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 Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit**

## BRIEF *AMICUS CURIAE* OF THE PRODUCT LIABILITY ADVISORY COUNCIL, INC. IN SUPPORT OF PETITIONER

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## STATEMENT OF INTEREST[1]

The Product Liability Advisory Council, Inc. (PLAC) is a non-profit professional association of corporate members representing a broad cross-section of American and international product manufacturers.[2] These companies seek to contribute to the improvement and reform of law in the United States and elsewhere, with emphasis on the law governing the liability of manufacturers of products and those in the supply chain. PLAC's perspective is derived from the experiences of a corporate membership that spans a diverse group of industries in various facets of the manufacturing sector. In addition, several hundred of the leading product litigation defense attorneys are sustaining (non-voting) members of PLAC. Since 1983, PLAC has filed more than 1,100 briefs as amicus curiae in both state and federal courts, including this court, on behalf of its members, while presenting the broad perspective of product manufacturers seeking fairness and balance in the application and development of the law as it affects product risk management.

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[1] Pursuant to this Court's Rule 37(2), all parties received timely notice and have consented to the filing of this brief. Letters evidencing such consent have been filed with the Clerk of Court. In accordance with Supreme Court Rule 37.6, *amicus* states that this brief was not authored, in whole or in part, by counsel to a party, and that no monetary contribution to the preparation or submission of this brief was made by any person or entity other than the *amicus* or its counsel.

[2] PLAC's members are identified on its website. https://plac.com/PLAC/Membership/Corporate_Membership.aspx.

## SUMMARY OF ARGUMENT

This Court's decision in *Bristol-Myers* establishes that, under the Fourteenth Amendment, a state cannot exercise specific personal jurisdiction to resolve claims that do not arise from or relate to the defendant's activities in the state. *Bristol-Myers Squibb Co. v. Superior Court,* 117 S. Ct. 1773 (2017). With certain exceptions not applicable here, a federal court's power to exercise personal jurisdiction is coextensive with the power of the state in which it sits. These principles are undisputed, and lead ineluctably to the conclusion that Illinois state and federal courts cannot exercise specific personal jurisdiction over a defendant to adjudicate claims that do not arise from or relate to the defendant's conduct in Illinois.

And yet, the Seventh Circuit held that these principles apply only to claims of "parties" and not to claims of unnamed class members—who, the Seventh Circuit recognized, can in fact be "parties" for some purposes. Nothing in *Bristol-Myers* or this Court's personal jurisdiction jurisprudence supports this conclusion. On the contrary, the interests protected by the Fourteenth Amendment recognized in *Bristol-Myers*—protecting defendants against unreasonable burdens and ensuring that states do not reach out beyond their limits as coequal sovereigns in a federal system—apply equally regardless of whether the claims are those of "parties" or "nonparties." In fact, the Seventh Circuit's decision to the contrary undermines the very interests that the Fourteenth Amendment was designed to protect.

Like many American businesses, PLAC members are routinely forced to defend against nationwide or multi-state class actions. Because this Court has not yet ruled on the issue raised in this case, these businesses are confronted with enormous and potentially ruinous liability to tens or hundreds of thousands of absent class members. The controlling principles, and the substantial harm associated with disregarding those principles, are clear. This Court should grant review.

## STATEMENT OF THE CASE

PLAC accepts Petitioner's Statement of the Case. However, for purposes of the argument that follows, PLAC would like to emphasize the fundamental basis for the Seventh Circuit's decision below: the supposed nonparty status of absent class members for purposes of personal jurisdiction.

The district court, applying this Court's decision in *Bristol-Myers Squibb Co. v. Superior Court,* 117 S. Ct. 1773 (2017), held that it did not have personal jurisdiction to resolve the claims of unnamed class members that were unrelated to the defendant's activities in Illinois. The Seventh Circuit held that the district court, in extending the *Bristol-Myers* approach to unnamed class members, "failed to recognize the critical distinction between this case and *Bristol-Myers*." (Pet. App. 10a.) That "critical distinction" was that all of the plaintiffs in *Bristol-Myers* were named parties to the action, while "[t]he absent class members are not full parties to the case *for many purposes*." (Pet. App. 10a, emphasis added.) While recognizing that absent class members can be parties for some

(unidentified) purposes, the court noted that they are not considered parties for purposes of determining diverse citizenship or venue. (Pet. App. 10a-11a.) The court could see "no reason why personal jurisdiction should be treated any differently from subject-matter jurisdiction and venue: the named representatives must be able to demonstrate either general or specific personal jurisdiction, but the unnamed class members are not required to do so." (Pet. App. 11a.)

That ended the court's discussion of *Bristol-Myers,* and it turned to IQVIA's "second major point: that allowing the non-Illinois unnamed class members to proceed would be inconsistent with Federal Rule of Civil Procedure 4(k), which governs service of process." (Pet. App. 11a.) The Seventh Circuit rejected this argument based on its discussion of *Bristol Myers:*

> It is true that, with certain exceptions [listed in Rule 4(k)], a federal district court has personal jurisdiction only over a party who would be subject to the jurisdiction of the state court where the federal district court is located. But, *as discussed above,* a district court need not have personal jurisdiction over the claims of class members at all.

(Pet. App. 12a, emphasis added.)

## ARGUMENT

### I. PERSONAL JURISDICTION TO RESOLVE A CLAIM DOES NOT DEPEND ON WHETHER THE PERSON ASSERTING THE CLAIM CAN BE CHARACTERIZED AS A PARTY.

1. There are several points on which there is or should be no dispute. Plaintiff's claim under the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, is based on unsolicited faxes that IQVIA allegedly sent to her in Illinois. For this reason, her claims arise out of or relate to Defendant's activities in Illinois, and, under *Bristol-Myers,* the district court had specific personal jurisdiction over IQVIA to resolve her claims. IQVIA may have sent unsolicited faxes to residents of other states—California, for example—but any TCPA claims asserted by such a California resident would not arise from or relate to any conduct by IQVIA in Illinois. If such a California resident sued in state court in Illinois, this Court's decision in *Bristol-Myers* would require dismissal for lack of specific personal jurisdiction, because "all the conduct giving rise to the nonresidents' claims occurred elsewhere." 137 S. Ct. at 405.

The result would be the same if that California resident brought suit in an Illinois federal court instead of Illinois state court. This Court and every Court of Appeals, including the Seventh Circuit, have recognized that federal courts can exercise personal jurisdiction only to the same extent as the courts of the

state in which they sit.[3] The Seventh Circuit reaffirmed that principle in this very case, noting that, with certain exceptions, a federal court has personal jurisdiction under Rule 4(k) "only over a party who would be subject to the jurisdiction of the state court where the federal district court is located." (Pet. App. 12a.)[4]

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[3] *See, e.g., Walden v. Fiore,* 571 U.S. 277, 283, 134 S. Ct. 1115, 1121 (2014) ("Thus, in order to determine whether the Federal District Court in this case was authorized to exercise jurisdiction over petitioner, we ask whether the exercise of jurisdiction 'comports with the limits imposed by federal due process' on the State of Nevada."); *In re Sealed Case,* 442 U.S. App. D.C. 378, 387, 932 F.3d 915, 924 (2019); *United Elec., Radio & Mach. Workers v. 163 Pleasant St. Corp.*, 960 F.2d 1080, 1086 (1st Cir. 1992); *Chloe v. Queen Bee of Beverly Hills, LLC*, 616 F.3d 158, 164 (2d Cir. 2010); *Pennzoil Prods. Co. v. Colelli & Assocs.*, 149 F.3d 197, 200 (3d Cir. 1998); *Mylan Labs., Inc. v. Akzo, N.V.*, 2 F.3d 56, 60 (4th Cir. 1993); *Cycles, Ltd. v. W.J. Digby, Inc.*, 889 F.2d 612, 616 (5th Cir. 1989); *Moore v. Lynch,* 793 F.2d 1292 (6th Cir. 1986); *St. Paul Fire & Marine Ins. Co. v. Courtney Enters.*, 270 F.3d 621, 623 (8th Cir. 2001); *Morrill v. Scott Fin. Corp.*, 873 F.3d 1136, 1141 (9th Cir. 2017); *Far W. Capital v. Towne*, 46 F.3d 1071, 1074 (10th Cir. 1995); *United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1274 (11th Cir. 2009).

[4] In *Bristol-Myers,* this Court left open the question whether the Fifth Amendment imposes the same restrictions as the Fourteenth Amendment on the exercise of personal jurisdiction by a federal court. As the Petition notes, however, this issue is not presented here. Given the Seventh Circuit's recognition that a federal court has personal jurisdiction only over a party who would be subject to the jurisdiction of the state court where the federal district court is located, and uniform case law to this effect, there is no serious dispute that to the extent the Fourteenth Amendment limits a state court's personal jurisdiction it also limits a federal court's personal jurisdiction.

2. Thus, neither Illinois state courts nor Illinois federal courts would have specific personal jurisdiction to resolve the TCPA claims of a California resident who sued in Illinois based on unsolicited faxes received in California. But under the Seventh Circuit's decision in this case, those same Illinois courts *would* have personal jurisdiction to resolve the same claims of that same California resident if that resident were an unnamed class member. According to the Seventh Circuit, the due process limitations on personal jurisdiction apply only to *parties,* and absent class members are not *parties* for purposes of personal jurisdiction—just as they are not parties for purposes of venue and diversity jurisdiction. According to the Seventh Circuit, "we see no reason why personal jurisdiction should be treated any differently from subject matter jurisdiction and venue." (Pet. App. 11a)

But the reason why personal jurisdiction should and must be treated differently from venue and subject matter jurisdiction based on diversity is obvious: both venue and the extent of diversity jurisdiction are set by statute, not by the Fourteenth Amendment. The Fourteenth Amendment does not limit the ability of Congress to decide whether the citizenship of class members should be considered in determining the existence of diversity jurisdiction beyond Article III's minimum-diversity requirement. The Fourteenth Amendment does not restrict the ability of Congress to set the amount in controversy requirements for diversity jurisdiction. And the Fourteenth Amendment does not prevent Congress from establishing which among several appropriate courts is the proper one to hear a suit.

3. But the due process clause of the Fourteenth Amendment *does* limit personal jurisdiction. The Seventh Circuit said nothing that would support its conclusion that the Fourteenth Amendment's due process limitations on personal jurisdiction do not apply when the claims are asserted by (or on behalf of) nonparties. This Court in *Bristol-Myers* discussed *claims,* not parties. This Court recognized that specific jurisdiction "over a claim" arises only there is an affiliation between the forum and the underlying controversy. 176 S. Ct. at 1781. It specifically noted that "[w]hat is needed ... is a connection between the forum and the specific claims at issue." *Id.*

4. Besides, the Seventh Circuit itself recognized that, under this Court's decisions, absent class members *are* considered to be "parties" for some purposes. (Pet. App. 10a.) For example, this Court has recognized that "[n]onnamed class members are … parties in the sense that the filing of an action on behalf of the class tolls a statute of limitations against them." *Devlin v. Scardelletti*, 536 U.S. 1, 10 (2002). In addition, "[n]onnamed class members are parties to the proceedings in the sense of being bound by the settlement." *Id.* "Unnamed class members are also parties for purposes of claim preclusion: 'a judgment in a properly entertained class action is binding on class members in any subsequent litigation.'" *Molock v. Whole Foods Mkt. Grp., Inc.*, 952 F.3d 293, 297 (D.C. Cir. 2020), quoting *Cooper v. Fed. Reserve Bank*, 467 U.S. 867, 874 (1984); *see also Phillips Petroleum Co. v. Shutts,* 472 U.S. 797, 808 (1985) (referring to absent class members as "absent parties").

The Seventh Circuit never explained why absent class members should not be treated as parties for purposes of personal jurisdiction, just as they are treated as parties for purposes of statutes of limitation, claim preclusion and appealing a settlement. It did recognize that "the label 'party' does not indicate an absolute characteristic, but rather a conclusion about the applicability of various procedural rules that may differ based on context." (Pet. App. 10a, quoting *Devlin,* 536 U.S. at 9-10.) And yet, the Seventh Circuit simply attached the "nonparty" label to absent class members with no analysis of why this conclusion was justified in the context of personal jurisdiction.

5. That context—specifically, the interests that the Fourteenth Amendment protects—demonstrates that the Seventh Circuit's conclusion was plainly wrong. The Fourteenth Amendment "protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it acts to ensure 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 Corp. v. Woodson*, 444 U.S. 286, 292 (1980). Both of these interests support treating absent class members as "parties" for purposes of personal jurisdiction.

For example, for purposes of personal jurisdiction, the "'primary concern'" is "'the burden on the defendant.'" *Bristol-Myers,* 137 S. Ct. at 1780. The Fourteenth Amendment would protect this interest even in an action by a single nonresident plaintiff asserting claims under the law of a single state. *See,*

*e.g., World-Wide Volkswagen,* 444 U.S. at 299. It would protect this interest in an action in which 592 nonresidents asserted claims under the laws of 33 states. *Bristol-Myers,* 137 S. Ct. at 1778. And yet, nationwide or multi-state class actions can involve hundreds of thousands or even millions of nonresident, unnamed class members asserting claims under the laws of all 50 states and the District of Columbia. The burden on the defendants in nationwide or multi-state class actions asserting claims of unnamed class members is as great as or greater than the burden that exists in actions asserting claims by named parties. Labeling unnamed class members as "nonparties" undermines the underlying interest protected by the Fourteenth Amendment.

Moreover, even if a defendant would suffer minimal or no inconvenience from being forced to litigate in another state, the "due process clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment." *World-Wide Volkswagen,* 444 U.S. at 294. 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 respective states.'" *Bristol-Myers*, 137 S. Ct. at 1780, quoting *Hanson v. Denckla,* 357 U.S. 235, 251 (1958).

This case happens to be in federal court, and the claims happen to be based on federal law, but the Seventh Circuit's conclusion—that *Bristol-Myers* does not apply to claims asserted by unnamed class members because they are not parties—would apply

equally to class actions filed in state and federal courts asserting claims under laws of other states. Thus, under the Seventh Circuit's decision, state and federal courts in Illinois can arrogate to themselves the power to declare the rights of California residents (or residents of any other state) even though none of the named parties are California residents, none of the claims asserted by the named plaintiffs arise out of conduct in California, and Illinois has no legitimate interest in resolving claims of California residents. Labeling the California residents as nonparties undermines the federalism interest protected by the Fourteenth Amendment.

6. As Petitioner points out, the issue in this case is not whether absent class members are "parties" or "nonparties"; "nonparty" is simply a label attached by the Seventh Circuit to reflect its *ipse dixit* conclusion that "a district court need not have personal jurisdiction over the claims of class members at all." (Pet. App. 12a.) When examined in light of the interests protected by the Fourteenth Amendment, that conclusion was clearly wrong.

## II. APPLICATION OF *BRISTOL-MYERS* TO NATIONWIDE AND MULTI-STATE CLASS ACTIONS IS A RECURRING ISSUE ON WHICH GUIDANCE FROM THIS COURT IS URGENTLY NEEDED.

1. The Petition outlines in great detail the deep division in the district courts on whether *Bristol-Myers* applies to unnamed class members. This division has a significant, adverse impact on defendants in class actions, including PLAC members. As the Petition

notes, one study shows that between 1994 and 2001, 71 percent of federal court class actions had members from more than two states. PLAC's experience suggests that this remains true of a large percentage of class actions filed in more recent years.

2. One typical case is *Garcia v. Harley-Davidson Motor Co.*, No. 19-cv-02054-JCS, 2019 U.S. Dist. LEXIS 199608 (N.D. Cal. Nov. 15, 2019). In that case, one California resident who purchased a motorcycle in California brought an action against a Wisconsin company based on an alleged defect in the motorcycle. That one California plaintiff seeks to represent almost everyone in the United States who purchased the same allegedly defective motorcycles. The defendant moved to dismiss the nationwide class allegations because of the lack of personal jurisdiction. Instead of ruling on the issue, the district court deferred a decision until the class certification stage. One year later the case is still pending with no resolution of the personal jurisdiction issue. If the district court had had the benefit of a decision by this Court, the defendant would not have been forced to spend a year defending against meritless allegations of a nationwide class.

3. *Garcia* is by no means an isolated example. Countless other cases alleging nationwide or multi-state classes have been filed and continue to be filed in states where courts do not have general personal jurisdiction.[5] This creates inordinate pressure on

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[5] Here are just a few examples of recently-filed nationwide or multi-state class actions based on alleged product defects and relying on specific personal jurisdiction: *Lessin v. Ford Motor Co.*, No. 3:19-cv-01082-AJB-AHG, 2020 U.S. Dist. LEXIS 208357 (S.D.

defendants to settle to avoid the risk, however small, of potentially ruinous liability. *See, e.g., AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011) ("Faced with even a small chance of a devastating loss, defendants will be pressured into settling questionable claims.")

4. There is no reason to allow this state of uncertainty to continue to exist. This Court's decision in *Bristol-Myers* establishes that, under the Fourteenth Amendment, a state cannot exercise personal jurisdiction to resolve claims that do not arise from or relate to the defendant's activities in the state. A federal court's power to exercise personal jurisdiction is coextensive with the power of the state in which it sits. These principles are undisputed, and nothing in *Bristol-Myers* or in this Court's jurisprudence suggests that these principles apply only to claims asserted by

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Cal. Nov. 5, 2020) (nationwide); *Short v. Hyundai Motor Co.*, No. C19-0318JLR, 2020 U.S. Dist. LEXIS 193991 (W.D. Wash. Oct. 19, 2020) (nationwide); *Martell v. GM LLC*, No. 3:20-cv-284-SI, 2020 U.S. Dist. LEXIS 185409 (D. Or. Oct. 6, 2020) (nationwide); *Nathan v. Whirlpool Corp.*, No. 3:19-cv-226, 2020 U.S. Dist. LEXIS 183777 (S.D. Ohio Oct. 2, 2020) (nationwide); *Berke v. Whole Foods Mkt.,* No. CV 19-7471 PSG (KSx), 2020 U.S. Dist. LEXIS 184346 (C.D. Cal. Sep. 18, 2020) (multi-state); *Rothschild v. GM LLC*, No. 19-cv-05240 (DLI)(RLM), 2020 U.S. Dist. LEXIS 187300 (E.D.N.Y. Sep. 30, 2020); *Huskey v. Colgate-Palmolive Co.*, No. 4:19-cv-02710-JAR, 2020 U.S. Dist. LEXIS 167911 (E.D. Mo. Sep. 14, 2020) (nationwide); *Bassaw v. United Indus. Corp.*, No. 19-CV-7759 (JMF), 2020 U.S. Dist. LEXIS 157800 (S.D.N.Y. Aug. 31, 2020) (nationwide); *Prescott v. Bayer Healthcare* LLC, No. 20-cv-00102-NC, 2020 U.S. Dist. LEXIS 136651 (N.D. Cal. July 31, 2020) (nationwide); *Noohi v. Kraft Heinz Co.*, No. CV 19-10658 DSF (SKx), 2020 U.S. Dist. LEXIS 171781 (C.D. Cal. July 20, 2020) (nationwide).

"parties." In fact, the Seventh Circuit's decision to the contrary undermines the very interests that the Fourteenth Amendment was designed to protect.

## CONCLUSION

This case raises a fundamental due process issue that will inevitably arise in countless nationwide and multi-state class actions. The lower courts are hopelessly divided on this issue. The petition for a writ of certiorari should be granted.

Respectfully submitted,

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