No. 25-909

IN THE

Supreme Court of the United States

META PLATFORMS, INC. AND INSTAGRAM, LLC,

Petitioners,

v.

STATE OF VERMONT,

Respondent.

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

BRIEF IN OPPOSITION

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April 17, 2026

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QUESTION PRESENTED

The petition rests on a mischaracterization of the Vermont Supreme Court's decision. Petitioners contend that the court based its personal jurisdiction holding "on their purported 'business model'—i.e., generating revenue by selling online advertising space to third parties . . . ." Pet. at i. On the contrary, the court repeatedly emphasized Petitioners' deliberate and continuous exploitation of Vermont and its market: Petitioners entered into contracts with Vermonters, obtained and studied Vermont teenagers' personal data, used that data specifically to increase Vermont teenagers' use of Instagram, and then used that increased engagement to further exploit the Vermont market.

Accordingly, under the Vermont Supreme Court's actual holding, the question presented is:

Whether a state court may exercise personal jurisdiction in a state enforcement action alleging that a non-resident defendant violated consumer protection regulations by nurturing an in-state market for a dangerously addictive product that it provides to tens of thousands of state residents.

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INTRODUCTION

Petitioners Meta Platforms, Inc. and Instagram, LLC (collectively, "Meta") interact daily with tens of thousands of Vermonters through their social media platform, Instagram. At times, more teens and young adults in Vermont used Instagram, per capita, than in any other state. And that is no accident: as the Vermont Supreme Court recognized below, Meta has directed its efforts at creating a Vermont-specific market.

Although not based in Vermont, Meta does not contest that it must abide by Vermont law when dealing with Vermont consumers on this massive scale. Upon investigation, Respondent, the State of Vermont, determined that Meta violated and continues to violate the Vermont Consumer Protection Act, Vt. Stat. Ann., tit. 9, ch. 63, by providing a dangerously addictive product and misrepresenting the safety of that product to the public. Disturbingly, the State's investigation showed that Meta targets teenagers, a vulnerable segment of the population, and in fact, studied Vermont teenagers' use of its products to increase "engagement" in the state. By designing its product to exploit teenagers' developing brains, Meta aimed to foster their addictions and increase the amount of time they spent using Instagram. The more time Vermont teenagers spend on Instagram, the more money Meta can make selling advertising space on Instagram to Vermont-based businesses targeting Vermont markets and Vermont teenagers.

To enforce its laws and protect its residents, the State brought a civil enforcement action against Meta in a Vermont court. Without challenging the State's power to regulate Meta's interactions with Vermont consumers, Meta seeks review of the Vermont Supreme

Court's determination that Meta must answer the State's claims in a Vermont court. According to Meta, review is needed to resolve a split in authority with respect to how a defendant's business model is relevant to the personal jurisdiction analysis.

The Court should decline Meta's invitation. *First*, there is no split in authority. Meta does no more than identify different cases with different facts that resulted in different outcomes. *Second*, the Vermont Supreme Court correctly and faithfully applied well-settled principles governing personal jurisdiction to a defendant who has extensive claim-related contacts with Vermont. Reviewing the decision will not permit the Court to reach potentially trickier questions that may arise when a small business is sued in a distant forum. *Cf. Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 592 U.S. 351, 377 (2021) (Gorsuch, J., concurring in the judgment) (discussing "a retiree in Maine who starts a one-man business, carving and selling wooden duck decoys"). And *third*, this enforcement action provides a poor vehicle for resolving the question set forth in the petition, if that question needs to be resolved at all. The possibility of denying the State the ability to enforce its own laws in its own courts to protect its own residents raises complex issues regarding state sovereignty and this Court's original jurisdiction jurisprudence that would not arise in a case brought by a private plaintiff.

The State respectfully submits that the appropriate course of action here is to deny the petition and permit this matter to be resolved by the Vermont courts.

STATEMENT OF THE CASE

1. Meta Platforms, Inc. "is a global [social media] company. It is incorporated in Delaware and headquartered in [California]. But its business is everywhere. [Meta] markets, sells, and services its products across the United States and overseas." *Cf. Ford*, 592 U.S. at 355; *see* Pet.App.76a. Together with its subsidiary, it operates Instagram, a social network that it designed to exploit teenagers' neurological, cognitive, and psychological vulnerabilities for the purpose of selling advertisements. Pet.App.67a-68a. Instagram is enormously profitable, but it would be far less profitable if the dangers of the product were widely known among consumers, particularly young users and their parents. Pet.App.74a. To avoid this loss in revenue, Meta has systematically and intentionally misled consumers about the safety of its product. *Id.*

Respondent, the State of Vermont, has enacted a set of consumer protection laws designed to protect its residents when they engage in commercial transactions. *See generally* Vt. Stat. Ann., tit. 9, ch. 63. When a company hurts Vermont consumers by engaging in unfair or deceptive business practices, the State has authorized its Attorney General to investigate and, where appropriate, seek redress in its courts. *See* Vt. Stat. Ann., tit. 9, §§ 2460-61.

Upon investigation, the State learned a number of disturbing facts about Meta and Instagram. Meta has invested substantial resources into studying teenagers' neurological, cognitive, and psychological vulnerabilities, including their underdeveloped capacity for self-regulation and heightened sensitivity to dopamine. Pet.App.95a-107a. It then designed Instagram to exploit those vulnerabilities for the purpose of maximizing the time young users spend on the platform. *Id.*

To be clear, Instagram is a highly individualized product that gives each user the experience that Meta has deemed most likely to keep them engaged (or, less euphemistically, addicted). Other than the fact that it is made available online, Instagram has little in common with a traditional website like the one maintained by this Court, which provides a uniform set of information to everyone who types in a URL.

Meta's own internal research confirms that these design choices worked as intended: one internal study found that "app addiction is common on [Instagram]," and another found that teens "have an addicts' narrative about their [Instagram] use." Pet.App.68a-69a; *see also* Pet.App.115a-116a (emphasis omitted). Meta further found that compulsive Instagram use caused serious harms to young users including anxiety, depression, sleep disruption, and suicidal ideation. Pet.App.120a-130a. Despite these findings, Meta's senior leadership repeatedly failed to fund meaningful safety improvements. Pet.App.135a-142a. And rather than disclose what it knew, Meta systematically misled consumers—including through congressional testimony and the concealment of internal research—to maintain the false impression that Instagram was safe for young people and avoid losing a profitable group of users. Pet.App.142a-163a.

The State also learned the degree to which Meta and Instagram inserted themselves into the lives of young Vermonters. Between July 2020 and June 2021, more than 40,000 Vermonters aged 13-17 were using Instagram monthly. Pet.App.91a. And between October 2022 and April 2023, Meta had more than 76,000 monthly Vermont Instagram users aged 18-24. *Id.* In both groups, the overwhelming majority used the product every single day. *Id.* By 2022, Instagram had nearly

fully saturated the market for Vermonters under age thirty-five. Pet.App.92a.

To protect Vermonters from Meta's dangerous product and its public misrepresentations, the State filed an enforcement action against Meta in a Vermont trial court. Meta moved to dismiss under Vermont Rule of Civil Procedure 12(b), arguing that the State had not sufficiently alleged personal jurisdiction, that it was immune under 47 U.S.C. § 230, and that its actions were protected by the First Amendment. The trial court rejected all of these arguments and denied the motion to dismiss. On Meta's motion, however, the trial court certified the personal jurisdiction question for an immediate interlocutory appeal to the Vermont Supreme Court.

2. The Vermont Supreme Court accepted the appeal and, after briefing and argument, affirmed the trial court's order.

The court applied the traditional test for specific jurisdiction. Pet.App.9a-10a. "To be subject to specific jurisdiction, the defendant (1) 'must take some act by which it purposefully avails itself of the privilege of conducting activities within the forum State' and (2) the plaintiff's claims 'must arise out of or relate to the defendant's contacts with the forum.'" Pet.App.9a (quoting *Ford*, 592 U.S. at 359). "The law of specific jurisdiction thus seeks to ensure that States with 'little legitimate interest' in a suit do not encroach on States more affected by the controversy." *Ford*, 592 U.S. at 360 (citation omitted).

On purposeful availment, the court identified a series of contacts through which Meta had "continuously and deliberately exploit[ed] the [Vermont] market." Pet.App.12a-13a (quoting *Keeton v. Hustler Mag., Inc.*,

465 U.S. 770, 781 (1984)). These included Meta's entry into contracts with tens of thousands of Vermont users, through which it collected their personal information; its sale of advertising to Vermont businesses seeking to target Vermont users, and Vermont teens specifically; and its specific study of Vermont teen users' engagement patterns to inform product development aimed at increasing those users' time on the platform. Pet.App.12a-13a, 16a-17a. The court emphasized that Meta was not "merely mak[ing] an application that happens to be accessible in Vermont" but was affirmatively engaging with Vermont consumers and Vermont businesses in ways that displayed "specific intent to target" Vermont. Pet.App.14a, 17a-18a (alterations omitted).

The court also rejected Meta's argument that its contacts with Vermont were solely the result of users' unilateral decisions to sign up for Instagram. While acknowledging that users initiate the relationship, the court held that "the mere fact that the users initiate a relationship between the defendant and themselves is not dispositive." Pet.App.19a. Meta's "deliberate choice to direct[] its business at and solicit engagement from Vermont consumers and businesses," the court found, was not undermined by the fact that Meta does not control users' initial choice to sign up. *Id.*

On relatedness, the court found "a sufficient relationship between the State's claims and Meta's connections to Vermont." Pet.App.28a. The relatedness requirement, the court explained, does not require "a strict causal showing." Pet.App.27a (citing *Ford*, 592 U.S. at 361). Rather, "jurisdiction attaches . . . when a company cultivates a market for a product in the forum State and the product malfunctions there." Pet.App.25a (quoting *Ford*, 592 U.S. at 352). Here, the

State alleged that Meta cultivated and purposefully availed itself of the Vermont market for social media, and that the use of Meta's product and its misrepresentations about that product caused injury to Vermonters. *Id.* Accordingly, the court held, "there is a sufficient relationship between the State's claims and Meta's connections to Vermont." Pet.App.28a.

Finally, the court considered whether the exercise of jurisdiction would comport with "fair play and substantial justice." Pet.App.30a-31a. Meta's only argument on this point was that asserting jurisdiction would "blur the distinction between general and specific jurisdiction, subjecting Meta to personal jurisdiction in every forum in the country." Pet.App.31a. The court rejected this contention, explaining that because the State has sued Meta "for its unfair design and misrepresentation of an application that was made available, downloaded, and used in Vermont by tens of thousands of Vermont teens on a daily basis in exchange for their personal information, and as a result generated revenue for Meta and caused harm to Vermont teens," the relevant due-process concerns are "clearly extinguished." Pet.App.32a.

Meta now petitions for certiorari.

REASONS FOR DENYING THE PETITION

I. Courts Nationwide Have Consistently Applied Existing Personal Jurisdiction Principles to Large Corporations' Online Activities.

Meta contends that plenary review is required here because the Vermont Supreme Court and some other courts have purportedly applied a novel "business model approach" to specific personal jurisdiction, while other courts have not. Contrary to Meta's position, there is no meaningful split in authority. Meta does not identify any decision in which a court has failed to apply the traditional test for personal jurisdiction in favor of a less stringent test. Rather, the different outcomes Meta highlights are the result of application of the traditional personal jurisdiction principles to different sets of facts. Those principles continue to work as intended, producing predictable and fair results, and there is no need to revisit them.

1. As has been true for over eighty years, "[t]he canonical decision in this area remains *International Shoe Co. v. Washington*, [326 U.S. 310 (1945)]." *Ford*, 592 U.S. at 358. "Since *International Shoe,* the rule has been that a state court can exercise personal jurisdiction over a defendant if the defendant has 'minimum contacts' with the forum—which means that the contacts must be 'such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."'" *Id.* at 372 (Alito, J., concurring in the judgment) (quoting *Int'l Shoe*, 326 U.S. at 316).

A defendant has sufficient contacts in a particular state if it "purposefully avails itself of the privilege of conducting activities" in the forum state in a manner

that is not merely "random, isolated, or fortuitous." *Ford*, 592 U.S. at 359. For jurisdiction to be proper, "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." *Id.* at 359-60 (quotation marks and alterations omitted). This rule "seeks to ensure that States with 'little legitimate interest' in a suit do not encroach on States more affected by the controversy." *Id.* at 360 (quoting *Bristol-Myers Squibb Co. v. Super. Ct. of California, San Francisco Cty.*, 582 U.S. 255, 263 (2017)).

2. Meta does not identify any cases that eschew the traditional test in favor of a novel one that relies solely on business models. Of course, the nature of a defendant's business model is often relevant to the jurisdictional inquiry. *See, e.g.*, *id.* at 364 ("To see why Ford is subject to jurisdiction in these cases (as Audi, Volkswagen, and Daimler were in their analogues), consider first the business that the company regularly conducts in Montana and Minnesota."); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 479-80 (1985) (discussing the defendant's franchise operator business model). Indeed, nearly all the cases Meta identifies appropriately consider aspects of the defendants' business models. However, there is no split of authority in how the courts analyzed the business models before them. Courts come to different conclusions because they are presented with different facts.

Consider *UMG Recordings, Inc. v. Kurbanov*, 963 F.3d 344 (4th Cir. 2020) and *Hasson v. FullStory, Inc.*, 114 F.4th 181 (3d Cir. 2024). Meta says these two cases are on the opposite side of the purported split, with *UMG* applying the wrong test and *Hasson* applying a better one. An examination of the facts of each case

demonstrates that those facts, rather than differing legal analysis, account for the partially divergent outcomes.

In *UMG*, a copyright infringement case, the defendant's entire business consisted of providing a free service that facilitated music piracy, then selling location-targeted ads to users of the service. 963 F.3d at 348. The Fourth Circuit explained that the defendant's website had more than half a million unique users in Virginia, which constitutes exploiting the state's market. *Id.* at 355. Those contacts were related to the copyright claims because the defendant "actively facilitated the alleged music piracy through a complex web involving Virginia visitors, advertising brokers, advertisers, and location-based advertising." *Id.* Thus the required, claim-specific contacts with Virginia were present, and there was personal jurisdiction in Virginia. This is a straightforward application of existing authority.

The Third Circuit arrived at a different result, in part, in *Hasson*, but the legal analysis was the same. *Hasson* involved claims against two defendants: a software developer that made an allegedly illegal wiretapping product and a pizza chain that used the product on its website. 114 F.4th at 185. While a "close call," the Third Circuit determined that the connection between the wiretapping and the pizza chain's business model was not close enough to create the "strong connection between the forum and the litigation that Due Process requires[.]" *Id.* at 193-94. However, the court was unable to come to that conclusion for the software developer, observing that the developer's "contacts with other Pennsylvania clients who may be using its software" are relevant to the minimum contacts inquiry. *Id.* at 197 (quotation marks and

alterations omitted). The court remanded for consideration of whether the nature of the developer's business in the forum state—what Meta might call a "business model"—subjected it to jurisdiction there. *See id.*

The *UMG* and *Hasson* courts thus reached partially different outcomes not because they were applying different legal standards, but because the cases before them had materially different facts. A defendant who allegedly helped half a million people in a state engage in music piracy should not be surprised when it has to answer for that conduct in the state, especially when the alleged piracy is central to its business. A chain of pizza restaurants, by contrast, mostly sells pizzas. It is a much closer call whether a claim about an allegedly unlawful piece of software on its website is sufficiently connected to the business of selling pizzas in a particular state. And if the developer of the alleged wiretapping software had as many customers in the forum state as the defendant in *UMG* (or Meta for that matter), that would be a strong factor weighing in favor of exercise of jurisdiction on remand.

Meta identifies two other circuits on its side of the purported split, but both cases are easily explained by application of the same legal principles at work in *UMG* and *Hasson* to defendants whose relevant business activities had effectively no connection to the forum state. In *Johnson v. TheHuffingtonPost.com, Inc.*, 21 F.4th 314, 325-26 (5th Cir. 2021), the Fifth Circuit considered whether there was personal jurisdiction over an out-of-state online publication for a libel claim in Texas. The court said "no" because the plaintiff could not point to *any* non-tenuous connection between the alleged libel and any business activity that the publisher undertook involving Texas. *See id.*

at 321 & n.7. For example, although the plaintiff alleged that the defendant sold targeted advertising in Texas, there was no allegation that it sold more Texas advertisements or otherwise increased its Texas revenue by publishing defamatory material rather than truthful material. *Id.* at 321-22. Similarly, in *XMission, L.C. v. Fluent LLC*, 955 F.3d 833, 836-38 (10th Cir. 2020), the Tenth Circuit found that a court in Utah did not have jurisdiction to hear a spam email case where the out-of-state defendant's digital marketing business model meant that it had "no involvement with or control over the origination, approval, or delivery of the emails." *See also id.* at 838 (explaining that the defendant "does not review the emails before they are sent, nor does it know the locations of the recipients nor decide who should receive the emails").

Meta's heavy reliance on the Fifth and Tenth Circuits' decisions is notable because both cases rely on a detailed analysis of the defendants' business models. *See Johnson*, 21 F.4th at 320-21; *Fluent*, 955 F.3d at 836-38. Meta does not explain how the Fifth and Tenth Circuits' consideration of the defendants' business models squares with its thesis that consideration of business models is improper.

Subsequent decisions confirm that Meta has identified no more than a split in facts. Several years after *Fluent*, the Tenth Circuit found that there was personal jurisdiction in another spam email case brought by the same plaintiff, because the defendant *did* know that it was sending emails to Utah. *XMission, L.C. v. PureHealth Rsch.*, 105 F.4th 1300, 1312 (10th Cir. 2024). And several years after *UMG*, the Fourth Circuit found that there was no personal jurisdiction over a foreign defendant in Virginia where

the defendant's business model involved licensing software to third parties who used the software to spy on the plaintiff in Virginia. *Khashoggi v. NSO Grp. Techs. Ltd.*, 138 F.4th 152, 164 (4th Cir. 2025). These are not intra-circuit splits; they are examples of different facts resulting in different outcomes.

3. Meta also suggests that there is another dimension to the split in authority, involving the State's misrepresentation claims. According to Meta, the Fifth and Sixth Circuits have held that the only way to establish specific personal jurisdiction over a claim involving any type of misrepresentation is to demonstrate that "the challenged statements [were] made in or specifically directed at the forum." Pet. at 21.

It would be concerning if Meta's analysis of the Fifth and Sixth Circuit authority were correct, considering that this Court has found personal jurisdiction in a defamation case because the defendant "continuously and deliberately exploited the [forum state's] market." *See Keeton*, 465 U.S. at 781. However, Meta is mistaken. The Fifth and Sixth Circuit cases stand for the proposition that where a defendant has no relevant connection to a state except for an allegedly tortious communication involving someone who happens to live in that state, personal jurisdiction is lacking. *See Blessing v. Chandrasekhar*, 988 F.3d 889, 906 (6th Cir. 2021) (explaining that the defendants' allegedly defamatory social media posts "formed no contacts. [The defendants] never traveled to, conducted activities within, contacted anyone in, or sent anything or anyone to [the forum state]") (internal quotation marks and citation omitted); *Clemens v. McNamee*, 615 F.3d 374, 379 (5th Cir. 2010) (holding that "the relevant contacts from which [the] cause of action arises are the allegedly defamatory remarks

about [the plaintiff] which [the defendant] made" outside the forum state). By contrast, where a defendant makes misrepresentations that are closely related to its extensive, claim-related activities in the forum, exercise of personal jurisdiction is proper. *See, e.g.*, *TikTok, Inc. v. Eighth Jud. Dist. Ct. in & for Cty. of Clark*, 578 P.3d 640, 649 (Nev. 2025) ("The State alleged that the design features and TikTok's misrepresentations and omissions about the platform's safety were intended to keep young users in Nevada addicted to the TikTok platform and spending as much time as possible viewing TikToks, so that it could profit from the data collection and revenue from advertising aimed at Nevada."); *Montgomery v. Minarcin*, 693 N.Y.S.2d 293, 296 (App. Div. 1999) (finding personal jurisdiction "where the defamation complained of arises directly from [the defendant's] purposeful and extended transaction of business as a journalist in this State").

In sum, Meta has not identified any real split in authority. All it can point to is different courts applying the same legal standard to different fact patterns and arriving at predictably different results. That does not require this Court's attention.

II. The Vermont Supreme Court Faithfully Applied this Court's Precedents.

Meta also insists that the Vermont Supreme Court "bypassed the requisite assessment of Meta's specific, claim-related activities directed at the forum and focused instead on Meta's purported overall 'business model.'" Pet. at 1. Quoting the factual background portion of the opinion, Meta contends that the Vermont Supreme Court "exercised specific jurisdiction over Meta based on Meta's so-called 'business model,' which 'depends on advertising revenue.'" Pet. at 23 (quoting Pet.App.6a). It summarizes the "court's view" as

having concluded that "Vermont courts could exercise specific jurisdiction over Meta because Meta allegedly sold advertising space on Instagram to Vermont businesses and then delivered these advertisements to Vermonters." *Id.* Meta's recitation omits so much of the court's reasoning that it is materially inaccurate. Read as a whole, the decision faithfully applies this Court's precedent.

1. First, as required, the court identified the relevant contacts Meta had with Vermont. Those contacts go far beyond merely selling "advertising space" to Vermont businesses. The court explained that "Instagram has tens of thousands of Vermont teen users with whom it enters into agreements and whose engagement with the app Meta tracks." Pet.App.16a. The court also observed that "Meta has specifically studied Vermont teen Instagram users to increase their engagement and concurrently its revenue by selling more advertisement space to Vermont businesses that target these teens." Pet.App.12a-13a.

Meta's petition hardly addresses these contacts, other than to say in a footnote that the agreements and studies are "irrelevant" to the State's claims. Pet. at 2 n.1; *but see Fluent*, 955 F.3d at 849 (explaining that a "high sales volume and large customer base and revenues" in a state is relevant to whether a defendant "continuously and deliberately exploits the forum State's market"). There can be no serious dispute that entering into contracts with and providing daily services to tens of thousands of people in Vermont constitutes "continuously and deliberately exploit[ing]" Vermont's market. *See Ford*, 592 U.S. at 364; *see also Raiz Fed. Credit Union v. Rize Fed. Credit Union*, No. 25-50406, 2026 WL 661998, at *3 (5th Cir. Mar. 9, 2026) (per curiam) (holding that a credit union's "continuing

obligations" and contacts through its website with 500 Texas members constituted purposeful availment of the "privilege of conducting business in Texas").

2. As the court explained in the second part of its analysis, the contacts Meta relegates to a footnote are closely related to the State's claims. *See Ford*, 592 U.S. at 364 ("When a corporation has continuously and deliberately exploited a State's market, it must reasonably anticipate being haled into that State's courts to defend actions based on products causing injury there.") (alterations and quotation marks omitted). The court recognized that Meta's contracts with Vermont teenagers are the agreements through which Meta delivered the very product the State alleges is harmful. Pet.App.28a. And Meta's study of Vermont teen users was not some collateral business activity. It was, as the court found, part of Meta's effort to increase their engagement with its product in Vermont, which effort Meta undertook for the purpose of making more money in Vermont. Pet.App.12a-13a.

Nevertheless, continuing its narrow focus on advertising only, Meta contends that the Vermont Supreme Court "reasoned that the State's claims related to Meta's business model because 'the State is claiming that Meta is encouraged to design Instagram in a way to . . . increase advertisement revenue' across jurisdictions, including Vermont." Pet. at 25 (quoting Pet.App.28a). According to Meta, this reasoning "dishonors this Court's precedents" by "waving away the absence of purposeful, claim-specific contacts between Meta and Vermont." Pet. at 26. Meta is both doctrinally and factually mistaken.

As far as doctrine, Meta's argument largely relies on this Court's decision in *Bristol-Myers Squibb* to argue that consideration of a "business model" in the

personal jurisdiction context is forbidden. But in *Bristol-Myers Squibb*, neither the plaintiffs nor the defendant resided in the forum state, nor did the plaintiffs claim to have been injured there. 582 U.S. at 264. Rather, the Court rejected personal jurisdiction based on the theory that *other* potential plaintiffs who might be part of a class had been injured in the forum state. *Id.* at 265. The plaintiffs were not able to identify any facts, including any facts about the defendant's business model, that connected their claims to a forum where neither they nor the defendant resided. *See id.* at 265-68. That, the Court explained, distinguished the situation from *Keeton* and other cases "involving in-state injury and injury to residents of the State[.]" *Id.* at 266. Nothing in the Court's opinion suggests that consideration of the nature of a defendant's business in a state is somehow improper.

And for the facts, the connection between the contacts and the claims is absent from Meta's recitation of the court's reasoning only because Meta replaced a critical phrase with an ellipsis, changing the meaning of the sentence. The full sentence, with the omitted portion in bold, reads:

> While there may not be a direct causal relationship between the contracts, advertisements, or the study and the State's claim, the State is claiming that Meta is encouraged to design Instagram in a way to **increase Vermont user engagement to** increase advertisement revenue.

Pet.App.28a (emphasis added). The omitted phrase is the heart of the State's claim. The unlawful conduct here, and the reason the State brought this enforcement action, is *how* Meta went about increasing Vermont user engagement: by peddling a dangerously

addictive product to Vermont teenagers, then making misrepresentations about its safety to ensure those users were not wrenched away from their screens by concerned parents. Meta's desire to increase its Vermont advertising revenue explains *why* it engaged in this lucrative but unlawful scheme. Both the "how" and the "why" form a strong, direct link between the State's claims and Meta's extensive, daily contact with tens of thousands of Vermont youth.

3. Rather than explain how traditional notions of fair play and substantial justice prevent Vermont courts from considering whether Meta should be able to continue providing a dangerous product to nearly every teenager in the state, Meta pivots. According to Meta, the Vermont Supreme Court improperly declined to consider the purported fact that Meta's conduct was "forum-agnostic," by which Meta apparently means that it does the same thing in lots of other places too. *See* Pet. at i, 1-2.

Neither traditional notions of fair play and substantial justice nor any decision of this Court suggest that if a defendant engages in similar wrongdoing in enough different states, then some of those states lose the ability to enforce their own laws in their own courts. Meta may well engage in unfair and deceptive conduct outside Vermont, and Meta notes that many sister states have pursued claims against it under their own laws. Pet. at iv. But the question here is, as it has been for decades, whether Meta's contacts with *Vermont* suffice to permit the exercise of jurisdiction in this case.

Meta has "not pointed to anything in the Constitution's original meaning or its history" that might allow it to avoid answering the State's suit here. *See Ford*, 592 U.S. at 384 (Gorsuch, J., concurring in the judgment).

Its contacts with Vermont involve daily interactions with tens of thousands of Vermonters, not the isolated or fortuitous online sale of a duck decoy. "No one seriously questions that the company, seeking to do business, entered [Vermont] through the front door." *See id.* The Court should decline to review the Vermont Supreme Court's correct decision for the purpose of permitting Meta to argue for the application of a novel test that would serve little purpose beyond allowing it to "escape out the back." *See id.*

III. A State Enforcement Action Provides a Poor Vehicle for Resolving Online Personal Jurisdiction.

Finally, to the extent the personal jurisdiction question presented in the petition needs answering, this state enforcement action provides a poor vehicle. The petition asks the Court to consider whether "a plaintiff" may establish jurisdiction under certain circumstances, but the State is not merely "a plaintiff." It is a coequal sovereign with a "[p]rima facie" entitlement "to enforce in its own courts its own statutes, lawfully enacted." *Davis v. Dep't of Lab. & Indus. of Washington*, 317 U.S. 249, 258 (1942). The petition does not challenge the validity of the Vermont Consumer Protection Act as applied to Meta's conduct, but it also does not explain where the State should enforce that Act if not in its own courts. The need to answer that complex question, which would not arise in a case brought by a private plaintiff, counsels against review.

1. The Court has "emphasized . . . that the reasonableness of asserting jurisdiction over the defendant must be assessed 'in the context of our federal system of government,' and stressed that the Due Process Clause ensures not only fairness, but also the 'orderly administration of the laws.'" *Fuld v. Palestine*

Liberation Org., 606 U.S. 1, 14 (2025) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293-94 (1980)). The minimum contacts requirement exists to "ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *Id.* The restriction is on the state's *judicial* power, not on its power to make or enforce laws. *See Shaffer v. Heitner*, 433 U.S. 186, 215 (1977); *Quill Corp. v. North Dakota*, 504 U.S. 298, 320-33 (1992) (Scalia, J., concurring in part and concurring in the judgment) (noting "that the due process standards for adjudicative jurisdiction and those for legislative (or prescriptive) jurisdiction" are not "necessarily identical").

This suit implicates the State's sovereign interests beyond the judicial power. "Paramount among the States' retained sovereign powers is the power to enact and enforce any laws that do not conflict with federal law." *Cameron v. EMW Women's Surgical Ctr., P.S.C.*, 595 U.S. 267, 277 (2022). The State's "historic police powers" include the power to enact and enforce regulations against "unfair business practices" as well as laws designed to "prevent the deception of consumers[.]" *California v. ARC Am. Corp.*, 490 U.S. 93, 101 (1989); *see also Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 146 (1963); *Dent v. West Virginia*, 129 U.S. 114, 122 (1889). The petition carefully avoids arguing that the Due Process Clause prohibits the State from applying its consumer protection laws to Meta. Rather, it focuses solely on the authority of Vermont courts to render a judgment. Accordingly, there is no dispute, for these purposes, that requiring Meta to comply with the Vermont Consumer Protection Act when it interacts with Vermont

consumers is a valid exercise of the State's sovereign authority.[1]

The State's power to regulate Meta necessarily includes the power to enforce those regulations. *See Cuomo v. Clearing House Ass'n, L.L.C.*, 557 U.S. 519, 529 (2009) ("To demonstrate the binding quality of a statute but deny the power of enforcement involves a fallacy made apparent by the mere statement of the proposition, for such power is essentially inherent in the very conception of law.") (quoting *First Nat'l Bank in St. Louis v. State of Missouri at inf. Barrett*, 263 U.S. 640, 660 (1924)). Evaluating personal jurisdiction "in the context of our federal system of government" therefore requires making some provision for vindicating the State's sovereign authority to enforce the Vermont Consumer Protection Act with respect to Meta. *See Int'l Shoe*, 326 U.S. at 317. If the State cannot compel Meta's compliance in its own courts, then it must be able to do so in some other forum.

2. The petition does not propose an alternative forum, likely because doing so is far more complicated here than it would be in a case brought by a private litigant. Endorsing either of the other possible forums—a court of another state or this Court—would require resolution of matters far removed from the purportedly central personal jurisdiction question.

To hold that the State is required to bring this suit in the courts of states where there is general jurisdiction over Meta, this Court would have to abandon the

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[1] Meta's motion to dismiss argued that a federal statute, 47 U.S.C. § 230, and the First Amendment prohibit the State from regulating its conduct. Pet.App.41a. However, the trial court declined to certify either matter for interlocutory review, and Meta does not raise those matters in its petition. Pet.App.38a-39a.

fundamental principle "that no State should be compelled to resort to the tribunals of other States for redress, since parochial factors might often lead to the appearance, if not the reality, of partiality to one's own." *Ohio v. Wyandotte Chemicals Corp.*, 401 U.S. 493, 500 (1971) (citing *Chisholm v. Georgia*, 2 U.S. (2 Dall.) 419, 475-476 (1793) and *Wisconsin v. Pelican Ins. Co.*, 127 U.S. 265, 289 (1888)). That holding would also undermine the State's position as an *equal* sovereign by forcing it to submit to the judicial power of another state. *See Franchise Tax Bd. of California v. Hyatt*, 587 U.S. 230, 241 (2019) ("[A]ll jurisdiction implies superiority of power[.]"). It would be difficult to square that option with the principles of interstate federalism embedded in the personal jurisdiction inquiry.[2]

The State is subordinate to the proper exercise of federal authority, but resolving this case in federal court presents other problems. Unlike in a case brought by a private plaintiff, Congress has not provided for the district courts to have jurisdiction over a controversy between a state and a citizen of another state. *See Wyandotte Chemicals*, 401 U.S. at 498 n.3 ("The fact that there is diversity of citizenship among the parties would not support district court jurisdiction under 28 U.S.C. § 1332 because that statute does not deal with cases in which a State is a party. Nor would federal question jurisdiction exist under 28 U.S.C. § 1331."). This Court is the only federal

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[2] Some states have alleged similar facts against Meta in federal court. *See* Pet. at iv. However, those states have brought claims under federal law, in addition to their own laws, which permits a federal district court to exercise jurisdiction under 28 U.S.C. §§ 1331 and 1367. *See In re Soc. Med. Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, 702 F. Supp. 3d 809, 823 (N.D. Cal. 2023). The State has not alleged a claim arising under federal law.

court where the State might be able to sue Meta. *See id.* at 499. But in *Wyandotte Chemicals*, the Court explained that while it does have original jurisdiction to hear "controversies between States and between a State and citizens of another State seeking to abate a nuisance that exists in one State yet produces noxious consequences in another," such cases should ordinarily be brought in state trial courts, which are far more equipped to resolve them. *Id.* at 496. Holding that a state trial court does not have jurisdiction to hear this case risks undermining—if not entirely overruling—*Wyandotte Chemicals* while raising difficult questions about the Court's original jurisdiction jurisprudence that need not be resolved here. *Cf. Texas v. California*, 141 S. Ct. 1469 (2021) (Alito, J., dissenting from denial of motion for leave to file complaint).

Either way, consideration of the appropriate alternative forum would take up a substantial portion of the merits briefing in this matter even though it has little bearing on what Meta says is the central question: "how courts should assess personal jurisdiction when technology and common modes of commerce and communication have changed." *See* Pet. at 28. To the extent that question needs to be answered, review is more appropriate in a private suit where the choice of alternative forum is not a confounding factor. The best course here is to permit the Vermont courts to resolve this action on their own. *Cf. Arkansas v. Farm Credit Servs. of Cent. Arkansas*, 520 U.S. 821, 826 (1997) ("The federal balance is well served when the several States define and elaborate their own laws through their own courts and administrative processes and without undue interference from the Federal Judiciary.").

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

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April 17, 2026