No. 19-368 and 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 *AMICI CURIAE* PROFESSORS OF JURISDICTION IN SUPPORT OF RESPONDENTS

VINCENT LEVY
Counsel of Record
GREGORY DUBINSKY
KEVIN D. BENISH
HOLWELL SHUSTER & GOLDBERG LLP
425 Lexington Avenue, 14th Floor
New York, NY 10017
(646) 837-5120
vlevy@hsgllp.com

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

Rules & Statutes

INTEREST OF *AMICI CURIAE*

Amici are professors of law who have taught and written about civil procedure and federal jurisdiction. They have an interest in the sound development of the Court's doctrine in this field. A list of *Amici* and their academic positions is set forth in the Appendix.[1]

SUMMARY OF THE ARGUMENT

Petitioner argues specific personal jurisdiction is permissible under the Fourteenth Amendment only if the defendant's forum contacts were a proximate cause of the plaintiff's injury, even where it is undisputed that (1) the defendant purposefully availed itself of the privilege of doing business in the forum, and (2) the plaintiff was injured in that same forum. Petitioner's argument improperly conflates two aspects of this Court's three-part test for specific jurisdiction: the first, which considers the defendant's connection to the forum, and the second, which considers the forum's interest in adjudicating claims.

This Court's precedents indeed establish that under the second part of the specific-jurisdiction test – the only part of the test before the Court in these

---

[1] Petitioner has filed a notice of blanket consent to the filing of *amicus* briefs with the Clerk, and Respondents have given written consent to the filing of the brief. In accordance with Rule 37.6, no counsel for any party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici* or their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

cases – the sole question is whether there is an "affiliation between the forum and the underlying *controversy*." *Bristol-Myers Squibb Co.* v. *Superior Court of California, San Francisco Cty.*, 137 S. Ct. 1773, 1781 (2017) (emphasis added). The relationship between the defendant's contacts and the forum is the province of the first part of the test, and irrelevant to the second. Nor is the fairness of exercising jurisdiction, the province of the third part, at issue. Instead, the "arise from/relate to" requirement merely ensures a forum state possesses a "legitimate interest" in resolving the dispute and is not an inefficient or improper forum for doing so. *Id.* at 1780.

In each of the cases before the Court, the regulatory "arise from/relate to" requirement is met because the plaintiff was injured in the forum. *Id.* at 1782 (explaining that specific jurisdiction is not warranted where "the nonresidents' claims involve *no harm in California [the forum state]*" and "*no harm to California residents*" (emphasis added)).

ARGUMENT

I. The Court's Precedents Do Not Support A "Proximate Cause" Test.

Petitioner argues that the decisions below should be overturned because "specific personal jurisdiction requires a causal connection between a defendant's forum contacts and a plaintiff's claims" and there is allegedly no such connection in this case. Brief of Petitioner ("Petr. Br.") at 3. Petitioner is wrong.

A. As a general matter, the specific-jurisdiction inquiry focuses on "the relationship among the defendant, *the forum*, and the litigation." *Daimler AG* v. *Bauman*, 571 U.S. 117, 126 (2014) (emphasis added). The purpose of the "minimum contacts" inquiry, the Court explained in *International Shoe*, is to test whether "maintenance of the suit [would] offend traditional notions of fair play and substantial justice." *Int'l Shoe Co.* v. *Washington*, 326 U.S. 310, 316 (1945).

To address that question, the Court developed a three-part test, with each part serving a distinct jurisprudential purpose. First, the defendant must "purposefully avail[] itself of the privilege of conducting activities within the forum State," such that the defendant has "clear notice that it is subject to suit there." *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 297 (1980) (citations and quotations omitted). Second, as relevant here, the controversy in suit must "arise out of or relate to" defendant's activities in the forum; "in other words, there must be 'an affiliation between the *forum* and the *underlying controversy*, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation.'" *Bristol-Myers Squibb Co.*, 137 S. Ct., at 1780 (emphasis added; citation omitted). Finally, the exercise of jurisdiction must be "reasonable" and comport with "fair play and substantial justice." *Asahi Metal Indus. Co., Ltd.* v. *Superior Court of California, Solano Cty.*, 480 U.S. 102, 113 (1987) (citation omitted).

Thus, the first part of the specific-jurisdiction test considers how defendants have structured their affairs and where they reasonably anticipate being sued; the second (the only part at issue here) ensures the forum's exercise of jurisdiction serves legitimate regulatory interests; and the third considers whether, overall, adjudication by the forum is fair.

B. Petitioner seeks to shoehorn its proximate-cause rule into the "arise from/relate to" part of the specific-jurisdiction test. Petr. Br. 13. But although the *first* part of the specific-jurisdiction test homes in on the defendant's contacts with the forum, the *second* part of the test does not focus at all on the defendant's purposeful availment of forum state benefits. As noted, it asks whether there is an "affiliation between the forum and the underlying *controversy*"; there must be an "activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*, 564 U.S. 915, 919 (2011) (emphasis added); *Bristol-Myers Squibb Co.*, 137 S. Ct., at 1781 ("What is needed . . . is a connection between the forum and the specific claims at issue."). The only question is whether the forum state has a "legitimate interest" sufficient to justify the exercise of its "coercive power" to resolve the dispute. *Id.*, at 1780.

The facts of *World-Wide Volkswagen* illustrate that the "purposeful availment" and "arise from/relate to" requirements are distinct. There, jurisdiction over a car distributor (World-Wide) and retail dealer (Seaway) was lacking because those defendants did

not meet the purposeful-availment standard. 444 U.S., at 298. But there was no question that Audi (the defendant car manufacturer) was subject to suit in Oklahoma on the basis that (1) the plaintiffs' were *injured* there, and (2) Audi purposefully availed itself of that forum by conducting business there. *Id.* at 288 n.3. It was of no moment that Audi's contacts with Oklahoma were not the proximate cause of the plaintiffs' injury; in fact, Audi did not even bother to contest jurisdiction and no Justice so much as hinted that specific jurisdiction over Audi might be lacking.

As a result, it is perfectly appropriate to find the second part of the test met if (as here) the plaintiff was injured in the forum. As the Court long ago explained, a state "has a manifest interest in providing effective means of redress for its residents." *McGee* v. *Int'l Life Ins. Co.*, 355 U.S. 220, 223 (1957). And "it is beyond dispute that [states] ha[ve] a significant interest in redressing injuries that actually occur within the State." *Keeton* v. *Hustler Magazine, Inc.*, 465 U.S. 770, 776 (1984); Linda J. Silberman, *Judicial Jurisdiction And Forum Access: The Search For Predictable Rules*, *in* Private International Law (Ferrari & Arroyo, eds. 2019) ("In a tort case, nexus is easily satisfied when the tortious act or injury giving rise to the claim takes place in the forum state.").[2]

---

[2] This rule is accepted around the world. *E.g.*, E.U. Regulation (Recast) No. 1215/2012, Art. 7, 2012 O.J. (L. 351) (place of injury sufficient for case-linked jurisdiction); see also Oscar G. Chase, Helen Hershkoff, Linda Silberman, et al., Civil Litigation in Comparative Context (2d ed. 2017).

Indeed, when the Court held in *International Shoe* that "single or occasional contacts" could justify specific jurisdiction, the Court relied upon cases finding jurisdiction on the basis of the plaintiff's injury in the forum state. 326 U.S., at 318. Thus, if a plaintiff is injured in a state, the defendant's conduct is "subject to the State's regulation" under the second part of the test, and specific jurisdiction is appropriate if the other two parts of the test are also met. *Goodyear*, 564 U.S., at 919.

By demanding a causal connection between the defendant's forum contacts and the particular plaintiff's injuries, Petitioner and its *amici* improperly conflate the first and second parts of the test. Thus, citing a number of decisions addressing the "purposeful availment" inquiry, Petitioner argues that "in every case since *International Shoe* in which the Court has found specific jurisdiction lacking, it has noted the absence" of a causal relationship. Petr. Br. 22. But in each of those cases, the Court found there was no jurisdiction because the defendant did not purposefully avail itself of the forum, *not* because the controversy was not caused by the defendant's contacts.[3] Those cases thus provide no support for

[3] See *Walden* v. *Fiore*, 571 U.S. 277, 278 (2014) ("[N]one of petitioner's challenged conduct had anything to do with [the forum] itself."); *World-Wide Volkswagen Corp.*, 444 U.S., at 297 (observing that defendant "ha[d] no 'contacts, ties, or relations'" with the forum); *Hanson* v. *Denckla*, 357 U.S. 235, 253 (1958) (holding that there was an "absence" of "some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State"); *Kulko* v. *Superior Court of*

Petitioner's proximate-cause requirement, which would abridge states' adjudicatory power in situations long recognized to implicate their legitimate regulatory interests.

C. In the face of the well-established specific-jurisdiction cases, Petitioner cites pre-*Goodyear* and *Daimler* general-jurisdiction cases, and argues that it would be unfair to "allow[] a State to exercise jurisdiction over a defendant merely because it does unconnected business there." Petr. Br. 26.[4]

The comparison is inapt. In *Bristol-Myers*, the Court rejected the California Supreme Court's approach to specific jurisdiction as being too similar to a "loose and spurious form of general jurisdiction" because it allowed a court to exercise jurisdiction over a controversy that had no connection at all to the forum. 137 S. Ct., at 1781. The non-resident plaintiffs, who alleged personal injuries from ingesting the defendant's drug, had not purchased the drug or been injured in California, and the drug was not manufactured in California. See *id.* at 1782 (emphasizing that there was a lack of "in-state injury" on the part of "[t]he nonresident plaintiffs in this case" and "no harm to California residents," circumstances

---

California In & For City & Cty. of San Francisco, 436 U.S. 84, 96 (1978) ("[A]ppellant did not purposefully derive benefit from any activities relating to the State of California.").

[4] A number of Petitioner's *amici* repeat the same argument. See Brief of Product Liability Advisory Council, Inc. at 18; Brief of Alliance For Automotive Innovation And General Aviation Manufacturers Association at 12; Brief of the Chamber of Commerce at 13.

that "amply distinguishe[d] . . . the present case" from precedent upholding specific jurisdiction). On the lower court's logic in *Bristol-Myers*, moreover, manufacturers who sold products nationwide would have found themselves subject to suit everywhere in the country – for anything at all – regardless of the connection between the suit and the forum.

A proximate-cause test is not necessary to avoid that result here. Plaintiffs in these cases are suing Ford in Montana and Minnesota *only* because there is an "affiliation between the forum and the underlying controversy," namely, the state residents suffered an injury in the forum in which they brought suit. That injury provides the state in which the injury occurred a legitimate interest in adjudicating the Plaintiffs' claims. It does not follow that Plaintiffs could sue Ford in another state, even if Ford purposefully availed itself of the privileges of doing business in that other state – unless there was some other meaningful connection between the other forum and their claim. And Plaintiffs in these cases did not suffer the misfortune of being injured in multiple states.[5]

D. Finally, Petitioner's approach does not advance the Fourteenth Amendment's aim, in the specific-jurisdiction context, of ensuring adequate and fair

---

[5] This is not to say that specific personal jurisdiction would be appropriate under the Court's three-part test in situations where there is no relationship whatsoever between the defendant's forum contacts and the plaintiff's forum-located injury. The purposeful-availment and reasonableness prongs of the specific-jurisdiction test ensure there is an adequate connection, and, as discussed below in Point II, jurisdiction is proper in these cases.

notice. The Due Process Clause of the Fourteenth Amendment was intended to "give[] 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 Corp.*, 444 U.S., at 297.

Petitioner and its *amici* argue their test is needed to ensure the defendant has adequate notice and that the exercise of jurisdiction in these cases is fair. Petr. Br. 26. But the first and the third part of the specific-jurisdiction test address these very questions. To repeat, those prongs of the test ask whether the defendant purposefully availed itself of the forum, and whether exercising jurisdiction is reasonable under the circumstances. There is no reason to transform the "arise from/relate to" inquiry of the specific-jurisdiction test by grafting onto it a proximate-causation barrier that would exclude cases brought to remedy injuries suffered by forum-state residents, a situation long recognized as constitutionally sufficient to trigger a state's police powers and regulatory interests.

II. The Montana and Minnesota Courts Properly Exercised Jurisdiction.

In both cases below, there was obviously an "affiliation between the forum and the underlying controversy" adequate to justify the state court's exercise of jurisdiction.

In the first consolidated case, Ford sold and serviced automobiles in Montana, including the model of car that allegedly injured Markkaya Jean Gullett, a Montana resident, on an interstate highway in Montana. By selling and servicing automobiles in Montana, Ford created purposeful contacts with Montana, meeting the first requirement for specific jurisdiction. And because the accident happened in Montana, there is a tight connection between the claim and the forum, thereby meeting the second requirement for specific jurisdiction.

In the second case, Ford sold and serviced automobiles in Minnesota, including "more than 2,000 1994 Crown Victoria cars," the model of car that allegedly injured Minnesota resident Adam Bandemer in a collision with a Minnesota snowplow on a Minnesota road, an injury for which Bandemer was treated in Minnesota. Bandemer Pet. App. 9a–10a. By selling and servicing automobiles in Minnesota, Ford created purposeful contacts with Minnesota, meeting the first part of the specific-jurisdiction test. And again, because the accident happened in Minnesota, there is a sufficiently tight connection between the claim and the forum to meet the second part of the test.

These facts show that the cases pass the second part of the specific-jurisdiction inquiry, because they clearly establish the requisite "connection between the forum and the specific claims at issue." *Bristol-Myers Squibb Co.*, 137 S. Ct., at 1781. Each plaintiff, a resident of the forum in which suit was brought,

alleges that a car sold by Ford caused injury in the forum. This establishes a connection between the forum and the underlying controversy, such that the second part of the specific-jurisdiction test is met. *Goodyear*, 564 U.S., at 929 n.5 ("When a defendant's act outside the forum causes injury in the forum . . . a plaintiff's residence in the forum may strengthen the case for the exercise of specific jurisdiction."). By contrast, Gullett could not sue in Minnesota, because her claim has nothing to do with Minnesota. And Bandemer could not sue in Montana, because his claim has nothing to do with Montana.

Ford's decision to sell cars in Minnesota and Montana is exactly the type of corporate "privilege of conducting activities within a state" that "may give rise to obligations." *Int'l Shoe Co.*, 326 U.S., at 319. Jurisdiction by Montana and Minnesota in these circumstances can "hardly be said to be undue." *Ibid.* Indeed, Ford's situation appears to be exactly what the Court envisioned in *World-Wide Volkswagen*:

> "[I]f the sale of a product . . . arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others."

444 U.S., at 297; see also *Goodyear*, 564 U.S., at 919 ("Because the episode-in-suit, the bus accident, occurred in France . . . North Carolina courts lacked specific jurisdiction to adjudicate the controversy.").

This is a fair result, and Ford's proposed approach would lead to absurdities. Consider two sets of grandparents (call them the Moores and the Wrights) who live in New York and have grandchildren who live in Chicago. Both visited their grandchildren for Christmas with the latest iPad in hand as a gift. The Moores had purchased the iPad from an Apple Store in New York and brought it with them on the plane to Chicago. The Wrights, by contrast, wanted to travel light, so they purchased an identical iPad from Apple online and had it shipped directly to their child's home in Chicago (with strict instructions not to open it until their arrival). Tragically, the batteries in the new iPads prove defective, and both the Moore grandchild and the Wright grandchild get burned. Under Ford's approach, the Wright grandchild could sue Apple in Illinois, but the Moore grandchild could not.

Or consider two law clerks living in Virginia, both of whom own identical Keurig coffee makers. One bought his while studying for the bar in New York before moving to Virginia; the other bought hers once she arrived in Virginia. The coffee makers prove defective, causing both clerks serious injuries in their Virginia homes. Under Ford's approach, the second could sue Keurig in Virginia; the first could not.

These results are mandated neither by "traditional notions of fair play and substantial justice," nor by the Constitution's text or any of this Court's cases. They defy logic, and cannot be squared with the Court's conception of the state's adjudicatory authority.

CONCLUSION

This Court has never before found specific personal jurisdiction lacking when a defendant "purposefully availed itself" of the forum, as Ford does not dispute it did here, and a product sold by the defendant injured a forum resident in the forum. Ford is trying to escape the consequences of doing business in the forum, but "the Due Process Clause may not readily be wielded as a territorial shield to avoid interstate obligations that have been voluntarily assumed." *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 474 (1985).

The Court should reject Petitioner's proximate-cause theory, reaffirm states' regulatory interest in adjudicating claims sought to remedy the injuries of forum residents occurring in the forum, and affirm.

Respectfully submitted,

VINCENT LEVY
Counsel of Record
GREGORY DUBINSKY
KEVIN D. BENISH
HOLWELL SHUSTER
& GOLDBERG LLP
425 Lexington Avenue
14th Floor
New York, NY 10017
(646) 837-5120
vlevy@hsgllp.com

Counsel for Amici

April 6, 2020

APPENDIX

APPENDIX[*]

Amici consist of the following professors:

1. Samuel Estreicher is Dwight D. Opperman Professor of Law, Director of the Center for Labor and Employment Law, and Co-Director of the Institute of Judicial Administration at New York University School of Law, and a co-author of Legislation and the Regulatory State (2d ed. 2017).

2. Edward A. Hartnett is Richard J. Hughes Professor of Law at Seton Hall School of Law. He specializes in Civil Procedure, Constitutional Law and Federal Courts with a particular emphasis on the history and practice of the Supreme Court of the United States.

3. Troy A. McKenzie is Professor of Law at New York University School of Law. His scholarly interests include bankruptcy, civil procedure, complex litigation, and the federal courts. He is Co-Director of two centers at NYU – the Institute of Judicial Administration and the Center on Civil Justice.

4. David L. Noll is Professor of Law at Rutgers Law School. He teaches and writes in the areas of legislation, regulation, civil procedure, and complex litigation, and is a co-author of

[*] Institutional affiliations are noted only for the purpose of identification. This brief does not purport to represent the views of any person or institution other than *Amici*.

Legislation and the Regulatory State (2d. ed. 2017).

5. Linda J. Silberman is the Clarence D. Ashley Professor of Law at New York University School of Law. She teaches Civil Procedure, Conflict of Laws, Comparative Procedure, International Litigation, and International Commercial Arbitration. She is co-director of NYU's Center for Transnational Litigation, Arbitration, and Commercial Law.