Nos. 19-368 & 19-369

IN THE

Supreme Court of the United States

FORD MOTOR COMPANY,

Petitioner,

v.

MONTANA EIGHTH JUDICIAL DISTRICT COURT, *ET AL.*,

Respondents.

FORD MOTOR COMPANY,

Petitioner,

v.

ADAM BANDEMER,

Respondent.

On Writs of Certiorari
to the Supreme Courts of Montana and Minnesota

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

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INTEREST OF *AMICUS CURIAE*

Washington Legal Foundation (WLF) is a non-profit, 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.*, *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty.*, 137 S. Ct. 1773 (2017); *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549 (2017); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011).

INTRODUCTION AND SUMMARY OF ARGUMENT

The Constitution limits 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) (citation omitted). This Court has carefully scrutinized—and consistently rebuffed—attempts to expand the bounds of personal jurisdiction beyond what the Constitution permits. In cases like *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011), and *Daimler AG v. Bauman*, 571 U.S. 117 (2014), the Court has declined to expand general jurisdiction to forums where a defendant is not truly at home. And in cases like

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* No party's counsel authored any part of this brief. No person or entity, other than Washington Legal Foundation and its counsel, helped pay for the brief's preparation or submission. Counsel for all parties have consented to the filing of this brief.

Walden v. Fiore, 571 U.S. 277 (2014), and *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty.*, 137 S. Ct. 1773 (2017), the Court has limited specific jurisdiction to cases in which the plaintiff's claims arise from the defendant's forum contacts.

The Minnesota and Montana Supreme Courts failed to follow these straightforward precepts. In so doing, those courts asserted specific jurisdiction over Ford even though its contacts with the forum States had nothing to do with the events that gave rise to the plaintiffs' claims. Their sliding-scale approach ignores the federalism concerns that animate personal jurisdiction jurisprudence; conflicts with this Court's precedents; and yields unpredictable results and increased opportunities for forum shopping.

Federalism interests support limiting specific jurisdiction to cases in which the defendant's forum contacts are causally connected to the plaintiff's claims. Preserving each State's independence from the others was critical to the Founders' efforts to "secure[ ] to citizens the liberties that derive from the diffusion of sovereign power." *New York v. United States*, 505 U.S. 144, 181 (1992) (quotation omitted). Limits on personal jurisdiction serve that goal. Indeed, this Court has made clear that, in analyzing personal jurisdiction, "federalism interest[s] may be decisive." *Bristol-Myers*, 137 S. Ct. at 1780. Those interests are best served by ensuring that no one State can encroach on the others by regulating the conduct of non-resident defendants simply because they happen to conduct unrelated business in that forum.

That is why this Court's specific-jurisdiction precedents affirmatively require a causal connection between the defendant's forum activities and the plaintiff's claims. "When there is no such connection," the Court has made clear, "specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." *Id.* at 1781 (citation omitted). Failing to ensure that such a causal connection exists—as the lower courts did here—threatens to turn specific jurisdiction into "a loose and spurious form of general jurisdiction." *Id.*

Finally, requiring a causal connection between the defendant's forum contacts and the plaintiff's claims promotes predictability and discourages forum shopping. Predictable jurisdictional rules promote fairness and the "orderly administration of the laws," *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)—to the benefit of plaintiffs and defendants alike, *see Hertz Corp. v. Friend*, 559 U.S. 77, 94–95 (2010). And rules that reduce incentives for forum shopping are fairer than those that do the opposite. *See Yee v. City of Escondido*, 503 U.S. 519, 538 (1992) (noting that forum shopping is a "particular concern").

The causal-connection requirement checks both boxes. It "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with 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. And it limits potential forums to those that are actually connected to the plaintiff's claims.

The Court should reverse the judgments below and reaffirm that specific personal jurisdiction requires a causal connection between the defendant's conduct and the plaintiff's claims.

ARGUMENT

I. Federalism Interests Inform and Limit the Scope of Specific Jurisdiction.

Federalism protects against tyranny by diffusing power not only between the States and the federal government, but also among the fifty States. The limits on personal jurisdiction ensure that no one State, through its courts, can reach outside its proper sphere of influence and encroach on the others. Federalism interests thus constitute an independent check on personal jurisdiction, serving to prevent State overreach no matter the weight of a defendant's convenience concerns.

A. In coming together to form a more perfect union, the States and the American people feared the accumulation of power in any single person or body. *See Printz v. United States*, 521 U.S. 898, 919–22 (1997); *New York*, 505 U.S. at 181–82; THE FEDERALIST NO. 47 (James Madison). They knew that power, left unchecked, tends to consolidate. *See* Harvey C. Mansfield, Jr., *America's Constitutional Soul* 122 (1991) (citing the Founders' understanding of the "'encroaching' . . . nature of power"). And they understood that with consolidated power come arbitrary laws disconnected from the will of the people. THE FEDERALIST NO. 47 ("The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny.").

To stop that from happening, the Founders 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 (James Madison). That first-level division of power between the States and the federal government was only part of the Founders' design. Just as important were the second-level divisions among the States and the three federal branches. *See id.* ("Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.").

These overlapping governmental bodies work together to advance the common good. But they also compete with each other for influence. *See Gregory v. Ashcroft*, 501 U.S. 452, 458–59 (1991) (quoting THE FEDERALIST No. 28 (Alexander Hamilton)); Heather K. Gerken & Ari Holtzblatt, *The Political Safeguards of Horizontal Federalism*, 113 MICH. L. REV. 57, 61 (2014) ("Conflict is a recurring feature of both vertical and horizontal federalism."). That competition serves as a bulwark against aggrandizement of power by any individual State or the federal government. *See Gregory*, 501 U.S. at 458 ("[A] healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.").

Preserving each State's independence from the others was critical to the Founders' efforts to "secure[ ] to citizens the liberties that derive from the diffusion of sovereign power." *New York*, 505 U.S. at 181 (quotation omitted); *see also Pennoyer v. Neff*, 95 U.S. 714, 722 (1877), *overruled on other grounds by Shaffer v.*

Heitner, 433 U.S. 186 (1977) ("The several States are of equal dignity and authority, and the independence of one implies the exclusion of power from all others."). The American people are diverse. They have different backgrounds, different jobs, and different goals. Each citizen is part of the united American people, but he or she is also a member of distinct political communities with unique values. A federal, multi-state system is "sensitive to the diverse needs of a heterogeneous society." *Gregory*, 501 U.S. at 458; *see also* Michael W. McConnell, *Federalism: Evaluating the Founders' Design*, 54 U. CHI. L. REV. 1484, 1493–94 (1987). Each citizen can express himself or herself politically at the local, state, and federal levels. And each additional opportunity for political expression allows for more responsive and better-tailored government.

B. Federalism only works if each State is prevented from unduly expanding its influence at the expense of the others. *See* FEDERALIST NO. 51 (explaining the importance of breaking society "into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority"); Lynn A. Baker & Ernest A. Young, *Federalism and the Double Standard of Judicial Review*, 51 Duke L.J. 75, 117–21 (2001) (describing "the problem of horizontal aggrandizement" (alterations omitted)). And one way a State regulates conduct, and thus exerts influence, is through its courts. *See* William S. Dodge & Scott Dodson, *Personal Jurisdiction and Aliens*, 116 MICH. L. REV. 1205, 1230 (2018) ("For another state to assert personal jurisdiction over a domestic defendant is an intrusion on this authority of the home state[.]").

So when a Montana court exercises jurisdiction over a Michigan citizen, Montana effectively extends its influence outside its borders and regulates the Michigander's conduct. That offends Michigan's sovereign prerogative to regulate the conduct of its own citizens. *See J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 879 (2011) (plurality opinion) (explaining that the Due Process Clause concerns, among other things, "the power of a sovereign to prescribe rules of conduct for those within its sphere"); *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel.*, *Barez*, 458 U.S. 592, 612 (1982) (Brennan, J., concurring) ("As a sovereign entity, a State is entitled to assess its needs, and decide which concerns of its citizens warrant its protection and intervention."). It also offends the Michigander's interests in representative government, as the Michigander is effectively being regulated by a government that is not accountable to him. *See* Brutus No. 1, Oct. 18, 1787, in 2 THE COMPLETE ANTI-FEDERALIST 370–71 (H. Storing ed. 1981) ("The confidence which the people have in their rulers, in a free republic, arises from their knowing them, from their being responsible to them for their conduct, and from the power they have of displacing them when they misbehave[.]").

Personal jurisdiction is an important check on those kinds of encroachments. The doctrine is "a consequence of territorial limitations on the power of the respective states." *Bristol-Myers*, 137 S. Ct. at 1780 (quoting *Hanson v. Denckla*, 357 U.S. 235, 251 (1958)). And it serves federalism by limiting the power of state courts to regulate non-residents—and thereby intrude on the sovereignty of other States. *See World-Wide Volkswagen*, 444 U.S. at 292; James Weinstein, *The Federal Common Law Origins of Judicial Jurisdiction:*

Implications for Modern Doctrine, 90 VA. L. REV. 169, 196–98 (2004) (explaining that the earliest jurisdiction cases were focused on ensuring that States did not encroach on the authority of other States).

To be sure, Michigan's interest in regulating the conduct of its citizens is not absolute. The States comprise a united country, and citizens may travel freely across state lines. As a result, it is clear Montana may regulate the conduct of Michiganders in appropriate circumstances. By defining what those circumstances are, personal jurisdiction limits the reach of Montana courts—and thereby balances Montana's and Michigan's competing interests in regulating the relevant conduct. *See World-Wide Volkswagen*, 444 U.S. at 292 (explaining that the minimum contacts test "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").

For that reason, federalism is not an afterthought in personal jurisdiction analysis. The limits of personal jurisdiction are "express or implicit in both the original scheme of the Constitution and the Fourteenth Amendment." *Id.* at 293; *see also Franchise Tax Bd. of Cal. v. Hyatt*, 139 S. Ct. 1485, 1498 (2019) ("There are many other constitutional doctrines that are not spelled out in the Constitution but are nevertheless implicit in its structure and supported by historical practice[.]"). And that "original scheme" is rooted in federalism. Accordingly, in analyzing personal jurisdiction, "federalism interest[s] may be decisive." *Bristol-Myers,* 137 S. Ct. at 1780.

C. That matters. Whereas "the individual liberty interest preserved by the Due Process Clause" often turns on the convenience of out-of-state litigation for

a particular defendant, *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 n.13 (1985) (quoting *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 n.10 (1982)), federalism interests are not subsumed by convenience. "Even if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, 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.

Federalism concerns do not dissipate simply because a defendant conducts business nationwide. To compete in the modern marketplace, many companies have developed at least some contacts in almost every State. In the general jurisdiction context, this Court has made clear that such contacts do not subject national and international entities to suit anywhere they happen to operate. *See Daimler*, 571 U.S. at 139; *Goodyear*, 564 U.S. at 929. Federalism demands nothing less of specific jurisdiction. *See Bristol-Myers*, 137 S. Ct. at 1781 (cautioning that specific jurisdiction ought not become "a loose and spurious form of general jurisdiction").

Were it otherwise—that is, if federalism did not serve as an independent check on personal jurisdiction, in both its general and specific forms—one State could aggrandize its powers at the expense of the others whenever a defendant has some operations within its borders. Take, for example, the uncertainty about

how state tort law should accommodate the risks associated with the next generation of autonomous vehicles. Under the current model of tort liability, drivers are generally liable for most injuries, and automobile manufacturers bear the risk only of product defects. *See, 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) [hereinafter Abraham, *Automated Vehicles*]. But as the role of technology in controlling vehicles continues to expand, that paradigm may shift. Some States may choose to maintain the current regimes; others may decide to treat manufacturers as "drivers" in some contexts. *See id.* at 133–34, 140, 145; Mark A. Geistfeld, *A Roadmap for Autonomous Vehicles: State Tort Liability, Automobile Insurance, and Federal Safety Regulation*, 105 CAL. L. REV. 1611, 1627–32 (2017). If state courts can regulate the conduct of out-of-state manufacturers—even when those manufacturers are not subject to general jurisdiction and any contacts with the forum State are unrelated to the suit—one State can effectively set the rules for the next generation of automobiles. *See* Abraham, *Automated Vehicles, supra*, at 148–49 (recognizing that States will set the new paradigm absent federal preemption); 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.").

True, uniform regulation has benefits in some contexts. The Founders anticipated the development of national markets, and they granted Congress, through the Commerce Clause, the power to regulate

them. *See* U.S. CONST. art. I, § 8, cl. 3. But when Congress does not exercise its power to regulate national markets, the Founders never envisioned that any individual State would step in to fill the void. The "essential attributes of sovereignty" retained by "each State . . . impl[y] a limitation on the sovereignty of all of its sister States." *World-Wide Volkswagen*, 444 U.S. at 293. As a result, the Court has "never accepted the proposition that state lines are irrelevant for jurisdiction purposes, nor could [it], and remain faithful to the principles of interstate federalism embodied in the Constitution." *Id.*

II. This Court's Precedents Require a Causal Connection Between the Defendant's Forum Contacts and the Plaintiff's Claims.

This Court need not tread new ground to decide this case. It has already held that specific jurisdiction exists only where there is a causal connection between the defendant's forum contacts and the plaintiff's claims. And that principle resolves this case: Because Ford's forum contacts have nothing to do with the plaintiffs' claims, specific jurisdiction is lacking.

A. "[S]ettled principles regarding specific jurisdiction control this case." *Bristol-Myers*, 137 S. Ct. at 1781. "Where a forum seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to suit there," the Due Process Clause's "fair warning requirement is satisfied if the defendant has purposefully directed his activities at residents of the forum . . . and the litigation results from alleged injuries that arise out of or relate to those activities." *Burger King*, 471 U.S. at 472 (quotations omitted). Put more simply, "the *suit* must aris[e] out of or relat[e] to the defendant's contacts with the *forum*."

Bristol-Myers, 137 S. Ct. at 1780 (alteration in original) (quotation and citations omitted).

In *Walden*, the Court clarified that specific jurisdiction turns on the *defendant's* conduct. *See* 571 U.S. at 283–84. "The inquiry whether a forum State may assert specific jurisdiction over a nonresident defendant," the Court explained, "focuses on the relationship among the defendant, the forum, and the litigation." *Id.* (quotation omitted). "For a State to exercise jurisdiction consistent with due process," it continued, "the defendant's *suit-related* conduct must create a substantial connection with the forum State." *Id.* at 284 (emphasis added); *see also Nicastro*, 564 U.S. at 881 (plurality opinion) (explaining that a defendant's "contact with and activity directed at a sovereign may justify specific jurisdiction in a suit arising out of or related to the defendant's contacts with the forum" (quotation omitted)). Where plaintiffs "would have experienced th[e] same [injury] . . . wherever else they might have" been, specific jurisdiction cannot be sustained. *Walden*, 571 U.S. at 290. That is, if "the effects of [a defendant's] conduct" would be the same anywhere, then they are "not connected to the forum State in a way that makes [them] a proper basis for jurisdiction." *Id.*

This Court further elaborated on the meaning of "suit-related" in *Bristol-Myers*. The assertion of specific jurisdiction, the Court explained, requires that there be "an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State[.]" *Bristol-Myers*, 137 S. Ct. at 1780 (quoting *Goodyear*, 564 U.S. at 919 (first alteration in original)). "For this reason, specific jurisdiction is confined to adjudication

of issues deriving from, or connected with, the very controversy that establishes jurisdiction." *Id.* (quotation omitted). "When there is no such connection," the Court made clear, "specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." *Id.* at 1781 (citation omitted).

That is as true of corporate defendants as it is of anyone else. "A corporation's 'continuous activity of some sorts within a state,'" this Court has stressed, "is not enough to support the demand that the corporation be amenable to suits unrelated to that activity.'" *Goodyear*, 564 U.S. at 927 (quoting *Int'l Shoe*, 326 U.S. at 318). Indeed, "even regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales." *Id.* at 930 n.6. Instead, a corporation's in-forum activities must be causally connected to the events giving rise to the plaintiff's suit to support an assertion of specific jurisdiction.

Reaffirming this defendant-focused, causal-connection requirement is crucial for preserving the distinction between general and specific jurisdiction. The former covers "instances in which the continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit . . . on causes of action arising from dealings entirely distinct from those activities." *Daimler*, 571 U.S. at 138 (quoting *Int'l Shoe*, 326 U.S. at 318 (alteration in original) (emphasis omitted)). The latter "is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction." *Goodyear*, 564 U.S. at 919 (quotation omitted). Without affording meaningful weight to the "connection" requirement, specific jurisdiction will become "a loose

and spurious form of general jurisdiction." *Bristol-Meyers*, 137 S. Ct. at 1781. Moreover, cases like *Daimler* and *Goodyear*, which set clear limits on general jurisdiction, will fall by the wayside.

B. These principles illuminate the fundamental error in the decisions below. In both cases, the plaintiffs' tort claims concern Ford activities—namely, the design, manufacture, and assembly of vehicles and components—that took place outside of the forums in which the plaintiffs brought suit. *See Bandemer v. Ford Motor Co.*, 931 N.W.2d 744, 757–59 (Minn. 2019) (Anderson, J., dissenting); *Ford Motor Co. v. Montana Eighth Judicial Dist. Court*, 443 P.3d 407, 411 (Mont. 2019). In both cases, the vehicles at issue were initially sold by Ford outside the forum States and ended up in the relevant forum more than a decade after their manufacture and original sale. *See id.* And in both cases, Ford's contacts with the forum States—which include vehicle sales, advertising, maintenance, and data collection—bore no causal connection to the plaintiffs' claims. *See id.*

The facts, accordingly, are indistinguishable from those in cases like *Walden*. As in *Walden*, "the reality [is] that none of [Ford's] challenged conduct had anything to do with" Minnesota or Montana. 571 U.S. at 289. And as in *Walden*, "the mere fact that [Ford's] conduct affected plaintiffs with connections to the forum State[s] does not suffice to authorize jurisdiction." *Id.* at 291. It is not "sufficient—or even relevant—that" Ford sold vehicles or sent advertisements to third parties in the forum States. *Bristol-Myers*, 137 S. Ct. at 1781 ("[A] defendant's relationship with a . . . third party, standing alone, is an insufficient basis for jurisdiction." (quoting *Walden*, 571 U.S. at

286)). "What is needed—and what is missing here—is a connection between the forum[s] and the specific claims at issue." *Id.*

Put differently, the plaintiffs in these cases would have "experienced this same [injury] . . . wherever else they might have" been. *Walden*, 571 U.S. at 290. Indeed, injuries from an alleged design defect in a product manufactured and sold elsewhere are perhaps the textbook example of the kind of "effects" that "are not connected to the forum State in a way that makes those effects a proper basis for jurisdiction." *Id.* Such injuries are never dependent on the defendant's conduct in the forum state under cases like *Walden* and *Bristol-Myers*.

In misapplying this Court's precedents and reaching the opposite result, the Minnesota and Montana Supreme Courts—like the Ninth Circuit in *Bristol-Myers*—have inadvertently turned specific jurisdiction into "a loose and spurious form of general jurisdiction." 137 S. Ct. at 1781. There is no question in this case that the plaintiffs cannot establish general jurisdiction. And specific jurisdiction is not a mechanism for plaintiffs to evade the limits of general jurisdiction by recasting general jurisdiction arguments in specific jurisdiction terms. "A corporation's continuous activity of some sorts within a state" does not "support the demand that the corporation be amenable to suits unrelated to that activity." *Id.* (alteration omitted) (quotation omitted). "For specific jurisdiction, a defendant's general connections with the forum are [simply] not enough." *Id.*

III. Requiring a Causal Connection for Specific Jurisdiction Promotes Predictability and Discourages Forum Shopping.

This Court has emphasized the importance of promoting predictability and discouraging forum shopping—including in cases implicating personal jurisdiction. *See, e.g., Daimler*, 571 U.S. at 139; *Burger King*, 471 U.S. at 472; *World-Wide Volkswagen*, 444 U.S. at 297; *cf. Hertz Corp.*, 559 U.S. at 94; *Hanna v. Plumer*, 380 U.S. 460, 467–68 (1965). Allowing for specific jurisdiction only in cases where a defendant's forum contacts are causally connected to the plaintiff's suit serves both of those ends.

A. "[T]he foreseeability that is critical to due process analysis is . . . that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen*, 444 U.S. at 297 (citation omitted). Predictable jurisdictional rules allow potential defendants to structure their conduct with an understanding of where they may be liable to suit—and the legal standards against which their culpability might be judged. *See, e.g., Daimler*, 571 U.S. at 139; *Burger King*, 471 U.S. at 472. Particularly for corporate defendants like Ford, such "[p]redictability is valuable [in] making business and investment decisions." *Hertz Corp.*, 559 U.S. at 94 (citation omitted). By contrast, "[c]omplex jurisdictional tests complicate a case, eating up time and money as the parties litigate, not the merits of their claims, but which court is the right court to decide those claims." *Id.*

Although the Court's "'primary concern" in assessing personal jurisdiction is "the burden on the defendant," *Bristol-Myers*, 137 S. Ct. at 1780 (quoting

World-Wide Volkswagen, 444 U.S. at 292), predictability also benefits plaintiffs and courts. Plaintiffs, after all, bear the initial burden of identifying the forum in which they may seek justice. Clear jurisdictional rules make it easier for them to determine "whether to file suit in a state or federal court" and to identify which State is an appropriate forum. *Hertz Corp.*, 559 U.S. at 95. "[T]he orderly administration of the laws" also benefits courts, which must apply jurisdictional rules to ensure that they are acting in their proper domain. *World-Wide Volkswagen*, 444 U.S. at 297 (quotation omitted).

A causal-connection requirement provides the sort of predictability that comports with the Constitution's notice requirements. When specific jurisdiction is limited to cases in which the defendant's forum contacts caused the plaintiff's injury, "potential defendants [can] structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *Id.*; *see also Nicastro*, 564 U.S. at 881 (plurality opinion). Just as important, individuals and entities can take full account of the unique legal landscape of each forum in which they choose to operate and "act to alleviate the risk[s] of burdensome litigation" and potential liability. *World-Wide Volkswagen*, 444 U.S. at 297. Businesses like Ford can manage those risks "by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State." *Id.*

B. Clear jurisdictional rules also minimize "opportunit[ies] for forum shopping," which "exist[ ] whenever a party has a choice of forums that will apply different laws." *Ferens v. John Deere Co.*, 494

U.S. 516, 527 (1990). Time and time again, this Court has identified "forum shopping" as a "particular concern." *Yee*, 503 U.S. at 538; *see also Southland Corp. v. Keating*, 465 U.S. 1, 15 (1984); *Hanna*, 380 U.S. at 467–68. And, where possible, it has adopted rules that minimize incentives for plaintiffs to forum shop.

Reaffirming that specific jurisdiction exists only where there is a causal connection between the defendant's forum contacts and the plaintiff's claims will ensure that opportunities for forum shopping based on personal jurisdiction remain limited. As an initial matter, it will guarantee that state and federal courts in the jurisdictions in which these cases arose apply the same standard to assess the existence of personal jurisdiction—which was decidedly not the case when certiorari was granted. *Compare Bandemer*, 931 N.W.2d at 752–53 (no causal requirement), *and Montana Eighth*, 443 P.3d at 416–17 (same), *with Myers v. Casino Queen, Inc.,* 689 F.3d 904, 912–13 (8th Cir. 2012) (causal requirement), *and Menken v. Emm*, 503 F.3d 1050, 1058 (9th Cir. 2007) (same).

Just as important, it will limit the potential forums in which plaintiffs may file suit to those that are actually connected to their claims. Personal jurisdiction is "a common forum shopping consideration for parties." Emil Petrossian, Note, *In Pursuit of the Perfect Forum*, 40 LOY. L.A. L. REV. 1257, 1279 (2007). The broad, amorphous view of specific jurisdiction espoused by the courts below will frequently leave plaintiffs "free to sue in more than one state," creating opportunities for plaintiffs "to secure the benefits of forum selection." George D. Brown, *The Ideologies of Forum Shopping*, 71 N.C. L. REV. 649, 650 (1993). Limiting specific jurisdiction to those forums where

the plaintiff's claims are causally connected to the defendant's contacts, by contrast, will minimize opportunities for litigants to forum shop.

CONCLUSION

This Court should reverse the decisions of the Minnesota and Montana Supreme Courts and reaffirm that specific jurisdiction exists only where there is a causal connection between the defendant's forum contacts and the plaintiff's claims.

MARCH 6, 2020

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