No. 16-1171

In the Supreme Court of the United States

GLAXOSMITHKLINE LLC,

Petitioner,

v.

M.M. EX REL. MEYERS, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the Illinois Appellate Court

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICUS 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 vital concern to the Nation's business community, and has participated as *amicus curiae* in numerous cases addressing jurisdictional issues.[1]

Many Chamber 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*, 134 S. Ct. 746, 760 (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.

Subjecting corporations to specific jurisdiction for claims that lack the requisite relation to the forum

[1] Pursuant to Rule 37.6, *amicus* affirms that no counsel for a party authored this brief in whole or in part and that no person other than *amicus*, its members, or its 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 *amicus* to file this brief. The parties' written consents to the filing have been filed concurrently with the brief.

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.

Amicus files 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 in many States. The certiorari petition should therefore be granted, the judgment below vacated, and the case remanded for reconsideration in light of this Court's disposition of *Bristol-Myers Squibb Co.* v. *Superior Court of Cal.*, No. 16-466. If the Court concludes that its decision in *Bristol-Myers Squibb* will not give the lower court sufficient guidance to resolve this case properly, it should grant plenary review.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court's decisions nearly three years ago in *Daimler* and in *Walden* v. *Fiore*, 134 S. Ct. 1115 (2014), clarified the due process limits on personal jurisdiction.

In *Daimler*, this Court held that general jurisdiction is available only where a "corporation's 'affiliations with the State are so "continuous and systematic" as to render it "essentially at home in the forum State," which—absent unusual circumstances—restricts general jurisdiction to a corporation's State of incorporation and State of principal place of business. 134 S. Ct. at 761 (internal quotation marks omitted).

Walden, in turn, emphasized that the specific jurisdiction inquiry "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." 134 S. Ct. at 1121 (internal quotation marks omitted).

But as explained in the petition here and the merits briefing in *Bristol-Myers Squibb*—including the Chamber's *amicus* brief in that case—lower courts have continued to reach decisions on personal jurisdiction that are at odds with this Court's precedents. In particular, courts are misapplying this Court's precedents defining the standard for determining when a defendant's activities within the forum bear a sufficient relationship to the plaintiff's claim to permit the exercise of specific jurisdiction.

The issue has the potential to arise in virtually every case that is not filed in the defendant's place of incorporation or principal place of business—and that set of cases represents a very substantial percentage of the litigation involving corporations. Uncertainty regarding the applicable legal rule inflicts needless litigation expense, promotes forum shopping, and violates important federalism principles by permitting one State to intrude on the sovereignty of other States.

This Court has expressly admonished lower courts not to "elide[] the essential difference between case-specific and all-purpose (general) jurisdiction." *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*, 564 U.S. 915, 927 (2011). But that is exactly what the court below did, by holding that petitioner was subject to specific jurisdiction in Illinois because it

conducted certain clinical trials of the drug Paxil there—even though those trials had nothing more to do with the claims of respondents than the other clinical trials that petitioner conducted in 44 other States. Pet. App. 19-23.

That approach subjects petitioner to the practical equivalent of general jurisdiction in Illinois for every claim involving the safety of Paxil—no matter where a particular plaintiff used or purchased the drug. Applying the "specific jurisdiction" label to uphold de facto general jurisdiction, so as to circumvent this Court's limits on general jurisdiction, is directly contrary to this Court's precedents and will have disastrous consequences for nationwide businesses and for the judicial system.

It also runs afoul of this Court's decisions regarding the scope of specific jurisdiction, which have recognized since *International Shoe* that the plaintiff's claims must relate directly to the defendant's contacts with the forum State. That is so because, as this Court explained in *Goodyear*, specific jurisdiction is proper only to the extent that a case involves "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 (brackets and internal quotation marks omitted). Where the defendant's activity within the forum State is not substantially related to the plaintiff's claim, there is no basis for regulation by the State and specific jurisdiction is unavailable.

That straightforward principle precludes the exercise of specific jurisdiction approved below. The majority below held that Illinois could exercise specific jurisdiction over out-of-State plaintiffs' claims, despite the lack of any allegations that petitioner's

conduct *in Illinois* gave rise to those claims, because plaintiffs' claims touched on the overall process for clinical trials and a "portion" of the trials were conducted in Illinois. Pet. App. 21. That attenuated relation does not suffice for specific jurisdiction.

Rather, 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 plaintiff's claim; and, *third*, assess whether the causal connection between the activity and the claim is sufficient to create the requisite substantial relationship. The latter inquiry should consider both (a) whether the in-forum activity is sufficient to support the conclusion that the obligation underlying the suit was incurred there, 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 States have a significantly greater connection to the underlying obligation than the forum State.

Holding otherwise would mean that a product manufacturer is subject in practical terms to general jurisdiction for product-related claims in *every* State where development or testing occurred, no matter how attenuated the relationship between development or testing in that forum and the claims of the out-of-State plaintiff. Such a result would be flatly inconsistent with *Daimler*, which held that general jurisdiction should only be found in a corporation's State of incorporation and principal place of business, except in a truly "exceptional case." 134 S. Ct. at 761 n.19.

It would also impose new and unwarranted burdens on nationwide businesses, the courts, and the

American federal system. Businesses that develop their products in a large number of States would have no ability to predict where, and to what extent, they might be haled into court on product-related claims: any plaintiff could bring a claim in any forum where the defendant conducted any activities regarding the product. Certain courts perceived to be plaintiff-friendly would be overwhelmed as plaintiffs' lawyers concentrated as many product-related lawsuits in those courts as possible. And States would be newly empowered to 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—or at a minimum, vacated and remanded for reconsideration in light of the Court's disposition of *Bristol-Myers Squibb*.

ARGUMENT

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

In *Bristol-Myers Squibb Co.* v. *Superior Court of Cal.*, No. 16-466, the Court is considering whether an assertion of specific personal jurisdiction is permissible only if the defendant's forum contacts have a causal connection to the plaintiff's claim. The Chamber's *amicus* brief in that case explains why this

Court's precedents and the underlying due process principles require such a causal connection.

This case presents the closely-related question regarding the standard the courts should apply to determine whether that causal connection requirement is satisfied. The Chamber submits that the defendant's forum activity that is both purposeful and a cause of the plaintiff's claim must be sufficiently significant to create a substantial connection between the defendant, the forum, and the claim. The contacts in this case fall far short of that requirement.[2]

A. The Defendant's Forum Activity Must Be A Cause Of The Plaintiff's Claim And Also Bear A Significant Enough Relationship To The Claim 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*, 134 S. Ct. at 1121 (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 plaintiff's claim.

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[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).

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 plaintiff's 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 is still used 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 (emphasis 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, 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, ***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." *Id.* (quoting *Int'l Shoe*, 326 U.S. at 318).

Finally, 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," or where the suit "relat[es] to that in-state activity." *Daimler*, 134 S. Ct. at 754 (internal quotation marks omitted).

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 with the plaintiff's claims.

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

As the petition explains (at 14-19), the lower courts that require a causal connection between the defendant's forum activity and the plaintiff's claim have adopted differing standards. Some require a mere "discernible relationship" that does not even rise to the level of "but-for" causation; other courts hold that the in-forum activity must be a but-for cause of the plaintiff's injury; and others require a more substantial relationship between the defendant's in-forum conduct and the plaintiff's claim—framing the test as "proximate" causation.[3]

Defining the necessary causal link is an important element of the specific jurisdiction test. But focusing on causation alone threatens to omit a criti-

[3] Other courts—such as the California Supreme Court in *Bristol-Myers Squibb*—do not require any causal connection between the defendant's in-forum activity and the plaintiff's claim.

cal element of the inquiry: whether the defendant's suit-related activity within the forum is sufficient to ensure that the State's exercise of jurisdiction does not intrude impermissibly on the sovereignty of other States.

The Court has repeatedly emphasized that the connection between the defendant's in-forum activity and the plaintiff's claim is relevant for two reasons. First, because a defendant that avails itself of the privilege of conducting business within a State may legitimately be subjected to jurisdiction when those in-state activities "give rise to obligations." *International Shoe*, 326 U.S. at 319.

Second, because a State may legitimately exercise its authority only to enforce "the obligations which [the defendant] ha[d] incurred there." *Id.* at 320. 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 therefore must ensure that the defendant's forum activity is sufficiently connected to the plaintiff's claim to conclude that the underlying "obligation" was incurred there. And it must not open the door to assertions of jurisdiction by States with little connection to the underlying "obligation," because doing so would permit States with little or no real interest in the dispute to displace States with a much more significant interest in the dispute. It is for these reasons that the Court has stated that "the defendant's suit-related conduct must create a *substantial connection* with the forum State." *Walden*, 134 S. Ct. at 1121 (emphasis added).

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

- Identify the defendant's purposeful[4] claim-related activity within the forum;
- Determine whether that activity gave rise to the plaintiff's claim; and
- Assess whether the causal connection between the activity and the claim is sufficient to create the requisite "substantial relationship."

The latter inquiry should consider both (a) whether the in-forum activity is sufficient to support the conclusion that the obligation underlying the suit was incurred there, 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 States have a significantly greater connection to the underlying obligation than the forum State.

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 plaintiff's claim, specific jurisdiction is impermissible. That was the situation in *Goodyear* and *Daimler*—where the claims were entirely unrelated to the defendants' in-forum activities.

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[4] The Court has explained that the "defendant *himself*" must be the one who "form[s] the necessary connection with the forum State." *Walden*, 134 S. Ct. at 1122 (internal quotation marks omitted).

Where, on the other hand, the defendant sold a product into the plaintiff's state of residence, and the plaintiff purchased the product in the State and was injured there, there is a clear, substantial relationship between the defendant's activity and the claim. Similarly, where the plaintiff alleges a manufacturing defect, the State of manufacture will usually be able to exercise specific jurisdiction.

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 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 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 (1985). The defendant's interaction with the forum-resident counterparty 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.[5]

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[5] As these examples indicate, a proximate relation between the forum activity and the claim will virtually always permit the exercise of specific jurisdiction, because there will be a causal relationship and the relationship virtually always will be substantial if the in-forum activity was a proximate cause of the claim. If the causal relationship is not proximate, it is more likely that the court will have to assess separately whether the defendant's in-forum activity nonetheless provides a sufficiently substantial connection to permit the exercise of jurisdiction.

B. The Expansive Standard Applied Below Extended Illinois' Authority Far Beyond The Bounds Permitted by the Constitution.

The reason for a specific jurisdiction standard, of course, is to prevent illegitimate exercises of that authority—and the facts of this case provide a perfect example of such abuse.

The out-of-State plaintiffs here do not allege that they were injured by petitioner's drug in Illinois; that the drug was designed or developed in Illinois; or that they saw any marketing or advertising for the drug in Illinois. Rather, their claim is that petitioner conducted its clinical trials across the country improperly and that, as a result, its conclusions about Paxil's safety were flawed.

But that claim has no more to do with Illinois than it does with any of the other 44 States in which clinical trials were conducted. It therefore lacks the "*substantial* connection with the forum State" required by this Court's precedents. See *Walden*, 134 S. Ct. at 1121 (emphasis added); see also *Glater* v. *Eli Lilly & Co.*, 744 F.2d 213, 216 (1st Cir. 1984) (holding that defendant's sales of a drug in New Hampshire could not "be said to be related to [plaintiff's] injury" in Massachusetts for specific-jurisdiction purposes).

The Illinois court found specific jurisdiction because the defendant collected data in the forum State that was "aggregated with the data from [numerous] other study locations" (Pet. App. 21), or because the defendant's actions were "informed, in part," by its studies in the State. In this regard, the court noted that:

- Petitioner's warning labels for Paxil were "informed, in part, by the results of [its] Illinois clinical trials" (*id.* at 20);
- Respondents allege that petitioner "failed to adequately track the pregnancies of women who participated in its clinical trials, a *portion of which* occurred in Illinois" (*id.* at 21) (emphasis added);
- "[T]he Illinois data was aggregated with the data from the other study locations" (*ibid.*); and
- "Illinois principal investigators" had "little or no"—which the court took to mean "*some*"—"degree of input into, and control over, the clinical trials" (*id.* at 22).

These observations do not come close to demonstrating that petitioner's Illinois activities caused respondents' claims. The court below acknowledged as much, speculating only that the trials in Illinois *could have* been the particular cause of respondents' injuries. As the Illinois appellate court put it—"echo[ing] the trial court"—"'What if Illinois had 1/10 of 1 percent of the total trials, but it was that data that skewed the entire interpretation of the tests? How do I know?'" Pet. App. 21 (brackets omitted).

The court below responded by taking on a straw man, contending that "the scattered nature of the clinical trials" should not "absolve[] [petitioner] of specific jurisdiction in Illinois." Pet. App. 26. But that asks the wrong question: there must be some *in*-State activity giving rise to the particular claims that each plaintiff has brought. The problem, in other words, is not simply that the clinical trials conducted in Illinois were a small percentage of the total

trials conducted—though that is highly relevant to the specific jurisdiction calculus. Rather, the problem is that neither respondents nor the court below pointed to *any* particular conduct or events in Illinois that gave rise to their claims—which is what this Court's precedent requires.

On the logic applied below, product manufacturers would effectively be subject to general jurisdiction in every State in which they engage in even de minimis design, testing, or production activities. Any plaintiff who purchased the product could bring suit in any State where such activities occurred, on the theory that the forum State *could have* been the place (or a place) where an error occurred in theory.

For example, an individual plaintiff from Maine, who bought and took the drug there and was allegedly injured there, could sue in Alaska as long as the defendant conducted *one* out of hundreds of clinical trials in Alaska—without any proof that the activity in Alaska was a cause of the plaintiff's claim. That approach would "reintroduce general jurisdiction by another name," on a massive scale. See Linda J. Silberman, *The End of Another Era: Reflections on* Daimler *and Its Implications for Judicial Jurisdiction in the United States*, 19 Lewis & Clark L. Rev. 675, 687 (2015).

Moreover, even if some causal connection could be manufactured out of the grab-bag of contacts cited by the court below—and it cannot—the connection could not possibly qualify as "substantial." In no real-world sense could the claims here be said to result from obligations incurred in Illinois.

Even more important, if these contacts were sufficient to permit specific jurisdiction, then 44 other

States could assert the same specific jurisdiction. That would intrude significantly, and impermissibly, on the sovereignty of the States in which respondents live and purchased the drug, in which the drug was manufactured, and in which petitioner is incorporated and has its principal place of business—all of which have a dramatically greater interest in this dispute than Illinois and the other States that were only the site of drug trials.

Rejecting the reasoning of the court below would not—as the Illinois court seemed to suggest—deny respondents any forum in which to pursue their claims. On the contrary, several forums remain available. For example, respondents could sue in a forum where petitioner is "at home" and subject to general jurisdiction, or they could bring suit in the States where they purchased and took Paxil—where specific jurisdiction would exist because petitioner's in-State conduct would have a clear connection to respondents' claims.

Lower courts should not be permitted to recreate the unduly expansive approaches to general jurisdiction that preceded *Daimler* by setting a low bar for *specific* jurisdiction that can be satisfied so long as a defendant's in-State activity *could have* made *some* marginal contribution to "aggregated" nationwide conduct. The decision below cannot stand.

If the Court's opinion in *Bristol-Myers Squibb* explains how lower courts should determine whether the defendant's in-forum activity has the requisite substantial connection with the plaintiff's claim, the Court should grant the petition, vacate the judgment below, and remand the case for application of that test. If, on the other hand, the Court does not reach

that issue in *Bristol-Myers Squibb*, it should grant plenary review to address that question in this case.

II. Exercising Specific Jurisdiction Over Claims 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 limitations on 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*, 134 S. Ct. at 1123.

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 that are not substantially related to a defendant's forum contacts eliminates any predictability. 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 product manufacturers 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. Expansive Specific Jurisdiction Rules Encourage Forum-Shopping.

The specific jurisdiction standard applied by the Illinois court below also would impose burdens on courts, by enabling plaintiffs—and plaintiffs' lawyers—to shop aggressively for plaintiff-friendly forums and bring as many claims as possible there. In pharmaceutical litigation, plaintiffs' counsel often seek to aggregate claims from plaintiffs across the country in particular "magnet jurisdictions" that are viewed as especially plaintiff-friendly. Before *Daimler*, plaintiffs seeking to bring suit in such "magnet jurisdictions" would rely on expansive theories of general jurisdiction, arguing that the defendant companies did a high volume of business there.

Daimler foreclosed that approach by holding that even a "substantial, continuous, and systematic course of business" by the defendant is not enough to support general jurisdiction. 134 S. Ct. at 761 (internal quotation marks omitted).

But the standard applied by the court below circumvents *Daimler* and opens a new forum-shopping avenue for plaintiffs' lawyers, allowing the filing of a limitless number of claims in a desired forum as long as the defendant's activity touched, in some small measure, on the forum State. See Charles W. Rhodes & Cassandra Burke Robertson, *Toward a New Equilibrium in Personal Jurisdiction*, 48 U.C. Davis L. Rev. 207, 242 (2014) (rejecting the notion that of "specific jurisdiction in every forum in which the defendant conducts continuous and systematic forum

activities that are sufficiently similar to the occurrence in dispute," which "would give the plaintiff the choice of essentially every state for proceeding against a national corporation"). This Court should not permit such blatant gamesmanship.

C. 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.

States have no legitimate interest in asserting specific jurisdiction so expansively and inserting themselves into claims that arose exclusively in other States. Rather, the ability to adjudicate claims based on a defendant's in-State activities is amply sufficient to vindicate a State's interest in protecting its citizens and regulating conduct within its borders.

This Court should reject the approach employed below—which allows States 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.

CONCLUSION

The petition for a writ of certiorari should be granted, the judgment below vacated, and the case remanded for further proceedings in light of this Court's disposition of *Bristol-Myers Squibb Co.* v.

Superior Court of Cal., No. 16-466. In the alternative, the Court should grant plenary review.

Respectfully submitted.

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