No. 21-1168

IN THE

Supreme Court of the United States

ROBERT MALLORY,

Petitioner,

v.

NORFOLK SOUTHERN RAILWAY CO.,

Respondent.

On Writ of Certiorari to the
Pennsylvania Supreme Court

BRIEF OF *AMICI CURIAE* THE NATIONAL ASSOCIATION OF MANUFACTURERS AND PRODUCT LIABILITY ADVISORY COUNCIL, INC. IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are the National Association of Manufacturers ("NAM") and Product Liability Advisory Council ("PLAC"). This case is of importance to *amici* and their members because it raises significant concerns that states will systematically circumvent this Court's decisions constraining general, all-purpose jurisdiction to states where the party is "at home," namely the state of incorporation and where its principal place of business is located. As a result, manufacturers may be subject to the jurisdiction of courts in states that have little or no relationship to the lawsuit and that unfairly subject them to liability exposure greater than the appropriate state forums.

The 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 12.7 million men and women, contributes $2.71 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for nearly two-thirds 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 compete in the global economy and create jobs across the United States.

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[1] Pursuant to Rule 37.6, counsel for *amici curiae* certifies that this brief was not authored in whole or in part by counsel for any party and that no person or entity, other than *amici curiae*, their members, or their counsel made a monetary contribution to the preparation or submission of the brief. The parties have provided blanket consent to the filing of amicus briefs.

PLAC is a non-profit professional association of corporate members representing a broad cross-section of American and international product manufacturers. These companies seek to contribute to the improvement and the reform of law in the United States and elsewhere, with emphasis on the law governing the liability of product manufacturers and those in the supply chain. PLAC's perspective is derived from the experiences of a corporate membership that spans a diverse group of industries of various facets of the manufacturing sector. In addition, several hundred of the leading product-liability defense attorneys in the country are sustaining (non-voting) members of PLAC. Since 1983, PLAC has filed more than 1,100 briefs as *amicus curiae* in both state and federal courts, including this Court, presenting the broad perspective of product manufacturers seeking fairness and balance in the application and development of the law as it affects product risk management.

INTRODUCTION AND SUMMARY OF ARGUMENT

Over the past decade, this Court has solidified the constitutional limits for general personal jurisdiction to properly reflect the modern economy where businesses of all types regularly conduct business in multiple states. It has held as a matter of due process and principles of federalism that a state can exercise general jurisdiction over a business only where the business is "at home," which in all but the rarest of circumstances is its place of incorporation or principal place of business. *See Daimler AG v. Bauman*, 571 U.S. 117 (2014); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011). The Court

has reaffirmed this fundamental principle, explaining that the "at home" rule "applies to all state-court assertions of general jurisdiction over non-resident defendants" and that it "does not vary" with the particulars of a case. *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1559 (2017).

Here, the Pennsylvania Supreme Court applied these constitutional limits. It struck down the Commonwealth's statute providing that when an out-of-state company registers to do business in Pennsylvania, the company is subject to general jurisdiction there, regardless of whether the company is actually doing business there, let alone has such extensive in-state contacts that Pennsylvania is a state in which it is "at home." *See* Pa. Const. Stat. § 5301(a). As a matter of constitutional law, Pennsylvania courts cannot assert general jurisdiction over the Virginia defendant in this case, which is brought by a Virginia plaintiff for an alleged injury that occurred outside of Pennsylvania. The Pennsylvania Supreme Court also rejected Petitioner's assertion that complying with the registration statute constitutes consent to general jurisdiction or could overcome this Court's constitutional concerns with expanding general jurisdiction beyond the "at home" states.

For years, this Court has made clear that general jurisdiction is the exception, not the rule, regarding when a state can exercise jurisdiction over a corporate defendant. As the Court has explained, since the seminal case of *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (1945), "specific jurisdiction has become the centerpiece of modern jurisdiction theory," *Goodyear*, 564 U.S. at 925, a change spurred by "the tremendous growth in interstate business activity." *Daimler*

(citing *Burnham v. Super. Ct. of Cal.,* 495 U.S. 604, 617 (1990)). Since then, the economy has grown more interconnected, and specific jurisdiction allows courts to focus on cases where "the suit arises out of or relates to the defendant's contacts with the forum." *Daimler*, 134 S. Ct. at 748-49 (cleaned up). It unifies the litigants', courts', and community's interests in a case so that courts and juries perform their responsibilities and expend their resources only when they have a meaningful stake in the claim. Such dynamics do not exist when jurisdiction is based solely on a state's registration statute.

Today, many manufacturers and other businesses are registered in a multitude of states because they have some employees or operations there, or conduct a sufficient amount of business in the state to trigger a registration statute. Reversing the Pennsylvania Supreme Court's ruling here would make those companies' constitutional protections against expansive general jurisdiction entirely illusory. States could use registration statutes or other mechanisms to undermine the Court's longstanding jurisprudence on personal jurisdiction, which has sought repeatedly to assure that the location of a lawsuit does not subvert "traditional notions of fair play and substantial justice." *Daimler*, 134 S. Ct. at 754 (quoting *Int'l Shoe Co.*, 326 U.S. at 316; *see also Ford Motor Co. v Montana Eighth Jud. Distr. Ct.*, 141 S. Ct. 1017, 1031 (2021) (cautioning that expansive jurisdiction encourages "forum-shopping" in "plaintiff-friendly" states that have no tie to the case at hand).

For these reasons, *amici* respectfully urge the Court to uphold the ruling below. The Court should clarify that constitutional limits on personal jurisdic-

tion cannot hinge on state law, and enforce *Daimler, Goodyear*, and *BNSF* to prevent states from circumventing these constraints on where businesses can be subject to general, all-purpose jurisdiction.

ARGUMENT

I. BASING GENERAL JURISDICTION ON REGISTRATION STATUTES WILL NULLIFY THE "AT HOME" REQUIREMENT FOR MANY BUSINESSES GIVEN THE INCREASED INTERSTATE NATURE OF THE MODERN ECONOMY

States enacted registration statutes so they could exercise jurisdiction over an out-of-state company in controversies arising from transactions in the forum state. *See* Tanya J. Monestier, *Registration Statutes, General Jurisdiction, and the Fallacy of Consent*, 36 Cardozo L. Rev. 1343, 1363-64 (2015). These laws were necessary before *International Shoe* allowed states to exercise specific jurisdiction based on a company's contacts in the state. At the time, state courts had no authority outside of their states' boundaries. *See Daimler*, 571 U.S. at 125-26. So, in order for out-of-state companies to conduct business in the state, states required the companies to appoint in-state agents that could accept service of process. This way, a plaintiff would not have to pursue an out-of-state business elsewhere for injuries based on in-state activities. These laws facilitated what later came to be known as specific jurisdiction.

State registration statutes persist to this day, but they are highly varied and generally vague. As the Pennsylvania Supreme Court explained below, its state law requires a company to register if it is "do-

ing business" in the state, but "does not define the phrase 'doing business.'" *Mallory v. Norfolk So. Ry.* Co., 266 A.3d 542, 562 (Pa. 2021). Rather, the commentary to the code enumerates activities that do *not* constitute doing business and posits that "more regular, systematic, or extensive" conduct qualifies as doing business there. *Id.*

Because these terms are subjective, they lead to confusion and disagreement among businesses and lawyers as to when registration is necessary. While some states use the phrase "transact business," *see, e.g.*, Conn. Gen. Stat. Ann. § 33-920(a); Minn. Stat. Ann. § 303.03; Neb. Rev. Stat. § 21-20, 174(2), the same ambiguities exist in their laws. Few, if any, states clearly delineate this line. *See, e.g.*, *Metropolitan Life Ins. Co. v. Robertson–Ceco Corp.*, 84 F.3d 560, 570 (2d Cir. 1996) (explaining under New York law that "[t]here is no talismanic significance to any one contact or set of contacts that a defendant may have with a forum state; courts should assess the defendant's contacts as a whole").

As a result of these ambiguities, manufacturers and other companies will generally register in a state if they have employees, an office, significant banking relationships, or other sustained contractual obligations there. For example, a manufacturer may have a 10-person design team in a state, maintain a small office for its sales force, or have employees stationed at a large supplier or purchaser of its goods. It is generally considered good practice to register in those states. A manufacturer supplying the auto industry, regardless of where it is "at home," would likely be registered in Michigan; the same is true for Wal-Mart suppliers in Arkansas and NASA suppliers

in Alabama, Florida or Texas, and more. Some companies register in anticipation of doing business in a state, but the business may not materialize. *See, e.g., Kropschot Fin. Servs., Inc v. Balboa Capital Corp.*, No. 11 Civ. 8609, 2012 WL 1870697 (S.D.N.Y. 2012) (asserting that "[t]he sheer act of registering to do business in the state—even in the absence of doing business—would suffice to ground general jurisdiction"). Thus, manufacturers and other businesses—both large and small—are registered in many states where they are not "at home."

The railroad industry, which is the subject of the case here, provides a vivid example of this situation. Norfolk Southern, which as indicated is a Virginia-based company, has "substantial and continuous business" in some 22 states. *State ex rel. Norfolk So. Ry. Co. v. Dolan*, 512 S.W.3d 41, 44 (Mo. 2017). BNSF, the defendant in a previous general jurisdiction case before this Court, operates in 28 states. *See BNSF*, 137 S. Ct. at 1554. And, Union Pacific, which is incorporated in Delaware and based in Nebraska, has operations in 23 states. *See Barrett v. Union Pacific R.R. Co.*, 361 Or. 115, 118 (Or. 2017).

This trend of an expanding employee base and operations across the country has accelerated in light of the pandemic, as many employees work remotely and have moved to states different from where their offices are located. For example, because of these dynamics, *amicus* NAM (a non-profit trade association), is now registered in seven states beyond the District of Columbia and New York where it is "at home." Some large manufacturers and other types of businesses are registered in every or nearly every state. As the Pennsylvania Supreme Court explained in the

ruling below, these registrations are neither optional nor indicative of consent to all-purpose jurisdiction. When interpreting its registration and long-arm statutes below, the Pennsylvania Supreme Court stated that any such "choice" is illusory.

These statutes are simply poor vehicles for determining the boundaries of a company's constitutional rights; they are compulsory, vaguely written and subject to change. Moreover, using them for determining the scope of general jurisdiction would create tension with their intended purpose of facilitating accountability for claims based on in-state conduct. Today, a prudent company may choose to register in a state to avoid penalties, but if the Court were to allow consent by registration, cautious companies would choose against registering whenever not clearly required in an effort to avoid general jurisdiction in a state in which it is not "at home." As this Court has recognized, many companies cannot afford the cost, interruptions, and liability exposure of trying cases in far-away jurisdictions. *See Asahi Metal Indus. Co. v. Super. Ct. of Cal.*, 480 U.S. 102, 114 (1987) (noting the "unique burdens placed upon one who must defend oneself in a foreign legal system"). States cannot, by statute, force parties to surrender their constitutional protections.

II. THE COURT SHOULD REAFFIRM THAT STATES CANNOT ABROGATE A DEFENDANT'S CONSTITUTIONAL PROTECTIONS AGAINST IMPROPER IMPOSITION OF GENERAL JURISDICTION

This Court has a long tradition of tailoring constitutional general jurisdiction safeguards to the eco-

nomic realities of the times, and it should do so here. *See Burnham*, 495 U.S. at 617 (recognizing that jurisdiction jurisprudence has historically reflected "changes in the technology of transportation and communication, and the tremendous growth of interstate business activity"). The "at home" standard in *Goodyear* and *Daimler* properly embraces the manner in which manufacturers and other businesses do business today; consent by registration does not. No legal or economic rationale exists between registering to do business in a state and subjecting oneself to general jurisdiction there. As the Court has stated, "[a] corporation that operates in many places can scarcely be deemed at home in all of them." *See Daimler*, 134 S. Ct. at 762 n.20.

In laying the foundation for the "at home" test, the Court established that the Due Process Clause of the Fourteenth Amendment prescribes the circumstances under which it is proper for a state to assert general jurisdiction over a defendant. *See Kulko v. Super. Ct.,* 436 U.S. 84, 91 (1978) (stating the Due Process Clause "operates as a limitation on the jurisdiction of state courts" against defendants). The maintenance of the suit must not "offend traditional notions of fair play and substantial justice." *Int'l Shoe Co.*, 326 U.S. at 316 (citing *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). For this reason, "it is the *defendant's conduct* that must form the necessary connection with the forum State that is the basis for its jurisdiction over him." *Walden v. Fiore*, 134 S. Ct. 1115, 1122 (2014) (emphasis added). The state of incorporation and principal place of business are the "paradigm all-purpose forums." *Daimler*, 571 U.S. at 760. They are "easily ascertainable" and the only forums appropriate for subjecting a company to liabil-

ity regardless of the cause of action. *Id.* (cleaned up). Plaintiffs, as in the case here, can always pursue their claims in one of these states, so that they are never left without an available forum.

A statute that imposes general jurisdiction based merely on registering to do business in the state does not meet the high bar for when general jurisdiction is appropriate. Indeed, the Court has already adopted in *Daimler* the policy rationale needed for such a ruling here. In *Daimler*, the Court stated that general jurisdiction is not appropriate merely because a defendant has "continuous operations" in a state. 134 S. Ct. at 761. The proper inquiry "is whether that corporation's affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home." *Id.* (quoting *Goodyear*, 564 U.S. at 919). This analysis "calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide." *Id.* at 762 n. 20. Otherwise, "'at home' would be synonymous with 'doing business' tests framed before specific jurisdiction evolved in the United States." *Id.* "Nothing in *International Shoe* and its progeny suggests that a particular quantum of local activity should give a State authority over a far larger quantum of activity having no connection to any in-state activity." *Id.*

Under this jurisprudence, general jurisdiction is based on the *defendant's* choice of where to reside. *See* Roberta Romano, *Competition for Corporate Charters and the Lesson of Takeover Statutes*, 61 Fordham L. Rev. 843, 843 (1993) ("[Firms] seek to incorporate in the state whose code best matches their needs."). When manufacturers and other businesses consider where to incorporate and locate their

principal places of business, the certainty of legal exposure and liability risks are significant factors. Accordingly, fairness requires that businesses be able to "structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *Daimler,* 134 S. Ct. at 762 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)).

General jurisdiction, therefore, is a *quid pro quo*: a reciprocal situation in which a defendant fully submits itself to jurisdiction in exchange for the jurisdiction's benefits. *See Helicopteros Nacionales de Colombia, S.A. v. Hall,* 466 U.S. 408, 416 (1984). As the Court recognized in *Daimler*, this *quid pro quo* for all-purpose liability does not exist everywhere a company does business. Thus, the Court's concerns in *Daimler* are apropos here: "Such exorbitant exercises of all-purpose jurisdiction would scarcely permit out-of-state defendants to structure their primary conduct with some minimum assurance as to whether that conduct will and will not render them liable to suit." 571 U.S. at 761-62.

The other pillar of the Court's jurisdiction rulings has been concern that expanding general jurisdiction undermines federalism, and such concerns are equally at force here. *See Bristol-Myers Squibb Co., v. Super. Ct. of Cal.*, 137 S. Ct. 1773, 1780-81 (2017) (The Due Process Clause "act[s] as an instrument of interstate federalism.") (cleaned up). The Court stated in *Bristol-Myers Squibb* that "restrictions on personal jurisdiction are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective states." *Id.* at 1780. When a state ex-

ercises jurisdiction over a matter, it "prevent[s] sister States from exercising their like authority." *Ford Motor Co.*, 141 S. Ct. at 1025 (cleaned up). Asserting jurisdiction in an inappropriate case "would upset the federal balance." *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 884 (2011) (plurality). Put simply, a state cannot force itself into a dispute when neither the case nor defendant has the requisite connection to the state. Registration statutes cannot be permitted to change these constitutional boundaries.

Here, it is undisputed that Norfolk Southern is not "at home" in Pennsylvania. It never availed itself of Pennsylvania laws such that it could be subject to liability there when the alleged injury and related events occurred outside of Pennsylvania. Pennsylvania must not be allowed to enact a statute giving it the authority to usurp jurisdiction over this case from states where Respondent is "at home." The Court should reassert that the boundaries established in *Goodyear*, *Daimler*, and *BNSF* apply in all cases and under all state laws. General jurisdiction should continue occupying "a less dominant place in the contemporary scheme," as the Court continues to ensure that specific jurisdiction governs the forum states where cases can be brought. *Daimler*, 571 U.S. at 132-33 (The Court has "declined to stretch general jurisdiction beyond limits traditionally recognized.").

III. EXPANDING GENERAL JURISDICTION FACILITATES FORUM SHOPPING AND BURDENS COURTS AND JURIES

Through its jurisdiction jurisprudence, the Court has also expressed concerns with the practical implications of expanding general jurisdiction beyond its traditional moorings. If the Court were to shift

course and allow general jurisdiction to hinge on state registration statutes, rather than the current "at home" requirement, the result would be a recipe for national general jurisdiction. Consent by registration statutes would quickly become the norm, leading companies large and small to be haled into foreign state courts all across the nation regardless of any meaningful connection to the forum. Plaintiffs would shop for preferred forums where courts "may reflect 'local prejudice' against unpopular" defendants, *Watson v. Philip Morris Cos.*, 551 U.S. 142, 150 (2007), leading to cases that would subvert justice and burden a community's judicial resources.

A. Forum Shopping Threatens Justice.

As this Court cautioned in *Ford Motor Co.*, expanding a state's jurisdictional reach would facilitate improper "forum shopping," where plaintiffs file their lawsuits in states with expansive liability laws and that are believed to be "plaintiff-friendly, even though their cases had no tie to the State." *See* 141 S. Ct. at 1031. The theme the Court has understood and conveyed across these rulings is that location matters. Yet, if the Pennsylvania Supreme Court's ruling is reversed, a handful of states—including Pennsylvania—would become America's courtrooms, contrary to basic principles of federalism.

This type of forum shopping has become all too common in the past few decades, particularly in speculative mass tort actions. In violation of fair play and justice, manufacturers and other businesses are routinely sued in jurisdictions with little or no connection to the lawsuits. The state may have more permissive liability laws, for example, by allowing market share liability to overtake traditional notions

of causation, lenient procedural or scientific evidence rules, or a reputation for large verdicts. *See* Philip S. Goldberg, Christopher E. Appel, and Victor E. Schwartz, *The U.S. Supreme Court's Personal Jurisdiction Paradigm Shift to End Litigation Tourism*, 14 Duke J. Const. L. & Pub. Pol'y 51, 81-89 (2019) (discussing the factors that can lead to forum shopping and the impact that forum shopping has on the ability of the judicial system to administer justice).

A former plaintiffs' lawyer called these places "magic jurisdictions." Asbestos for Lunch, Panel Discussion at the Prudential Securities Financial Research and Regulatory Conference (May 9, 2002), in Industry Commentary (Prudential Securities, Inc., N.Y., New York), June 11, 2002, at 5 (quoting Richard Scruggs). A tort reform group has been issuing annual reports for nearly twenty years identifying such jurisdictions in an effort to encourage fairness.[2]

For years, the Philadelphia Court of Common Pleas has been a magnet jurisdiction for mass torts. In 2009, the Common Pleas Presiding Judge undertook a "public campaign to lay out the welcome mat for increased mass torts filings." Amaris Elliott-Engle, *Common Pleas Court Seeing More Diabetes Drug Cases*, Legal Intelligencer, Mar. 19, 2009, at 1; *see also* Amaris Elliott-Engle, *Philadelphia Courts May See Substantial Layoffs*, Legal Intelligencer, Jan. 29, 2009 (reporting the plan to make the Complex Litigation Center for mass torts more attractive to attorneys to "tak[e] business away from other courts"). In 2015, out-of-state plaintiffs accounted for

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[2] *See* Am. Tort Reform Found., Judicial Hellholes (2021-2022) at https://www.judicialhellholes.org/.

81 percent of new pharmaceutical cases filed in the Philadelphia courts, with that number dipping to 65 percent in 2016. *See* Max Mitchell, *Out-of-State Pharma Filings Dip as Phila. Mass Torts Remain Steady*, Legal Intelligencer, July 25, 2016.[3] Local lawyers attributed this decrease to *Daimler*, but that trend has reversed, as the courts have refused to faithfully apply the Court's jurisdictional jurisprudence. *See, e.g.*, *Hammons v. Ethicon, Inc.*, 240 A.3d 537 (Pa. 2020) (allowing an out-of-state plaintiff to bring action against an out-of-state medical device manufacturer for harms alleged to have occurred outside of Pennsylvania).

In asbestos litigation, any manufacturer with an historic association to an asbestos-containing product or workplace faces lawsuits in Madison and St. Clair Counties in Illinois, which collectively host half of the nation's asbestos litigation. *See* KCIC, Asbestos Litigation: 2021 Year in Review (2022), at 5.[4] Very few of these claims have any connection to Madison or St. Clair Counties. For example, in 2015, only 75 of 1,224 asbestos cases filed there were on behalf of Illinois residents, with only six cases involving Madison County residents. *See* Heather Isringhausen Gvillo, *Madison County Asbestos Filings Total 1,224; Only 6 Percent Filed on Behalf of Illinois Residents,* Madison-St. Clair Record, Mar. 23, 2016.

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[3] http://www.thelegalintelligencer.com/latest-news/id=1202763506813/OutofState-Pharma-Filings-Dip-as-Phila-Mass-Torts-Remain-Steady.

[4] https://www.kcic.com/media/2217/kcic_report_asbestos-annual-report_2021.pdf.

By contrast, the impact of faithfully applying *Daimler* was seen in Delaware, which abided by the constitutional limits set forth by this Court. Before *Daimler,* out-of-state plaintiffs with no meaningful connection to Delaware had increasingly filed asbestos claims there. *See In re Asbestos Litig.*, 929 A.2d 373, 378 (Del. 2006) (finding out-of-state asbestos claims filed in Delaware courts began in May 2005 and quickly reached 129 claims). *Daimler* reversed that trend. *See* KCIC, Asbestos Litigation: 2016 Mid-Year Update (2016), at 5.[5] (finding asbestos claims filed in New Castle, Delaware fell from 219 in 2014 to 124 in 2015, a decline of 43.4%). The Delaware Supreme Court properly held that "it is not tenable" after *Daimler* to exert personal jurisdiction over a non-resident manufacturer where the claims "had nothing to do with its activities in Delaware," merely because the corporation registered to do business and appointed a registered agent to receive service of process in that state. *Genuine Parts Co v. Cepec*, 137 A.3d 123, 125-26 (Del. 2016) (finding no personal jurisdiction over manufacturer incorporated in Georgia with principal place of business in Atlanta in claim brought by Georgia plaintiff who worked in Florida warehouse).

Amici appreciate this Court cannot eliminate forum shopping or the resulting injustices that occur in these jurisdictions. But, there are clear cases, such as the one at bar, that have no connection to the forum state and where the defendant is not "at home." These lawsuits violate this Court's jurisdictional

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[5] http://riskybusiness.kcic.com/wp-content/uploads/2016/09/KCIC-Asbestos-Mid-Year-Report-2016-1.pdf.

safeguards, and affirming the Pennsylvania Supreme Court's ruling would help curtail this practice.

B. Judicial Resources Should Be Preserved for Cases Connected to the Community.

Finally, attracting out-of-state claims often conflicts with the interests of a local community. *See* Daniel Klerman & Greg Reilly, *Forum Selling*, 89 S. Cal. L. Rev. 241, 242 (2016) ("For diverse motives, such as prestige, local benefits, or re-election, some judges want to hear more of certain types of cases."). A troubling consequence of stockpiling hundreds or thousands of claims in a jurisdiction, especially when a vast majority of them have no connection to the locale, is the increased pressure to shift a court's focus from dispensing justice to disposing of cases. Sometimes well-intentioned judges take shortcuts to temporarily fix a clogged docket. *See* Francis E. McGovern, *The Defensive Use of Federal Class Actions in Mass Torts*, 39 Ariz. L. Rev. 595, 606 (1997) ("Judges who move large numbers of highly elastic mass torts through their litigation process at low transaction costs create the opportunity for new filings.").

Even when a case is heard individually and on its merits, the commitment of ensuring that the nonresident business receives a fair trial can wane. *See Honda Motor Co., Ltd. v. Oberg*, 512 U.S. 415, 432 (1994) (identifying "the potential that juries will use their verdicts to express biases against big businesses, particularly those without strong local presences"); *TXO Prod. Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 464 (1993) (identifying "prejudice against large corporations, a risk that is of special concern when the defendant is a nonresident"). Concerns of injustice go to the heart of the fair play

and substantial justice reasons this Court imposed the "at home" standard for general jurisdiction.

In addition, an expansive view of general jurisdiction will cause states to spend their limited judicial resources, including the jury service of their citizens, on cases where their communities have insufficient interests. A jury's mission is to provide a voice for its community, establish facts of a case, and ensure parties are treated neutrally and equally. *See Duncan v. Louisiana*, 391 U.S. 145, 155-56 (1968) (explaining in the criminal context, that juries guard against overreaching prosecutors). While an overwhelming majority of Americans have high regard for the jury system, many citizens try to avoid jury service. *See* Mark A. Behrens & Cary Silverman, *Improving the Jury System in Virginia: Jury Patriotism Legislation is Needed,* 11 Geo. Mason L. Rev. 657 (2003). They see jury service as a civic responsibility but do not want to make professional and personal sacrifices. *See*, *e.g.*, *Thiel v. Southern Pac. Co.*, 328 U.S. 217, 231 (1946) (Frankfurter, J., dissenting) ("[I]t cannot be denied that jury service by persons dependent upon a daily wage imposes a very real burden.").

A citizen's personal sacrifice to serve on a jury is supposed to be counterbalanced by the ability of jurors to address an alleged wrong committed in their communities. *See* Restatement (Second) of Conflict of Laws § 36, cmt. c (1971). To facilitate such service, some states have spent significant resources improving jury systems, creating a one-day, one-trial rule, and developing lengthy-trial funds to subsidize jurors who lose incomes when at trial. When a case has no connection to the community, these resources are wasted, jurors may resent showing up for service,

and the rationale for the jury pool to be a cross-section of the community is undermined.

Further, many local courts have seen an increase in claims and a reduction in resources. Deep budget cuts some systems faced "threaten[ed] the basic mission of state courts." Richard Y. Schauffler & Matthew Kleiman, *State Courts and Budget Crisis: Rethinking Court Services,* The Book of the States 2010, 290. State courts became "an easy target," for slashing budgets. Andrew Cohen, *At State Courts, Budgets Are Tight and Lives Are in Limbo*, The Atlantic, Sept. 23, 2011. The result, some feared, would be local citizens having difficulty accessing their courts to have contract, tort, and other claims heard. *See id.*

Reinforcing the "at home" requirement for general jurisdiction will protect the interests of justice and the ability of local courts to serve the interests of their communities.

CONCLUSION

For these reasons, *amici curiae* respectfully request that this Court affirm the judgment below.

Respectfully submitted,

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