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.

FORD MOTOR COMPANY,
Petitioner,

v.

ADAM BANDEMER,
Respondent.

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

BRIEF OF RESPONDENTS

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March 30, 2020

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QUESTION PRESENTED

Should the due-process standard for establishing specific personal jurisdiction incorporate a proximate-cause requirement derived from tort law, under which a manufacturer cannot be held to answer in the forum state for injuries caused in the forum state, by a product that it regularly sells and markets in the forum state, unless the first sale of the particular individual item also took place in that state?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

INTRODUCTION

This Court's personal-jurisdiction cases have arisen mainly at the margins, presenting hard questions under the Due Process Clause about when it is fair and consistent with federalism to hale someone into a distant court. But this isn't a case about a bus accident in France (*Goodyear*) or a German company's actions in Argentina (*Daimler*). Nor is this about foreign companies that have done nothing to target a state (*Nicastro, Asahi*) or mass-action plaintiffs forum shopping far from home (*Bristol-Myers*). Instead, the question here is whether a Minnesotan and a Montanan injured in Minnesota and Montana can access courts in Minnesota and Montana to be heard on claims against the company that regularly marketed and sold, in Minnesota and Montana, the product that caused their injuries.

Ford proposes that the Court answer that question by importing into the Due Process Clause a proximate-cause standard derived from tort law. Ford is cagey about its contours. But Ford does make clear that its novel standard attaches great constitutional significance to the site of the first sale of the particular widget that caused injury. On Ford's view, a state may be rendered powerless to provide a forum for its citizens who are injured by products that a manufacturer regularly sells and markets in the state—even where the injury occurred in the state, the widget was purchased used in the state, and the defendant actively cultivated a market in the state for the same product that caused the injury—if the first sale of the widget that caused injury happened to have taken place out of state.

To see what's at stake, imagine two car accidents. They involve the same make and model, which the manufacturer regularly sells in both Utah and Vermont.

One accident occurs in Utah, with a car first sold to a previous owner in Vermont. The other occurs in Vermont, with a car first sold to a previous owner in Utah. Naturally, the Utah accident leads to a lawsuit in Utah; the Vermont accident leads to a suit in Vermont. But under the rule that Ford seeks, Ford would have a constitutional right to make the two plaintiffs switch places, forcing them each to travel to a distant forum that has no real connection to—or stake in—their case, for no meaningful benefit to Ford (beyond making it harder for injured people to sue Ford).

The consequences are not merely hypothetical, and it's worth imagining how one might try to explain them to a non-lawyer. It is roughly 2,000 miles from Superior, Montana—where the victim in the Montana case lived—to the Kentucky factory that made the Ford Explorer in which she died. Ford's Michigan headquarters is just as far. Must her estate sue in those distant places? The victim in the Minnesota accident was just a passenger—the accident that caused his brain injury involved someone else's car. If he alleges a manufacturing defect, must he sue in Canada, where the car was made? Or should these two suits have been brought in North Dakota and Washington State—the sites of the first sales—where no person, place, or thing related to the claims is located? And, if so, why? If this is where Ford's view of the law takes us, it is time to put on the brakes.

Fortunately, that is not hard to do. Ford's new rule has no basis in the text or original public meaning of the Fourteenth Amendment, and Ford does not argue otherwise. And nothing in this Court's modern personal-jurisdiction precedents—or the principles of federalism, fairness, and predictability that have always guided them—supports Ford's arbitrary regime. This Court has

never held, or even suggested, that a state is constitutionally prohibited from providing a forum for its citizens when a defendant has deliberately cultivated a market for its product in the state and that same product causes injury in the state. To the contrary, the Court has recognized that the movement of a manufacturer's products "into the forum" after their sale elsewhere may support "an affiliation germane to specific jurisdiction." *Goodyear Dunlop Tires Operations v. Brown*, 564 U.S. 915, 927 (2011). Thus, when the manufacturer has cultivated a "market for a product" in certain states, "it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others." *Id.* (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). That rule controls this case.

Ultimately, any sensible decision here must be grounded in the principles of federalism, fairness, and predictability on which all of this Court's personal-jurisdiction jurisprudence rests. It does not respect federalism to deprive the states of their manifest interest in providing their citizens a convenient forum for redressing injuries—particularly when no strong state interest lies on the other side of the scale. It does not serve fairness to embrace the "unwisdom, unfairness and injustice of permitting [plaintiffs] to seek redress only in some distant state"—particularly when the defendant does not even claim that facing suit in the forum would be burdensome. *Travelers Health Ass'n v. Com. of Va. ex rel. State Corp. Comm'n*, 339 U.S. 643, 649 (1950). And it does not further predictability to adopt an elusive proximate-causation standard that is difficult to apply, particularly given the difficulty (or impossibility) of identifying the location of the first sale in many cases.

STATEMENT

These two consolidated cases arise out of accidents involving Ford vehicles. The first case was brought in Minnesota by a Minnesotan who suffered permanent brain injury because the passenger-side airbag of a Ford Crown Victoria failed to deploy when the driver (another Minnesotan) crashed into a snowplow on a rural Minnesota road. The second case was brought in Montana by the Montana relatives of a Montana woman who died after a Ford Explorer lost stability and rolled over into a ditch beside a Montana highway.

A. Factual background

1. Ford's activities in Minnesota. Ford is a global automaker but its Minnesota roots run deep. In 1903, the world's first Ford dealership was established in central Minnesota—it initially sold "Fordmobiles" from a bicycle shop—and has since been operated by five generations of the same Minnesota family. NPR, *The World's Oldest Ford Dealer: Minnesota Family Celebrates a Century of Selling Cars*, June 16, 2003. In 1912, Henry Ford chose St. Paul, Minnesota as the site of what was then the tallest assembly plant ever built for manufacturing cars. *See* McMahon, *The Ford Century in Minnesota* (Univ. of Minn. Press 2016).

Today, Ford deliberately cultivates Minnesota as a market for its vehicles, both new and used, through a variety of in-state activities. Its activities include "substantial marketing" of its cars in the state through television, print, and online advertisements that directly target Minnesotans, sponsorships of Minnesota sports teams and athletic events, and "direct mail advertisements to residents of Minnesota." JA 68-69, 73, 19-369 Pet. App. 4a, 39a, 41a. This Minnesota-directed marketing activity promotes Ford's brand and assures

Minnesotans of the safety of Ford's vehicles, as well as the availability of servicing for all Ford cars at authorized Ford dealers throughout Minnesota. JA 69, 19-369 Pet. App. 17a, 44a.

Ford has sold more than two thousand 1994 Crown Victoria cars in Minnesota—the model involved in the Minnesota accident at issue here. JA 101. There are over eighty licensed Ford dealerships in Minnesota, each authorized by Ford to sell both new and used Ford vehicles. JA 102. Ford guarantees the availability of repairs in Minnesota, trains and certifies Ford mechanics in the state, and maintains ongoing consumer warranties in Minnesota for both new and used Ford cars. JA 73, 75, 78, 79. And, through its Minnesota dealerships, Ford collects data about its cars' performance in Minnesota and uses that data to design its cars and train its mechanics. JA 79; 19-369 Pet. App. 9a.

2. The Minnesota accident and lawsuit. Adam Bandemer—a resident of Crow Wing County in central Minnesota—was riding in the passenger seat of a 1994 Ford Crown Victoria on rural Azalea Road in Minnesota, on his way to go ice fishing, when the car crashed into a county snowplow and ended up in a ditch. *Id.* at 25a. Because the Ford's airbag failed to deploy on impact, Bandemer suffered "lifelong lasting brain injury and disfigurement." JA 64. Like Bandemer, the driver and owner of the car were both Minnesota residents. JA 58, 61.

After the accident, Bandemer sued Ford, as well as the Minnesota-based driver and owner, in Minnesota state court. He asserted negligence claims against the driver and owner and products-liability, negligence, and breach-of-warranty claims against Ford, alleging that

Ford's "defective airbag system" caused his injuries. JA 60-64. Each claim was brought under Minnesota law.

The Crown Victoria was registered in Minnesota and had twice been purchased secondhand in Minnesota—first in 2011 and then again in 2013 by the current owner. But it turned out that the car was first sold at a Ford dealership in the neighboring state of North Dakota and manufactured at a Ford assembly plant in Ontario, Canada. JA 94, 130-33. Based on these facts alone, Ford moved to dismiss for lack of personal jurisdiction. Pet. App. 3a. Solely because the first sale of this particular Crown Victoria occurred outside Minnesota, Ford argued that Minnesota's courts could not exercise specific jurisdiction over Bandemer's suit to redress injuries he suffered in Minnesota as a result of a product that Ford actively sold and promoted in Minnesota. *Id.*

3. Ford's activities in Montana. As in Minnesota, Ford has long sold its cars in Montana. A Montana dealer was selling the company's Model T as early as 1917 and is still in business. Schurman, *100 years later, Model T is back at Bell McCall*, Bitterroot Star, Oct. 31, 2017. Ford cultivates the market for new and used Ford vehicles in Montana—including the Explorer, the vehicle that caused the rollover accident here. The company has specifically "marketed and advertised the Ford Explorer in Montana as a safe and stable passenger-carrying vehicle," JA 13, even though the Explorer has a long history of rollover accidents resulting from its faulty design. JA 10; *see* Latin & Kasolas, *Bad Designs, Lethal Profits: The Duty to Protect Other Motorists Against SUV Collision Risks*, 82 B.U. L. Rev. 1161, 1196-98 (2002).

Ford sells both new and used Explorers at all of its thirty-six licensed Ford dealerships in Montana, which service these Explorers for Montana residents. JA 13. In

addition to selling Explorers in Montana, Ford also maintains ongoing relationships with customers by selling car parts, earning revenue from loans to Montana customers and dealers through its captive company Ford Motor Credit, and "provid[ing] automotive services in Montana, including certified repair, replacement, and recall services." 19-368 Pet. App. 12a; *see* Smith & Naughton, *Ford's Lending Arm Is Generating More Profit Than Ever*, Bloomberg News, Feb. 3, 2020. The company "pervasive[ly] market[s] on multiple platforms to Montana residents" and accrues "benefits from Montana consumers buying its products," new or used. JA 15. For the particular Explorer vehicle that was involved in the accident in this case, "Ford provided recall services in Montana for the vehicle, including certified repair and replace[ment] services." JA 13.

4. The Montana accident and lawsuit. Twenty-three-year-old Markkaya Gullett was a resident of the mountain town of Superior (population 812), nestled in the Bitterroot Range in the westernmost part of Montana. JA 10. In 2015, she was driving her Ford Explorer on the highway near her home when one of its tires suffered a catastrophic failure. JA 10, 22. The vehicle lost stability and—because of a defect in the Explorer's design that gives it a dangerous tendency to roll over—it rolled into a ditch, where it came to rest upside down. *Id.* Gullett was pronounced dead at the crash scene, just outside Alberton, Montana. JA 22. She left behind her parents, husband, and two young daughters—one of whom had been born just three months before the crash. JA 10-11; *see Officials ID Superior woman killed in Alberton crash*, Great Falls Tribune, May 27, 2015. All are citizens of Montana.

The representative of Gullett's estate sued Ford, the tire manufacturer, and other defendants in Montana state court. JA 10-12. JA 10. The complaint asserted negligence, defective-design, and failure-to-warn claims. JA 23-28. Each claim was brought under Montana law.

The particular Explorer that Gullett was driving was assembled in Louisville, Kentucky, and, while Gullett's mother had bought it used in Montana and registered it in the state, it happened to have been originally sold to an Oregonian at a Ford dealership in Spokane, Washington. *See* JA 41, 48-51; 19-368 Pet. App. 24a. Because this particular Explorer was originally sold to a third party outside Montana, Ford moved to dismiss the action for lack of personal jurisdiction. *Id.* at 3a.

B. Procedural history

1. The Minnesota Supreme Court's decision. The Minnesota Supreme Court found personal jurisdiction over Ford proper. 19-369 Pet. App. at 3a. The Court first reviewed Ford's Minnesota contacts to evaluate the "'relationship among the defendant, the forum, and the litigation.'" *Id.* at 9a (quoting *Walden v. Fiore*, 571 U.S. 277, 284 (2014)). It held that Ford's extensive sales, marketing, and data-collection efforts "establish that Ford has purposely availed itself of the privileges, benefits, and protections of the state of Minnesota." *Id.* at 10a.

Next, the Court concluded that Ford's contacts with Minnesota were sufficiently related to Bandemer's claims. *Id.* at 15a-18a. "This is not a case where a 1994 Ford Crown Victoria fortuitously ended up in Minnesota"; rather, "Ford has sold thousands of such Crown Victoria cars" in Minnesota. *Id.* at 16a. The Court highlighted that "Ford directs marketing and advertisements directly to Minnesotans, with the hope that they will purchase and

drive more Ford vehicles," and that here a "Minnesotan bought a Ford vehicle, and it is alleged that the vehicle did not live up to Ford's safety claims." *Id.* at 17a. The Court rejected Ford's proposed causal standard as a "'radical' shift in specific personal jurisdiction law." *Id.* at 11a-12a.

Finally, the Court held that exercising jurisdiction was constitutionally reasonable, explaining that Minnesota has a "strong interest" in adjudicating a suit about an accident "on a Minnesota road" that involved "a Minnesota resident as plaintiff and both Ford—a corporation that does business regularly in Minnesota—and two Minnesota residents as defendants." *Id.* at 19a.

2. The Montana Supreme Court's decision. The Montana Supreme Court similarly found jurisdiction proper over Ford. 19-368 Pet. App. 21a-22a. It first determined that "Ford purposefully availed itself of the privilege of conducting activities in Montana, thereby invoking Montana's laws." *Id.* at 11a. Ford's in-state advertising and widespread dealership network, it explained, "clearly establishes channels that permit it to provide regular assistance and advice to customers in Montana" and demonstrates that "Ford serves the market in Montana and expects consumers to drive its automobiles" in the state. *Id.*

The Court next concluded that the plaintiff's claims "relate to Ford's Montana activities," reasoning that Ford "advertises, sells, and services vehicles in Montana," and "makes it convenient for Montana residents to drive Ford vehicles by offering maintenance, repair, and recall services in Montana." *Id.* at 14a. "Gullett's use of the Explorer in Montana," the Court wrote, "is tied to" those activities, which show "a willingness to sell to and serve Montana customers like Gullett." *Id.* at 17a, 19a. In other words, by "market[ing], sell[ing], and servic[ing] vehicles

in Montana," Ford's "own actions" showed a "willingness to sell to and serve Montana customers like Gullett, who was injured while driving an Explorer in Montana." *Id.* at 19a–20a.

Finally, the Court held that jurisdiction over Ford in Montana was reasonable. *Id.* at 21a. "Ford's purposeful interjections into Montana are extensive," the Court explained, and Ford did not contend that it would be "burdened by defending in Montana." *Id.* Montana also "has a strong interest in adjudicating the dispute" because "the accident involved a Montana resident and occurred on Montana roadways." *Id.* Moreover, the Court reasoned, "the controversy may be efficiently resolved in Montana, as it was the place of the accident." *Id.*

SUMMARY OF ARGUMENT

I. This Court has repeatedly made clear that where (a) a company deliberately cultivates a market for a product in the forum state and (b) that product causes an injury in the forum state, the relationship between the injury and the defendant's in-state activity is sufficient for specific jurisdiction. The principles that animate the relatedness requirement—fair warning and reciprocal obligation—strongly weigh in favor of jurisdiction in this paradigmatic scenario, regardless of where the particular widget that caused injury in the forum happened to have first been sold.

II.A. Ford urges this Court to disregard seven decades of precedent and craft a new requirement under which a plaintiff, as a prerequisite to specific jurisdiction, must prove the existence of a causal relationship between the defendant's in-state actions and the plaintiff's injury. Ford identifies no basis for such a requirement in the Constitution or this Court's cases. For 75 years, the Court has consistently held that a plaintiff's injuries must "arise

out of or relate to" a defendant's contacts with the forum. Ford's rule would jettison half of that formulation and, in so doing, would contravene this Court's precedent.

B. Ford's causal rule would undermine federalism by denying jurisdiction to the states with the most at stake in cases like this, while granting jurisdiction to states with only a minimal interest at best. Ford tries to dismiss these concerns as irrelevant. But Ford is asking this Court to create—and constitutionalize—a novel requirement for personal jurisdiction. This Court, in evaluating Ford's proposal, cannot ignore the federalism interests that it has consistently held underpin its personal-jurisdiction jurisprudence. Ford identifies no state with a greater interest than the state where the victim was injured, and no overreach by the forum states beyond their valid regulatory power. And, regardless of whether Ford's causal rule is adopted, Ford's liability in these cases (and that of defendants in similar cases) will not vary significantly, for liability will generally be governed by the substantive law of the place where the injury occurs.

C. Ford's rule would also undermine another core due process value—fairness—by denying citizens access to courts where they are injured, without any countervailing benefit to Ford. Ford suggests that only a causal rule would ensure "fair warning" of where it may be sued. But Ford already has warning that it will be sued over a defective product in a state where it extensively markets and sells that product.

D. Ford's rule would also undermine predictability by importing an elusive standard from tort law into personal jurisdiction. Proximate cause is notoriously hard to pin down, even in the tort context. In the personal jurisdiction context, it will often be impossible. These

difficulties will be compounded by the need to track down the first sale of a widget under Ford's first-sale rule—a task that will often prove impossible. Ford's rule will lead to preliminary litigation to track down locations that are ultimately irrelevant to the merits and wasteful, duplicative litigation of multi-party disputes that were previously heard in one place.

III. Ford's policy concerns are meritless. The status quo already provides fair warning, adheres to territorial limitations, and upholds the distinction between specific and general jurisdiction. And existing doctrines—the reasonableness requirement, choice of law, and *forum non conveniens*—protect defendants from aggressive exercises of state-court jurisdiction. In any event, Ford's policy complaints are better addressed through the democratic process than by revision of the Due Process Clause.

ARGUMENT

I. Specific jurisdiction over a defendant is permissible where a plaintiff has been injured in the forum by a product that the defendant has systematically marketed, sold, and serviced in the forum.

A. For seven decades, this Court's modern precedents—from *International Shoe* to *Bristol-Myers Squibb*—have established that, where a defendant "has purposefully directed [its] activities at residents" of a forum state, and "litigation results from alleged injuries that arise out of or relate to those activities," the "forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction" over the defendant. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-73 (1985). This Court has also made clear that this principle captures the cases at hand: Where a

manufacturer like Ford sells its product in a state "not simply [as] an isolated occurrence" but as an effort to cultivate a "market for its product," "it is not unreasonable to subject it to suit" in the state "if its allegedly defective merchandise has there been the source of injury to its owner or to others." *World-Wide Volkswagen*, 444 U.S. at 297-98.

As a result, cases with facts like those presented here have long been ones where personal jurisdiction over the defendant is a given. Every year, there are more than six million police-reported car crashes in the United States, resulting in more than 35,000 fatalities and injuries to over two million people. *See Traffic Safety Facts*, National Highway Traffic Safety Administration, 1-3, Feb. 2020, https://bit.ly/2WRACkZ. About half the people injured in motor-vehicle accidents attempt to seek compensation, resulting in one of the most common types of litigation faced by the courts, and some fraction of them seek damages against manufacturers of cars, tires, or parts that have contributed to their injuries. *See* Engstrom, *When Cars Crash*, 53 Wake Forest L. Rev. 293, 299-302 (2018). Yet Ford cannot find any case from any state or federal appellate court invoking its causal theory to find personal jurisdiction lacking over an automaker, tire manufacturer, or other defendant whose product injures the plaintiff in a state where the manufacturer routinely sells that product.

There is good reason for this: It would mark an abrupt departure from settled law. In the century and a half since the Fourteenth Amendment was ratified, this Court has never deployed the Due Process Clause to deprive a state of its ability to provide its own injured citizens with a forum for redress when those citizens have been injured in the state by products that a defendant has

routinely promoted and sold in the state. Under the *Pennoyer* regime that governed after the Fourteenth Amendment was adopted, state courts had the power to adjudicate claims against non-resident defendants who had property in the state, and could provide redress for their citizens up to the value of that property. *Pennoyer v. Neff*, 95 U.S. 714, 722-24 (1877). Under the modern *International Shoe* regime, suits like these have long been understood to be consistent with "fair play and substantial justice." *Int'l Shoe Co. v. Wash., Office of Unemployment Comp. & Placement*, 326 U.S. 310 (1945). Ford offers no sound reasons to depart from this settled understanding, and due process does not require it.

In evaluating whether exercising specific jurisdiction over a defendant is permissible, this Court has long held that courts must examine "the relationship among the defendant, the forum, and the litigation." *Walden*, 571 U.S. at 284. It is this focus that distinguishes *specific* or case-linked jurisdiction from *general* or all-purpose jurisdiction (which permits "any and all claims" against the defendant, "wherever in the world the claims may arise," *Daimler AG v. Bauman*, 571 U.S. 117, 121 (2014)).

For specific jurisdiction to comport with due process, this Court has consistently held that three requirements—known collectively as the minimum-contacts test—must be satisfied. *First*, the "constitutional touchstone" is whether the defendant has "purposefully avail[ed] itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." *Burger King*, 471 U.S. at 474-75 (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1985)). *Second*, "there must be 'an affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum state and is

therefore subject to the State's regulation.'" *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773, 1780 (2017) (quoting *Goodyear*, 564 U.S. at 919). This second requirement has also been phrased "[i]n other words" as a rule that the lawsuit at issue "must arise out of or relate to the defendant's contacts with the forum." *Id. Third*, jurisdiction must be reasonable. A defendant may still defeat jurisdiction by "present[ing] a compelling case that the presence of some other considerations would render jurisdiction unreasonable" given concerns of "fair play and substantial justice." *Burger King*, 471 U.S. at 476-78.

B. With respect to the first requirement, there is no question that Ford has purposefully availed itself of the privilege of conducting activities in Montana and Minnesota. It "has continuously and deliberately exploited" both states' markets for decades. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781 (1984). Ford advertises, markets, sells, and services tens of thousands of new and used vehicles in each state—including the particular model and year of the cars involved in both accidents. Ford "makes it convenient for [Montana and Minnesota] residents to drive Ford vehicles by offering maintenance, repair, and recall services" in both states. 19-368 Pet. App. 17a. Such "continuing and wide-reaching contacts," established "purposefully" outside of Ford's home state, are more than enough to support jurisdiction. *Walden*, 571 U.S. at 285 (quoting *Burger King*, 471 U.S. at 479-80).

There is also no question that jurisdiction here would satisfy the third requirement. Ford makes no argument, let alone "a compelling case," that "other considerations would render jurisdiction unreasonable." *Burger King*, 471 U.S. at 477-78. Both Minnesota and Montana have a

"manifest interest" in providing their residents with a convenient forum for redressing injuries inflicted by out-of-state actors. *Burger King*, 471 U.S. at 473. Minnesota and Montana were the sites of the accidents and home to everyone involved. Ford identifies no state with a stronger interest. And it would be absurd for Ford to even suggest that it would suffer any hardship from litigating these cases in either state.

C. Conceding these points, Ford focuses exclusively on the second requirement of relatedness. It urges this Court to adopt the following rule: Even where a defendant has marketed and sold a product in the forum continuously for years and a plaintiff is injured by that product in the forum, specific jurisdiction is nonetheless foreclosed if the first sale of the specific item involved happened to have been made to a third party outside the forum. Pet. Br. 18-22. Neither this Court's modern precedent nor the original understanding of the Due Process Clause supports this novel interpretation of the relatedness requirement.

To the contrary, this Court has repeatedly made clear that where (a) a company has deliberately cultivated a market for a product in a forum state, and (b) that product causes an injury in the forum state, the relationship between the injury and the defendant's conduct—same product, same state—is sufficient to provide a basis for personal jurisdiction. As the Court put it in *World-Wide Volkswagen*: "[I]f the sale of a product of a manufacturer or distributor such as [a car company] is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product," then "it is not unreasonable to subject it to suit" in a state "if its allegedly defective

merchandise has there been the source of injury to its owner or to others." 444 U.S. at 297.

Ford attempts to discredit this passage as "dicta," as if it were some stray musing not reflected in subsequent cases. Pet Br. 34. But that aspect of *World-Wide Volkswagen*'s reasoning has been a repeated touchstone of this Court's personal-jurisdiction cases for the past four decades. Many times, this Court has used this example from *World-Wide Volkswagen*—of in-forum injuries caused by a product that the manufacturer routinely sells in the forum—as the paradigmatic instance of an appropriate exercise of specific jurisdiction.

It first did so in *Keeton v. Hustler Magazine*, invoking *World-Wide Volkswagen*'s language to hold that where a company "has continuously and deliberately exploited" a state's markets, "it must reasonably anticipate being haled into court there in" actions that are "based on" the products it regularly sells in those markets. 465 U.S. at 781. Then, in *Burger King*, the Court reaffirmed the relevant passage of *World-Wide Volkswagen*, explaining that when a company regularly sells products in a forum state "and those products subsequently injure forum consumers," in-state litigation satisfies both the requirements that a company have "purposefully directed" its activities at the forum and that "the litigation results from alleged injuries that 'arise out of or relate to' those activities." 471 U.S. at 472-73 (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)).

More recently, this Court's opinions have continued to highlight this fact pattern as a benchmark to distinguish specific jurisdiction from general jurisdiction. In *Goodyear*, 564 U.S. at 927, the Court's unanimous opinion did so by quoting and reaffirming the key passage

from *World-Wide Volkswagen*. That same day, in *J. McIntyre Machinery v. Nicastro,* 564 U.S. 863 (2011), despite the differing approaches in that case, nobody questioned Justice Ginsburg's straightforward reading of *World-Wide Volkswagen:* "[T]he Court's opinion," she explained, "indicates that an objection to jurisdiction by the manufacturer" there "would have been unavailing"—even though the car at issue had been originally been sold in a different state. (Ginsburg, J., dissenting). Three years later, in *Daimler AG*, 571 U.S. at 127 n.5, the Court's opinion once again offered this same basic scenario as the textbook example of specific jurisdiction: "a California plaintiff, injured in a California accident involving a Daimler-manufactured vehicle" who has "sued Daimler in California court alleging that the vehicle was defectively designed."

None of these cases has ever suggested that the exercise of jurisdiction in this paradigmatic scenario should depend on where the particular item was originally sold to a third party not before the court, as opposed to where the defendant has regularly sold the product and where the accident and the injuries occurred.

D. And with good reason: The principles this Court has articulated as justifying the relatedness requirement all weigh strongly in favor of exercising jurisdiction in these cases regardless of the site of first sale.

First, relatedness serves to ensure that defendants have "fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign." *Burger King*, 471 U.S. at 472. The purposeful-availment requirement, on its own, would not give defendants notice of what "particular" acts form a basis for jurisdiction over specific types of claims. *Id.*

As this Court's precedent makes clear, this "fair warning" function is easily satisfied here. Where a company like Ford has cultivated a market in a particular state by regularly selling its products there "with the expectation that they will be purchased by consumers," it has "fair warning" that it will be subject to suit if identical "products subsequently injure forum consumers." *Burger King*, 471 U.S. at 472-73. There is no dispute that Ford has a reasonable expectation of being haled into court in Montana and Minnesota for injuries in those states resulting from accidents caused by defects in the cars at issue here. Ford knows that Montanans and Minnesotans will bring these cars into their states, and will purchase them used in their states—Ford makes every effort to get them to do so.

Second, the relatedness requirement serves to ensure that a state has the power to hold out-of-state corporations accountable only for "the obligations which [they have] incurred there." *Int'l Shoe,* 326 U.S. at 320. The relationship between a defendant's obligations and the state's power has grounded specific jurisdiction since *International Shoe*, which explained that, "to the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state." *Id.* at 319. That enjoyment, in turn, "may give rise to obligations," and it can "hardly be said to be undue" to "require[] the corporation to respond to a suit brought to enforce" those obligations "so far as those obligations arise out of or are connected with the activities within the state." *Id.*

Ford's obligations to the states of Montana and Minnesota and their citizens ground the exercise of jurisdiction here. There can be no doubt that Ford has enjoyed the "benefits and protection" of both states' legal

systems, which have created a market for its products, protected its property, and enforced its contracts for decades. Ford invests great effort into ensuring not only that Minnesotans and Montanans will buy its new cars but also that Ford will have a continuing relationship with anyone who drives a Ford vehicle, ensuring that people will drive its cars long after the first sale. To that end, it has actively encouraged and benefited from the market for resale, servicing, and parts of Ford vehicles in Minnesota and Montana. JA 13, 100-102. It lends its dealers money to buy and resell used cars, *see* Smith & Naughton, *Ford's Lending Arm*; it lends consumers money to purchase used cars, *id.*; and it profits from selling aftermarket parts and accessories to its dealers and through distributors. Ford 10-K Report at 2, 27 (2019). And, when it sells new cars, Ford sells them at lower prices—and can even plan the obsolescence of their parts—knowing it will recoup costs over the life of the car through sales of parts, by virtue of its continuing relationships with car owners. *See* Dayen, *The Infuriating Reason That Car Repairs Are So Expensive*, The New Republic, Sept. 15, 2015. As a Ford executive explained, when Ford sells a car, it effectively tells consumers: "'[W]e're gonna back that car up, and oh yes, we would like you to use original equipment Ford parts on those cars.'" Huetter, *Ford plans to compete on OEM parts*, Repairer Driven News, Feb. 15, 2019.

In turn, Ford has subjected itself to the basic obligation not to injure each state's residents through negligence in the design or manufacture of its products. In these cases, citizens of Montana and Minnesota injured by Ford cars in each state seek to hold Ford to those obligations. Ford's "continuing relationships and obligations with citizens" of Minnesota and Montana, *Burger King*, 471 U.S. at 473, are not annulled simply

because the very products it regularly sells and services in Minnesota and Montana, in these particular instances, happened to arrive in each state as part of a used-car sale rather than a first sale.

Ford's primary argument to the contrary is circular. Ford argues that "[i]f a plaintiff's claim would be the same whether or not the defendant engaged in any in-state activity," then it cannot be "suit-related." Pet. Br. 13. But that is just a restatement of its assertion that the only kind of "relationship" that matters is a rigid, provably causal relationship. *Id.* at 14. In contrast, the principles underlying this Court's personal-jurisdiction jurisprudence demonstrate the reason *why* Ford's contacts in Minnesota and Montana are relevant to the claims here: they created a market for Ford's cars in those states, thereby generating obligations between Ford and the citizens of each state. The consequence of those obligations is that Ford must have "reasonably anticipate[d] being haled into court" in actions in either state "based on" the products it has sold in those markets and the cars that it intentionally encouraged the residents of those states to purchase and use. *Keeton*, 465 U.S. at 781. In any event, Ford has no basis for confidently asserting that the plaintiffs' claims here "would be the same" regardless of Ford's in-state activity, given that Ford has gone to great lengths to encourage Minnesotans and Montanans to purchase new and used Ford cars and drive Ford cars in these states.

II. Ford's proposed causation test runs contrary to decades of this Court's personal-jurisdiction jurisprudence and would undermine the values of federalism, fairness, and predictability that it serves.

Ford (at 43) urges this Court to disregard decades of its personal-jurisdiction jurisprudence and craft a new "proximate-cause requirement" under which a plaintiff must prove the existence of a causal relationship between the defendant's in-state actions and the plaintiff's injuries as a prerequisite for specific jurisdiction. But, as the Solicitor General points out, "Ford fails to identify any basis in this Court's cases for such a requirement," which would for the first time "require plaintiffs to show that the defendant's acts [in the forum] caused their injuries." U.S. Br. 31. Ford is coy about what circumstances would satisfy this new causal test. But it makes clear that, on its view, a state may be rendered powerless to provide a forum for its citizens who are injured by products that a manufacturer regularly sells and markets in the state—even where the injury occurred in the state, the widget was purchased used in the state, and the defendant actively cultivated a market in the state for the same product that caused the injury. Adopting such a rule would radically reshape the jurisdictional landscape.

Ford makes no attempt to ground its novel rule in the original meaning of the Due Process Clause or Anglo-American legal tradition. And it cannot. Nor does Ford's rule have any firmer footing in the principles of federalism, fairness, and predictability that animate this Court's modern personal-jurisdiction jurisprudence. Ford's rule undermines each one of these principles, cutting against the core due process interests that the Fourteenth Amendment protects.

A. Ford's proposed causation test runs contrary to this Court's cases.

Since *International Shoe*, this Court has consistently held that specific jurisdiction may rest on "an affiliation between the forum and the underlying controversy, principally an activity or an occurrence that takes place in the forum state and is therefore subject to the State's regulation." *Bristol-Myers Squibb*, 137 S. Ct. at 1780. The Court has often phrased this as a requirement that the suit "must arise out of or relate to the defendant's contacts with the forum." *Id.*

The crux of Ford's argument appears to be that this Court's use of the words "arising out of," and similar language, is enough to read a rigid causation test into decades of precedent—even though this Court has never created one, and has expressly and repeatedly phrased the standard as one that does *not* require causation. Ford. Br. 18. In isolation, the phrase "arising out of" does suggest a causal relationship. But this Court has never limited the minimum-contacts test to cases in which plaintiffs can prove that their injuries "aris[e] out of" the defendant's forum contacts. Since it adopted its modern approach to personal jurisdiction, this Court has consistently held that the test is satisfied when the plaintiff's claims "arise out of *or are connected with*" those contacts. *Int'l Shoe*, 326 U.S. at 319 (emphasis added). For almost three-quarters of a century, the Court has consistently phrased the test in the disjunctive. *See Bristol-Myers*, 137 S. Ct. at 1780 ("arise out of or relate to"); *Goodyear*, 564 U.S. at 919 ("deriving from, or connected with"); *Burger King*, 471 U.S. at 472 ("arises out of or relates to"); *Helicopteros*, 466 U.S. at 414 ("related to or arises out of"). The phrase "related to" contrasts with "arising from" precisely because only the

latter connotes a causal link. Thus, the apparent reason that the Court has included the two phrases together time and again is to draw that contrast and avoid insisting that plaintiffs satisfy an inflexible causal test.

This Court has unanimously recognized that, even when products are first sold outside the forum and then brought into the forum, a manufacturer's efforts to cultivate "the market for its product" in the forum and encourage the "flow of a manufacturer's products *into the forum*" can constitute "an affiliation germane to specific jurisdiction." *Goodyear*, 564 U.S. at 927 (emphasis added) (citing *World-Wide Volkswagen*, 444 U. S., at 297). By its terms, and in practice, the relatedness inquiry has never required a plaintiff to prove that some discrete act taken by the defendant in the forum was the cause of the plaintiff's injury. Instead, jurisdiction may be premised on a defendant's "*course of conduct* directed at the society or economy existing within the jurisdiction of a given sovereign." *Nicastro*, 564 U.S. at 884 (plurality opinion) (emphasis added). As the Solicitor General points out, the Court's cases have never insisted that an injured plaintiff must try to prove that a "particular advertisement" in Minnesota, or the availability of service and parts at authorized Ford dealerships in Montana, for example, "influenced the customer's decision to make the particular purchase" of a particular used Ford vehicle. U.S. Br. 30. "Nothing in this Court's cases supports that blinkered and inflexible approach." *Id.* That the plaintiff has been injured in the forum by a product that the defendant regularly sells, promotes, and services in the forum is enough.

Ford makes no real effort to dispute the conclusion of the courts below that the claims here, at the very least, "relate to" Ford's active cultivation of a market for its

products in the forum states. Instead, as Ford acknowledges (at 36-37), it seeks to jettison half of the Court's longstanding standard for relatedness.

Quoting a treatise on statutory interpretation, Ford contends (at 37) that "arising out of" and "related to" should be treated as merely "synonymous" because "[d]oublets and triplets"—synonymous phrases like "able and willing" or "last will and testament"—"abound in legalese." But such phrases are always conjunctive, not disjunctive. *See* Garner, *A Dictionary of Modern Legal Usage* 293-94 (2011) (providing over 170 examples of such phrases in legal usage, all with the conjunctive "and"). So Ford's point about legal usage actually cuts the other way—it shows that the Court has consistently used the disjunctive formulation to distinguish two separate concepts. Moreover, the Court's use of the specific phrase "arising out of or related to" originates in an influential law-review article that emphasized the full breadth of the disjunctive phrase. *See Helicopteros*, 466 U.S. at 414 n.8 (citing von Mehren & Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. L. Rev. 1121 (1966)). The article itself made this disjunction even more emphatic: "In the case of specific jurisdiction, the assertion of power to adjudicate is limited to matters arising out of—or intimately related to—the affiliating circumstances on which the jurisdictional claim is based." von Mehren, *Jurisdiction to Adjudicate*, 79 Harv. L. Rev. at 1144-45. The Court's test is not mere verbal excess. A test that has been reaffirmed by this Court over seven decades, and that has engendered substantial reliance and legal development in the lower courts, should not be cast aside on so flimsy a basis.

Ford also suggests (at 30-32) that this Court in *Bristol-Myers* altered its longstanding formulation of the

personal-jurisdiction test. But although the petitioner there *asked* this Court to adopt a causation requirement, based on arguments indistinguishable from those made by Ford here, the Court declined that invitation. Pet. Br. in *Bristol-Myers* 14-37. Rather, it applied "settled principles of personal jurisdiction" to the facts. *See Bristol-Myers*, 137 S. Ct. at 1783; *see also id.* at 1788 (J. Sotomayor, dissenting) (noting the lack of a "rigid requirement that a defendant's in-state conduct must actually cause a plaintiff's claim"). In doing so, *Bristol-Myers* reiterated the "arise out of or relate to" test, alternately describing the required relationship as a "connection" or "affiliation" between the claims and the forum state. *Id.* at 1780, 1781. The Court repeatedly emphasized that the reason this required affiliation was not present in that case was because "[t]he relevant plaintiffs [were] not California residents and [did] not claim to have suffered harm in that State." *Id.* at 1782.

Ford has no better luck attempting (at 37) to ground its proposed causal approach in cases decided before *Bristol-Myers.* Ford's arguments on this score all conflate the purposeful-availment and relatedness inquiries. In *Walden*, for instance, specific jurisdiction was lacking because the defendant "never traveled to, conducted activities within…or sent anything or anyone to" the forum state—in other words, the defendant did not purposefully avail himself of the forum state. 571 U.S. at 277. Likewise, the defendant in *Hanson* had "no office[s]," "transact[ed] no business," and had never "solicit[ed] business in that state." 357 U.S. at 251. In such cases, there is no need to ask whether nonexistent contacts relate to the suit. And in cases where there *was* a causal relationship between a defendant's in-state contacts and the suit, there was no need to go beyond a causal relationship to explore the boundaries of other kinds of

connections that might also satisfy due process. This Court has never articulated the rule that Ford seeks to represent as the status quo and has instead consistently articulated a different standard.

B. Ford's proposed causation rule would deprive states with the strongest interest in the controversy of their ability to protect their injured citizens.

Although Ford purports to ground its causal rule in principles of federalism, its rule actually undermines federalism. It would deny jurisdiction to the very states with the most at stake in these cases, while granting jurisdiction to states with only an attenuated interest at best.

1. Ford brushes aside both the states' important role in the federal system and their legitimate authority to protect their citizens from injury within their borders. Ford goes so far as to assert (at 40) that the interest of a sovereign state in "protecting its residents from dangerous products that are marketed and sold there"—and that injure those residents within the state's borders—is "irrelevant" to the question before the Court.

That is wrong. A state "has a 'manifest interest' in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors." *Burger King*, 471 U.S. at 473; *see also Watson v. Employers Liab. Assur. Corp.*, 348 U.S. 66, 73 (1954) (noting the states' "legitimate interest in safeguarding the rights of persons injured there"). Thus, although *Bristol-Myers* held that California lacked personal jurisdiction over the claims of non-resident plaintiffs who did "not claim to have suffered harm in that State," it never questioned that the state had jurisdiction over the claims of plaintiffs who lived, and were injured, in the state. 137

S. Ct. at 1782. And this Court's cases have long held that "it is beyond dispute that" each state "has a significant interest in redressing injuries that actually occur within the State." *Keeton*, 465 U.S. at 776.

Ford's rule would call into question not just the states' authority to provide a forum for injured residents, but also their authority to directly enforce their own laws. States have a strong interest in ensuring "faithful observance" of the law within their borders—an interest that is particularly powerful when enforcement is necessary to protect citizens from dangerous products in the state. *Travelers Health Ass'n,* 339 U.S. at 648. The importance of that interest does not depend on whether the manufacturer sells the products directly in the forum or to an out-of-state distributor. If, for example, a state's citizen is injured by a nutritional supplement falsely marketed by the manufacturer in the state as safe, the state should not be foreclosed from investigating and prosecuting the manufacturer just because the citizen happened to have bought the particular bottle online from a distributor in another state. If the manufacturer regularly markets the supplement in the forum, the state has a compelling interest in protecting its citizens from its harmful effects.

Ford responds to these concerns by arguing that a state's interest is relevant only to the final step of the constitutional test, which asks whether the state's exercise of jurisdiction is reasonable. Pet. Br. 40. That misses the point. Ford is asking this Court to create a new threshold requirement for personal jurisdiction that would limit states' power to adjudicate matters of compelling interest to them. In evaluating Ford's proposed test, this Court cannot ignore the federalism interests that animate its personal-jurisdiction

jurisprudence—a fact that Ford implicitly recognizes when it argues (incorrectly) that a strict causation requirement is necessary to serve those interests.

2. To be sure, a state's jurisdiction over particular claims may be limited to the extent that assertion of its regulatory interests interferes with the legitimate interests of other states. Due process ensures that states "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 Ford has pointed to no state that has an interest in these cases greater than the states where the plaintiffs reside and the accidents occurred, and in which Ford regularly markets and sells the allegedly defective vehicles.

Ford suggests (at 41) that courts in the places where it assembles cars—here, Ontario, Canada and Louisville, Kentucky—may properly exercise personal jurisdiction based on their "interest in preventing the manufacture of harmful products within [their] borders and in not allowing companies to use [their] resources to do so." And it says that Michigan, where it designs its cars, may exercise jurisdiction for similar reasons. But although those states may have *some* interest in regulating the production of dangerous goods built for sale out of state, that interest is not more significant than the interest of the states whose citizens the products actually injure or kill. The state of injury has the strongest interest in regulating dangerous products—an interest rooted in protecting its citizens from harm.

Ford itself has acknowledged this principle—and recently used it to secure the dismissal of numerous plaintiffs' breach-of-warranty and fraud claims brought against it in its home state of Michigan. *See Cyr v. Ford Motor Co.*, 2019 WL 7206100 (Mich. Ct. App. Dec. 26,

2019). Ford asked for the claims to be dismissed on *forum non conveniens* grounds. The court *agreed with Ford* that the plaintiffs' "respective places of domicile provide appropriate alternate fora." *Id.* at *4. Although Michigan "may have a vested interest in adjudicating" claims against Ford, the court wrote, "the nonresident plaintiffs' home jurisdictions have at least an equal stake in adjudicating controversies that affect their citizens' rights." *Id.* at *7.

Moreover, Ford seems to acknowledge (at 41) that the necessary implication of its argument is that the states where it originally sold the cars at issue—Washington and North Dakota—could exercise jurisdiction over these cases. But the fact that Ford originally sold the cars to third parties there is pure happenstance. Ford's causation test, in other words, would deny jurisdiction to the states with the most significant interest in these cases while granting it to states that lack much, if any, interest.

As a result, the application of Ford's rule leads to arbitrary outcomes. Under Ford's first-sale rule, a Montana resident who bought a new Explorer in Montana could bring suit there for injuries suffered in an accident in the state, but a neighbor who purchased an identical used Explorer, and who suffered identical injuries in the state, could not bring the same claim if the car's first sale occurred elsewhere.

Not only that, but even injured bystanders who have never left Montana—or passengers like Mr. Bandemer who had nothing to do with the car's purchase—would be forced to sue in a distant forum with which they have no connection, and which has no interest in the controversy, based only on the coincidence that Ford once sold the car there to someone else. No legitimate purpose would be

served by these bizarre results. And due process does not command them.

3. The substantial limit on states' sovereign powers that Ford advocates is not justified by any countervailing federalism concerns. Even without a causation requirement, the existing specific-jurisdiction test already imposes sensible limits on a state's power to reach beyond its borders. In products-liability cases like those here, purposeful availment exists only if the defendant "can be said to have targeted the forum"—that is, if the defendant "has followed a course of conduct directed at the society or economy existing within the jurisdiction of a given sovereign, so that the sovereign has the power to subject the defendant to judgment concerning that conduct." *Nicastro*, 564 U.S. at 881, 884 (plurality op.). Ford has followed precisely such a "course of conduct" *id.*, by marketing, selling, and servicing the defective car models in Montana and Minnesota and thereby submitting itself to the authority of those states. No existing principle of constitutional law requires that Ford must, as a matter of due process, separately consent to a state's authority to "regulate" each individual car.

4. Nor is Ford's causal test justified by the claim that it will prevent defendants from being held liable under a state's laws unless the state is a place where the defendant "took or aimed an action that ultimately led to the plaintiff's claim." Pet. Br. 24. Ford repeatedly makes a mistake that this Court has cautioned against, loosely equating a state's ability to provide a forum for its injured citizens with its ability to "regulate" substantive conduct. *See, e.g.*, Pet. Br. at 25 ("If a State can exercise jurisdiction over—that is, regulate—a defendant's out-of-state activity...."). But the issue of what substantive law governs a defendant's conduct is distinct from the question of

which states have personal jurisdiction over that defendant. *See, e.g.*, *Keeton*, 465 U.S. at 778 ("The issue is personal jurisdiction, not choice of law."). Ford and the Solicitor General both argue as if the state where an injury occurs has a legitimate interest only in regulating a defendant's conduct if that conduct took place in or was "aimed at" the state. Pet. Br. 24; *see also* U.S. Br. 25.

But applying the choice-of-law standards that prevail across the United States, Ford likely will be liable in these cases under the laws of Minnesota and Montana no matter where the cases are heard. *See* Restatement (Second) of Conflict of Laws § 146. The Solicitor General argues otherwise, pointing out (at 25) that most states have abandoned the "bright-line rule" that torts are governed by the law of the place of injury. But the very article it cites for that proposition goes on to clarify that the erosion of this bright-line rule has meant little "in terms of the final choice of the law governing tort conflicts," with the states that have departed from the bright-line rule still tending to "continue to apply the law of the *locus delicti*." Symeonides, *The Choice-of-Law Revolution Fifty Years After Currie*, 2015 U. Ill. L. Rev. 1847, 1901-04. Across a "comprehensive review of American products liability conflicts cases," "[s]eventy-seven percent of all cases applied the law of a state that had only plaintiff-affiliating contacts," *id.* at 1900-01; the "only major departure" from the traditional place-of-injury rule in tort cases more broadly occurs when both the defendant and plaintiff share a home state and the injury happened to occur elsewhere. *Id.* at 1902-03.

Although the Solicitor General cites Section 145 of the Restatement (Second) of Conflict of Laws for the general rule according weight to "the place [where] the conduct" giving rise to the injury occurred, U.S. Br. 25, he does not

mention that the very next section provides the rule that specifically governs personal-injury cases: "the local law of the state where the injury occurred determines the rights and liabilities of the parties." Restatement (Second) of Conflict of Laws § 146. Despite the Solicitor General's assertion (at 25) that "the place of sale probably has a greater interest" in these cases than Montana or Minnesota, it is hard to imagine how North Dakota or Washington—which have no relevant witnesses or parties, where the injury did not occur, and where none of the injured parties engaged in any transactions—could have a stronger interest.

The upshot is that Ford's ultimate liability risk in these cases—and the risks of defendants in nearly all cases like these—will be governed by the substantive law of the place where an injury occurs. *Id.* This is true regardless of whether Ford's causal rule is adopted. As a result, Ford's stance (at 41) that its liability should depend only on conduct that it "took inside or purposefully aimed at a state" ignores the law that has long governed the liability of defendants, including Ford, that sell their products in interstate commerce. *See MacPherson v. Buick Motor Co.*, 111 N.E. 1050 (N.Y. 1916) (Cardozo, J.). "Few matters could be deemed more appropriately the concern of the state in which [an] injury occurs" than "the bodily safety" of residents, and few things are "more completely within its power." *Pacific Employers Ins. Co. v. Industrial Accident Commission of State of Cal.*, 306 U.S. 493, 503 (1939). Ford's causal test cannot change this foundational principle.

C. Depriving injured forum residents of access to their own courts would be manifestly unfair.

Ford is also wrong that a causal test would do anything to promote fairness. It would just shuffle claims from the state where plaintiffs were injured to another forum, like the state of first sale, that is no more convenient for Ford but far more burdensome for plaintiffs. The only advantage for Ford is an illegitimate one: the possibility that the litigation burdens will be so substantial that many plaintiffs will give up their claims.

1. Ford does not contend that litigating the plaintiffs' claims in Minnesota or Montana would be an unfair burden to Ford. Nor could it. Ford does not suffer any hardship by litigating in states where it routinely does business and defends itself from other lawsuits. Nor does Ford argue that jurisdiction in, for example, Washington or North Dakota—states with no real connection to the case—would be any fairer or less burdensome.

Ford's only fairness argument is that a strict causal rule would give it "fair warning" of where it may be subject to jurisdiction. Pet. Br. 26 (quoting *Burger King*, 471 U.S. at 472). But a causal test is not needed for a product manufacturer like Ford to predict that it may be subject to suit over an allegedly defective product in a state where it extensively markets and sells that product. The risk of lawsuits in these circumstances is not an unfair surprise, but a predictable cost of doing business in the forum. *See* Restatement (Second) of Torts § 402A (1965).

Ford asserts that its causal rule would allow it to better predict its risk based on the "*volume* of its sales in each State." Pet. Br. 27 (emphasis added). The rule would, in other words, allow it to more precisely tailor the probability that it will be subjected to the jurisdiction of a

state by reducing its sales in that state, without having to "entirely stop[] doing business" there. *Id.* at 28. But as noted above, Minnesota and Montana law will govern these lawsuits wherever they are held—so the state in which the injury occurred will determine the amount of Ford's substantive liability even if its rule is adopted. This Court, moreover, has never held that due process requires that defendants have fine-grained control over a state's jurisdiction. Selling fewer cars of a specific model in a state would in theory reduce the potential volume of lawsuits there, but Ford is still on notice that it might be sued. As long as Ford continues to deliberately target the state as a market for a product, it has subjected itself to the state's jurisdiction for injuries related to that product. It cannot claim surprise if it is held to account there.

2. Plaintiffs' access to the courts of jurisdictions where they reside and are injured, on the other hand, directly serves their "interest in obtaining convenient and effective relief." *Burger King,* 471 U.S. at 477. It is there that witnesses to the accident and other evidence will be located. *See Travelers Health Ass'n*, 339 U.S. at 649; *see* von Mehren, *Jurisdiction to Adjudicate*, 79 Harv. L. Rev. at 1167 ("[C]onsiderations of litigational convenience, particularly with respect to the taking of evidence, tend in accident cases to point insistently to the community in which the accident occurred."). That forum is by far the most convenient, not only for plaintiffs but also for in-state defendants of all stripes, like local distributors or retailers of a product.

In an ordinary car-accident case, plaintiffs may be unable to "afford the expense and trouble" of suing in a far-off forum. *Travelers Health Ass'n*, 339 U.S. at 649. This Court's personal-jurisdiction cases have traditionally emphasized the "unwisdom, unfairness and injustice of

permitting [plaintiffs] to seek redress only in some distant state." *Id.* "The Due Process Clause does not forbid a state to protect its citizens from such injustice." *Id.*

D. In even the simplest cases, Ford's proposed rule would be unworkable, unpredictable, and inefficient.

Ford primarily justifies its proposed causal rule by arguing (at 14) that the rule "provides predictability for defendants" and is "administrable." But the opposite is true. Under this Court's existing test, Ford can easily predict where it may be sued: It can be sued in a forum for injuries caused in that forum by a product that it regularly advertises and sells there. In contrast, even in the most straightforward cases of the kind typically heard in state courts, a causation requirement would turn that simple test into an unmanageable one. Requiring causation would also subject parties and courts to burdensome preliminary and satellite litigation—all for no good reason.

1. Ford's causation test is subjective, difficult to apply, and would lead to unpredictable and inconsistent results.

As then-Judge Gorsuch noted in examining personal jurisdiction in *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, "'[t]here is perhaps nothing in the entire field of law which has called forth more disagreement, or upon which the opinions are in such a welter of confusion,' as causation doctrine." 514 F.3d 1063, 1078 (10th Cir. 2008) (quoting *Prosser and Keeton on the Law of Torts* 263 (5th ed. 1984)). Ford makes little effort to explain the proper standard of causation under its test, arguing that "this Court need not answer that question here." Pet. Br. 42.

All Ford has to say about its proposed test is that it is based on the "proximate cause" standard from tort law.[1]

It is one thing to apply a proximate-cause standard to liability in tort, or in analogous statutory contexts where the Court treats the liability concept as a background principle. In such cases, courts may be guided by long-established common-law applications that provide some measure of predictability. But it is another thing entirely to import the test where there is no similar common-law background of a proximate-causation standard for personal-jurisdiction cases. That means that courts would be entirely at sea—and that if the Court adopts Ford's test, it is signing itself up for a steady stream of cases asking it to resolve the inevitable conflicts that will arise.

Even when applied to traditional liability questions, the "term 'proximate cause' does not easily lend itself to definition." *McBride v. CSX Transp., Inc.*, 598 F.3d 388, 393 n.3 (7th Cir. 2010). In torts, the test asks little more than whether the "legal system wishes to assign at least partial responsibility for an accident" to the defendant. Calabresi, *Concerning Cause and the Law of Torts,* 43 U. Chi. L. Rev. 69, 72 (1975). The standard is inherently subjective—more a value judgment than an actual test. And "despite the manifold attempts which have been made to clarify the subject," there is no "general agreement as to the best approach." *Prosser and Keeton on the Law of Torts* 263. Proximate cause is thus "elusive,"

[1] Ford is correct to reject but-for causation as a "vastly overinclusive" alternative. Pet. Br. 43. That test has "no limiting principle; it literally embraces every event that hindsight can logically identify in the causative chain." *Nowak v. Tak How Invs.*, 94 F.3d 708, 715 (1st Cir. 1996).

and "hardly a rigorous analytic tool." *Blue Shield of Virginia v. McCready,* 457 U.S. 465, 477 n.13 (1982). [2]

In car-accident cases like those here, countless problems might complicate the proximate-cause inquiry. What if a mechanic who inspected the car after the plaintiff's purchase failed to notice and fix the problem? Is his negligence an independent act that breaks the chain of responsibility? *See Sinram v. Pa. R.R. Co.*, 61 F.2d 767 (2d Cir. 1932) (Hand, J.). What if the accident occurred only because another driver was driving negligently, or because the plaintiff failed to follow a safety warning? Or what if the accident was precipitated by an additional defect for which the car's manufacturer was not responsible? *See Seward v. Minneapolis St. R.R. Co.*, 25 N.W.2d 221 (Minn. 1946). That last question is not a hypothetical: The defect that caused Gullett's death in Montana was the dangerous tendency of Ford Explorers to roll over, but the rollover also happened because a separate defect caused one of the car's Goodyear tires to fail. Under Ford's standard, these vexing questions would become jurisdictional, needing to be settled not just to decide liability but to determine the right forum. Because the power of the proximate-cause test to answer questions

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[2] Ford responds (at 15) that lower courts "have required a causal test for years … without issue." But none of the courts Ford identifies has adopted the rigid proximate-cause test it asks for. The First Circuit, for example, has expressly disclaimed such a test, holding that "strict adherence to a proximate cause standard ... is unnecessarily restrictive." *Nowak*, 94 F.3d at 715. That court actually follows a "flexible, relaxed standard," requiring only that "the nexus between the contacts and the cause of action is sufficiently strong." *Id.* at 715-16. Its use of the words "proximate cause," it has explained, is meant only to "correlate[] to foreseeability, a significant component of the jurisdictional inquiry." *Id.*; *see* 19-368 BIO 17-18 (discussing other cases).

like these typically proves illusory, courts are likely to "come out every which way." Calabresi, *Concerning Cause,* 43 U. Chi. L. Rev. at 99-100.

Even if a causation-based rule made sense in theory, it would be unworkable because there will often be no way for plaintiffs to determine the site of the first sale of a particular defective product—either before they must sue or, often, even after discovery. In the modern economy, products are assembled from components made around the world. *See* Campbell, *Why no one knows the source of every car part—and why it matters*, *Financial Times*, Feb. 20, 2020. Some products are impossible to trace to their original point of sale. Tires of the same size and brand, for example, are marked with Department of Transportation numbers that show the particular week they were manufactured. *See Robinson v. Bridgestone/Firestone North American Tire, L.L.C.*, 703 S.E.2d 883, 887 (N.C. Ct. App. 2011). But because these codes are not unique, a tire manufacturer often cannot pinpoint where a particular tire was first sold—it can be simply "impossible to track a particular tire." *Id.*

In many cases, even discovery will not solve that problem. Because of the complex global supply chain, "no one, anywhere, actually knows where every single one of the 3,000 parts that go into the average car comes from." Campbell, *Why no one knows the source of every car part.* Under a causal rule linked solely to the location of design, manufacture, or sale of a defective part, it could be impossible to determine in a particular case whether jurisdiction is proper.

2. Ford's rule would lead to wasteful preliminary and duplicative litigation.

Personal jurisdiction is supposed to be "resolved expeditiously at the outset of litigation." *Daimler AG*, 571

U.S. at 139 n.20. But causation is usually a disputed issue—often the *main* disputed issue. As the Solicitor General explains (at 31), "[i]nquiries into causation can raise complex factual questions that typically go to the merits" and are often decided by the jury. Tying jurisdiction to causation would require extensive preliminary discovery and litigation on those questions before a case could even get started.

A causation-based rule would also be inefficient, requiring even simple disputes to be litigated separately in cases around the country. Even in basic tort cases involving one plaintiff's injury, there are typically multiple defendants—for example, the car's manufacturer, the manufacturer of a component like a tire, other drivers who contributed to the accident, those drivers' employers, or any of these parties' insurers. Until now, these claims would often proceed together efficiently in one case. Under Ford's causation approach, it would often be the case that no forum would have jurisdiction over all defendants, necessitating separate suits in different forums to litigate overlapping issues.

Mr. Bandemer, for example, sued not only Ford but also the car's Minnesota-based driver and owner. If he were forced to sue Ford in North Dakota (the state of first sale), he would be unable to join the Minnesota defendants. He would thus have to file *two* cases—one against Ford in North Dakota and one against the other defendants in Minnesota. Similarly, the Montana plaintiff sued Ford, which made the car; Goodyear, the Ohio corporation that made the tires; and several other defendants that reside in Montana, Maryland, and Washington. A causation rule could thus require suits in as many as five jurisdictions. That would not only be extraordinarily burdensome for plaintiffs but would also

waste judicial resources, create a risk of inconsistent judgments, and harm the states' "substantial interest in cooperating with other States ... to provide a forum for efficiently litigating all issues and damage[s] claims" together in a single location. *Keeton*, 465 U.S. at 777.

Given the burden that filing suit in multiple inconvenient jurisdictions would impose on an accident victim, many plaintiffs may forgo suing non-resident defendants altogether—leaving local citizens and in-state businesses with disproportionate liability. A plaintiff who purchased a defective product might, for example, sue just the retailer under a joint-and-several liability theory, leaving the out-of-state manufacturer out of the case. *See Norfolk & W. Ry. Co. v. Ayers*, 538 U.S. 135, 163-64 (2003). Defendants in those circumstances can typically protect themselves with third-party claims against other responsible parties. But Ford's rule would often mean that those third parties are not subject to jurisdiction in the forum, making it impossible for local defendants to bring them into the case. *See* 6 Wright, et al., *Federal Practice and Procedure §* 1445 (3d ed. 2012). Ford's rule would often thus require local defendants to travel to other forums to initiate a new round of litigation—or get left holding the bag.

* * *

These examples are just the tip of the iceberg. Ford offers this Court "a rule of broad applicability," *Nicastro*, 564 U.S. at 887 (Breyer, J., concurring). But Ford has said almost nothing about how it would work in practice, in contexts ranging from property to child support, from probate to contract law. Adopting such a rule requires "full consideration of the modern-day consequences." *Id.* at 887. If adopted, it would cause serious problems in everyday litigation for years to come. U.S. Br. 31. This

Court's relatedness standard, by contrast, applies well across contexts and promotes, rather than undermines, the values of fairness, federalism, and predictability that due process protects.

III. The consequences Ford attributes to a non-causal relatedness standard are hyperbolic and avoidable.

Ford's brief manufactures a parade of horribles that it attributes to any non-causal test, which Ford argues would fail to provide notice, Pet. Br. 27; "nullif[y]" territorial limitations on state power, *id.* at 25; and conflate specific and general jurisdiction, *id.* at 30-31. But Ford's arguments are built around a straw man: the idea that any non-causal test is equivalent to a vague standard that Ford may "be sued on car-related claims anywhere it does car-related business." *Id.* at 29. This Court need not adopt such a rule to reject Ford's arguments. Just as Ford argues that adopting a causation standard does not mean that *any* causal relationship is sufficient, Pet. Br. 42-45, adhering to the traditional non-causal standard does not mean that *any* non-causal relationship is sufficient. Ruling for the respondents requires holding only that where a product has caused an injury in a forum state, and the defendant has systematically cultivated a market for that product in the state, jurisdiction over the defendant for claims arising from that injury is appropriate.

1. There is a simple test that defendants could follow to determine their potential to face suit: If a defendant deliberately cultivates a given state as a market for a product, it may be sued in that state for injuries caused in that state by that product. That rule gives "fair warning" to defendants based on their own "purposefully directed" conduct that "create[s] continuing relationships and obligations with citizens of another state." *Burger King*, 471 U.S. at 472-73. And it provides "constitutionally

sufficient notice" by allowing defendants to structure their "primary conduct with some minimum assurance" as to where their conduct will open them to suit. Pet. Br. 29. A defendant's choice to cultivate a market for its product in a forum is not the "unilateral activity" of a third party. Pet. Br. 33. It is entirely within the defendant's control. If a defendant wishes to avoid being subject to suit in a given forum for injuries arising in that forum from its products, it may refrain from selling its products in that forum.

2. Nor does a ruling for the respondents mean that "territorial limitations on state power would be nullified." Pet. Br. 25. Ford again relies on its straw-man theory of relatedness to argue that any non-causal standard would be a "jurisdictional free for all" in which any large company can be sued "on any claim for relief, wherever its products are distributed." *Id.* at 25-26. Not so. Rejecting Ford's theory still permits a rule that restricts jurisdiction to states in which a defendant chooses to regularly market a product. No state would have the authority "to enforce 'obligations' that arose entirely outside its boundaries." *Id.* at 25 (quoting *International Shoe*, 326 U.S. at 319-20).

3. Ford is also wrong to argue that a non-causal standard is analogous to a "sliding scale approach" that is merely "a loose and spurious form of general jurisdiction." *Bristol-Myers*, 137 S. Ct. at 1781. A sliding scale approach veers toward general jurisdiction because it relaxes "the strength of the requisite connection between the forum and the specific claims at issue" on the basis of "contacts that are unrelated to those claims." *Id.* But Ford's contacts with Minnesota and Montana *are* related to the claims in these cases. Ford sold the product at issue in the state where the injury occurred—unlike the claims

rejected in *Bristol-Myers*, which did not arise out of in-state injuries.

4. Resolving this case in respondents' favor does not require this Court to rule on "foreseeability" under a "stream-of-commerce" approach. Pet. Br. 29. So-called "stream of commerce" analysis refers to the possibility that a court may conclude that a defendant has purposefully availed itself of a state by "placing goods into the stream of commerce 'with the expectation that they will be purchased by consumers in the forum State.'" *Nicastro*, 564 U.S. at 881-82 (plurality). But in this case, it is already clear (and conceded) that Ford has purposefully availed itself of the forum states. The question presented here is whether Ford's purposeful availment is rendered irrelevant by the fact that the first sale of these particular cars occurred outside the forum. The Court need not reach the separate question of whether Ford's sale of the specific cars at issue could itself constitute purposeful availment based solely on the reasonable foreseeability that the cars would end up in the forum states.

5. Finally, Ford's proposed standard is not only unworkable but also unnecessary because numerous existing doctrines adequately protect defendants from overly aggressive exercises of jurisdiction.

For starters, even where the first two specific-jurisdiction requirements are met, due process still requires assessing "other factors" to determine if jurisdiction is reasonable. *Burger King*, 471 U.S. at 476. These include "the burden on the defendant, the interests of the forum State, and the plaintiff's interest in obtaining relief," "the interstate judicial system's interest in obtaining the most efficient resolution of controversies," and "the shared interest of the several States in furthering fundamental substantive social policies."

Asahi Metal Indus. Co. v. Sup. Ct. of Cal., Solano Cnty., 480 U.S. 102, 113 (1987). These factors prevent state courts from exercising jurisdiction when contacts between the defendant and the forum are attenuated. *Id.* at 116.

In addition, concerns about litigating in inconvenient or unfair forums "usually may be accommodated through means short of finding jurisdiction unconstitutional." *Burger King*, 471 U.S. at 477. For example, states' choice-of-law rules will sufficiently "put[] defendants on notice of where they might be liable and on what claims." Pet. Br. 27; *see Burger King*, 471 U.S. at 477. The *forum non conveniens* doctrine prevents defendants from being required to litigate in a forum that would cause particular inconvenience or expense. *See Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508-509 (1947). In virtually all states, defendants may seek dismissal where the convenience of the litigants and witnesses, access to evidence, and the interests of justice would be better served by a change in forum. *See, e.g., San Diego Gas v. Gilbert*, 329 P.3d 1264, 1271 (Mont. 2014); *Paulownia Plantations de Panama Corp. v. Rajamannan*, 793 N.W.2d 128, 133 (Minn. 2009).

To the extent that Ford's policy concerns about unfair exercises of state-court jurisdiction cannot be addressed by existing doctrines, Congress and state legislatures are better situated to address them than the judiciary. Weighing corporate defendants' desire to avoid litigation against states' and citizens' interests in health and safety is better left to legislators, who can amend long-arm statutes in accordance with the democratic process—not through the Constitution.

CONCLUSION

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

Respectfully submitted,

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March 30, 2020

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