No. 24-867

In the Supreme Court of the United States

IQVIA INC.,
PETITIONER,

v.

SUPERIOR COURT OF CALIFORNIA, ALAMEDA COUNTY, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT

BRIEF FOR WASHINGTON LEGAL FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

CORY L. ANDREWS
WASHINGTON LEGAL FOUNDATION
2009 Mass. Ave., NW
Washington, D.C. 20036

JUDD E. STONE II
Counsel of Record
CHRISTOPHER D. HILTON
ARI CUENIN
CODY C. COLL
STONE HILTON PLLC
600 Congress Ave., Ste. 2350
Austin, Texas 78701
judd@stonehilton.com
(737) 465-7248

Counsel for Amicus Curiae

QUESTION PRESENTED

Does the Due Process Clause permit a state court to exercise specific personal jurisdiction over an out-of-state defendant in a preemptive action to deem a non-compete agreement unenforceable on the ground that enforcement of the agreement would prohibit the out-of-state plaintiff from working for an in-state employer?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases:

Cases—Continued: Page(s)

Cases—Continued: Page(s)

Cases—Continued: Page(s)

Constitutional Provisions and Statute:

Regulation and Rules:

Other Authorities:

Other Authorities— Continued: Page(s)

Other Authorities— Continued: Page(s)

INTEREST OF AMICUS CURIAE[1]

Washington Legal Foundation (WLF) is a nonprofit, public-interest law firm and policy center with supporters nationwide. WLF promotes and defends free enterprise, individual rights, a limited and accountable government, and the rule of law. WLF often appears before this Court to stress the limits that both the Due Process Clause and federalism impose on a state court's exercise of personal jurisdiction. *See, e.g.*, *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351 (2021); *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty.*, 582 U.S. 255 (2017); *BNSF Ry. Co. v. Tyrrell*, 581 U.S. 402 (2017).

SUMMARY OF ARGUMENT

This Court's precedents limit the ability of "state court[s] to render a valid personal judgment against a nonresident defendant." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980). In *Walden v. Fiore*, 571 U.S. 277 (2014), the Court limited specific personal jurisdiction to cases in which a plaintiff's claims arise from a defendant's contacts with the forum State. The California Court of Appeal failed to follow these precepts. It instead blessed the exercise of specific jurisdiction to extend the reach of California's near-total ban on noncompete agreements to contracts formed outside the State by non-California parties.

---

[1] All parties' counsel of record were timely notified via email on March 7, 2025, of WLF's intent to file this brief under Rule 37.2. Under Rule 37.6, no counsel for any party authored this brief, in whole or in part, nor did counsel for any party make a monetary contribution intended to fund this brief in whole or part. No person or entity other than *amicus* and its counsel contributed monetarily to this brief's preparation or submission.

That result contravenes the interests of federalism, which in personal-jurisdiction cases can be "decisive." *Bristol-Myers*, 582 U.S. at 263. Those interests are reflected in this Court's precedents basing specific personal jurisdiction on whether the defendant's actions in the forum State gave rise to the plaintiff's claims. Preventing one State from aggrandizing its interests at the expense of other States was critical to "secure[ing] to citizens the liberties that derive from the diffusion of sovereign power." *New York v. United States*, 505 U.S. 144, 181 (1992) (cleaned up).

Here, those interests are best served by ensuring that one State cannot impose its policy preferences on individuals who reside and do business outside the forum State. Just as this Court favors jurisdictional limitations in service of the "orderly administration of the laws," *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945), parties also benefit from predictability in knowing what conduct will trigger a state court's exercise of personal jurisdiction, *see Hertz Corp. v. Friend*, 559 U.S. 77, 94-95 (2010). Parties expect "some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen*, 444 U.S. at 297. This Court has long recognized that parties will "structure their primary conduct" accordingly. *Id.* This Court's review is needed to prevent out-of-state employers from having to choose between noncompete agreements disfavored by California and being haled into court there.

ARGUMENT

The same federalism interests that animated the Constitution are at play alongside the due process inquiry into whether plaintiffs' claims "arise out of or relate to the defendant's contacts." *Ford Motor Co.*, 592 U.S. at 359. The Court's focus has long been on the

"relationship among the *defendant*, the forum, and the litigation." *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984) (emphasis added). Review is needed to protect against a state court's exercise of personal jurisdiction that contravenes those principles.

This case also presents a good vehicle to reaffirm personal-jurisdiction's federalism limits. *See* S. Ct. R. 10(c). This case implicates a hotly contested national debate over noncompete agreements and their attendant benefits. *See generally* 89 Fed. Reg. 38,342 (May 7, 2024) (publishing the Federal Trade Commission's "Non-Compete Clause Rule"). Granting review presents an ideal opportunity to preserve that policy debate without undue pressure from dissenting States. And no vehicle problems impede review of the question presented.

I. Review Is Needed to Protect Federalism from Encroachment by California's Exercise of Personal Jurisdiction.

The limits of specific personal jurisdiction are important for maintaining the constitutional structure envisioned in the Framers' view of federalism. Granting review is necessary to protect federalism and to prevent California from using its courts to exert its policy preferences extraterritorially.

A. Review is needed to vindicate the federalism limits of specific personal jurisdiction.

Federalism protects against tyranny by diffusing power not only vertically between the States and the federal government, but also horizontally among all fifty States. The limits on personal jurisdiction ensure that no one State can use its courts to reach outside its proper sphere of influence and encroach on other States.

1. The Constitution's Framers feared the accumulation of power in any single person or body. So much, in fact, that the "accumulation of all powers, legislative, executive, and judiciary, in the same hands," would "justly be pronounced the very definition of tyranny." THE FEDERALIST NO. 47, at 301 (James Madison) (Clinton Rossiter, ed. 1961). To foreclose that result, the Framers created the "compound republic of America," in which "the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments." THE FEDERALIST No. 51, at 323 (James Madison) (Clinton Rossiter, ed. 1961). Such federalism principles track the separation of powers. *See New York*, 505 U.S. at 181; *see also Printz v. United States*, 521 U.S. 898, 918-22 (1997).

But an equally important separation of power was the division among the fifty States themselves. For the Framers, this additional separation was necessary so that "a double security arises to the rights of the people: state and federal governments would "control each other, at the same time that each will be controlled by itself." THE FEDERALIST NO. 51, at 323. That "structure allows local policies 'more sensitive to the diverse needs of a heterogeneous society,' permits 'innovation and experimentation,' enables greater citizen 'involvement in democratic processes,' and makes government 'more responsive by putting the States in competition for a mobile citizenry.'" *Bond v. United States*, 564 U.S. 211, 221 (2011) (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991)). Federalism thus "allows States to respond . . . to the initiative of those who seek a voice in shaping the destiny of their own times without having to rely solely upon

the political processes that control a remote central power." *Id.*

The Framers believed that the States would compete with one another for influence, guarding against "the risk of tyranny and abuse from either front." *Gregory*, 501 U.S. at 458-59 (citing THE FEDERALIST NO. 28, at 180-81 (Alexander Hamilton) (Clinton Rossiter, ed. 1961)). Maintaining proper separation among the components of our federal system was crucial to guard against "danger from interested combinations of the majority." THE FEDERALIST NO. 51, at 324. Preserving each State's independence from one another was thus critical to the Framers' efforts to "secure to citizens the liberties that derive from the diffusion of sovereign power." *New York*, 505 U.S. at 181 (cleaned up).

Federalism, however, cannot work as intended without restraining States from unduly expanding their influence at the expense of others. The phenomenon where one State exploits decentralized federal power at the expense of other States is known as "the problem of horizontal aggrandizement." Lynn A. Baker & Ernest A. Young, *Federalism and the Double Standard of Judicial Review*, 51 DUKE L.J. 75, 117-21 (2001). Of course, "each State's equal dignity and sovereignty under the Constitution implies certain constitutional limitations on the sovereignty of all of its sister States." *Franchise Tax Bd. v. Hyatt*, 587 U.S. 230, 245 (2019) (cleaned up). But the Framers did not give the States "an untouchable domain of judicially protected jurisdiction" to protect their interests. Larry D. Kramer, *Putting the Politics Back into the Political Safeguards of Federalism*, 100 COLUM. L. REV. 215, 286 (2000). The Framers instead relied on the States' "capacity to compete effectively for political authority" and "ability to influence national politics." *Id.*

State courts are vital organs of political influence. *See, e.g.*, Earl M. Maltz, *Slavery, Federalism, and the Structure of the Constitution*, 36 AM. J. LEGAL HIST. 466, 471 (1992) (explaining the "powerful influence" of anti-slavery activists in state courts after *Dred Scott*). And one way in which a State's courts can exert influence is through the exercise of personal jurisdiction, for to "assert personal jurisdiction over a domestic defendant is an intrusion on this authority of the home state." William S. Dodge & Scott Dodson, *Personal Jurisdiction and Aliens*, 116 MICH. L. REV. 1205, 1230 (2018). When one State's court exercises jurisdiction over the citizen of another State, that forum State intrudes upon its sister State's sovereign prerogative to regulate its own citizens' conduct. It also impedes that citizen's ability to seek protections from a jurisdiction that is politically accountable to him, contravening federalism's aim "to assign political responsibility, not to obscure it." *FTC v. Ticor Title Ins. Co.*, 504 U.S. 621, 636 (1992). An inability to hold "the government answerable to the citizens" was "more dangerous than devolving too much authority to the remote central power." *United States v. Lopez*, 514 U.S. 549, 577 (1995).

This Court's personal jurisdiction precedents provide an important safeguard against those threats to federalism. Personal jurisdiction doctrine reflects a balance in the "limitation on the sovereignty" of the fifty States. *World-Wide Volkswagen*, 444 U.S. at 293. That doctrine flows from "territorial limitations on the power of the respective States." *Bristol-Myers*, 582 U.S. at 263 (cleaned up). And it serves federalism by limiting the power of state courts to regulate non-residents at the expense of the sovereignty of other States. *See World-Wide Volkswagen*, 444 U.S. at 292.

That is why this Court has long held that "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." *Id.* at 294. The Due Process Clause limits "the power of a sovereign to prescribe rules of conduct for those within its sphere." *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 879 (2011) (plurality opinion). No State had an absolute right to regulate its citizens' conduct exclusively: "the Constitution affirmatively altered the relationships between the States, so that they no longer relate to each other solely as foreign sovereigns." *Franchise Tax Bd.*, 587 U.S. at 245. But since the early days of the Republic, judges have also aimed to "promote the harmony of the states by ensuring that each state stayed within the sphere of its authority and did not encroach upon the authority of other states." James Weinstein, *The Federal Common Law Origins of Judicial Jurisdiction: Implications for Modern Doctrine*, 90 VA. L. REV. 169, 196 (2004) (cleaned up). Indeed, some of the Nation's earliest jurisdiction cases "expressly identified the primary value informing federal limitations on state courts as what we would today call interstate federalism." *Id.*

In short, federalism and personal jurisdiction go hand-in-glove. Personal jurisdiction doctrine "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*, 444 U.S. at 292. Because personal jurisdiction is primarily grounded in the Due Process Clause, it has never independently raised a "problem sounding in federalism when an out-of-state defendant submits to suit in the forum State." *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 144 (2023). But the "federalism implications

of one State's assertion of jurisdiction over the corporate residents of another" must not be overlooked, *id.*, and may even "be decisive" under this Court's precedents, *Bristol-Myers*, 582 U.S. at 263.

2. Review is necessary to reinforce those principles here. As noted above, the overreach of a state court at the expense of other States' sovereignty is not responsive to political checks. The out-of-state petitioner is not "at home" in the forum State, and its officials are not politically accountable to that foreign entity. *Ford Motor Co.*, 592 U.S. at 359. Judicial review outside the state-court system provides the only mechanism to assess whether the requisite "affiliation between the forum State and the underlying controversy" exists such that petitioner is "subject to the State's regulation." *Id.* (cleaned up). Nor is there any substitute for this Court's oversight in ensuring that state courts are not treating specific jurisdiction as "a loose and spurious form of general jurisdiction." *See Bristol-Myers*, 582 U.S. at 264.

Were it otherwise, one State could aggrandize its powers at the expense of the others even if a defendant has *no* operations within its borders. If state courts can regulate the conduct of out-of-state companies where forum-state contacts are unrelated to the plaintiff's claims, then companies nationwide will have little choice but to tailor their practices to anticipate suit in the forum State. The forum State can thus effectively set the substantive rules it wishes companies to follow. *Cf., e.g.*, Kenneth S. Abraham & Robert L. Rabin, *Automated Vehicles and Manufacturer Responsibility for Accidents: A New Legal Regime for a New Era*, 105 VA. L. REV. 127, 133-34 (2019) (describing cohesive regulation with a "single national approach" as a solution for "the major

dissatisfaction of auto manufacturers" in variable and unpredictable liability standards among States).

The forum State may perceive a benefit in uniform regulation that Congress has not yet provided through its Commerce Clause power to regulate the States. *See* U.S. CONST. art. I, § 8, cl. 3. But even if the forum State perceives benefit in that outcome, this Court's precedent holds that this interest is insufficient. The "essential attributes of sovereignty" retained by "each State" imply "a limitation on the sovereignty of all of its sister States." *World-Wide Volkswagen*, 444 U.S. at 293. Consequently, the Court's review is necessary to ensure that "state lines" remain [ ]relevant for jurisdiction purposes," and so that the courts "remain faithful to the principles of interstate federalism embodied in the Constitution." *Id.*

B. Review is needed to prevent California from imposing its policy choices extraterritorially.

As noted above, the Constitution strikes a balance between limiting actions that discriminate against fellow States and maintaining "the autonomy of the individual States within their respective spheres" on the other. *Healy v. Beer Inst.*, 491 U.S. 324, 335-36 (1989). In a federalist system, properly limiting States' jurisdiction "confin[es] each state to its proper sphere of authority." Katherine Florey, *State Courts, State Territory, State Power: Reflections on the Extraterritoriality Principle in Choice of Law and Legislation*, 84 NOTRE DAME L. REV. 1057, 1093 (2009). The Constitution thus also restricts States from legislating extraterritorially. That is so because "[u]nrepresented interests will often bear the brunt of regulations imposed by one State having a significant effect on persons or operations in other States." *S.-Cent. Timber Dev., Inc. v. Wunnicke*, 467 U.S. 82, 92 (1984). When the "burden [of regulation] falls principally

upon those without the state, legislative action is not likely to be subjected to those political restraints which are normally exerted on legislation where it affects adversely some interests within the state." *Id.* (cleaned up). Thus, as here, a State's legislative preferences can trigger "horizontal" threats to federalism like those noted in Part I.

1. The Constitutional Convention was convened in part as a response to the "Balkanization" that "plagued" the States under the Articles of Confederation. *Hughes v. Oklahoma*, 441 U.S. 322, 325-26 (1979). Fears of devolving into further commercial animosity provided strong incentives to support the Constitution. *See, e.g.*, THE FEDERALIST No. 7, at 62-63 (Alexander Hamilton) (Clinton Rossiter, ed. 1961). To address that unique problem, the States ceded to Congress the authority to "regulate Commerce . . . among the several States." U.S. CONST. art. I, § 8, cl. 3. The Constitution thus guarded against destructive trade disputes by establishing Congress as "a superintending authority over the reciprocal trade" among the States. THE FEDERALIST No. 42, at 268 (James Madison) (Clinton Rossiter, ed. 1961).

As a tradeoff, States must "recognize, and sometimes defer to, the laws, judgments, or interests of another." Gil Seinfeld, *Reflections on Comity in the Law of American Federalism*, 90 NOTRE DAME L. REV. 1309, 1309 (2015). "[W]hile an individual state may make policy choices for its own state," the Constitution does not permit a State to directly "impose those policy choices on the other states." Margaret Meriwether Cordray, *The Limits of State Sovereignty and the Issue of Multiple Punitive Damages Awards*, 78 ORE. L. REV. 275, 292 (1999) (citing *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 568-73 (1996)). This Court's precedents balance the tension

between restrictions on state legislation that discriminates against other States versus "the autonomy of the individual States within their respective spheres." *Healy*, 491 U.S. at 335-36. In practice, this balance means that policy judgments in one State must often be respected even if those in other States might disagree.

But the Framers also understood the States' tendency "to aggrandize themselves at the expense of their neighbors." THE FEDERALIST NO. 6, at 60 (Alexander Hamilton) (Clinton Rossiter, ed. 1961). They feared economic inequality among the States, the "most common and durable source" of factions, as an existential threat to the Union. THE FEDERALIST NO. 10, at 79 (James Madison) (Clinton Rossiter, ed. 1961). The Framers thus enshrined protections to guard against this outcome, ensuring that the individual States would become "integral parts of a single nation." *V.L. v. E.L.*, 577 U.S. 404, 407 (2016) (per curiam) (quoting *Milwaukee Cnty. v. M.E. White Co.*, 296 U.S. 268, 277 (1935)).

The Full Faith and Credit Clause, for instance, requires each State to recognize the "public acts, records and judicial proceedings of every other state." U.S. CONST. art. IV, § 1. That is so regardless of whether a State "disagrees with the reasoning underlying the judgment or deems it to be wrong on the merits." *V.L.*, 577 U.S. at 407. Likewise, in the criminal-law context, the Extradition Clause requires that States hand over a criminal defendant to another State even if it believes "that what the fugitive did was not wrong or that rendition would be unfair." Allan Erbsen, *Horizontal Federalism*, 93 MINN. L. REV. 493, 546 (2008). The "dormant Commerce Clause" likewise promotes healthy horizontal federalism by disfavoring "state laws discriminating against interstate commerce." *Camps*

Newfound/Owatonna, Inc. v. Town of Harrison, 520 U.S. 564, 575 (1997).

Personal jurisdiction also works in tandem with these principles. As noted above, the Constitution forbids state courts from exercising personal jurisdiction over other States' residents without a proven connection to the forum State. *See, e.g.*, *Bristol-Myers*, 582 U.S. at 264 (requiring a connection between the defendant's forum-state activity and the underlying controversy). This rule "respect[s] the interests of other States" to exercise their "own reasoned judgment" over conduct within their respective borders. *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408, 422 (2003) (quoting *BMW*, 517 U.S. at 571). Comity dictates that each State must respect the sovereignty of the other States. As observed when Congress enacted the Class Action Fairness Act, when state courts "dictate the substantive laws of other states by applying" a State's laws outside its borders, it is "a breach of federalism principles." S. Rep. No. 109-14, 61 (2005), *reprinted in* 2005 U.S.C.C.A.N. 3, 57 (cleaned up). Likewise, a jurisdictional ruling that allows a State court to apply forum-state law to an out-of-state corporation doing business outside the State's borders frustrates both comity and federalism.

2. Review is needed because this personal-jurisdiction dispute implicates the extraterritorial reach of state legislative choices. In 2024, California amended its laws to render a noncompete agreement "unenforceable regardless of where and when the contract was signed." Cal. Bus. & Prof. Code § 16600.5(a). The limits that this Court has recognized for the exercise of jurisdiction over out-of-state parties, *see supra* Part I.A, should have provided an important check on California's ability to export that policy nationwide.

But the decision below eviscerates those limits. Rather, as petitioners argue (at 30-33), the exercise of personal jurisdiction aligns with California's policy aims of prohibiting noncompete agreements. The Constitution would forbid California from enforcing that policy choice directly on the other forty-nine sovereign States. Yet it is no less an affront to comity and federalism to achieve that result indirectly by exercising personal jurisdiction over an out-of-state defendant. *See, e.g.*, John S. Baker, Jr., *Respecting a State's Tort Law, While Confining its Reach to that State*, 31 SETON HALL L. REV. 698, 704 (2001) ("A federal problem arises when some states apply their laws beyond their own borders, resulting in increased costs in other states.").

Review is especially warranted because the judgment below contravenes principles of contract animating the Constitution. As noted above, the Framers were especially mindful of economic tensions among the States and saw contracts as the "legal underpinning of a dynamic and expanding free enterprise system." E. ALLAN FARNSWORTH, CONTRACTS § 1.7 (4th ed. 2004). So concerned were the Framers with state laws that might relieve parties of their contractual obligations, they drafted the Contracts Clause, which prohibits any State from "impairing the Obligation of Contracts." U.S. CONST. art. I, § 10, cl. 1. And the Framers likewise preserved "[a]ll debts contracted and engagements entered into, before the adoption of th[e] Constitution." *Id.* art. VI, § 1.

The Framers understood a party's right to enforce a valid contract as important to the harmony needed for a healthy federalist system. As James Madison wrote, "impairing the obligation of contracts" was "contrary to the first principles of the social compact, and to every

principle of sound legislation." THE FEDERALIST NO. 44, at 282 (James Madison) (Clinton Rossiter, ed. 1961). The Framers "took the view that treating existing contracts as 'inviolable' would benefit society by ensuring that all persons could count on the ability to enforce promises lawfully made to them—even if they or their agreements later prove unpopular with some passing majority." *Sveen v. Melin*, 584 U.S. 811, 828 (2018) (Gorsuch, J., dissenting) (citing *Sturges v. Crowninshield*, 17 U.S. (4 Wheat) 122, 206 (1819)). The Framers thus understood freedom of contract is the general rule with "restraint the exception." *Charles Wolff Packing Co. v. Ct. of Indus. Rels.*, 262 U.S. 522, 534 (1923). Review is necessary to ensure that States treat contracts in keeping with the Constitution.

II. This Case Presents Important Issues About Noncompete Agreements in a Good Vehicle to Address Them.

The noncompete agreements at issue here are part of a larger and timely policy debate over the continued vitality of such contracts. The ruling below has implications far beyond the facts and parties of this case. As petitioner argues (at 31-34), the decision below states that "respondent's challenge to the validity of his contract directly affects California employers as well as the rights of all California employers as well as the rights of all California companies who rely on the State's prohibition on noncompete agreements for protection." Pet. 32 (cleaned up). The answer to the question profoundly affects employers nationwide. And no vehicle problems foreclose review of the question presented.

A. Review is needed to ensure that noncompete agreements and their benefits do not become a dead letter nationwide.

This case implicates a broader policy debate about noncompete agreements, which carry many attendant benefits for employers. The use of noncompetes raises questions about what business practices constitute fair competition throughout "a significant portion of the American economy—indeed, nearly the entire economy." Dissenting Statement of Andrew N. Ferguson, In re Non-Compete Clause Rule 12 (June 28, 2024) (hereinafter "Ferguson Dissent") (cleaned up). The answers to such questions have implications far beyond the contours of this case. At scale, employers have no real alternative to noncompete agreements like those at issue in the underlying litigation. For instance, courts must consider that at-will employment is the norm in forty-nine States. *See, e.g.*, *First Tower Loan, LLC v. Broussard*, No. 3:15-cv-385, 2015 WL 13942412, at *2 n.6 (S.D. Miss. July 7, 2015) (citing BLACK'S LAW DICTIONARY (10th ed. 2014)). It is unrealistic to expect companies seeking to protect their investment in employees to start "forgoing at-will employment" and begin relying instead on fixed-term contracts to protect their investment in the employees they hire and train. *Contra* 89 Fed. Reg. at 38,403.

The ruling below not only threatens the public benefits of noncompete agreements, it unduly chills the refinement of the law surrounding noncompete agreements to the detriment of companies and workers nationwide. Review is thus warranted because the resolution of these issues has effects far beyond the immediate case.

1. Contrary to the views of California and the court below, noncompete agreements carry significant public benefit. To start, noncompete agreements can provide

protection of trade secrets and confidential information and thus help protect valuable investments made by employers. Noncompete agreements help prevent employees from taking sensitive knowledge—like client lists, pricing strategies, or proprietary processes—to competitors, safeguarding a company's competitive edge. As an attendant benefit, noncompete agreements encourage innovation: by limiting the chance that innovations or unique business methods will be immediately shared with competitors, noncompete agreements can incentivize companies to invest in research and development. To give just one industry example, numerous financial-services companies submitted public comments in opposition to proposed federal action on noncompete agreements, each explaining the significant resources used to fuel proprietary tools and strategic innovations. *See, e.g.*, Am. Investment Council, Comment on Proposed Non-Compete Rule 19-20 (Apr. 19, 2023); Futures Indus. Ass'n Principal Traders Grp., Comment on Proposed Non-Compete Clause Rule 1-2 (Apr. 19, 2023); Managed Funds Ass'n, Comment on Proposed Non-Compete Rule 4-5 (Apr. 19, 2023).

At the same time, noncompete agreements also allow companies to retain the value of significant investments in employee training. Companies often invest significant time and resources in training employees; non-competes reduce the risk of that investment walking out the door to benefit a rival. As the Federal Trade Commission itself acknowledges, several studies have shown that noncompete agreements "increase employee human and physical capital investment." 89 Fed. Reg. at 38,433. Companies are more likely to invest resources in training employees when they can ensure that their competitors cannot free-ride off their investments. *See id.*

Conversely, if employers were not able to rely on noncompete agreements, they are likely to "make fewer similar training investments." Ferguson Dissent, *supra*, at 42. In practice, noncompete agreements help provide predictability that stabilizes the workforce. They can deter employees from jumping ship to competitors, fostering longer-term employment and reducing turnover costs.

Noncompete agreements benefit employees as well. Noncompete agreements help give employees access to specialized knowledge. Employers might be more willing to share valuable skills or insider know-how with workers if they are confident it will not be used against them later. In some industries, employers may reward employees for agreeing to the restriction with perks like higher pay, bonuses, or promotions. *See, e.g.*, U.S. Gov't Accountability Office, Noncompete Agreements 55-56 tbl. 14 (2023).

Because of these benefits for employers and employees alike, the market also benefits from noncompete agreements. No one seriously disputes that noncompete agreements can benefit competition by protecting companies' confidential information. *See* 89 Fed. Reg. at 38,422. Indeed, for well over a century, courts have upheld noncompete agreements under the Sherman Act based on their salutary competitive effects. *See, e.g.*, *United States v. Addyston Pipe & Steel Co.*, 85 F. 271, 281-82 (6th Cir. 1898). The Federal Trade Commission has likewise acknowledged that noncompete agreements may lead to cost savings for companies that could enable lower prices for consumers. *See* 89 Fed. Reg. at 38,398 ("By suppressing workers' earnings, non-competes decrease firms' costs, which firms may theoretically pass through to consumers in the form of lower prices.").

Noncompete agreements can also promote business growth. By protecting a company's unique advantages in its respective field, noncompete agreements can help smaller firms or startups establish themselves in the market without facing immediate threats from larger competitors who seek to poach talent or ideas. Noncompete agreements serve the public interest by promoting "stability and certainty" in the marketplace. *Wright Med. Tech., Inc. v. Somers*, 37 F. Supp. 2d 673, 684 (D.N.J. 1999). Noncompete agreements can thus be especially beneficial in sectors like technology or sales, where intellectual and relational capital are key.

2. Because of unique challenges in promoting horizontal federalism through political channels, *see supra* Part I, judicial review is all the more important. Citizens in one jurisdiction are not able to directly hold States accountable across the country. The Court's recent cases like *Ford Motor Co.* reflect the need for review to avoid adverse effects on the federal system. After all, "[t]o make political safeguards of federalism work, some sense of enforceable lines must linger." Vicki Jackson, *Federalism and the Uses and Limits of Law:* Printz *and Principle*, 111 HARV. L. REV. 2180, 2228 (1998).

This Court regularly grants certiorari as a judicial check to maintain the bounds of federalism. *See, e.g.*, *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356 (2023) (concerning state agriculture laws whose practical effect controlled commerce extraterritorially); *Torres v. Tex. DPS*, 597 U.S. 580 (2022) (concerning state sovereign immunity and veterans' benefits); *South Dakota v. Wayfair*, 585 U.S. 162 (2018) (concerning taxation of out-of-state sellers); *United States v. Windsor*, 570 U.S. 744 (2013) (concerning the federal Defense of Marriage Act); *Gonzales v. Oregon*, 546 U.S. 243 (2006) (concerning

Oregon's physician-assisted suicide laws and the Controlled Substances Act); *Gonzales v. Raich*, 545 U.S. 1 (2005) (concerning marijuana laws).

As petitioner argues (at 14), California is an outlier in prohibiting noncompete agreements, which are permitted in the vast majority of States. The ruling below thus puts out-of-state defendants to a choice: voluntarily abandon the benefits of noncompete agreements or risk being haled into court in another State. Especially for small businesses, the risks and costs of prospective out-of-state litigation may obviate many benefits of noncompete agreements. *See supra* Part II.A.1.

Judicial review thus provides a safeguard against encroachment by California on the policy choices of other States. California's restrictions may be popular in California, since "smaller units of government have an incentive . . . to adopt popular policies." Michael W. McConnell, *Federalism: Evaluating the Founders' Design*, 54 U. CHI. L. REV. 1484, 1498-99 (1987). But preventing personal jurisdiction from unduly extending California's policies would increase options that better balance competing interests nationwide. *See* James G. Hodge, Jr., *The Role of Federalism and Public Health Law*, 12 J.L. & HEALTH 309, 356 (1997) (explaining that, compared to national policies, "state governments are generally more responsive to the needs of their citizenry"). Federalism thus "provides an additional level of freedom to individuals, beyond that provided by specific guarantees of individual rights, by conferring the freedom to choose from among various diverse regulatory regimes the one that best suits the individual's preferences." Baker & Young, *supra*, at 1506. The "point of federalism" is "to allow normative disagreement amongst the subordinate units so that different units can

subscribe to different value systems." Edward L. Rubin & Malcolm Feeley, *Federalism: Some Notes on a National Neurosis*, 41 UCLA L. REV. 903, 912 (1994).

This case arrives before the Court at a critical juncture for federalism. Recent federal actions to curtain noncompete agreements at the national level have garnered significant public and judicial attention. *See, e.g.*, *Ryan LLC v. Fed. Trade Comm'n*, 739 F. Supp. 3d 496, 521-22 (N.D. Tex. 2024); *Props. of the Villages, Inc. v. Fed. Trade Comm'n*, No. 5:24-cv-316-TJC-PRL, 2024 WL 3870380, at *1 (M.D. Fla. Aug. 15, 2024). Those cases enjoined the Federal Trade Commission from implementing a prohibition on noncompete agreements promulgated in 2024. *See* 89 Fed. Reg. 38342 (publishing the "Non-Compete Clause Rule").

Granting review in this case is necessary to preserve vital state independence to address the role of noncompete agreements in the absence of a uniform national rule. This "gradualist approach" serves the interests of federalism because it "lowers the political temperature." Richard A. Epstein, *The Constitutionality of Proposition 8*, 34 HARV. J.L. & PUB. POL'Y 879, 881 (2011). And it prevents the small minority of States like California who disfavor noncompete agreements from imposing their policy preference on the majority of States that allow such agreements. *See* Baker & Young, *supra*, at 110. Only when "competition between legal systems exists can we perceive which legal rules are most appropriate." Ralph K. Winter, Jr., *State Law, Shareholder Protection, and the Theory of the Corporation*, 6 J. LEGAL STUD. 251, 276 (1977). Granting review limits States' ability to expand their reach at the expense of other States and protects out-of-state companies who lack the

resources and political influence to fight to preserve that competition.

B. No vehicle problems foreclose this Court's review of the question presented.

This case presents a good vehicle to eliminate the disparity caused by the California court's jurisdictional ruling. As petitioner has explained (at 25), this case involves whether a State may exercise personal jurisdiction over a defendant based solely on a noncompete agreement's being challenged in a former employee's new place of business in the forum State. This suit did not arise from or relate to petitioner operating in California, employing the former employee in California, or being physically located in California. In short, petitioner did everything possible to avoid subjecting itself to California's laws consistent with this Court's specific personal jurisdiction precedents. The case turns solely on issues of law; as petitioner explains (at 27), there is no danger that a muddled factual record poses an obstacle to review. This means that the Court can focus on the question presented and decide the narrow issue of whether a State's exercise of personal jurisdiction based solely on a noncompete agreement violates due process.

That this case arrives before the Court from a summary affirmance is no obstacle to review. As petitioners explain, the Court of Appeal's denial of the request for review could only have rested on its agreement with the superior court's legal holding. Pet. 33. That is because no plausible alternative grounds to affirm were presented below or otherwise apparent from the record on the court's de novo jurisdictional review. Pet. 33.

For that reason, the decision in this case is likely to influence other California courts. That is because of the weight that California judges may give to nonbinding

appellate decisions addressing similar factual circumstances. "Although trial courts may not rely on unpublished opinions as authority, courts may may adopt the analysis of an unpublished opinion as its own, if it finds such analysis persuasive." *Axten v. John Foster, LLC*, No. G049665, 2015 WL 1383540, at *3 (Cal. App. 4th Dist. Mar. 25, 2015) (quoting trial court's minute order). There, for instance, the trial court adopted a nonbinding California appellate decision because it had construed "almost the identical arbitration provision under very similar facts," had drawn "the same conclusion" as the trial court, and had "distinguished the primary case relied upon" by the defendant before the trial court. *Id.* That trial court thus found "the analysis in that [appellate] case persuasive and adopt[ed] it as its own." *Id.*

Here, the facts involve an out-of-state employer, a routine noncompete agreement, and a former employee seeking subsequent employment at one of the countless employers operating in California. Given the high probability that the fact pattern here will present itself again, it is reasonable to expect future California courts to follow the path of the Court of Appeal here. Indeed, American federalism presupposes that state courts will be tempted to do so. *See supra* Part I. Because judicial review of state-court exercises of personal jurisdiction forms an integral role in federalism, the posture in which this case arrives poses no obstacle to review.

CONCLUSION

The Court should grant the petition.

Respectfully submitted.

CORY L. ANDREWS
WASHINGTON LEGAL FOUNDATION
2009 Mass. Ave., NW
Washington, D.C. 20036

JUDD E. STONE II
Counsel of Record
CHRISTOPHER D. HILTON
ARI CUENIN
CODY C. COLL
STONE HILTON PLLC
600 Congress Ave., Ste. 2350
Austin, Texas 78701
judd@stonehilton.com
(737) 465-7248

MARCH 2025