No. 20-510

In The
Supreme Court of the United States

IQVIA, INC.,

Petitioner,

v.

FLORENCE MUSSAT, M.D., S.C.,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF OF ATLANTIC LEGAL FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICUS CURIAE*[1]

Founded in 1977, the Atlantic Legal Foundation is a national, nonprofit, public interest law firm whose mission is to advance the rule of law and civil justice by advocating for individual liberty, free enterprise, property rights, limited and efficient government, sound science in judicial and regulatory proceedings, and school choice. With the benefit of guidance from the legal scholars, corporate legal officers, private practitioners, business executives, and prominent scientists who serve on its Board of Directors and Advisory Council, the Foundation pursues its mission by participating as *amicus curiae* in carefully selected appeals before the Supreme Court of the United States, federal courts of appeals, and state supreme courts.

For the civil justice system to be fair, the due process principles governing personal jurisdiction should be the same regardless of whether an individual, mass-action, or class-action suit is filed in federal or state court. The Court's decision in *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773 (2017), raised, but did not address, the enormously important due process question of

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[1] Petitioner's and Respondent's counsel of record were provided timely notice in accordance with Supreme Court Rule 37.2(a), and have consented to the filing of this brief. In accordance with Supreme Court Rule 37.6, *amicus curiae* Atlantic Legal Foundation certifies that no counsel for a party authored this brief in whole or part, and that no party or counsel other than the *amicus curiae* and its counsel made a monetary contribution intended to fund preparation or submission of this brief.

whether the same, well-established, principles of specific jurisdiction (sometimes called case-linked jurisdiction) applied by the Court in *Bristol-Myers* also govern exercise of specific jurisdiction over the claims of putative, out-of-state class members in federal class actions. Review should be granted because this appeal presents the Court with an ideal opportunity to answer this crucial question.

Applying "settled principles regarding specific jurisdiction," the Court held in *Bristol-Myers* that a California state court lacked personal jurisdiction over claims asserted by named nonresident plaintiffs against a corporate defendant in mass (i.e., aggregate) product liability litigation because "what is missing . . . is a connection between the forum and the specific claims at issue." 137 S. Ct. at 1781. As Justice Sotomayor noted in her dissenting opinion, however, the majority did not "confront the question whether its opinion . . . would apply to a class action in which a plaintiff injured in the forum State seeks to represent a nationwide class of plaintiffs, not all of whom were injured there." *Id.* at 1789 n.4 (Sotomayor, J., dissenting). (Although not presented here, the majority also left "open the question whether the Fifth Amendment imposes the same restrictions on the exercise of personal jurisdiction by a federal court." *Id.* at 1784; *see* Pet. at 15 n.3.)

The far-reaching class-action question raised by Justice Sotomayor but unanswered in *Bristol-Myers* not only has created a gaping void in the Court's personal jurisdiction jurisprudence, but also has sparked tremendous debate among courts, litigants, and legal scholars. In particular, during the past

three years, there has been widespread disagreement among the nation's district courts concerning the applicability of *Bristol-Myers* to federal class actions. *See* Pet. at 24-25 (citing district court cases). Here, in the court of appeals opinion below, the Seventh Circuit reversed an Illinois federal district court and squarely held that "the principles announced in *Bristol-Myers* do not apply to the case of a nationwide class action filed in federal court under a federal statute." App. 3a; *but see Molock v. Whole Foods Mkt. Grp.*, 952 F.3d 293, 306 (D.C. Cir. 2020) (Silberman, J., dissenting) ("Although the Supreme Court avoided opining on whether its reasoning in the mass action context would apply also to class actions, it seems to me that logic dictates that it does. After all, like the mass action in *Bristol-Myers*, a class action is just a species of joinder . . . . I think that personal jurisdiction over claims asserted on behalf of absent class members must be analyzed on a claim-by-claim basis.").

The frequently recurring question of whether a federal district court in a putative class action filed under Federal Rule of Civil Procedure 23 can exercise specific personal jurisdiction over unnamed nonresident class members' claims—claims over which a district court would have no specific jurisdiction if brought as individual suits—has great practical significance. As this *amicus* brief explains, the uncertainties engendered by this important unresolved issue, and the resultant lower court divisions, have triggered a new wave of class-action gamesmanship by the plaintiffs' bar—including forum shopping for plaintiff-friendly district courts where the claims of absent class members in putative

nationwide class actions are unlikely to be dismissed for lack of personal jurisdiction.

More fundamentally, the fissures in the personal jurisdiction landscape that *Bristol-Myers* has produced among lower federal courts, and between the federal and state judicial systems, undermine "the principles of interstate federalism embodied in the Constitution." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980).

Amicus curiae Atlantic Legal Foundation urges the Court to grant certiorari and hold that the principles of specific personal jurisdiction applied in *Bristol-Myers* govern federal courts (and also state courts) in connection with nonresident class members' claims that neither arise out of nor relate to the defendant's conduct in the forum state.

SUMMARY OF ARGUMENT

Although *Bristol-Myers Squibb v. Superior Court* quickly achieved landmark status, the Court relied on a "straightforward application . . . of settled principles of personal jurisdiction" to hold that state courts cannot exercise specific personal jurisdiction over nonresident plaintiffs' claims if there is no "'affiliation between the forum and the underlying controversy.'" *Bristol-Myers*, 137 S. Ct. at 1781, 1783 (quoting *Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915, 919 (2011)); *see also Walden v. Fiore*, 571 U.S. 277, 284 (2014) ("For a State to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a substantial connection with the forum State."). "When there is no such connection, specific jurisdiction is lacking regardless

of the extent of a defendant's unconnected activities in the State." *Bristol-Myers*, 137 S. Ct. at 1781. The Court repeatedly has recognized that "[t]he inquiry into the 'minimum contacts' necessary to create specific jurisdiction," *Walden*, 571 U.S. at 277, "protects the liberty of the nonresident defendant," *id.* at 290 n.9, by ensuring that "'maintenance of the suit does not offend traditional notions of fair play and substantial justice.'" *Id.* at 283 (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotation marks omitted)).

"[N]othing in the Constitution would prevent Congress from authorizing a federal court to exercise specific personal jurisdiction over claims in [a] nationwide class action . . . . *But Congress has done no such thing*." *Molock*, 952 F.3d at 308 (Silberman, J., dissenting) (emphasis added). Instead, through Federal Rule of Civil Procedure 4(k), Congress has elected to make the personal jurisdiction of federal district courts in almost all cases coextensive, i.e., no more extensive, than that of state courts. *See Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014) (citing Fed. R. Civ. P. 4(k)(1)(A)); Pet. at 14-18. As a result, "a district court's analysis of personal jurisdiction in a civil action will be identical to the Fourteenth Amendment inquiry undertaken by the relevant state court." *Molock*, 952 F.3d at 308 (Silberman, J., dissenting).

"In other words, except in cases where Congress says otherwise, Rule 4(k) applies the Fourteenth Amendment's limitation on state courts' personal jurisdiction to the federal courts. And those limitations now include the relatedness requirements

of *Bristol-Myers*." Andrew D. Bradt and D. Theodore Rave, *Aggregation on Defendants' Terms: Bristol-Myers Squibb and the Federalization of Mass-Tort Litigation*, 59 B.C. L. Rev. 1251, 1287 (2018). The same limitations, which require a substantial connection between each individual's claims and the defendant's forum conduct, should govern the personal jurisdiction of federal district courts in putative class actions that purport to encompass nonresident members. Although "logic dictates" the correctness of this proposition, *Molock*, 952 F.3d at 306 (Silberman, J., dissenting), *Bristol-Myers* left open the question of the requirements for specific jurisdiction over "a nationwide class of plaintiffs, not all of whom were injured" in the forum state. *Bristol-Myers*, 137 S. Ct. at 1789 n.4 (Sotomayor, J., dissenting).

In the wake of *Bristol-Myers*, numerous district courts are split on the applicability of that decision to certification of putative nationwide classes in federal class actions filed under Rule 23. Because Rule 23(f) interlocutory review of class certification rulings (or their functional equivalents) is difficult to obtain in most circuits, and a large majority of federal class actions settle prior to trial, the Seventh Circuit's holding that *Bristol-Myers* is inapplicable to federal class actions will continue to reverberate throughout the nation unless and until reviewed and reversed by this Court.

Absent Supreme Court review, opportunistic lawyers seeking to file nationwide class actions on a wide variety of state and/or federal causes of action will forum shop for federal district courts that are

willing (and within the Seventh Circuit, *required*) to exercise personal jurisdiction over the claims of absent, unnamed, class members who otherwise could not establish personal jurisdiction on their own. And insofar as multi-million dollar, nationwide class actions continue to be filed in plaintiff-friendly state courts, corporate defendants will have to decide whether—contrary to the objectives of the federal Class Action Fairness Act—to submit to state-court class-action abuses by refraining from removing the litigation to federal district court, *see* 28 U.S.C. § 1453(b), where according to the Seventh Circuit, *Bristol-Myers*' personal jurisdiction limitations on nonresident class members' claims do not apply. Regardless of whether such a putative national class action proceeds in federal or state court, it will undermine interstate federalism by enabling a single state's courts to usurp the personal jurisdiction and adjudicatory authority of 49 other coequal states.

ARGUMENT

A. Review is needed to secure uniformity of decision regarding the effect of *Bristol-Myers* on federal class actions

The growing divisions among lower courts regarding whether, or how, *Bristol-Myers* applies to Rule 23 class actions is reason enough for this Court to grant review.

According to a comprehensive survey of post-*Bristol Myers* federal district court cases, as of November 2019:

- 104 district court rulings "considered at least to some extent the possibility that *BMS* [*Bristol-Myers Squibb*] could affect the propriety of exercising personal jurisdiction over a defendant with respect to out-of-state unnamed class members";
- 64 of these rulings, issued by 56 federal district judges across 24 districts, "reached a firm conclusion [on] the question of *BMS*'s application to unnamed class members";
- 47 judges "upheld the exercise of jurisdiction with respect to out-of-state absent class members," and 9 "held the exercise of jurisdiction to be inappropriate."

Daniel Wilf-Townsend, *Did Bristol-Myers Squibb Kill the National Class Action?* Yale L.J. F. 205, 213-14 (Nov. 19, 2020).

Interestingly, "[t]he survey revealed that judges were more likely to rest their holdings on the class/mass distinction [the distinction between named parties and unnamed class members] than on the federal/state distinction." *Id.* at 215; *see also* Michael J. Ruttinger, *Specific Personal Jurisdiction and Nationwide Class Actions*, For The Defense, July 2020, at 33 (following issuance of *Bristol-Myers*, it took district courts "just months to develop a well-defined fault between those courts that reasoned that [p]ersonal jurisdiction in class actions must comport with due process just the same as any other case, and those that distinguished class actions, from 'mass actions' similar to the one in *Bristol-Myers"* (citations and internal quotation marks omitted); Grant McLeod, Comment, *In a Class of Its Own: Bristol-Myers Squibb's Worrisome Application to Class*

Actions, 53 Akron L. Rev. 721, 744-45 (2019) ("In the three years following the [*Bristol-Myers*] opinion, a host of federal district courts . . . have issued differing decisions regarding whether the opinion can be applied to class actions, and to what degree. . . . Three major categories of district court decisions have emerged."); Philip S. Goldberg, Christopher E. Appel, and Victor E. Schwartz, *The U.S. Supreme Court's Paradigm Shift To End Litigation Tourism*, 14 Duke J. of Const. Law & Pub. Policy 51, 77-78 (2019) (discussing district courts' "very different approaches" in light of *Bristol-Myers* to "the key question [of] whether an individual who cannot establish general or specific jurisdiction in a state over the defendant can, nonetheless, be included in a class action in that state").

The paucity of federal court of appeals decisions concerning the effect of *Bristol-Myers* reflects the fact that compared to other types of litigation, district courts play a critical role in the ultimate resolution of federal class actions. Federal Rule of Civil Procedure 23(f) "commits the decision whether to permit interlocutory appeal from an adverse certification decision to 'the sole discretion of the court of appeals.'" *Microsoft Corp. v. Baker*, 137 S. Ct. 1702, 1709-10 (2017) (quoting Fed. R. Civ. P. 23(f) advisory committee note (1998)). With the possible exception of the Seventh Circuit, including in this case, *see* App. 3a-5a (holding that an order striking a class definition is functionally equivalent to an order denying class certification), the courts of appeals have exercised their "'unfettered discretion'" under Rule 23(f) to permit interlocutory appeals, *id.* at 1709 (quoting committee note), sparingly and inconsistently. *See*

Aimee G. Mackay, Comment, *Appealability of Class Certification Orders Under Federal Rule of Civil Procedure 23(f): Toward a Principled Approach,* 96 Nw. U. L. Rev. 755, 793 (2002) ("[A]n ad hoc, non-uniform approach has governed appeals under Rule 23(f)."); 5 James Wm. Moore *et al.*, *Moore's Federal Practice* § 23.88[2](c) (3d ed. 2014) (collecting cases).

Because most circuits rarely grant petitions for interlocutory appeal of class-certification orders (or their functional equivalents), obtaining timely and meaningful review of district court orders concerning application of *Bristol-Myers* to nonresident members of a putative class is problematic. So is appealing such orders following final judgment since the vast majority of class actions are settled following district court class-certification rulings. *See Microsoft*, 137 S. Ct. at 1708 ("Just as a denial of class certification may sound the death knell for plaintiffs, [c]ertification of a large class may so increase the defendant's potential damages liability and litigation costs that he may find it economically prudent to settle and to abandon a meritorious defense.") (internal quotation marks omitted); *see also Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 568 U.S. 455, 485 (2013) (Scalia, J., dissenting)) ("Certification of the class is often, if not usually, the prelude to a substantial settlement by the defendant because the costs and risks of litigating further are so high."); *id.* at 495 n.9 (Thomas, J., dissenting) (referring to "*in terrorem* settlement pressures" following class certification); Fed. R. Civ. P. 23(f) advisory comm. note (1998) ("An order granting certification . . . may force a defendant to settle rather than incur the costs of defending a class action and run the risk of potentially ruinous liability.").

These realities of federal class-action litigation magnify the impact that the Seventh Circuit's ruling may have on other circuits and their district courts, and underscore the need for this Court's immediate review.

B. Review is needed to deter class-action forum shopping

The absence of Supreme Court guidance concerning whether the specific personal jurisdiction limitations imposed in *Bristol-Myers* on nonresident plaintiffs' claims apply in federal class actions encourages both "vertical" and "horizontal" forum shopping to the detriment of the judicial system, litigants, and the public.

Sometimes described as "litigation tourism," forum shopping "is the practice of filing a lawsuit in a location believed to provide a litigation advantage to the plaintiff regardless of the forum's affiliation with the parties or claims." Goldberg et al., *supra* at 52. This Court has endeavored to deter forum shopping at least since *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938), where the Court held that federal courts sitting in diversity cases are bound by federal procedural rules, but must apply state substantive law. *See Hanna v. Plumer*, 380 U.S. 460, 468 (1965) ("discouragement of forum-shopping" is one of the *Erie* rule's aims). Nonetheless, "[t]he practice of forum shopping between state and federal courts is age old." Bradt & Rave, *supra* at 1254.

Class-action plaintiffs traditionally have preferred to pursue or force settlement of their claims in welcoming state courts, while class-action defendants

typically have done everything possible to remove putative state-court class actions to federal court, where Rule 23 class-certification standards apply. But as long as the class-action personal jurisdiction question in *Bristol-Myers* remains unanswered by this Court, litigants will pursue new tactics to avoid, or take advantage of, the Court's holding.

More specifically, the Court previously has "acknowledge[d] the reality that keeping the federal court-door open to class actions that cannot proceed in state court will produce forum shopping." *Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 415 (2010). *Bristol-Myers* has produced exactly this situation: Closing state courthouse doors to nonresidents' aggregate claims where specific jurisdiction over their individual claims is lacking—presumably including the state-court claims of absent members of a putative class—instigates the filing of purported national class actions in federal, rather than state, court.

Insofar as a requirement to establish specific jurisdiction *only* over named plaintiffs' claims is the post-*Bristol-Myers* rule in "a substantial majority of district courts," Wilf-Townsend, *supra* at 207—a rule now bolstered by the Seventh Circuit's opinion in this case—plaintiffs' attorneys will have a significant incentive for clogging the dockets of carefully selected district courts with a steady stream of entrepreneurial national class actions on a broad variety of novel theories and subjects. *See generally* Carlton Fields, P.A., *2020 Class Action Survey: Best Practices in Reducing Cost and Managing Risk in Class Action Litigation* 3 (2020) (companies "are handling a higher

volume of class actions than ever before"); *id.* ("Already, corporate America faces a rising tide of more than 500 new class action matters stemming from the coronavirus outbreak . . . ."); *id.* at 17 (discussing survey participants' "belief that data privacy and security will be the next wave of class actions, resulting from new causes of action created by privacy statutes").

Bristol-Myers also is affecting the litigation strategies of class-action defendants. *See id.* at 42 ("Forty percent of companies identified the Supreme Court's personal jurisdiction decision in *Bristol-Myers Squibb* [more than any other case] as a recent Supreme Court ruling relevant to their management of class actions."). For example, Congress enacted the Class Action Fairness Act of 2005 ("CAFA") because "[s]ome in Congress feared that plaintiffs' lawyers were able to "'game" the procedural rules and keep nationwide or multi-state class actions in state courts whose judges have reputations for readily certifying classes and approving settlements without regard to class member interests.'" *Home Depot U.S.A., Inc. v. Jackson*, 139 S. Ct. 1743, 1752 (2019) (Alito, J., dissenting) (quoting S. Rep. No. 109-14, at 4 (2005)); *see* S. Rep., supra at 10-27 (providing an encyclopedic discussion of state-court class-action abuses); *see also* 28 U.S.C. § 1711 note (CAFA § 2(a)(2), (3) & (4), Pub. L. No. 109–2, 119 Stat. 5 (2005)) (describing state-court class-action abuses, including state courts "keeping cases of national importance out of Federal court" and "acting in ways that demonstrate bias against out-of-State defendants"). Through CAFA, "Congress sought to make it easier for [class-action] defendants to remove to federal court," *id.* at 1753, by

"lower[ing] the barriers to diversity jurisdiction" for class actions, and by including a lenient, class action-specific removal provision, 28 U.S.C. § 1453(b). *Home Depot*, 139 S. Ct. at 1753, 1754 (Alito, J., dissenting).

But now, in light of *Bristol-Myers* and its unanswered class-action specific jurisdiction question, corporate defendants targeted with state-court class actions that aspire to be national in scope are confronted with a dilemma that undermines CAFA's objectives: They can forgo CAFA removal and be forced to litigate or settle in a plaintiff-friendly state court that hopefully (but not necessarily) will respect the personal jurisdiction limitations imposed by *Bristol-Myers*, or they can remove the litigation to a federal district court that may or may not respect these same limitations.

Consider, for example, a $100 million class action filed against a national corporate defendant in Cook, Madison, or St. Clair County, Illinois. Assuming that *Bristol-Myers*' specific jurisdiction principles apply to state-court class actions as well as to state-court aggregate actions, the unfortunate defendant in such a suit currently would have the following choice: (i) attempt to litigate, or be forced to settle, in one of these notorious and perennial "judicial hellholes," *see* American Tort Reform Foundation, *Judicial Hellholes* (2019/2020),[2] or (ii) remove the class action to an Illinois federal district court, where the Seventh Circuit's holding that *Bristol-Myers* does not apply to federal class actions is binding precedent.

[2] Available at https://tinyurl.com/y6phrszf.

Indeed, unless this Court grants certiorari and reverses the Seventh Circuit, district courts in Illinois, Indiana, and Wisconsin will become magnets for forum-shopping class-action plaintiffs who hope to circumvent the personal jurisdiction restrictions that *Bristol-Myers* has placed on state courts. The same will be true for the many additional federal district courts around the nation that already have declined, or in the future may decline, to apply *Bristol-Myers* to class actions. To make matters worse, according to a legal scholar who has studied class action abuses, "[l]oose jurisdictional rules that allow plaintiffs to choose among many potential courts give judges an incentive to be pro-plaintiff in order to attract litigation." Daniel Klerman, *Rethinking Personal Jurisdiction*, 6 J. of Legal Analysis 245, 247 (Winter 2014). "Without constitutional constraints on assertions of jurisdiction, some courts are likely to be biased in favor of plaintiffs in order to attract litigation and thus benefit themselves or their communities." Daniel Klerman & Greg Reilly, *Forum Selling*, 89 S. Cal. L. Rev. 241, 243 (2016).

These types of vertical and horizontal class-action forum-shopping (and any associated "forum-selling") would be abated, however, if this Court grants review and holds that the same personal jurisdiction principles identified in *Bristol-Myers* apply to federal class actions.

C. Review is needed to restore interstate federalism

This Court repeatedly has emphasized that "the reasonableness of asserting jurisdiction over the defendant must be assessed 'in the context of our

federal system of government.'" *World-Wide Volkswagen*, 44 U.S. at 293 (quoting *Int'l Shoe*, 326 U.S. at 317). Under our federal system, the fifty states are "coequal sovereigns," *id.* at 292, and "'[t]he sovereignty of each State . . . implie[s] a limitation on the sovereignty of all its sister States.'" *Bristol-Myers*, 147 S. Ct. at 1780 (quoting *World-Wide Volkswagen*, 444 U.S. at 293) (alterations in original). This "limitation [is] express or implied in both the original scheme of the Constitution and in the Fourteenth Amendment." *World-Wide Volkswagen*, 444 U.S. at 293.

As a result, the Due Process Clause acts as "an instrument of interstate federalism" for purposes of personal jurisdiction "even if the forum State has a strong interest in applying its law to the controversy." *Id.* at 294; *see* A. Benjamin Spencer, *Jurisdiction to Adjudicate: A Revised Analysis*, 73 U. Chi. L. Rev. 616, 624, 637 (2006) ("Interstate federalism refers to the relationship between the states within our federal system, their status as coequal sovereigns, and the limits on state power that derive from that status."). In short, interstate federalism "bars one state from over-reaching and hearing claims that should be heard elsewhere." Goldberg et al., *supra* at 62; *see also* Spencer, *supra* at 624 ("state sovereign authority plays a vital role in limiting the scope of a state's adjudicatory jurisdiction").

Although interstate federalism is the primary concern (even more than convenience to the defendant) underlying Fourteenth Amendment due process limitations on the personal jurisdiction of state courts, *see Bristol-Myers*, 137 S. Ct. at 1779-81,

the same constitutional imperative that each state must respect the sovereignty of the other states should apply with equal force in federal courts. As discussed above, "[t]his is because a federal district court's authority to assert personal jurisdiction in most cases is linked to service of process on a defendant 'who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located.'" *Walden*, 571 U.S. at 283 (quoting Fed. Rule Civ. P. 4(k)(1)(A)). Thus, "'[f]ederal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons.'" *Id.* (quoting *Daimler*, 571 U.S. at 125)); *see* Pet. at 15, 23-24.

Interstate federalism is imperiled, however, where—as currently is the case within the Seventh Circuit and elsewhere around the nation—a federal district court can exercise specific personal jurisdiction over out-of-state class members' claims that otherwise could not be brought as separate suits in the same court. For example, in a product liability class action filed in an Illinois federal district court, why should a defendant that sells its allegedly defective prescription drug throughout the United States arguably be subjected to Illinois tort law with respect to the claims of putative class members who reside in, and allege that they were injured in, a different state—especially if the other state's tort law is significantly different? This is the same question of specific personal jurisdiction that the Court addressed in *Bristol-Myers*, albeit in a California state-court aggregate action, and that the Court indicated implicates interstate federalism concerns. *See* 137 S. Ct. at 178-81. Why would these federalism concerns be any different merely because Illinois tort law is

being applied by an Illinois federal district court rather than by an Illinois state trial court?

Although class actions are a procedural device intended to serve the interests of individual class members, in reality they inure primarily, if not almost entirely, to the financial benefit of contingency-fee lawyers, who look for every occasion to file (or threaten to file) class-action litigation and then coerce multi-million dollar settlements regardless of the merit (or lack of merit) of their claims. *See, e.g.*, S. Rep. No. 109-14, *supra* at 14 (discussing class-action abuse in the form of "settlements in which the attorneys receive excessive attorneys' fees with little or no recovery for the class members themselves"); U.S. Chamber Inst. for Legal Reform, *Unstable Foundation: Our Broken Class Action System and How to Fix It* 6 (Oct. 2017) ("The lack of compensation for consumers, even that are in cases that are settled, contrasts sharply with the benefits reaped by plaintiffs' lawyers.")[3]; Daniel Klerman, *Posner and Class Actions*, 86 U. Chi. L. Rev. 1097, 1098 (2019) ("class lawyers may be tempted to enter into sweetheart deals, which provide ample fees to the lawyers, paltry compensation to class members, and minimal deterrence of future wrongdoing").

In contrast, "'piecemeal litigation,' where claims are heard in their proper states rather than concentrated in a few specific, plaintiff-chosen jurisdictions [is a] more diversified litigation environment [that] can promote fairness, and facilitate each claim being resolved on its own merits."

[3] Available at https://tinyurl.com/y4f6ehb5.

Goldberg et al., *supra* at 81. And even when similar separate suits are filed in federal district courts around the nation, they do not have to proceed in isolation: "When civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings." 28 U.S.C. § 1407 (Multidistrict litigation); *see* Bradt & Rave, *supra* at 1320 ("For the time being, at least, *Bristol-Myers* appears to have laid the groundwork for a stable equilibrium where the major players will view federal multidistrict litigation [MDL] as the best available option for litigating and resolving mass torts. MDL . . . is, indeed, a powerful and flexible tool for resolving disputes that are nationwide in scope."). In view of the availability of multidistrict litigation, federal district courts do not need to exercise personal jurisdiction over nationwide classes.

Interstate federalism will continue to be undermined, however, if any federal district court can assert its coercive power by exercising specific personal jurisdiction over a class-action defendant that is targeted with claims asserted on behalf of a nationwide or multi-state class but unrelated to the defendant's forum conduct. *Cf. Goodyear*, 564 U.S. at 918 (assertion of personal jurisdiction "exposes defendants to the State's coercive power").

To restore interstate federalism as well as uniformity of decision in the federal judicial system, and to deter rather than encourage both vertical and horizontal forum shopping, the Court should grant certiorari and hold that the same specific jurisdiction

principles applied in *Bristol-Myers* to nonresidents' state-court claims also govern specific personal jurisdiction in federal class actions.

CONCLUSION

The Court should grant the Petition for a Writ of Certiorari.

Respectfully submitted,

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