

In the Supreme Court of the United States

FORD MOTOR COMPANY, PETITIONER

v.

MONTANA EIGHTH JUDICIAL DISTRICT COURT, ET AL.,

FORD MOTOR COMPANY, PETITIONER

v.

ADAM BANDEMER

*ON WRITS OF CERTIORARI TO THE
SUPREME COURTS OF MONTANA AND MINNESOTA*

**MOTION FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT
AS AMICI CURIAE AND FOR DIVIDED ARGUMENT**

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**MOTION FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT
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Pursuant to Supreme Court Rules 28.4 and 28.7, the States of Minnesota and Texas, on behalf of themselves, 37 other States, and the District of Columbia (a total of 40 “Amici States”), respectfully request that the Court allow Bill Davis, a member of the Bar of this Court and Deputy Solicitor General of Texas, to present oral argument for ten minutes of the time allotted to the respondents. This case implicates the Amici States’ core sovereign interest in ensuring that their citizens may continue to bring suits in their courts for injuries sustained within their borders. The Amici States also have an interest in ensuring their own access to their courts for suits based on injuries to them by nonresident defendants. As reflected in the brief of the Amici States in support of the respondents and the brief of the United States as amicus curiae in support of the petitioner, the interests and positions of the Amici States differ from those of the parties and of the United States. The Amici States are uniquely positioned to represent and defend their interests before this Court.

The respondents consent to this motion. The petitioner does not oppose it.

* * *

1. Amici are 39 States and the District of Columbia. Their elected leaders span the political spectrum, but they are united by their common interest in preserving their inherent sovereign ability to provide forums to redress injuries by nonresident defendants to themselves and their citizens within their borders.

2. The interests of the Amici States are distinct from those of the United States. The United States has an interest as a litigant in federal courts, where the Court’s decision in this case may be relevant. *See* U.S. Br. 1, 32. But the Court’s decision will directly affect litigation in state courts, and the Amici States would suffer unique harms if the Court adopted either of the tests for specific personal jurisdiction proposed by the petitioner and the United States.

Despite continuous advances in business, communication, and technology, the Court “ha[s] never accepted the proposition that state lines are irrelevant for jurisdictional purposes.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980). The Framers “intended that the States retain many essential attributes of sovereignty, including, in particular, the sovereign power to try causes in their courts.” *Id.* Accordingly, the Court has long recognized the States’ “manifest interest” in providing judicial forums for their injured citizens, preventing them from having to follow defendants to distant tribunals. *McGee v. Int’l Life Ins. Co.*, 355 U.S. 220, 223 (1957). In particular, States have sovereign authority and an obligation to protect their citizens from dangerous products within their borders. The Court has also recognized heightened state interests when the alleged wrongdoing violates state law. *See Travelers Health Ass’n v. Virginia*, 339 U.S. 643, 648 (1950).

Although the Amici States agree with the United States that the petitioner’s proposed test for the relatedness component of specific personal jurisdiction analysis lacks support in this Court’s precedents and should not be adopted, the petitioner’s proposal presents risks unique to the States. Adopting the petitioner’s proximate cause test could undermine efforts by attorneys general to protect their States and citizens through lawsuits. The petitioner’s test could also unfairly shift risk to smaller local defendants in multi-defendant tort actions, limit interstate mobility, and alter the operation of state statutes.

The Amici States also oppose the United States’ proposal to locate personal jurisdiction in cases of this variety in the place that an injurious product was manufactured or first sold. Like the petitioner’s proposal, the United States’ proposal lacks sufficient grounding in the Court’s precedent and presents risks of harm unique to States. The United States conflates the purposeful availment and relatedness components of specific jurisdiction analysis and fails to acknowledge either that purposeful availment focuses on ensuring a defendant-initiated link to the forum or that relatedness properly accounts for the relationships among a State, its citizens, and the nature of the claim. Further, the United States’ proposed test

erroneously ignores the locus of injury. *See Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1781-83 (2017) (noting the lack of forum residence or injury in finding the relatedness requirement unsatisfied); *see also Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 927 (2011) (emphasizing the location where the product allegedly injured its owner or others).

3. The Court regularly allows States to appear and present oral argument as amici curiae when state sovereignty issues are presented or when States have a valuable perspective distinct from those of the parties and of the United States. *See, e.g., Tenn. Wine & Spirits Retailers Ass'n v. Byrd*, 139 S. Ct. 2449 (2019) (granting leave to Illinois); *Gamble v. United States*, 139 S. Ct. 1960 (2019) (Texas); *Sturgeon v. Frost*, 136 S. Ct. 1061 (2019) (Alaska); *ONEOK, Inc. v. Learjet, Inc.*, 135 S. Ct. 1591 (2015) (Kansas); *Kennedy v. Louisiana*, 554 U.S. 407 (2008) (Texas); *Leegin Creative Leather Prods. Inc. v. PSKS, Inc.*, 551 U.S. 877 (2007) (New York); *United Haulers Ass'n v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330 (2007) (New York); *Halbert v. Michigan*, 125 S. Ct. 1822 (2005) (Louisiana); *Clingman v. Beaver*, 125 S. Ct. 825 (2005) (South Dakota); *Jackson v. Birmingham Bd. of Educ.*, 125 S. Ct. 457 (2004) (Alabama); *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 901 (2004) (Ohio); *City of Burbank v. Lockheed Air Terminal, Inc.*, 409 U.S. 1073 (1972) (California). The Court should similarly allow the 40 Amici States to participate here.

CONCLUSION

The Amici States respectfully request that the Court grant this motion and allow Bill Davis, a member of the Bar of this Court and Deputy Solicitor General of Texas, to present oral argument for ten minutes of the time allotted to the respondents.

Respectfully submitted.

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