No. _____

IN THE

Supreme Court of the United States

ALADDIN MANUFACTURING CORPORATION, MOHAWK CARPET, LLC, MOHAWK INDUSTRIES, INC., AND SHAW INDUSTRIES, INC.,

Petitioners,

v.

THE WATER WORKS & SEWER BOARD OF THE TOWN OF CENTRE AND THE WATER WORKS & SEWER BOARD OF THE CITY OF GADSDEN,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court of Alabama

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a State may exercise specific personal jurisdiction over an out-of-state defendant because the defendant knew (or should have known) that its conduct would have in-state effects, where all of the defendant's relevant conduct occurred out of state and the in-state effects resulted from the unilateral actions of a third party.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioners Aladdin Manufacturing Corporation, Mohawk Industries, Inc., Mohawk Carpet, LLC, and Shaw Industries, Inc. were petitioners in the Alabama Supreme Court.

Respondents The Water Works and Sewer Board of the Town of Centre and The Water Works and Sewer Board of the City of Gadsden were respondents in the Alabama Supreme Court.

Additional respondents that were petitioners in the Alabama Supreme Court are ArrowStar, LLC, The Dixie Group, Inc., Dorsett Industries, Inc., ECMH d/b/a Clayton Miller Hospitality Carpets, Emerald Carpets, Inc., Engineered Floors, LLC, J&J Industries, Inc., Kraus USA, Inc., Lexmark Carpet Mills, Inc., Indian Summer Carpet Mills, Inc., Kaleen Rugs, Inc., MFG Chemical, Inc., Milliken & Company, Oriental Weavers USA, Inc., and Textile Rubber and Chemical Company, Inc.

3M Company, Apricot International, Inc., Beaulieu Group LLC, Beaulieu of America, Inc., Collins & Aikman Floor Covering International, Inc., Daltonian Flooring, Inc., Dependable Rug Mills, Inc., DyStar, L.P., E.I. DuPont De Nemours and Company, Fortune Contract, Inc., Harcros Chemical, Inc., Home Carpet Industries LLC, Industrial Chemicals, Inc., Lyle Industries, Inc., Mohawk Group, Inc., NPC South, Inc., S & S Mills, Inc., Savannah Mills Group, LLC, Tandus Centiva Inc., Tandus Centiva US LLC, Tiarco Chemical Company, Inc., and Victor Carpet Mills, Inc. were defendants in the trial courts but did not participate in proceedings before the Alabama Supreme Court.

Pursuant to this Court's Rule 29.6, petitioners state that:

Aladdin Manufacturing Corporation is a wholly owned subsidiary of Mohawk Carpet, LLC.

The sole member and owner of Mohawk Carpet, LLC is Mohawk Industries, Inc.

Mohawk Industries, Inc. has no parent corporation and no publicly held corporation owns 10 percent or more of its stock.

Shaw Industries, Inc. is a wholly owned subsidiary of Shaw Industries Group, Inc., which is 100 percent owned by Berkshire Hathaway, Inc.

STATEMENT OF RELATED PROCEEDINGS

The proceedings directly related to this petition are:

Ex parte Aladdin Mfg. Corp., et al., Nos. 1170864, 1170887, 1170894, 1171182, 1171196, 1171197, 1171198, 1171199 (Ala. Dec. 20, 2019) (granting mandamus in Nos. 1170887, 1171197, and 1171199, and denying mandamus in Nos. 1170864, 1170894, 1171182, 1171196, and 1171198);

Ex parte Aladdin Mfg. Corp., et al., No. 1170864 (Ala. Mar. 27, 2020) (denying rehearing);

Ex parte Textile Rubber & Chem. Co., No. 1170894 (Ala. Mar. 27, 2020) (denying rehearing);

Ex parte Mohawk Indus., Inc., et al., No. 1171182 (Ala. Mar. 27, 2020) (denying rehearing);

Ex parte Dorsett Indus., Inc., No. 1171196 (Ala. Mar. 27, 2020) (denying rehearing);

Ex parte Oriental Weavers USA, Inc., No. 1171198 (Ala. Mar. 27, 2020) (denying rehearing);

Ex parte ECMH, LLC d/b/a Clayton Miller & Emerald Carpets, Inc., No 1171205 (Ala. Nov. 21, 2018) (denying petition to appeal);

The Water Works & Sewer Board of the Town of Centre v. 3M Company, et al., No. 13-CV-2017-900049 (Cherokee Cir. Ct. May 15, 2018);

The Water Works & Sewer Board of the City of Gadsden v. 3M Company, et al., No. 31-CV-2016-900676 (Etowah Cir. Ct. Aug. 13, 2018).

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Aladdin Manufacturing Corporation, Mohawk Industries, Inc., Mohawk Carpet, LLC, and Shaw Industries, Inc. respectfully petition for a writ of certiorari to review the judgment of the Supreme Court of Alabama.

OPINIONS BELOW

The opinion of the Alabama Supreme Court (Pet. App. 1a-50a) is not yet reported but is available at 2019 WL 6974629. The Alabama Supreme Court's orders denying rehearing (Pet. App. 126a-127a, 128a-129a) are unreported. The opinions of the Circuit Court of Cherokee County, Alabama (Pet. App. 51a-74a) and the Circuit Court of Etowah County, Alabama (Pet. App. 75a-125a) are unreported.

JURISDICTION

The Alabama Supreme Court entered judgment on December 20, 2019, and denied timely applications for rehearing on March 27, 2020. On March 19, 2020, this Court issued a standing order extending the time for filing a petition for a writ of certiorari to and including August 24, 2020. This Court has jurisdiction under 28 U.S.C. § 1257(a). *See Fisher v. District Court*, 424 U.S. 382, 385 n.7 (1976) ("A judgment that terminates original proceedings in a state appellate court, in which the only issue decided concerns the jurisdiction of a lower state court, is final, even if further proceedings are to be had in the lower court.").

CONSTITUTIONAL PROVISION INVOLVED

The Due Process Clause of the Fourteenth Amendment, U.S. Const. amend. XIV, § 1, provides:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law.

STATEMENT

Petitioners manufacture carpet in Dalton, Georgia. Respondents are the water works and sewer boards of Centre, Alabama, and Gadsden, Alabama. The Alabama Supreme Court allowed respondents to sue petitioners in Alabama even though none of their suit-related conduct occurred in the State.

For a period of time petitioners used perfluorinated compounds ("PFCs") in their manufacturing process to make their carpets soil and stain resistant. Respondents allege that industrial wastewater from that process contained PFCs. According to respondents, petitioners sent the wastewater to Dalton's municipal wastewater treatment facility, Dalton Utilities, which sprayed the wastewater on land near the Conasauga River in accordance with a permit issued by Georgia's environmental agency. Respondents allege that trace amounts of PFCs migrated from that land into the Conasauga River, followed that river's zigzag course as it merged into the Coosa River and crossed the Alabama state line, and eventually ended up in respondents' intake sources for drinking water. Respondents further allege that petitioners knew that Dalton Utilities' land application system did not completely remove PFCs from the wastewater and also knew that the Conasauga River flows into the Coosa River and into Alabama.

Based on these attenuated contacts, the Alabama Supreme Court in a 4–3 decision held that petitioners are subject to specific personal jurisdiction in Alabama. In reaching that conclusion, the court ignored this Court's consistent holdings that specific personal jurisdiction must be based on the *defendant's* actions, not the unilateral actions of a *third party*. *See*, *e.g.*, *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (personal jurisdiction "must arise out of contacts that the 'defendant *himself*' creates with the forum State" (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985))). Because petitioners' purported contacts with Alabama resulted entirely from the unilateral activity of Dalton Utilities, this Court should summarily reverse.

Alternatively, this Court should grant plenary review because the Alabama Supreme Court deepened an existing conflict among federal circuit courts and state supreme courts over whether a defendant purposefully directs its conduct at the forum State merely because it knows that its out-of-state conduct will have in-state effects. Following *Walden*, the Second, Seventh, and Tenth Circuits, and the Texas Supreme Court have all correctly held that a defendant's mere knowledge that its conduct will have an effect in the forum State is insufficient for specific personal jurisdiction. *See Waldman v. Palestine Liberation Org.*, 835 F.3d 317 (2d Cir. 2016); *Ariel Invs., LLC v. Ariel Capital Advisors LLC*, 881 F.3d 520 (7th Cir. 2018); *Old Republic Ins. Co. v. Cont'l Motors, Inc.*, 877 F.3d 895 (10th Cir. 2017); *TV Azteca v. Ruiz*, 490 S.W.3d 29 (Tex. 2016). In contrast, the Alabama Supreme Court followed the Ninth Circuit and the Ohio Supreme Court in holding, notwithstanding *Walden*, that mere knowledge suffices. *See* Pet. App. 42a; *Pakootas v. Teck Cominco*

Metals, Ltd., 905 F.3d 565 (9th Cir. 2018); *Triad Hunter, LLC v. Eagle Natrium, LLC*, 132 N.E.3d 1272 (Ohio 2019).

At a minimum, the Court should hold this petition pending its forthcoming decision in *Ford Motor Co. v. Montana Eighth Judicial District Court*, No. 19-368 (scheduled for argument Oct. 7, 2020), which could affect the judgment below by clarifying the nature of the forum contacts that suffice to establish personal jurisdiction over an out-of-state defendant.

1. Petitioners Aladdin Manufacturing Corporation, Mohawk Industries, Inc., Mohawk Carpet, LLC, and Shaw Industries, Inc. are incorporated and have their principal places of business in States other than Alabama. Pet. App. 137a, 154a, 156a-157a. They are carpet manufacturers with operations in Dalton, Georgia, which is home to more than 150 carpet-manufacturing plants and produces more than 90 percent of the world's carpet. *Id.* at 138a-139a, 158a.

Respondents allege that the carpet industry uses PFC-containing chemicals in the manufacturing process. Pet. App. 139a, 158a.

According to respondents' complaints, various carpet-manufacturing facilities sent wastewater containing PFCs into Dalton's municipal wastewater treatment facility, Dalton Utilities. Pet. App. 139a, 158a. In turn, Dalton Utilities treated the wastewater and sprayed it over a land application system, comprising 9,800 acres of land bordering the Conasauga River in Georgia. *Id.*

Dalton Utilities is closely regulated by the Georgia Department of Natural Resources. Pet. App. 48a. The Department issued a land application

system permit to Dalton Utilities, approving its proposed method of wastewater treatment. *Id.* Specifically, the permit authorized a "no discharge system," meaning that treated water was not allowed to be discharged directly into a river, lake, or other groundwater. *See* Georgia Dep't of Nat. Res., *Letter re Dalton Utilities-Riverbend*, at 3 (Apr. 30, 2007), https://archive.epa.gov/pesticides/region4/water/documents/web/pdf/dalton_utilities_las_permit.pdf. And the permit specified that "[g]roundwater leaving the land application system boundaries must not exceed maximum contaminant levels for drinking water." *Id.* at 17.

Nonetheless, respondents allege that wastewater containing PFCs made its way into the Conasauga River. Pet. App. 139a, 158a. The Conasauga eventually joins the Coosawattee River near Calhoun, Georgia, to form the Oostanaula River. In turn, the Oostanaula joins the Etowah River in Rome, Georgia, to form the Coosa River. And the Coosa crosses the Alabama state line before meandering past Centre and Gadsden. *See id.* at 27a. According to respondents, trace amounts of PFCs followed this 150-mile course before eventually ending up in their water intake systems on the Coosa River. *Id.* at 27a, 91a, 142a, 161a.

2. Respondent The Water Works and Sewer Board of the City of Gadsden sued dozens of companies in the Circuit Court of Etowah County, Alabama, for injunctive relief and damages, asserting claims for negligence, wantonness, nuisance, and trespass. Pet. App. 130a-148a. Respondent The Water Works and Sewer Board of the Town of Centre filed a virtually identical complaint against nearly the same group of defendants in the Circuit Court of

Cherokee County, Alabama. *Id.* at 149a-168a. Petitioners filed timely motions to dismiss or for judgment on the pleadings, arguing that the Alabama state courts lacked personal jurisdiction over them. *Id.* at 63a, 66a, 92a, 117a.

Both Alabama trial courts denied petitioners' motions. Both held that petitioners were subject to specific personal jurisdiction in Alabama because "the act of causing the chemicals to enter the Conasauga River is an act directed at Alabama." Pet. App. 60a, 87a. And both concluded that Dalton Utilities' intervening activities were not "the 'unilateral activit[ies] of another party or a third person'" because respondents had alleged that "the chemicals at issue 'resist degradation during the treatment process utilized by Dalton Utilities and increase in concentration as waste accumulates in the [land application system].'" *Id.* at 60a, 89a.

3. Petitioners filed petitions for writs of mandamus in both cases, and the Alabama Supreme Court consolidated the petitions. Pet. App. 4a-5a.

On December 20, 2019, the Alabama Supreme Court denied mandamus relief, holding 4–3 that petitioners were subject to specific personal jurisdiction in Alabama. Pet. App. 45a. The three-Justice plurality explained that Alabama's long-arm statute extends to the limits of due process, and thus resolved the issue by determining that petitioners had sufficient minimum contacts with Alabama under the Constitution. Pet. App. 38a-40a (opinion of Stewart, J., joined by Parker, C.J., and Wise, J.). According to the plurality, petitioners "knew or should have known from publicly available reports of the [Environmental Protection Agency] and from published studies that the PFC-containing chemicals used during the

manufacturing process and discharged into their wastewater were polluting the Conasauga River, which flows downstream via the Coosa River into Alabama." Pet. App. 28a.

The plurality first rejected petitioners' argument that Dalton Utilities' "unilateral activity" of spraying treated wastewater near the Conasauga River (under the terms of a permit issued by the Georgia Department of Natural Resources) could not support a claim of personal jurisdiction over them. Pet. App. 28a-29a. Dalton Utilities' conduct, the plurality reasoned, was "foreseeable" and could be considered in the jurisdictional analysis because petitioners "allegedly knew or should have known that the treatment process could not and did not remove the PFC-containing chemicals from the wastewater." *Id.* at 29a.

Next, the plurality concluded that petitioners "purposefully directed their actions at Alabama," under the "effects test" from *Calder v. Jones*, 465 U.S. 783 (1984). Pet. App. 41a; *see also id.* at 25a-26a. The plurality reasoned that petitioners "knowingly discharg[ed] PFC-containing chemicals in their industrial wastewater, knowing they were ineffectively treated by Dalton Utilities, and knowing that the PFCs would end up in the Coosa River, which flows into Alabama." *Id.* at 41a. "Under this factual scenario," the plurality concluded, "the physical entry of the pollution into Alabama's water source create[d] the [necessary] relationship among [petitioners], Alabama, and the actions"—"regardless of the distance the chemicals traveled to reach the sites in Alabama where the injuries occurred." *Id.* at 42a.

The plurality also noted that some courts have held that a tort claim "arises out of or relates to" a

defendant's in-state activity only if the activity is a "but-for" cause of the claim. Pet. App. 40a n.12 (alterations omitted). The plurality explained that if it were to apply a "but-for" test, it would conclude that respondents' claims "arise out of or relate to [petitioners'] contacts with Alabama, the forum state." *Id.* at 41a n.12.

Justice Bryan concurred in the result without authoring an opinion. Pet. App. 45a.

Three Justices dissented in relevant part. Pet. App. 45a. Justice Sellers, joined by Justice Mendheim, explained that "[a]ll the underlying actions giving rise to the [respondents'] claims in the present case occurred in Georgia." *Id.* at 48a. Petitioners "directed their wastewater to Dalton Utilities," not Alabama, and Dalton Utilities treated the wastewater and sprayed it onto the land application system, as it was "specifically authorized and permitted to do under Georgia law." *Id.* The mere "fact that some runoff allegedly ended up in the Conasauga River in Georgia and eventually in the Coosa River in Alabama," Justice Sellers concluded, "does not establish that the [petitioners'] actions were intentionally and directly aimed at Alabama." *Id.*

The Alabama Supreme Court denied petitioners' timely applications for rehearing. Pet. App. 126a, 128a.

REASONS FOR GRANTING THE PETITION

I. THE ALABAMA SUPREME COURT'S HOLDING THAT PETITIONERS ARE SUBJECT TO PERSONAL JURISDICTION IN ALABAMA NOTWITHSTANDING THE UNILATERAL ACTIONS OF A THIRD PARTY CONFLICTS WITH THIS COURT'S PRECEDENT.

By permitting Alabama courts to exercise specific personal jurisdiction in this case, despite the unilateral activity of a third party, the Alabama Supreme Court defied this Court's well-settled precedent. The only possible contacts between petitioners and Alabama resulted from Dalton Utilities' alleged conduct—spraying wastewater near the Conasauga River. But this Court has repeatedly held that personal jurisdiction "must arise out of contacts that the 'defendant *himself*' creates with the forum State," not out of the unilateral actions of a third party. *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)).

This Court has "consistently rejected attempts to satisfy the defendant-focused 'minimum contacts' inquiry by demonstrating contacts between the plaintiff (*or third parties*) and the forum State." *Walden*, 571 U.S. at 284 (emphasis added). As *Walden* explains, the Court has "rejected a plaintiff's argument that a Florida court could exercise personal jurisdiction over a trustee in Delaware based solely on the contacts of the trust's settlor, who was domiciled in Florida and had executed powers of appointment there." *Id.* (citing *Hanson v. Denckla*, 357 U.S. 235 (1958)). And it has "likewise held that Oklahoma courts could not exercise personal jurisdiction over an automobile distributor that supplies New York, New

Jersey, and Connecticut dealers based only on an automobile purchaser's act of driving it on Oklahoma highways." *Id.* at 284-85 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980)).

Simply put, the "unilateral activity of another party *or a third person* is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction." *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984) (emphasis added). Thus, "it is essential in each case that there be some act by which *the defendant* purposefully avails itself of the privilege of conducting activities within the forum State," thereby "invoking the benefits and protections of its laws." *Hanson*, 357 U.S. at 253 (emphasis added).

In this case, every supposed "contact" between petitioners and Alabama resulted from the unilateral activity of Dalton Utilities. The *only* action petitioners allegedly took was to send PFC-containing wastewater for treatment by Dalton Utilities in Georgia. Pet. App. 133a-134a, 139a, 152a-153a, 158a. And Dalton Utilities *alone* sprayed the wastewater in such a way that PFCs allegedly migrated into the Conasauga River and flowed downstream to the Coosa River. *Id.*

The Alabama Supreme Court's holding that petitioners are subject to personal jurisdiction in Alabama notwithstanding Dalton Utilities' unilateral and independent role in treating and releasing the wastewater cannot be squared with this Court's precedents. Respondents do not allege that petitioners controlled or directed Dalton Utilities' activities. *See Daimler AG v. Bauman*, 571 U.S. 117, 135 n.13 (2014) ("[A] corporation can purposefully

avail itself of a forum by directing its agents or distributors to take action there."); *Helicopteros*, 466 U.S. at 416-17 (co-defendant drawing checks on a Texas bank was "unilateral activity" where defendant did not "request[ ] that the checks be drawn on a Texas bank" or "negotiat[e] . . . with respect to the location or identity of the bank on which checks would be drawn"). Nor could they: Dalton Utilities is regulated by the Georgia Department of Natural Resources, a state government agency that authorized its wastewater treatment plan. Pet. App. 48a (Sellers, J., dissenting). Thus, the court below should have disregarded any contacts with Alabama that resulted from Dalton Utilities' activities. If it had done so, it would necessarily have granted mandamus relief and instructed the trial courts to dismiss respondents' lawsuits against petitioners.

Instead of adhering to this Court's precedents, the Alabama Supreme Court plurality reasoned that Dalton Utilities' unilateral activities did not foreclose personal jurisdiction, because petitioners "allegedly knew or should have known that the treatment process could not and did not remove the PFC-containing chemicals from the wastewater." Pet. App. 29a.

But knowledge of another person's contacts with the forum is not enough, as this Court reaffirmed in *Walden*. There, the Ninth Circuit had reasoned that "knowledge of respondents' 'strong forum connections'" when "combined with" the "conclusion that respondents suffered foreseeable harm in Nevada, satisfied the 'minimum contacts' inquiry." 571 U.S. at 289. This Court rejected that approach: "Petitioner's actions in Georgia did not create sufficient contacts with Nevada simply because he

allegedly directed his conduct at plaintiffs whom he knew had Nevada connections. Such reasoning improperly attributes a plaintiff's forum connections to the defendant and makes those connections 'decisive' in the jurisdictional analysis." *Id.*

Here, the Alabama Supreme Court made the same error the Ninth Circuit committed in *Walden*: It attributed a third party's forum connections to petitioners and made them the basis for exercising specific jurisdiction. *See also* 571 U.S. at 291 ("Respondents' Nevada attorney contacted petitioner in Georgia, but that is precisely the sort of 'unilateral activity' of a third party that 'cannot satisfy the requirement of contact with the forum State.'" (quoting *Hanson*, 357 U.S. at 253)).

The Alabama Supreme Court's conclusion that Dalton Utilities' third-party contacts with Alabama subject petitioners to personal jurisdiction in that State stands in direct and open conflict with *Walden* and this Court's specific-jurisdiction cases. Indeed, the plurality went so far as to declare that cases "regarding a third-party 'intervening cause' are *inapplicable* here," because Dalton Utilities' conduct "was foreseeable." Pet. App. 29a (emphasis added). To support that proposition, the plurality cited a 45-year-old Alabama Supreme Court case that has nothing to do with personal jurisdiction. *See id.* (citing *Ala. Power Co. v. Taylor*, 306 So. 2d 236 (Ala. 1975)). Yet under this Court's cases, "'foreseeability' alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause." *World-Wide Volkswagen*, 444 U.S. at 295. In *World-Wide Volkswagen*, it was "foreseeable that the purchasers of automobiles sold by" defendants might "take them to Oklahoma," but this Court held that

Oklahoma lacked jurisdiction because "the mere 'unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State.'" *Id.* at 298 (quoting *Hanson*, 357 U.S. at 253).

Thus, this is not a case where a court applies this Court's precedents and simply reaches an incorrect result. Rather, it is the rare and unusual case where a court ignores this Court's precedents and issues a decision that cannot be reconciled with binding law on undisputed facts. *See Schweiker v. Hansen*, 450 U.S. 785, 791 (1981) (Marshall, J., dissenting) ("A summary reversal is a rare disposition, usually reserved by this Court for situations in which the law is settled and stable, the facts are not in dispute, and the decision below is clearly in error.").

Because the Alabama Supreme Court ignored clear and well-settled law, this Court should grant certiorari and summarily reverse the judgment below. Under *Walden* and all of the cases on which it relied, Dalton Utilities' unilateral activity cannot be considered in the personal jurisdiction analysis. Yet respondents' complaints confirm that, without Dalton Utilities' conduct, there would be no connection whatsoever between petitioners and the State of Alabama. Thus, if the Alabama Supreme Court had applied binding law from this Court, it would have granted mandamus relief and instructed the trial courts to dismiss the complaints against petitioners for lack of personal jurisdiction.

Summary reversal is particularly warranted here because the decision below raises especially acute federalism concerns. As this Court has explained, "restrictions on personal jurisdiction 'are more than a guarantee of immunity from inconvenient or distant

litigation. They are a consequence of territorial limitations on the power of the respective States.'" *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1780 (2017) (quoting *Hanson*, 357 U.S. at 251). By cabining the power of each State to exercise personal jurisdiction over the out-of-state conduct of defendants, the Due Process Clause "'act[s] as an instrument of interstate federalism.'" *Id.* at 1781 (quoting *World-Wide Volkswagen*, 444 U.S. at 294). It does so by "ensur[ing] that the States through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *World-Wide Volkswagen*, 444 U.S. at 292.

Here, the third party in question is an instrumentality of a Georgia municipality. *See* Pet. App. 48a (Sellers, J., dissenting). And the actions it allegedly undertook that formed the supposed connection between petitioners and Alabama—spraying treated wastewater on land near the Conasauga River—were "specifically authorized and permitted" by the Georgia Department of Natural Resources. *Id.* Allowing Alabama courts to exercise jurisdiction on the theory that petitioners knew Dalton Utilities would not treat the wastewater effectively thus raises the possibility that the Alabama courts will conclude that the actions of a Georgia municipal utility following Georgia law as applied by a Georgia agency were improper. This Court should reverse to prevent the Alabama courts from interfering with Georgia's sovereignty and to correct the Alabama Supreme Court's refusal to apply well-settled and binding law to undisputed facts.

II. THE ALABAMA SUPREME COURT'S HOLDING THAT SPECIFIC JURISDICTION CAN BE BASED ON MERE KNOWLEDGE OF IN-STATE EFFECTS DEEPENS AN EXISTING SPLIT AND CONFLICTS WITH THIS COURT'S PRECEDENT.

The Alabama Supreme Court's decision premising specific personal jurisdiction on a defendant's knowledge that its out-of-state conduct can have in-state effects deepens an existing conflict among federal courts of appeals and state courts of last resort. Following this Court's decision in *Walden*, three federal courts of appeals and the Texas Supreme Court have all rejected the effects-based theory accepted by the court below. In accepting that theory as the basis for personal jurisdiction, the Alabama Supreme Court joined the Ninth Circuit and the Ohio Supreme Court.

This Court should grant review to resolve this conflict. And it should make clear that specific personal jurisdiction is inappropriate when it is based solely on a defendant's knowledge that its out-of-state conduct will have in-state effects.

A. The Circuits And State Supreme Courts Are Divided Over Whether Knowledge Of In-State Effects Suffices For Personal Jurisdiction.

The Alabama Supreme Court applied the effects test from this Court's decision in *Calder v. Jones* to hold that an out-of-state defendant "alleged to have caused environmental pollution in another state" is subject to specific personal jurisdiction if the defendant knew (or should have known) that "the consequences of those acts [would] cause[] harm in [the forum State]." Pet. App. 30a. "[B]y virtue of knowingly discharging PFC-containing chemicals in

their industrial wastewater, knowing they were ineffectively treated by Dalton Utilities, and knowing that the PFCs would end up in the Coosa River, which flows into Alabama," the plurality concluded, petitioners "purposefully directed their actions at Alabama." *Id.* at 41a.

1. That conclusion directly conflicts with cases from the Second, Seventh, and Tenth Circuits, as well as the Texas Supreme Court, all of which have relied on *Walden* to hold that a defendant's mere knowledge that its conduct will have an effect in the forum State is insufficient for specific personal jurisdiction.

In *Waldman v. Palestine Liberation Organization*, the Second Circuit interpreted *Walden* to mean "that a defendant's mere knowledge that a plaintiff resides in a specific jurisdiction would be insufficient to subject a defendant to specific jurisdiction in that jurisdiction if the defendant does nothing in connection with the tort in that jurisdiction." 835 F.3d 317, 338 (2d Cir. 2016). The Second Circuit thus rejected the plaintiffs' attempt to invoke *Calder*. *Id.* at 340. The "jurisdictional inquiry in *Calder* focused on the relationship among the defendant, the forum, and the litigation," not on the foreseen effects of the defendant's out-of-state conduct. *Id.* (citing *Walden*, 571 U.S. at 287). And the Second Circuit reaffirmed that holding in *Charles Schwab Corp. v. Bank of America Corp.*, where it again rejected the plaintiffs' argument that the "effects test" permitted personal jurisdiction in California "because defendants surely knew that the brunt of th[e] injury would be felt by plaintiffs like Schwab in California." 883 F.3d 68, 87-88 (2d Cir. 2018) (alteration in original).

In *Ariel Investments, LLC v. Ariel Capital Advisors LLC*, the Seventh Circuit likewise explained

that "[k]nowing about a potential for harm in a particular state is not the same as acting *in* that state—and it takes the latter to permit personal jurisdiction under state law." 881 F.3d 520, 522 (7th Cir. 2018). Thus, it made no difference whether the defendant "set out to injure" the plaintiff "knowing that [the plaintiff was] located in" the forum State. *Id.* For that reason, the Seventh Circuit rejected the plaintiff's argument that *Calder* deems knowledge of in-state harm sufficient to confer personal jurisdiction. *See id.* at 522-23. "As *Walden* observed, because publication to third parties is an element of libel, the defendants' tort [in *Calder*] occurred in California." *Id.* at 523.

The Tenth Circuit has similarly interpreted the "effects test to require three elements: '(a) an intentional action . . . , that was (b) expressly aimed at the forum state . . . , with (c) knowledge that the brunt of the injury would be felt in the forum state.'" *Old Republic Ins. Co. v. Cont'l Motors, Inc.*, 877 F.3d 895, 907 (10th Cir. 2017) (omissions in original) (quoting *Dudnikov v. Chalk & Vermillion Fine Arts, Inc.*, 514 F.3d 1063, 1072 (10th Cir. 2008) (Gorsuch, J.)). As this three-part test makes clear, a defendant's mere knowledge that harmful effects would be felt in the forum State is insufficient to show that the defendant "expressly aimed" or purposefully directed its actions at the forum State. Conflating mere knowledge with express aim would collapse the second and third prongs of the Tenth Circuit's test. And in *Old Republic* itself, the defendant not only "knowingly s[old] its publications to Arapahoe Aero in Colorado, but it knew that they would be used by Arapahoe Aero nowhere else but Colorado, and that any harmful effects of the publications would be felt in Colorado." *Id.* at 917. But that was not enough to

"establish[] purposeful direction under the *Calder* harmful effects framework" as refined by *Walden*. *Id.* at 917-18.

Finally, the Texas Supreme Court rejected the argument that mere knowledge of in-state effects is enough in *TV Azteca v. Ruiz*, 490 S.W.3d 29 (Tex. 2016). There, the plaintiff sued two Mexico-based broadcasters and a television producer for defamation in Texas state court. *Id.* at 34-35. She alleged that the defendants produced and broadcast defamatory "television programs on over-the-air signals that originate[d] in Mexico but travel into parts of Texas." *Id.* at 34. Although the court ultimately held that defendants were subject to personal jurisdiction in Texas, it carefully distinguished between the defendants' mere knowledge of in-state effects and their purposefully directing activities at Texas.

The Texas Supreme Court agreed with the defendants "that the mere fact that the signals through which they broadcast their programs in Mexico travel into Texas is insufficient to support specific jurisdiction because that fact does not establish that Petitioners purposefully directed their activities at Texas." *TV Azteca*, 490 S.W.3d at 45. Even defendants' "*knowledge* that its programs will be received in another jurisdiction is insufficient to establish that the broadcaster purposefully availed itself of the benefits of conducting activities in that jurisdiction." *Id.* at 46 (emphasis added). Rather, to support personal jurisdiction, the plaintiff must provide "evidence of additional conduct" to "establish that the broadcaster had an intent or purpose to serve the market in the forum State." *Id.* at 46-47 (quotation marks omitted).

Ultimately, the Texas Supreme Court concluded that the plaintiff had provided sufficient evidence because the defendants had promoted their broadcasts in Texas, derived substantial advertising revenue from Texas businesses, and "made substantial efforts to distribute their programs and increase their popularity in Texas." *TV Azteca*, 490 S.W.3d at 52. That *additional* conduct, not defendants' mere knowledge that their broadcasts traveled to Texas, showed that they had "purposefully availed themselves of the benefits of conducting activities in Texas." *Id.*

2. In the decision below, the Alabama Supreme Court departed from the holdings of those courts and instead relied on two post-*Walden* cases—from the Ninth Circuit and Ohio Supreme Court, respectively—which had reached the opposite conclusion, thus deepening an existing conflict.

In *Pakootas v. Teck Cominco Metals, Ltd.*, the Ninth Circuit concluded that the defendant "expressly aimed its waste at the State of Washington"—and thus was subject to personal jurisdiction in Washington—where it "knew the Columbia River carried waste away from [its] smelter, and that much of this waste travelled downstream into Washington, yet [the defendant] continued to discharge hundreds of tons of waste into the river every day." 905 F.3d 565, 577-78 (9th Cir. 2018), *cert. denied sub nom. Teck Metals Ltd. v. Confederated Tribes of the Colville Reservation*, 139 S. Ct. 2693 (2019).[1] Those

[1] Notably, respondents in *Teck Metals* did not dispute that the Ninth Circuit would have created a circuit conflict *if* it had held that mere knowledge of in-state effects sufficed for personal jurisdiction. But they insisted that the Ninth Circuit "did not

allegations satisfied *Calder*'s "effects test," the court held, because the defendant "knew" or "acknowledged" that some of its waste would end up in the forum State. *Id.*

Similarly, in *Triad Hunter, LLC v. Eagle Natrium, LLC*, the Ohio Supreme Court held that "[c]ontinuing to release a substance while knowing it travels to a jurisdiction is considered purposeful direction of efforts toward that jurisdiction." 132 N.E.3d 1272, 1285 (Ohio 2019) (citing *Pakootas*, 905 F.3d at 577-78). Thus, because the defendant knew "or reasonably should have known" that a liquid it injected into West Virginia mines traveled across the Ohio border, it was subject to specific personal jurisdiction in Ohio. *Id.* at 1284-85.[2]

By joining those courts, the Alabama Supreme Court deepened a square conflict among federal courts of appeals and state supreme courts.

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anchor its analysis in mere 'knowledge,'" but instead "applied the trial court's findings showing that Teck intentionally availed itself of the forum state with the 'very purpose' of using it as a free and convenient waste disposal site." Confederated Tribes Br. in Opp., at *22, No. 18-1160 (filed May 6, 2019); *accord* Washington Br. in Opp., at *23, No. 18-1160 (filed May 6, 2019). Whatever the merits of that argument, the Alabama Supreme Court indisputably relied solely on petitioners' mere knowledge here, thus confirming the existence of a square circuit conflict.

[2] The Alabama Supreme Court also relied on a pre-*Walden* case, *Horne v. Mobile Area Water & Sewer System*, 897 So. 2d 972 (Miss. 2004). There, the Mississippi Supreme Court held that defendant was subject to personal jurisdiction where the defendant (anticipating heavy rains from a hurricane) released a significant amount of water from an Alabama reservoir, knowing that it would travel downstream to Mississippi. *See id.* at 974.

B. The Decision Below Is Inconsistent With *Walden*.

The Alabama Supreme Court's holding is incorrect, and the cases on its side of the conflict are inconsistent with this Court's opinion in *Walden*.

Walden clarified that where all of a defendant's "relevant conduct" occurs outside the forum, "the mere fact that [its] conduct affected plaintiffs with connections to the forum State does not suffice to authorize jurisdiction." 571 U.S. at 291. Because defendants must "*purposefully* 'reach[] out beyond' their State and into another," *id.* at 285 (emphasis added) (quoting *Burger King*, 462 U.S. at 479), merely *knowing* about the in-state effects of their out-of-state conduct is not enough, *see Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 112 (1987) (opinion of O'Connor, J.) ("defendant's awareness" that its product will end up in the forum State does not show it acted "purposefully" toward the forum State).

By conflating knowledge of in-state effects with purposeful direction at the forum State, the Alabama Supreme Court repeated virtually the same error that this Court corrected in *Walden*. Before *Walden*, some courts had interpreted *Calder*'s "effects test" as allowing personal jurisdiction in a forum whenever a defendant's intentional act was "targeted at a plaintiff whom the defendant knows to be a resident of the forum state," and the defendant knew "harm . . . is likely to be suffered in the forum state." *E.g.*, *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1077, 1079 (9th Cir. 2011) (citations omitted).

Walden corrected that misreading of *Calder*. The Court clarified that *Calder*'s personal jurisdiction holding rested on the defendant's ties to California—not the effects of the defendant's conduct on a plaintiff

who resided there. *Walden*, 571 U.S. at 290-91. The Court emphasized that "[t]he proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way." *Id.* at 290. Thus, where all of a defendant's "relevant conduct" occurs out of state, "the mere fact that [its] conduct affected plaintiffs with connections to the forum State does not suffice to authorize jurisdiction." *Id.* at 291.

And because the defendants in *Calder* wrote the magazine article giving rise to the plaintiffs' defamation claims "for publication in California," defendants' libelous conduct "actually occurred *in* California." *Walden*, 571 U.S. at 287-88; *see also id.* at 287 ("However scandalous a newspaper article might be, it can lead to a loss of reputation only if communicated to (and read and understood by) third persons."). That meaningful connection between defendants and the forum State, not their mere knowledge of the in-state effects of their conduct, was enough to authorize specific personal jurisdiction.

By permitting the exercise of specific personal jurisdiction here, the Alabama Supreme Court disregarded *Walden*. Petitioners' only jurisdictionally relevant conduct in these cases was allegedly sending wastewater containing PFCs to Dalton Utilities. Pet. App. 139a, 158a. But that conduct occurred entirely *in Georgia*, and the conduct underlying respondents' claims thus did not "actually occur[]" *in* Alabama. *Walden*, 571 U.S. at 288. Petitioners' supposed knowledge that their conduct would eventually result in PFCs flowing through various waterways and across the Alabama state line does not connect them "to the forum in a[ny] meaningful way" because it does

not show that they intended or consciously desired that result. *Id.* at 290.

Moreover, petitioners' mere knowledge of in-state effects cannot establish that they "expressly aimed" their conduct at Alabama. *Calder*, 465 U.S. at 789. In *Calder*, this Court rejected petitioners' arguments that they could not be subject to personal jurisdiction in California because their employer was "responsible for the circulation of the [allegedly defamatory] article in California." *Id.* But petitioners there wrote and edited the "article that they knew would have a potentially devastating impact upon respondent. And they knew that the brunt of that injury would be felt by respondent in the State in which she lives and works and in which" the magazine in which the article appeared had "its largest circulation." *Id.* at 789-90.

Unlike the intentional tort at issue in *Calder*, which "actually occurred *in* California," *Walden*, 571 U.S. at 288, the alleged torts here occurred in Georgia, where petitioners allegedly sent wastewater to Dalton Utilities and Dalton Utilities sprayed it near the Conasauga River. Moreover, petitioners here had no control over—and are not responsible for—Dalton Utilities' conduct. Unlike the petitioners in *Calder*, they are in no sense the "primary participants in an alleged wrongdoing intentionally directed" at Alabama, 465 U.S. at 790; *see also Walden*, 571 U.S. at 287 n.7; and unlike the employer in *Calder*, Dalton Utilities did not engage in *any* conduct in the forum State. As a result, the Alabama Supreme Court's decision is manifestly inconsistent with this Court's cases.[3]

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[3] The Alabama Supreme Court's error is especially clear in light of the plurality's statement that these "cases do not involve

Because the Alabama Supreme Court's decision deepens an existing conflict and departs from this Court's decision in *Walden*, the Court should grant plenary review and reverse.

C. This Case Is An Excellent Vehicle For Resolving The Important And Recurring Question Presented.

The Alabama Supreme Court's decision shows how expansive the "mere knowledge" theory of personal jurisdiction can be. Distance, intervening steps taken by a third party, and a causal chain that would make Rube Goldberg proud were no barrier to subjecting more than a dozen Georgia businesses to jurisdiction in the Alabama courts.

Notably, the cases on which the plurality relied all "involved defendants . . . discharging material directly into a water source that flowed into the forum jurisdiction a short distance away." Pet. App. 49a-50a (Sellers, J., dissenting). None of them endorsed the extreme view that a defendant purposefully directs

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the sale of a product that is placed into the stream of commerce. Rather, they involve the deposit of toxic chemicals into a stream of water." Pet. App. 33a. Justices endorsing the most expansive version of the "stream-of-commerce" test have explained that "[a] defendant who has placed goods in the stream of commerce *benefits economically* from the retail sale of the final product in the forum State, and *indirectly benefits* from the State's laws that regulate and facilitate commercial activity." *Asahi Metal*, 480 U.S. at 117 (opinion of Brennan, J.) (emphasis added). Respondents here never alleged that petitioners derived any benefits—directly or indirectly—from the fact that PFCs from their treated wastewater ended up in Alabama. Thus, comparing this case with stream-of-commerce cases should have cut *against* a finding that petitioners purposefully availed themselves of the privilege of conducting activities in Alabama.

activity toward the forum State merely because it knows its conduct will have an effect in the forum State, no matter how attenuated that effect may be. *See Pakootas*, 905 F.3d at 572 (defendant deposited its industrial waste directly into the Columbia River, just ten miles upstream from the Washington border); *Triad Hunter*, 132 N.E.3d at 1285 (defendant allegedly injected a mining solution within a half-mile from the Ohio border; the defendant's solution traveled to mineral deposits in Ohio; and the defendant then retrieved both the solution and minerals from Ohio that had dissolved into it); *Horne*, 897 So. 2d at 979 (reservoir was located just 12 miles from the Mississippi state line, and the defendant opened "the spillway to its maximum capacity").

But this case shows that there is no way to limit the "knowledge is enough" theory of personal jurisdiction to avoid sweeping in such attenuated contacts. Here, the court upheld personal jurisdiction based on contacts involving three different rivers and the intervening conduct of a state-regulated municipal utility. If all it takes for a forum to exercise jurisdiction over an out-of-state defendant is an allegation that the defendant knew (or should have known) about the in-state effects of its out-of-state conduct, any hip-bone-connected-to-the-thigh-bone allegations would suffice. And that would deprive defendants of the "predictability" due-process limits are supposed to ensure so that defendants can "structure their primary conduct with some minimum assurance as to where *that conduct* will and will not render them liable to suit." *World-Wide Volkswagen*, 444 U.S. at 297 (emphasis added).

To defeat personal jurisdiction under the "mere knowledge" theory, defendants will be forced to

submit detailed affidavits disputing their knowledge of the rippling effects of their conduct. That, in turn, will open the door to time-consuming and expensive jurisdictional discovery and a complicated inquiry into what defendants knew and when. That result is flatly inconsistent with the principle that "courts benefit from straightforward [jurisdictional] rules under which they can readily assure themselves of their power to hear a case." *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010). "Complex jurisdictional tests complicate a case, eating up time and money as the parties litigate, not the merits of their claims, but which court is the right court to decide those claims." *Id.*

Moreover, the conflict over whether mere knowledge of in-state effects suffices for personal jurisdiction has developed rapidly in the wake of *Walden*. And that is not surprising. As this Court's decisions have cabined general personal jurisdiction to its proper role, the question of when specific personal jurisdiction can be exercised has come to the forefront. *See Daimler*, 571 U.S. at 128 ("[S]pecific jurisdiction will . . . form a considerably more significant part of the scene."). In *Daimler*'s wake, this Court has not hesitated to grant certiorari in order to curtail expansive theories of specific personal jurisdiction. *See Bristol-Myers Squibb*, 137 S. Ct. 1773; *Walden*, 571 U.S. 277; *see also Ford Motor Co. v. Bandemer*, 140 S. Ct. 916 (cert. granted Jan. 17, 2020); *Ford Motor Co. v. Montana Eighth Judicial Dist. Court*, 140 S. Ct. 917 (cert. granted Jan. 17, 2020). It should do the same here.

Finally, this petition offers the Court an excellent vehicle for resolving the important, recurring question presented. Personal jurisdiction was decided at the

pleadings stage, meaning there are no disputed facts. *See* Pet. App. 26a n.6 (noting that "[t]he trial courts were required to consider the allegations in [respondents'] complaints to be true because" petitioners "did not submit evidentiary materials disputing" the jurisdictional allegations). Petitioners did not dispute below that they knew Dalton Utilities' wastewater treatment had not completely removed PFCs or that Dalton Utilities sprayed the treated wastewater near the Conasauga River, which eventually flows into the Coosa River and across the Alabama state line. The only contested issue—whether petitioners' mere knowledge of those alleged consequences of their conduct in Georgia is enough to subject them to personal jurisdiction in Alabama—is a pure question of law.[4]

Not only that, but the facts here offer a particularly suitable opportunity for the Court to resolve the question presented. As in *Waldman*, 835 F.3d 317, *Ariel Investments*, 881 F.3d 520, and *Old Republic Insurance Co.*, 877 F.3d 895, the only fact that could have supported personal jurisdiction in the forum state was the defendants' knowledge that their out-of-state activities could have in-state effects. Thus, unlike in *Pakootas*, there are no nuanced factors

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[4] The Etowah Circuit Court held that petitioner Shaw Industries is subject to general personal jurisdiction in Alabama—even though it is "incorporated in Georgia" and has "its principal place of business in Dalton"—because it engages in "substantial, continuous, and systematic" business in the State. Pet. App. 94a. That holding flatly contradicts this Court's holding in *BNSF Railway Co. v. Tyrrell*, 137 S. Ct. 1549 (2017). And respondent The Water Works and Sewer Board of Gadsden conceded before the Alabama Supreme Court that Shaw "is not subject to general personal jurisdiction" in Alabama. Pet. App. 173a n.3.

that might muddy this Court's review. By taking this case, the Court can resolve the squarely presented conflict as a matter of law. It should do so.

III. AT A MINIMUM, THIS COURT SHOULD HOLD THIS PETITION PENDING *FORD MOTOR CO. V. MONTANA EIGHTH JUDICIAL DISTRICT COURT*.

This Court should, at a minimum, hold this petition pending its decision in *Ford Motor Co. v. Montana Eighth Judicial District Court*, No. 19-368 (scheduled for argument Oct. 7, 2020). In that case, the Court will address whether the defendant's forum contacts must "cause"—or merely "relate to"—the plaintiff's claims, and, if a causal connection is required, what type of causal connection will suffice. *See generally* Br. for Petitioner, *Ford Motor Co. v. Montana Eighth Judicial District Court*, No. 19-368 (filed Feb. 28, 2020). Notably, Ford Motor argues that this Court should adopt a "proximate-cause requirement." *Id.* at *43-45.

Here, the Alabama Supreme Court plurality addressed causation in a cursory fashion. It noted that the Eleventh Circuit requires "'but-for'" causation. Pet. App. 40a n.12 (quoting *Waite v. All Acquisition Corp.*, 901 F.3d 1307, 1314 (11th Cir. 2018)). And it indicated that if it were to apply a "but-for" causation test, it would conclude that petitioners' contacts were the but-for cause of respondents' claims. *See id.* at 41a n.12. But the plurality did not address whether petitioners' contacts were the *proximate* cause of respondents' claims. *See id.* And the plurality dismissed the argument that Dalton Utilities' wastewater treatment was "an intervening cause that breaks the chain of causation" as "inapplicable here." *Id.* at 29a.

Because this Court's forthcoming decision in *Ford Motor* will likely clarify the type of causation (if any) that is required for personal jurisdiction and thus could affect the judgment below, this Court should hold this petition pending *Ford Motor* if it does not summarily reverse or grant plenary review of the question presented.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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