No. 18-311

# In the Supreme Court of the United States

EXXON MOBIL CORPORATION,

*Petitioner*,

v.

MAURA HEALEY, ATTORNEY GENERAL OF MASSACHUSETTS,

*Respondent.*

**On Petition for a Writ of Certiorari to the Supreme Judicial Court of Massachusetts**

## BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND NATIONAL ASSOCIATION OF MANUFACTURERS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER


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## INTEREST OF THE *AMICI CURIAE*

The Chamber of Commerce of the United States of America is the world's largest business federation, representing 300,000 direct members and indirectly representing the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. The Chamber represents the interests of its members in matters before the courts, Congress, and the Executive Branch. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of concern to the Nation's business community, and has participated as *amicus curiae* in numerous cases addressing personal jurisdiction.[1]

The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs more than 12 million men and women, contributes $2.25 trillion to the U.S. economy annually, has the largest economic impact of any major sector and accounts for more than three-quarters of all private-sector research and development in the nation. The NAM is the voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers com-

[1] Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici*, their members, and their counsel made a monetary contribution to its preparation or submission. Counsel of record for both parties received notice at least 10 days prior to the due date of the intention of *amici* to file this brief. All parties consented to the filing of the brief.

pete in the global economy and create jobs across the United States.

Many of *amici*'s members conduct business in States other than their State of incorporation and State of principal place of business (the forums in which they are subject to general personal jurisdiction, see *Daimler AG* v. *Bauman*, 571 U.S. 117, 137 (2014)). They therefore have a substantial interest in the rules governing the extent to which a State can subject nonresident corporations to specific personal jurisdiction, whether in the form of regulatory investigations or claims brought in state courts.

Subjecting corporations to specific jurisdiction for claims that lack the requisite relation to the forum State would eviscerate the due process limits on personal jurisdiction recognized by this Court in numerous cases dating back to *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945)—and could well expose corporations that do business nationwide to what amounts to general personal jurisdiction in all fifty States.

*Amici* file this brief to explain that the holding below is irreconcilable with this Court's precedents and would have numerous harmful consequences for companies that, like petitioner, conduct activities or have relationships with entities in many States. The certiorari petition should therefore be granted.

## INTRODUCTION AND SUMMARY OF ARGUMENT

This Court in recent years has repeatedly addressed the due process limits on specific personal jurisdiction, clarifying the governing standards to eliminate inconsistent approaches in the lower courts. But as the holding below demonstrates, lower

courts are continuing to transgress those limits—sometimes, as in this case, dramatically so. This Court's intervention is therefore needed to curb the abuses of due process that lower courts continue to permit.

Although the issue here is whether the Constitution permits Massachusetts to subject petitioner to its investigatory and enforcement authority, as opposed to whether Massachusetts' courts may exercise jurisdiction over petitioner in a private lawsuit, the governing due process principles are the same. Both situations involve the attempted exercise of specific jurisdiction—the contention that an out-of-state corporation may be subjected to Massachusetts' authority based on the purported connection between the asserted claim (whether by a private plaintiff or, as here, the State itself) and the corporation's alleged activity within the State.

Two recent decisions of this Court emphasize particularly important aspects of the specific jurisdiction inquiry. First, in *Walden* v. *Fiore*, the Court explained that specific jurisdiction "focuses on the relationship among the defendant, the forum, and the litigation"; "[f]or a State to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a substantial connection with the forum State." 571 U.S. 277, 284 (2014) (internal quotation marks omitted).

More recently, in *Bristol-Myers Squibb Co.* v. *Superior Court of California* ("*BMS*"), the Court reaffirmed that a state court cannot exercise specific jurisdiction over claims that are unrelated to the defendant's activities within the State. When there is no "substantial connection" between the asserted claim and the defendant's conduct within the forum,

"specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." 137 S. Ct. 1773, 1781 (2017).

As the petition here shows, the holdings in *Walden* and *BMS*—which require a substantial connection between the defendant's activities within a State and the claims at issue—are being undermined in practice by lower courts' continued application of specific jurisdiction tests that ignore that requirement. Indeed, the court below applied a sweeping but-for causation test that seemingly would be satisfied as long as a business has some contact or transaction in a given State, no matter how tangential the connection between that contact and the asserted claim.

The approach of these lower courts not only violates *Walden* and *BMS* but also runs afoul of numerous other decisions of this Court regarding the scope of specific jurisdiction, which have recognized since *International Shoe* that the asserted claims must relate directly to the defendant's contacts with the forum State. That is so because, as this Court has explained, specific jurisdiction is proper only to the extent that the asserted claim involves "activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*, 564 U.S. 915, 919 (2011) (brackets and internal quotation marks omitted). When the defendant's activity within the forum State is not substantially related to the asserted claim, there is no basis for regulation by that State and specific jurisdiction is unavailable.

That straightforward principle precludes the exercise of specific jurisdiction approved below. Applying the same standard of specific jurisdiction that de-

termines whether a plaintiff may sue an out-of-State defendant in the forum State, the court below held that Massachusetts could invoke specific jurisdiction to compel production of documents regarding petitioner's activities and communications related to the issue of climate change, on the basis of in-State advertising and franchisee relationships that lack any relevant connection to that issue. Pet. App. 15a. Those unrelated contacts do not provide a sufficient basis for specific jurisdiction.

Instead of relying on the attenuated "but-for" relationship that the court below erroneously found sufficient, a court analyzing the permissibility of exercising specific jurisdiction should, *first*, identify the defendant's purposeful claim-related activity within the forum; *second*, determine whether that activity gave rise to the claim being asserted; and, *third*, assess whether the connection between the activity and the claim is sufficient to create the requisite substantial relationship. The latter inquiry should consider both (a) whether the causal connection between the in-forum activity and the claim is sufficient to support the conclusion that the defendant incurred an obligation in the forum State, and (b) whether permitting an assertion of specific jurisdiction based on that activity will intrude on the sovereignty of other States, because one or more other States have a significantly greater connection to the underlying obligation than the forum State.

The impermissibly broad standard applied below does not simply contravene this Court's precedent. It also imposes new and unwarranted burdens on nationwide businesses, the courts, and the American federal system. Companies that do business in a large number of States would have no ability to pre-

dict where, and to what extent, they might be haled into court or subjected to burdensome investigations. And States would be newly empowered to initiate investigations and regulate conduct that occurred entirely outside their borders—contrary to the principles of federalism, which hold that each State's regulatory authority is confined to in-State matters.

The harmful consequences that are sure to follow from the decision below are ample evidence that this issue merits this Court's attention. And the clear conflict between the decision below and this Court's precedents leaves no doubt that the decision below should be reversed.

## ARGUMENT

### I. Specific Personal Jurisdiction Requires A Substantial Causal Connection Between The Defendant's Forum Contacts And The Asserted Claim.

This case presents a question that this Court left open in *BMS*: what standard should courts apply to determine whether contacts between a defendant and the forum State are sufficiently related to a matter to give rise to specific jurisdiction. *Amici* submit that, to satisfy due process, the defendant must purposefully engage in forum activity that is a cause of the asserted claim and also has a sufficiently significant relationship to that claim—both elements are needed to establish a substantial connection between the defendant, the forum, and the claim.[2] The con-

[2] In addition, of course, the forum State's assertion of personal jurisdiction is impermissible if it would "offend 'traditional notions of fair play and substantial justice.'" *Asahi Metal Indus. Co., Ltd.* v. *Superior Court*, 480 U.S. 102, 113 (1987) (quoting *Int'l Shoe*, 326 U.S. at 316).

tacts at issue in this case fall far short of that requirement.

### A. The Relationship Between The Defendant's Forum Activity And The Asserted Claim Must Be Sufficiently Significant To Create A Substantial Connection With The Forum State.

This Court has consistently held that in order for an exercise of specific jurisdiction to comport with due process, "the defendant's *suit-related* conduct must create a *substantial connection* with the forum State." *Walden*, 571 U.S. at 284 (emphasis added). This requirement encapsulates the essence of specific jurisdiction: Unlike general jurisdiction, specific jurisdiction must be based on forum contacts that provide a substantial relationship between the forum, the defendant, and the asserted claim.

#### *1. The forum connection requirement.*

*Walden* was not the first decision of this Court to acknowledge the necessity of a connection between the defendant's forum contacts and the asserted claim. To the contrary, the Court articulated that requirement more than seventy years ago in *International Shoe*, which defined the approach to specific jurisdiction that the Court applies today.

Explaining why specific jurisdiction comports with due process, this Court observed that when "a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state." 326 U.S. at 319. "The exercise of that privilege," the Court reasoned, "may give rise to obligations; and, so far as those obligations arise out of or are connected with the *activities within the state*, a procedure which requires the

corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue." *Ibid.* (emphasis added).

The Court went on to conclude that Washington's exercise of specific jurisdiction over the defendant was permissible because the defendant had engaged in activities within the State and "[t]he obligation which is here sued upon arose out of *those very activities*," making it "reasonable and just * * * to permit the state to enforce *the obligations which [the defendant] ha[d] incurred there*." *Id.* at 320 (emphases added).

The *International Shoe* framework thus rests on the principle that, when a defendant engages in activity in the forum State, due process permits it to be haled into court there on a specific jurisdiction theory only with respect to claims that arise out of "the very activities" that the defendant engaged in in the State, or that enforce the "obligations" that the defendant incurred in the State.

This Court has repeatedly recognized that precise limitation on specific jurisdiction. In *J. McIntyre Machinery, Ltd.* v. *Nicastro*, for example, the plurality opinion contrasted specific jurisdiction with general jurisdiction, which allows a State "to resolve both matters that originate within the State and those based on activities and events elsewhere." 564 U.S. 873, 881 (2011) (plurality opinion). Specific jurisdiction, the plurality explained, involves a "more limited form of submission to a State's authority," whereby the defendant subjects itself "to the judicial power of an otherwise foreign sovereign *to the extent that power is exercised in connection with the defendant's activities touching on the State*." *Ibid.* (emphasis added).

Then, in *Goodyear*, the Court explained that specific jurisdiction "depends on 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*." *Goodyear*, 564 U.S. at 919 (emphasis added; brackets and internal quotation marks omitted). Thus, specific jurisdiction exists only where a defendant engages in continuous activity in the state "and *that activity gave rise to the episode-in-suit*," *id.* at 923, or where the defendant commits "'single or occasional acts' in a State [that are] sufficient to render [it] answerable in that State with respect to those acts, though not with respect to matters unrelated to the forum connections." *Ibid.* (quoting *Int'l Shoe*, 326 U.S. at 318).

Next, in *Daimler*, the Court reaffirmed that specific jurisdiction is available only where the defendant's in-State activities "g[i]ve rise to the liabilities sued on" (571 U.S. at 126) (internal quotation marks omitted), or where the suit "relat[es] to that in-state activity" (*id.* at 127).

Most recently, in *BMS*, the Court emphasized that "a defendant's general connections with [a] forum are not enough" to support specific jurisdiction. Rather, the Court explained, "[i]n order for a court to exercise specific jurisdiction over a claim, there must be an 'affiliation between the forum and the underlying controversy.'" 137 S. Ct. at 1781 (quoting *Goodyear*, 564 U.S. at 919). "When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." *Ibid.*

In short, the Court has repeatedly underscored that specific jurisdiction is available *only* for claims

that are substantially connected to a defendant's in-State activities. Put another way, a State cannot exercise specific jurisdiction when a defendant's forum contacts do not have a sufficiently substantial relationship to the asserted claims.

*2. The standard for assessing the sufficiency of the defendant's forum contacts.*

This Court's decision in *BMS* establishes that, at a minimum, there must be *some* causal connection between the defendant's forum activity and the asserted claim for specific jurisdiction to comport with due process. But as the petition explains (Pet. 13-16), the lower courts remain divided over the degree of connection that is required. Some hold that the in-forum activity need only be a but-for cause of the plaintiff's injury, while others require a more substantial relationship between the defendant's in-forum conduct and the asserted claim—framing the test as "proximate" causation.

A meaningful causal link is one important prerequisite for specific jurisdiction, and *amici* agree with petitioner that this Court should resolve the conflict among lower courts by making clear that but-for causation is not sufficient to satisfy due process standards because the but-for standard "can be satisfied by the loosest of connections" between the relevant contacts and the asserted claim. Pet. 25; see also, *e.g.*, *Nowak* v. *Tak How Investments, Ltd.*, 94 F.3d 708, 715 (1st Cir. 1996) ("A 'but for' requirement * * * has in itself no limiting principle; it literally embraces every event that hindsight can logically identify in the causative chain.").

But causation is only one element of the necessary inquiry. The Court has repeatedly emphasized

that the connection between the defendant's in-forum activity and the asserted claim is relevant for two distinct reasons. First, a defendant that avails itself of the privilege of conducting business within a State may legitimately be subjected to jurisdiction only when those in-state activities "give rise to obligations"—i.e., legal claims. *International Shoe*, 326 U.S. at 319. And second, a State may legitimately exercise its authority only to enforce "the obligations which [the defendant] ha[d] incurred *there*"—i.e., within the State. *Id*. at 320 (emphasis added). Otherwise, "the States[,] through their courts," would be able to "reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 292 (1980).

The standard governing exercises of specific jurisdiction must therefore serve two functions. First, it must ensure that the defendant's forum activity is sufficiently connected to the asserted claim, from a causal standpoint, to conclude that the activity created an "obligation" on the defendant's part to respond to the claim in the forum State's courts. And second, the analysis must ensure that the connection between the forum State and the claim is "*substantial*" (*Walden*, 571 U.S. at 284 (emphasis added)) relative to the connection of *other* States to that claim. This second step is necessary to avoid allowing States with little or no real interest in the dispute to displace States with a much more significant interest.

In sum, a court analyzing the permissibility of exercising specific jurisdiction should proceed as follows:

- Identify the defendant's purposeful[3] claim-related activity within the forum;
- Determine whether that activity gave rise to the asserted claim; and
- Assess whether the causal connection between the activity and the claim is sufficient to create the "substantial relationship" required by due process.

The latter inquiry, as explained above, should consider both (a) whether the in-forum activity is sufficiently causally connected to the claim to warrant a conclusion that the defendant incurred obligations in the forum State; and (b) whether the forum State's connection to the claim is substantial relative to the connections to other States, such that permitting an assertion of specific jurisdiction based on that activity will not intrude on the sovereignty of other States.

In most cases, this test is easy to apply. For example, where there is no causal link between the defendant's in-forum activity and the claim being asserted, specific jurisdiction is impermissible. That was the situation in *Goodyear* and *BMS*—where the claims at issue were entirely unrelated to the defendants' in-forum activities.

Where, on the other hand, the defendant sold a product in the forum State, specific jurisdiction is usually proper. Similarly, a State where the defendant actually engaged in conduct now under investigation will usually be able to exercise specific juris-

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[3] As the Court explained in *Walden*, the "defendant *himself*" (571 U.S. at 284) (internal quotation marks omitted) must be the one who "form[s] the necessary connection with the forum State" (*id.* at 285).

diction. In all of these situations, there is a strong causal link between the claim and the defendant's in-forum activity—and the forum's connection to the claim is substantial.

This Court's decision in *Burger King Corp.* v. *Rudzewicz* provides another example. The dispute in that case arose out of a contract in which the defendant's counterparty (the plaintiff in the lawsuit) was located in the forum. The Court observed that the defendant negotiated the agreement by reaching out to the forum, the contract itself indicated that the plaintiff was located in the forum, and "the parties' actual course of dealing repeatedly confirmed that [the plaintiff's] decisionmaking authority" resided in the forum. 471 U.S. 462, 480-81 (1985). The defendant's interaction with the forum resident plainly constituted a cause of the plaintiff's claim. Given these facts, and the plaintiff's residence in the forum, the forum clearly had a substantial connection with the dispute.[4]

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[4] As these examples indicate, a proximate-cause relationship between the forum activity and the claim would virtually always permit the exercise of specific jurisdiction, because if the defendant's in-State activity has a causal relationship that strong with the underlying claim, the forum State's connection to the claim will almost always be "substantial" relative to other States'. If the causal relationship is *not* proximate, it is more likely that the court will have to assess separately whether the forum State has a sufficiently substantial connection to the claim, relative to other States, to permit the exercise of specific jurisdiction.

We urge the Court to adopt the test we have outlined in this brief rather than simply adopting proximate cause as the relevant test for specific jurisdiction. Although proximate cause is certainly preferable to but-for causation, it is flawed because it is a fact-intensive standard, and determining whether the

In some circumstances, however, the causal connection offered to establish but-for causation will not distinguish the forum State from other States. For example, if a company has employees who work remotely, and 30 of the employees living in five different States contribute to a product's design, then—on a but-for causation approach to specific jurisdiction—a plaintiff asserting a design-defect claim could sue the company in any one of those five States. But the State in which the company's headquarters is located and the State in which the product is manufactured would have a much stronger interest than those five States. Because the but-for approach fails to consider the substantiality of the connection between the asserted claim and the forum State, it threatens to blur the line between specific jurisdiction and general jurisdiction.

In short, specific jurisdiction depends on a connection between a claim and the forum State that is "substantial"—in both a causal sense and taking into account the competing interests of different States in adjudicating the matter. This Court should make clear that both of these inquiries are part of the substantial-connection requirement—and reaffirm that where there is no such substantial connection, specific jurisdiction is not available.

### B. The Expansive Standard Applied Below Extended Massachusetts' Authority Far Beyond The Bounds Permitted By The Constitution.

As we have shown, one key reason for a rigorous specific jurisdiction standard is to prevent illegiti-

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standard is satisfied could thus require extensive discovery that would be out of place at the pleading stage.

mate exercises of a State's authority under our system of federalism. The facts of this case provide a perfect example of such abuse.

The civil investigative demand ("CID") at issue in this case is sweeping in its scope. It demands every document relating to climate change that petitioner possesses, going back more than 40 years; communications with certain outside entities; and documents relating to the company's securities. Pet. 6. The burden imposed by this CID rivals all but the largest of lawsuits.

Yet the Massachusetts court found hardly any connection, let alone a "substantial" one (*Walden*, 571 U.S. at 284) between the subject of the investigation—as indicated by the CID's requests—and petitioner's contacts with Massachusetts. It mentioned that the CID touches on "deceptive advertisements to consumers" (Pet. App. 15a), but petitioner explains why there is no indication that any of petitioner's advertisements in Massachusetts had anything to do with climate change—the subject of respondent's investigation. Pet. 17-18. Similarly, the court below relied on "[p]ossible misrepresentations or omissions" by petitioner in communications with Massachusetts-based licensees of its trademarks (Pet App. 16a), but as petitioner explains, respondent identified no such misrepresentations. Pet. 17-18. A link between such alleged communications and the investigation is tenuous in any event: despite the extraordinary breadth of the CID's document requests, the CID did not request any such communications.

This cursory analysis draws the expansive nature of the "but-for" approach to causation into stark relief. Virtually any contact between a defendant and a forum State can be asserted to have a connection—

albeit a highly attenuated connection—that can be claimed to satisfy a but-for standard. And that is particularly true in the context of an investigation, where the State can point to theoretical contacts that have not even been shown to exist—such as the "misrepresentations or omissions" that the court below speculated petitioner *might* have made to its licensees, but that remain entirely within the realm of the hypothetical at present.

Had the court asked whether petitioner had formed a *substantial* connection with Massachusetts related to the subject matter of the investigation, rather than simply whether petitioner's Massachusetts contacts were a but-for cause of the activities that allegedly violated Massachusetts law, it would have been bound to conclude that the CID could not stand. There simply cannot be a "substantial" connection between a company's "knowledge of and activities related to climate change" (Pet. App. 2a) and in-State activities that demonstrably have nothing to do with climate change. And allowing Massachusetts to exercise jurisdiction over this matter infringes on the sovereignty of other States with a greater interest in the matter, including petitioner's State of incorporation and principal place of business and the State from which the allegedly improper communications emanated. This Court should reaffirm that a substantial connection is the *sine qua non* of specific jurisdiction and repudiate the expansive but-for test applied by the court below.

## II. Exercising Specific Jurisdiction Over Matters That Do Not Relate Substantially To A Defendant's Forum Contacts Harms Businesses, Courts, And The Federal System.

Decisions such as the ruling below not only violate settled due process principles—they inflict severe burdens on the business community, the courts, and the federal system. These burdens demonstrate why there is a compelling need for this Court's intervention.

### A. Overly Expansive Approaches To Jurisdiction Impose Greater Uncertainty On Businesses.

This Court has long recognized that the standards governing specific jurisdiction "give[] a degree of predictability to the legal system that allow[] 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. Companies know that they generally have a "due process right not to be subjected to judgment in [the] courts" of a State other than their home State, or States, unless they have affirmatively established contacts with the State itself that make them subject to specific jurisdiction there. *Nicastro*, 564 U.S. at 881; see also *Walden*, 571 U.S. at 284.

This "[p]redictability is valuable to corporations making business and investment decisions." *Hertz Corp.* v. *Friend*, 559 U.S. 77, 94 (2010). For example, "[i]f a business entity chooses to enter a state on a minimal level, it knows that under the relationship standard, its potential for suit will be limited to suits concerning the activities that it initiates in the

state." Carol Rice Andrews, *The Personal Jurisdiction Problem Overlooked in the National Debate About "Class Action Fairness*," 58 S.M.U. L. Rev. 1313, 1346 (2005).

Extending specific jurisdiction to claims or matters that are not substantially related to a defendant's forum contacts eliminates any predictability. A company's ability to assess its exposure to enforcement actions by regulators would be virtually nil if merely doing some business in a State authorized the State's executive branch to investigate the company on *any* subject, no matter how remotely connected to the company's in-State activities. Similarly, if plaintiffs could bring claims from all over the country in any State as long as the claims mention an activity in the forum State that relates to the claims in some tangential, attenuated way, businesses' ability to predict where they are subject to specific jurisdiction—and tailor their conduct to limit exposure to jurisdiction—would be drastically reduced. Indeed, a nationwide company would have no way of avoiding being trapped in mass actions, comprised principally of cases involving only out-of-State conduct, in various States around the country—no matter how "distant or inconvenient." *See World-Wide Volkswagen*, 444 U.S. at 292.

Applying specific jurisdiction in such an unpredictable and indiscriminate manner would be unfair to nationwide businesses and irreconcilable with the Due Process Clause. *See Nicastro*, 564 U.S. at 885 (explaining that "[j]urisdictional rules should avoid the[] costs [of unpredictability] whenever possible"); *Burger King*, 471 U.S. at 475 n.17 (explaining that due process is violated when a defendant "has had no 'clear notice that it is subject to suit' in the forum

and thus no opportunity to 'alleviate the risk of burdensome litigation' there" (quoting *World-Wide Volkswagen*, 444 U.S. at 297)). And the increase in legal costs produced by this unbridled approach to specific jurisdiction would ultimately be borne by consumers.

### B. Permitting Specific Jurisdiction Without A Substantial Connection Between The Forum State And The Claim Would Intrude On Other States' Sovereignty.

The minimum-contacts requirement for exercising specific jurisdiction "acts 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." *World-Wide Volkswagen*, 444 U.S. at 292.

But that is exactly what States would be able to do under the approach to specific jurisdiction employed below. That test permits a State to subject a nonresident business to a massive, burdensome investigation of matters with no relevant connection to its in-State activities. And in the context of litigation, it permits a State with no real interest in the underlying controversy to intrude on the sovereignty of those States that have a substantial connection to the claim and therefore a real interest in adjudicating it.

There are no offsetting benefits to permitting this serious erosion of federalism. States have no legitimate interest in asserting specific jurisdiction so expansively and inserting themselves into matters or disputes that are much more closely connected to other States. And the ability to investigate and adjudicate claims based on a defendant's in-State activi-

ties fully vindicates a State's interest in protecting its citizens and regulating conduct within its borders.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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