No. 21-494

In the
Supreme Court of the United States

RALPH LEWIS,

Petitioner,

v.

POWER RESEARCH, INC. AND WANDA DAVIDSON,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Nevada

REPLY BRIEF FOR PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

INTRODUCTION

This case is important to Petitioner. He has a right not to litigate in Nevada—where he has done nothing related to this suit—against his will. But it is also important to litigants around the country. Corporate officers and directors should not be subject to suit in a state unless they have real forum contacts, not just because either the company they work for or the competitor they "harmed" filed its corporate charter in a particular state. The Court should grant certiorari to resolve the deep split about *Calder* and provide a uniform rule for personal jurisdiction that clarifies this Court's precedent.

Respondents hardly deny that there is a deep tripartite split between courts that apply *Calder's* "effects test," courts that entirely reject it, and courts that have modified it. Instead, Respondents claim that the Nevada Supreme Court applied the correct law because Petitioner's case-related actions in Nevada go "far beyond just working for a Nevada company." BIO at 2. But Respondents have nothing to back up that claim. Everything relevant that happened, whether it is the alleged misuse of trade secrets or the allegedly unfair competition, happened either outside Nevada or in another country altogether.

This case is an ideal vehicle to finally lay to rest the *Calder* question. There are no material factual disputes—the jurisdictional point is dispositive—and the split presented deep and adequately percolated. Certiorari should be granted.

REPLY

I. The Nevada Supreme Court's decision deepens a solid split among state courts of last resort and federal courts of appeals.

Respondents do not seriously dispute that there is a substantial and serious split between the Federal courts of appeals and state supreme courts about the viability and scope of *Calder's* "effects test." Nor could it. As the Petition explained, courts have split in at least three ways on whether the *Calder* "effects test" remains (or ever was) good law under *Walden*. Pet. at 10-14.

To set up the most obvious split, the Nevada Supreme Court here held that a court analyzing personal jurisdiction in a "tort action" must "apply the effects test," and analyzed whether Lewis "caused harm" that he "knew was likely to be suffered in the forum state." App. 4-5 (internal quotations omitted). But the Texas Supreme Court directly refused to "adopt the effects test," and announced the test was not "an alternative" to the traditional minimum contacts test. *Old Republic Nat. Title Ins. Co. v. Bell*, 549 S.W.3d 550, 564 (Tex. 2018). "Even if a tort was committed" and "even if" the defendant "knew her actions would cause an injury in Texas," that was not enough for purposeful availment. *Id.* The gap between those two conceptions of personal jurisdiction law is yawning—this is no mere instance of an "incorrect label" causing confusion. BIO at 9. Nor is the Texas Supreme Court an outlier. As the Petition makes clear, the Second, Fifth, and Seventh Circuits have directly rejected the "effects test" the Nevada Supreme Court

applied here. Judge Easterbrook even observed that it was the exact argument this Court had rejected in *Walden*. Pet. at 12. Respondents offer no way to reconcile these cases other than to wanly observe that the Nevada Supreme Court parroted *Walden's* text. BIO at 8. But while it may have "recited … *Walden's* holding," the court below *applied Calder*.

Even after the Petition was filed, courts have continued to come down on one side of these divides or the other. *See, e.g.*, *Seward v. Richards*, 265 A.3d 9, 19 (N.H. 2021) (concluding that the "so-called *Calder* effects test was met") (cleaned up); *Danziger v. De Llano, L.L.P v. Morgan Verkamp, L.L.C.*, ___ Fed. 4th ___, 2022 WL 246131, at *4 (5th Cir. 2022) (rejecting personal jurisdiction where although tortious conduct "may have *affected*" plaintiff in Texas, "none of this conduct *occurred* in Texas") (emphasis in original). The time has come for this issue to be resolved. The Court should grant certiorari and unify the circuits and the State Supreme Courts on the correct test for personal jurisdiction.

II. The decision below was wrong.

Rather than dispute that there is a split in authority about *Calder*—which Respondents barely mention, despite their reliance on it below—Respondents argue that the Nevada Supreme Court correctly applied this Court's precedents in finding personal jurisdiction. Again and again, the BIO promises that the alleged harm to a Nevada corporation is just "one of many" of the defendant's purposeful connections with Nevada. BIO at (i); *see also* BIO at 2 ("Lewis's purposeful connections and

relationship with Nevada go far beyond just working for a Nevada company."); BIO at 10 (noting Lewis's "suit-related conduct" which "connects him to Nevada" in a meaningful way).

But the BIO mentions only a single fact connecting Lewis to Nevada—that in "1990, Lewis found a toll blender in Las Vegas, Nevada, who could blend [PRI's] product." BIO at 4. That thirty-year-old story cannot possibly tie Lewis to Nevada now and in this suit. Otherwise, Respondents do not dispute that Lewis does not "work in Nevada, own anything in Nevada, or buy anything from Nevada." Pet. at 2. Respondents' claims against Lewis have nothing to do with Nevada.

The only additional allegations Respondents make relate either to the claim that Lewis caused "an injury to a Nevada resident," BIO at 10, or that he formed a Nevada corporation. This includes Respondents' new assertion that Lewis "acquired" their trade secrets by working at a Nevada corporation. BIO at 10. Putting to one side that Respondents' claims are false on the merits, there is no evidence that Lewis acquired anything in Nevada, because he did not work there. And even assuming Lewis acquired Respondents' trade secrets in Nevada somehow (and he did not), *acquiring* the trade secrets is not what Respondents allege he did wrong.

Respondents also tout that the contracts Lewis signed included a Nevada choice-of-law clause. If anything, those contracts cut in the opposite direction—PRI could have insisted that Lewis waive his objection to personal jurisdiction in those contracts. It did not. In any event, in *Burger King Corp. v.*

Rudzewicz, 471 U.S. 462 (1985), this Court held only that a choice-of-law provision could be relevant as part of a "20-year interdependent relationship" established with the jurisdiction. *Id.* at 481-82. Other than Lewis's employment at a Nevada corporation, and the alleged harm to a Nevada resident, there is no connection between the allegations in this suit and Nevada. Again, Respondents do not (and could not) dispute that Lewis does not live in Nevada, he does not work in Nevada, and none of his employees have anything to do with Nevada.

III. The petition squarely presents this important question.

Respondents suggest that this Court's previous denials of certiorari on similar issues counsel denial here. BIO at 9. In fact, this Court's previous denials evidence the depth of the split and the fact that this issue has sufficiently percolated in the lower courts. The lower courts have been divided on this issue since *Walden* issued in 2014, and there is no indication that any of the courts of appeals or state courts that have already weighed in will change their mind.

In any event, nothing can be implied from a mere denial about whether an issue is ready for review. The previous cases could have been denied review for any number of fact-and-case-specific reasons, none of which have anything to do with the issue's importance or with the depth of the split. What Respondents cannot gainsay, however, is that there is no vehicle problem in *this* case.

IV. In the alternative, the Court should grant, vacate, and remand this case in light of *Ford*.

Respondents resist a GVR by asserting that *Ford* strengthens his case because Lewis had the "same" level of involvement in Nevada as Ford did in Montana and Minnesota. BIO at 13. But this is fantasy. This Court was clear about the extent of Ford's ties to Minnesota and and Montana—it "extensively promoted, sold, and serviced" the defective products in those two states, and those defective products caused the injury. *Ford Motor Co. v. Montana Eighth Judicial District Court*, 141 S. Ct. 1017, 1032 (2021). Indeed, Ford "admit[ed] that it has purposefully avail[ed] itself of the privilege of conducting activities in both States." *Id*.

Nothing like that is true here. Lewis has done nothing in Nevada that has anything to do with this suit other than be the director of a Nevada corporation. The proof is evident on the face of the complaint. Respondents' alleged claims would not change an iota if Power Research were a Delaware corporation, or from Minnesota, or Florida.

Moreover, Respondents fail to dispute that in *Ford*, this Court analyzed a tort claim involving actions outside a state that had effects in a state and *never mentioned Calder*, not even as support for the result reached. One would imagine that if there were an "effects test," the Court would have suggested it has some purchase there. But it did not. Instead, the Court turned to just the traditional tests for personal jurisdiction, none of which would be enough here.

While this Court could easily grant plenary review, therefore, the Court could also dispose of this case by GVRing the decision below and remanding for further consideration in light of *Ford*.

CONCLUSION

The Court should grant the Petition for Writ of Certiorari. In the alternative, and at a minimum, the petition should be granted, the judgment vacated, and the case remanded to the Nevada Supreme Court for reconsideration in light of *Ford*.

Respectfully submitted,

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