

No. 25-

IN THE
Supreme Court of the United States

WESTFORTH SPORTS, INC.,

Petitioner,

v.

CITY OF CHICAGO, ILLINOIS,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
APPELLATE COURT OF ILLINOIS, FIRST DISTRICT**

REPLY BRIEF FOR PETITIONER

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TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF CITED AUTHORITIES	ii
INTRODUCTION.....	1
I. THERE IS INCONSISTENCY AMONG STATE AND FEDERAL COURTS ON THE SPECIFIC PERSONAL JURISDICTION QUESTION RAISED BY WESTFORTH	2
II. THE COURT HAS JURISDICTION TO REVIEW THIS APPEAL	6
A. Westforth Seeks Review Of A Final Judgment Or Decree Under 28 U.S.C. § 1257(a).....	6
B. Newly Added Claims Related To Different Sales Of Different Products Does Not Render Moot The Specific Personal Jurisdiction Question Over Claims Related To The Indiana Sales	8
III. THE PURPORTED FACT QUESTION ON WHETHER ANY OR ALL OF THE INDIANA SALES WERE STRAW PURCHASES DOES NOT RENDER MOOT THE SPECIFIC PERSONAL JURISDICTION ANALYSIS.....	10
CONCLUSION	12

TABLE OF CITED AUTHORITIES

	<i>Page</i>
CASES:	
<i>Baker v. Carr</i> , 369 U.S. 186 (1962).....	6
<i>Barone v. Rich Bros. Interstate Display Fireworks Co.</i> , 25 F.3d 610 (8th Cir. 1994).....	5
<i>Cox Broadcasting Corp. v. Cohn</i> , 420 U.S. 469 (1975).....	7
<i>Goodyear Atomic Corp. v. Miller</i> , 486 U.S. 174 (1988).....	6
<i>Johnson v. California</i> , 541 U.S. 428 (2004).....	6
<i>Kollmorgen Corp. v. Yaskawa Electric Corp.</i> , 169 F. Supp. 2d 530 (W.D. Va. 1999).....	5
<i>Strabala v. Zhang</i> , 318 F.R.D. 81 (N.D. Ill. 2016)	4, 5
<i>Texas v. Mead</i> , 465 U.S. 1041 (1984).....	10
<i>Walden v. Fiore</i> , 134 S. Ct. 1115 (2014).....	5

Cited Authorities

	<i>Page</i>
<i>Williams v. Beemiller, Inc.</i> , 33 N.Y.3d 523 (2019).....	2, 3, 4
<i>Williams v. Beemiller, Inc.</i> , 100 A.D.3d 143, 952 N.Y.S.2d 333 (N.Y. App. Div. 2012)	4

STATUTES AND OTHER AUTHORITIES:

U.S. Const., Art. III, § 2.....	6
15 U.S.C. § 7903(5)(A)(iii).....	11
28 U.S.C. § 1257(a).....	6, 7

INTRODUCTION

The City of Chicago brought its case against Westforth alleging that Westforth Sports, a licensed firearms retailer in Gary, Indiana, supplied an illegal market for handguns in Illinois by selling handguns at its brick-and-mortar store in Indiana to purported “straw purchasers” presenting identification issued by the State of Indiana showing Indiana residences. The City of Chicago and the Illinois Court of Appeals took the position that, to the extent that those individuals by some means or another transported those handguns to Illinois of their own initiative and outside of Westforth’s direction or control, specific personal jurisdiction in Illinois can still be exercised over Westforth for claims relating to those sales. Westforth is asking the Court to settle the question of whether and to what extent due process allows for specific personal jurisdiction on the basis that a defendant “should have known” that some product may cross state lines at the hands of a third party absent any agreement or other relationship to cause it to do so.

Further, the City of Chicago’s brief in opposition to Westforth’s petition for *certiorari* highlights why the Court should grant Westforth’s petition by raising yet another question. That is, can a plaintiff create specific personal jurisdiction over some claims that do not arise out of or relate to the forum state by alleging different claims arising out or related to altogether different, unrelated transactions, even if the claims are generally of the same type? Does jurisdiction over one nuisance claim create jurisdiction over all nuisance claims? Can the latter subsume the former for specific personal jurisdictional analysis? As the City of Chicago notes in its brief, it sought

to bolster its position on specific personal jurisdiction over claims regarding Westforth's handgun sales to Indiana residents by adding new claims related to legal transfers of handguns to firearms retailers in Illinois and legal transfers of long guns to Illinois residents in Indiana. Simply put, are specific personal jurisdiction questions claim-specific, or does jurisdiction over one claim extend to jurisdiction over all claims if they are raised in the same lawsuit?

Questions of specific personal jurisdiction are far-reaching and central to our system of jurisprudence, and this case presents an opportunity to further settle the rules to be applied and to bring consistency among our nation's courts.

I. THERE IS INCONSISTENCY AMONG STATE AND FEDERAL COURTS ON THE SPECIFIC PERSONAL JURISDICTION QUESTION RAISED BY WESTFORTH.

Presently, a trial court's analysis of whether a third party's unilateral actions in transporting firearms into another state can be the basis of specific personal jurisdiction in that state depends upon the state in which the trial court sits. For instance, in the State of New York, specific personal jurisdiction does not lie against an out-of-state seller of firearms when a third party transfers them of its own initiative into the forum state. *Williams v. Beemiller, Inc.*, 33 N.Y.3d 523, 530-531 (2019). In *Williams*, conducting the same constitutional analysis that Westforth asks the Court to undertake here, the State of New York's highest court held that the requisite showing of minimum contacts regarding the transactions was lacking for a firearms dealer in Ohio who sold numerous

firearms to a non-licensee at retail in Ohio. *Id.* While the court noted that the purchaser had voiced his intention to open gun stores and that he “wouldn’t mind having a shop in Buffalo,” the court rejected the notion that the awareness of such a potentiality was sufficient for the State of New York to exercise specific personal jurisdiction over the seller:

[The retailer] was not a member of the criminal gun trafficking conspiracy and had no distribution agreement with [the purchaser] and his associates, who purchased guns in separate transactions. ... Despite [the purchaser’s] stated aspiration to open a gun shop in Buffalo, the record is devoid of evidence supporting plaintiffs’ theory that, merely by selling handguns to [the purchaser], [the retailer] intended to serve the New York market. Even if [the purchaser] indicated that there was a chance that he may—at some undefined point in the future—transport the firearms to New York, [the retailer] cannot be said to have “forged [constitutionally_sufficient] ties with New York” as there is no evidence that he “took purposeful action, motivated by the entirely understandable wish to sell [his] products here” such that he availed himself “of the privilege of conducting activities within” New York. In the absence of minimum contacts, New York courts may not exercise personal jurisdiction over [the retailer] Plaintiffs’ alternative alter ego theory of jurisdiction is also unavailing.

Id.

Conversely, the Illinois Court of Appeals' decision [2a] upheld by the Illinois Supreme Court [1a] in this case applied a dramatically lesser standard and reached the exact opposite conclusion. Without any evidence like that in *Williams* of anyone telling Westforth that they were considering take firearms to Illinois someday, the Illinois Court of Appeals simply worked backwards from the result – that firearms sold by Westforth ended up in Illinois – to reach a conclusion that personal jurisdiction was proper if interstate transfer was foreseeable. Where the awareness of the retailer in *Williams* based upon purchaser comments that some purchased firearms might be sold in New York market was insufficient under the New York court's jurisdictional analysis, Westforth's common-sense awareness that some firearms sold mere miles from the state line over decades likely would end up in Illinois was deemed sufficient applying a “should have known” standard. Curiously, to support its opinion, the Illinois Court to Appeals cited a New York Appellate Division ruling in the underlying case in *Williams*, not the ultimate decision reached by the New York Court of Appeals:

Westforth's claim of ignorance unravels under scrutiny. Courts have consistently rejected willful blindness as a defense when a defendant “knew or should have known” the consequences of their actions. See *Williams v. Beemiller, Inc.*, 100 A.D.3d 143, 153, 952 N.Y.S.2d 333 (N.Y. App. Div. 2012) (federally licensed firearm dealer in Ohio “expected or reasonably should have expected” obvious straw purchases to interstate trafficker “would have consequences in New York”); see also, *e.g.*, *Strabala v. Zhang*,

318 F.R.D. 81, 111 (N.D. Ill. 2016) (defendant turning “blind eye to the natural consequences of [its] actions”(internal quotation marks omitted)); *Kollmorgen Corp. v. Yaskawa Electric Corp.*, 169 F. Supp. 2d 530, 534-35 (W.D. Va. 1999) (defendant “professing ignorance” and “deliberately tak[ing] steps to keep itself in the dark” about destination of its goods); *Barone*, 25 F.3d at 613-14 (defendant’s ignorance «defie[d] reason and could aptly be labeled ‘willful’”).

[2a, at *P51]. The other cases cited by the Illinois Court of Appeals are readily distinguishable. *Strabala* involved a defamation action where the defendant sent an email to a recipient in the forum state. The *Kollmorgen Corp.* and *Barone* cases involved questions of specific personal jurisdiction over corporations that contracted with a nationwide distributors to reach markets nationwide. Other courts, as noted in Westforth’s initial brief, have wrestled with this question and, extrapolating from *Walden v. Fiore*, 134 S. Ct. 1115 (2014), they have rejected “knew or should have known” bases for specific personal jurisdiction.

This case presents an opportunity for the Court to state explicitly what these courts have extrapolated implicitly. Granting Westforth’s petition will result in consistency across the country on the issue of whether a brick-and-mortar retailer’s intentional act of transporting or causing a product to be transported across state lines is necessary to subject it to specific personal jurisdiction in another state, or whether a third party’s unilateral act in doing so, outside of the control of the retailer and

apart from any contractual relationship with the retailer, is sufficient as long as the potentiality was foreseeable or likely or any other description short of required.

II. THE COURT HAS JURISDICTION TO REVIEW THIS APPEAL.

Westforth agrees with the City of Chicago and, more importantly, this Court, that “[a] petition for certiorari must demonstrate to this Court that it has jurisdiction to review the judgment.” *Johnson v. California*, 541 U.S. 428, 531 (2004). The Court must “determine as a threshold matter that [it has] jurisdiction.” *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 178 (1988). The Constitution provides for the Court’s jurisdiction over “Cases” and “Controversies.” Art. III, §2. That constitutional requirement ensures that the parties before us retain a “personal stake” in the litigation. *Baker v. Carr*, 369 U.S. 186, 204 (1962). This requirement is undisputably met.

A. Westforth Seeks Review Of A Final Judgment Or Decree Under 28 U.S.C. § 1257(a).

Where the parties disagree is on whether there exists in this case a “final judgment or decree” under 28 U.S.C. § 1257(a) from which to seek appeal. There does. 28 U.S.C. § 1257(a) provides for the Court’s exercise of jurisdiction over “[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had.” *Id.* The question raised by the City of Chicago involves the Court’s exercise of jurisdiction in “situations in which the highest court of a State has finally determined the federal issue present in a particular case, but in which there are further proceedings in the lower state courts

to come.” *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 477 (1975).

The Court in *Cox Broadcasting* recognized that “the Court has recurrently encountered situations in which the highest court of a State has finally determined the federal issue present in a particular case, but in which there are further proceedings in the lower state courts to come,” but nonetheless recognized that 28 U.S.C. § 1257(a) jurisdiction may be proper. *Id.* The Court delineated “at least four categories of such cases in which the Court has treated the decision on the federal issue as a final judgment for the purposes of 28 U.S.C. § 1257(a)” despite “additional proceedings anticipated in the lower state courts.” *Id.* As relevant, the second category includes those “cases . . . in which the federal issue, finally decided by the highest court in the State, will survive and require decision regardless of the outcome of future state court proceedings.” *Id.*, at 480.

Here, the Court’s adjudication of whether the State of Illinois may exercise specific personal jurisdiction over claims arising out of or related to Westforth’s sales of handguns in Indiana to individuals presenting state-issued Indiana identification indicating an Indiana state of residence will be ultimately determinative of that issue. If the Court declined to hear Westforth’s petition and all claims against it were tried to conclusion, the constitutional due process specific personal jurisdiction question would remain for later. It is both consistent with *Cox Broadcasting* and in the furtherance of judicial economy that the question be settled now rather than later and granting Westforth’s petition is proper.

B. Newly Added Claims Related To Different Sales Of Different Products Does Not Render Moot The Specific Personal Jurisdiction Question Over Claims Related To The Indiana Sales.

The City's litigation and claims relating to Indiana handgun sales is based upon the conclusion that "Westforth feeds the market for illegal firearms by knowingly selling its products to an ever-changing roster of gun traffickers and straw (sham) purchasers who transport Westforth's guns from Indiana into Chicago, where they are resold to individuals who cannot legally possess firearms, including convicted felons and drug traffickers" because of Indiana's "significantly weaker gun laws." *See* Complaint, ¶ 1, 28. The case-specific question is whether bringing different claims not based upon purported sales seeking to take advantage of another state's "significantly weaker gun laws" is the magic potion to make all constitutional due process analysis moot. The broader question to be answered is whether and to what extent do multiple claims, even of the same type, interrelate to confer specific personal jurisdiction over a defendant.

Initially, the City brought claims alleging that straw purchasers traveled to Indiana to acquire and traffic firearms. Years later, and only after grant of Westforth's motion to dismiss on the basis of specific personal jurisdiction, the City amended its complaint to add "nuisance" claims relating to legal sales of long guns to individuals Illinois residents presenting Firearms Owner Identification Cards issued by the Illinois State Police and claims relating to transfers firearms to Illinois FFLs without making any allegation that such an Illinois resident was a "straw purchaser" or otherwise involved in any alleged third-party criminal trafficking activity

from Indiana to Illinois to take advantage of Indiana's "weaker" gun laws, which is the thrust of its complaint against Westforth regarding the Indiana sales.

In doing so, the City places at the center of this Court's consideration the underlying question of whether specific personal jurisdiction analysis is claim-specific or whether claims that do not arise out of or relate to contact with the forum state can be subsumed into a jurisdictional analysis as long as a plaintiff alleges other claims that do arise out of or related to a defendant's the forum state. Put differently, does the City's amendment of its complaint, years after litigation was initiated, to add different claims about different sales of different products somehow moot the specific personal jurisdiction question governing claims related to Indiana sales?

There appears to be a noticeable lack of instruction from this Court concerning plaintiffs' attempts to bootstrap claims to unrelated forum contacts as the City is attempting to do here. As noted in Westforth's petition, courts have generally held that even a defendant's own connections with a forum state do not confer specific personal jurisdiction over claims unrelated to those connections. Westforth's petition affords the Court an opportunity to expressly state that, if a plaintiff has claims against defendant over which a forum state may properly exercise specific personal jurisdiction, then that is the appropriate jurisdiction in which to litigate those claims. But only those claims, and not every other claim, even of the same type, that a plaintiff would like to piggyback on them. The Court should take this opportunity to provide clarity that due process specific personal jurisdiction analysis cannot be swept away by alleging different facts about a different purported grievance.

III. THE PURPORTED FACT QUESTION ON WHETHER ANY OR ALL OF THE INDIANA SALES WERE STRAW PURCHASES DOES NOT RENDER MOOT THE SPECIFIC PERSONAL JURISDICTION ANALYSIS.

Asserting that there is factual complexity in the case and suggesting that Westforth is “asking the Court to draw factual inferences in its favor,” the City cites *Texas v. Mead*, 465 U.S. 1041, 1043 (1984) for the premise that the Court “do[es] not grant [] certiorari to review evidence and discuss specific facts.” Fortunately, that is not what Westforth is asking the Court to do, and the fact questions of whether any number of the underlying transactions were straw purchases and, if so, whether Westforth knew or did not know of this fact, are immaterial to the specific personal jurisdiction analysis and the issues that Westforth seeks to bring before the Court.

For the sake of argument, assume that every sale of a handgun by Westforth in Indiana to an individual presenting Indiana government-issued identification indicating an Indiana residence was, in fact, a straw purchaser. Further, assume that Westforth knew it and admitted to knowing it. So, what? For assessing whether claims related to those sales may be brought in Illinois, those facts would be entirely immaterial. After all, every criminal or civil complaint begins with the allegation that someone did something wrong, giving rise to a charge or a claim. The City’s argument never goes beyond that, however, to explain what jurisdictional significance such would have to render additional jurisdictional analysis moot.

Certainly, the fact question might have a bearing on the substantive consideration of a plaintiff's claims. For instance, such a finding or admission may be of significance in determining whether a violation of a predicate statute has occurred to remove a federal firearms licensee from the immunity protections of the Protection of Lawful Commerce in Arms Act under 15 U.S.C. § 7903(5)(A)(iii). Likewise, such an admission or finding could arguably be informative on an underlying claim under the right circumstances. But it would be entirely immaterial on the question of specific personal jurisdiction, because none of the "fact questions" related to whether a sale was a straw purchase touches any of the issues necessary to establish specific personal jurisdiction in another forum. In making its argument on this point, the City has seemingly highlighted yet another question that ought to be addressed directly by the Court and put to rest once and for all.

At the very least, the City's argument on this point is a distraction and a mischaracterization of what Westforth is requesting. Westforth did not knowingly sell to straw purchasers, and it will continue to say so in every context in which the opportunity is afforded. But for purposes of this petition, neither that fact nor Westforth's declaration of it ultimately matters.

Understandably, the City fixates on a purported, but immaterial, question of fact concerning whether the sales in Indiana were straw purchases, and it then asks the Court to do the same and dispense with the actual jurisdictional analysis that due process requires. That is precisely what the Illinois Court of Appeals did in the

opinion below. Westforth asks this Court to see through the illusion and not do the same. The purported questions of fact are of no jurisdictional significance, and the City and the Illinois Court of Appeals' reliance upon a immaterial purported questions of fact to circumvent a proper due process specific personal jurisdiction analysis present an opportunity for the Court to provide guidance to all courts concerning what does and what does not matter in determining whether specific personal jurisdiction may be exercised over a defendant.

CONCLUSION

For the reasons set forth in its initial brief and herein, Westforth respectfully requests the issuance of a writ of *certiorari* to the Supreme Court of Illinois. The issues that Westforth seeks to have reviewed are not limited to just this case, and the effect of clarity from the Court will be far-reaching and valuable for the administration of justice nationwide.

Respectfully submitted,

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