

No. 25-909

In the Supreme Court of the United States

META PLATFORMS, INC., ET AL.,

Petitioners,

v.

VERMONT,

Respondent.

*On Petition for Writ of Certiorari to the
Vermont Supreme Court*

**BRIEF FOR AMICUS CURIAE NETCHOICE
IN SUPPORT OF PETITIONERS**

Mark M. Rothrock
LEHOTSKY KELLER COHN LLP
8513 Caldbeck Drive
Raleigh, NC 27615

Paul D. Taske
NETCHOICE
1401 K. St. NW, Suite 502
Washington, DC 20005

Scott A. Keller
Counsel of Record
Jeremy Evan Maltz
LEHOTSKY KELLER COHN LLP
200 Massachusetts Ave. NW
Suite 700
Washington, DC 20001
(512) 693-8350
scott@lkcfirm.com

Counsel for Amicus Curiae

TABLE OF CONTENTS

Table of Authorities ii

Interest of Amicus Curiae 1

Introduction and Summary of Argument 2

Argument 4

I. The Vermont Supreme Court’s decision below deepens an entrenched split of authority by erroneously adopting a “business model” theory of personal jurisdiction for online businesses..... 4

II. The “business model” theory makes it more difficult for online businesses to predict where they may be sued and it undermines interstate federalism. 10

Conclusion 13

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Bristol-Myers Squibb Co. v. Super. Ct. of Cal., S.F. Cnty.</i> , 582 U.S. 255 (2017)	2, 4, 5, 6, 7, 12
<i>Daimler AG v. Bauman</i> , 571 U.S. 117 (2014)	5
<i>Ford Motor Co. v. Mont. Eighth Judicial Dist. Ct.</i> , 592 U.S. 351 (2021)	3, 4, 7, 8, 9, 12
<i>Hasson v. FullStory, Inc.</i> , 114 F.4th 181 (3d Cir. 2024)	9
<i>Hertz Corp. v. Friend</i> , 559 U.S. 77 (2010)	10, 12
<i>Johnson v. TheHuffingtonPost.com, Inc.</i> , 21 F.4th 314 (5th Cir. 2021).....	9
<i>Keeton v. Hustler Magazine, Inc.</i> , 465 U.S. 770 (1984)	7
<i>Mavrix Photo, Inc. v. Brand Techs., Inc.</i> , 647 F.3d 1218 (9th Cir. 2011)	8
<i>South Dakota v. Wayfair</i> , 585 U.S. 162 (2018)	11
<i>State of Iowa v. TikTok, Inc.</i> , 30 N.W.3d 732 (Iowa 2026)	8
<i>State v. Yelp, Inc.</i> , 725 S.W.3d 170 (Tex. App.—Austin [15th Dist.] 2025, pet. pending)	9
<i>TikTok, Inc. v. Eighth Judicial Dist. Ct.</i> , 578 P.3d 640 (Nev. 2025)	8

<i>TV Azteca v. Ruiz</i> , 490 S.W.3d 29 (Tex. 2016).....	8
<i>UMG Recordings, Inc. v. Kurbanov</i> , 963 F.3d 344 (4th Cir. 2020)	8
<i>Walden v. Fiore</i> , 571 U.S. 277 (2014)	3, 4, 8
<i>World-Wide Volkswagen Corp. v.</i> <i>Woodson</i> , 444 U.S. 286 (1980)	3, 10, 12
<i>XMission, L.C. v. Fluent LLC</i> , 955 F.3d 833 (10th Cir. 2020)	9
Other Authorities	
Krista Chavez, <i>Digital Advertising</i> <i>Offers Small Businesses a</i> <i>Competitive Edge</i> , NetChoice (July 10, 2023), https://perma.cc/A5EN- DVEG	11
Sup. Ct. R. 37.2	1
Sup. Ct. R. 37.6	1

INTEREST OF AMICUS CURIAE

NetChoice is a national trade association of online businesses that operate a variety of popular websites, apps, and online services.¹ NetChoice’s guiding principles are (1) promoting consumer choice; (2) continuing the successful policy of “light-touch” Internet regulation; and (3) fostering online competition to provide consumers with an abundance of services. Toward those ends, NetChoice engages in litigation, amicus curiae work, and political advocacy.

NetChoice and its members have a strong interest in this Court granting the petition. The decision below subjects an out-of-state online entity to personal jurisdiction in Vermont based solely on its “business model.” Namely, the decision below relies on advertising practices in the forum State to which none of the underlying claims relate. That decision both creates uncertainty for online businesses as to where they can be haled into court, and deepens a split that is already causing substantial harm for online services. It also provides precedent for other States to unduly expand their personal-jurisdiction doctrine over out-of-state businesses so as not to limit their own jurisdictional

¹ Pursuant to Supreme Court Rule 37.6, amicus curiae states that no counsel for any party authored this brief in whole or in part and no entity or person, aside from amicus curiae, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief. Although Petitioner Meta is a NetChoice member, Meta did not contribute money that was intended to fund preparing or submitting this brief. Amicus curiae provided notice of its intent to file this brief to counsel of record for both parties at least 10 days before the brief’s due date. *See* Sup. Ct. R. 37.2.

reach in comparison to their neighbors. This case provides a good opportunity for this Court to clarify the law, reestablish predictability, and stop this race to the bottom among States unconstitutionally expanding their personal jurisdiction.

INTRODUCTION AND SUMMARY OF ARGUMENT

The internet has transformed how businesses operate, but due process principles of personal jurisdiction apply just as equally to online businesses. Just like brick-and-mortar businesses, online businesses are subject to specific personal jurisdiction in a forum only if there is a “connection between th[at] forum and the specific claims at issue.” *Bristol-Myers Squibb Co. v. Super. Ct. of Cal., S.F. Cnty.*, 582 U.S. 255, 264 (2017).

Yet the decision below follows a number of jurisdictions that have abandoned this fundamental requirement for personal jurisdiction over online businesses. The Vermont Supreme Court exercised specific jurisdiction based solely on Meta’s “business model,” in which it sells advertising space to Vermont businesses and delivers those advertisements to Vermont users. Pet.App.6a, 12a-13a. Yet none of Respondent’s claims against Meta implicated, or arose out of, those advertising practices. Rather, Vermont’s claims target Meta’s extraterritorial activity, including its design decisions and representations regarding Instagram, that are entirely divorced from Meta’s Vermont advertising. This disconnect between Vermont’s claims and Meta’s only forum contacts means that Vermont has, in effect, exercised general jurisdiction over Meta.

Erroneous personal jurisdiction holdings, like the decision below, impose immediate and severe consequences for the internet economy. NetChoice’s members operate websites, apps, and online services used by hundreds of millions of people. They structure their operations to create predictability about where they will face suit, including through deliberate choices about where to direct their activities. The court below’s “business model” test for personal jurisdiction renders those efforts meaningless. If selling advertising is sufficient to confer jurisdiction for claims unrelated to that advertising, then NetChoice’s members cannot “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. v. Woodson*, 444 U.S. 286, 297 (1980). Plus, when one State asserts jurisdiction based on forum-agnostic business practices, it inevitably incentivizes other States to do the same—threatening the interstate federalism this Court’s doctrine protects. See *Ford Motor Co. v. Mont. Eighth Judicial Dist. Ct.*, 592 U.S. 351, 360 (2021).

This Court previously left “questions about virtual contacts for another day.” *Walden v. Fiore*, 571 U.S. 277, 290 n.9 (2014). The Court should address those questions now. A deepening split among federal and state courts—spanning the Third, Fourth, Fifth, Ninth, and Tenth Circuits, as well as the highest courts of Iowa, Nevada, and Vermont—warrants this Court’s review. The internet needs a clear rule, grounded in this Court’s precedents, that an online business’s advertising practices do not provide a

license to adjudicate any claim against that business in any forum.

ARGUMENT

I. The Vermont Supreme Court’s decision below deepens an entrenched split of authority by erroneously adopting a “business model” theory of personal jurisdiction for online businesses.

The Vermont Supreme Court erroneously joined a growing number of jurisdictions embracing an erroneous “business model” theory of personal jurisdiction for online businesses. This theory is a “loose and spurious form of general jurisdiction,” which this Court has rejected. *Bristol-Myers Squibb*, 582 U.S. at 264. The decision below deepens an existing split among federal and state courts regarding how courts should determine whether a defendant is subject to personal jurisdiction based on contacts created online. This Court’s guidance is urgently needed to resolve that conflict.

A. This Court’s specific personal jurisdiction precedent makes two points abundantly clear. First, a defendant must “take some act by which [it] purposefully avails itself of the privilege of conducting activities within th[at] forum State.” *Ford Motor*, 592 U.S. at 359 (first alteration in original; citation omitted). In determining whether this requirement is satisfied, a court must rely on “contacts that the defendant [it]self creates with the forum State,” rather than contacts created by “[t]he unilateral activity of another party or a third person.” *Walden*, 571 U.S. at 284 (citation

modified). Second, “the suit must arise out of or relate to the defendant’s contacts with the forum.” *Bristol-Myers Squibb*, 582 U.S. at 262 (citation modified). Importantly, that requires a “connection between the forum and the specific claims at issue.” *Id.* at 264-65 (“[T]here must be an affiliation between the forum and the underlying controversy” (citation modified)).

The Vermont Supreme Court failed to apply those requirements. It exercised specific jurisdiction over Meta, even though the State failed to allege contacts purposefully directed at Vermont that relate to the State’s claims.² The State brought two claims under its consumer protection laws: an “unfairness” claim and a “deception” claim. Under the “unfairness” claim, the State alleges that Meta violated Vermont law by “intentionally design[ing] Instagram to be addictive.” Pet.App.4a. But the State nowhere alleged that Meta “designed” Instagram in Vermont or that any of the individual “features” it challenges were created in Vermont. Pet.App.95a-115a. And under the “deception” claim, the State alleges that Meta made misrepresentations about Instagram’s safety. Pet.App.6a. But the State likewise did not allege that Meta made any of those statements in Vermont or that it directed them at Vermont residents. Pet.App.21a.

Nevertheless, the Vermont Supreme Court exercised specific jurisdiction over Meta by applying a

² The parties agree that Vermont does not have general personal jurisdiction over Meta. Meta is incorporated in Delaware and has its principal place of business in California. *See, e.g., Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014).

so-called “business model” approach. Specifically, the court held that Meta had “continuously and deliberately exploit[ed]” the Vermont market by operating a nationwide application, selling advertising to Vermont businesses, and delivering those advertisements to Vermonters. Pet.App.6a, 12a-13a. It reasoned that those advertising contacts were “related” to the State’s claims because Meta “is encouraged to design Instagram” in a way to “increase advertisement revenue.” Pet.App.28a.

But this chain of reasoning proves too much. The State itself conceded that it did “not claim[] that viewing advertisements is causing Vermonters to be *addicted* to Instagram.” Pet.App.27a (emphasis added). Nor did it allege that those advertisements were deceptive. Pet.App.80a-95a. There is thus no connection between Meta’s advertising contacts with the forum and the alleged addiction and deception that are the bases for Vermont’s claims against Meta.

This “business model” approach to personal jurisdiction contravenes *Bristol-Myers Squibb*. There, a pharmaceutical company had “extensive contacts with California,” and over \$900 million in revenue from its sales of a certain drug—all plainly part of its business model. 582 U.S. at 260 (internal quotation marks omitted). This Court held that personal jurisdiction was lacking because the plaintiff’s claims (alleging injuries from that drug) occurred *outside* of California. *Id.* at 264; *see id.* at 259. As *Bristol-Myers Squibb* explained, “a corporation’s continuous activity” within “a state is not enough to support the demand that the corporation be amenable to suits *unrelated* to that

activity.” *Id.* at 264 (emphasis added; citation modified). Under the erroneous business-model test, California courts would have been able to exercise specific jurisdiction based on the defendants’ offices, employees, and revenue generated from drug sales. In fact, the California Supreme Court seemed to conclude as much. *Id.* at 260. Yet *Bristol-Myers Squibb* reached the opposite conclusion, holding that even those extensive forum contacts cannot support specific jurisdiction for unrelated claims. *Id.* at 264.

The decision below relied heavily on this Court’s decisions in *Keeton v. Hustler Magazine, Inc.* and *Ford Motor*. But in both of those cases, contacts *with the forum* gave rise to the claims at issue. *Keeton* concluded that New Hampshire had specific personal jurisdiction when libel claims arose directly from a magazine publisher’s distribution of thousands of physical copies of an allegedly libelous magazine into New Hampshire. 465 U.S. 770, 772, 780-81 (1984). In *Ford Motor*, a car manufacturer’s advertisements in the relevant forum States supported specific jurisdiction because those were advertisements for the “very vehicles that the plaintiffs allege malfunctioned and injured them in those States.” 592 U.S. at 365. Here, by contrast, the advertisements Instagram sold and distributed in Vermont are not connected either to the allegedly addictive design of Instagram or the alleged misrepresentations about Instagram’s safety. Thus, neither of the State’s claims against Meta arise from any of its alleged advertising contacts with Vermont.

B. The Vermont Supreme Court’s decision deepens an existing split among state and federal courts

regarding how courts should determine whether a defendant is subject to personal jurisdiction based on contacts created online. This Court has never squarely addressed that question. *See Walden*, 571 U.S. at 290 n.9; *Ford Motor*, 592 U.S. at 366 n.4 (explaining that such issues “raise doctrinal questions of their own”). The result has been confusion among the lower federal and state courts. *See, e.g., TV Azteca v. Ruiz*, 490 S.W.3d 29, 44 n.8 (Tex. 2016) (“For twenty years already, courts around the country have struggled to determine how to apply personal-jurisdiction principles to a defendant’s Internet website or activities[.]”).

This confusion has created a split as to whether courts may exercise specific jurisdiction based only on specific, claim-related activities or instead based on more general contacts arising out of a defendant’s “business model.” On one side of the split are decisions—like the one below—holding that specific jurisdiction is appropriate where a defendant operates a nationally accessible website with a “business model” that “exploit[s]” the forum’s market, even if those allegedly exploitative contacts are unrelated to the underlying claims. Pet.App.12a; *see UMG Recordings, Inc. v. Kurbanov*, 963 F.3d 344, 354 (4th Cir. 2020); *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1230 (9th Cir. 2011); *State of Iowa v. TikTok, Inc.*, 30 N.W.3d 732, 737-38 (Iowa 2026); *TikTok, Inc. v. Eighth Judicial Dist. Ct.*, 578 P.3d 640, 649 (Nev. 2025).

Those decisions conflict with decisions of the Third, Fifth, and Tenth Circuits, which have refused to relax the traditional specific, claim-related contact

requirement and have rejected specific jurisdiction based on undifferentiated contacts generated by a website’s business model that are not related to the complained-of conduct. *See Hasson v. FullStory, Inc.*, 114 F.4th 181, 191-95 (3d Cir. 2024); *Johnson v. TheHuffingtonPost.com, Inc.*, 21 F.4th 314, 320-22 (5th Cir. 2021); *XMission, L.C. v. Fluent LLC*, 955 F.3d 833, 846-47 (10th Cir. 2020). These decisions impose the “real limits” on specific jurisdiction that this Court has emphasized are necessary to “adequately protect defendants.” *Ford Motor*, 592 U.S. at 362.

This Court should grant certiorari to resolve that conflict and make clear that a defendant’s “business model” alone is not sufficient to exercise specific jurisdiction. Beyond resolving this split, a decision from this Court would provide guidance in other contexts involving online activity. For example, a Texas court recently exercised specific personal jurisdiction over Yelp based on its advertising and commercial contacts with Texas, even though the challenged conduct was non-commercial. *See State v. Yelp, Inc.*, 725 S.W.3d 170, 175-76 (Tex. App.—Austin [15th Dist.] 2025, pet. pending). A decision from this Court mandating rigorous enforcement of the claim-specific contacts requirement would foreclose similar errors by other courts in the future.

II. The “business model” theory makes it more difficult for online businesses to predict where they may be sued and it undermines interstate federalism.

Exercising specific jurisdiction over online businesses based on their forum-agnostic “business models” undermines long-recognized interests in predictability and interstate federalism. This petition therefore presents a question of exceptional national importance.

The Due Process Clause requires “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. This predictability “is valuable to corporations making business and investment decisions.” *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010). No less than their brick-and-mortar counterparts, online businesses depend on this predictability to structure their operations. They eschew commercial relationships with certain categories of businesses in a forum and otherwise order their affairs in reliance on established jurisdictional principles.

The Vermont Supreme Court’s decision further undermines that predictability by joining other jurisdictions adopting the “business model” approach to specific jurisdiction. Under this approach, no good-faith effort to conform to established jurisdictional rules allows online businesses to reliably predict where they can be haled into court. The decision below premised specific jurisdiction on advertising contacts

bearing no relationship to the State’s claims. *See supra* Part I. Under that test, no degree of responsible business planning and risk management practices ensure predictability.

The “business model” test’s focus on forum-agnostic practices (*e.g.*, advertising) renders most online businesses subject to something akin to general personal jurisdiction in States across the nation. Advertising in particular is the economic engine of the Internet. Companies use advertising to support free email, news, entertainment, search tools, navigation and more. Small businesses also rely on online advertising to efficiently and cost-effectively reach new customers and grow their business.³ Unsurprisingly, then, digital advertising is nearly universal online. *See* Pet.27 (“Virtually all of the most popular websites on the Internet—from news and information sites (like the New York Times, Weather Channel, and ESPN) to brick-and-mortar retailers (like Walmart)—generate substantial revenue by displaying third-party advertisements.”).

Permitting courts to exercise personal jurisdiction over website operators based on advertising alone would have staggering consequences for the national economy. This Court has recognized that the “Internet’s prevalence and power have changed the dynamics of the national economy.” *South Dakota v. Wayfair*, 585 U.S. 162, 184 (2018). And as Petitioners point out,

³ *See, e.g.*, Krista Chavez, *Digital Advertising Offers Small Businesses a Competitive Edge*, NetChoice (July 10, 2023), <https://perma.cc/A5EN-DVEG>.

“over 80 percent of global businesses use the Internet’s largest online advertising platform, reaching 90 percent of Internet users worldwide.” Pet.27 (citation omitted). If those advertising practices confer specific jurisdiction in almost any forum for any claim, then online businesses will no longer be able to “reasonably anticipate” where they will be haled into court next. *World-Wide Volkswagen*, 444 U.S. at 297. Absent that “predictability,” a substantial segment of the national economy will be unable to make key business decisions with any confidence. *Hertz Corp.*, 559 U.S. at 94.

The “business model” test also threatens “interstate federalism.” *World-Wide Volkswagen*, 444 U.S. at 293. Defendants’ interests in notice and predictability exist alongside “those of the States in relation to each other.” *Ford Motor*, 592 U.S. at 360. Recognizing that one “State’s sovereign power to try a suit” may “prevent sister States from exercising their like authority,” this Court applies the “law of specific jurisdiction” to “ensure that States with little legitimate interest in a suit do not encroach on States more affected by the controversy.” *Id.* (citation modified). The “business model” test, however, ignores those principles and allows States to exercise specific jurisdiction over claims even where there is no “affiliation between the forum and the underlying controversy.” *Bristol-Myers Squibb*, 582 U.S. at 262 (citation omitted). The inevitable result is that the State where the challenged conduct occurred—the State with the greatest regulatory interest—loses its primacy to any forum where the defendant happens to sell advertising. When one or several States adopt such an approach—as has already

happened in Iowa, Nevada, and Vermont—that incentivizes others to do the same. This Court’s specific personal jurisdiction doctrine, however, is designed to prevent this race to the bottom.

This Court should therefore grant review now over this erroneous “business model” theory of specific personal jurisdiction, before a growing patchwork of decisions further erodes core due process principles.

CONCLUSION

The petition for a writ of certiorari should be granted.

14

Respectfully submitted,

SCOTT A. KELLER

Counsel of Record

JEREMY E. MALTZ

LEHOTSKY KELLER COHN LLP

200 Massachusetts Ave. NW

Suite 700

Washington, DC 20001

(512) 693-8350

scott@lkcfirm.com

MARK M. ROTHROCK

LEHOTSKY KELLER COHN LLP

8513 Caldbeck Drive

Raleigh, NC 27615

PAUL D. TASKE

NETCHOICE

1401 K. St. NW, Suite 502

Washington, DC 20005

Counsel for Amicus Curiae

MARCH 2026