Nos. 19-368 and 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 Supreme Court Of Montana And The Supreme Court Of Minnesota

BRIEF OF PROFESSORS OF CIVIL PROCEDURE AND FEDERAL COURTS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF THE *AMICI CURIAE*

This brief is written on behalf of a group of law professors who teach and write in Civil Procedure and Federal Courts. *See* Appendix (listing *amici curiae*). Our goal is to promote an approach to personal jurisdiction that reflects fundamental principles of due process and respects this Court's precedent.[1]

SUMMARY OF ARGUMENT

The car accidents prompting the underlying suits are so centered in Montana and Minnesota that requiring plaintiffs to litigate elsewhere would contradict traditional principles of state sovereignty and undermine the due-process interests at stake in the Fourteenth Amendment. Ford sought to induce Montana and Minnesota citizens to buy and trust Ford products, and the vehicles involved in these accidents were purchased second-hand in Montana and Minnesota, where they were later involved in accidents. As this Court pointed out in its very first case considering due-process limitations on personal jurisdiction, "every

[1] Petitioners have issued a blanket consent to the filing of *amicus* briefs and respondents have consented to this filing. No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made any monetary contribution intended to fund the preparation or submission of this brief. Suffolk University School of Law, Case Western Reserve University School of Law, and South Texas College of Law Houston shared the cost of printing and filing this brief. No other person or entity made any monetary contribution to the preparation and submission of this brief.

State owes protection to its own citizens." *Pennoyer v. Neff*, 95 U.S. 714, 723 (1878). A century later, this Court acknowledged that 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 Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985). The States also possess a "significant interest in redressing injuries" within their borders to regulate and deter wrongful conduct. *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 776 (1984). Thus, while the Fourteenth Amendment ensures that States cannot infringe the due-process rights of nonresident defendants like Ford, prohibiting Montana and Minnesota from exercising personal jurisdiction in these cases would go too far in insulating defendants from state court judicial process and would infringe the sovereign authority of the States.

Ford does not make a procedural due-process argument. Rather, it suggests that exercising jurisdiction would violate its substantive due-process interest because Ford would be unable to predict or control its jurisdictional exposure. But Ford engaged in in-state activity designed to create brand loyalty and to establish long-lasting consumer relationships that cultivated years of profits from citizens of Montana and Minnesota. The exercise of jurisdiction in these cases does not violate historical limits on the "contacts, ties, or relations" necessary to subject nonresident defendants to binding judgments or contravene defendants' expectations about amenability to suit. *See, e.g.*, *Burger King*, 471 U.S. at 471-72 (quoting *Int'l Shoe Co. v.*

Washington, 326 U.S. 310, 319 (1945)); *Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982).

Ford also argues that allowing Montana and Minnesota to exercise jurisdiction would violate horizontal federalism interests. But it is well accepted that a State's sovereign power within its borders necessarily includes some ability to regulate conduct outside its borders. The question, then, is not whether the State's regulatory authority reached out-of-state conduct, but whether regulating out-of-state conduct encroaches on the interest of a sister State more tightly connected to the conduct at issue. Extraterritorial regulation that undermines the interests of a sister State with a stronger interest in the dispute could be a problem for the U.S. constitutional order and for the defendant caught in the middle of a regulatory tug-of-war. But in these cases, the vehicles were purchased second-hand in the forum, registered in the forum, and the plaintiffs suffered injury in the forum from those Ford vehicles. The plaintiffs thereby established the necessary "connection between the forum and the specific claims at issue" to satisfy the traditional demands of due process, and no other state has a greater interest in regulating these incidents.

ARGUMENT

I. The States' Exercise of Jurisdiction in These Cases Does Not Violate Any Traditionally Recognized Due-Process Interest

The underlying cases pose a simple question: what relationship must exist between the defendant's purposeful state contacts and the plaintiff's claim in order to support specific personal jurisdiction? The answer is not a matter of mere common-law analysis. Instead, it is a constitutional question that inherently raises questions of federalism and state sovereignty. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 918 (2011) ("A state court's assertion of jurisdiction exposes defendants to the State's coercive power, and is therefore subject to review for compatibility with the Fourteenth Amendment's Due Process Clause."). As this Court has recently written in a criminal-law case (where due-process protections are strongest), a state liability rule violates due process "only if it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Kahler v. Kansas*, 589 U.S. ___, slip op. at 6 (2020) (internal quotations omitted). This historical analysis requires examining whether the rule is "so old and venerable —so entrenched in the central values of our legal system—as to prevent a State from ever choosing another." *Id.* at 7.

Civil liability standards arising from the State's exercise of personal jurisdiction demand no less deference. Doctrinal limitations on a State's jurisdictional authority must be precisely defined, and the due-

process interests protected by that doctrine must be clearly articulated and grounded in the historical recognition of fundamental liberties. In a series of recent cases, this Court has identified certain assertions of jurisdiction that infringe on fundamental due-process interests. The Court has applied such limits when the defendant engaged in little or no purposeful conduct in the forum, *Goodyear*, 564 U.S at 926-29; *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873 (2011), and when an out-of-forum plaintiff sought to bring suit in a jurisdiction wholly unrelated to the events underlying the suit, *Walden v. Fiore*, 571 U.S. 277 (2014); *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773 (2017).

Without such a due-process violation, this Court has long emphasized that States retain sovereign authority to manage their own courts. As this Court has explained, the Framers "intended that the States retain many essential attributes of sovereignty, including, in particular, the sovereign power to try causes in their courts." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980). Thus, while the Fourteenth Amendment ensures that States cannot infringe the due-process rights of nonresident defendants, going too far in insulating defendants from state-court judicial process risks infringing the sovereign authority of the States.

This Court's precedent suggests that there are three potential ways that a State's exercise of personal jurisdiction could contravene the Due Process Clause. First, a State's exercise of jurisdiction could violate

procedural due process—that is, it could impose an undue burden so oppressive that it interferes with defendants' ability to have a meaningful opportunity to be heard. *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950) (holding that the Due Process Clause requires "that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case"). Second, the State's exercise of jurisdiction could violate historical limits on the "contacts, ties, or relations" necessary to subject nonresident defendants to binding judgments and thereby contravene defendants' expectations about amenability to suit. *See*, *e.g.*, *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72 (1985) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)); *Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982) ("The personal jurisdiction requirement recognizes and protects an individual liberty interest."). Protecting the defendant's historically grounded liberty interest from arbitrary assertions of government authority is often called substantive due process. *See* Charles W. "Rocky" Rhodes, *Liberty, Substantive Due Process, and Personal Jurisdiction*, 82 Tul. L. Rev. 567, 576 (2007). Finally, the State's exercise of jurisdiction could encroach on the right or authority of sister States, thus putting the defendant in a difficult bind between the regulatory authority of two different sovereigns. *World-Wide Volkswagen*, 444 U.S. at 294 ("[T]he Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment"). This third category is

often called "horizontal federalism." Allan Erbsen*, Impersonal Jurisdiction*, 60 Emory L.J. 1 (2010) (arguing that horizontal federalism drives much of the personal jurisdiction analysis).

In cases involving international corporations like Ford, the second two of the three due-process interests are primarily at issue—horizontal federalism and substantive due process. Ford admits that procedural due process does not play a significant role in the cases before the Court; it would suffer no burdensome procedural barriers in litigating in either Montana or Minnesota courts. In fact, Ford reasonably expects to be litigating in both states for cases involving any of the thousands of cars that Ford sells directly to consumers in both states, and assuredly has already built such expectations into its business plan. For individual defendants or smaller corporations, procedural due process could play a larger role in limiting the scope of personal jurisdiction. For large corporate defendants, however, the other two interests routinely play the dispositive role.

A. Horizontal Federalism.

In the cases before the Court, Ford raises the horizontal federalism issue by arguing that neither Minnesota nor Montana has a significant regulatory interest over out-of-state design or manufacturing. In its brief on the merits, Ford writes: "A non-causal test would allow a forum State to use a defendant's unconnected in-state activities as a hook to regulate the defendant's out-of-

state activities that actually form the basis of the plaintiff's claims. The test would therefore authorize a State to enforce 'obligations' that arose entirely outside its boundaries." Ford asserts that such power to regulate out-of-state actors strays from constitutional principles of horizontal federalism.

The problem with Ford's argument, however, is that sovereigns—including the U.S. States—have always had "prescriptive jurisdiction," or the power to regulate, beyond extraterritorial boundaries. *Laker Airways Ltd. v. Sabena, Belgian World Airlines*, 731 F.2d 909, 923 (D.C. Cir. 1984) ("[L]egislation to protect domestic economic interests can legitimately reach conduct occurring outside the legislating territory intended to damage the protected interests within the territory."). A State's sovereign power within its borders necessarily includes some ability to regulate conduct outside its borders.

The question is not whether the State's regulatory authority reached out-of-state conduct, but whether regulating out-of-state conduct encroaches on the interest of a sister State more tightly connected to the conduct at issue. Exterritorial regulation is not, by itself, a problem; but extraterritorial regulation that undermines the interests of the State where the conduct occurred could be a problem for the U.S. constitutional order—and particularly for the defendant caught in the middle of a regulatory tug-of-war.

Ford relies heavily on the most recent personal-jurisdiction case from this Court, *Bristol-Myers Squibb*,

to buttress its horizontal federalism argument. 137 S. Ct. at 1785-86. In *Bristol-Myers Squibb*, the plaintiffs had filed a nationwide mass-action product-liability suit in California against the manufacturer of the drug Plavix. This Court held that out-of-state plaintiffs could not sue the defendant in a state where they did not live and where they had suffered no harm, reasoning that such a jurisdictional claim was "especially weak." *Id.* at 1781. This Court emphasized that "the nonresidents were not prescribed Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, and were not injured by Plavix in California." *Id.* This Court therefore found that the plaintiffs failed to satisfy the nexus requirement: "[t]he mere fact that other plaintiffs were prescribed, obtained, and ingested Plavix in California—and allegedly sustained the same injuries as did the nonresidents—does not allow the State to assert specific jurisdiction over the nonresidents' claims. . . . What is needed—and what is missing here—is a connection between the forum and the specific claims at issue." *Id.*

The horizontal federalism interests at issue in *Bristol-Myers* do not carry over to the current cases, however, and do not require a strict causation rule. California had no regulatory interest in adjudicating the claims of those plaintiffs who "were not prescribed Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, and were not injured by Plavix in California." *Id.* But that is not the same situation confronting this Court here. The Ford

vehicles were purchased second-hand, registered, and driven in the forum, and plaintiffs suffered an injury from the Ford vehicles in the forum. The plaintiffs thereby established the necessary "connection between the forum and the specific claims at issue" to satisfy the traditional demands of due process when no other State has a greater interest in regulating these incidents.

B. Substantive Due Process.

Ford also makes a substantive due-process argument, asserting that it has a substantive liberty interest to be free from a binding judgment unless its forum conduct strictly gave rise to the plaintiffs' claims. A nonresident defendant's personal jurisdiction liberty interest, though, depends on its expectations from those forum activities that create ties with and reflect submission to the State and its jurisdictional authority. *See J. McIntyre Mach., Ltd.*, 564 U.S. at 880; *Burger King*, 471 U.S. at 472-76. The proper focus considers traditional jurisdictional principles. Is it reasonable for Ford to expect to submit to the binding judgment of a State when one of its vehicles injures a citizen within the forum, when it sells thousands of the same vehicle, provides automotive repairs and services, operates dealerships, advertises extensively, and collects data on that vehicle in the forum?

Under historical traditions of fair play and substantial justice, the answer is clear. Before *Daimler AG v. Bauman*, 571 U.S. 117 (2014), limited general

jurisdiction, nonresident defendants seldom contested jurisdiction for any claim when undertaking a similar level of in-forum activity. *See*, *e.g.*, *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 799-801 (1985) (demonstrating that a Delaware corporation headquartered in Oklahoma did not object to its own amenability in Kansas for named plaintiffs' claims based on Texas and Oklahoma oil and gas leases). Even in specific jurisdiction cases, courts since *International Shoe* often held that a nonresident defendant who purposefully sold its product in a market could not escape jurisdiction when an identical product caused injury in the forum even when the specific product at issue was originally sold in another state. *E.g.*, *Manufacture Francaise des Pneumatiques Michelin v. District Court*, 620 P.2d 1040, 1045-48 (Colo. 1980); *Gray v. Am. Radiator & Standard Sanitary Corp.*, 176 N.E.2d 761, 766-67 (Ill. 1961). This Court never held or even indicated that these decisions were erroneous. To the contrary, this Court has continuously recognized that, when a plaintiff suffers an injury within the forum from a product which the defendant is purposefully marketing in the forum State, the defendant's forum contacts are sufficiently related to the operative facts of the litigation to sustain jurisdiction. *See J. McIntyre Mach., Ltd.*, 564 U.S. at 907 (Ginsburg, J., dissenting) (noting that the Court in *World-Wide Volkswagen* indicated that an objection to jurisdiction under such circumstances would have been futile).

Consider *World-Wide Volkswagen*. The Court there, while holding that a New York automobile

retailer and its regional distributor were not amenable to jurisdiction in Oklahoma for an in-state car accident because they conducted no activities within the forum, analyzed jurisdiction against the vehicle manufacturer and distributor:

> if the sale of a product of a manufacturer or distributor such as Audi or Volkswagen 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 in other 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.

444 U.S. at 297.

This was not loose language pronounced and then ignored. Very recently, this Court's decision in *Daimler* used this verbatim quote as its parenthetical description of *World-Wide Volkswagen*'s contribution to the rising significance of specific jurisdiction in modern jurisdictional doctrine. 571 U.S. at 128 & n.7. And many lower courts have relied on this quotation in upholding jurisdiction over manufacturers and distributors serving the in-state market whose products cause an injury there, even if the products were originally sold elsewhere.[2]

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[2] For a small sampling just from published federal circuit court and state high court decisions, *see Beverly Hills Fan Co. v. Royal Sovereign Corp.*, 21 F.3d 1558, 1565-67 (Fed. Cir. 1994); *Vermeulen v. Renault, U.S.A., Inc.*, 985 F.2d 1534 1546-50 (11th

This Court also reinforced the same principle in *Asahi Metal Indus. Co. v. Superior Court*. 480 U.S. 102 (1987). Although the Court in *Asahi* could not converge on a single opinion, each of the opinions issued by the Court would support jurisdiction under the current facts. In her plurality opinion, Justice O'Connor, joined by three other Justices, explained, after quoting the language from *World-Wide Volkswagen* above, that the tire-valve manufacturer Asahi would have purposefully availed itself of the California market if it had engaged in other conduct in the forum State, such as advertising. *Id.* at 110-12 (plurality opinion). She did not suggest that the advertising would need to cause the injury itself. Four other members of the Court reasoned that Asahi had purposefully availed itself of the California market and accordingly would normally be amenable to suit there, except for the fact that the transnational nature of the remaining indemnity action made such jurisdiction unreasonable. *Id.* at 116-17 (Brennan, J., concurring in part). Justice Stevens viewed the discussion of minimum contacts as unnecessary but did suggest that the tire-valve manufacturer purposefully availed itself of the California

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Cir. 1993); *Montalbano v. Easco Hand Tools, Inc.*, 766 F.2d 737, 742-43 (2d Cir. 1985); *Van Buskirk v. Carey Canadian Mines, Ltd.*, 760 F.2d 481, 490-91 (3d Cir. 1985); *Nelson v. Park Indus., Inc.*, 717 F.2d 1120, 1125-26 (7th Cir.1983); *Noel v. S. S. Kresge Co.*, 699 F.2d 1150, 1154 (6th Cir. 1982); *Oswalt v. Scripto, Inc.*, 616 F.2d 191, 199-201 (5th Cir. 1980); *Bryant v. Ceat S.p.A.*, 406 So.2d 376, 378-79 (Ala. 1981); *A. Uberti & C. v. Leonardo*, 892 P.2d 1354, 1362-63 (Ariz. 1995); *Waters v. Deutz Corp.*, 479 A.2d 273, 276 (Del. 1984); *Book v. Doublestar Dongfeng Tyre Co.*, 860 N.W.2d 576, 585-98 (Iowa 2015).

market. *Id*. at 121-22 (Stevens, J., concurring in part). But note that, even under Justice O'Connor's view, the tire-valve manufacturer could reasonably be subject to jurisdiction in California if it had engaged in other activities reflecting an intent to serve the market for its product there—even activities such as advertising that didn't directly give rise to the claim. Once purposeful availment was established, the plaintiff's in-state injury thus appeared to satisfy the nexus requirement. *See Daimler*, 571 U.S. at 128 n.7 (describing O'Connor's opinion as reflecting that "specific jurisdiction may lie over a foreign defendant that places a product into the 'stream of commerce' while also 'designing the product for the market in the forum State, advertising in the forum State, . . . or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State'").

Ford acknowledges this Court's language in *World-Wide Volkswagen* supporting jurisdiction over the national corporations, yet dismisses the Court's statement as "dicta" because "Audi and Volkswagen were not before the Court; only the regional distributor and dealer were." It does not acknowledge *Daimler*'s parenthetical explanations of the contribution of both *Asahi* and *World-Wide Volkswagen* to the rise of specific jurisdiction that the Court believed diminished the need for general jurisdiction. *See id.*; *see also Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 927 (2011) ("Flow of a manufacturer's products into the forum, we have explained, may bolster an affiliation germane to *specific* jurisdiction.") Of course,

accepting Ford's construction would limit the availability of specific jurisdiction, contrary to *Daimler*'s descriptions of *Asahi* and *World-Wide Volkswagen* and to *Daimler*'s promise that "flourish[ing]" conceptions of specific jurisdiction would fill the void after the demise of general jurisdiction. 571 U.S. at 133 n.10. Instead, Ford argues that this Court's "cases have always 'applied a causal standard' when allowing specific jurisdiction" and that the Court's "use of the term 'related to' " should not be understood to allow anything less than proximate cause.

This argument, however, misapplies the role of historical practice in evaluating due-process protections. This Court's cases "allowing" personal jurisdiction are not the relevant framework for analysis: instead, given the primacy of the States, the historical practice that matters is whether this Court restricted the State's traditional practice in exercising jurisdiction under these circumstances. That is not to say that the exercise of jurisdiction will be reasonable in every case—if the defendant made no effort to serve the target market and its products ended up in the forum only fortuitously, then the State might indeed overreach by trying to hale the defendant into court. *See*, *e.g.*, *J. McIntyre Machinery v. Nicastro*, 564 U.S. 863 (2011). But when the defendant sought to benefit from marketing to state citizens and when its products caused harm to those citizens, state courts typically asserted jurisdiction.

State sovereign interests undergird this jurisdictional tradition. As this Court pointed out in its very

first case considering due-process limitations on personal jurisdiction, "every State owes protection to its own citizens," *Pennoyer v. Neff*, 95 U.S. 714, 723 (1878), and, as it acknowledged over a century later, the 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. States also possess, according to this Court, a "significant interest in redressing injuries that actually occur within the State," including those suffered by nonresidents, to regulate and deter wrongful conduct within their borders. *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 776 (1984). Imposing a strict causation requirement would insulate defendants from judicial process for many injuries suffered in the very states whose markets they seek to exploit. Such a result contradicts the States' historical power to protect their citizens and other persons from injuries suffered within a state.

Without a due-process violation, this Court should defer to state rulings on the scope of their judicial power and should affirm Ford's amenability to these product-liability claims. To resolve these cases, the Court needs to go no further than to pronounce that, in accordance with longstanding traditions, an injury occurring in the forum from a product marketed there is sufficiently related for specific jurisdiction. Product-liability claims are exclusively state-law claims that do not accrue until the product causes an injury. The States in which those injuries accrue have traditionally exercised prescriptive and adjudicative jurisdiction over such claims against nonresident defendants

purposefully conducting marketing activities within the forum in accordance with our traditional notions of fair play and substantial justice. *See Taishan Gypsum Co. v. Gross (In re Chinese-Drywall Prods. Liab. Litigation)*, 753 F.3d 521 (5th Cir. 2014) (upholding personal jurisdiction over manufacturers of drywall aware of sales of products in state); *Ainsworth v. Moffett Eng'g, Ltd.*, 716 F.3d 174 (5th Cir. 2013) (upholding specific jurisdiction over Irish product manufacturer in Missouri because of knowledge that under distributorship agreement significant sales of product occurred in Missouri).

II. A Strict Causation Requirement Deviates from This Court's Precedent.

This Court has repeatedly suggested, from *International Shoe* to the present decade, that specific jurisdiction does not *require* that the defendant's forum conduct gave rise to the claim. Rather, a State can exercise specific jurisdiction when the suit is "connected with" the defendant's in-state activities, *Int'l Shoe*, 326 U.S. at 319, or "relates to" such activities. *Daimler*, 571 U.S. at 127; *Burger King*, 471 U.S. at 472-73; *Helicopteros Nacionales de Colom., S.A. v. Hall*, 466 U.S. 408, 414 & n.8 (1984).

Under this Court's personal jurisdiction framework, the minimum contacts benchmark performs two principal overarching functions. First, it protects the defendant against the burden of inconvenient litigation, and second, it ensures the "orderly administration

of the laws" among co-equal sovereign state courts "in the context of our federal system of government." *Int'l Shoe*, 326 U.S. at 317. The nexus requirement should be interpreted in light of these concerns. This Court described the affiliation required for specific jurisdiction in *Goodyear* as, "principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Goodyear*, 564 U.S. at 919. Various considerations help define those activities subject to the State's regulatory authority, such as the "economic realities of the market the defendant seeks to serve," *J. McIntyre Mach.*, 564 U.S. at 885, the deterrence of wrongful conduct within the State's borders, *Keeton*, 465 U.S. at 776, and the extent of the State's prescriptive jurisdiction, *Burger King*, 471 U.S. at 481-82; *Mullane*, 339 U.S. at 313 ("[T]he interest of each state in providing means to close trusts that exist by the grace of its laws and are administered under the supervision of its courts is so insistent and rooted in custom as to establish beyond doubt the right of its courts to determine the interests of all claimants, resident or nonresident").

These principles highlight the necessary relationship for specific jurisdiction. When at least part of the episode-in-suit occurs within the State, the State possesses a regulatory interest. And when the defendants engaged in forum activity designed to induce forum residents to purchase or use those goods or services, then the defendant can reasonably expect to be haled before the state courts for actions arising from the use of those products—even when purchased elsewhere.

Under this approach, the plaintiffs' causes of action against Ford are sufficiently related to Ford's purposeful forum activity. The plaintiffs' claims arose in their respective forum States, and Ford sought to serve the in-state market—not just selling new cars, but also seeking to induce brand trust and loyalty more broadly. Both States have undoubted regulatory authority over defective products that injure state citizens within their borders, and the burden imposed on Ford is no greater than for the hundreds of thousands of vehicles it did sell within these states.

When these two factors are satisfied in product-liability claims—first, an affiliation between the claim and the State that implicates State regulatory authority, and second, forum conduct by the defendant designed to induce the purchase or use of its goods or services—the relatedness prong is met. Jurisdiction is then appropriate unless the "multi-factored reasonableness check" exhibits that a nonresident defendant's amenability in a particular context is unreasonable. *Daimler*, 571 U.S. at 762 n.20 (citing *Burger King*, 471 U.S. at 476-78) (suggesting that a "multi-factored reasonableness check" is relevant to a determination of specific jurisdiction). Under Ford's preferred test, by contrast, the jurisdictional analysis would end if the defendant's contacts are not the proximate cause of the plaintiff's claim, making the multi-factored reasonableness check irrelevant, even if the State possesses a legitimate regulatory interest in the dispute. Indeed, if Ford's argument prevails, a defendant could invoke these contextual considerations to show that

jurisdiction is unreasonable even when defendant's purposeful contacts directly caused plaintiff's injury—but a plaintiff could not invoke those same considerations to show that jurisdiction is reasonable when the plaintiff's claim is non-causally related to defendant's purposeful forum contacts. The considerations that comprise a "multipronged reasonableness check" should not be wielded as a one-way ratchet that only works to the advantage of the defendant.

In *Bristol-Myers Squibb*, this Court was careful not to impose a strict causation-based nexus requirement. Indeed, this Court could have summarily rejected jurisdiction by noting that the nonresident plaintiffs' claims did not arise out of the defendant's continuous and anticipated flow of Plavix into California. Instead, what is necessary is "an affiliation between the forum and the underlying controversy." *Bristol-Myers Squibb*, 137 S. Ct. at 1781 (citing *Goodyear*, 564 U.S. at 919). To highlight the lack of such an affiliation, this Court noted that "the nonresidents were not prescribed Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, and were not injured by Plavix in California." *Id.* at 1781. By considering where the plaintiffs were prescribed the drug and where they ingested the product and suffered harm, this Court illustrated its willingness to consider activities—beyond just the defendant's forum conduct—that were part of the events leading to the litigation. This analysis allowed the Court to ascertain the strength of California's interest in adjudicating the dispute. *Id.* at 1780. If the

Court had adopted a strict causation-based nexus requirement, none of these facts would have been relevant.

While the Court's analysis weighed against the exercise of jurisdiction in *Bristol-Myers Squibb*, the facts presented by the Ford cases suggest a different conclusion.

III. Adopting a Strict Causation Requirement Would Create Significant Inefficiency Inconsistent with Procedural Due Process.

The car accidents prompting these suits are so centered in Montana and Minnesota that requiring plaintiffs to litigate elsewhere would deviate from the due-process interests at stake in the Fourteenth Amendment. Ford sought to induce Montana and Minnesota citizens to buy and trust Ford products. The plaintiffs' claims relate to Ford's efforts to serve those markets, regardless of whether there is sufficient evidence to prove that the cases directly arose out of those efforts.

Ford asserts that the plaintiffs' claims would be the same regardless of its in-state marketing. That assertion is not supported by the underlying facts. Ford engaged in substantial brand marketing to help increase consumer trust. Such marketing is about more than promoting a single vehicle. Ford's most famous advertising campaign, after all, created a jingle for the slogan "Have you driven a Ford. . . . lately?", and other advertising campaigns promoted Ford vehicles as

"Built to Last," and "Ford Tough." Tanya Gadzik, "Ford Boosts Ad Spending Behind JWT's 'Built To Last' Campaign," Forbes, Feb. 9, 1998. These marketing efforts reveal Ford's desire to create brand loyalty and establish long-lasting consumer relationships to cultivate years of profits from maintenance, repairs, and purchases of new and used vehicles.

The plaintiffs should not have to bear the burden of proving that these marketing efforts directly caused the events underlying the suit. In most cases such proof would be impossible to come by; purchasing decisions depend on many sources of information, of which advertising is only one. And when the second-hand purchaser dies in a product-related accident, his or her heirs cannot reasonably be expected to prove the subjective effects of such marketing—even when those subjective effects are both real and significant. In any event, a company that advertises the longevity of its branded vehicles should expect that such marketing would influence a consumer's later decision to buy or to keep that vehicle. That Ford engaged in advertising and marketing within the forum, conduct that created a regular anticipated flow of Ford vehicles into Montana and Minnesota, should be enough on its own to establish a relationship between the defendant's conduct and the plaintiff's cause of action. That is, after all, "the rationale for the relatedness inquiry: to allow a defendant to anticipate his jurisdictional exposure based on his own action." *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1079 (10th Cir. 2008) (Gorsuch, J.); *see also* Linda Sandstrom Simard,

Meeting Expectations: Two Profiles For Specific Jurisdiction, 38 Ind. L. Rev. 343, 366 (2005).

Ford is no stranger to Montana or Minnesota. Ford's marketing efforts, along with its support for dealerships and repair facilities, evidences its desire for Montana and Minnesota residents to buy, drive, and trust Ford vehicles. Ford expects to be sued in both States when allegedly defective Ford products cause injury there. The plaintiffs are residents of the forum States, the Ford vehicles were purchased in the used-car market in the forum States, and the plaintiffs suffered injuries from accidents within the forum States. Montana and Minnesota have a strong interest in adjudicating these cases.

Prohibiting the States with the strongest connection to the dispute from adjudicating these suits is an undue limitation on their inherent state power to interpret and develop state substantive law and provide a remedy to state residents who seek relief in their home forum. The plaintiffs have a strong interest in obtaining convenient and effective relief. In fact, the strict causation-based nexus requirement would hinder the plaintiffs' ability to obtain convenient relief by steering the cases to forums that have little or no interest in adjudicating these disputes. Plaintiffs would have to leave their home states to sue in distant forums where little or no evidence is located. If the burden proves insurmountable, they may opt not to file suit at all. In this situation, not only will the plaintiffs be left without a remedy, but Montana and Minnesota will be deprived of the deterrent value of a judgment

for an accident within the geographic limits of the state.

Moreover, a strict causation-based nexus requirement would prevent joinder of claims and parties, hindering the efficient resolution of disputes and creating an unnecessary risk of inconsistent judgments. Together, these considerations far outweigh any inconvenience to Ford and suggest that Montana and Minnesota have the power to compel Ford to answer for these injuries without infringing the Due Process Clause.

In *Bristol-Myers Squib*, the Court prohibited California from compelling the defendant to answer claims filed by non-California citizens about products bought outside California, ingested outside California and causing harm outside California. Ironically, the narrow nexus requirement proposed by Ford would force these plaintiffs to sue in a forum where the plaintiffs did not purchase the product, did not use the product, and did not suffer injury from the product. Such a result contradicts the due-process protections set out in this Court's personal jurisdiction jurisprudence.

CONCLUSION

For the reasons stated above, the judgments of the Supreme Courts of Montana and Minnesota should be affirmed.

Respectfully submitted,

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