

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 Court of
Montana and the Supreme Court of Minnesota**

**BRIEF OF THE AMERICAN ASSOCIATION
FOR JUSTICE AND PUBLIC JUSTICE, P.C.
AS *AMICI CURIAE* IN SUPPORT OF
RESPONDENTS**

BRUCE STERN,
President

JEFFREY R. WHITE
Senior Associate

General Counsel

AMERICAN ASSOCIATION

FOR JUSTICE

777 6th Street, NW #200

Washington, DC 20001

jeffrey.white@justice.org

ROBERT S. PECK

Counsel of Record

CENTER FOR CONSTITUTIONAL
LITIGATION, P.C.

455 Massachusetts Ave. NW

Suite 152

Washington, DC 20001

(202) 944-2874

robert.peck@cclfirm.com

Counsel for Amici curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	iii
INTEREST OF AMICI CURIAE.....	1
INTRODUCTION AND SUMMARY OF ARGUMENT.....	2
ARGUMENT.....	5
I. Ford’s Ongoing Relationship With Its Customers And Its Efforts To Cultivate Purchase And Use Of Ford Products In The Forum States Are Sufficient To Confer Specific Jurisdiction.....	5
II. Ford’s Proposed Causation Test Would Not Simplify The Inquiry But Would Instead Require Extensive Discovery While Excluding Fact Patterns That Conform To Existing Standards.....	10
A. Ford’s Causation Standard Is Not Simple.....	11
B. Ford’s Causation Standard Would De- prive The State With The Most Interest In The Controversy Of Jurisdiction.....	13
C. In Its Narrow Emphasis On Causation, Ford’s Standard Excludes Conduct That Relates Directly To Claimants’ Injuries.....	14
III. Hidden Complexities And Illogical Results Plague Any First-Purchase Rule.....	17

IV. The Cases Before This Court Are Categorically Distinct From Those In Which Specific Jurisdic- tion Was Found Lacking.....	21
CONCLUSION.....	24

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Asahi Metal Industry Co. v.</i>	
<i>Superior Court of California, Solano County,</i>	
480 U.S. 102 (1987)	20
 <i>BNSF Railway Co. v. Tyrrell,</i>	
137 S. Ct. 1549 (2017)	1
 <i>Bristol-Myers Squibb Co. v.</i>	
<i>Superior Court of California, Solano County,</i>	
137 S. Ct. 1773 (2017)	1, 2, 16, 21
 <i>Brower v. North Pacific Railway Co.,</i>	
124 N.W. 10 (1910)	23
 <i>Burger King Corp. v. Rudzewicz,</i>	
471 U.S. 462 (1985)	2, 22
 <i>Calder v. Jones,</i>	
465 U.S. 783 (1984)	15
 <i>Cieslikowski v. FCA,</i>	
2019 WL 4138650 (C.D. Cal. Mar. 26, 2019)	10
 <i>Daimler AG v. Bauman,</i>	
571 U.S. 117 (2014)	1
 <i>Domagala v. Rolland,</i>	
805 N.W.2d 14 (Minn. 2011)	23

<i>In Re: Ford Motor Co. DPS6 Powershift Transmission Products Liability Litigation</i> Case No. 2:18-ML-02814 (C.D. Cal.).....	12
<i>Goodyear Dunlop Tires Operations, S.A. v. Brown,</i> 564 U.S. 915 (2011)	20, 22
<i>Helicopteros Nacionales de Colombia, S.A. v. Hall,</i> 466 U.S. 408 (1984)	22
<i>Hertz Corp. v. Friend,</i> 559 U.S. 77 (2010)	10
<i>International Shoe Co. v. State of Washington, Office of Unemployment Compensation and Placement,</i> 326 U.S. 310 (1945).....	4
<i>J. McIntyre Machinery, Ltd. v. Nicastro,</i> 564 U.S. 873 (2011)	21, 22
<i>Logan v. Zimmerman Brush Co.,</i> 455 U.S. 422 (1982)	16
<i>MacPherson v. Buick Motor Co.,</i> 111 N.E. 1050 (N.Y. 1916).....	18
<i>Paroline v. United States,</i> 572 U.S. 434 (2014)	11
<i>Pennoyer v. Neff,</i> 95 U.S. 714 (1877)	18
<i>TV Azteca v. Ruiz,</i> 490 S.W.3d 29 (Tex. 2016).....	16

Walden v. Fiore,
571 U.S. 277 (2014) 4, 15, 21

World-Wide Volkswagen Corp. v. Woodson,
444 U.S. 286 (1980) 5, 14, 15, 20, 21

Other Authorities

Lindsay Chappell, *The Biggest Suppliers Beef Up for Change*, *Automotive News* (Jun. 24, 2019)..... 11

David Coffin, *China's Growing Role in U.S. automotive Supply Chains*, U.S. Int'l Trade Comm'n Working Paper (Aug. 2019) 12

Morris A. Cohen, et al., *Winning in the Aftermarket*, *Harv. Bus. Rev.* (May 2006) 7

Alessandro Gavazza, et al., *A Quantitative Analysis of the Used-Car Market*, 104 *American Econ. Rev.* 11 (Nov. 2014) 7

Hans Greimel, *Discrete Joint Ventures and Projects*, *Automotive News* (Sep. 7, 2015) 12

Phoebe Wall Howard, *Ford Knew Focus, Fiesta Models Had Flawed Transmissions, Sold Them Anyways*, *Detroit Free Press* (Sep. 10, 2019) 12

Ford Motor Co., *Owner Home*,
<https://owner.ford.com> 6

INTEREST OF AMICI CURIAE¹

The American Association for Justice (AAJ) is a national, voluntary bar association founded in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those who have been wrongfully injured. With members in the United States, Canada, and abroad, AAJ is the world's largest plaintiff trial bar. AAJ's members primarily represent plaintiffs in personal injury actions, employment rights cases, and other civil actions. Throughout its 70-year history, AAJ has served as a leading advocate for all Americans seeking legal recourse for wrongful conduct.

AAJ has participated before this Court as *amicus curiae* on personal jurisdiction issues in a number of cases, including *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773 (2017); *BNSF Ry. v. Tyrrell*, 137 S. Ct. 1549 (2017); and *Daimler AG v. Bauman*, 571 U.S. 117 (2014). AAJ's members retain a keen interest in this Court's personal-jurisdiction jurisprudence.

Public Justice, P.C. (Public Justice) is a national public interest law firm that pursues high impact litigation to enhance the public's access to justice. Public Justice routinely advocates in courts across the nation, including the Supreme Court of the United

¹ No counsel for any party authored this brief in whole or in part and no person or entity, other than amici, their members, or their counsel has made a monetary contribution to its preparation or submission. Petitioner and Respondents have consented to the filing of this brief.

States, by filing *amicus curiae* briefs in cases involving issues of vital public concern. Public Justice has submitted *amicus curiae* briefs on issues of personal jurisdiction in the past, including to this Court in *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773 (2017).

The issues presented in this case are of substantial importance to the public interest throughout the United States. In this case and many others across the country, corporations are attempting to limit injured plaintiffs' access to justice by advocating such a narrow reading of this Court's personal-jurisdiction precedent as to effectively deny injury victims access to state courts. Public Justice submits this brief to assist the Court in understanding why the rulings of the Montana and Minnesota courts affirming specific personal jurisdiction over Petitioner Ford comport with due process.

INTRODUCTION AND SUMMARY OF ARGUMENT

Ford asks this Court to adopt an unworkable approach to personal jurisdiction that seeks what the Minnesota Supreme Court correctly called a “radical shift” in the law. Bandemer Pet. App. 12a. This Court has recognized that, where defendants “reach out beyond one state and create continuing relationships and obligations with citizens of another state,” they “are subject to regulation and sanctions in the other State for the consequences of their activities.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985) (citation and internal quotation marks omitted). Ford’s

proposal to add a causal element to the inquiry misconceives the due-process principles animating jurisdictional limits and ignores the “continuing relationships and obligations” that Ford and its fellow manufacturers have with the owners of each vehicle, regardless of where it was first purchased or where it eventually becomes domiciled. The brief filed by the United States correctly recognizes (at 28) that car manufacturers may deliberately target a market for used cars or actively foster a secondary market and that this may provide a basis for jurisdiction. But the United States both underplays the scope of Ford’s activities and wrongly denies that the courts below undertook the necessary analysis to consider this basis for jurisdiction. This rationale—on which the United States concedes that jurisdiction exists—fits squarely within the question presented, was passed upon by the courts below, and is supported by both common sense and the record in both cases.

Ford not only sells new and used cars in the forum States but also maintains a continuing bond to the Ford owners living in those states, through warranties, and through scheduled maintenance provided by Ford dealerships in the forum States, which it uses to obtain critical vehicle data that can be used in vehicle service bulletins that instruct dealerships on repairs, provide the basis for recalls, and correct design flaws in future models.

Ford also maintains an ongoing relationship to the vehicle and owner through original equipment manufacturer (OEM) parts, shipped to the forum States for use in Ford dealerships, in unaffiliated car repair shops, and in automobile supply stores. It

promotes the use of OEM parts in national advertising that tells owners to “Keep Your Ford a Ford.”

Ford’s warranties, available on both new and used cars (designated as certified pre-owned for an additional fee), on Ford service, and on OEM parts, travel with the vehicle to wherever the owner may locate and obligate Ford to repair any manufacturing defects in materials or workmanship in that location. The scope of that activity and the marketing Ford uses to promote it in Montana and Minnesota forms “the necessary connection with the forum State that is the basis for its jurisdiction over [it].” *Walden v. Fiore*, 571 U.S. 277, 285 (2014).

Because of that continuing connection to the vehicle and thus the owner, something that is not unique to the automobile industry, Ford cannot logically deny that the necessary minimum contacts with the forum State and “traditional notions of fair play and substantial justice” are met, as required by this Court’s canonical opinion in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

The rules proposed by Ford and its amici—limiting specific jurisdiction to either the forum where some unarticulated notion of causation lies, the place of design or manufacture, or to the place of first purchase—complicate rather than simplify the inquiry and call into question jurisdiction in circumstances entirely consistent with this Court’s personal jurisdiction precedents. The jurisdictional determinations of the Minnesota and Montana Supreme Courts are correct and in line with the existing jurisprudence and should be affirmed.

ARGUMENT**I. FORD'S ONGOING RELATIONSHIP WITH ITS CUSTOMERS AND ITS EFFORTS TO CULTIVATE PURCHASE AND USE OF FORD PRODUCTS IN THE FORUM STATES ARE SUFFICIENT TO CONFER SPECIFIC JURISDICTION.**

Ford advances a hypothetical in its brief that underscores the blinkered approach it urges on this Court and ignores facts it knows all too well. Petitioner's Br. 33. It suggests that a vehicle sold by Ford in one state and then moved to a second State leaves Ford's activities in the second State the same as when the vehicle was sold: nonexistent. *Id.* To Ford, those facts are no different from an attempt to sue Ford in a state where the driver is merely passing through, as in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980). Ford's rendition of its hypothetical misses the fact that Ford does not just sell cars in different markets; it serves the individual vehicles that bear its brand and their owners, regardless of where they eventually domicile.

Consider that Mark buys a Ford in his home state, South Dakota. He decides to move to Montana. Because of Ford's marketing, Mark knows he can get Ford parts in Montana, he can have his car serviced to specifications by Ford dealerships in Montana, and he can eventually trade it in at a Ford dealership for another Ford—while the purchaser of the used car also knows that Ford will back that used vehicle with possible warranties, replacement parts, and service, so that buying the used car is not the gamble it might

otherwise be. So he doesn't sell his car before moving—he brings it with him into Montana, effectively with Ford's encouragement.

Just like many product manufacturers, Ford has an ongoing relationship with its products and their owners. Unlike the sale of toothpaste or a pair of shoes, where the purchase normally marks the end of the manufacturer's involvement, the purchase of a car involves a continuing series of transactions between the current owner and the manufacturer, as Ford plainly anticipates.

Cars require scheduled maintenance. Oil, air, and fuel filters must be changed periodically, as must the engine's oil, coolant, and brake and transmission fluids. Batteries, brake pads, spark plugs, and timing belts also need replacement after a certain number of miles, while gaskets, hoses, windshield-wiper blades, and tires wear out based on usage. To direct Ford owners to Ford dealerships for these services from which the manufacturer derives both profit and significant data, Ford runs a special Ford owners' website, <https://owner.ford.com>, where, regardless of the vintage of your vehicle and regardless of whether you purchased it new or used, you can register your car to receive "customized maintenance reminders, special offers, and rewards designed to keep you and your vehicle running smoothly." <https://owner.ford.com/service.html>. You can purchase extended service plans for your car, *id.*, as well as learn about accessories that are the only ones "designed and selected by Ford for optimal fit and performance." <https://owner.ford.com/service/accessories.html>.

To keep Ford owners coming back to dealerships for service, Ford's national owners' website helpfully identifies the nearest Ford service center and permits owners to make a service appointment. <https://ford-servicespecials.com/oil-change/articles>.

Even if owners choose to service their cars at shops unaffiliated with Ford, Ford encourages owners to insist on OEM parts, under the targeted advertising slogan, "Keep Your Ford a Ford." <https://ford.to/2Xg5yvM>. As part of that campaign, Ford tells owners that the "right parts are critical to your vehicle's long-term performance and your peace of mind," stating that parts "are readily available at thousands of Ford and Lincoln Dealerships, ensuring fast delivery times," installed by "factory-trained and OEM certified" technicians so that it is done correctly and quickly," while helping to maintain the vehicle's resale value. <https://ford.to/2Xg5yvM>. It further advises that only Ford OEM parts are "warranted by Ford Motor Company." *Id.*

Cars (and many other products) enjoy a potentially long useful life, but only if they receive proper service and replacement parts from time to time. Manufacturers understand that and profit from it. See Morris A. Cohen, *et al.*, *Winning in the Aftermarket*, Harv. Bus. Rev. (May 2006) (noting that "[a]fter-sales services are a high-margin business" and that, in industries such as automobiles, "companies have sold so many units over the years that their aftermarkets have become four to five times larger than the original equipment businesses."); Alessandro Gavazza, *et al.*, *A Quantitative Analysis of the Used-Car Market*, 104 American Econ. Rev. 11 (Nov. 2014) (same).

Ford derives significant profit from aftermarket parts and accessories, which the company sells to its dealers and to distributors. Ford 10-K Report at 2, 27 (2019). In those instances, the manufacturer/seller warrants its product and takes steps, regardless of where the buyer/owner moves, to keep the product in functional order, which can take the form of sending replacement parts, replacing the item altogether, sending a repair service to the location, or sending software updates to the product through the internet.

These factors plainly animated the decisions below, notwithstanding the suggestion otherwise by the United States. *See* U.S. Br. 28 (asserting that “the state courts did not rely on such theories.”). The Montana Supreme Court explicitly found the necessary “nexus ... between Gullett’s use of the Explorer and Ford’s in-state activity” in Ford’s advertising, sales, and service of vehicles in the state, including its “maintenance, repair, and recall services.” Gullett Pet. App. 17a; *id.* at 12a; J.A. 13 (“Ford provided recall services *in Montana* for the vehicle, including certified repair and replace[ment] services.”) (emphasis added). In fact, the actual vehicle in question was the subject of a safety recall after it had been moved to Montana and where Ford undertook a certified repair and replacement of the faulty part. *Id.* at 13a, 29a. Thus, Ford had contact with this specific vehicle in Montana, and many like it, in the course of its normal business. Ford’s recall service for Gullett’s particular vehicle in Montana speaks to Ford’s active cultivation of an environment that encouraged ownership of used Ford cars and assured that the cars would continue to use Montana’s roadways.

The record is also replete with evidence that Ford encouraged the use of its vehicles on Minnesota's thoroughfares. In Minnesota, the Supreme Court noted that Ford "collects data from its dealerships *in Minnesota* for use in redesigns and repairs." Bandemer Pet. App. 4a, 9a & n.3 (emphasis added); *see also* JA 69, 73, 75. The record also shows that Ford guarantees the availability of repairs in Minnesota and maintains ongoing warranties there for both new and used cars. JA 101. The court also held that the data collection efforts from Ford's service efforts in Minnesota, and its failure to detect the design flaw, related to the plaintiff's claim there. Bandemer Pet. App. 17a. It also relied on the fact that "Ford delivers its vehicles and parts into the stream of commerce with the expectation that Minnesota consumers will purchase them." Bandemer Pet. App. 11a. *See also id.* at 12a ("Ford also provides automotive services in Minnesota, including certified repair, replacement, and recall services.").

In summary, the United States is correct to recognize that "the manufacturer is subject to jurisdiction ... with respect to used cars sold resold in the State" where it has "deliberately target[ed] the forum State as a market for used cars" or "actively foster[ed] the secondary market for such cars." U.S. Br. 28 (alterations omitted). But the upshot of that recognition is that the decisions below must be affirmed. *See* Respondents' Br. 20 (arguing that Ford "has actively encouraged and benefited from the market for resale, servicing, and parts of Ford vehicles in Minnesota and Montana"). This rationale is fully within the scope of the question presented, is supported by the record in both cases, and was passed upon by the courts below.

II. FORD'S PROPOSED CAUSATION TEST WOULD NOT SIMPLIFY THE INQUIRY, BUT WOULD INSTEAD REQUIRE EXTENSIVE DISCOVERY WHILE EXCLUDING FACT PATTERNS THAT CONFORM TO EXISTING STANDARDS.

Ford argues that the test it proposes would satisfy the desire for simplicity. Petitioner's Br. 28. *See Hertz Corp. v. Friend*, 559 U.S. 77, 94-95 (2010). It would not.

The logical extension of Ford's argument conjures up this scenario: Sally buys a Ford in Wisconsin, moves to Minnesota, but starts experiencing difficulty starting the car or keeping it running. So Sally goes to a Minnesota Ford dealership while the vehicle is still under warranty. The dealer finds that a defective relay is preventing electricity from being reliably delivered to the fuel pump. The dealer replaces the relay with an OEM part, ordered directly from Ford. After a few weeks, while driving down a highway at high speed, the new relay fails, the car stalls, and she is rear-ended, causing serious injury to Sally. As it turns out, the relay was not defective. The engine design was, because it placed the relay so far from the fuel pump that the standard relay could not produce a sufficient electrical capacity to travel that distance. And its efficacy was further diminished by being exposed to extreme engine heat.² Rather than constituting a defective part, the issue is one of defective design and engineering. Little of that, however, can be knowable

² This hypothetical is derived from *Cieslikowski v. FCA*, No. ED CV 17-562 MRW, 2019 WL 4138650 (C.D. Cal. Mar. 26, 2019), *appeal pending*, No. 19-55679 (9th Cir.).

without compulsory discovery, just as Ford’s mechanic could not determine the existence of that flaw.

A. Ford’s causation standard is not simple.

Causation is rarely obvious and often difficult to determine. This Court has frequently recognized that “[e]very event has many causes.” *Paroline v. U.S.*, 572 U.S. 434, 444 (2014). Even in *amici’s* hypothetical, though the design rendered the relay inadequate, the design may have worked if the dealership installed a larger relay and wiring of heavier gauge. Another possible fix would have moved the relay away from a place where it absorbed too much engine heat to work efficiently. That suggests that another cause of the injury may be the failure of the mechanic performing the warranted repair to discover the problem and effectuate the correct repair. It is also possible that Ford was aware of the problem and sent a service bulletin to its dealerships on how to address complaints about difficulty starting and frequent stalling. In that case, a cause of the litigation could be the dealership’s failure to follow directions or Ford’s inadequate quality controls – changing the jurisdictional venue under Ford’s proposed causal approach.

Yet another possible “cause” could also be design or manufacturing flaws in the relay itself that contributed to the vehicle’s failure. Parts are sourced from multiple places, *see* Lindsay Chappell, *The Biggest Suppliers Beef Up for Change*, *Automotive News* (Jun. 24, 2019), at 2, and the place that part was designed or made could be unknowable—both to the plaintiff and to Ford. *See, e.g.*, David Coffin, *China’s Growing Role in U.S. Automotive Supply Chains*, U.S. Int’l

Trade Comm'n Working Paper (Aug. 2019), <https://bit.ly/2XdGeGs>.

Current multidistrict litigation over Ford transmissions provides another twist to the difficulty that a causation standard creates. *See In re: Ford Motor Co. DPS6 Powershift Transmission Prods. Liab. Litig.*, Case No. 2:18-ML-02814 (C.D. Calif.). In the *Powershift Transmission* case, the subject transmission was developed as a co-venture with a German company, which settled its liability directly with Ford so that Ford retained all responsibility for continuing consumer litigation. *See* Phoebe Wall Howard, *Ford Knew Focus, Fiesta Models Had Flawed Transmission, Sold Them Anyway*, Detroit Free Press (Sep. 10, 2019), <https://bit.ly/2JGCqWv>. Joint ventures on automobile parts are common. *See, e.g.*, Hans Greimel, *Discrete Joint Ventures and Projects*, Automotive News (Sept. 7, 2015), <https://bit.ly/3dUmPR3>. Only through extensive jurisdictional discovery would a plaintiff learn which companies were involved in the design or manufacture of the component and, even then, that plaintiff would have great difficulty determining the location of origin. Or, in many cases, it may prove simply impossible to determine the origin. *See* Respondents' Br. 40.

In short, nothing about a causation standard would render the jurisdictional inquiry simple or straightforward.

B. Ford’s Causation Standard Would Deprive the State with the Most Interest in the Controversy of Jurisdiction.

Under Ford’s “causation-based” approach, the warrantied repair on Sally’s vehicle that took place in Minnesota would not matter for purposes of personal jurisdiction because the cause of her injury was the vehicle’s design, not the replaced relay. Ford tells us that the design of its vehicles generally occurs in Michigan, *Bandemer* Pet. App. 25a, and appears to suggest that only Michigan would have personal jurisdiction over such a dispute. After all, the hypothetical dispute was not caused by a manufacturing defect, which would open the door to Ontario, Canada, the place of manufacture, as having jurisdiction. Nor would purchase in Wisconsin be a “cause” of the litigation under Ford’s reckoning.

Inserting a causation element into the analysis would deprive Minnesota of jurisdiction even though it has a heightened interest in the dispute that is certainly as great, if not greater, than any other state. Unquestionably, Minnesota is the only State with a specific interest in the impact that the faulty vehicle’s crash had on its roads, the safety of its citizenry, and the expenditure of police and emergency personnel. Yet, there is more. The warrantied repair that should have identified the vehicle’s problem (but did not) occurred in Minnesota—and the warranty was enforceable in that State.

C. In Its Narrow Emphasis On Causation, Ford’s Standard Excludes Conduct That Relates Directly To Claimants’ Injuries.

Ford’s causation approach focuses narrowly on the original sale, design or manufacture of the vehicle itself. But this myopic focus leaves out myriad other conduct that may lead to, or relate to, a plaintiff’s injuries—conduct that this Court has found to be sufficient to confer specific jurisdiction.

As this Court recognized in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980), an injury to plaintiffs while passing through a state without a connection to the forum by the defendant is insufficient by itself. There, specific jurisdiction was lacking as to a New York-based company that distributed vehicles, parts, and accessories to dealerships in New York, New Jersey, and Connecticut and as to a New York dealership. *Id.* at 289. Neither defendant did any business in the forum state of Oklahoma, shipped or sold any products to or in that State, or advertised “in any media calculated to reach Oklahoma.” *Id.*

On the other hand, no question was raised about the jurisdictional reach of the Oklahoma courts to the manufacturer (Audi) or the importer (Volkswagen). As this Court explained, “if the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but 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.” *Id.* at 297.

In *amici’s* hypothetical, Ford has a stronger connection to the forum state than the New York dealership without connection to Oklahoma in *World-Wide Volkswagen*. Ford serviced the vehicle for the problem that caused the injury in the forum States and brought about the litigation. Its connection, causal and otherwise, to the forum renders its due-process complaint imaginary. Similarly, in the cases before this Court, Ford serviced the Montana-based vehicle in a recall and sought to provide services and likely provided parts to the vehicles in both cases. Its jurisdictional objection should fail.

Likewise, in *Calder v. Jones*, 465 U.S. 783 (1984), the plaintiff brought a libel action in California against an editor and reporter for an article written and edited in Florida. Under Ford’s causation approach, specific jurisdiction would lie only in Florida, not in the plaintiff’s domicile of California. Nonetheless, this Court upheld jurisdiction in California “based on the ‘effects’ of [the defendants’] Florida conduct in California.” *Id.* at 789. *Cf.* Gullett Pet. App. 7a-8a (case fell under the state long-arm statute because the tort accrued in Montana).³

³ *Amici* recognize that “[d]ue process limits on the State’s adjudicative authority principally protect the liberty of the non-resident defendant—not the convenience of plaintiffs or third parties.” *Walden*, 571 U.S. at 284. Still, due-process concerns are

This Court denied certiorari, as well as a suggestion that it grant, vacate, and remand, in a case pending at the same time as *Bristol-Myers Squibb v. Superior Court*, 137 S. Ct. 1773 (2017). Although the denial of certiorari implies no view on the merits, the decision against a GVR suggests that *TV Azteca v. Ruiz*, 490 S.W.3d 29, 46 (Tex. 2016), *cert. denied*, 137 S.Ct. 2290 (2017), raised no issues addressed by *Bristol-Myers* that would have warranted consideration by the Texas Supreme Court. In *TV Azteca*, a Texas resident sued Mexican broadcasters for defamation in the Texas courts. Although the Texas Supreme Court rejected anchoring personal jurisdiction on arguments that the defamation was directed to the plaintiff in Texas or that it was broadcast to Texas, it held that jurisdiction was proper because the broadcasters made “substantial and successful efforts to benefit from the fact that the signals travel into Texas,” by promoting its broadcasts there and selling advertising to Texas businesses. *Id.* at 49-50.

By comparison, Ford’s efforts to serve the vehicles at issue in Montana and Minnesota were yet more “substantial and successful.” Ford speculates that the plaintiffs could not have been influenced by Ford’s advertising because “the Crown Victoria was decades old when the current owner bought it.” Ford Br. 48. Yet, Ford still advertises, no matter the vintage of the

not a one-sided coin for the benefit of defendants alone. This “Court traditionally has held that the Due Process Clauses protect civil litigants who seek recourse in the courts, either as defendants hoping to protect their property or as plaintiffs attempting to redress grievances.” *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 429 (1982).

vehicle, that genuine Ford service and parts will best keep the car running and “being a Ford.”

Permitting the forum States to serve as forums, under these facts, satisfies the jurisdictional inquiry’s “primary focus” on “the defendant’s relationship to the forum State.” *Bristol-Myers*, 137 S. Ct. at 1779. That Ford sold Ford Explorers in Montana, Gullett Pet. App. 12a, and “2,000 1994 Crown Victoria vehicles in Minnesota,” Bandemer Pet. App. 9a-10a, 16a, is not beside the point as Ford suggests. Instead, these facts demonstrate that Ford was prepared to service those cars and provide replacement parts in those States. Its service and part replacement efforts were not limited to the vehicles sold there but also included out-of-state purchases that moved into the State—and, as here, vehicles that were purchased second-hand within the State—and that needed those services on a schedule known and developed by Ford itself.

III. HIDDEN COMPLEXITIES AND ILLOGICAL RESULTS PLAGUE ANY FIRST-PURCHASE RULE.

Ford, its *amici*, and apparently the United States appear comfortable with an approach to personal jurisdiction that credits the place of first purchase as appropriate, but this proposed rule fares equally poorly. Its rigidity, among other things, fails to account for Ford’s ongoing relationship with its customers, summed up by its slogan, “Keep your Ford a Ford.”

In the hypothetical posed by *amici*, a first-purchase rule would mean that Wisconsin, as the place of original purchase, has jurisdiction, but Minnesota

does not. While Wisconsin has an interest in preventing the sale of defective automobiles from within its territory, that interest pales in comparison with that of Minnesota, which has a real concern for the carnage on its roads, its expenditure of law enforcement, road repair or clean-up, and emergency personnel resources, and the safety of its citizens from the specific crash that occurred.

In *amici's* hypothetical, no “purchase,” original or otherwise, was made in Minnesota. Sally’s vehicle was purchased in Wisconsin. Nonetheless, the warranty was carried out in Minnesota, the vehicle’s defective nature was perceived in Minnesota, an attempted fix—even if ineffective—was carried out in Minnesota, and parts were installed in Minnesota.

Exercising jurisdiction over the litigation in Wisconsin makes no sense. The state has no connection to the faulty design, the inadequate warranty repair, or the actual crash. Making Wisconsin the locus of specific jurisdiction adopts a type of formalism deemed archaic and abandoned from the time jurisdiction embraced a rigid territorial prerogative under *Pennoyer v. Neff*, 95 U.S. 714 (1877), and resurrects the privity-based legal regime that prevailed a century ago, before Justice Cardozo’s opinion in *MacPherson v. Buick Motor Co.*, 111 N.E. 1050 (N.Y. 1916).

Consider a small variation on *amici's* hypothetical. In this instance, two Fords are purchased separately in Wisconsin by neighbors, John and Mary, who both later move to Minnesota. They both experience the same design flaw, a defective relay that results in difficulty starting the engine, as well as unexpected

stalling. This time, the flaw is the relay itself, not the car's design. John goes to a Minnesota Ford dealership to have the problem fixed and receives a new OEM part under warranty but it has the same flaw as the original relay. His neighbor, Mary, does not go to the dealership but awaits the result of John's repair.

Both John and Mary then suffer collisions because of stalls caused by the defective relay. Under the proposed first-purchase rule, specific jurisdiction lies in Wisconsin as the place of first purchase in both instances. After all, the warranty service that took place in Minnesota came at no additional cost and was not a purchase because the warranty came with the vehicle purchase in Wisconsin.

Even if one credits the warranty service as a sort of renewed purchase so that Minnesota's courts could exercise dominion over a lawsuit, two neighbors experiencing the identical problem with cars purchased the same way would be treated differently because one made it to the local dealership for a failed repair, while the other waited, even though both cars failed for the identical reason. The distinction provides too slender a reed to carry the weight a first-purchase rule would accord it.

Moreover, should Ford issue a recall because it discovers a dangerous condition in its vehicles, it would not exclude either John or Mary from its recall simply because they no longer reside in the place of original purchase. In fact, the Gullett vehicle was the subject of a recall and was repaired in that recall in Montana, not in the state of first purchase. Gullett Pet. App. 13a, 29a

In conflict with the suggested “first-purchase” approach, the United States asserts that advertising in the forum and establishing “channels for providing regular advice to customers in the forum State” may satisfy the requirements for personal jurisdiction, even without tying a particular advertisement or advice, causally, to the claim. U.S. Br. 30 (quoting *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102, 112 (1987) (opinion of O’Connor, J.)). In addition, used vehicles of the age of the subject automobiles must have had numerous scheduled maintenance services, repairs, and replaced parts over the years, in order to remain in operational order. It is undoubted that some of these took place in the forum States and likely included OEM parts, in alignment with Ford’s advertising in those States. A first-purchase approach ignores the necessary continued care these products require and that Ford provides.

Moreover, the first-purchase approach cannot be reconciled with *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 929 (2011), where this Court unanimously held that jurisdiction properly lies when injury from a product “arises from the efforts of the manufacturer or distributor to serve . . . the market for its product” thereby permitting a defendant to be sued “in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others.” *Id.* at 927 (quoting *World-Wide Volkswagen*, 444 U.S. at 297). In contracting specific jurisdiction further than current caselaw requires, the proposed first-sale rule offends both Our Federalism and the residual individual sovereignty of the States by limiting jurisdiction to one alone on arbitrary criteria.

In short, a first-sale rule is unworkable in the real world—and conflicts with the longstanding understandings that undergird this Court’s personal-jurisdiction jurisprudence. Application of such a rule would deny a sovereign State jurisdiction over *suit-related conduct* that occurs within its geographic bounds in a quixotic quest for simplicity belied by submerged complexities.

IV. THE CASES BEFORE THIS COURT ARE CATEGORICALLY DISTINCT FROM THOSE IN WHICH SPECIFIC JURISDICTION WAS FOUND LACKING.

The cases before this Court differ immensely from those in which this Court has ruled out specific jurisdiction. In a significant number of those cases, the defendant created absolutely no presence in the jurisdiction and therefore lacked minimum contacts. *See, e.g., World-Wide Volkswagen*, 444 U.S. at 295 (“a total absence of ... affiliating circumstances”); *Walden*, 571 U.S. at 290 (finding no connection between the defendant and Nevada); *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 878 (2011) (plurality op.) (a single machine sold by an independent distributor in the United States was insufficient to connect the foreign manufacturer to the jurisdiction).

In other cases, there was an utter lack of connection between the forum and the occurrence that gave rise to the lawsuit in the forum State. *See, e.g., Bristol-Myers*, 137 S. Ct. at 1781 (no “adequate link between the State and the nonresidents’ claims” where the plaintiffs did not reside in the forum, did not

consume the product in the forum, and were not injured in the forum).

Yet other cases lacked jurisdiction where the “attenuated connections to the State fall far short of ‘the continuous and systematic general business contacts’ necessary to empower [the forum state] to entertain suit against them on claims unrelated to anything that connects them to the State.” *Goodyear*, 564 U.S. at 929 (2011) (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416 (1984)).

Here, by contrast, Ford has a continuous and systematic presence in both forum States that are related to servicing and replacing parts for all Ford-branded cars, regardless of where purchased, designed, or manufactured—including the very Ford models involved in the accidents at issue. It collects data to improve its servicing operations and to improve its future vehicles. Ford’s own State-directed conduct, continuing its relationship with vehicles and their owners, provide the necessary “fair warning” about where it is liable to suit. *Burger King*, 471 U.S. at 472. These actions by Ford constitute “a course of action directed at the society or economy existing within the jurisdiction of a given sovereign, so that the sovereign has the power to subject the defendant to judgment concerning that conduct.” *Nicastro*, 564 U.S. at 884 (plurality opinion).

Ford does not direct those activities solely at residents of Montana and Minnesota who purchased their vehicles in those States. It endeavors to reach *all* Ford owners. Its statewide advertising of parts and Ford service, including its “Keep Your Ford a Ford”

campaign and its owner website, follows the vehicle, regardless of its geographic origin. As the Montana Supreme Court detailed, Ford “delivers its vehicles and parts into the stream of commerce with the expectation that Montana consumers will purchase them,” “advertises in Montana,” “operates subsidiary companies in Montana,” “has thirty-six dealerships in Montana,” “has employees in Montana,” “sells automobiles” in Montana, and provides “repair, replacement, and recall services” in Montana. Gullett Pet. App. 11a-12a. The Montana court found that “Gullett’s use of the Explorer in Montana is tied to Ford’s activities of selling, maintaining, and repairing vehicles in Montana.” *Id.* at 17a.

The Minnesota Supreme Court similarly focused on how Ford “collected data on how all Ford-branded cars performed” in Minnesota, regardless of place of first purchase and, despite that data collection, “Ford failed to detect a defect in” the design of its 1994 Crown Victoria. Bandemer Pet. App. 17a. Ford argues that a causal link is missing between the data collection and Bandemer’s injury. Ford Br. 47. But where, as here, the manufacturer has a duty, nonfeasance is every bit as actionable as misfeasance. *See Domagala v. Rolland*, 805 N.W.2d 14, 22 (Minn. 2011). *See also Brower v. N. Pac. Ry. Co.*, 124 N.W. 10, 11 (1910) (“[T]he distinction between misfeasance and nonfeasance is sometimes fanciful.”).

Ford has structured its contacts with the forum States so that there cannot be any surprise about rendering it subject to suit with respect to the failure of used, resold vehicles in the forum States. The company’s continued outreach to the vehicles’ owners and

the owners' dependency on Ford service and parts to keep the cars running provides the requisite jurisdictional connections – connections that were lacking in past cases where this Court has found jurisdiction wanting. On these contacts, a finding of personal jurisdiction remains consistent with Due Process and this Court's precedents.

CONCLUSION

For the foregoing reasons, *amici* urge this Court to affirm the judgments of the Montana and Minnesota Supreme Courts.

Respectfully submitted,

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Robert S. Peck
Counsel of Record
 CENTER FOR CONSTITUTIONAL
 LITIGATION, P.C.
 455 Massachusetts Ave. N.W.
 Suite 152
 Washington, DC 20001
 (202) 944-2874
 robert.peck@cclfirm.com

Bruce Stern
President
 Jeffrey R. White
*Senior Associate
 General Counsel*
 AMERICAN ASSOCIATION
 FOR JUSTICE
 777 6th Street, NW #200
 Washington, DC 20001
 jeffrey.white@justice.org
Counsel for Amici Curiae