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 A Writ Of Certiorari To The Supreme Court of Alabama

REPLY BRIEF FOR PETITIONERS

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RULE 29.6 STATEMENT

The corporate disclosure statements included in the petition for a writ of certiorari remain accurate.

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REPLY BRIEF FOR PETITIONERS

Respondents' opposition brief confirms that this Court should grant the petition and summarily reverse the Alabama Supreme Court. Their brief all but ignores the fundamental flaw in the decision below—the Alabama Supreme Court attributed to petitioners the unilateral activity of a third party, Dalton Utilities, and held that petitioners were subject to personal jurisdiction in Alabama on that basis. Respondents do not contend that petitioners directed or controlled Dalton Utilities' treatment and disposal of the PFC-containing wastewater. And without Dalton Utilities' unilateral conduct, there would be no connection whatsoever between petitioners and Alabama. By holding that Dalton Utilities' conduct established personal jurisdiction over petitioners, the Alabama Supreme Court repeated the exact error this Court reversed in *Walden v. Fiore*, 571 U.S. 277 (2014), and defied this Court's well-settled precedent, warranting summary reversal.

Alternatively, this Court should grant plenary review to decide whether personal jurisdiction can be based on a defendant's mere knowledge that its out-of-state conduct will have in-state effects. Respondents repeatedly mischaracterize the opinion below as rejecting a mere knowledge test. But in respondents' own words, the Alabama Supreme Court held that "continuing to engage in tortious conduct out-of-state despite knowing it would impact the forum state evinces a purposeful direction of tortious conduct to the forum state." Opp. 17. That holding deepened an existing conflict between federal courts of appeals and state supreme courts and cannot be reconciled with *Walden*.

The amicus brief from the U.S. Chamber of Commerce, the Georgia Chamber of Commerce, and the National Federation of Independent Business confirms that the question presented here is important and recurring, and that the ruling below threatens serious consequences to the nation's business community. This Court should grant review.

REASONS FOR GRANTING THE PETITION

I. RESPONDENTS CANNOT DEFEND THE ALABAMA SUPREME COURT'S HOLDING PREMISING PERSONAL JURISDICTION ON THE UNILATERAL ACTIONS OF A THIRD PARTY.

Respondents offer no serious defense of the Alabama Supreme Court's holding permitting the exercise of personal jurisdiction over petitioners based on the unilateral activity of a third party, Dalton Utilities. Because that holding defies this Court's well-settled precedent, the Court should summarily reverse. *See* Pet. 9-14.

For more than sixty years, this Court has consistently held that specific personal jurisdiction must be based on the *defendant's* contacts with the forum, not the plaintiff's contacts or those of a third party. *See*, *e.g.*, *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). Accordingly, this Court reversed the Ninth Circuit in *Walden* because it "improperly attribute[d]" another party's "forum connections to the defendant and ma[de] those connections 'decisive' in the jurisdictional analysis." 571 U.S. at 289. The Alabama Supreme Court repeated that error here: It held that petitioners are subject to specific personal jurisdiction in Alabama even though their only "contact" with the State depended on the unilateral activity of Dalton Utilities. *See* Pet. 10. But for

Dalton Utilities' independent conduct—treating and applying PFC-containing wastewater on land near the Conasauga River—*none* of the PFCs would have migrated into the Conasauga or flowed downstream into Alabama.

Respondents do not dispute that "Dalton Utilities' acceptance and disposal of the wastewater on the [land application system]" played the decisive role in petitioners' supposed contacts with Alabama. Opp. 25-26. Nor do they suggest that Dalton Utilities' conduct was anything other than unilateral and independent: Dalton Utilities acted in accordance with a wastewater treatment plan authorized by the Georgia Department of Natural Resources, Pet. App. 48a (Sellers, J., dissenting); petitioners neither controlled nor directed its conduct. And respondents' discussion of *Walden* studiously ignores the key point that personal jurisdiction "must arise out of contacts that the 'defendant *himself*' creates with the forum State," not out of "contacts between the plaintiff (or third parties) and the forum State." 571 U.S. at 284; *see* Opp. 27-29.

Instead, respondents simply parrot the Alabama Supreme Court's finding that petitioners' "alleged continual discharge of PFC-laden wastewater to Dalton Utilities, despite knowing they would persist treatment, was 'expressly and directly aimed . . . not only at Dalton Utilities or the [land application system] in Georgia but also at Alabama.'" Opp. 28 (quoting Pet. App. 42a). They even endorse the Alabama Supreme Court's conclusion that "Dalton Utilities' inability to remove PFCs was foreseeable to [p]etitioners." *Id.* at 31-32. But under this Court's well-settled precedent, neither knowledge of a third-party's unilateral activity nor the foreseeability of

that activity can establish personal jurisdiction. *See Walden*, 571 U.S. at 289 (knowledge); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980) (foreseeability).

Here, there is no dispute about the relevant factual allegations that gave rise to the Alabama Supreme Court's jurisdictional finding. According to respondents' allegations, which were "construed as true at this stage in the litigation," Opp. 31, the *sole* action petitioners took was to send PFC-containing wastewater for treatment by Dalton Utilities in Georgia, *see*, *e.g.*, Pet. App. 133a-134a, 139a; Opp. 3 ("Dalton chemical suppliers and carpet manufacturers discharge their post-manufacturing wastewater into Dalton Utilities' wastewater treatment system where it is subsequently applied onto a land application sprayfield"). On those undisputed facts, the Alabama Supreme Court's holding directly conflicts with this Court's clear and well-settled precedent, warranting summary reversal.

Summary reversal is particularly appropriate in light of the grave federalism concerns created by the decision below. *See* Pet. 13-14. Those concerns are not merely that Alabama courts might apply Alabama law to "out-of-state conduct," Opp. 25, but that they might apply Alabama law to the conduct of an instrumentality of a Georgia municipality operating as authorized by a Georgia agency. This Court should summarily reverse to prevent that interference with Georgia's sovereignty.

II. RESPONDENTS OFFER NO PERSUASIVE ARGUMENT AGAINST PLENARY REVIEW OF THE ALABAMA SUPREME COURT'S HOLDING THAT SPECIFIC JURISDICTION CAN BE BASED ON MERE KNOWLEDGE OF IN-STATE EFFECTS.

If the Court does not summarily reverse the judgment below, it should grant plenary review. The Alabama Supreme Court's holding that petitioners are subject to personal jurisdiction merely because they knew that their out-of-state conduct had in-state effects deepened a split among federal courts of appeals and state supreme courts and conflicts with this Court's decision in *Walden*.

A. Respondents Cannot Avoid The Split Over Whether Knowledge Of In-State Effects Suffices For Personal Jurisdiction.

Respondents do not dispute that the Second, Seventh, and Tenth Circuits, as well as the Texas Supreme Court, have held that specific jurisdiction cannot be premised on a defendant's mere knowledge that its out-of-state conduct would have in-state effects. *See* Pet. 16-19; Opp. 17 ("Petitioners' cases . . . acknowledged that more than mere knowledge of an injury in the forum state was required."). Because the Alabama Supreme Court, following the Ninth Circuit and other state courts, held that petitioners were subject to specific jurisdiction in Alabama merely because they knew (or should have known) that their out-of-state conduct would cause harm in Alabama, the court below deepened an existing circuit split. *See* Pet. 19-20.

Respondents attempt to wave away that split by mischaracterizing the Alabama Supreme Court's holding—as well as other cases on both sides of the

split. They say that "none of the courts in any of the cases . . . held that mere knowledge was sufficient." Opp. 9. But that is exactly what the Alabama Supreme Court and the cases on which it relied held. *See*, *e.g.*, Pet. App. 41a (petitioners "purposefully directed their actions at Alabama" by "knowingly discharging PFC-containing chemicals in their industrial wastewater, . . . knowing that the PFCs would end up in the Coosa River, which flows into Alabama"). Those courts may have rejected "foreseeability alone," Opp. 14, but—in respondents' own words—they "held that continually engaging in conduct known to cause injury in the forum state constitutes purposeful direction towards that forum thereby satisfying specific personal jurisdiction," *id.* Those holdings squarely conflict with the rule applied in other courts. *See*, *e.g.*, *Charles Schwab Corp. v. Bank of Am. Corp.*, 883 F.3d 68, 87-88 (2d Cir. 2018) (no personal jurisdiction merely "because defendants surely knew that the brunt of th[e] injury would be felt by plaintiffs like Schwab in California"); *Old Republic Ins. Co. v. Cont'l Motors, Inc.*, 877 F.3d 895, 907 (10th Cir. 2017) (requiring conduct "expressly aimed at the forum state" *and* "knowledge that the brunt of the injury would be felt in the forum state").

Respondents are thus incorrect in asserting that the "differences in outcome are due to different facts," rather than the application of different legal rules. Opp. 20. To be sure, the decision below—like *Pakootas v. Teck Cominco Metals, Ltd.*, 905 F.3d 565 (9th Cir. 2018), and *Triad Hunter, LLC v. Eagle Natrium, LLC*, 132 N.E.3d 1272 (Ohio Ct. App.

2019)—involves water.[1] But that fact makes no constitutional difference. *Cf. BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1558-59 (2017) (due process constraint applying to general jurisdiction "does not vary with the type of claim asserted or business enterprise sued"). Nor does it render the circuit split illusory: The broadcast signals at issue in *TV Azteca v. Ruiz*, 490 S.W.3d 29, 44 (Tex. 2016), reached Texas for the same reason that water in the Conasauga River reaches Alabama: by "following the law of physics." Yet the mere fact that the defendants "*knew* their broadcasts would reach Texas homes" was not enough. *Id.* at 45.

Respondents' assertion that the out-of-state conduct in the cases on the other side of the split was "aimed at nowhere in particular" is unavailing. Opp. 20. Each case rejected the argument the Alabama Supreme Court accepted, that out-of-state conduct was aimed at the forum state merely because the defendant knew it would have an effect there. In *Old Republic*, for example, the Tenth Circuit held that the defendant did not aim its conduct at Colorado even though it "knew . . . that any harmful effects of [its] publications" on the plaintiff "would be felt in

[1] Respondents note that this Court denied certiorari in *Pakootas*. Opp. 13. But the petition in that case was filed before the decision below confirmed the existence of a circuit conflict over whether mere knowledge is enough. *See* Pet. 19 n.1. The petition mistakenly attributed *Triad Hunter* to the Ohio Supreme Court, rather than the Ohio Court of Appeal. *Triad Hunter* nonetheless confirms the importance of the circuit split and reflects confusion over the question presented in lower courts.

Colorado." 877 F.3d at 917.[2] And respondents do not even attempt to offer a meaningful distinction between "inadvertently straying TV signals that spill over to the neighboring state" and discharging PFCs that eventually "migrate" into the neighboring state. Opp. 20.

B. Respondents Cannot Justify The Decision Below As Consistent With *Walden*.

Respondents' efforts to square the decision below with this Court's opinion in *Walden* fare no better.

Recognizing that *Walden* demands "more than knowledge of an in-state injury," Opp. 27, respondents defend the decision below by mischaracterizing it. The Alabama Supreme Court indeed held that petitioners' "conduct constituted a purposeful direction of tortious activates towards Alabama." *Id.* at 26. But the sole basis for that holding, as respondents acknowledge, was "[p]etitioners' alleged continual discharge of PFC-laden wastewater to Dalton Utilities, despite knowing they would persist treatment" and end up in Alabama. *Id.* at 28. That the Alabama Supreme Court equated mere knowledge with purposeful direction does not justify the court's holding, but demonstrates its error. *See* Pet. 21-22. And even if petitioners' alleged discharge of PFC-containing wastewater to Dalton Utilities was "intentional," Opp. 28, there is no basis for concluding

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[2] Respondents incorrectly assert that the Tenth Circuit "refuted that allegation based on the evidence before the court." Opp. 18 n.7. To the contrary, the court "resolve[d] all factual disputes in favor of the plaintiff"; the plaintiff's allegations about defendants' knowledge were legally insufficient, not factually unsupported. *Old Republic*, 877 F.3d at 903.

that petitioners intended or desired Dalton Utilities to treat and dispose of the wastewater in such a way that it ended up in the Coosa River in Alabama. Agreeing with respondents, the court below held that Dalton Utilities' alleged conduct was "foreseeable," not that it was intended, directed, controlled, or even desired by petitioners. Pet. App. 29a.

The Alabama Supreme Court's holding that the alleged torts occurred "in Alabama" for purposes of the State's long-arm statute does not reconcile this case with *Walden*. Pet. App. 39a-40a. As respondents note, that holding was premised on the fact that the alleged "injury occurred" in Alabama. Opp. 29. But the same was true in *Walden*, which 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." 571 U.S. at 290-91. And although respondents contend that an element of some of their claims occurred in Alabama because that is where their property is located, *see* Opp. 29-30, the Alabama Supreme Court's decision did not rely on that theory. And unlike in *Calder v. Jones*, 465 U.S. 783 (1984), where the defendants published the allegedly defamatory article in California, petitioners here took no action whatsoever in Alabama.

Finally, *City of Milwaukee v. Illinois*, 451 U.S. 304 (1981), provides no support for the Alabama Supreme Court's holding. In one sentence of dicta, the Court noted its "agree[ment] that, given the existence of a federal common-law claim at the commencement of the suit, . . . personal jurisdiction was properly exercised." *Id.* at 312 n.5. But the Court did not provide any reasoning in support of that statement. *See id.* And that case is distinguishable because the

defendant itself, rather than a third party, caused "the discharge of sewage directly into Lake Michigan or tributaries leading into Lake Michigan." *Id.* at 308-09.

C. Respondents' Alleged Vehicle Problems Are Meritless.

Respondents' assertions (Opp. 21-25) that this case is a poor vehicle to resolve the question presented are unpersuasive.

Far from being a parochial issue of importance only to the parties, the question whether an out-of-state defendant can be haled into a forum merely because it knows that its out-of-state conduct will have effects there has wide-ranging significance—as demonstrated by the *amici curiae* brief. *See* Amici Br. 12-15. Although this particular case involves alleged contamination "of a river flowing in one direction," there is no way to cabin the mere knowledge test to cases involving "mother nature." Opp. 24-25. And even if there were, that would not make the test "predictable." *Id.* at 24. Air pollution and broadcast signals are also governed by "mother nature"—and rivers eventually reach the sea. *See* Amici Br. 14-15.

That the opinion below is a plurality decision, Opp. 21-22, neither poses an obstacle to this Court's review nor diminishes the importance of the question presented. Respondents do not suggest that there are any disputed facts or alternative grounds for affirming the judgment below. *See* Pet. 27. And while as a formal matter plurality opinions of the Alabama Supreme Court bind only the parties, as a practical matter they are not so limited. Here, for example, both the Alabama Supreme Court and the trial courts relied on *Hinrichs v. General Motors of Canada, Ltd.*, 222 So. 3d 1114 (Ala. 2016), *see*, *e.g.*, Pet. App. 25a,

40a, 53a-55a, 78a-79a, even though—as respondents point out—that too was a plurality opinion, *see* Opp. 22. This Court often reviews plurality opinions and similarly non-precedential unpublished opinions. *See*, *e.g.*, *Alice Corp. Pty. v. CLS Bank Int'l*, 573 U.S. 208, 215-16 (2014) (plurality opinion); *Mont v. United States*, 139 S. Ct. 1826, 1831 (2019) (unpublished opinion). That is because opinions with limited precedential effect can still, as here, implicate circuit splits and raise nationally important questions.

Finally, respondents' assertion that this case "involves a state court's interpretation of a state statute" is incorrect. Opp. 22. As the decision below notes, Alabama's long-arm statute "extends to the limits of due process," Pet. App. 39a, so the question presented is a constitutional question, not a statutory question. *See*, *e.g.*, *BNSF*, 137 S. Ct. at 1558 (where defendant did not contest that it was subject to personal jurisdiction as a matter of Montana law, this Court "inquire[d] whether the Montana courts' exercise of personal jurisdiction under Montana law comport[ed] with the Due Process Clause of the Fourteenth Amendment"). This Court routinely grants review in personal jurisdiction cases where the relevant long-arm statue extends as far as the Constitution allows. *See*, *e.g.*, *Walden*, 571 U.S. at 283; *Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014).

III. RESPONDENTS PROVIDE NO REASON WHY THIS COURT SHOULD NOT HOLD THIS PETITION PENDING *FORD MOTOR CO. V. MONTANA EIGHTH JUDICIAL DISTRICT COURT*.

Respondents offer no persuasive reason why this Court should not, at a minimum, hold this petition for *Ford Motor Co. v. Montana Eighth Judicial District Court*, No. 19-368. Contrary to respondents'

assertion, the question presented in *Ford* about the proper application of the "arise out of or relate to" prong is also at issue in this case. Opp. 31. The Alabama Supreme Court passed upon that question, as it had to do to hold that petitioners are subject to specific personal jurisdiction. *See* Pet. App. 40a & n.12. And although *Ford* involves "products liability," that does not suggest that the decision will be categorically "inapplicable" here. Opp. 31.

Respondents contend that the Alabama Supreme Court already held that petitioners "were both the 'but-for' and proximate cause of the alleged harm." Opp. 32. Not so. The plurality did not even decide whether to adopt a "but-for" test; it merely explained that *if* it were to do so, it would hold that petitioners were the but-for cause of the alleged torts. Pet. App. 40a n.12. And the plurality reasoned that *both* the cases on which petitioners relied *and* their "defense that the wastewater was transferred to and treated by Dalton Utilities" were "inapplicable." *Id.* at 29a. In any event, because the decision in *Ford* will likely clarify the "arises out of or relates to" prong, this Court should hold this petition if it does not summarily reverse or grant plenary review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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