No. 16-481

In the Supreme Court of the United States

TV AZTECA, S.A.B. DE C.V., PATRICIA CHAPOY, AND PUBLIMAX, S.A. DE C.V.,

Petitioners,

v.

GLORIA DE LOS ANGELES TREVINO RUIZ, INDIVIDUALLY AND ON BEHALF OF A MINOR CHILD, A.G.J.T., AND ARMANDO ISMAEL GOMEZ MARTINEZ,

Respondents.

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

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, AMERICAN TORT REFORM ASSOCIATION, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, AND THE TEXAS ASSOCIATION OF BUSINESS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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MISCELLANEOUS

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, AMERICAN TORT REFORM ASSOCIATION, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, AND THE TEXAS ASSOCIATION OF BUSINESS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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 vital concern to the Nation's business community, and has participated as *amicus curiae* in numerous cases addressing personal jurisdiction 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

[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, or their counsel made a monetary contribution to its preparation or submission. Counsel of record for all parties received notice of the intention of *amici* to file this brief at least 10 days prior to the due date. Petitioners' blanket consent to the filing of *amicus* briefs is on file with the Clerk of the Court. Respondents' consent to the filing of this brief has been filed concurrently with the brief.

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 may subject nonresident corporations to specific personal jurisdiction.

Founded in 1986, American Tort Reform Association ("ATRA") is a broad-based coalition of businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil justice system with the goal of ensuring fairness, balance, and predictability in civil litigation. For over two decades, ATRA has filed *amicus* briefs in cases that have addressed important liability issues.

The National Federation of Independent Business ("NFIB") is the Nation's leading small business advocacy association, representing more than 350,000 member businesses in all fifty States and the District of Columbia. NFIB's members range from sole proprietors to firms with hundreds of employees, and collectively they reflect the full spectrum of America's small business owners. Founded in 1943 as a nonpartisan organization, NFIB defends the freedom of small business owners to operate and grow their businesses and promotes public policies that recognize and encourage the vital contributions that small businesses make to our national economy.

NFIB has asserted claims in court to protect the interests of small business owners—see, e.g., *Nat'l Fed'n of Indep. Bus.* v. *Sebelius*, 567 U.S. ___, 132 S. Ct. 2566 (2012)—and frequently files amicus briefs in cases of consequence to America's small businesses, including in this Court.

Texas Association of Business ("TAB") is a broad-based, bipartisan organization representing thousands of Texas employers and over 200 local chambers of commerce. As Texas' leading employer organization for more than 90 years, TAB represents some of the largest multinational corporations as well as small businesses in almost every community in the state. TAB's mission is to make Texas the best place to do business.

Subjecting defendants to specific jurisdiction based on contacts that are not directly related to the plaintiff's claims would eviscerate the constitutional 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 why that result is irreconcilable with this Court's precedents and would impose unfair burdens on businesses, permit forum-shopping that undermines the integrity of the judicial system, and contradict the principles of American federalism.

INTRODUCTION AND SUMMARY OF ARGUMENT

The petition in this case is one of several pending before the Court presenting questions regarding the due process limits on personal jurisdiction—questions that have arisen with considerable frequency since this Court's decisions three years ago in *Daimler AG* v. *Bauman*, 134 S. Ct. 746, 760 (2014), and in *Walden* v. *Fiore*, 134 S. Ct. 1115 (2014).

Amici Chamber of Commerce of the United States and American Tort Reform Association ex-

plained in their *amicus* brief in *Bristol-Myers Squibb Co.* v. *Superior Court of Cal., Cnty. of S.F.*, No. 16-466, at 3-6, that this Court's intervention is essential to resolve the conflicting approaches in the lower courts with respect to a number of these issues, and provide the clarity that is essential with respect to these fundamental questions, which arise in a very substantial proportion of lawsuits in both federal and state courts. That *amicus* brief urged the Court to grant the petition in *Bristol-Myers Squibb*.

The factual setting in which the due process issue arises in this case could provide a useful complement to the Court's consideration of the due process issue in *Bristol-Myers Squibb*. Alternatively, the Court could grant review in *Bristol-Myers Squibb* and hold the petition in this case for disposition in light of the decision on the merits in *Bristol-Myers Squibb*.

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 as in *Bristol-Myers Squibb*, the decision below here does exactly that.

The court below purported to apply a specific jurisdiction standard, but rested its exercise of jurisdiction solely on petitioners' general business contacts with Texas. Upholding "specific jurisdiction" based on contacts by the defendant unrelated to the plaintiff's claim effectively nullifies the due process limits on general jurisdiction, and renders specific jurisdiction "specific" in name, but "general" in fact.

That expansive holding is contrary to this Court's precedents, will have disastrous consequenc-

es for nationwide businesses and for the judicial system, and should not be permitted to stand.

This Court—since its decision in *International Shoe Co.* v. *Washington*, 326 U.S. 310 (1945)—has consistently recognized that due process permits a defendant to be subjected to specific jurisdiction only if the plaintiff's claims relate *directly* to the defendant's contacts with the forum State. That is 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." 564 U.S. at 919 (brackets and internal quotation marks omitted). When a claim does not arise out of the defendant's contacts with the forum State, there is no basis for regulation by that State and specific jurisdiction is not available.

The court below held that Texas could exercise specific jurisdiction over respondents' claims, despite the acknowledged absence of any direct connection between those claims and petitioners' limited Texas contacts, because petitioners "made efforts to distribute their broadcasts and increase their popularity in Texas." Pet. App. 33a. But that holding means that any company's efforts to increase sales in a State could be invoked to subject the company to suits there based on claims unrelated to the State—general jurisdiction in fact but not in name. That 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.

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

and the American federal system. Businesses would completely lose the ability to predict where, and to what extent, they might be haled into court: personal jurisdiction would lie wherever a business was active, even if its forum activity were unrelated to the plaintiff's claims. Certain courts perceived to be plaintiff-friendly would be overwhelmed as plaintiffs' lawyers concentrated as many 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 demonstrate why 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 is wrong. The "relatedness" between the defendant's contacts and the plaintiff's claim necessary to support specific jurisdiction must be *direct*—including in intentional-tort cases such as this one.

ARGUMENT

I. The Decision Below Conflicts With This Court's Precedents And Violates Due Process.

A. This Court's Precedents Establish That A Claim Must Relate Directly To The Defendant's Forum Contacts To Support Specific Jurisdiction.

This Court recently reaffirmed 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* v. *Fiore*, 134 S. Ct. 1115, 1121 (2014) (emphasis added). This requirement of "suit-related" conduct is the essential, indispensable element of specific jurisdiction: Unlike general jurisdiction, specific jurisdiction must be based on forum contacts *that give rise to the plaintiff's suit.*

Walden was hardly the first decision of this Court to recognize and apply that principle. The Court articulated it for the first time more than seventy years ago in *International Shoe*, which defined the due process standards for personal jurisdiction approach to specific jurisdiction that continue to apply 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." *Int'l Shoe*, 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.*

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 ac-

tivity in the forum State, due process permits it to be haled into court there on specific jurisdiction grounds 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. That principle necessarily bars the invocation of specific jurisdiction with respect to claims that do ***not*** arise out of in-State activities or obligations.

The Court repeatedly affirmed that precise limitation on specific jurisdiction in later decisions. 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 majority 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.* (emphasis added) (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 relate *directly* to a defendant's in-State activities. A State cannot exercise specific jurisdiction with respect to claims that do not relate directly to a defendant's forum contacts.

B. The Relatedness Standard Adopted By The Court Applies A "Specific Jurisdiction" Label To What Is In Fact An Exercise Of General Jurisdiction.

The expansive approach to relatedness employed by the court below is incompatible with this Court's teachings on specific jurisdiction. It allows a defendant to be haled into court on a "specific jurisdiction" theory even when the plaintiff's claims lack any direct relation to the defendant's forum contacts—thereby transforming specific jurisdiction into a principle closely resembling general jurisdiction, and circumventing the due process limits on general jurisdiction recognized by this Court.

The court below did not contend that respondents' claims arose out of, or directly resulted from,

petitioners' conduct in Texas—on the contrary, it freely acknowledged under its approach, that inquiry is irrelevant because a plaintiff's claim need not be causally related in any way to the defendant's forum contacts. Pet. App. 38a. Instead, the court held that it was sufficient that petitioners had engaged in business conduct—even though that conduct was "*beyond the particular business transaction at issue*"—that indicated an "intent * * * to serve the market in the forum State [*i.e.*, Texas]." *Id.* at 42a (emphasis added).

That holding cannot be squared with cases such as *Goodyear*, which make clear that specific jurisdiction may be exercised only with respect to "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).

There is no dispute here that the conduct upon which this suit is based—petitioners' broadcast of a television program that allegedly defamed respondents—took place outside of Texas. Indeed, *every* operative event underlying respondents' claims took place outside the State. Thus, none of petitioner's "suit-related conduct" had *any* connection to Texas, let alone a "substantial connection." See *Walden*, 134 S. Ct. at 1121. That precludes the assertion of specific jurisdiction.

II. Exercising Specific Jurisdiction Over Claims That Are Not Causally Related To A Defendant's Forum Contacts Harms Businesses, Courts, And The Federal System.

Decisions such as the one below not only violate settled due process principles—they inflict severe

burdens on the business community, the courts, and the federal system. That is why this Court should intervene to correct the lower court's broad conception of specific jurisdiction.

A. The "Substantial Connection" Approach Creates Significant Uncertainty For Businesses.

This Court has long recognized that the concept of specific jurisdiction "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 297 (1980). 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, 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).

That predictability would be destroyed if specific jurisdiction could be asserted with respect to claims

that lack any causal connection to the defendant's forum contacts. If a plaintiff could bring a claim in any State as long as the defendant engaged in "promotional" activities there, *e.g.*, Pet. App. 41a, businesses' ability to control or predict where they are subject to specific jurisdiction would be drastically reduced. Indeed, a company that did business nationwide might have no way of avoiding nationwide general jurisdiction—being trapped in litigation in any forum in the country, no matter how "distant or inconvenient" or unrelated to the subject of the suit. *See World-Wide Volkswagen*, 444 U.S. at 292.

Applying specific jurisdiction in such an unpredictable and indiscriminate manner would be unfair to defendants 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 Corp. v. Rudzewicz*, 471 U.S. 462, 475 n.17 (1985) (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 that this unbridled approach to specific jurisdiction would cause would ultimately be borne by consumers.

B. The "Substantial Connection" Approach Expands Plaintiffs' Ability To Engage In Forum-Shopping.

A "substantial connection" approach like the one used by the court below also would impose new burdens on courts, by enabling plaintiffs—and plaintiffs' lawyers—to shop aggressively for plaintiff-friendly forums and bring as many claims as possible in such

courts. It has already long been commonplace for plaintiffs' counsel to concentrate lawsuits 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 "substantial connection" test endorsed by the lower court here opens up a new forum-shopping avenue for plaintiffs, allowing them to bring their claims in any desired forum as long as the defendant is generally trying to expand its business in the forum. This Court should not permit such blatant gamesmanship.

C. An Expansive Relatedness Test Infringes On With Federalism.

Finally, the lower court's approach violates basic principles of federalism. As this Court has recognized, the minimum-contacts requirement for exercising specific jurisdiction does not just protect defendants' due process rights—it also "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 meddling in affairs that occurred exclusively in other States. Rather, a State's legitimate interests are in protecting

its citizens and regulating conduct within its borders—interests which can be served by limiting specific jurisdiction to claims based on a defendant's in-State activities. This Court should therefore reject the unbounded relatedness approach applied below and require plaintiffs to bring their claims in the proper forum—the State in which their claims arose or a State in which the defendant is subject to general jurisdiction.

CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, if the Court grants review in *Bristol-Myers Squibb Co.* v. *Superior Court of Cal., Cnty. of S.F.*, No. 16-466, it could hold the petition in this case and dispose of it as appropriate in light of the Court's decision in *Bristol-Myers Squibb Co.*

Respectfully submitted.

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