Substantial Connection To The Defendant's Forum Contacts Harms Businesses And The Federal System.

Decisions such as the rulings below not only violate due process principles—they inflict severe burdens on the business community and the federal system.

A. Overly Expansive Approaches To Jurisdiction Impose Greater Uncertainty On Businesses.

This Court has long recognized that the standards governing specific jurisdiction "give[] a degree of predictability to the legal system that allow[] potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen*, 444 U.S. at 297. Companies know that they generally have a "due process right not to be subjected to judgment in [the] courts" of a State other than their home State, or States, unless they have affirmatively established contacts with the State itself that make them subject to specific jurisdiction there. *Nicastro*, 564 U.S. at 881; see also *Walden*, 571 U.S. at 284.

This "[p]redictability is valuable to corporations making business and investment decisions." *Hertz Corp.* v. *Friend*, 559 U.S. 77, 94 (2010). For example, "[i]f a business entity chooses to enter a state on a minimal level, it knows that under the relationship standard, its potential for suit will be limited to suits concerning the activities that it initiates in the state."

Carol Rice Andrews, *The Personal Jurisdiction Problem Overlooked in the National Debate About "Class Action Fairness*," 58 S.M.U. L. Rev. 1313, 1346 (2005).

The approach to specific jurisdiction embodied in the decisions below makes it impossible for corporations to structure their affairs to limit the number of jurisdictions in which they can be sued by any plaintiff residing anywhere. Many corporations advertise and sell their products in a large number of States—and often do so nationwide. If merely advertising products in a forum were deemed sufficient to give rise to specific jurisdiction on any claim related to those products—even products made and sold *outside* the State—a corporation could be sued in any State with respect to its sales in every State. The respondents here, for example, could on that theory sue in California, Alaska, Missouri, or Texas—indeed, "wherever [the company] does business." Pet. Br. 29-30. Yet "[s]uch exorbitant exercises of all-purpose jurisdiction would scarcely permit out-of-state defendants" to structure their affairs to provide some assurances about where they could be sued. *Daimler*, 571 U.S. at 139.

Applying specific jurisdiction in such an unpredictable and indiscriminate manner would be unfair to companies that do business throughout the country and irreconcilable with the Due Process Clause. See *Nicastro*, 564 U.S. at 885 (explaining that "[j]urisdictional rules should avoid the[] costs [of unpredictability] whenever possible"); *Burger King*, 471 U.S. at 475 n.17 (explaining that due process is violated when a defendant "has had no 'clear notice that it is subject to suit' in the forum and thus no opportunity to 'alleviate the risk of burdensome litigation' there" (quoting

World-Wide Volkswagen, 444 U.S. at 297)). And consumers would ultimately bear the increase in legal costs produced by this unbridled approach to specific jurisdiction.

B. Permitting Specific Jurisdiction Without A Substantial Connection Between The Forum State And The Claim Would Intrude On Other States' Sovereignty.

The minimum-contacts requirement for exercising specific jurisdiction "acts to ensure that the States[,] through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *World-Wide Volkswagen*, 444 U.S. at 292.

But that is exactly what States would be able to do under the approach to specific jurisdiction employed below. That test permits a State with no real interest in the defendant's allegedly tortious conduct to intrude on the sovereignty of those States that have a substantial connection to that conduct and therefore a real interest in adjudicating claims involving the defendant's actions.

There are no offsetting benefits to permitting this serious erosion of judicial federalism. States have no legitimate interest in asserting specific jurisdiction so expansively and inserting themselves into matters or disputes that are much more closely connected to other States. And a State's ability to adjudicate claims based on a defendant's in-State activities fully vindicates a State's interest in protecting its citizens and regulating conduct within its borders. See, *e.g.*, *Walden*, 571 U.S. at 284.

The broader approach taken by the courts below is therefore not necessary to ensure that companies

may be held accountable for conduct actually taking place in a forum State. Rather, it serves only to consume the resources of the courts of that State in deciding disputes that—like in these cases—have only random or "fortuitous" connections to the forum States (*World-Wide Volkswagen*, 444 U.S. at 295), while displacing the authority of States with greater interests in the disputes.

CONCLUSION

The judgments of the Montana and Minnesota Supreme Courts should be reversed.

Respectfully submitted.

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