

No. 24-1012

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IN THE  
**Supreme Court of the United States**

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PHILADELPHIA INDEMNITY  
INSURANCE COMPANY,

*Petitioner,*

*v.*

MARTIN J. O'LEARY, *et al.*,

*Respondents.*

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPREME COURT OF MONTANA

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**REPLY BRIEF**

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**QUESTION PRESENTED**

Is a lawyer with a multi-jurisdictional law practice subject to specific personal jurisdiction for a legal malpractice claim in a state where the lawyer is not licensed and the lawyer's firm has no offices when the lawyer's legal advice to a client concerning the state where the lawyer is not admitted caused the lawyer's client to be sued and subject to specific personal jurisdiction in the state about which the lawyer provided advice.

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## INTRODUCTION

Respondents' opposition avoids the issues presented by petitioner Philadelphia Indemnity Insurance Company by recasting the case as involving only the limited issue of due process for respondents, which was not the issue giving rise to petitioner's request for this Court's review. The inequity of a court exercising specific personal jurisdiction as to a client but then not as to its counsel, for the same conduct by such counsel in two related cases in the same forum, is not addressed by examining only the issue of jurisdiction in one case in isolation. Moreover, the underlying case was stated in part to have been determined by the application of this Court's prior precedent regarding the federal question of due process as to minimum contacts.

Furthermore, the petition is meritorious, does not omit any germane information pertaining to the underlying case and, significantly, the due process issue involved in this case is not limited to this case. This case highlights the lack of a predictive rule for the exercise of personal jurisdiction over attorneys for legal malpractice cases given modern business practices and the multi-jurisdictional practice of law. Existing precedent has not yet evolved to accommodate significant changes in the transaction of business over the past eight decades after the Court's ruling in *International Shoe*. This case affords the Court an opportunity to further shape the rules for personal jurisdiction to create a predictable framework that will enable courts to address jurisdictional issues in a consistent matter to account for modern business practices, which will in turn ensure litigants' constitutional right to due process.

## ARGUMENT

### I. Philadelphia has Presented a Federal Question

Respondents improperly narrow and avoid the question presented for review. Philadelphia's request for this Court's review has been over-simplified by respondents as a request for this Court merely to consider whether the Montana Supreme Court properly applied Montana's enumerated acts long-arm statute. Respondents contend that considerations of due process do not arise in this case because the Montana Supreme Court found that the Montana long-arm statute did not provide for personal jurisdiction over the respondents. However, respondents' characterization of the case as being confined to the due process of the respondents fails to address the concerns that warrant this Court's consideration of a federal question as to due process.

First, the question presented by petitioner does not involve the simple and discrete consideration of due process for respondents alone. Petitioner argues that *petitioner* has been denied due process, because the same court first found that specific jurisdiction existed for petitioner, but then did not find that specific jurisdiction exists for respondents for a second case in the same forum involving the same conduct by respondents. The inequity created by the Montana Supreme Court's majority was recognized by the three justices in the dissenting opinion the case below. *Phila. Indem. Ins. Co. v. O'Leary*, 2024 MT 235, P30. (McKinnon, J., Dissenting, joined by Shea, J. & Gustafso, J.).

Although cases addressing the reach of a long-arm statute typically involve due process concerns solely for

the defendant in the case at hand (here, the respondents), this case also involves due process for plaintiff (here, the petitioner, Philadelphia), because in a related case in the same forum involving the same dispute regarding the same legal advice provided by respondents to petitioner as to the same transaction, the Montana Supreme Court found that the State of Montana could exercise specific jurisdiction over petitioner. The result is a lack of due process for petitioner, as respondents' client, because of the inconsistent action taken by the Montana Supreme Court, first as to a client (Philadelphia) and then as to Philadelphia's attorneys. The basis for petitioner's request for this Court's review is that the inequitable treatment of the petitioner in this case has arisen because the existing rules for consideration of minimum contacts for specific jurisdiction are outdated. The due process issue in this case is not, as respondents frame it, simply a question of due process for respondents under the Montana long-arm statute.

Second, in arguing that there is no federal question in this case, respondents are ignoring the fact that the Montana Supreme Court considered constitutional principals to deny jurisdiction under a state long arm statute, such that a federal question is implicated in connection with the application of a state law. In *Perkins v. Genquet Consol. Mining Co.*, 342 U.S. 437 (1952) a state court had denied jurisdiction, but the Court reviewed the matter because the state court had done so on the basis of its application of federal precedent in regard to due process concerns. The Montana Supreme Court's basis for declining to recognize jurisdiction under the Montana long-arm jurisdiction for the respondents in this case was likewise based upon consideration of minimum

contacts necessary for due process. *Phila Indemn. Ins. Co. v. O'Leary*, 2024 MT 235, P.10, citing the reliance of the Montana Supreme Court in *Tacket v. Duncan*, 2014 MT 253, P33, upon the minimum contacts analysis in *Walden v. Fiore*, 571 U.S. 277, 286 (2014), and further citing *Helicopteros Nacionales, de Columbia v. Hall.*, 466 U.S. 408, 417. Petitioner has highlighted the inconsistent treatment of jurisdiction in attorney malpractice cases that exists because courts have addressed this issue through the minimum contacts analysis first established for due process by *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). Pet. 19-29. Again, although a typical case involving a state court's application of a long-arm statute may not involve a federal question, the case at hand is not that typical case.

## II. The Petition has Merit

Respondents' attack on the merits of petitioner's request for this Court's review are not well-founded. Opp. 8-9. First, petitioner has provided concrete examples as to why existing case law does not reflect a consistent and workable rule for jurisdiction in malpractice cases in light of the current multi-jurisdictional practice or in light of the current conduct of business, which is no longer conducted as it had been 80-years ago when this Court constructed the framework for consideration of minimum contacts in *International Shoe*. Pet. 19-29. Similar concerns regarding this issue, which petitioner has also identified, are also well-stated by Justice McKinnon in the dissenting opinion in the underlying case. *Phila. Indem. Ins. Co. v. O'Leary*, 2024 MT 235, P30, P34-P41 (McKinnon, J., Dissenting joined by Shea, J. & Gustafso, J.). Moreover, petitioner has highlighted recent concerns

raised pertaining to personal jurisdiction rules by Justice Alito, Justice Gorsuch and Justice Barrett, for which this case provides an opportunity for further guidance. Pet. 10-13.

It is not “audacious” for petitioner to agree with Justice Alito’s observation in his concurrence in *Ford Motor Company* that there are grounds for questioning the standard that the Court adopted in *International Shoe* and its progeny. Pet. 10, citing 592, U.S. 351, 372 (Alito, J., concurring). Likewise, as Justice Gorsuch similarly observed in his concurrence in *Ford Motor Company*, the test for jurisdiction as provided therein, which the majority characterized as not meaning “anything goes,” does not provide further guidance as to what the parameters for specific jurisdiction ought to be, that is, whether causation and affiliation should be considered as alternative routes to specific jurisdiction. Pet. 10-11, citing 592 U.S. 351, 376 (Gorsuch, J., concurring).

The lament of respondents that petitioner “does not even take time the time to craft a proposed alternative rule” (Opp. 10) is erroneous, as is respondents’ unsupported observation that “it goes without saying that constitutional interpretation does not involve ‘working backwards from the proper result.’” *Id.* To the contrary, Petitioner proposed that the solution for law firm specific personal jurisdiction in a multi-jurisdictional law practice be a finding that a law firm and its attorneys impliedly “consent” that personal jurisdiction follows the client. Pet. 12. This is buttressed by petitioner’s reference to the insightful observations of Justice McKinnon in her dissent addressing why the Montana Supreme Court should have found that respondents in this case had

availed themselves of Montana’s jurisdiction through their conduct in providing legal advice to the petitioner (Pet. 15-18, citing *Phila. Indem. Ins. Co. v. O’Leary*, 2024 MT 235, P30 (McKinnon, J., Dissenting joined by Shea, J. & Gustafso, J.). Moreover, there is nothing improper about crafting such a rule by beginning with the desired result – predictability and fairness – especially in this context.

Furthermore, respondents are wrong to suggest that the Court is being asked to engage in an improper “first view” rather than a “review” in this case. First, as a specific matter, and as addressed above in Section I. of this reply, the Montana Supreme Court relied upon constitutional doctrines in reaching its decision below. Second, as a general matter, the due process issues in this case merit the Court’s attention because existing precedent underscores a need for further adjustments to the framework for judicial consideration of personal jurisdiction, so that the framework ensures due process in light of modern business practices that have evolved over the past eighty years since the Court provided its ruling in *International Shoe*. The Court’s jurisprudential construction of a new framework to eliminate the obvious inequity in this specific case, and as part of the further clarification called for by the concurrences in *Ford Motor Company*, is not a request for improper unprecedented action by the Court, as suggested by respondents. Opp. 10. To the contrary, if undertaken, the Court’s review in this case would be no different from the Court’s endeavor when it rendered its ruling in *International Shoe* in 1945. When the Court issued its guidance as to personal jurisdiction in *International Shoe*, the Court had recognized a need for guidance to account for changes in the conduct of commerce over the course of the sixty-

eight years following its ruling in *Pennoyer v. Neff*. The petition properly calls upon the Court to recognize, once again, that personal jurisdiction, which is tied with the conduct of business, may need to evolve over time. While there is call for changes in jurisdictional rules in 2025, the role of the Court in fostering the evolution of such rules, to ensure due process, is a concept as old as the 14th Amendment itself.

### **III. The Petition is Accurate**

Respondents assert that the petition should be denied because petitioner has “fail[ed] to disclose that the decision below rested on state-law grounds.” As addressed in the first section of this reply, this case involves a lack of due process as to petitioner, and not the issue of due process as to respondents themselves. Moreover, the ruling of the Montana Supreme Court had not rested solely upon a state-law ground, but had invoked prior precedent in regard to minimum contacts as analyzed by this Court.

Last, respondents further urge that the petition be denied as “inaccurate” because respondents did not have Montana contacts pursuant to the ruling of the Montana Supreme Court. However, this is a point of contention in regard to the application of law to the facts of the case, as to which petitioner has not asserted any statement that is inaccurate, and therefore a denial of the petition on a basis of “inaccuracy” is not warranted.

**CONCLUSION**

For the reasons stated above and in its petition, petitioner respectfully requests that this Court issue a writ of certiorari.

Respectfully submitted,

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