NO. 20-231

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 Writ of Certiorari to the Supreme Court of Alabama

MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* AND BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, THE GEORGIA CHAMBER OF COMMERCE, AND THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

Daryl L. Joseffer
Jonathan D. Urick
U.S. CHAMBER LITIGATION CENTER
1615 H Street NW
Washington, DC 20062

Charles C. Correll, Jr.
KING & SPALDING LLP
101 Second Street
San Francisco, CA 94105

Jeffrey S. Bucholtz
Ashley C. Parrish
Counsel of Record
I. Cason Hewgley IV
KING & SPALDING LLP
1700 Pennsylvania Ave. NW
Washington, DC 20006
(202) 737-0500
aparrish@kslaw.com

Counsel for Amici Curiae

September 28, 2020

MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF PETITIONERS

Pursuant to Rule 37.2(b), the Chamber of Commerce of the United States, the Georgia Chamber of Commerce, and the National Federation of Independent Business respectfully request leave to submit a brief as *amici curiae* in support of the petition for writ of certiorari filed by Aladdin Manufacturing Corporation, Mohawk Carpet, LLC, Mohawk Industries, Inc., and Shaw Industries, Inc. As required under Rule 37.2(a), *amici* provided notice to all parties' counsel of their intent to file this brief ten days before its due date. Petitioners and the respondents that support the petition have consented to the filing of this brief. Respondents that oppose the petition did not consent and, therefore, *amici* are filing this motion.

This case raises issues that are vitally important to the nation's businesses. This Court has repeatedly emphasized that personal jurisdiction must be based on a defendant's actions—whether the defendant has purposefully availed itself of the benefits of the forum state—and not on the foreseeable effects of a defendant's out-of-state conduct that result from the independent actions of a third party. *See Walden v. Fiore*, 571 U.S. 277, 289 (2014). In this case, however, the Alabama Supreme Court adopted an expansive "foreseeable effects" theory of specific personal jurisdiction, under which a court may exercise personal jurisdiction based merely on allegations that the business knew that its out-of-state conduct could have in-state effects.

The Chamber of Commerce of the United States, the Georgia Chamber of Commerce, and the National Federation of Independent Business seek leave to file this brief to explain why the Alabama Supreme Court's approach would impose costly burdens on businesses. If it is left uncorrected, the state court's decision threatens to undermine the important limits on specific personal jurisdiction that allow defendants to exert some control over where they might be subject to suit. *Amici* therefore urge the Court to grant the petition and either summarily reverse the decision below or grant plenary review to provide additional guidance in this important area of the law.

Respectfully submitted,

Ashley C. Parrish
Counsel of Record
KING & SPALDING LLP
1700 Pennsylvania Ave. NW
Washington, DC 20006
(202) 737-0500
aparrish@kslaw.com

Counsel for Amici Curiae

CORPORATE DISCLOSURE STATEMENT

The Chamber of Commerce of the United States of America ("Chamber") is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent company, and no publicly held company has 10% or greater ownership in the Chamber.

The Georgia Chamber of Commerce ("Georgia Chamber") is a non-profit, tax-exempt organization incorporated in the State of Georgia. The Georgia Chamber has no parent company, and no publicly held company has 10% or greater ownership in the Georgia Chamber.

The National Federation of Independent Business ("NFIB") is a non-profit, tax-exempt organization. The NFIB has no parent corporation, and no publicly held company has 10% or greater ownership in the NFIB.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

Other Authority

INTEREST OF *AMICI CURIAE*[1]

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. It directly represents approximately 300,000 members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, from every region of the country. The Chamber regularly files *amicus curiae* briefs in cases that raise issues of concern to the nation's business community. It has participated as *amicus curiae* in numerous cases addressing the permissible scope of specific personal jurisdiction. *See Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773 (2017); *Walden v. Fiore*, 571 U.S. 277 (2014); *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873 (2011); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011).

The Georgia Chamber of Commerce ("Georgia Chamber") serves the unified interests of its nearly 50,000 members—ranging in size from small businesses to Fortune 500 corporations—covering a diverse range of industries across all of Georgia's 159 counties. The Georgia Chamber is the State's largest

---

[1] Pursuant to Supreme Court Rule 37.2(a), *amici curiae* notified the parties in writing of their intent to file this brief ten days before its due date. Because some respondents did not consent, *amici* are submitting a motion for leave to file this brief. Pursuant to Supreme Court Rule 37.6, *amici curiae* state that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *amici curiae*, their members, and their counsel, made any monetary contribution toward the preparation or submission of this brief.

business advocacy organization and is dedicated to representing the interests of both businesses and citizens in the State. Established in 1915, the Georgia Chamber's primary mission is creating, keeping, and growing jobs in Georgia. The Georgia Chamber pursues this mission, in part, by aggressively advocating the businesses and industry viewpoint in the shaping of law and public policy in an effort to ensure that Georgia is economically competitive nationwide and in the global economy.

The National Federation of Independent Business ("NFIB"), based in Nashville, Tennessee, is the nation's leading small business association, representing members in Washington, DC, and all 50 state capitals. Its membership spans the spectrum of business operations, ranging from sole proprietor enterprises to firms with hundreds of employees. Founded in 1943 as a nonprofit, nonpartisan organization, NFIB's mission is to promote and protect the rights of its members to own, operate, and grow their businesses. To protect its members' interests, NFIB frequently files amicus curiae briefs in cases that threaten to harm small businesses.

Amici support the petition because they have a strong interest in ensuring that the lower courts comply with this Court's precedent recognizing limits on the exercise of specific personal jurisdiction.

SUMMARY OF ARGUMENT

The Alabama Supreme Court's decision embraces a theory of personal jurisdiction that is directly at odds with this Court's controlling precedent. According to the court below, personal jurisdiction exists over an out-of-state defendant whenever the defendant knew or should have known that its out-of-state conduct would have effects in the forum state. Under that expansive approach, specific personal jurisdiction exists even when all of a defendant's case-related conduct occurs outside of the forum state and the forum-state effects are the result of a third party's independent actions.

The lower court's "foreseeable effects" test for specific personal jurisdiction cannot be squared with this Court's precedent, and its decision should be summarily reversed. The Alabama Supreme Court's approach—under which a defendant's knowledge that its out-of-state conduct could have in-state effects qualifies as purposeful contact with the forum state—was rejected in *Walden v. Fiore*, 571 U.S. 277 (2014). Moreover, this Court has emphasized, at least since its decision in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), that there must be "minimum contacts" between "*the defendant* and the forum State." *Id.* at 291 (emphasis added). In this case, petitioners had no contacts with the State of Alabama—instead, in exercising personal jurisdiction, the court below attributed to petitioners the Alabama contacts of a third party, Dalton Utilities.

If the lower court's clear violation of precedent is not corrected, it threatens serious consequences for the nation's businesses. This Court's due process

jurisprudence, and its focus on whether a defendant has made purposeful contacts with the forum state, allows businesses to control their conduct to limit where they may be subject to suit. But if "foreseeable effects" is the test, specific personal jurisdiction is limited only by plaintiffs' imaginations and lower courts' ad hoc analyses of foreseeability. Out-of-state defendants will be subject to personal jurisdiction in any case where a plaintiff can claim that some attenuated causal chain connects the defendant with effects felt in the forum state.

ARGUMENT

This case presents a question that this Court has already answered: Is an out-of-state defendant subject to personal jurisdiction merely because its conduct has foreseeable "effects" in the forum state? At least since *Calder v. Jones*, 465 U.S. 783 (1984), the answer has been "no." And *Walden* settled whatever doubts may have remained. 571 U.S. at 283. The decision below conflicts with these precedents and generates needless uncertainty. The Court should grant the petition and summarily reverse the decision below. If the Court does not summarily reverse, it should grant plenary review to address the split in authority identified in the petition and provide further clarity on the important issues at stake.

I. The Decision Below Contravenes This Court's Precedents.

A "state court may exercise personal jurisdiction over a nonresident defendant only so long as there exist 'minimum contacts' between *the defendant* and the forum State." *World-Wide Volkswagen*, 444 U.S.

at 291 (emphasis added). Minimum contacts require "some act by which *the defendant* purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958) (emphasis added) (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)). The Alabama Supreme Court violated these basic principles.

A. Specific jurisdiction requires purposeful activity by the defendant directed at the forum state.

The relevant facts are not disputed. Petitioners sent their wastewater containing perfluorocarbon ("PFC") to Dalton Utilities in Georgia for treatment. After Dalton Utilities allegedly discharged the water still containing PFCs, the water eventually reached the State of Alabama. The lower court concluded that "by 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 … defendants … purposefully directed their actions at Alabama." Pet. App. 41a. According to the court below, "the physical entry of the pollution into Alabama's water source creates the relationship" necessary to assert specific jurisdiction over petitioners. Pet. App. 42a.

But petitioners *themselves* did not take any action purposefully directed at the State of Alabama. Petitioners made no "physical entry" into Alabama. Nor did petitioners direct their wastewater into Alabama. Their only suit-related conduct—if it can

even be called that—was to lawfully send their wastewater to Dalton Utilities for treatment in Georgia. After that, petitioners had no control over what was done (or not done) with their wastewater or where it was sent. The wastewater allegedly ended up in Alabama only because Dalton Utilities—without any allegation of involvement by petitioners—sprayed the water over ground near a river that eventually wended its way to Alabama.

Even if the Alabama Supreme Court's assumptions about the extent of petitioners' knowledge were correct, that is not enough to establish personal jurisdiction. As this Court has explained, "'foreseeability' alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause." *World-Wide Volkswagen*, 444 U.S. at 295; *see also Rush v. Savchuk*, 444 U.S. 320, 328–29 (1980) (refusing to impute an insurer's forum contacts to its insured where the defendant had "no control" over the insurer's decision-making, so that "it cannot be said that the *defendant* engaged in any purposeful activity related to the forum"). The governing standard is that "[f]or a state to exercise jurisdiction consistent with due process, *the defendant's suit-related conduct* must create a substantial connection with the forum State." *Walden*, 571 U.S. at 284 (emphasis added). Accordingly, the "unilateral activity of … 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). It must be "the defendant himself that create[s] a 'substantial

connection' with the forum State." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) (quoting *McGee v. Int'l Life Ins. Co.*, 355 U.S. 220, 223 (1957)).

Although this is not a stream-of-commerce case, the same underlying principles are instructive here, where petitioners' wastewater allegedly found its way to Alabama through a literal, rather than a metaphorical, stream. In the stream-of-commerce context, personal jurisdiction may not be exercised solely because it was foreseeable that a defendant's products could be sold in the forum state. Justice Kennedy's plurality opinion in *Nicastro* illustrates the problem: The owner of a small Florida farm might sell crops to a large nearby distributor, for example, who might then distribute them to grocers across the country. If foreseeability were the controlling criterion, the farmer could be sued in Alaska or any number of other States' courts without ever leaving town." *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 885 (2011) (plurality opinion). This Court explained in *World-Wide Volkswagen* that "the foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that *the defendant's conduct and connection with the forum State* are such that he should reasonably anticipate being haled into court there." 444 U.S. at 297 (emphasis added).

Due process "require[s] something more than that the defendant was aware of its product's entry into the forum State through the stream of commerce." *Asahi Metal Indus. Co. v. Superior* Court, 480 U.S. 102, 111 (1987) (plurality opinion). Accordingly, defendants that merely place goods into the stream of commerce

cannot be subjected to specific jurisdiction in a forum where those goods happen to be sold, even if it was foreseeable to the defendants that the goods might be sold in that forum. *See id.* at 112 (plurality opinion) ("The 'substantial connection[]' between the defendant and the forum State necessary for a finding of minimum contacts must come about by *an action of the defendant purposefully directed toward the forum State*.") (citations omitted); *Nicastro*, 564 U.S. at 883 (plurality opinion) ("it is the defendant's actions, not his expectations, that empower a State's courts to subject him to judgment").

The Alabama Supreme Court's decision in this case goes even further than the most lenient approach applied by courts in stream-of-commerce cases—the so-called "pure" stream-of-commerce approach—under which foreseeability of sales in the forum state is enough to establish personal jurisdiction. *See, e.g., Align Corp. Ltd. v. Allister Mark Boustred*, 421 P.3d 163, 171 (Colo. 2017). Even that theory requires some presence in the forum state (from a generalized marketing effort or the like). And, of course, the defendant stands to benefit economically from its sales in the forum state when its products enter the stream of commerce. *Asahi Metal*, 480 U.S. at 117 (opinion of Brennan, J.) ("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.").

If mere knowledge or foreseeability does not establish personal jurisdiction in the stream-of-commerce context, where defendants at least benefit

financially from the sale of their products in the forum state, jurisdiction certainly should not lie here, where petitioners' suit-related conduct has no relationship with Alabama, financial or otherwise. Holding, as the Alabama Supreme Court did, that being able to foresee the result of a third party's future actions is the same thing as purposefully targeting the forum state cannot be squared with this Court's precedent.

B. The same rule applies to intentional tort cases.

This Court's decision in *Calder v. Jones*, 465 U.S. 783 (1984), has been the wellspring of many an error, including the Alabama Supreme Court's error here. Contrary to common (but incorrect) belief, *Calder* did not establish a separate rule of personal jurisdiction for intentional tort cases. *Walden* is clear on this point.

In *Calder*, the plaintiff brought a libel suit in California against a reporter and editor who worked for the *National Enquirer* magazine in Florida and who had worked on an article about actress Shirley Jones. The Enquirer sold 600,000 copies of its magazine in California, which was "almost twice the level of the next highest State." 465 U.S. at 785. Jurisdiction in California was consistent with due process because of the defendants' multiple contacts with the State of California: their article "impugned the professionalism of an entertainer whose television career was centered in California," "was drawn from California sources," and caused harm that "was suffered in California." *Id.* at 788–89. As this Court later explained in *Walden*:

> The crux of *Calder* was that the reputation-based "effects" of the alleged libel connected the defendants to California, not just to the plaintiff. The strength of that connection was largely a function of the nature of the libel tort …. Indeed, because publication to third persons is a necessary element of libel, the defendants' intentional tort actually occurred *in* California. In this way, the "effects" caused by the defendants' article—*i.e.*, the injury to the plaintiff's reputation in the estimation of the California public—connected the defendants' conduct to *California*, not just to a plaintiff who lived there. That connection, combined with the various facts that gave the article a California focus, sufficed to authorize the California court's exercise of jurisdiction.

571 U.S. at 287–88 (citations omitted).

Walden confirms that even when intentional torts are alleged, the jurisdictional analysis turns on the forum-targeting actions of the defendant and not on the conduct of third parties or the effects felt by the plaintiff. The "same principles" apply in the context of an intentional tort. *Id.* at 286. As with other causes of action, "[a] forum State's exercise of jurisdiction over an out-of-state intentional tortfeasor must be based on intentional conduct by the defendant that creates the necessary contacts with the forum." *Id.* (emphasis added).

Walden rejected the theory of personal jurisdiction that the Alabama Supreme Court embraced. This Court held that a Georgia police

officer could not be haled into Nevada court by Nevada plaintiffs based on the officers' alleged Fourth Amendment violations during a search in Georgia. *Id.* at 281–83. The Court held that personal jurisdiction in Nevada was inconsistent with due process because the defendant himself had not created contacts with Nevada:

> 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. at 289.

This passage from *Walden* could have been written with this case in mind. Petitioners have no connection to Alabama. They merely sent their water to Dalton Utilities's treatment plant in Georgia. The latter's unilateral actions allegedly caused the water to flow downstream and to affect plaintiffs in Alabama. "[T]he reality" is that "none of petitioner[s'] challenged conduct"—the disposing of their wastewater—"had anything to do with [the forum] itself." *Id.* at 278. The attenuated, insubstantial connection on which the Alabama Supreme Court relied "improperly attributes" the Alabama contacts of other parties to petitioners in a way that *Walden* forecloses. Without more—and plaintiffs have nothing else—there is no Alabama connection on which specific jurisdiction can be based.

II. The Question Presented Is Important to Businesses.

This Court has recognized the importance of the Constitution's limits on the exercise of personal jurisdiction in enabling businesses to anticipate and manage the forums in which they are subject to litigation. In a system where plaintiffs are able to choose both the forum and the law that applies—and where either or both may be hostile to out-of-state defendants—the Constitution's limitations on specific jurisdiction serve an essential function. They "give[] a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen*, 444 U.S. at 297; *see also Burger King*, 471 U.S. at 475 n.17.

This "[p]redictability is valuable to corporations making business and investment decisions." *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010). For example, "[i]f a business entity chooses to enter a state on a minimal level, it knows that under the relationship standard, its potential for suit [in a State] will be limited to suits concerning the activities that it initiates in the state." Carol Rice Andrews, *The Personal Jurisdiction Problem Overlooked in the National Debate About "Class Action Fairness,"* 58 S.M.U. L. Rev. 1313, 1346 (2005). As this Court has recognized, businesses should be on "clear notice" regarding where they are subject to suit so they "can act to alleviate the risk of burdensome litigation," including by "severing [their] connection" with states where the risks of litigation and expected costs on

customers "are too great." *World-Wide Volkswagen*, 444 U.S. at 297.

Permitting manufacturers to be sued wherever their operations may have some minimally foreseeable effect will create substantial uncertainty and lead to burdensome litigation. Whether an out-of-state defendant can be subject to personal jurisdiction under this new regime will turn on the defendant's knowledge about the effects of its conduct. But figuring out the extent of a defendant's knowledge—and tougher still, at what point the defendant had that knowledge—will likely require dueling affidavits and burdensome jurisdictional discovery. The inquiry will be complicated in even the best of cases. Requiring businesses to guess about whether an alleged forum-state effect will be deemed foreseeable enough will undermine the certainty and predictability that businesses value and the law requires. *See Nicastro*, 564 U.S. at 885 (explaining that "[j]urisdictional rules should avoid the[] costs [of unpredictability] whenever possible").

The Court need not think far beyond the facts of this case to see the obvious problems. The Alabama Supreme Court characterized this case as a "unique situation," Pet. App. 30a, but in truth it is anything but. Just like petitioners, thousands of businesses nationwide work with chemicals and then discharge their wastewater to public facilities (known as "publicly operated treatment works") for treatment. *See* 40 C.F.R. § 403.8. To ensure that those facilities are not overwhelmed, and that EPA-regulated toxic chemicals do not pass through them, businesses must comply with certain EPA-established pretreatment

guidelines for toxic chemicals. *See* 33 U.S.C. § 1317(b) (existing sources) & (c) (new sources). The federal regulations thus serve a balance of objectives designed to protect the public and handle the large amounts of wastewater that are generated every year.

Significantly, because PFCs are not designated as "toxic pollutants" by the EPA, *see* 40 C.F.R. § 401.15, petitioners had no obligation to pretreat the wastewater or to remove the PFCs *before* sending their wastewater to Dalton Utilities. Petitioners complied with the law. What happened to the water after that point was, as a matter of law and of fact, not petitioners' responsibility or within their control. Under the Alabama Supreme Court's theory, however, even a company that lawfully discharges wastewater containing a non-toxic chemical (or a permissible amount of a toxic chemical) can be haled into court *anywhere* downstream from the final point of discharge, even if a third party chooses the final point of discharge and effectuates that discharge.

This case illustrates these concerns. Dalton Utilities's discharge ran into the Conasauga River, which eventually flows into the Coosa River, which travels through Gadsden and Centre, where plaintiffs are located. But the water does not stop there. The Coosa joins with the Tallapoosa to form the Alabama River, which joins with the Tombigbee to form the Mobile, which flows into Mobile Bay, which empties into the Gulf of Mexico, relatively close to both Florida and Mississippi. Under the decision below, it is unclear if anything would stop plaintiffs in coastal communities in those states from haling petitioners into court there by alleging that they too have been

harmed by petitioners' PFC-containing water. Water is transient by its very nature, *cf.*, *United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 134 (1985) ("[w]ater moves in hydrologic cycles"), so predicating personal jurisdiction on the "foreseeability" of where water might flow opens up nearly unlimited possibilities.

The causal chain in any particular case may or may not be more attenuated than the one relied on by the Alabama Supreme Court. But how long of a causal chain is too long? The opinion below provides no answer, which is another reason why "foreseeability" is not an appropriate touchstone for establishing personal jurisdiction. Our legal system cannot operate fairly if jurisdiction relies on such an indeterminate and attenuated test.

CONCLUSION

The Court should summarily reverse the Alabama Supreme Court's judgment or grant the petition for certiorari for plenary consideration.

Respectfully submitted,

Daryl L. Joseffer
Jonathan D. Urick
U.S. CHAMBER LITIGATION CENTER
1615 H Street NW
Washington, DC 20062
(202) 659-6000

Charles C. Correll, Jr.
KING & SPALDING LLP
101 Second Street
San Francisco, CA 94105
(415) 318-1200

Jeffrey S. Bucholtz
Ashley C. Parrish
Counsel of Record
I. Cason Hewgley IV
KING & SPALDING LLP
1700 Pennsylvania Ave. NW
Washington, DC 20006
(202) 737-0500
aparrish@kslaw.com

Counsel for Amici Curiae the Chamber of Commerce of the United States of America, the Georgia Chamber of Commerce, and the National Federation of Independent Business

September 28, 2020