Chapter 3

Personal Jurisdiction

1. Constitutional Limits: Due Process

1.1 Foundations

Pennoyer v. Neff, 95 U.S. 714 (1877)

MR. JUSTICE FIELD delivered the opinion of the court.

This is an action to recover the possession of a tract of land, of the alleged value of $15,000, situated in the State of Oregon. The plaintiff asserts title to the premises by a patent of the United States issued to him in 1866, under the act of Congress of Sept. 27, 1850, usually known as the Donation Law of Oregon. The defendant claims to have acquired the premises under a sheriff's deed, made upon a sale of the property on execution issued upon a judgment recovered against the plaintiff in one of the circuit courts of the State. The case turns upon the validity of this judgment.

It appears from the record that the judgment was rendered in February, 1866, in favor of J.H. Mitchell, for less than $300, including costs, in an action brought by him upon a demand for services as an attorney; that, at the time the action was commenced and the judgment rendered, the defendant therein, the plaintiff here, was a non-resident of the State; that he was not personally served with process, and did not appear therein; and that the judgment was entered upon his default in not answering the complaint, upon a constructive service of summons by publication.

The Code of Oregon provides for such service when an action is brought against a non-resident and absent defendant, who has property within the State. It also provides, where the action is for the recovery of money or damages, for the attachment of the property of the non-resident. And it also declares that no natural person is subject to the jurisdiction of a court of the State, "unless he appear in the court, or be found within the State, or be a resident thereof, or have property therein; and, in the last case, only to the extent of such property at the time the jurisdiction attached." Construing this latter provision to mean, that, in an action for money or damages where a defendant does not appear in the court, and is not found within the State, and is not a resident thereof, but has property therein, the juris-

diction of the court extends only over such property, the declaration expresses a principle of general, if not universal, law. The authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established. Any attempt to exercise authority beyond those limits would be deemed in every other forum, as has been said by this court, an illegitimate assumption of power, and be resisted as mere abuse. In the case against the plaintiff, the property here in controversy sold under the judgment rendered was not attached, nor in any way brought under the jurisdiction of the court. Its first connection with the case was caused by a levy of the execution. It was not, therefore, disposed of pursuant to any adjudication, but only in enforcement of a personal judgment, having no relation to the property, rendered against a non-resident without service of process upon him in the action, or his appearance therein. The court below did not consider that an attachment of the property was essential to its jurisdiction or to the validity of the sale, but held that the judgment was invalid from defects in the affidavit upon which the order of publication was obtained, and in the affidavit by which the publication was proved.

The Supreme Court held that a challenge to the form of the affidavit could only be raised on a direct appeal, not a collateral attack.

It was also contended in that court, and is insisted upon here, that the judgment in the State court against the plaintiff was void for want of personal service of process on him, or of his appearance in the action in which it was rendered, and that the premises in controversy could not be subjected to the payment of the demand of a resident creditor except by a proceeding *in rem*; that is, by a direct proceeding against the property for that purpose. If these positions are sound, the ruling of the Circuit Court as to the invalidity of that judgment must be sustained, notwithstanding our dissent from the reasons upon which it was made. And that they are sound would seem to follow from two well-established principles of public law respecting the jurisdiction of an independent State over persons and property. The several States of the Union are not, it is true, in every respect independent, many of the rights and powers which originally belonged to them being now vested in the government created by the Constitution. But, except as restrained and limited by that instrument, they possess and exercise the authority of independent States, and the principles of public law to which we have referred are applicable to them. One of these principles is, that every State possesses exclusive jurisdiction and sovereignty over persons and property within its territory. As a consequence, every State has the power to determine for itself the civil status and capacities of its inhabitants; to prescribe the subjects upon which they may contract, the forms and solemnities with which their contracts shall be executed, the rights and obligations arising from them, and the mode in which their validity shall be determined and their obligations enforced; and also to regulate the manner and conditions upon which property situated within such territory, both personal and real, may be acquired, enjoyed, and transferred. The other principle of public law referred to follows from the one mentioned; that is, that no State can exercise direct jurisdiction and authority over persons or property without its territory. The several States are of equal dignity and authority, and the independence

"In-rem jurisdiction refers to the power of a court over an item of real or personal property. The"thing" over which the court has power may be a piece of land or even a marriage. Thus, a court with only in-rem jurisdiction may terminate a marriage or declare who owns a piece of land. In-rem jurisdiction is based on the location of the property and enforcement follows property rather than person." Wex Legal Dictionary.

of one implies the exclusion of power from all others. And so it is laid down by jurists, as an elementary principle, that the laws of one State have no operation outside of its territory, except so far as is allowed by comity; and that no tribunal established by it can extend its process beyond that territory so as to subject either persons or property to its decisions.

But as contracts made in one State may be enforceable only in another State, and property may be held by non-residents, the exercise of the jurisdiction which every State is admitted to possess over persons and property within its own territory will often affect persons and property without it. To any influence exerted in this way by a State affecting persons resident or property situated elsewhere, no objection can be justly taken; whilst any direct exertion of authority upon them, in an attempt to give ex-territorial operation to its laws, or to enforce an ex-territorial jurisdiction by its tribunals, would be deemed an encroachment upon the independence of the State in which the persons are domiciled or the property is situated, and be resisted as usurpation.

Thus the State, through its tribunals, may compel persons domiciled within its limits to execute, in pursuance of their contracts respecting property elsewhere situated, instruments in such form and with such solemnities as to transfer the title, so far as such formalities can be complied with; and the exercise of this jurisdiction in no manner interferes with the supreme control over the property by the State within which it is situated.

So the State, through its tribunals, may subject property situated within its limits owned by non-residents to the payment of the demand of its own citizens against them; and the exercise of this jurisdiction in no respect infringes upon the sovereignty of the State where the owners are domiciled. Every State owes protection to its own citizens; and, when non-residents deal with them, it is a legitimate and just exercise of authority to hold and appropriate any property owned by such non-residents to satisfy the claims of its citizens. It is in virtue of the State's jurisdiction over the property of the non-resident situated within its limits that its tribunals can inquire into that non-resident's obligations to its own citizens, and the inquiry can then be carried only to the extent necessary to control the disposition of the property. If the non-resident have no property in the State, there is nothing upon which the tribunals can adjudicate.

If, without personal service, judgments in personam, obtained ex parte against non-residents and absent parties, upon mere publication of process, which, in the great majority of cases, would never be seen by the parties interested, could be upheld and enforced, they would be the constant instruments of fraud and oppression. Judgments for all sorts of claims upon contracts and for torts, real or pretended, would be thus obtained, under which property would be seized, when the evidence of the transactions upon which they were founded, if they ever had any existence, had perished.

"In personam refers to courts' power to adjudicate matters directed against a party, as distinguished from in-rem proceedings over disputed property." Wex Legal Dictionary.

"In civil procedure, ex parte is used to refer to motions for orders that can be granted without waiting for a response from the other side. Generally, these are orders that are only in place until further hearings can be held, such as a temporary restraining order.

Typically, a court will be hesitant to make an ex parte motion. This is because the Fifth Amendment and the Fourteenth Amendment guarantee a right to due process, and ex parte motions—due to their exclusion of one party—risk violating the excluded party's right to due process." Wex Legal Dictionary.

Substituted service by publication, or in any other authorized form, may be sufficient to inform parties of the object of proceedings taken where property is once brought under the control of the court by seizure or some equivalent act. The law assumes that property is always in the possession of its owner, in person or by agent; and it proceeds upon the theory that its seizure will inform him, not only that it is taken into the custody of the court, but that he must look to any proceedings authorized by law upon such seizure for its condemnation and sale. Such service may also be sufficient in cases where the object of the action is to reach and dispose of property in the State, or of some interest therein, by enforcing a contract or a lien respecting the same, or to partition it among different owners, or, when the public is a party, to condemn and appropriate it for a public purpose. In other words, such service may answer in all actions which are substantially proceedings in rem. But where the entire object of the action is to determine the personal rights and obligations of the defendants, that is, where the suit is merely in personam, constructive service in this form upon a non-resident is ineffectual for any purpose. Process from the tribunals of one State cannot run into another State, and summon parties there domiciled to leave its territory and respond to proceedings against them. Publication of process or notice within the State where the tribunal sits cannot create any greater obligation upon the non-resident to appear. Process sent to him out of the State, and process published within it, are equally unavailing in proceedings to establish his personal liability.

The want of authority of the tribunals of a State to adjudicate upon the obligations of non-residents, where they have no property within its limits, is not denied by the court below: but the position is assumed, that, where they have property within the State, it is immaterial whether the property is in the first instance brought under the control of the court by attachment or some other equivalent act, and afterwards applied by its judgment to the satisfaction of demands against its owner; or such demands be first established in a personal action, and the property of the non-resident be afterwards seized and sold on execution. But the answer to this position has already been given in the statement, that the jurisdiction of the court to inquire into and determine his obligations at all is only incidental to its jurisdiction over the property. Its jurisdiction in that respect cannot be made to depend upon facts to be ascertained after it has tried the cause and rendered the judgment. If the judgment be previously void, it will not become valid by the subsequent discovery of property of the defendant, or by his subsequent acquisition of it. The judgment if void when rendered, will always remain void: it cannot occupy the doubtful position of being valid if property be found, and void if there be none. Even if the position assumed were confined to cases where the non-resident defendant possessed property in the State at the commencement of the action, it would still make the validity of the proceedings and judgment depend upon the question whether, before the levy of the execution, the defendant had or had not disposed of the property. If before the levy the property should be sold, then, ac-

cording to this position, the judgment would not be binding. This doctrine would introduce a new element of uncertainty in judicial proceedings. The contrary is the law: the validity of every judgment depends upon the jurisdiction of the court before it is rendered, not upon what may occur subsequently.

The force and effect of judgments rendered against non-residents without personal service of process upon them, or their voluntary appearance, have been the subject of frequent consideration in the courts of the United States and of the several States, as attempts have been made to enforce such judgments in States other than those in which they were rendered, under the provision of the Constitution requiring that "full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State;" and the act of Congress providing for the mode of authenticating such acts, records, and proceedings, and declaring that, when thus authenticated, "they shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are or shall be taken." In the earlier cases, it was supposed that the act gave to all judgments the same effect in other States which they had by law in the State where rendered. But this view was afterwards qualified so as to make the act applicable only when the court rendering the judgment had jurisdiction of the parties and of the subject-matter, and not to preclude an inquiry into the jurisdiction of the court in which the judgment was rendered, or the right of the State itself to exercise authority over the person or the subject-matter.

Be that as it may, the courts of the United States are not required to give effect to judgments of this character when any right is claimed under them. Whilst they are not foreign tribunals in their relations to the State courts, they are tribunals of a different sovereignty, exercising a distinct and independent jurisdiction, and are bound to give to the judgments of the State courts only the same faith and credit which the courts of another State are bound to give to them.

Since the adoption of the Fourteenth Amendment to the Federal Constitution, the validity of such judgments may be directly questioned, and their enforcement in the State resisted, on the ground that proceedings in a court of justice to determine the personal rights and obligations of parties over whom that court has no jurisdiction do not constitute due process of law. Whatever difficulty may be experienced in giving to those terms a definition which will embrace every permissible exertion of power affecting private rights, and exclude such as is forbidden, there can be no doubt of their meaning when applied to judicial proceedings. They then mean a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights. To give such proceedings any validity, there must be a

tribunal competent by its constitution—that is, by the law of its creation—to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the State, or his voluntary appearance.

Except in cases affecting the personal status of the plaintiff, and cases in which that mode of service may be considered to have been assented to in advance, as hereinafter mentioned, the substituted service of process by publication, allowed by the law of Oregon and by similar laws in other States, where actions are brought against non-residents, is effectual only where, in connection with process against the person for commencing the action, property in the State is brought under the control of the court, and subjected to its disposition by process adapted to that purpose, or where the judgment is sought as a means of reaching such property or affecting some interest therein; in other words, where the action is in the nature of a proceeding *in rem*.

It is true that, in a strict sense, a proceeding in rem is one taken directly against property, and has for its object the disposition of the property, without reference to the title of individual claimants; but, in a larger and more general sense, the terms are applied to actions between parties, where the direct object is to reach and dispose of property owned by them, or of some interest therein. Such are cases commenced by attachment against the property of debtors, or instituted to partition real estate, foreclose a mortgage, or enforce a lien. So far as they affect property in the State, they are substantially proceedings in rem in the broader sense which we have mentioned.

In an omitted portion of the opinion, the Court notes some limits to its holding. In suits "to determine the civil status and capacities of" state residents (e.g. divorce cases) judgments may bind non-residents even "without personal service of process or personal notice". States may also require that non-residents appoint in-state agents to receive service, or consent to alternative forms of service, in cases involving business dealings or contracts within the state.

It follows from the views expressed that the personal judgment recovered in the State court of Oregon against the plaintiff herein, then a non-resident of the State, was without any validity, and did not authorize a sale of the property in controversy.

Note on *Pennoyer*

The Donation Land Claims Act of 1850 was instrumental in the settlement of the Pacific Northwest. Under the Act, white male U.S. citizens could claim 320 acres of land (640 acres for a married couple) in the Oregon Territory (which also encompassed the present-day States of Washington and Idaho, along with parts of Montana and Wyoming). The Act gave legal imprimatur to the dispossesson of Native people from their lands, and bolstered white supremacy in the territory, which had already enacted legislation excluding Black people.

John H. Mitchell and Sylvester Pennoyer were significant and colorful political figures in Oregon. Marcus Neff was later a party to another suit involving the same property, once again turning on a dispute with a lawyer for payment of his fees. Wells v. Neff, 14 Or. 66 (1886). For further background on *Pennoyer v. Neff* and a discussion of its significance for modern personal jurisdiction doctrine, see Wendy Collins Purdue, Sin, Scandal, and Substantive Due Process: Personal Jurisdiction and Pennoyer Reconsidered, 62 Wash. L. Rev. 479 (1987).

International Shoe Corp. v. Washington, 326 U.S. 310 (1945)

Chief Justice STONE delivered the opinion of the Court.

The questions for decision are (1) whether, within the limitations of the due process clause of the Fourteenth Amendment, appellant, a Delaware corporation, has by its activities in the State of Washington rendered itself amenable to proceedings in the courts of that state to recover unpaid contributions to the state unemployment compensation fund exacted by state statutes, and (2) whether the state can exact those contributions consistently with the due process clause of the Fourteenth Amendment.

In this case notice of assessment[for unpaid contributions] for the years in question was personally served upon a sales solicitor employed by appellant in the State of Washington, and a copy of the notice was mailed by registered mail to appellant at its address in St. Louis, Missouri. Appellant appeared specially before the office of unemployment and moved to set aside the order and notice of assessment on the ground that the service upon appellant's salesman was not proper service upon appellant; that appellant was not a corporation of the State of Washington and was not doing business within the state; that it had no agent within the state upon whom service could be made; and that appellant is not an employer and does not furnish employment within the meaning of the statute.

The facts as found by the appeal tribunal and accepted by the state Superior Court and Supreme Court, are not in dispute. Appellant is a Delaware corporation, having its principal place of business in St. Louis, Missouri, and is engaged in the manufacture and sale of shoes and other footwear. It maintains places of business in several states, other than Washington, at which its manufacturing is carried on and from which its merchandise is distributed interstate through several sales units or branches located outside the State of Washington.

Appellant has no office in Washington and makes no contracts either for sale or purchase of merchandise there. It maintains no stock of merchandise in that state and makes there no deliveries of goods in intrastate commerce. During the years from 1937 to 1940, now in question, appellant employed eleven to thirteen salesmen under direct supervision and control of sales managers located in St. Louis. These salesmen resided in Washington; their principal activities were confined to

that state; and they were compensated by commissions based upon the amount of their sales. The commissions for each year totaled more than $31,000. Appellant supplies its salesmen with a line of samples, each consisting of one shoe of a pair, which they display to prospective purchasers. On occasion they rent permanent sample rooms, for exhibiting samples, in business buildings, or rent rooms in hotels or business buildings temporarily for that purpose. The cost of such rentals is reimbursed by appellant.

The authority of the salesmen is limited to exhibiting their samples and soliciting orders from prospective buyers, at prices and on terms fixed by appellant. The salesmen transmit the orders to appellant's office in St. Louis for acceptance or rejection, and when accepted the merchandise for filling the orders is shipped f.o.b. from points outside Washington to the purchasers within the state. All the merchandise shipped into Washington is invoiced at the place of shipment from which collections are made. No salesman has authority to enter into contracts or to make collections.

F.O.B. ("free on board") is a commercial law term indicating the point at which responsibility for goods shifts from the seller to the buyer. In this case, International Shoe shipped its shoes "F.O.B. Origin", meaning it was no longer responsible for the shoes once they left the point of shipment outside Washington. The company relied on this legal formality to contend it engaged in no activity within Washington.

Historically the jurisdiction of courts to render judgment *in personam* is grounded on their de facto power over the defendant's person. Hence his presence within the territorial jurisdiction of a court was prerequisite to its rendition of a judgment personally binding him. *Pennoyer v. Neff,* 95 U.S. 714, 733. But due process requires only that in order to subject a defendant to a judgment *in personam,* if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."

Since the corporate personality is a fiction, although a fiction intended to be acted upon as though it were a fact, it is clear that unlike an individual its "presence" without, as well as within, the state of its origin can be manifested only by activities carried on in its behalf by those who are authorized to act for it. To say that the corporation is so far "present" there as to satisfy due process requirements, for purposes of taxation or the maintenance of suits against it in the courts of the state, is to beg the question to be decided. For the terms "present" or "presence" are used merely to symbolize those activities of the corporation's agent within the state which courts will deem to be sufficient to satisfy the demands of due process. Those demands may be met by such contacts of the corporation with the state of the forum as make it reasonable, in the context of our federal system of government, to require the corporation to defend the particular suit which is brought there. An "estimate of the inconveniences" which would result to the corporation from a trial away from its "home" or principal place of business is relevant in this connection.

"Presence" in the state in this sense has never been doubted when the activities of the corporation there have not only been continuous and systematic, but also give rise to the liabilities sued on, even though no consent to be sued or authorization to an agent to accept service of process has been given. Conversely it has been generally recognized that the casual presence of the corporate agent or even his conduct of single or isolated items of activities in a state in the corporation's behalf are not enough to subject it to suit on causes of action unconnected with the activities there. To require the corporation in such circumstances to defend the suit away from its home or other jurisdiction where it carries on more substantial activities has been thought to lay too great and unreasonable a burden on the corporation to comport with due process.

While it has been held, in cases on which appellant relies, that continuous activity of some sorts within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity, there have been instances in which the continuous corporate operations within a state were thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities.

Finally, although the commission of some single or occasional acts of the corporate agent in a state sufficient to impose an obligation or liability on the corporation has not been thought to confer upon the state authority to enforce it, other such acts, because of their nature and quality and the circumstances of their commission, may be deemed sufficient to render the corporation liable to suit. True, some of the decisions holding the corporation amenable to suit have been supported by resort to the legal fiction that it has given its consent to service and suit, consent being implied from its presence in the state through the acts of its authorized agents. But more realistically it may be said that those authorized acts were of such a nature as to justify the fiction.

It is evident that the criteria by which we mark the boundary line between those activities which justify the subjection of a corporation to suit, and those which do not, cannot be simply mechanical or quantitative. The test is not merely, as has sometimes been suggested, whether the activity, which the corporation has seen fit to procure through its agents in another state, is a little more or a little less. Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. That clause does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has no contacts, ties, or relations. *Cf. Pennoyer v. Neff*.

But to the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege 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.

Applying these standards, the activities carried on in behalf of appellant in the State of Washington were neither irregular nor casual. They were systematic and continuous throughout the years in question. They resulted in a large volume of interstate business, in the course of which appellant received the benefits and protection of the laws of the state, including the right to resort to the courts for the enforcement of its rights. The obligation which is here sued upon arose out of those very activities. It is evident that these operations establish sufficient contacts or ties with the state of the forum to make it reasonable and just, according to our traditional conception of fair play and substantial justice, to permit the state to enforce the obligations which appellant has incurred there. Hence we cannot say that the maintenance of the present suit in the State of Washington involves an unreasonable or undue procedure.

We are likewise unable to conclude that the service of the process within the state upon an agent whose activities establish appellant's "presence" there was not sufficient notice of the suit, or that the suit was so unrelated to those activities as to make the agent an inappropriate vehicle for communicating the notice. It is enough that appellant has established such contacts with the state that the particular form of substituted service adopted there gives reasonable assurance that the notice will be actual. Nor can we say that the mailing of the notice of suit to appellant by registered mail at its home office was not reasonably calculated to apprise appellant of the suit.

Appellant having rendered itself amenable to suit upon obligations arising out of the activities of its salesmen in Washington, the state may maintain the present suit *in personam* to collect the tax laid upon the exercise of the privilege of employing appellant's salesmen within the state. For Washington has made one of those activities, which taken together establish appellant's "presence" there for purposes of suit, the taxable event by which the state brings appellant within the reach of its taxing power. The state thus has constitutional power to lay the tax and to subject appellant to a suit to recover it. The activities which establish its "presence" subject it alike to taxation by the state and to suit to recover the tax.

International Shoe Headquarters, St. Louis

International Shoe Headquarters, St. Louis (detail)

Note on *International Shoe*

International Shoe extended the reach of personal jurisdiction over out-of-state parties. As a result, the exercise of jurisdiction no longer requires personal service on the defendant while they are present in the state.

Service of the complaint and summons is still required to satisfy the notice aspect of due process. However, the Federal Rules of Civil Procedure, adopted in the same year that the Court decided *International Shoe*, also relaxed that requirement, permitting service by various alternate means and giving defendants an incentive to waive formal service if they receive actual notice. Fed.R.Civ.P. Rule 4.

The requirements of personal jurisdiction and service of process are analogous to an electrical circuit. Minimum contacts between the defendant and the forum state are the wiring. Service of process is the switch. The court cannot exercise power over the defendant unless the wiring is connected (personal jurisdiction) and the switch is turned on (service of process).

Suppose that Dan, who lives in Ohio, rents a beach house in the Outer Banks from Pat, who lives in North Carolina. One evening, while enjoying several cocktails on the deck, Dan carelessly knocks over a Tiki torch, setting fire to the house. After Dan returns home to Ohio, Pat files suit in the U.S. District Court for the Eastern District of North Carolina.

The suit arises out of Dan's conduct in North Carolina, satisfying the minimum contacts requirement for personal jurisdiction. But there has been no service of process, so the court's power is not yet activated (Fig. 4.1).

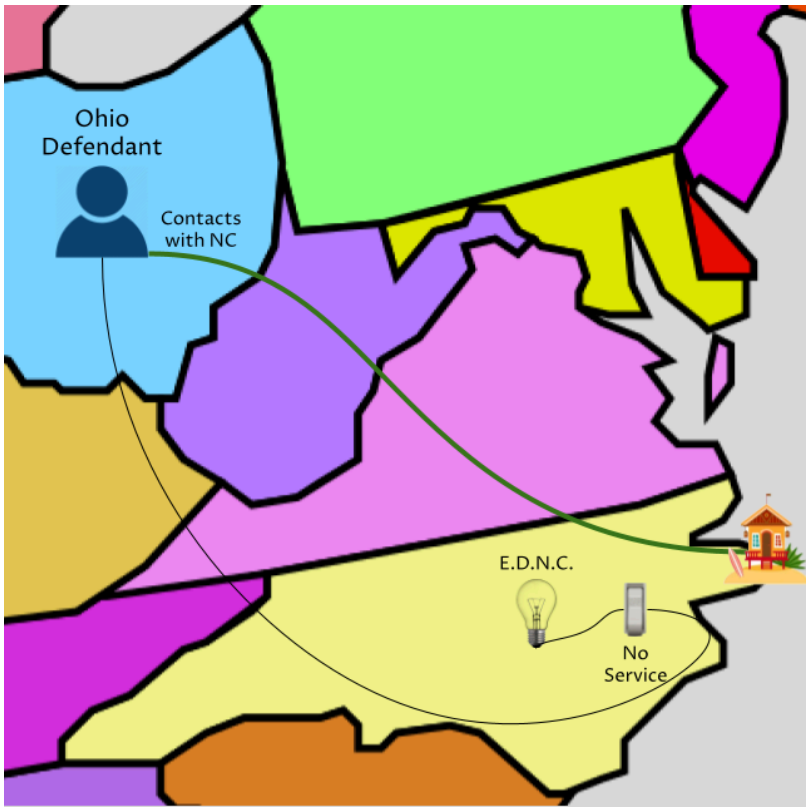

Fig. 4.1

After filing the suit, Pat serves Dan with a copy of the summons and complaint, in a manner authorized, and within the time allowed, under Rule 4. The court's power is now active (Fig. 4.2).

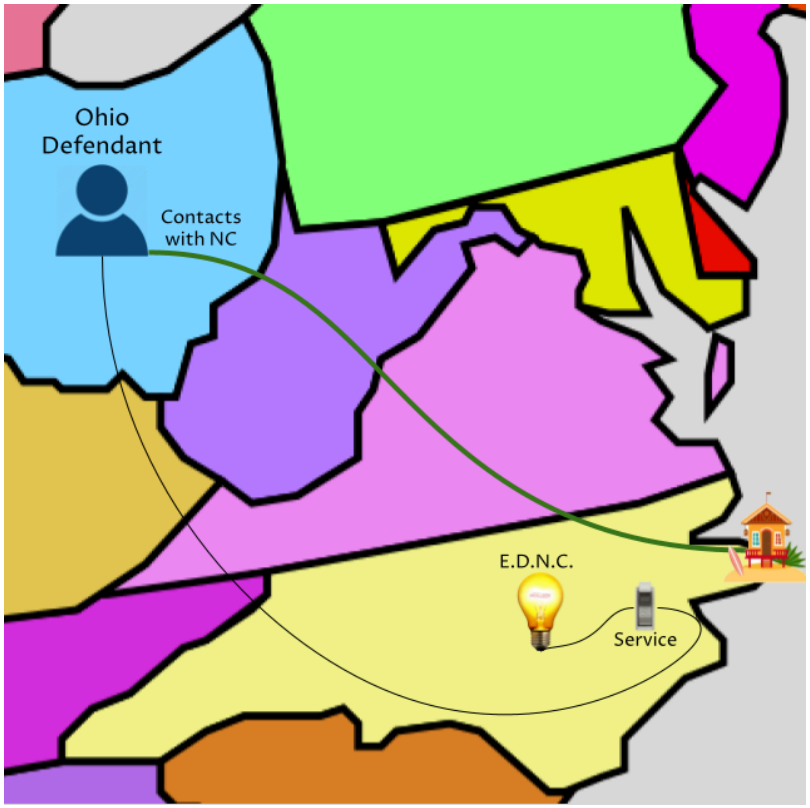

Fig. 4.2

Suppose instead that Pat travels from North Carolina to Ohio for a football game between the Carolina Panthers and the Cleveland Browns. Dan, a diehard Browns fan, was sitting behind Pat. Throughout the game, Pat vociferously cheers for the visiting team and mercilessly heckles the Cleveland quarterback. Annoyed with Pat's taunts, Dan pours a large cup of beer over Pat's head, provoking a brawl in which Pat is badly injured. After returning home, having vowed never to return to Ohio again, Pat sues Dan for battery, filing the case in the U.S. District Court for the Eastern District of North Carolina.

In this case, there has been service of process, but the suit does not arise out of any contacts between Dan and North Carolina. So the switch is not connected and the court has no power at all (Fig. 4.3).

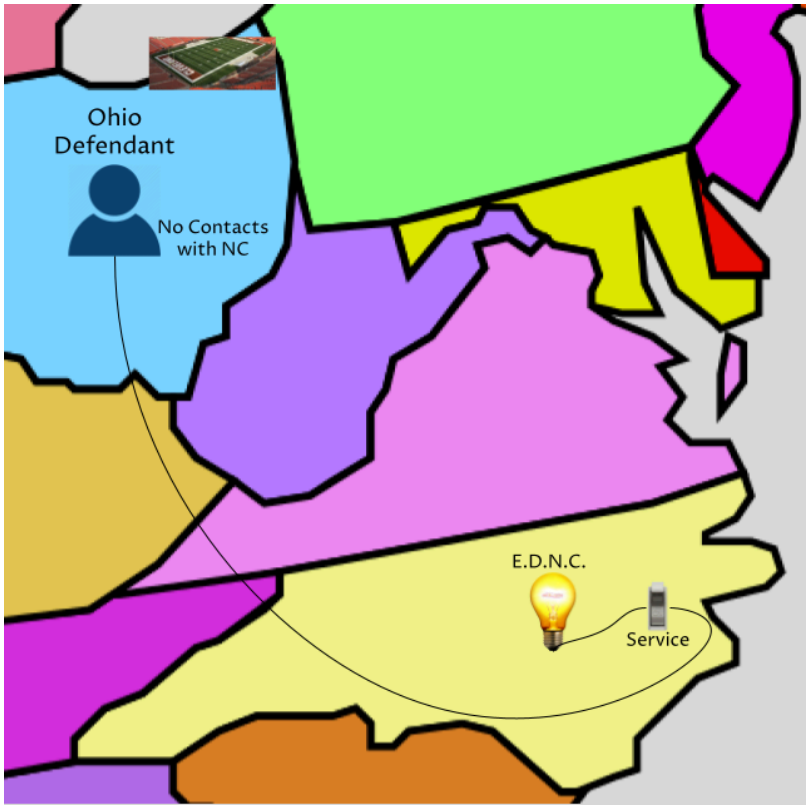

Fig. 4.3

1.2 Specific Jurisdiction

McGee v. International Life Ins. Co., 355 US 220 (1957)

Opinion of the Court by Justice BLACK, announced by Justice DOUGLAS.

Petitioner, Lulu B. McGee, recovered a judgment in a California state court against respondent, International Life Insurance Company, on a contract of insurance. Respondent was not served with process in California but by registered mail at its principal place of business in Texas. The California court based its jurisdiction on a state statute which subjects foreign corporations to suit in California on insurance contracts with residents of that State even though such corporations cannot be served with process within its borders.

Unable to collect the judgment in California petitioner went to Texas where she filed suit on the judgment in a Texas court. But the Texas courts refused to enforce her judgment holding it was void under the Fourteenth Amendment because service of process outside California could not give the courts of that State jurisdiction over respondent. Since the case raised important questions, not only to California but to other States which have similar laws, we granted certiorari. It is not controverted that if the California court properly exercised jurisdiction over respondent the Texas courts erred in refusing to give its judgment full faith and credit.

The material facts are relatively simple. In 1944, Lowell Franklin, a resident of California, purchased a life insurance policy from the Empire Mutual Insurance Company, an Arizona corporation. In 1948 the respondent agreed with Empire Mutual to assume its insurance obligations. Respondent then mailed a reinsurance certificate to Franklin in California offering to insure him in accordance with the terms of the policy he held with Empire Mutual. He accepted this offer and from that time until his death in 1950 paid premiums by mail from his California home to respondent's Texas office. Petitioner, Franklin's mother, was the beneficiary under the policy. She sent proofs of his death to the respondent but it refused to pay claiming that he had committed suicide. It appears that neither Empire Mutual nor respondent has ever had any office or agent in California. And so far as the record before us shows, respondent has never solicited or done any insurance business in California apart from the policy involved here.

Since *Pennoyer v. Neff*, this Court has held that the Due Process Clause of the Fourteenth Amendment places some limit on the power of state courts to enter binding judgments against persons not served with process within their boundaries. But just where this line of limitation falls has been the subject of prolific controversy, particularly with respect to foreign corporations. In a continuing process of evolution this Court accepted and then abandoned "consent," "doing business," and "presence" as the standard for measuring the extent of state judicial power over such corporations. More recently in *International Shoe Co. v. Washington*, the Court decided that "due process requires only that in order to subject a defendant to a judgment *in personam,* if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"

Looking back over this long history of litigation a trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents. In part this is attributable to the fundamental transformation of our national economy over the years. Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great in-

crease in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity.

Turning to this case we think it apparent that the Due Process Clause did not preclude the California court from entering a judgment binding on respondent. It is sufficient for purposes of due process that the suit was based on a contract which had substantial connection with that State. The contract was delivered in California, the premiums were mailed from there and the insured was a resident of that State when he died. It cannot be denied that California has a manifest interest in providing effective means of redress for its residents when their insurers refuse to pay claims. These residents would be at a severe disadvantage if they were forced to follow the insurance company to a distant State in order to hold it legally accountable. When claims were small or moderate individual claimants frequently could not afford the cost of bringing an action in a foreign forum— thus in effect making the company judgment proof. Often the crucial witnesses—as here on the company's defense of suicide—will be found in the insured's locality. Of course there may be inconvenience to the insurer if it is held amenable to suit in California where it had this contract but certainly nothing which amounts to a denial of due process. There is no contention that respondent did not have adequate notice of the suit or sufficient time to prepare its defenses and appear.

The California statute became law in 1949, after respondent had entered into the agreement with Franklin to assume Empire Mutual's obligation to him. Respondent contends that application of the statute to this existing contract improperly impairs the obligation of the contract. We believe that contention is devoid of merit. The statute was remedial, in the purest sense of that term, and neither enlarged nor impaired respondent's substantive rights or obligations under the contract. It did nothing more than to provide petitioner with a California forum to enforce whatever substantive rights she might have against respondent. At the same time respondent was given a reasonable time to appear and defend on the merits after being notified of the suit. Under such circumstances it had no vested right not to be sued in California.

The judgment is reversed and the cause is remanded to the Court of Civil Appeals of the State of Texas, First Supreme Judicial District, for further proceedings not inconsistent with this opinion.

World-Wide Volkswagen Corp. v. Woodson, 444 US 286 (1980)

Justice WHITE delivered the opinion of the Court.

The issue before us is whether, consistently with the Due Process Clause of the Fourteenth Amendment, an Oklahoma court may exercise *in personam* jurisdiction over a nonresident automobile retailer and its wholesale distributor in a products-liability action, when the defendants' only connection with Oklahoma is the fact that an automobile sold in New York to New York residents became involved in an accident in Oklahoma.

I

Respondents Harry and Kay Robinson purchased a new Audi automobile from petitioner Seaway Volkswagen, Inc. (Seaway), in Massena, N. Y., in 1976. The following year the Robinson family, who resided in New York, left that State for a new home in Arizona. As they passed through the State of Oklahoma, another car struck their Audi in the rear, causing a fire which severely burned Kay Robinson and her two children.

The Robinsons subsequently brought a products-liability action in the District Court for Creek County, Okla., claiming that their injuries resulted from defective design and placement of the Audi's gas tank and fuel system. They joined as defendants the automobile's manufacturer, Audi NSU Auto Union Aktiengesellschaft (Audi); its importer, Volkswagen of America, Inc. (Volkswagen); its regional distributor, petitioner World-Wide Volkswagen Corp. (World-Wide); and its retail dealer, petitioner Seaway. Seaway and World-Wide entered special appearances, claiming that Oklahoma's exercise of jurisdiction over them would offend the limitations on the State's jurisdiction imposed by the Due Process Clause of the Fourteenth Amendment.

The facts presented to the District Court showed that World-Wide is incorporated and has its business office in New York. It distributes vehicles, parts, and accessories, under contract with Volkswagen, to retail dealers in New York, New Jersey, and Connecticut. Seaway, one of these retail dealers, is incorporated and has its place of business in New York. Insofar as the record reveals, Seaway and World-Wide are fully independent corporations whose relations with each other and with Volkswagen and Audi are contractual only. Respondents adduced no evidence that either World-Wide or Seaway does any business in Oklahoma, ships or sells any products to or in that State, has an agent to receive process there, or pur-

chases advertisements in any media calculated to reach Oklahoma. In fact, as respondents' counsel conceded at oral argument, there was no showing that any automobile sold by World-Wide or Seaway has ever entered Oklahoma with the single exception of the vehicle involved in the present case.

II

The Due Process Clause of the Fourteenth Amendment limits the power of a state court to render a valid personal judgment against a nonresident defendant. A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere. Due process requires that the defendant be given adequate notice of the suit, and be subject to the personal jurisdiction of the court, In the present case, the only question is whether these particular petitioners were subject to the jurisdiction of the Oklahoma courts.

As has long been settled, and as we reaffirm today, a state court may exercise personal jurisdiction over a nonresident defendant only so long as there exist "minimum contacts" between the defendant and the forum State. *International Shoe Co. v. Washington*. The concept of minimum contacts, in turn, can be seen to perform two related, but distinguishable, functions. It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it 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.

The protection against inconvenient litigation is typically described in terms of "reasonableness" or "fairness." We have said that the defendant's contacts with the forum State must be such that maintenance of the suit "does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co.* The relationship between the defendant and the forum must be such that it is "reasonable to require the corporation to defend the particular suit which is brought there." Implicit in this emphasis on reasonableness is the understanding that the burden on the defendant, while always a primary concern, will in an appropriate case be considered in light of other relevant factors, including the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, at least when that interest is not adequately protected by the plaintiff's power to choose the forum, the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies.

The limits imposed on state jurisdiction by the Due Process Clause, in its role as a guarantor against inconvenient litigation, have been substantially relaxed over the years. As we noted in *McGee v. International Life Ins. Co.,* this trend is largely attributable to a fundamental transformation in the American economy:

> Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity.

The historical developments noted in *McGee,* of course, have only accelerated in the generation since that case was decided.

Nevertheless, we have never accepted the proposition that state lines are irrelevant for jurisdictional purposes, nor could we, and remain faithful to the principles of interstate federalism embodied in the Constitution. The economic interdependence of the States was foreseen and desired by the Framers. In the Commerce Clause, they provided that the Nation was to be a common market, a "free trade unit" in which the States are debarred from acting as separable economic entities. But the Framers also intended that the States retain many essential attributes of sovereignty, including, in particular, the sovereign power to try causes in their courts. The sovereignty of each State, in turn, implied a limitation on the sovereignty of all of its sister States—a limitation express or implicit in both the original scheme of the Constitution and the Fourteenth Amendment.

Hence, even while abandoning the shibboleth that "the authority of every tribunal is necessarily restricted by the territorial limits of the State in which it is established," *Pennoyer v. Neff,* we emphasized that the reasonableness of asserting jurisdiction over the defendant must be assessed "in the context of our federal system of government," *International Shoe Co. v. Washington,* and stressed that the Due Process Clause ensures not only fairness, but also the "orderly administration of the laws," *id.* As we noted in *Hanson v. Denckla,* 357 U. S. 235, 250-251 (1958):

> As technological progress has increased the flow of commerce between the States, the need for jurisdiction over nonresidents has undergone a similar increase. At the same time, progress in communications and transportation has made the defense of a suit in a foreign tribunal less burdensome. In response to these changes, the requirements for personal jurisdiction over nonresidents have evolved from the rigid rule of *Pennoyer v. Neff* to the flexible standard of *International Shoe Co. v. Washington*. But it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts. Those restrictions 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.

Thus, the Due Process Clause "does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has no contacts, ties, or relations." *International Shoe Co.* Even if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong in-

terest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment.

III

Applying these principles to the case at hand, we find in the record before us a total absence of those affiliating circumstances that are a necessary predicate to any exercise of state-court jurisdiction. Petitioners carry on no activity whatsoever in Oklahoma. They close no sales and perform no services there. They avail themselves of none of the privileges and benefits of Oklahoma law. They solicit no business there either through salespersons or through advertising reasonably calculated to reach the State. Nor does the record show that they regularly sell cars at wholesale or retail to Oklahoma customers or residents or that they indirectly, through others, serve or seek to serve the Oklahoma market. In short, respondents seek to base jurisdiction on one, isolated occurrence and whatever inferences can be drawn therefrom: the fortuitous circumstance that a single Audi automobile, sold in New York to New York residents, happened to suffer an accident while passing through Oklahoma.

It is argued, however, that because an automobile is mobile by its very design and purpose it was "foreseeable" that the Robinsons' Audi would cause injury in Oklahoma. Yet "foreseeability" alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause.

This is not to say, of course, that foreseeability is wholly irrelevant. But the foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there. The Due Process Clause, by ensuring the "orderly administration of the laws," *International Shoe Co.,* 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.

When a corporation "purposefully avails itself of the privilege of conducting activities within the forum State," *Hanson v. Denckla,* it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State. Hence if the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise

has there been the source of injury to its owner or to others. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.

But there is no such or similar basis for Oklahoma jurisdiction over World-Wide or Seaway in this case. Seaway's sales are made in Massena, N. Y. World-Wide's market, although substantially larger, is limited to dealers in New York, New Jersey, and Connecticut. There is no evidence of record that any automobiles distributed by World-Wide are sold to retail customers outside this tristate area. It is foreseeable that the purchasers of automobiles sold by World-Wide and Seaway may take them to Oklahoma. But the mere "unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State." *Hanson v. Denckla*.

In a variant on the previous argument, it is contended that jurisdiction can be supported by the fact that petitioners earn substantial revenue from goods used in Oklahoma. While this inference seems less than compelling on the facts of the instant case, we need not question the court's factual findings in order to reject its reasoning.

This argument seems to make the point that the purchase of automobiles in New York, from which the petitioners earn substantial revenue, would not occur *but for* the fact that the automobiles are capable of use in distant States like Oklahoma. Respondents observe that the very purpose of an automobile is to travel, and that travel of automobiles sold by petitioners is facilitated by an extensive chain of Volkswagen service centers throughout the country, including some in Oklahoma. However, financial benefits accruing to the defendant from a collateral relation to the forum State will not support jurisdiction if they do not stem from a constitutionally cognizable contact with that State. In our view, whatever marginal revenues petitioners may receive by virtue of the fact that their products are capable of use in Oklahoma is far too attenuated a contact to justify that State's exercise of *in personam* jurisdiction over them.

Justice BRENNAN, dissenting.

The Court holds that the Due Process Clause of the Fourteenth Amendment bars the States from asserting jurisdiction over the defendants in these two cases. In each case the Court so decides because it fails to find the "minimum contacts" that have been required since *International Shoe Co. v. Washington*. Because I believe that the Court reads *International Shoe* and its progeny too narrowly, and because I believe that the standards enunciated by those cases may already be obsolete as constitutional boundaries, I dissent.

I

The Court's opinions focus tightly on the existence of contacts between the forum and the defendant. In so doing, they accord too little weight to the strength of the forum State's interest in the case and fail to explore whether there would be any actual inconvenience to the defendant. The essential inquiry in locating the constitutional limits on state-court jurisdiction over absent defendants is whether the particular exercise of jurisdiction offends "'traditional notions of fair play and substantial justice.'" *International Shoe*. The clear focus in *International Shoe* was on fairness and reasonableness. The Court specifically declined to establish a mechanical test based on the quantum of contacts between a State and the defendant:

> Whether due process is satisfied must depend rather upon the quality and nature of the activity *in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure.* That clause does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has *no* contacts, ties, or relations.

The existence of contacts, so long as there were some, was merely one way of giving content to the determination of fairness and reasonableness.

Surely *International Shoe* contemplated that the significance of the contacts necessary to support jurisdiction would diminish if some other consideration helped establish that jurisdiction would be fair and reasonable. The interests of the State and other parties in proceeding with the case in a particular forum are such considerations. *McGee v. International Life Ins. Co.,* 355 U. S. 220, 223 (1957), for instance, accorded great importance to a State's "manifest interest in providing effective means of redress" for its citizens.

Another consideration is the actual burden a defendant must bear in defending the suit in the forum. Because lesser burdens reduce the unfairness to the defendant, jurisdiction may be justified despite less significant contacts. The burden, of course, must be of constitutional dimension. Due process limits on jurisdiction do not protect a defendant from all inconvenience of travel, and it would not be sensible to make the constitutional rule turn solely on the number of miles the defendant must travel to the courtroom. Instead, the constitutionally significant "burden" to be analyzed relates to the mobility of the defendant's defense. For instance, if having to travel to a foreign forum would hamper the defense because witnesses or evidence or the defendant himself were immobile, or if there were a disproportionately large number of witnesses or amount of evidence that would have to be transported at the defendant's expense, or if being away from home for the duration of the trial would work some special hardship on the defendant, then the Constitution would require special consideration for the defendant's interests.

That considerations other than contacts between the forum and the defendant are relevant necessarily means that the Constitution does not require that trial be held in the State which has the "best contacts" with the defendant.The defendant has no constitutional entitlement to the best forum or, for that matter, to any particular forum. We need only determine whether the forum States in these cases satisfy the constitutional minimum.

II

I would find that the forum State has an interest in permitting the litigation to go forward, the litigation is connected to the forum, the defendant is linked to the forum, and the burden of defending is not unreasonable. Accordingly, I would hold that it is neither unfair nor unreasonable to require these defendants to defend in the forum State.

B

The interest of the forum State and its connection to the litigation is strong. The automobile accident underlying the litigation occurred in Oklahoma. The plaintiffs were hospitalized in Oklahoma when they brought suit. Essential witnesses and evidence were in Oklahoma. The State has a legitimate interest in enforcing its laws designed to keep its highway system safe, and the trial can proceed at least as efficiently in Oklahoma as anywhere else.

The petitioners are not unconnected with the forum. Although both sell automobiles within limited sales territories, each sold the automobile which in fact was driven to Oklahoma where it was involved in an accident. It may be true, as the Court suggests, that each sincerely intended to limit its commercial impact to the limited territory, and that each intended to accept the benefits and protection of the laws only of those States within the territory. But obviously these were unrealistic hopes that cannot be treated as an automatic constitutional shield.

An automobile simply is not a stationary item or one designed to be used in one place. An automobile is *intended* to be moved around. Someone in the business of selling large numbers of automobiles can hardly plead ignorance of their mobility or pretend that the automobiles stay put after they are sold. It is not merely that a dealer in automobiles foresees that they will move. The dealer actually intends that the purchasers will use the automobiles to travel to distant States where the dealer does not directly "do business." The sale of an automobile does *purposefully* inject the vehicle into the stream of interstate commerce so that it can travel to distant States.

Furthermore, an automobile seller derives substantial benefits from States other than its own. A large part of the value of automobiles is the extensive, nationwide network of highways. Significant portions of that network have been constructed by and are maintained by the individual States, including Oklahoma. The States, through their highway programs, contribute in a very direct and important way to the value of petitioners' businesses. Additionally, a network of other related dealerships with their service departments operates throughout the country under the protection of the laws of the various States, including Oklahoma, and enhances the value of petitioners' businesses by facilitating their customers' traveling.

Thus, the Court errs in its conclusion that "petitioners have *no* contacts, ties, or relations'" with Oklahoma. There obviously are contacts, and, given Oklahoma's connection to the litigation, the contacts are sufficiently significant to make it fair and reasonable for the petitioners to submit to Oklahoma's jurisdiction.

III

International Shoe inherited its defendant focus from *Pennoyer v. Neff,* and represented the last major step this Court has taken in the long process of liberalizing the doctrine of personal jurisdiction. Though its flexible approach represented a major advance, the structure of our society has changed in many significant ways since *International Shoe* was decided in 1945. Mr. Justice Black, writing for the Court in *McGee v. International Life Ins. Co.,* recognized that "a trend is clearly discernible toward expanding the permissible scope of state jurisdiction over foreign corporations and other nonresidents." He explained the trend as follows:

> In part this is attributable to the fundamental transformation of our national economy over the years. Today many commercial transactions touch two or more States and may involve parties separated by the full continent. With this increasing nationalization of commerce has come a great increase in the amount of business conducted by mail across state lines. At the same time modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity.

Both the nationalization of commerce and the ease of transportation and communication have accelerated in the generation since 1957. The model of society on which the *International Shoe* Court based its opinion is no longer accurate. Business people, no matter how local their businesses, cannot assume that goods remain in the business' locality. Customers and goods can be anywhere else in the country usually in a matter of hours and always in a matter of a very few days.

In answering the question whether or not it is fair and reasonable to allow a particular forum to hold a trial binding on a particular defendant, the interests of the forum State and other parties loom large in today's world and surely are entitled to as much weight as are the interests of the defendant. The "orderly administration of the laws" provides a firm basis for according some protection to the interests of plaintiffs and States as well as of defendants. Certainly, I cannot see how a defendant's right to due process is violated if the defendant suffers no inconvenience.

The conclusion I draw is that constitutional concepts of fairness no longer require the extreme concern for defendants that was once necessary. Rather, minimum contacts must exist "among the *parties,* the contested transaction, and the forum State." The contacts between any two of these should not be determinate.

Justice BLACKMUN, dissenting.

I confess that I am somewhat puzzled why the plaintiffs in this litigation are so insistent that the regional distributor and the retail dealer, the petitioners here, who handled the ill-fated Audi automobile involved in this litigation, be named defendants. It would appear that the manufacturer and the importer, whose subjectability to Oklahoma jurisdiction is not challenged before this Court, ought not to be judgment-proof. It may, of course, ultimately amount to a contest between insurance companies that, once begun, is not easily brought to a termination. Having made this much of an observation, I pursue it no further.

Keeton v. Hustler Magazine, Inc., 465 US 770 (1984)

Justice REHNQUIST delivered the opinion of the Court.

Petitioner Kathy Keeton sued respondent Hustler Magazine, Inc., and other defendants in the United States District Court for the District of New Hampshire, alleging jurisdiction over her libel complaint by reason of diversity of citizenship. The District Court dismissed her suit because it believed that the Due Process Clause of the Fourteenth Amendment to the United States Constitution forbade the application of New Hampshire's long-arm statute in order to acquire personal jurisdiction over respondent. The Court of Appeals for the First Circuit affirmed, summarizing its concerns with the statement that "the New Hampshire tail is too small to wag so large an out-of-state dog." We granted certiorari, and we now reverse.

Petitioner Keeton is a resident of New York. Her only connection with New Hampshire is the circulation there of copies of a magazine that she assists in producing. The magazine bears petitioner's name in several places crediting her with editorial and other work. Respondent Hustler Magazine, Inc., is an Ohio corporation,

with its principal place of business in California. Respondent's contacts with New Hampshire consist of the sale of some 10,000 to 15,000 copies of Hustler Magazine in that State each month. Petitioner claims to have been libeled in five separate issues of respondent's magazine published between September 1975 and May 1976. [1]

1 (n.1 in opinion) Initially, petitioner brought suit for libel and invasion of privacy in Ohio, where the magazine was published. Her libel claim, however, was dismissed as barred by the Ohio statute of limitations, and her invasion-of-privacy claim was dismissed as barred by the New York statute of limitations, which the Ohio court considered to be 'migratory.' Petitioner then filed the present action in October 1980.

The Court of Appeals, in its opinion affirming the District Court's dismissal of petitioner's complaint, held that petitioner's lack of contacts with New Hampshire rendered the State's interest in redressing the tort of libel to petitioner too attenuated for an assertion of personal jurisdiction over respondent. The Court of Appeals observed that the "single publication rule" ordinarily applicable in multistate libel cases would require it to award petitioner "damages caused in *all* states" should she prevail in her suit, even though the bulk of petitioner's alleged injuries had been sustained outside New Hampshire. The court also stressed New Hampshire's unusually long (6-year) limitations period for libel actions. New Hampshire was the only State where petitioner's suit would not have been time-barred when it was filed. Under these circumstances, the Court of Appeals concluded that it would be "unfair" to assert jurisdiction over respondent. New Hampshire has a minimal interest in applying its unusual statute of limitations to, and awarding damages for, injuries to a nonresident occurring outside the State, particularly since petitioner suffered such a small proportion of her total claimed injury within the State.

We conclude that the Court of Appeals erred when it affirmed the dismissal of petitioner's suit for lack of personal jurisdiction. Respondent's regular circulation of magazines in the forum State is sufficient to support an assertion of jurisdiction in a libel action based on the contents of the magazine. This is so even if New Hampshire courts would apply the so-called "single publication rule" to enable petitioner to recover in the New Hampshire action her damages from "publications" of the alleged libel throughout the United States.

The District Court found that "the general course of conduct in circulating magazines throughout the state was purposefully directed at New Hampshire, and inevitably affected persons in the state." Such regular monthly sales of thousands of magazines cannot by any stretch of the imagination be characterized as random, isolated, or fortuitous. It is, therefore, unquestionable that New Hampshire jurisdiction over a complaint based on those contacts would ordinarily satisfy the requirement of the Due Process Clause that a State's assertion of personal jurisdiction over a nonresident defendant be predicated on "minimum contacts" between the defendant and the State. And, as the Court of Appeals acknowledged, New Hampshire has adopted a "long-arm" statute authorizing service of process on nonresident corporations whenever permitted by the Due Process Clause. Thus, all the requisites for personal jurisdiction over Hustler Magazine, Inc., in New Hampshire are present.

We think that the three concerns advanced by the Court of Appeals, whether considered singly or together, are not sufficiently weighty to merit a different result. The "single publication rule," New Hampshire's unusually long statute of limitations, and plaintiff's lack of contacts with the forum State do not defeat jurisdiction otherwise proper under both New Hampshire law and the Due Process Clause.

In judging minimum contacts, a court properly focuses on "the relationship among the defendant, the forum, and the litigation." Thus, it is certainly relevant to the jurisdictional inquiry that petitioner is *seeking* to recover damages suffered in all States in this one suit. The contacts between respondent and the forum must be judged in the light of that claim, rather than a claim only for damages sustained in New Hampshire. That is, the contacts between respondent and New Hampshire must be such that it is "fair" to compel respondent to defend a multistate lawsuit in New Hampshire seeking nationwide damages for all copies of the five issues in question, even though only a small portion of those copies were distributed in New Hampshire.

The Court of Appeals expressed the view that New Hampshire's "interest" in asserting jurisdiction over plaintiff's multistate claim was minimal. We agree that the "fairness" of haling respondent into a New Hampshire court depends to some extent on whether respondent's activities relating to New Hampshire are such as to give that State a legitimate interest in holding respondent answerable on a claim related to those activities. But insofar as the State's "interest" in adjudicating the dispute is a part of the Fourteenth Amendment due process equation, as a surrogate for some of the factors already mentioned, we think the interest is sufficient.

The Court of Appeals acknowledged that petitioner was suing, at least in part, for damages suffered in New Hampshire. And it is beyond dispute that New Hampshire has a significant interest in redressing injuries that actually occur within the State.

This interest extends to libel actions brought by nonresidents. False statements of fact harm both the subject of the falsehood *and* the readers of the statement. New Hampshire may rightly employ its libel laws to discourage the deception of its citizens.

New Hampshire may also extend its concern to the injury that in-state libel causes within New Hampshire to a nonresident. The tort of libel is generally held to occur wherever the offending material is circulated. The reputation of the libel victim may suffer harm even in a State in which he has hitherto been anonymous. The communication of the libel may create a negative reputation among the residents of a jurisdiction where the plaintiff's previous reputation was, however small, at least unblemished.

New Hampshire has clearly expressed its interest in protecting such persons from libel, as well as in safeguarding its populace from falsehoods. Its criminal defamation statute bears no restriction to libels of which residents are the victim. Moreover, in 1971 New Hampshire specifically deleted from its long-arm statute the requirement that a tort be committed "against a resident of New Hampshire."

New Hampshire also has a substantial interest in cooperating with other States, through the "single publication rule," to provide a forum for efficiently litigating all issues and damages claims arising out of a libel in a unitary proceeding. This rule reduces the potential serious drain of libel cases on judicial resources. It also serves to protect defendants from harassment resulting from multiple suits. In sum, the combination of New Hampshire's interest in redressing injuries that occur within the State and its interest in cooperating with other States in the application of the "single publication rule" demonstrates the propriety of requiring respondent to answer to a multistate libel action in New Hampshire.

The Court of Appeals also thought that there was an element of due process "unfairness" arising from the fact that the statutes of limitations in every jurisdiction except New Hampshire had run on the plaintiff's claim in this case. Strictly speaking, however, any potential unfairness in applying New Hampshire's statute of limitations to all aspects of this nationwide suit has nothing to do with the jurisdiction of the court to adjudicate the claims. The question of the applicability of New Hampshire's statute of limitations to claims for out-of-state damages presents itself in the course of litigation only after jurisdiction over respondent is established, and we do not think that such choice-of-law concerns should complicate or distort the jurisdictional inquiry.

The chance duration of statutes of limitations in nonforum jurisdictions has nothing to do with the contacts among respondent, New Hampshire, and this multistate libel action. Whether Ohio's limitations period is six months or six years does not alter the jurisdictional calculus in New Hampshire. Petitioner's successful search for a State with a lengthy statute of limitations is no different from the litigation strategy of countless plaintiffs who seek a forum with favorable substantive or procedural rules or sympathetic local populations. Certainly Hustler Magazine, Inc., which chose to enter the New Hampshire market, can be charged with knowledge of its laws and no doubt would have claimed the benefit of them if it had a complaint against a subscriber, distributor, or other commercial partner.

Finally, implicit in the Court of Appeals' analysis of New Hampshire's interest is an emphasis on the extremely limited contacts of the *plaintiff* with New Hampshire. But we have not to date required a plaintiff to have "minimum contacts" with the forum State before permitting that State to assert personal jurisdiction over a nonresident defendant. On the contrary, we have upheld the assertion of jurisdiction

where such contacts were entirely lacking. Respondent is carrying on a "part of its general business" in New Hampshire, and that is sufficient to support jurisdiction when the cause of action arises out of the very activity being conducted, in part, in New Hampshire.

The plaintiff's residence is not, of course, completely irrelevant to the jurisdictional inquiry. As noted, that inquiry focuses on the relations among the defendant, the forum, and the litigation. Plaintiff's residence may well play an important role in determining the propriety of entertaining a suit against the defendant in the forum. That is, plaintiff's residence in the forum may, because of defendant's relationship with the plaintiff, enhance defendant's contacts with the forum. Plaintiff's residence may be the focus of the activities of the defendant out of which the suit arises. But plaintiff's residence in the forum State is not a separate requirement, and lack of residence will not defeat jurisdiction established on the basis of defendant's contacts.

It is undoubtedly true that the bulk of the harm done to petitioner occurred outside New Hampshire. But that will be true in almost every libel action brought somewhere other than the plaintiff's domicile. There is no justification for restricting libel actions to the plaintiff's home forum. The victim of a libel, like the victim of any other tort, may choose to bring suit in any forum with which the defendant has "certain minimum contacts such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice."

Where, as in this case, respondent Hustler Magazine, Inc., has continuously and deliberately exploited the New Hampshire market, it must reasonably anticipate being haled into court there in a libel action based on the contents of its magazine. And, since respondent can be charged with knowledge of the "single publication rule," it must anticipate that such a suit will seek nationwide damages. Respondent produces a national publication aimed at a nationwide audience. There is no unfairness in calling it to answer for the contents of that publication wherever a substantial number of copies are regularly sold and distributed.

Note on *Keeton*

This news story provides some background about Keeton's suit.

Keeton's Reputation An Issue In Defamation Suit

Michael Morkrzycki, Aug. 6, 1986

CONCORD N.H. (AP) – Lawyers for a Penthouse magazine executive today closed their defamation suit against Hustler magazine and publisher Larry Flynt by reading a deposition in which Flynt scoffed at libel laws.

"I didn't care then and I don't care now," he said in the 1984 depostion taken in another case.

Flynt is being sued by Kathy Keeton for $1.6 million, who alleges that her reputation was libeled by material printed in Hustler.

The lawyer questioning Flynt in 1984 asked him if he realized he could injure people or cause people mental anguish worse than physical pain by what he published in Hustler.

"You (are) right and you're all going to be on your knees before we finish here," Flynt replied.

After reading the deposition into the record, Keeton's lawyers rested their case.

Judge Edward Northup told the jurors to keep in mind the deposition was taken two years ago in a different case.

In earlier testimony, Hustler magazine's lawyers tried to paint Keeton as someone whose reputation cannot be libeled.

During the second day of trial in her lawsuit, Keeton's chief lawyer tried instead to present her as an immigrant from South Africa who worked her way to the top of the American publishing industry.

Norman Roy Grutman, one of Keeton's four lawyers at the U.S. District Court trial, closed his questioning of her Tuesday by noting that she was among prominent immigrants invited to tape 30-second television spots this year for the Statue of Liberty centennial.

Grutman also portrayed Penthouse and its publisher, Robert Guccione - Keeton's common-law husband - as winners of numerous awards and honors. He read a lengthy list of notables who have written for the magazine or been interviewed in it.

But earlier, Hustler lawyers showed the four-woman, two-man jury blowups of color photographs of a bare-breasted Keeton performing a striptease at a London nightclub. The photos were published in Penthouse in 1966, when the magazine was distributed only in the United Kingdom.

Keeton also acknowledged that she was a pioneer of what she called "exotic dancing" - involving stripping to a bikini - in South Africa 25 years ago.

Under questioning from Hustler lawyer Dort Bigg, Keeton testified that for the first 14 of the 20 years she has lived with Guccione, he was married to someone else.

Keeton concluded her testimony Tuesday afternoon.

A Penthouse vice chairman and president of Omni magazine, Keeton charges she was libeled by a centerfold pictorial of a nude woman - not Keeton - published in the September 1975 Hustler with a headline, "Kathy Keeton - who says you're over the hill at 50?" Keeton testified she was not close to 50 years old at the time.

Keeton also charges she was libeled by a cartoon in the May 1976 Hustler issue suggesting that Guccione had infected her with gonorrhea. Keeton said she never has had venereal disease.

Keeton said she was not offended by anything that ever has appeared in Penthouse or Viva. She said the same applied to Guccione's sexually explicit movie "Caligula."

Bigg also asked Keeton about a remark she made during an appearance with Flynt on NBC's "Tomorrow" show with Tom Snyder in 1975, saying that she would have liked to appear nude in the pages of Penthouse.

"I would have loved to have my picture taken by Bob Guccione," Keeton said. "He's the most wonderful photographer in the world. It would have been a privilege."

Larry Flynt's colorful life and encounters with the law are the subject of a movie, The People vs. Larry Flynt (1996), by acclaimed director Miloš Forman. The movie stars Woody Harrelson as Flynt, Courtney Love as Flynt's wife and co-publisher Althea Leasure, and Edward Norton as Flynt's lawyer Alan Isaacman. NYU law professor Burt Neuborne plays the role of Roy Grutman, longtime attorney for Robert Guccione, who also represented the Rev. Jerry Falwell in a suit against Flynt over a scurrilous parody ad that appeared in Hustler. See Hustler Magazine, Inc. v. Falwell, 485 U.S. 46 (1988)

Johnson v. Griffin, No. 3:22-cv-000295 (M.D. Tenn. March 3, 2023)

WILLIAM L. CAMPBELL, JR., District Judge.

I. FACTUAL AND PROCEDURAL BACKGROUND

On April 24, 2021, Plaintiff Samuel Johnson ("Johnson") was at a local hotel restaurant for dinner. An incident occurred at the hotel between Johnson and some teenagers dressed for prom. One of the teenagers took a video of the incident on their cell phone and published an edited version (the "Clip") to their personal TikTok account. The complaint alleges that the Clip had limited public exposure between April 24 and April 25, 2021.

Kathy Griffin, a comedian who lives in California, tweeted about the incident on April 26, 2021. Her first tweet shared another user's video of the Clip, with that user's caption reading: "Homophobic POS in Tennessee harasses a teenager for wearing a dress to prom." Griffin's added commentary to the quoted tweet read:

> If this is Sam Johnson in Nashville, Tennessee, the CEO of @VisuWell, healthcare-tech-growth strategist, married to Jill Johnson where they may reside in Franklin, Tennessee, it seems like he's dying to be online famous. ¯_(ツ)_/¯ 🏳️‍🌈 ¯_(ツ)_/¯

Later that morning, Griffin tweeted a screen shot of google image search results for "ceo visuwell" showing two headshots of Johnson along with the caption: "Who is? THIS Sam Johnson of Franklin Tennessee?" That evening, VisuWell tweeted four times via its official Twitter account about the incident:

> Post 1/4: We unequivocally condemn the behavior exhibited by Sam Johnson in a recent video widely circulated on social media.
>
> Post 2/4: After investigating the matter and speaking to the individuals involved, the VisuWell BOD has chosen to terminate Mr. Johnson from his position as CEO, effective immediately. Gerry Andrady, our President and COO, will lead the company through this important time.
>
> Post 3/4: VisuWell's culture emphasizes respect, kindness, and compassion, especially for those from traditionally marginalized communities, and we maintain a zero-tolerance policy for intolerance of any kind.
>
> Post 4/4: Mr. Johnson's actions contradicted the high standards we set for ourselves in promoting the health of those who use our platform.

In response to VisuWell's second tweet, Griffin tweeted:

> Has Sam Johnson has been removed from his position on the Board of Directors and, if not, what measures is Visuwell taking in this regard? Leaving Johnson on the Board raises an eyebrow that the company intends to rehire. Know the nation will remain vigilant. (Per @NastyProud)

VisuWell replied to Griffin minutes later, tweeting: "terminated." The complaint alleges that Griffin's first tweet about the incident on April 26, 2021, caused the Clip to go viral. The teenager who originally posted the Clip to his TikTok tweeted: "KATHY 😢 😢 when I posted this I did NOT expect it to go viral to this extent but THANK YOU SO MUCH." Griffin tweeted in reply:

> Jacob, I'm so sorry you had to be anywhere near this thing. I was very anxious for you while watching, but am grateful you took the video (as is your right.) I'm proud to be an ally. Let me know if there's anything I can do to help. ❤️ 🏳️‍🌈

Plaintiffs filed the present suit against Griffin on April 25, 2022, based on diversity of citizenship and an amount in controversy exceeding $75,000.00. Plaintiffs bring state law claims for tortious interference with employment relations, common law and statutory tortious interference with contractual relations, intentional infliction of emotional distress, invasion of privacy — intrusion upon seclusion, prima facie tort, and negligence *per se.* Griffin filed the pending motion to dismiss for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2) and for failure to state a claim under Rule 12(b)(6). (Doc. No. 18).

II. PERSONAL JURISDICTION

A. Legal Standard

"Motions to dismiss under Rule 12(b)(2) involve burden shifting." "The plaintiff must first make a prima facie case, which can be done merely through the complaint." "The burden then shifts to the defendant, whose motion to dismiss must be properly supported with evidence." "Once the defendant has met the burden, it returns to the plaintiff, who may no longer stand on his pleadings but must, by affidavit or otherwise, set forth specific facts showing that the court has jurisdiction." "The court must view the pleadings and affidavits in a light most favorable to the plaintiff and not weigh the controverting assertions of the party seeking dismissal."

B. Analysis

"A federal court sitting in diversity may not exercise jurisdiction over a defendant unless courts of the forum state would be authorized to do so by state law—and any such exercise of jurisdiction must be compatible with the due process requirements of the United States Constitution." "Due process requires that an out-of-

state defendant have 'minimum contacts' with the forum state sufficient to comport with 'traditional notions of fair play and substantial justice.'" Tennessee's long-arm statute "extends its jurisdiction to due process's limits, so due process is all the court must address."

Under the applicable burden shifting framework, "the first question is whether the complaint makes out a prima facie showing of jurisdiction." "Personal jurisdiction falls into two categories: general and specific." In responding to the pending motion, Plaintiffs argue the Court has specific jurisdiction over Griffin. "Specific jurisdiction turns on the 'affiliation between the forum and the underlying controversy.'" "This requires a plaintiff to establish, with reasonable particularity, sufficient contacts between the defendant and the forum state." "This 'minimum contacts' analysis depends on the defendant's contact with the forum, 'not the defendant's contacts with persons who reside there.'" "That means Griffin's 'suit-related conduct' must establish 'a substantial connection' with Tennessee." While "a defendant may be subject to personal jurisdiction if her 'efforts are 'purposefully directed' toward residents of another State," "the plaintiff cannot be the only link between the defendant and the forum." "These same principles apply when intentional torts are involved."

Here, Plaintiffs argue the following factual allegations make the requisite prima facie showing of specific personal jurisdiction: (1) Griffin's tweets intentionally targeted them, (2) the injury from Griffin's tortious conduct was felt in Tennessee, and (3) Griffin has done business in Tennessee at least twice by personally performing her stage act. *Walden v. Fiore*, 571 U.S. 277 (2014), forecloses Plaintiffs' argument that Griffin is subject to jurisdiction because her allegedly tortious postings on social media intentionally targeted and harmed Tennessee residents. In *Walden,* the Supreme Court held that a federal district court in Nevada lacked jurisdiction over a Georgia defendant who allegedly drafted a false affidavit about the Nevada plaintiffs knowing it would harm Nevada plaintiffs. It was not sufficient that the plaintiffs had "strong forum connections" and suffered "foreseeable harm" in the forum state because "the proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way."

Even viewing the factual allegations in the light most favorable to Plaintiffs and drawing all reasonable inferences in their favor, the factual allegations in the complaint do not demonstrate that Griffin has sufficient minimum contacts with Tennessee such that jurisdiction over her would be reasonable. While Griffin's tweets expressly named Tennessee residents, a Tennessee business, and Tennessee cities, there are no allegations in the complaint that Griffin's tweets were directed at Tennessee readers, as opposed to the residents of other states, or that Griffin posted her tweets hoping to reach Tennessee specifically as opposed to her two million Twitter followers generally. Nor does the complaint allege that Griffin has any Twitter followers in Tennessee or that Tennessee was the focal point of Grif-

fin's tweets. While Plaintiffs allege that Griffin's tweets caused third parties to threaten and dox them in Tennessee, "the Supreme Court has"consistently rejected attempts to satisfy the defendant-focused 'minimum contacts' inquiry by demonstrating contacts between third parties and the forum State." Finally, Griffin's two previous live performances in Tennessee are insufficient contacts to form the basis for this Court to exercise personal jurisdiction over Griffin in the present case because Plaintiffs' causes of action do not arise from those alleged contacts.

III. CONCLUSION

For the foregoing reasons, the exercise of jurisdiction over Griffin would offend due process. Accordingly, Griffin's motion to dismiss will be GRANTED for lack of personal jurisdiction.

Ford Motor Co. v. Mont. Eighth Judicial Dist. Ct., 141 S.Ct. 1017 (2021)

Justice KAGAN delivered the opinion of the Court.

In each of these two cases, a state court held that it had jurisdiction over Ford Motor Company in a products-liability suit stemming from a car accident. The accident happened in the State where suit was brought. The victim was one of the State's residents. And Ford did substantial business in the State—among other things, advertising, selling, and servicing the model of vehicle the suit claims is defective. Still, Ford contends that jurisdiction is improper because the particular car involved in the crash was not first sold in the forum State, nor was it designed or manufactured there. We reject that argument. When a company like Ford serves a market for a product in a State and that product causes injury in the State to one of its residents, the State's courts may entertain the resulting suit.

I

Ford is a global auto company. It is incorporated in Delaware and headquartered in Michigan. But its business is everywhere. Ford markets, sells, and services its products across the United States and overseas. In this country alone, the company annually distributes over 2.5 million new cars, trucks, and SUVs to over 3,200 licensed dealerships. Ford also encourages a resale market for its products: Almost all its dealerships buy and sell used Fords, as well as selling new ones. To enhance its brand and increase its sales, Ford engages in wide-ranging promotional activities, including television, print, online, and direct-mail advertisements. No matter where you live, you've seen them: "Have you driven a Ford lately?" or "Built Ford Tough." Ford also ensures that consumers can keep their vehicles running long past the date of sale. The company provides original parts to auto supply

stores and repair shops across the country. (Goes another slogan: "Keep your Ford a Ford.") And Ford's own network of dealers offers an array of maintenance and repair services, thus fostering an ongoing relationship between Ford and its customers.

Accidents involving two of Ford's vehicles—a 1996 Explorer and a 1994 Crown Victoria—are at the heart of the suits before us. One case comes from Montana. Markkaya Gullett was driving her Explorer near her home in the State when the tread separated from a rear tire. The vehicle spun out, rolled into a ditch, and came to rest upside down. Gullett died at the scene of the crash. The representative of her estate sued Ford in Montana state court, bringing claims for a design defect, failure to warn, and negligence. The second case comes from Minnesota. Adam Bandemer was a passenger in his friend's Crown Victoria, traveling on a rural road in the State to a favorite ice-fishing spot. When his friend rear-ended a snowplow, this car too landed in a ditch. Bandemer's air bag failed to deploy, and he suffered serious brain damage. He sued Ford in Minnesota state court, asserting products-liability, negligence, and breach-of-warranty claims.

Ford moved to dismiss the two suits for lack of personal jurisdiction, on basically identical grounds. According to Ford, the state court (whether in Montana or Minnesota) had jurisdiction only if the company's conduct in the State had given rise to the plaintiff's claims. And that causal link existed, Ford continued, only if the company had designed, manufactured, or—most likely—sold in the State the particular vehicle involved in the accident. In neither suit could the plaintiff make that showing. Ford had designed the Explorer and Crown Victoria in Michigan, and it had manufactured the cars in (respectively) Kentucky and Canada. Still more, the company had originally sold the cars at issue outside the forum States—the Explorer in Washington, the Crown Victoria in North Dakota. Only later resales and relocations by consumers had brought the vehicles to Montana and Minnesota. That meant, in Ford's view, that the courts of those States could not decide the suits.

Both the Montana and the Minnesota Supreme Courts (affirming lower court decisions) rejected Ford's argument.

We granted certiorari to consider if Ford is subject to jurisdiction in these cases. We hold that it is.

II

A

The Fourteenth Amendment's Due Process Clause limits a state court's power to exercise jurisdiction over a defendant. The canonical decision in this area remains *International Shoe Co. v. Washington*. There, the Court held that a tribunal's authority depends on the defendant's having such "contacts" with the forum State that "the maintenance of the suit" is "reasonable, in the context of our federal system of government," and "does not offend traditional notions of fair play and substantial justice." In giving content to that formulation, the Court has long focused on the nature and extent of "the defendant's relationship to the forum State." That focus led to our recognizing two kinds of personal jurisdiction: general (sometimes called all-purpose) jurisdiction and specific (sometimes called case-linked) jurisdiction.

A state court may exercise general jurisdiction only when a defendant is "essentially at home" in the State. General jurisdiction, as its name implies, extends to "any and all claims" brought against a defendant. Those claims need not relate to the forum State or the defendant's activity there; they may concern events and conduct anywhere in the world. But that breadth imposes a correlative limit: Only a select "set of affiliations with a forum" will expose a defendant to such sweeping jurisdiction. what we have called the "paradigm" case, an individual is subject to general jurisdiction in her place of domicile. And the "equivalent" forums for a corporation are its place of incorporation and principal place of business. So general jurisdiction over Ford (as all parties agree) attaches in Delaware and Michigan—not in Montana and Minnesota.

Specific jurisdiction is different: It covers defendants less intimately connected with a State, but only as to a narrower class of claims. The contacts needed for this kind of jurisdiction often go by the name "purposeful availment." The defendant, we have said, must take "some act by which it purposefully avails itself of the privilege of conducting activities within the forum State." The contacts must be the defendant's own choice and not "random, isolated, or fortuitous." They must show that the defendant deliberately "reached out beyond" its home—by, for example, "exploiting a market" in the forum State or entering a contractual relationship centered there. Yet even then—because the defendant is not "at home"—the forum State may exercise jurisdiction in only certain cases. The plaintiff's claims, we have often stated, "must arise out of or relate to the defendant's contacts" with the forum. Or put just a bit differently, "there must be 'an affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation.'"

These rules derive from and reflect two sets of values—treating defendants fairly and protecting "interstate federalism." Our decision in *International Shoe* founded specific jurisdiction on an idea of reciprocity between a defendant and a State: When (but only when) a company "exercises the privilege of conducting activities within a state"—thus "enjoying the benefits and protection of its laws"—the State may hold the company to account for related misconduct. Later decisions have added that our doctrine similarly provides defendants with "fair warning"—knowledge that "a particular activity may subject it to the jurisdiction of a foreign sovereign." A defendant can thus "structure its primary conduct" to lessen or avoid exposure to a given State's courts. And this Court has considered alongside defendants' interests those of the States in relation to each other. One State's "sovereign power to try" a suit, we have recognized, may prevent "sister States" from exercising their like authority. The law of specific jurisdiction thus seeks to ensure that States with "little legitimate interest" in a suit do not encroach on States more affected by the controversy.

B

Ford contends that our jurisdictional rules prevent Montana's and Minnesota's courts from deciding these two suits. In making that argument, Ford does not contest that it does substantial business in Montana and Minnesota—that it actively seeks to serve the market for automobiles and related products in those States. Or to put that concession in more doctrinal terms, Ford agrees that it has "purposefully availed itself of the privilege of conducting activities" in both places. Ford's claim is instead that those activities do not sufficiently connect to the suits, even though the resident-plaintiffs allege that Ford cars malfunctioned in the forum States. In Ford's view, the needed link must be causal in nature: Jurisdiction attaches "only if the defendant's forum conduct *gave rise* to the plaintiff's claims." And that rule reduces, Ford thinks, to locating specific jurisdiction in the State where Ford sold the car in question, or else the States where Ford designed and manufactured the vehicle. On that view, the place of accident and injury is immaterial. So (Ford says) Montana's and Minnesota's courts have no power over these cases.

But Ford's causation-only approach finds no support in this Court's requirement of a "connection" between a plaintiff's suit and a defendant's activities. That rule indeed serves to narrow the class of claims over which a state court may exercise specific jurisdiction. But not quite so far as Ford wants. None of our precedents has suggested that only a strict causal relationship between the defendant's in-state activity and the litigation will do. As just noted, our most common formulation of the rule demands that the suit "arise out of *or relate to* the defendant's contacts with the forum." The first half of that standard asks about causation; but the back half, after the "or," contemplates that some relationships will support jurisdiction without a causal showing. That does not mean anything goes. In the

sphere of specific jurisdiction, the phrase "relate to" incorporates real limits, as it must to adequately protect defendants foreign to a forum. But again, we have never framed the specific jurisdiction inquiry as always requiring proof of causation—*i.e.*, proof that the plaintiff's claim came about because of the defendant's in-state conduct. So the case is not over even if, as Ford argues, a causal test would put jurisdiction in only the States of first sale, manufacture, and design. A different State's courts may yet have jurisdiction, because of another "activity or occurrence" involving the defendant that takes place in the State.

And indeed, this Court has stated that specific jurisdiction attaches in cases identical to the ones here—when a company like Ford serves a market for a product in the forum State and the product malfunctions there. In *World-Wide Volkswagen*, the Court held that an Oklahoma court could not assert jurisdiction over a New York car dealer just because a car it sold later caught fire in Oklahoma. But in so doing, we contrasted the dealer's position to that of two other defendants—Audi, the car's manufacturer, and Volkswagen, the car's nationwide importer (neither of which contested jurisdiction):

> If the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in several or all other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others.

Or said another way, if Audi and Volkswagen's business deliberately extended into Oklahoma (among other States), then Oklahoma's courts could hold the companies accountable for a car's catching fire there—even though the vehicle had been designed and made overseas and sold in New York. For, the Court explained, a company thus "purposefully availing itself"of the Oklahoma auto market "has clear notice" of its exposure in that State to suits arising from local accidents involving its cars. And the company could do something about that exposure: It could "act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are still too great, severing its connection with the State."

Our conclusion in *World-Wide Volkswagen*—though, as Ford notes, technically "dicta"—has appeared and reappeared in many cases since. So, for example, the Court in *Keeton* invoked that part of *World-Wide Volkswagen* to show that when a corporation has "continuously and deliberately exploited a State's market, it must reasonably anticipate being haled into that State's courts" to defend actions "based on" products causing injury there. And in *Daimler*, we used the Audi/Volkswagen scenario as a paradigm case of specific jurisdiction (though now naming Daimler, the maker of Mercedes Benzes). Said the Court, to "illustrate" specific jurisdiction's "province": A California court would exercise specific jurisdiction "if a California plaintiff, injured in a California accident involving a Daimler-manufactured vehi-

cle, sued Daimler in that court alleging that the vehicle was defectively designed." As in *World-Wide Volkswagen*, the Court did not limit jurisdiction to where the car was designed, manufactured, or first sold. Substitute Ford for Daimler, Montana and Minnesota for California, and the Court's "illustrative" case becomes ... the two cases before us.

To see why Ford is subject to jurisdiction in these cases (as Audi, Volkswagen, and Daimler were in their analogues), consider first the business that the company regularly conducts in Montana and Minnesota. Small wonder that Ford has here conceded "purposeful availment" of the two States' markets. By every means imaginable—among them, billboards, TV and radio spots, print ads, and direct mail—Ford urges Montanans and Minnesotans to buy its vehicles, including (at all relevant times) Explorers and Crown Victorias. Ford cars—again including those two models—are available for sale, whether new or used, throughout the States, at 36 dealerships in Montana and 84 in Minnesota. And apart from sales, Ford works hard to foster ongoing connections to its cars' owners. The company's dealers in Montana and Minnesota (as elsewhere) regularly maintain and repair Ford cars, including those whose warranties have long since expired. And the company distributes replacement parts both to its own dealers and to independent auto shops in the two States. Those activities, too, make Ford money. And by making it easier to own a Ford, they encourage Montanans and Minnesotans to become lifelong Ford drivers.

Now turn to how all this Montana-and Minnesota-based conduct relates to the claims in these cases, brought by state residents in Montana's and Minnesota's courts. Each plaintiff's suit, of course, arises from a car accident in one of those States. In each complaint, the resident-plaintiff alleges that a defective Ford vehicle—an Explorer in one, a Crown Victoria in the other—caused the crash and resulting harm. And as just described, Ford had advertised, sold, and serviced those two car models in both States for many years. (Contrast a case, which we do not address, in which Ford marketed the models in only a different State or region.) In other words, Ford had systematically served a market in Montana and Minnesota for the very vehicles that the plaintiffs allege malfunctioned and injured them in those States. So there is a strong "relationship among the defendant, the forum, and the litigation"—the "essential foundation" of specific jurisdiction. That is why this Court has used this exact fact pattern (a resident-plaintiff sues a global car company, extensively serving the state market in a vehicle, for an in-state accident) as an illustration—even a paradigm example—of how specific jurisdiction works.[2]

The only complication here, pressed by Ford, is that the company sold the specific cars involved in these crashes outside the forum States, with consumers later selling them to the States' residents. Because that is so, Ford argues, the plaintiffs' claims "would be precisely the same if Ford had never done anything in Montana and Minnesota." Of course, that argument merely restates Ford's demand for an ex-

2 (n.4 in opinion) None of this is to say that any person using any means to sell any good in a State is subject to jurisdiction there if the product malfunctions after arrival. We have long treated isolated or sporadic transactions differently from continuous ones. And we do not here consider Internet transactions, which may raise doctrinal questions of their own.

clusively causal test of connection—which we have already shown is inconsistent with our caselaw. And indeed, a similar assertion could have been made in *World-Wide Volkswagen*—yet the Court made clear that systematic contacts in Oklahoma rendered Audi accountable there for an in-state accident, even though it involved a car sold in New York. So too here, and for the same reasons—even supposing (as Ford does) that without the company's Montana or Minnesota contacts the plaintiffs' claims would be just the same.

But in any event, that assumption is far from clear. For the owners of these cars might never have bought them, and so these suits might never have arisen, except for Ford's contacts with their home States. Those contacts might turn any resident of Montana or Minnesota into a Ford owner—even when he buys his car from out of state. He may make that purchase because he saw ads for the car in local media. And he may take into account a raft of Ford's in-state activities designed to make driving a Ford convenient there: that Ford dealers stand ready to service the car; that other auto shops have ample supplies of Ford parts; and that Ford fosters an active resale market for its old models. The plaintiffs here did not in fact establish, or even allege, such causal links. Nor should jurisdiction in cases like these ride on the exact reasons for an individual plaintiff's purchase, or on his ability to present persuasive evidence about them. But the possibilities listed above—created by the reach of Ford's Montana and Minnesota contacts—underscore the aptness of finding jurisdiction here, even though the cars at issue were first sold out of state.

For related reasons, allowing jurisdiction in these cases treats Ford fairly, as this Court's precedents explain. In conducting so much business in Montana and Minnesota, Ford "enjoys the benefits and protection of their laws"—the enforcement of contracts, the defense of property, the resulting formation of effective markets. All that assistance to Ford's in-state business creates reciprocal obligations—most relevant here, that the car models Ford so extensively markets in Montana and Minnesota be safe for their citizens to use there. Thus our repeated conclusion: A state court's enforcement of that commitment, enmeshed as it is with Ford's government-protected in-state business, can "hardly be said to be undue." And as *World-Wide Volkswagen* described, it cannot be thought surprising either. An automaker regularly marketing a vehicle in a State, the Court said, has "clear notice" that it will be subject to jurisdiction in the State's courts when the product malfunctions there (regardless where it was first sold). Precisely because that exercise of jurisdiction is so reasonable, it is also predictable—and thus allows Ford to "structure its primary conduct" to lessen or even avoid the costs of state-court litigation.

Finally, principles of "interstate federalism" support jurisdiction over these suits in Montana and Minnesota. Those States have significant interests at stake—"providing their residents with a convenient forum for redressing injuries inflicted by out-of-state actors," as well as enforcing their own safety regulations. Consider, next to those, the interests of the States of first sale (Washington and North Dako-

ta)—which Ford's proposed rule would make the most likely forums. For each of those States, the suit involves all out-of-state parties, an out-of-state accident, and out-of-state injuries; the suit's only connection with the State is that a former owner once (many years earlier) bought the car there. In other words, there is a less significant "relationship among the defendant, the forum, and the litigation." So by channeling these suits to Washington and North Dakota, Ford's regime would undermine, rather than promote, what the company calls the Due Process Clause's "jurisdiction-allocating function."

C

Ford mainly relies for its rule on two of our recent decisions—*Bristol-Myers* and *Walden.* But those precedents stand for nothing like the principle Ford derives from them. If anything, they reinforce all we have said about why Montana's and Minnesota's courts can decide these cases.

Ford says of *Bristol-Myers* that it "squarely forecloses" jurisdiction. In that case, non-resident plaintiffs brought claims in California state court against Bristol-Myers Squibb, the manufacturer of a nationally marketed prescription drug called Plavix. The plaintiffs had not bought Plavix in California; neither had they used or suffered any harm from the drug there. Still, the California Supreme Court thought it could exercise jurisdiction because Bristol-Myers Squibb sold Plavix in California and was defending there against identical claims brought by the State's residents. This Court disagreed, holding that the exercise of jurisdiction violated the Fourteenth Amendment. In Ford's view, the same must be true here. Each of these plaintiffs, like the plaintiffs in *Bristol-Myers*, alleged injury from a particular item (a car, a pill) that the defendant had sold outside the forum State. Ford reads *Bristol-Myers* to preclude jurisdiction when that is true, even if the defendant regularly sold "the same *kind* of product" in the State.

But that reading misses the point of our decision. We found jurisdiction improper in *Bristol-Myers* because the forum State, and the defendant's activities there, lacked any connection to the plaintiffs' claims. The plaintiffs, the Court explained, were not residents of California. They had not been prescribed Plavix in California. They had not ingested Plavix in California. And they had not sustained their injuries in California. In short, the plaintiffs were engaged in forum-shopping—suing in California because it was thought plaintiff-friendly, even though their cases had no tie to the State. That is not at all true of the cases before us. Yes, Ford sold the specific products in other States, as Bristol-Myers Squibb had. But here, the plaintiffs are residents of the forum States. They used the allegedly defective products in the forum States. And they suffered injuries when those products malfunctioned in the forum States. In sum, each of the plaintiffs brought suit in the most natural. State—based on an "affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that took place" there. So *Bristol-Myers* does not bar jurisdiction.

Ford falls back on *Walden* as its last resort. In that case, a Georgia police officer working at an Atlanta airport searched, and seized money from, two Nevada residents before they embarked on a flight to Las Vegas. The victims of the search sued the officer in Nevada, arguing that their alleged injury (their inability to use the seized money) occurred in the State in which they lived. This Court held the exercise of jurisdiction in Nevada improper even though "the plaintiffs experienced the effects" of the officer's conduct there. According to Ford, our ruling shows that a plaintiff's residence and place of injury can never support jurisdiction. And without those facts, Ford concludes, the basis for jurisdiction crumbles here as well.

But *Walden* has precious little to do with the cases before us. In *Walden*, only the plaintiffs had any contacts with the State of Nevada; the defendant-officer had never taken any act to "form a contact" of his own. The officer had "never traveled to, conducted activities within, contacted anyone in, or sent anything or anyone to Nevada." So to use the language of our doctrinal test: He had not "purposefully availed himself of the privilege of conducting activities" in the forum State. Because that was true, the Court had no occasion to address the necessary connection between a defendant's in-state activity and the plaintiff's claims. But here, Ford has a veritable truckload of contacts with Montana and Minnesota, as it admits. The only issue is whether those contacts are related enough to the plaintiffs' suits. As to that issue, so what if (as *Walden* held) the place of a plaintiff's injury and residence cannot create a defendant's contact with the forum State? Those places still may be relevant in assessing the link between the defendant's forum contacts and the plaintiff's suit—including its assertions of who was injured where. And indeed, that relevance is a key part of *Bristol-Myers*' reasoning. One of Ford's own favorite cases thus refutes its appeal to the other.

Here, resident-plaintiffs allege that they suffered in-state injury because of defective products that Ford extensively promoted, sold, and serviced in Montana and Minnesota. For all the reasons we have given, the connection between the plaintiffs' claims and Ford's activities in those States—or otherwise said, the "relationship among the defendant, the forums, and the litigation"—is close enough to support specific jurisdiction. The judgments of the Montana and Minnesota Supreme Courts are therefore affirmed.

Justice ALITO, concurring in the judgment.

These cases can and should be decided without any alteration or refinement of our case law on specific personal jurisdiction. To be sure, for the reasons outlined in Justice GORSUCH's thoughtful opinion, there are grounds for questioning the standard that the Court adopted in *International Shoe*. And there are also reasons

to wonder whether the case law we have developed since that time is well suited for the way in which business is now conducted. But there is nothing distinctively 21st century about the question in the cases now before us, and the answer to that question is settled by our case law.

Since *International Shoe*, the rule has been that a state court can exercise personal jurisdiction over a defendant if the defendant has "minimum contacts" with the forum—which means that the contacts must be "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'"

That standard is easily met here. Ford has long had a heavy presence in Minnesota and Montana. It spends billions on national advertising. It has many franchises in both States. Ford dealers in Minnesota and Montana sell and service Ford vehicles, and Ford ships replacement parts to both States. In entertaining these suits, Minnesota and Montana courts have not reached out and grabbed suits in which they "have little legitimate interest." *Their* residents, while riding in vehicles purchased within *their* borders, were killed or injured in accidents on *their* roads. Can anyone seriously argue that requiring Ford to litigate these cases in Minnesota and Montana would be fundamentally unfair?

Well, Ford makes that argument. It would send the plaintiffs packing to the jurisdictions where the vehicles in question were assembled (Kentucky and Canada), designed (Michigan), or first sold (Washington and North Dakota) or where Ford is incorporated (Delaware) or has its principal place of business (Michigan).

As might have been predicted, the Court unanimously rejects this understanding of "traditional notions of fair play and substantial justice." And in doing so, we merely follow what we said in *World-Wide Volkswagen Corp. v. Woodson*, which was essentially this: If a car manufacturer makes substantial efforts to sell vehicles in States A and B (and other States), and a defect in a vehicle first sold in State A causes injuries in an accident in State B, the manufacturer can be sued in State B. That rule decides these cases.

Ford, however, asks us to adopt an unprecedented rule under which a defendant's contacts with the forum State must be proven to have been a but-for cause of the tort plaintiff's injury. The Court properly rejects that argument, and I agree with the main thrust of the Court's opinion. My only quibble is with the new gloss that the Court puts on our case law. Several of our opinions have said that a plaintiff's claims "'must arise out of or relate to the defendant's contacts'" with the forum. The Court parses this phrase "as though we were dealing with language of a statute," and because this phrase is cast in the disjunctive, the Court recognizes a new category of cases in which personal jurisdiction is permitted: those in which the claims do not "arise out of" (*i.e.*, are not caused by) the defendant's contacts but nevertheless sufficiently "relate to" those contacts in some undefined way.

This innovation is unnecessary and, in my view, unwise. To say that the Constitution does not require the kind of proof of causation that Ford would demand—what the majority describes as a "strict causal relationship"—is not to say that no causal link of any kind is needed. And here, there is a sufficient link. It is reasonable to infer that the vehicles in question here would never have been on the roads in Minnesota and Montana if they were some totally unknown brand that had never been advertised in those States, was not sold in those States, would not be familiar to mechanics in those States, and could not have been easily repaired with parts available in those States. The whole point of those activities was to put more Fords (including those in question here) on Minnesota and Montana roads. The common-sense relationship between Ford's activities and these suits, in other words, is causal in a broad sense of the concept, and personal jurisdiction can rest on this type of link without strict proof of the type Ford would require. When "arise out of" is understood in this way, it is apparent that "arise out of" and "relate to" overlap and are not really two discrete grounds for jurisdiction. The phrase "arise out of or relate to" is simply a way of restating the basic "minimum contacts" standard adopted in _International Shoe.

Recognizing "relate to" as an independent basis for specific jurisdiction risks needless complications. The "ordinary meaning" of the phrase "relate to" "is a broad one." Applying that phrase "according to its terms is a project doomed to failure, since, as many a curbstone philosopher has observed, everything is related to everything else." To rein in this phrase, limits must be found, and the Court assures us that "relate to," as it now uses the concept, "incorporates real limits." But without any indication what those limits might be, I doubt that the lower courts will find that observation terribly helpful. Instead, what limits the potentially boundless reach of "relate to" is just the sort of rough causal connection I have described.

I would leave the law exactly where it stood before we took these cases, and for that reason, I concur in the judgment.

Justice GORSUCH, with whom Justice THOMAS joins, concurring in the judgment.

Since *International Shoe Co. v. Washington*, this Court's cases have sought to divide the world of personal jurisdiction in two. A tribunal with "general jurisdiction" may entertain any claim against the defendant. But to trigger this power, a court usually must ensure the defendant is "'at home'" in the forum State. Meanwhile, "specific jurisdiction" affords a narrower authority. It applies only when the defendant "'purposefully avails'" itself of the opportunity to do business in the forum State and the suit "'arises out of or relates to'" the defendant's contacts with the forum State.

While our cases have long admonished lower courts to keep these concepts distinct, some of the old guardrails have begun to look a little battered. Take general jurisdiction. If it made sense to speak of a corporation having one or two "homes" in 1945, it seems almost quaint in 2021 when corporations with global reach often have massive operations spread across multiple States. To cope with these changing economic realities, this Court has begun cautiously expanding the old rule in "'exceptional cases.'"

Today's case tests the old boundaries from another direction. Until now, many lower courts have proceeded on the premise that specific jurisdiction requires two things. First, the defendant must "purposefully avail" itself of the chance to do business in a State. Second, the plaintiff's suit must "arise out of or relate to" the defendant's in-state activities. Typically, courts have read this second phrase as a unit requiring at least a but-for causal link between the defendant's local activities and the plaintiff's injuries. As every first year law student learns, a but-for causation test isn't the most demanding. At a high level of abstraction, one might say any event in the world would not have happened "but for" events far and long removed.

Now, though, the Court pivots away from this understanding. Focusing on the phrase "arise out of or relate to" that so often appears in our cases, the majority asks us to parse those words "as though we were dealing with language of a statute." In particular, the majority zeros in on the disjunctive conjunction "or," and proceeds to build its entire opinion around that linguistic feature. The majority admits that "arise out of" may connote causation. But, it argues, "relate to" is an independent clause that does not.

Where this leaves us is far from clear. For a case to "relate to" the defendant's forum contacts, the majority says, it is enough if an "affiliation" or "relationship" or "connection" exists between them. But what does this assortment of nouns *mean*? Loosed from any causation standard, we are left to guess. The majority promises that its new test "does not mean anything goes," but that hardly tells us what does. In some cases, the new test may prove more forgiving than the old causation rule. But it's hard not to wonder whether it may also sometimes turn out to be more demanding. Unclear too is whether, in cases like that, the majority would treat causation and "affiliation" as alternative routes to specific jurisdiction, or whether it would deny jurisdiction outright.

For a glimpse at the complications invited by today's decision, consider its treatment of North Dakota and Washington. Those are the States where Ford first sold the allegedly defective cars at issue in the cases before us. The majority seems to suggest that, if the plaintiffs had sought to bring their suits in those States, they would have failed. The majority stresses that the "only connection" between the plaintiffs' claims and North Dakota and Washington is the fact that former owners once bought the allegedly defective cars there. But the majority never tells us why

that "connection" isn't enough. Surely, North Dakota and Washington would contend they have a strong interest in ensuring they don't become marketplaces for unreasonably dangerous products. Nor is it clear why the majority casts doubt on the availability of specific jurisdiction in these States without bothering to consider whether the old causation test might allow it. After all, no one doubts Ford purposefully availed itself of those markets. The plaintiffs' injuries, at least arguably, "arose from" (or were caused by) the sale of defective cars in those places. Even if the majority's new affiliation test isn't satisfied, don't we still need to ask those causation questions, or are they now to be abandoned?

Consider, too, a hypothetical the majority offers in a footnote. The majority imagines a retiree in Maine who starts a one-man business, carving and selling wooden duck decoys. In time, the man sells a defective decoy over the Internet to a purchaser in another State who is injured. We aren't told how. (Was the decoy coated in lead paint?) But put that aside. The majority says this hypothetical supplies a useful study in contrast with our cases. On the majority's telling, Ford's "continuous" contacts with Montana and Minnesota are enough to establish an "affiliation" with those States; by comparison, the decoy seller's contacts may be too "isolated" and "sporadic" to entitle an injured buyer to sue in his home State. But if this comparison highlights anything, it is only the litigation sure to follow. For between the poles of "continuous" and "isolated" contacts lie a virtually infinite number of "affiliations" waiting to be explored. And when it comes to that vast terrain, the majority supplies no meaningful guidance about what kind or how much of an "affiliation" will suffice. Nor, once more, does the majority tell us whether its new affiliation test supplants or merely supplements the old causation inquiry.

Not only does the majority's new test risk adding new layers of confusion to our personal jurisdiction jurisprudence. The whole project seems unnecessary. Immediately after disavowing any need for a causal link between the defendant's forum activities and the plaintiffs' injuries, the majority proceeds to admit that such a link may be present here. The majority stresses that the Montana and Minnesota plaintiffs before us "might" have purchased their cars because of Ford's activities in their home States. They "may" have relied on Ford's local advertising. And they "may" have depended on Ford's promise to furnish in-state servicers and dealers. If the majority is right about these things, that would be more than enough to establish a but-for causal link between Ford's in-state activities and the plaintiffs' decisions to purchase their allegedly defective vehicles. Nor should that result come as a surprise: One might expect such causal links to be easy to prove in suits against corporate behemoths like Ford. All the new euphemisms—"affiliation," "relationship," "connection"—thus seem pretty pointless.

With the old *International Shoe* dichotomy looking increasingly uncertain, it's hard not to ask how we got here and where we might be headed.

Before *International Shoe*, it seems due process was usually understood to guarantee that only a court of competent jurisdiction could deprive a defendant of his life, liberty, or property. In turn, a court's competency normally depended on the defendant's presence in, or consent to, the sovereign's jurisdiction. But once a plaintiff was able to "tag" the defendant with process in the jurisdiction, that State's courts were generally thought competent to render judgment on any claim against the defendant, whether it involved events inside or outside the State.

International Shoe's emergence may be attributable to many influences, but at least part of the story seems to involve the rise of corporations and interstate trade. A corporation doing business in its State of incorporation is one thing; the old physical presence rules for individuals seem easily adaptable to them. But what happens when a corporation, created and able to operate thanks to the laws of one State, seeks the privilege of sending agents or products into another State?

Early on, many state courts held conduct like that renders an out-of-state corporation present in the second jurisdiction. And a present company could be sued for any claim, so long as the plaintiff served an employee doing corporate business within the second State. Other States sought to obviate any potential question about corporate jurisdiction by requiring an out-of-state corporation to incorporate under their laws too, or at least designate an agent for service of process. Either way, the idea was to secure the out-of-state company's presence or consent to suit.

Unsurprisingly, corporations soon looked for ways around rules like these. No one, after all, has ever liked greeting the process server. For centuries, individuals facing imminent suit sought to avoid it by fleeing the court's territorial jurisdiction. But this tactic proved "too crude for the American business genius," and it held some obvious disadvantages. Corporations wanted to retain the privilege of sending their personnel and products to other jurisdictions where they lacked a charter to do business. At the same time, when confronted with lawsuits in the second forum, they sought to hide behind their foreign charters and deny their presence. Really, their strategy was to do business without being seen to do business.

Initially and routinely, state courts rejected ploys like these. But, in a series of decisions at the turn of the last century, this Court eventually provided a more receptive audience. On the one hand, the Court held that an out-of-state corporation often has a right to do business in another State unencumbered by that State's registration rules, thanks to the so-called dormant Commerce Clause. On the other hand, the Court began invoking the Due Process Clause to restrict the circumstances in which an out-of-state corporation could be deemed present. So, for example, the Court ruled that even an Oklahoma corporation purchasing a large portion of its merchandise in New York was not "doing business" there. Perhaps

advocates of this arrangement thought it promoted national economic growth. But critics questioned its fidelity to the Constitution and traditional jurisdictional principles, noting that it often left injured parties with no practical forum for their claims too.

In many ways, *International Shoe* sought to start over. The Court "cast aside" the old concepts of territorial jurisdiction that its own earlier decisions had seemingly twisted in favor of out-of-state corporations. At the same time, the Court *also* cast doubt on the idea, once pursued by many state courts, that a company "consents" to suit when it is forced to incorporate or designate an agent for receipt of process in a jurisdiction other than its home State. In place of nearly everything that had come before, the Court sought to build a new test focused on "'traditional notions of fair play and substantial justice.'"

It was a heady promise. But it is unclear how far it has really taken us. Even today, this Court usually considers corporations "at home" and thus subject to general jurisdiction in only one or two States. All in a world where global conglomerates boast of their many "headquarters." The Court has issued these restrictive rulings, too, even though *individual* defendants remain subject to the old "tag" rule, allowing them to be sued on any claim anywhere they can be found. Nearly 80 years removed from *International Shoe*, it seems corporations continue to receive special jurisdictional protections in the name of the Constitution. Less clear is why.

Maybe, too, *International Shoe* just doesn't work quite as well as it once did. For a period, its specific jurisdiction test might have seemed a reasonable new substitute for assessing corporate "presence," a way to identify those out-of-state corporations that were simply pretending to be absent from jurisdictions where they were really transacting business. When a company "purposefully availed" itself of the benefits of another State's market in the 1940s, it often involved sending in agents, advertising in local media, or developing a network of on-the-ground dealers, much as Ford did in these cases. But, today, even an individual retiree carving wooden decoys in Maine can "purposefully avail" himself of the chance to do business across the continent after drawing online orders to his e-Bay "store" thanks to Internet advertising with global reach. A test once aimed at keeping corporations honest about their out-of-state operations now seemingly risks hauling individuals to jurisdictions where they have never set foot.

Perhaps this is the real reason why the majority introduces us to the hypothetical decoy salesman. Yes, he arguably availed himself of a new market. Yes, the plaintiff's injuries arguably arose from (or were caused by) the product he sold there. Yes, *International Shoe*'s old causation test would seemingly allow for personal jurisdiction. But maybe the majority resists that conclusion because the old test no longer seems as reliable a proxy for determining corporate presence as it once did.

Maybe *that's* the intuition lying behind the majority's introduction of its new "affiliation" rule and its comparison of the Maine retiree's "sporadic" and "isolated" sales in the plaintiff's State and Ford's deep "relationships" and "connections" with Montana and Minnesota.

If that is the logic at play here, I cannot help but wonder if we are destined to return where we began. Perhaps all of this Court's efforts since *International Shoe*, including those of today's majority, might be understood as seeking to recreate in new terms a jurisprudence about corporate jurisdiction that was developing before this Court's muscular interventions in the early 20th century. Perhaps it was, is, and in the end always will be about trying to assess fairly a corporate defendant's presence or consent. *International Shoe* may have sought to move past those questions. But maybe all we have done since is struggle for new words to express the old ideas. Perhaps, too, none of this should come as a surprise. New technologies and new schemes to evade the process server will always be with us. But if our concern is with "'*traditional* notions of fair play and substantial justice,'" not just our personal and idiosyncratic impressions of those things, perhaps we will always wind up asking variations of the same questions.

None of this is to cast doubt on the outcome of these cases. The parties have not pointed to anything in the Constitution's original meaning or its history that might allow Ford to evade answering the plaintiffs' claims in Montana or Minnesota courts. No one seriously questions that the company, seeking to do business, entered those jurisdictions through the front door. And I cannot see why, when faced with the process server, it should be allowed to escape out the back. The real struggle here isn't with settling on the right outcome in these cases, but with making sense of our personal jurisdiction jurisprudence and *International Shoe*'s increasingly doubtful dichotomy. On those scores, I readily admit that I finish these cases with even more questions than I had at the start. Hopefully, future litigants and lower courts will help us face these tangles and sort out a responsible way to address the challenges posed by our changing economy in light of the Constitution's text and the lessons of history.

1.3 General Jurisdiction

Daimler A.G. v. Bauman, 571 U.S. 117 (2014)

Justice GINSBURG delivered the opinion of the Court.

This case concerns the authority of a court in the United States to entertain a claim brought by foreign plaintiffs against a foreign defendant based on events occurring entirely outside the United States. The litigation commenced in 2004, when twenty-two Argentinian residents filed a complaint in the United States District Court for the Northern District of California against DaimlerChrysler Aktiengesellschaft a German public stock company, headquartered in Stuttgart, that manufactures Mercedes-Benz vehicles in Germany. The complaint alleged that during Argentina's 1976-1983 "Dirty War," Daimler's Argentinian subsidiary, Mercedes-Benz Argentina (MB Argentina) collaborated with state security forces to kidnap, detain, torture, and kill certain MB Argentina workers, among them, plaintiffs or persons closely related to plaintiffs. Damages for the alleged human-rights violations were sought from Daimler under the laws of the United States, California, and Argentina. Jurisdiction over the lawsuit was predicated on the California contacts of Mercedes-Benz USA, LLC (MBUSA), a subsidiary of Daimler incorporated in Delaware with its principal place of business in New Jersey. MBUSA distributes Daimler-manufactured vehicles to independent dealerships throughout the United States, including California.

The question presented is whether the Due Process Clause of the Fourteenth Amendment precludes the District Court from exercising jurisdiction over Daimler in this case, given the absence of any California connection to the atrocities, perpetrators, or victims described in the complaint. Plaintiffs invoked the court's general or all-purpose jurisdiction. California, they urge, is a place where Daimler may be sued on any and all claims against it, wherever in the world the claims may arise. For example, as plaintiffs' counsel affirmed, under the proffered jurisdictional theory, if a Daimler-manufactured vehicle overturned in Poland, injuring a Polish driver and passenger, the injured parties could maintain a design defect suit in California. Exercises of personal jurisdiction so exorbitant, we hold, are barred by due process constraints on the assertion of adjudicatory authority.

In *Goodyear Dunlop Tires Operations, S.A. v. Brown*,we addressed the distinction between general or all-purpose jurisdiction, and specific or conduct-linked jurisdiction. As to the former, we held that a court may assert jurisdiction over a foreign corporation "to hear any and all claims against it" only when the corporation's

affiliations with the State in which suit is brought are so constant and pervasive "as to render it essentially at home in the forum State." Instructed by *Goodyear*, we conclude Daimler is not "at home" in California, and cannot be sued there for injuries plaintiffs attribute to MB Argentina's conduct in Argentina.

I

In 2004, plaintiffs (respondents here) filed suit in the United States District Court for the Northern District of California, alleging that MB Argentina collaborated with Argentinian state security forces to kidnap, detain, torture, and kill plaintiffs and their relatives during the military dictatorship in place there from 1976 through 1983, a period known as Argentina's "Dirty War." Based on those allegations, plaintiffs asserted claims under the Alien Tort Statute, 28 U.S.C. § 1350, and the Torture Victim Protection Act of 1991, as well as claims for wrongful death and intentional infliction of emotional distress under the laws of California and Argentina. The incidents recounted in the complaint center on MB Argentina's plant in Gonzalez Catan, Argentina; no part of MB Argentina's alleged collaboration with Argentinian authorities took place in California or anywhere else in the United States.

The Alien Tort Statute gives federal district courts subject matter jurisdiction over suits "by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." The Torture Victims Protection Act ('TVPA') amended the Alien Tort Statute to establish a civil cause of action against "An individual who, under actual or apparent authority, or color of law, of any foreign nation subjects an individual to torture or subjects an individual to extrajudicial killing". In Mohamad v. Palestinian Authority, 566 U.S. 449 (2012), the Supreme Court held that the TVPA authorized suits only against individuals, not organizations. In a later case, Jesner v. Arab Bank, PLC, 138 S.Ct. 1386 (2018), the Court likewise held that the Alien Tort Statute does not authorize suits against foreign corporations.

Plaintiffs' operative complaint names only one corporate defendant: Daimler, the petitioner here. Plaintiffs seek to hold Daimler vicariously liable for MB Argentina's alleged malfeasance. Daimler is a German *Aktiengesellschaft* (public stock company) that manufactures Mercedes-Benz vehicles in Germany and has its headquarters in Stuttgart. At times relevant to this case, MB Argentina was a subsidiary wholly owned by Daimler's predecessor in interest.

Daimler moved to dismiss the action for want of personal jurisdiction. Opposing the motion, plaintiffs submitted declarations and exhibits purporting to demonstrate the presence of Daimler itself in California. Alternatively, plaintiffs maintained that jurisdiction over Daimler could be founded on the California contacts of MBUSA, a distinct corporate entity that, according to plaintiffs, should be treated as Daimler's agent for jurisdictional purposes.

MBUSA, an indirect subsidiary of Daimler, is a Delaware limited liability corporation. MBUSA serves as Daimler's exclusive importer and distributor in the United States, purchasing Mercedes-Benz automobiles from Daimler in Germany, then importing those vehicles, and ultimately distributing them to independent dealerships located throughout the Nation. Although MBUSA's principal place of business is in New Jersey, MBUSA has multiple California-based facilities, including a regional office in Costa Mesa, a Vehicle Preparation Center in Carson, and a Classic Center in Irvine. According to the record developed below, MBUSA is the largest supplier of luxury vehicles to the California market. In particular, over 10% of all sales of new vehicles in the United States take place in California, and MBUSA's California sales account for 2.4% of Daimler's worldwide sales.

The relationship between Daimler and MBUSA is delineated in a General Distributor Agreement, which sets forth requirements for MBUSA's distribution of Mercedes-Benz vehicles in the United States. That agreement established MBUSA as an "independent contractor" that "buys and sells vehicles as an independent business for its own account." The agreement "does not make MBUSA a general or special agent, partner, joint venturer or employee of DAIMLERCHRYSLER or any Daimler-Chrysler Group Company"; MBUSA "has no authority to make binding obligations for or act on behalf of DAIMLERCHRYSLER or any DaimlerChrysler Group Company."

We granted certiorari to decide whether, consistent with the Due Process Clause of the Fourteenth Amendment, Daimler is amenable to suit in California courts for claims involving only foreign plaintiffs and conduct occurring entirely abroad.

II

Federal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons. Under California's long-arm statute, California state courts may exercise personal jurisdiction "on any basis not inconsistent with the Constitution of this state or of the United States." California's long-arm statute allows the exercise of personal jurisdiction to the full extent permissible under the U.S. Constitution. We therefore inquire whether the Ninth Circuit's holding comports with the limits imposed by federal due process.

III

In *Pennoyer v. Neff,* decided shortly after the enactment of the Fourteenth Amendment, the Court held that a tribunal's jurisdiction over persons reaches no farther than the geographic bounds of the forum. In time, however, that strict territorial approach yielded to a less rigid understanding, spurred by "changes in the technology of transportation and communication, and the tremendous growth of interstate business activity."

"The canonical opinion in this area remains *International Shoe,* in which we held that a State may authorize its courts to exercise personal jurisdiction over an out-of-state defendant if the defendant has 'certain minimum contacts with [the State] such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."'" Following *International Shoe,* "the relationship among the defendant, the forum, and the litigation, rather than the mutually exclusive sovereignty of the States on which the rules of *Pennoyer* rest, became the central concern of the inquiry into personal jurisdiction."

International Shoe's conception of "fair play and substantial justice" presaged the development of two categories of personal jurisdiction. The first category is represented by *International Shoe* itself, a case in which the in-state activities of the corporate defendant "had not only been continuous and systematic, but also gave rise to the liabilities sued on." *International Shoe* recognized, as well, that "the commission of some single or occasional acts of the corporate agent in a state" may sometimes be enough to subject the corporation to jurisdiction in that State's tribunals with respect to suits relating to that in-state activity. Adjudicatory authority of this order, in which the suit "arises out of or relates to the defendant's contacts with the forum," is today called "specific jurisdiction."

International Shoe distinguished between, on the one hand, exercises of specific jurisdiction, as just described, and on the other, situations where a foreign corporation's "continuous corporate operations within a state are so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." As we have since explained, "a court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Goodyear,* 131 S.Ct. at 2851.

Our post-*International Shoe* opinions on general jurisdiction are few. "[The Court's] 1952 decision in *Perkins v. Benguet Consol. Mining Co.* remains the textbook case of general jurisdiction appropriately exercised over a foreign corporation that has not consented to suit in the forum." The defendant in *Perkins,* Benguet, was a company incorporated under the laws of the Philippines, where it operated gold and silver mines. Benguet ceased its mining operations during the Japanese occupation of the Philippines in World War II; its president moved to Ohio, where he kept an office, maintained the company's files, and oversaw the company's activities. The plaintiff, an Ohio resident, sued Benguet on a claim that neither arose in Ohio nor related to the corporation's activities in that State. We held that the Ohio courts could exercise general jurisdiction over Benguet without offending due process. That was so, we later noted, because "Ohio was the corporation's principal, if temporary, place of business."

The next case on point, *Helicopteros,* arose from a helicopter crash in Peru. Four U.S. citizens perished in that accident; their survivors and representatives brought suit in Texas state court against the helicopter's owner and operator, a Colombian corporation. That company's contacts with Texas were confined to "sending its chief executive officer to Houston for a contract-negotiation session; accepting into its New York bank account checks drawn on a Houston bank; purchasing helicopters, equipment, and training services from [a Texas-based helicopter company] for substantial sums; and sending personnel to Texas for training." 466 U.S. at 416. Notably, those contacts bore no apparent relationship to the accident that gave rise to the suit. We held that the company's Texas connections

did not resemble the "continuous and systematic general business contacts found to exist in *Perkins*." "Mere purchases, even if occurring at regular intervals," we clarified, "are not enough to warrant a State's assertion of *in personam* jurisdiction over a nonresident corporation in a cause of action not related to those purchase transactions."

Most recently, in *Goodyear,* we answered the question: "Are foreign subsidiaries of a United States parent corporation amenable to suit in state court on claims unrelated to any activity of the subsidiaries in the forum State?" 131 S.Ct. at 2850. That case arose from a bus accident outside Paris that killed two boys from North Carolina. The boys' parents brought a wrongful-death suit in North Carolina state court alleging that the bus's tire was defectively manufactured. The complaint named as defendants not only The Goodyear Tire and Rubber Company (Goodyear), an Ohio corporation, but also Goodyear's Turkish, French, and Luxembourgian subsidiaries. Those foreign subsidiaries, which manufactured tires for sale in Europe and Asia, lacked any affiliation with North Carolina. A small percentage of tires manufactured by the foreign subsidiaries were distributed in North Carolina, however, and on that ground, the North Carolina Court of Appeals held the subsidiaries amenable to the general jurisdiction of North Carolina courts.

We reversed, observing that the North Carolina court's analysis "elided the essential difference between case-specific and all-purpose (general) jurisdiction." Although the placement of a product into the stream of commerce "may bolster an affiliation germane to *specific* jurisdiction," we explained, such contacts "do not warrant a determination that, based on those ties, the forum has *general* jurisdiction over a defendant." As *International Shoe* itself teaches, a corporation's "continuous activity of some sorts within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity." 326 U.S. at 318. Because Goodyear's foreign subsidiaries were "in no sense at home in North Carolina," we held, those subsidiaries could not be required to submit to the general jurisdiction of that State's courts.

As is evident from *Perkins*, *Helicopteros,* and *Goodyear,* general and specific jurisdiction have followed markedly different trajectories post-*International Shoe.* Specific jurisdiction has been cut loose from *Pennoyer's* sway, but we have declined to stretch general jurisdiction beyond limits traditionally recognized. As this Court has increasingly trained on the "relationship among the defendant, the forum, and the litigation," *i.e.,* specific jurisdiction, general jurisdiction has come to occupy a less dominant place in the contemporary scheme.

IV

With this background, we turn directly to the question whether Daimler's affiliations with California are sufficient to subject it to the general (all-purpose) personal jurisdiction of that State's courts. In the proceedings below, the parties agreed on, or failed to contest, certain points we now take as given. Plaintiffs have never attempted to fit this case into the *specific* jurisdiction category. Nor did plaintiffs challenge on appeal the District Court's holding that Daimler's own contacts with California were, by themselves, too sporadic to justify the exercise of general jurisdiction. While plaintiffs ultimately persuaded the Ninth Circuit to impute MBUSA's California contacts to Daimler on an agency theory, at no point have they maintained that MBUSA is an alter ego of Daimler.

Daimler, on the other hand, failed to object below to plaintiffs' assertion that the California courts could exercise all-purpose jurisdiction over MBUSA. We will assume then, for purposes of this decision only, that MBUSA qualifies as at home in California.

A

This Court has not yet addressed whether a foreign corporation may be subjected to a court's general jurisdiction based on the contacts of its in-state subsidiary.

B

Even if we were to assume that MBUSA is at home in California, and further to assume MBUSA's contacts are imputable to Daimler, there would still be no basis to subject Daimler to general jurisdiction in California, for Daimler's slim contacts with the State hardly render it at home there.

Goodyear made clear that only a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there. "For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home." With respect to a corporation, the place of incorporation and principal place of business are "paradigm bases for general jurisdiction." Those affiliations have the virtue of being unique—that is, each ordinarily indicates only one place—as well as easily ascertainable. These bases afford plaintiffs recourse to at least one clear and certain forum in which a corporate defendant may be sued on any and all claims.

Goodyear did not hold that a corporation may be subject to general jurisdiction *only* in a forum where it is incorporated or has its principal place of business; it simply typed those places paradigm all-purpose forums. Plaintiffs would have us look beyond the exemplar bases *Goodyear* identified, and approve the exercise of general jurisdiction in every State in which a corporation "engages in a substantial, continuous, and systematic course of business." That formulation, we hold, is unacceptably grasping.

As noted, the words "continuous and systematic" were used in *International Shoe* to describe instances in which the exercise of *specific* jurisdiction would be appropriate. Turning to all-purpose jurisdiction, in contrast, *International Shoe* speaks of "instances in which the continuous corporate operations within a state are so substantial and of such a nature as to justify suit *on causes of action arising from dealings entirely distinct from those activities.*" Accordingly, the inquiry under *Goodyear* is not whether a foreign corporation's in-forum contacts can be said to be in some sense "continuous and systematic," it is whether that corporation's "affiliations with the State are so 'continuous and systematic' as to render it essentially at home in the forum State."

Here, neither Daimler nor MBUSA is incorporated in California, nor does either entity have its principal place of business there. If Daimler's California activities sufficed to allow adjudication of this Argentina-rooted case in California, the same global reach would presumably be available in every other State in which MBUSA's sales are sizable. 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 where that conduct will and will not render them liable to suit."

It was therefore error for the Ninth Circuit to conclude that Daimler, even with MBUSA's contacts attributed to it, was at home in California, and hence subject to suit there on claims by foreign plaintiffs having nothing to do with anything that occurred or had its principal impact in California.

C

Finally, the transnational context of this dispute bears attention. The Court of Appeals emphasized, as supportive of the exercise of general jurisdiction, plaintiffs' assertion of claims under the Alien Tort Statute (ATS) and the Torture Victim Protection Act of 1991 (TVPA). Recent decisions of this Court, however, have rendered plaintiffs' ATS and TVPA claims infirm.

The Ninth Circuit, moreover, paid little heed to the risks to international comity its expansive view of general jurisdiction posed. Other nations do not share the uninhibited approach to personal jurisdiction advanced by the Court of Appeals in this case. Considerations of international rapport thus reinforce our determination that subjecting Daimler to the general jurisdiction of courts in California would not accord with the "fair play and substantial justice" due process demands.

1.4 Consent

Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585 (1991)

JUSTICE BLACKMUN delivered the opinion of the Court.

In this admiralty case we primarily consider whether the United States Court of Appeals for the Ninth Circuit correctly refused to enforce a forum-selection clause contained in tickets issued by petitioner Carnival Cruise Lines, Inc., to respondents Eulala and Russel Shute.

I

The Shutes, through an Arlington, Wash., travel agent, purchased passage for a 7-day cruise on petitioner's ship, the *Tropicale.* Respondents paid the fare to the agent who forwarded the payment to petitioner's headquarters in Miami, Fla. Petitioner then prepared the tickets and sent them to respondents in the State of Washington. The face of each ticket, at its left-hand lower corner, contained this admonition:

> **SUBJECT TO CONDITIONS OF CONTRACT ON LAST PAGES IMPORTANT! PLEASE READ CONTRACT ON LAST PAGES 1, 2, 3**

The following appeared on "contract page 1" of each ticket:

> *TERMS AND CONDITIONS OF PASSAGE CONTRACT TICKET*
>
> 3. (a) The acceptance of this ticket by the person or persons named hereon as passengers shall be deemed to be an acceptance and agreement by each of them of all of the terms and conditions of this Passage Contract Ticket.
>
> 8. It is agreed by and between the passenger and the Carrier that all disputes and matters whatsoever arising under, in connection with or incident to this Contract shall be litigated, if at all, in and before a Court located in the State of Florida, U. S. A., to the exclusion of the Courts of any other state or country."

The last quoted paragraph is the forum-selection clause at issue.

II

Respondents boarded the *Tropicale* in Los Angeles, Cal. The ship sailed to Puerto Vallarta, Mexico, and then returned to Los Angeles. While the ship was in international waters off the Mexican coast, respondent Eulala Shute was injured when she slipped on a deck mat during a guided tour of the ship's galley. Respondents filed suit against petitioner in the United States District Court for the Western District of Washington, claiming that Mrs. Shute's injuries had been caused by the negligence of Carnival Cruise Lines and its employees.

Petitioner moved for summary judgment, contending that the forum clause in respondents' tickets required the Shutes to bring their suit against petitioner in a court in the State of Florida. Petitioner contended, alternatively, that the District Court lacked personal jurisdiction over petitioner because petitioner's contacts with the State of Washington were insubstantial. The District Court granted the motion, holding that petitioner's contacts with Washington were constitutionally insufficient to support the exercise of personal jurisdiction.

The Court of Appeals reversed. Reasoning that "but for" petitioner's solicitation of business in Washington, respondents would not have taken the cruise and Mrs. Shute would not have been injured, the court concluded that petitioner had sufficient contacts with Washington to justify the District Court's exercise of personal jurisdiction.

Turning to the forum-selection clause, the Court of Appeals acknowledged that a court concerned with the enforceability of such a clause must begin its analysis with *The Bremen v. Zapata Off-Shore Co.,* 407 U. S. 1 (1972), where this Court held that forum-selection clauses, although not "historically. . . favored," are "prima facie valid." The appellate court concluded that the forum clause should not be enforced because it "was not freely bargained for." As an "independent justification" for refusing to enforce the clause, the Court of Appeals noted that there was evidence in the record to indicate that "the Shutes are physically and financially incapable of pursuing this litigation in Florida" and that the enforcement of the clause would operate to deprive them of their day in court and thereby contravene this Court's holding in *The Bremen.*

We granted certiorari to address the question whether the Court of Appeals was correct in holding that the District Court should hear respondents' tort claim against petitioner. Because we find the forum-selection clause to be dispositive of this question, we need not consider petitioner's constitutional argument as to personal jurisdiction.

III

We begin by noting the boundaries of our inquiry. First, this is a case in admiralty, and federal law governs the enforceability of the forum-selection clause we scrutinize. Second, we do not address the question whether respondents had sufficient notice of the forum clause before entering the contract for passage. Respondents essentially have conceded that they had notice of the forum-selection provision ("The respondents do not contest the incorporation of the provisions nor that the forum selection clause was reasonably communicated to the respondents, as much as three pages of fine print can be communicated"). Additionally, the Court of Appeals evaluated the enforceability of the forum clause under the assumption, although "doubtful," that respondents could be deemed to have had knowledge of the clause.

"Admiralty law (or maritime law) is the body of law that governs navigation and shipping. It includes substantive and procedural law." Wex Legal Dictionary.

Within this context, respondents urge that the forum clause should not be enforced because, contrary to this Court's teachings in *The Bremen,* the clause was not the product of negotiation, and enforcement effectively would deprive respondents of their day in court.

IV

A

Both petitioner and respondents argue vigorously that the Court's opinion in *The Bremen* governs this case, and each side purports to find ample support for its position in that opinion's broad-ranging language. This seeming paradox derives in large part from key factual differences between this case and *The Bremen,* differences that preclude an automatic and simple application of *The Bremen*'s general principles to the facts here.

In *The Bremen,* this Court addressed the enforceability of a forum-selection clause in a contract between two business corporations. An American corporation, Zapata, made a contract with Unterweser, a German corporation, for the towage of Zapata's oceangoing drilling rig from Louisiana to a point in the Adriatic Sea off the coast of Italy. The agreement provided that any dispute arising under the contract was to be resolved in the London Court of Justice. After a storm in the Gulf of Mexico seriously damaged the rig, Zapata ordered Unterweser's ship to tow the rig to Tampa, Fla., the nearest point of refuge. Thereafter, Zapata sued Unterweser in admiralty in federal court at Tampa. Citing the forum clause, Unterweser moved to dismiss. The District Court denied Unterweser's motion, and the Court of Appeals for the Fifth Circuit, sitting en banc on rehearing, and by a sharply divided vote, affirmed.

This Court vacated and remanded, stating that, in general, "a freely negotiated private international agreement, unaffected by fraud, undue influence, or overweening bargaining power, such as that involved here, should be given full effect." The Court further generalized that "in the light of present-day commercial realities and expanding international trade we conclude that the forum clause should control absent a strong showing that it should be set aside. The Court did not define precisely the circumstances that would make it unreasonable for a court to enforce a forum clause. Instead, the Court discussed a number of factors that made it reasonable to enforce the clause at issue in *The Bremen* and that, presumably, would be pertinent in any determination whether to enforce a similar clause.

In this respect, the Court noted that there was "strong evidence that the forum clause was a vital part of the agreement, and that it would be unrealistic to think that the parties did not conduct their negotiations, including fixing the monetary terms, with the consequences of the forum clause figuring prominently in their calculations." Further, the Court observed that it was not "dealing with an agreement between two Americans to resolve their essentially local disputes in a remote alien forum," and that in such a case, "the serious inconvenience of the contractual forum to one or both of the parties might carry greater weight in determining the reasonableness of the forum clause." The Court stated that even where the forum clause establishes a remote forum for resolution of conflicts, "the party claiming unfairness should bear a heavy burden of proof."

In applying *The Bremen,* the Court of Appeals in the present litigation took note of the foregoing "reasonableness" factors and rather automatically decided that the forum-selection clause was unenforceable because, unlike the parties in *The Bremen,* respondents are not business persons and did not negotiate the terms of the clause with petitioner. Alternatively, the Court of Appeals ruled that the clause should not be enforced because enforcement effectively would deprive respondents of an opportunity to litigate their claim against petitioner.

The Bremen concerned a "far from routine transaction between companies of two different nations contemplating the tow of an extremely costly piece of equipment from Louisiana across the Gulf of Mexico and the Atlantic Ocean, through the Mediterranean Sea to its final destination in the Adriatic Sea." These facts suggest that, even apart from the evidence of negotiation regarding the forum clause, it was entirely reasonable for the Court in *The Bremen* to have expected Unterweser and Zapata to have negotiated with care in selecting a forum for the resolution of disputes arising from their special towing contract.

In contrast, respondents' passage contract was purely routine and doubtless nearly identical to every commercial passage contract issued by petitioner and most other cruise lines. In this context, it would be entirely unreasonable for us to assume that respondents—or any other cruise passenger—would negotiate with petitioner the terms of a forum-selection clause in an ordinary commercial cruise

ticket. Common sense dictates that a ticket of this kind will be a form contract the terms of which are not subject to negotiation, and that an individual purchasing the ticket will not have bargaining parity with the cruise line. But by ignoring the crucial differences in the business contexts in which the respective contracts were executed, the Court of Appeals' analysis seems to us to have distorted somewhat this Court's holding in *The Bremen*.

In evaluating the reasonableness of the forum clause at issue in this case, we must refine the analysis of *The Bremen* to account for the realities of form passage contracts. As an initial matter, we do not adopt the Court of Appeals' determination that a nonnegotiated forum-selection clause in a form ticket contract is never enforceable simply because it is not the subject of bargaining. Including a reasonable forum clause in a form contract of this kind well may be permissible for several reasons: First, a cruise line has a special interest in limiting the fora in which it potentially could be subject to suit. Because a cruise ship typically carries passengers from many locales, it is not unlikely that a mishap on a cruise could subject the cruise line to litigation in several different fora. Additionally, a clause establishing *ex ante* the forum for dispute resolution has the salutary effect of dispelling any confusion about where suits arising from the contract must be brought and defended, sparing litigants the time and expense of pretrial motions to determine the correct forum and conserving judicial resources that otherwise would be devoted to deciding those motions. Finally, it stands to reason that passengers who purchase tickets containing a forum clause like that at issue in this case benefit in the form of reduced fares reflecting the savings that the cruise line enjoys by limiting the fora in which it may be sued.

Does this really "stand to reason"? What is the basis for the Court's assertion? Assuming the assertion is correct, why does it matter?

We also do not accept the Court of Appeals' "independent justification" for its conclusion that *The Bremen* dictates that the clause should not be enforced because "there is evidence in the record to indicate that the Shutes are physically and financially incapable of pursuing this litigation in Florida." We do not defer to the Court of Appeals' findings of fact. In dismissing the case for lack of personal jurisdiction over petitioner, the District Court made no finding regarding the physical and financial impediments to the Shutes' pursuing their case in Florida. The Court of Appeals' conclusory reference to the record provides no basis for this Court to validate the finding of inconvenience. Furthermore, the Court of Appeals did not place in proper context this Court's statement in *The Bremen* that "the serious inconvenience of the contractual forum to one or both of the parties might carry greater weight in determining the reasonableness of the forum clause." The Court made this statement in evaluating a hypothetical "agreement between two Americans to resolve their essentially local disputes in a remote alien forum." In the present case, Florida is not a "remote alien forum," nor—given the fact that Mrs. Shute's accident occurred off the coast of Mexico— is this dispute an essentially local one inherently more suited to resolution in the State of Washington

than in Florida. In light of these distinctions, and because respondents do not claim lack of notice of the forum clause, we conclude that they have not satisfied the "heavy burden of proof" required to set aside the clause on grounds of inconvenience.

It bears emphasis that forum-selection clauses contained in form passage contracts are subject to judicial scrutiny for fundamental fairness. In this case, there is no indication that petitioner set Florida as the forum in which disputes were to be resolved as a means of discouraging cruise passengers from pursuing legitimate claims. Any suggestion of such a bad-faith motive is belied by two facts: Petitioner has its principal place of business in Florida, and many of its cruises depart from and return to Florida ports. Similarly, there is no evidence that petitioner obtained respondents' accession to the forum clause by fraud or overreaching. Finally, respondents have conceded that they were given notice of the forum provision and, therefore, presumably retained the option of rejecting the contract with impunity. In the case before us, therefore, we conclude that the Court of Appeals erred in refusing to enforce the forum-selection clause.

V

The judgment of the Court of Appeals is reversed.

JUSTICE STEVENS, with whom JUSTICE MARSHALL joins, dissenting.

The Court prefaces its legal analysis with a factual statement that implies that a purchaser of a Carnival Cruise Lines passenger ticket is fully and fairly notified about the existence of the choice of forum clause in the fine print on the back of the ticket. Even if this implication were accurate, I would disagree with the Court's analysis. But, given the Court's preface, I begin my dissent by noting that only the most meticulous passenger is likely to become aware of the forum-selection provision. I have therefore appended to this opinion a facsimile of the relevant text, using the type size that actually appears in the ticket itself. A careful reader will find the forum-selection clause in the 8th of the 25 numbered paragraphs.

Of course, many passengers, like the respondents in this case, will not have an opportunity to read paragraph 8 until they have actually purchased their tickets. By this point, the passengers will already have accepted the condition set forth in paragraph 16(a), which provides that "the Carrier shall not be liable to make any refund to passengers in respect of . . . tickets wholly or partly not used by a passenger." Not knowing whether or not that provision is legally enforceable, I assume that the average passenger would accept the risk of having to file suit in Florida in

the event of an injury, rather than canceling—without a refund— a planned vacation at the last minute. The fact that the cruise line can reduce its litigation costs, and therefore its liability insurance premiums, by forcing this choice on its passengers does not, in my opinion, suffice to render the provision reasonable.

Even if passengers received prominent notice of the forum-selection clause before they committed the cost of the cruise, I would remain persuaded that the clause was unenforceable under traditional principles of federal admiralty law and is "null and void" under the terms of Limitation of Vessel Owner's Liability Act, which was enacted in 1936 to invalidate expressly stipulations limiting shipowners' liability for negligence.

Exculpatory clauses in passenger tickets have been around for a long time. These clauses are typically the product of disparate bargaining power between the carrier and the passenger, and they undermine the strong public interest in deterring negligent conduct. For these reasons, courts long before the turn of the century consistently held such clauses unenforceable under federal admiralty law. Thus, in a case involving a ticket provision purporting to limit the shipowner's liability for the negligent handling of baggage, this Court wrote:

> It is settled in the courts of the United States that exemptions limiting carriers from responsibility for the negligence of themselves or their servants are both unjust and unreasonable, and will be deemed as wanting in the element of voluntary assent; and, besides, that such conditions are in conflict with public policy. This doctrine was announced so long ago, and has been so frequently reiterated, that it is elementary.

Clauses limiting a carrier's liability or weakening the passenger's right to recover for the negligence of the carrier's employees come in a variety of forms. Complete exemptions from liability for negligence or limitations on the amount of the potential damage recovery, requirements that notice of claims be filed within an unreasonably short period of time, provisions mandating a choice of law that is favorable to the defendant in negligence cases, and forum-selection clauses are all similarly designed to put a thumb on the carrier's side of the scale of justice.

Forum-selection clauses in passenger tickets involve the intersection of two strands of traditional contract law that qualify the general rule that courts will enforce the terms of a contract as written. Pursuant to the first strand, courts traditionally have reviewed with heightened scrutiny the terms of contracts of adhesion, form contracts offered on a take-or-leave basis by a party with stronger bargaining power to a party with weaker power. Some commentators have questioned whether contracts of adhesion can justifiably be enforced at all under traditional contract theory because the adhering party generally enters into them without manifesting knowing and voluntary consent to all their terms.

The common law, recognizing that standardized form contracts account for a significant portion of all commercial agreements, has taken a less extreme position and instead subjects terms in contracts of adhesion to scrutiny for reasonableness. Judge J. Skelly Wright set out the state of the law succinctly in *Williams v. Walker-Thomas Furniture Co.,* 350 F. 2d 445, 449-450 (1965):

> Ordinarily, one who signs an agreement without full knowledge of its terms might be held to assume the risk that he has entered a one-sided bargain. But when a party of little bargaining power, and hence little real choice, signs a commercially unreasonable contract with little or no knowledge of its terms, it is hardly likely that his consent, or even an objective manifestation of his consent, was ever given to all of the terms. In such a case the usual rule that the terms of the agreement are not to be questioned should be abandoned and the court should consider whether the terms of the contract are so unfair that enforcement should be withheld.

The second doctrinal principle implicated by forum-selection clauses is the traditional rule that "contractual provisions, which seek to limit the place or court in which an action may . . . be brought, are invalid as contrary to public policy." Although adherence to this general rule has declined in recent years, particularly following our decision in *The Bremen v. Zapata Off-Shore Co.,* the prevailing rule is still that forum-selection clauses are not enforceable if they were not freely bargained for, create additional expense for one party, or deny one party a remedy. A forum-selection clause in a standardized passenger ticket would clearly have been unenforceable under the common law before our decision in *The Bremen,* and, in my opinion, remains unenforceable under the prevailing rule today.

The Bremen, which the Court effectively treats as controlling this case, had nothing to say about stipulations printed on the back of passenger tickets. That case involved the enforceability of a forum-selection clause in a freely negotiated international agreement between two large corporations providing for the towage of a vessel from the Gulf of Mexico to the Adriatic Sea. The Court recognized that such towage agreements had generally been held unenforceable in American but held that the doctrine of those cases did not extend to commercial arrangements between parties with equal bargaining power.

Mallory v. Norfolk Southern Railway Co., No. 21-1168 (U.S. June 27, 2023)

Justice Gorsuch announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I and III–B, and an opinion with respect to Parts II, III–A, and IV, in which Justice Thomas, Justice Sotomayor, and Justice Jackson join.

Imagine a lawsuit based on recent events. A few months ago, a Norfolk Southern train derailed in Ohio near the Pennsylvania border. Its cargo? Hazardous chemicals. Some poured into a nearby creek; some burst into flames. In the aftermath, many residents reported unusual symptoms. Suppose an Ohio resident sued the train conductor seeking compensation for an illness attributed to the accident. Suppose, too, that the plaintiff served his complaint on the conductor across the border in Pennsylvania. Everyone before us agrees a Pennsylvania court could hear that lawsuit consistent with the Due Process Clause of the Fourteenth Amendment. The court could do so even if the conductor was a Virginia resident who just happened to be passing through Pennsylvania when the process server caught up with him.

Now, change the hypothetical slightly. Imagine the same Ohio resident brought the same suit in the same Pennsylvania state court, but this time against Norfolk Southern. Assume, too, the company has filed paperwork consenting to appear in Pennsylvania courts as a condition of registering to do business in the Commonwealth. Could a Pennsylvania court hear that case too? You might think so. But today, Norfolk Southern argues that the Due Process Clause entitles it to a more favorable rule, one shielding it from suits even its employees must answer. We reject the company's argument. Nothing in the Due Process Clause requires such an incongruous result.

I

Robert Mallory worked for Norfolk Southern as a freight-car mechanic for nearly 20 years, first in Ohio, then in Virginia. During his time with the company, Mr. Mallory contends, he was responsible for spraying boxcar pipes with asbestos and handling chemicals in the railroad's paint shop. He also demolished car interiors that, he alleges, contained carcinogens.

After Mr. Mallory left the company, he moved to Pennsylvania for a period before returning to Virginia. Along the way, he was diagnosed with cancer. Attributing his illness to his work for Norfolk Southern, Mr. Mallory hired Pennsylvania lawyers and sued his former employer in Pennsylvania state court under the Federal Employers' Liability Act. That law creates a workers' compensation scheme permitting railroad employees to recover damages for their employers' negligence.

Norfolk Southern resisted Mr. Mallory's suit on constitutional grounds. By the time he filed his complaint, the company observed, Mr. Mallory resided in Virginia. His complaint alleged that he was exposed to carcinogens in Ohio and Virginia. Meanwhile, the company itself was incorporated in Virginia and had its headquarters there too. On these facts, Norfolk Southern submitted, any effort by a Pennsylvania court to exercise personal jurisdiction over it would offend the Due Process Clause of the Fourteenth Amendment.

Mr. Mallory saw things differently. He noted that Norfolk Southern manages over 2,000 miles of track, operates 11 rail yards, and runs 3 locomotive repair shops in Pennsylvania. He also pointed out that Norfolk Southern has registered to do business in Pennsylvania in light of its "'regular, systematic, and extensive'" operations there. That is significant, Mr. Mallory argued, because Pennsylvania requires out-of-state companies that register to do business in the Commonwealth to agree to appear in its courts on "any cause of action" against them. By complying with this statutory scheme, Mr. Mallory contended, Norfolk Southern had consented to suit in Pennsylvania on claims just like his.

Ultimately, the Pennsylvania Supreme Court sided with Norfolk Southern. Yes, Mr. Mallory correctly read Pennsylvania law. It requires an out-of-state firm to answer any suits against it in exchange for status as a registered foreign corporation and the benefits that entails. But, no, the court held, Mr. Mallory could not invoke that law because it violates the Due Process Clause. In reaching this conclusion, the Pennsylvania Supreme Court acknowledged its disagreement with the Georgia Supreme Court, which had recently rejected a similar due process argument from a corporate defendant.

In light of this split of authority, we agreed to hear this case and decide whether the Due Process Clause of the Fourteenth Amendment prohibits a State from requiring an out-of-state corporation to consent to personal jurisdiction to do business there.

II

The question before us is not a new one. In truth, it is a very old question—and one this Court resolved in __Pennsylvania Fire_ Ins. Co. of Philadelphia v. Gold Issue Mining & Milling Co._, 243 U. S. 93 (1917). There, the Court unanimously held that laws like Pennsylvania's comport with the Due Process Clause. Some background helps explain why the Court reached the result it did.

Both at the time of the founding and the Fourteenth Amendment's adoption, the Anglo-American legal tradition recognized that a tribunal's competence was generally constrained only by the "territorial limits" of the sovereign that created it. That principle applied to all kinds of actions, but cashed out differently based on the object of the court's attention. So, for example, an action *in rem* that claimed an interest in immovable property was usually treated as a "local" action that could be brought only in the jurisdiction where the property was located. Meanwhile, an *in personam* suit against an individual "for injuries that might have happened any where" was generally considered a "transitory" action that followed the individual. All of which meant that a suit could be maintained by anyone on any claim in any place the defendant could be found.

American courts routinely followed these rules. Chief Justice Marshall, for one, was careful to distinguish between local and transitory actions in a case brought by a Virginia plaintiff against a Kentucky defendant based on a fraud perpetrated in Ohio. Because the action was a transitory one that followed the individual, he held, the suit could be maintained "wherever the defendant may be found."

This rule governing transitory actions still applies to natural persons today. Some call it "tag" jurisdiction. And our leading case applying the rule is not so old. See *Burnham v. Superior Court of Cal., County of Marin*, 495 U. S. 604 (1990). The case began with Dennis Burnham's business trip to California. During his short visit, Mr. Burnham's estranged wife served him with a summons to appear in California state court for divorce proceedings. This Court unanimously approved the state court's exercise of personal jurisdiction over Mr. Burnham as consistent with the Due Process Clause—and did so even though the Burnhams had spent nearly all their married life in New Jersey and Mr. Burnham still resided there.

As the use of the corporate form proliferated in the 19th century, the question arose how to adapt the traditional rule about transitory actions for individuals to artificial persons created by law. Unsurprisingly, corporations did not relish the prospect of being haled into court for any claim anywhere they conducted business. "No one, after all, has ever liked greeting the process server." Corporations chartered in one State sought the right to send their sales agents and products freely into other States. At the same time, when confronted with lawsuits in those other States, some firms sought to hide behind their foreign character and deny their presence to defeat the court's jurisdiction.

Lawmakers across the country soon responded to these stratagems. Relevant here, both before and after the Fourteenth Amendment's ratification, they adopted statutes requiring out-of-state corporations to consent to in-state suits in exchange for the rights to exploit the local market and to receive the full range of benefits enjoyed by in-state corporations. These statutes varied. In some States, out-of-state corporate defendants were required to agree to answer suits brought by in-state plaintiffs. In other States, corporations were required to consent to suit if the plaintiff's cause of action arose within the State, even if the plaintiff happened to reside elsewhere. Still other States (and the federal government) omitted both of these limitations. They required all out-of-state corporations that registered to do business in the forum to agree to defend themselves there against any manner of suit. Yet another group of States applied this all-purpose-jurisdiction rule to a subset of corporate defendants, like railroads and insurance companies. Mr. Mallory has collected an array of these statutes, enacted between 1835 and 1915, in his statutory appendix.

III

A

Unsurprisingly, some corporations challenged statutes like these on various grounds, due process included. And, ultimately, one of these disputes reached this Court in *Pennsylvania Fire*.

That case arose this way. *Pennsylvania Fire* was an insurance company incorporated under the laws of Pennsylvania. In 1909, the company executed a contract in Colorado to insure a smelter located near the town of Cripple Creek owned by the Gold Issue Mining & Milling Company, an Arizona corporation. Less than a year later, lightning struck and a fire destroyed the insured facility. When Gold Issue Mining sought to collect on its policy, *Pennsylvania Fire* refused to pay. So, Gold Issue Mining sued. But it did not sue where the contract was formed (Colorado), or in its home State (Arizona), or even in the insurer's home State (Pennsylvania). Instead, Gold Issue Mining brought its claim in a Missouri state court. *Pennsylvania Fire* objected to this choice of forum. It said the Due Process Clause spared it from having to answer in Missouri's courts a suit with no connection to the State.

The Missouri Supreme Court disagreed. It first observed that Missouri law required any out-of-state insurance company "desiring to transact any business" in the State to file paperwork agreeing to (1) appoint a state official to serve as the company's agent for service of process, and (2) accept service on that official as valid in any suit. For more than a decade, *Pennsylvania Fire* had complied with the law, as it had "desired to transact business" in Missouri "pursuant to the laws thereof." And Gold Issue Mining had served process on the appropriate state official, just as the law required.

As to the law's constitutionality, the Missouri Supreme Court carefully reviewed this Court's precedents and found they "clearly" supported "sustaining the proceeding." The Missouri Supreme Court explained that its decision was also supported by "the origin, growth, and history of transitory actions in England, and their importation, adoption, and expansion" in America. It stressed, too, that the law had long permitted suits against individuals in any jurisdiction where they could be found, no matter where the underlying cause of action happened to arise. What sense would it make to treat a fictitious corporate person differently? For all these reasons, the court concluded, *Pennsylvania Fire* "had due process of law, regardless of the place, state or nation where the cause of action arose."

Dissatisfied with this answer, *Pennsylvania Fire* turned here. Writing for a unanimous Court, Justice Holmes had little trouble dispatching the company's due process argument. Under this Court's precedents, there was "no doubt" *Pennsylvania Fire* could be sued in Missouri by an out-of-state plaintiff on an out-of-state contract because it had agreed to accept service of process in Missouri on any suit as a condition of doing business there. Indeed, the Court thought the matter so settled by existing law that the case "hardly" presented an "open" question. The Court acknowledged that the outcome might have been different if the corporation had never appointed an agent for service of process in Missouri, given this Court's earlier decision in *Old Wayne Mut. Life Assn. of Indianapolis v. McDonough*. But the Court thought that Old Wayne had "left untouched" the principle that due process allows a corporation to be sued on any claim in a State where it has appointed an agent to receive whatever suits may come. The Court found it unnecessary to say more because the company's objections had been resolved "at length in the judgment of the court below."

That assessment was understandable. Not only had the Missouri Supreme Court issued a thoughtful opinion. Not only did a similar rule apply to transitory actions against individuals. Other leading judges, including Learned Hand and Benjamin Cardozo, had reached similar conclusions in similar cases in the years leading up to *Pennsylvania Fire*. In the years following *Pennsylvania Fire*, too, this Court reaffirmed its holding as often as the issue arose.

B

Pennsylvania Fire controls this case. Much like the Missouri law at issue there, the Pennsylvania law at issue here provides that an out-of-state corporation "may not do business in this Commonwealth until it registers with" the Department of State. As part of the registration process, a corporation must identify an "office" it will "continuously maintain" in the Commonwealth. Upon completing these requirements, the corporation "shall enjoy the same rights and privileges as a domestic entity and shall be subject to the same liabilities, restrictions, duties and

penalties imposed on domestic entities." Among other things, Pennsylvania law is explicit that "qualification as a foreign corporation" shall permit state courts to "exercise general personal jurisdiction" over a registered foreign corporation, just as they can over domestic corporations.

Norfolk Southern has complied with this law for many years. In 1998, the company registered to do business in Pennsylvania. Acting through its Corporate Secretary as a "duly authorized officer," the company completed an "Application for Certificate of Authority" from the Commonwealth "in compliance with" state law. As part of that process, the company named a "Commercial Registered Office Provider" in Philadelphia County, agreeing that this was where it "shall be deemed located." The Secretary of the Commonwealth approved the application, conferring on Norfolk Southern both the benefits and burdens shared by domestic corporations—including amenability to suit in state court on any claim. Since 1998, Norfolk Southern has regularly updated its information on file with the Secretary. In 2009, for example, the company advised that it had changed its Registered Office Provider and would now be deemed located in Dauphin County. All told, then, Norfolk Southern has agreed to be found in Pennsylvania and answer any suit there for more than 20 years.

Pennsylvania Fire held that suits premised on these grounds do not deny a defendant due process of law. Even Norfolk Southern does not seriously dispute that much. It concedes that it registered to do business in Pennsylvania, that it established an office there to receive service of process, and that in doing so it understood it would be amenable to suit on any claim. Of course, Mr. Mallory no longer lives in Pennsylvania and his cause of action did not accrue there. But none of that makes any more difference than the fact that Gold Issue Mining was not from Missouri (but from Arizona) and its claim did not arise there (but in Colorado). To decide this case, we need not speculate whether any other statutory scheme and set of facts would suffice to establish consent to suit. It is enough to acknowledge that the state law and facts before us fall squarely within *Pennsylvania Fire*'s rule.

In the proceedings below, the Pennsylvania Supreme Court seemed to recognize that *Pennsylvania Fire* dictated an answer in Mr. Mallory's favor. Still, it ruled for Norfolk Southern anyway. It did so because, in its view, intervening decisions from this Court had "implicitly overruled" *Pennsylvania Fire*. But in following that course, the Pennsylvania Supreme Court clearly erred. As this Court has explained: "If a precedent of this Court has direct application in a case," as *Pennsylvania Fire* does here, a lower court "should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions." This is true even if the lower court thinks the precedent is in tension with "some other line of decisions."

IV

Now before us, Norfolk Southern candidly asks us to do what the Pennsylvania Supreme Court could not—overrule *Pennsylvania Fire*. To smooth the way, Norfolk Southern suggests that this Court's decision in *International Shoe* Co. v. Washington_ has already done much of the hard work for us. That decision, the company insists, seriously undermined *Pennsylvania Fire*'s foundations. We disagree. The two precedents sit comfortably side by side.

A

Start with how Norfolk Southern sees things. On the company's telling, echoed by the dissent, *International Shoe* held that the Due Process Clause tolerates two (and only two) types of personal jurisdiction over a corporate defendant. First, "specific jurisdiction" permits suits that "'arise out of or relate to'" a corporate defendant's activities in the forum State. Second, "general jurisdiction" allows all kinds of suits against a corporation, but only in States where the corporation is incorporated or has its "principal place of business." After *International Shoe*, Norfolk Southern insists, no other bases for personal jurisdiction over a corporate defendant are permissible.

But if this account might seem a plausible summary of some of our *International Shoe* jurisprudence, it oversimplifies matters. Here is what really happened in *International Shoe*. The State of Washington sued a corporate defendant in state court for claims based on its in-state activities even though the defendant had not registered to do business in Washington and had not agreed to be present and accept service of process there. Despite this, the Court held that the suit against the company comported with due process. In doing so, the Court reasoned that the Fourteenth Amendment "permits" suits against a corporate defendant that has not agreed to be "present within the territorial jurisdiction of a court," so long as "the quality and nature of the company's activity" in the State "make it reasonable and just" to maintain suit there. Put simply, even without agreeing to be present, the out-of-state corporation was still amenable to suit in Washington consistent with "'fair play and substantial justice'"—terms the Court borrowed from Justice Holmes, the author of *Pennsylvania Fire*.

In reality, then, all *International Shoe* did was stake out an additional road to jurisdiction over out-of-state corporations. *Pennsylvania Fire* held that an out-of-state corporation that has consented to in-state suits in order to do business in the forum is susceptible to suit there. *International Shoe* held that an out-of-state corporation that has not consented to in-state suits may also be susceptible to claims in the forum State based on "the quality and nature of its activity" in the forum. Consistent with all this, our precedents applying *International Shoe* have long spoken of the decision as asking whether a state court may exercise jurisdic-

tion over a corporate defendant "'that has not consented to suit in the forum.'" Our precedents have recognized, too, that "express or implied consent" can continue to ground personal jurisdiction—and consent may be manifested in various ways by word or deed.

That Norfolk Southern overreads *International Shoe* finds confirmation in that decision's emphasis on "'fair play and substantial justice.'" Sometimes, *International Shoe* said, the nature of a company's in-state activities will support jurisdiction over a nonconsenting corporation when those activities "give rise to the liabilities sued on." Other times, it added, suits "on causes of action arising from dealings entirely distinct from [the company's] activities" in the forum State may be appropriate. These passages may have pointed the way to what (much) later cases would label "specific jurisdiction" over claims related to in-forum activities and "general jurisdiction" in places where a corporation is incorporated or headquartered. But the fact remains that *International Shoe* itself eschewed any "mechanical or quantitative" test and instead endorsed a flexible approach focused on "the fair and orderly administration of the laws which it was the purpose of the due process clause to insure." Unquestionably, too, *International Shoe* saw this flexible standard as expanding—not contracting—state court jurisdiction. As we later put the point: "The immediate effect of [*International Shoe*] was to increase the ability of the state courts to obtain personal jurisdiction over nonresident defendants." *Shaffer v. Heitner*, 433 U. S. 186, 204 (1977).

Given all this, it is no wonder that we have already turned aside arguments very much like Norfolk Southern's. In Burnham, the defendant contended that *International Shoe* implicitly overruled the traditional tag rule holding that individuals physically served in a State are subject to suit there for claims of any kind. This Court rejected that submission. Instead, as Justice Scalia explained, *International Shoe* simply provided a "novel" way to secure personal jurisdiction that did nothing to displace other "traditional ones." What held true there must hold true here.

B

Norfolk Southern offers several replies, but none persuades. The company begins by pointing to this Court's decision in Shaffer. There, as the company stresses, the Court indicated that "'prior decisions inconsistent with'" *International Shoe* " 'are overruled.'" True as that statement may be, however, it only poses the question whether *Pennsylvania Fire* is "inconsistent with" *International Shoe*. And, as we have seen, it is not. Instead, the latter decision expanded upon the traditional grounds of personal jurisdiction recognized by the former. This Court has previously cautioned litigants and lower courts against (mis)reading Shaffer as suggesting that *International Shoe* discarded every traditional method for securing personal jurisdiction that came before. We find ourselves repeating the admonition today.

Next, Norfolk Southern appeals to the spirit of our age. After *International Shoe*, it says, the "primary concern" of the personal jurisdiction analysis is "treating defendants fairly." And on the company's telling, it would be "unfair" to allow Mr. Mallory's suit to proceed in Pennsylvania because doing so would risk unleashing "'local prejudice'" against a company that is "not 'local' in the eyes of the community."

But if fairness is what Norfolk Southern seeks, pause for a moment to measure this suit against that standard. When Mr. Mallory brought his claim in 2017, Norfolk Southern had registered to do business in Pennsylvania for many years. It had established an office for receiving service of process. It had done so pursuant to a statute that gave the company the right to do business in-state in return for agreeing to answer any suit against it. And the company had taken full advantage of its opportunity to do business in the Commonwealth, boasting of its presence this way:

Norfolk Southern Corp., State Fact Sheets–Pennsylvania (2018)

All told, when Mr. Mallory sued, Norfolk Southern employed nearly 5,000 people in Pennsylvania. It maintained more than 2,400 miles of track across the Commonwealth. Its 70-acre locomotive shop there was the largest in North America. Contrary to what it says in its brief here, the company even proclaimed itself a proud part of "the Pennsylvania Community." By 2020, too, Norfolk Southern man-

aged more miles of track in Pennsylvania than in any other State. And it employed more people in Pennsylvania than it did in Virginia, where its headquarters was located. Nor are we conjuring these statistics out of thin air. The company itself highlighted its "intrastate activities" in the proceedings below. 266 A.3d, at 560, 563 (discussing the firm's "extensive operations in Pennsylvania," including "2,278 miles of track," "eleven rail yards," and "three locomotive repair shops"). Given all this, on what plausible account could *International Shoe*'s concerns with "fair play and substantial justice" require a Pennsylvania court to turn aside Mr. Mallory's suit?

Perhaps sensing its arguments from fairness meet a dead end, Norfolk Southern ultimately heads in another direction altogether. It suggests the Due Process Clause separately prohibits one State from infringing on the sovereignty of another State through exorbitant claims of personal jurisdiction. And, in candor, the company is half right. Some of our personal jurisdiction cases have discussed the federalism implications of one State's assertion of jurisdiction over the corporate residents of another. But that neglects an important part of the story. To date, our personal jurisdiction cases have never found a Due Process Clause problem sounding in federalism when an out-of-state defendant submits to suit in the forum State. After all, personal jurisdiction is a personal defense that may be waived or forfeited.

That leaves Norfolk Southern one final stand. It argues that it has not really submitted to proceedings in Pennsylvania. The company does not dispute that it has filed paperwork with Pennsylvania seeking the right to do business there. It does not dispute that it has established an office in the Commonwealth to receive service of process on any claim. It does not dispute that it appreciated the jurisdictional consequences attending these actions and proceeded anyway, presumably because it thought the benefits outweighed the costs. But, in the name of the Due Process Clause, Norfolk Southern insists we should dismiss all that as a raft of meaningless formalities.

Taken seriously, this argument would have us undo not just *Pennsylvania Fire* but a legion of precedents that attach jurisdictional consequences to what some might dismiss as mere formalities. Consider some examples we have already encountered. In a typical general jurisdiction case under *International Shoe*, a company is subject to suit on any claim in a forum State only because of its decision to file a piece of paper there (a certificate of incorporation). The firm is amenable to suit even if all of its operations are located elsewhere and even if its certificate only sits collecting dust on an office shelf for years thereafter. Then there is the tag rule. The invisible state line might seem a trivial thing. But when an individual takes one step off a plane after flying from New Jersey to California, the jurisdictional consequences are immediate and serious.

Consider, too, just a few other examples. A defendant who appears "specially" to contest jurisdiction preserves his defense, but one who forgets can lose his. Failing to comply with certain pre-trial court orders, signing a contract with a forum selection clause, accepting an in-state benefit with jurisdictional strings attached—all these actions as well can carry with them profound consequences for personal jurisdiction.

The truth is, under our precedents a variety of "actions of the defendant" that may seem like technicalities nonetheless can "amount to a legal submission to the jurisdiction of a court." That was so before *International Shoe*, and it remains so today. Should we overrule them all? Taking Norfolk Southern's argument seriously would require just that. But, tellingly, the company does not follow where its argument leads or even acknowledge its implications. Instead, Norfolk Southern asks us to pluck out and overrule just one longstanding precedent that it happens to dislike. We decline the invitation. There is no fair play or substantial justice in that.

*

Not every case poses a new question. This case poses a very old question indeed—one this Court resolved more than a century ago in *Pennsylvania Fire*. Because that decision remains the law, the judgment of the Supreme Court of Pennsylvania is vacated, and the case is remanded.

Justice Barrett, with whom The Chief Justice, Justice Kagan, and Justice Kavanaugh join, dissenting.

For 75 years, we have held that the Due Process Clause does not allow state courts to assert general jurisdiction over foreign defendants merely because they do business in the State. *International Shoe Co. v. Washington*. Pennsylvania nevertheless claims general jurisdiction over all corporations that lawfully do business within its borders. As the Commonwealth's own courts recognized, that flies in the face of our precedent. See *Daimler AG v. Bauman*.

The Court finds a way around this settled rule. All a State must do is compel a corporation to register to conduct business there (as every State does) and enact a law making registration sufficient for suit on any cause (as every State could do). Then, every company doing business in the State is subject to general jurisdiction based on implied "consent"—not contacts. That includes suits, like this one, with no connection whatsoever to the forum.

Such an approach does not formally overrule our traditional contacts-based approach to jurisdiction, but it might as well. By relabeling their long-arm statutes, States may now manufacture "consent" to personal jurisdiction. Because I would not permit state governments to circumvent constitutional limits so easily, I respectfully dissent.

I

A

Personal jurisdiction is the authority of a court to issue a judgment that binds a defendant. If a defendant submits to a court's authority, the court automatically acquires personal jurisdiction. But if a defendant contests the court's authority, the court must determine whether it can nevertheless assert coercive power over the defendant. That calculus turns first on the statute or rule defining the persons within the court's reach. It depends next on the Due Process Clause, which guards a defendant's right to resist the judicial authority of a sovereign to which it has an insufficient tie. The Clause has the companion role of ensuring that state courts "do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system."

Our precedent divides personal jurisdiction into two categories: specific and general. Both are subject to the demands of the Due Process Clause. Specific jurisdiction, as its name suggests, allows a state court to adjudicate specific claims against a defendant. When a defendant "purposefully avails itself of the privilege of conducting activities within the forum State," that State's courts may adjudicate claims that " 'arise out of or relate to the defendant's contacts' with the forum".

General jurisdiction, by contrast, allows a state court to adjudicate "'any and all claims' brought against a defendant." This sweeping authority exists only when the defendant's connection to the State is tight—so tight, in fact, that the defendant is "'at home'" there. An individual is typically "at home" in her domicile, and a corporation is typically "at home" in both its place of incorporation and principal place of business. Absent an exceptional circumstance, general jurisdiction is cabined to these locations.

B

This case involves a Pennsylvania statute authorizing courts to exercise general jurisdiction over corporations that are not "at home" in the Commonwealth. All foreign corporations must register to do business in Pennsylvania, and all registrants are subject to suit on "any cause" in the Commonwealth's courts. Section 5301 thus purports to empower Pennsylvania courts to adjudicate any and all claims against corporations doing business there.

As the Pennsylvania Supreme Court recognized, this statute "clearly, palpably, and plainly violates the Constitution." Look no further than *BNSF R. Co. v. Tyrrell*, a case with remarkably similar facts—and one that the Court conspicuously ignores. There, we assessed whether Montana's courts could exercise general jurisdiction over the BNSF railroad. No plaintiff resided in Montana or suffered an injury there. Like Mallory, one of the plaintiffs alleged that the railroad exposed him to toxic substances that caused his cancer. Like Norfolk Southern, BNSF had tracks and employees in the forum, but it was neither incorporated nor headquartered there. We rejected Montana's assertion of general jurisdiction over BNSF because "in-state business does not suffice to permit the assertion of general jurisdiction over claims that are unrelated to any activity occurring in [the State]." *Daimler* and *Goodyear*, we explained, could not have made that any clearer.

The same rule applies here. The Pennsylvania statute announces that registering to do business in the Commonwealth "shall constitute a sufficient basis" for general jurisdiction. But as our precedent makes crystal clear, simply doing business is insufficient. Absent an exceptional circumstance, a corporation is subject to general jurisdiction only in a State where it is incorporated or has its principal place of business. Adding the antecedent step of registration does not change that conclusion. If it did, "every corporation would be subject to general jurisdiction in every state in which it registered, and Daimler's ruling would be robbed of meaning by a back-door thief."

II

A

The Court short-circuits this precedent by characterizing this case as one about consent rather than contacts-based jurisdiction. Consent is an established basis for personal jurisdiction, which is, after all, a waivable defense. "A variety of legal arrangements have been taken to represent express or implied consent to the personal jurisdiction of the court," including contract, stipulation, and in-court appearance. Today, the Court adds corporate registration to the list.

This argument begins on shaky ground, because Pennsylvania itself does not treat registration as synonymous with consent. Section 5301(a)(2)(i) baldly asserts that "qualification as a foreign corporation" in the Commonwealth is a sufficient hook for general jurisdiction. The next subsection (invoked by neither Mallory nor the Court) permits the exercise of general jurisdiction over a corporation based on "consent, to the extent authorized by the consent." If registration were actual consent, one would expect to see some mention of jurisdiction in Norfolk Southern's registration paperwork—which is instead wholly silent on the matter. What Mal-

lory calls "consent" is what the Pennsylvania Supreme Court called "compelled submission to general jurisdiction by legislative command." Corporate registration triggers a statutory repercussion, but that is not "consent" in a conventional sense of the word.

To pull § 5301(a)(2)(i) under the umbrella of consent, the Court, following Mallory, casts it as setting the terms of a bargain: In exchange for access to the Pennsylvania market, a corporation must allow the Commonwealth's courts to adjudicate any and all claims against it, even those (like Mallory's) having nothing to do with Pennsylvania. Everyone is charged with knowledge of the law, so corporations are on notice of the deal. By registering, they agree to its terms.

While this is a clever theory, it falls apart on inspection. The Court grounds consent in a corporation's choice to register with knowledge (constructive or actual) of the jurisdictional consequences. But on that logic, any long-arm statute could be said to elicit consent. Imagine a law that simply provides, "any corporation doing business in this State is subject to general jurisdiction in our courts." Such a law defies our precedent, which, again, holds that "in-state business does not suffice to permit the assertion of general jurisdiction." Yet this hypothetical law, like the Pennsylvania statute, gives notice that general jurisdiction is the price of doing business. And its "notice" is no less "clear" than Pennsylvania's. So on the Court's reasoning, corporations that choose to do business in the State impliedly consent to general jurisdiction. The result: A State could defeat the Due Process Clause by adopting a law at odds with the Due Process Clause.

That makes no sense. If the hypothetical statute overreaches, then Pennsylvania's does too. As the United States observes, "invoking the label 'consent' rather than 'general jurisdiction' does not render Pennsylvania's long-arm statute constitutional." Brief for United States as Amicus Curiae 4. Yet the Court takes this route without so much as acknowledging its circularity.

B

While our due process precedent permits States to place reasonable conditions on foreign corporations in exchange for access to their markets, there is nothing reasonable about a State extracting consent in cases where it has "no connection whatsoever." The Due Process Clause protects more than the rights of defendants—it also protects interstate federalism. We have emphasized this principle in case after case. For instance, in Hanson v. Denckla, we stressed 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." In *World-Wide Volkswagen*, we explained that "even if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the

State of its power to render a valid judgment." And in *Bristol-Myers*, we reinforced that "this federalism interest may be decisive." A defendant's ability to waive its objection to personal jurisdiction reflects that the Clause protects, first and foremost, an individual right. But when a State announces a blanket rule that ignores the territorial boundaries on its power, federalism interests are implicated too.

Pennsylvania's effort to assert general jurisdiction over every company doing business within its borders infringes on the sovereignty of its sister States in a way no less "exorbitant" and "grasping" than attempts we have previously rejected. Conditions on doing in-state business cannot be "inconsistent with those rules of public law which secure the jurisdiction and authority of each State from encroachment by all others." Permitting Pennsylvania to impose a blanket claim of authority over controversies with no connection to the Commonwealth intrudes on the prerogatives of other States—domestic and foreign—to adjudicate the rights of their citizens and enforce their own laws.

The plurality's response is to fall back, yet again, on "consent." In its view, because a defendant can waive its personal jurisdiction right, a State can never overreach in demanding its relinquishment. That is not how we treat rights with structural components. The right to remove a case to federal court, for instance, is primarily personal—it secures for a nonresident defendant a federal forum thought to be more impartial. At the same time, however, it serves federal interests by ensuring that federal courts can vindicate federal rights. Recognizing this dual role, we have rejected efforts of States to require defendants to relinquish this (waivable) right to removal as a condition of doing business. The same logic applies here. Pennsylvania's power grab infringes on more than just the rights of defendants—it upsets the proper role of the States in our federal system.

III

A

The plurality attempts to minimize the novelty of its conclusion by pointing to our decision in *Burnham v. Superior Court of Cal*. There, we considered whether "tag jurisdiction"—personal service upon a defendant physically present in the forum State—remains an effective basis for general jurisdiction after *International Shoe*. We unanimously agreed that it does. The plurality claims that registration jurisdiction for a corporation is just as valid as the "tag jurisdiction" that we approved in *Burnham*. But in drawing this analogy, the plurality omits any discussion of *Burnham*'s reasoning.

In *Burnham*, we acknowledged that tag jurisdiction would not satisfy the contacts-based test for general jurisdiction. Nonetheless, we reasoned that tag jurisdiction is "both firmly approved by tradition and still favored," making it "one of the continuing traditions of our legal system that defines the due process standard of 'traditional notions of fair play and substantial justice. *Burnham* thus permits a longstanding and still-accepted basis for jurisdiction to pass *International Shoe*'s test.

General-jurisdiction-by-registration flunks both of these prongs: It is neither "firmly approved by tradition" nor "still favored." Thus, the plurality's analogy to tag jurisdiction is superficial at best.

Start with the second prong. In *Burnham*, "we did not know of a single state that had abandoned in-state service as a basis of jurisdiction." Here, as Mallory concedes, Pennsylvania is the only State with a statute treating registration as sufficient for general jurisdiction. Indeed, quite a few have jettisoned the jurisdictional consequences of corporate registration altogether—and in no uncertain terms. With the Pennsylvania Legislature standing alone, the plurality does not even attempt to describe this method of securing general jurisdiction as "still favored," or reflective of "our common understanding now". Quite the opposite: The plurality denigrates "the spirit of our age"—reflected by the vast majority of States—and appeals to its own notions of fairness.

The past is as fatal to the plurality's theory as the present. *Burnham's* tradition prong asks whether a method for securing jurisdiction was "shared by American courts at the crucial time"—"1868, when the Fourteenth Amendment was adopted." But the plurality cannot identify a single case from that period supporting its theory. In fact, the evidence runs in the opposite direction. Statutes that required the appointment of a registered agent for service of process were far more modest than Pennsylvania's. And even when a statute was written more broadly, state courts generally understood it to implicitly limit jurisdiction to suits with a connection to the forum. The state reporters are replete with examples of judicial decisions that stood by the then-prevailing rule: Compliance with a registration law did not subject a foreign corporation to suit on any cause in a State, but only those related to the forum. Our cases from this era articulate the same line. Although "plaintiffs typically did not sue defendants in fora that had no rational relation to causes of action," courts repeatedly turned them away when they did.

B

Sidestepping *Burnham*'s logic, the plurality seizes on its bottom-line approval of tag jurisdiction. According to the plurality, tag jurisdiction (based on physical presence) and registration jurisdiction (based on deemed consent) are essentially the same thing—so by blessing one, *Burnham* blessed the other. The plurality never explains why they are the same, even though—as we have just discussed—more

than a century's worth of law treats them as distinct. The plurality's rationale seems to be that if a person is subject to general jurisdiction anywhere she is present, then a corporation should be subject to general jurisdiction anywhere it does business. That is not only a non sequitur—it is "contrary to the historical rationale of *International Shoe*."

Before *International Shoe*, a state court's power over a person turned strictly on "service of process within the State" (presence) "or her voluntary appearance" (consent). *Pennoyer v. Neff*. In response to changes in interstate business and transportation in the late 19th and early 20th centuries, States deployed new legal fictions designed to secure the presence or consent of nonresident individuals and foreign corporations. For example, state laws required nonresident drivers to give their "implied consent" to be sued for their in-state accidents as a condition of using the road. And foreign corporations, as we have discussed, were required by statute to "consent" to the appointment of a resident agent, so that the company could then be constructively "present" for in-state service.

As Justice Scalia explained, such extensions of "consent and presence were purely fictional" and can no longer stand after *International Shoe*. The very point of *International Shoe* was to "cast aside" the legal fictions built on the old territorial approach to personal jurisdiction and replace them with its contacts-based test. In Burnham, we upheld tag jurisdiction because it is not one of those fictions—it is presence. By contrast, Pennsylvania's registration statute is based on deemed consent. And this kind of legally implied consent is one of the very fictions that our decision in *International Shoe* swept away.

C

Neither JUSTICE ALITO nor the plurality seriously contests this history. Nor does either deny that Mallory's theory would gut *Daimler*. Instead, they insist that we already decided this question in a pre-*International Shoe* precedent: *Pennsylvania Fire*.

The Court asserts that *Pennsylvania Fire* controls our decision today. I disagree. The case was "decided before this Court's transformative decision on personal jurisdiction in *International Shoe*," and we have already stated that "prior decisions that are inconsistent with this standard are overruled". *Pennsylvania Fire* fits that bill. Time and again, we have reinforced that "'doing business' tests"—like those "framed before specific jurisdiction evolved in the United States"—are not a valid basis for general jurisdiction. The only innovation of Pennsylvania's statute is to make "doing business" synonymous with "consent." If *Pennsylvania Fire* endorses that trick, then *Pennsylvania Fire* is no longer good law.

The plurality tries to get around *International Shoe* by claiming that it did no more than expand jurisdiction, affecting nothing that came before it. That is as fictional as the old concept of "corporate presence" on which the plurality relies. We have previously abandoned even "ancient" bases of jurisdiction for incompatibility with *International Shoe*. And we have repeatedly reminded litigants not to put much stock in our pre-*International Shoe* decisions. Daimler itself reinforces that pre-*International Shoe* decisions "should not attract heavy reliance today." Over and over, we have reminded litigants that *International Shoe* is "canonical," "seminal," "pathmarking," and even "momentous"—to give just a few examples. Yet the Court acts as if none of this ever happened.

In any event, I doubt *Pennsylvania Fire* would control this case even if it remained valid. *Pennsylvania Fire* distinguished between express consent (that is, consent "actually conferred by the document") and deemed consent (inferred from doing business). As Judge Learned Hand emphasized in a decision invoked by the plurality, without "express consent," the normal rules apply.

The express power of attorney in *Pennsylvania Fire* "made service on the insurance superintendent the equivalent of a corporate vote that had accepted service in this specific case." Norfolk Southern, by contrast, "executed no document like the power of attorney there." The Court makes much of what Norfolk Southern did write on its forms: It named a "Commercial Registered Office Provider," it notified Pennsylvania of a merger, and it paid $70 to update its paperwork. None of those documents use the word "agent," nothing hints at the word "jurisdiction," and (as the Pennsylvania Supreme Court explained) nothing about that registration is "voluntary." Consent in *Pennsylvania Fire* was contained in the document itself; here it is deemed by statute. If "mere formalities" matter as much as the plurality says they do, it should respect this one too.

IV

By now, it should be clear that the plurality's primary approach to this case is to look past our personal jurisdiction precedent. Relying on a factsheet downloaded from the internet, for instance, the plurality argues that Norfolk Southern is such a "part of 'the Pennsylvania Community,'" and does so much business there, that its "presence" in Pennsylvania is enough to require it to stand for suits having nothing to do with the Commonwealth. In Daimler, however, we roundly rejected the plaintiff's request that we "approve the exercise of general jurisdiction in every State in which a corporation 'engages in a substantial, continuous, and systematic course of business.'" The established test—which the plurality barely acknowledges—is whether the corporation is "at home" in the State. "A corporation that operates in many places," and must therefore register in just as many, "can scarcely be deemed at home in all of them."

***

Critics of Daimler and Goodyear may be happy to see them go. And make no mistake: They are halfway out the door. If States take up the Court's invitation to manipulate registration, Daimler and Goodyear will be obsolete, and, at least for corporations, specific jurisdiction will be "superfluous." Because I would not work this sea change, I respectfully dissent.

1.5 Synthesis: Analyzing a Personal Jurisdiction Problem

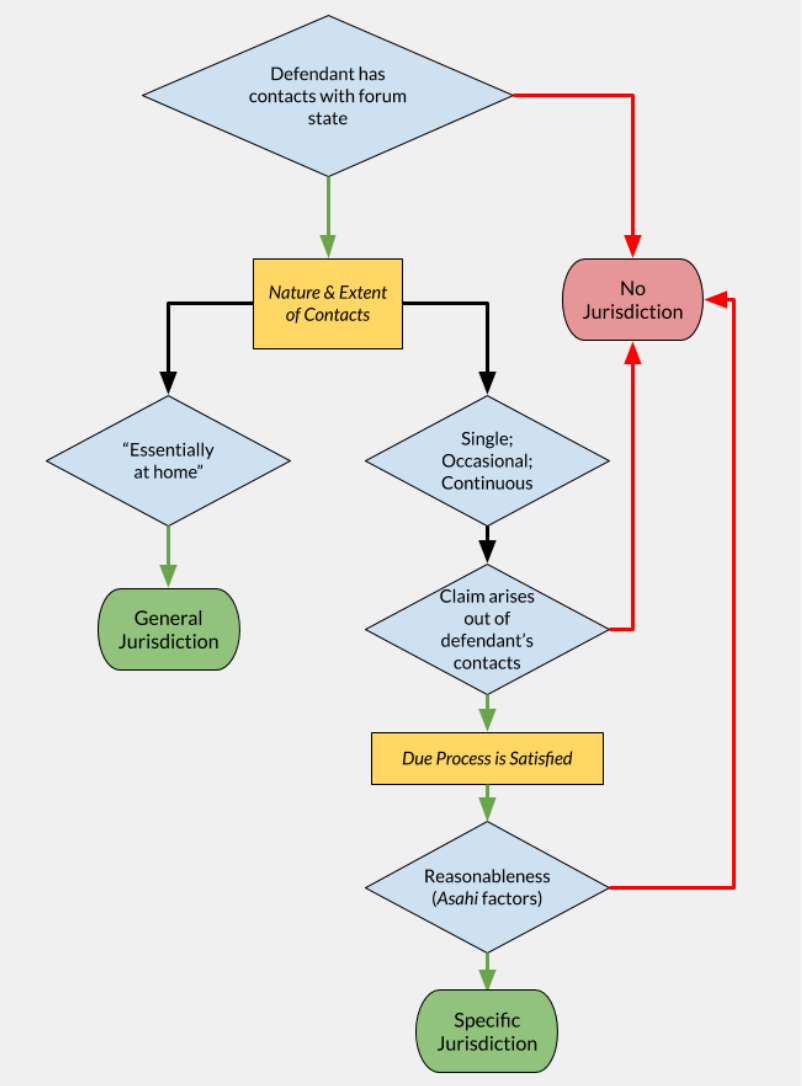

Fig. 4.4

2. Statutory Authorization: Long-Arm Statutes

Within the outer bounds allowed under the constitutional due process standard, the exercise of personal jurisdiction are subject to additional limits under state "long-arm" statutes. There are two types of long-arm statute.

Robert Wadlow, the tallest human in history, visiting Folsom Prison in 1939 as a spokesman for the International Shoe Company.

2.1 Enumerated Statutes

Enumerated long-arm statutes identify particular circumstances in which a state's courts may exercise jurisdiction over a non-resident. The New York long-arm statute is an example:

NY CPLR § 302

Personal jurisdiction by acts of non-domiciliaries.

(a) Acts which are the basis of jurisdiction. As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary, or his executor or administrator, who in person or through an agent:

1. transacts any business within the state or contracts anywhere to supply goods or services in the state; or

2. commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act; or

3. commits a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if he

(i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or

(ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce; or

4. owns, uses or possesses any real property situated within the state.

(b) Personal jurisdiction over non-resident defendant in matrimonial actions or family court proceedings. A court in any matrimonial action or family court proceeding involving a demand for support, alimony, maintenance, distributive awards or special relief in matrimonial actions may exercise personal jurisdiction over the respondent or defendant notwithstanding the fact that he or she no longer is a resident or domiciliary of this state, or over his or her executor or administrator, if the party seeking support is a resident of or domiciled in this state at the time such demand is made, provided that this state was the matrimonial domicile of the parties before their separation, or the defendant abandoned the plaintiff in this state, or the claim for support, alimony, maintenance, distributive awards or special relief in matrimonial actions accrued under the laws of this state or under an agreement executed in this state. The family court may exercise personal jurisdiction over a non-resident respondent to the extent provided in sections one hundred fifty-four and one thousand thirty-six and article five-B of the family court act and article five-A of the domestic relations law.

(c) Effect of appearance. Where personal jurisdiction is based solely upon this section, an appearance does not confer such jurisdiction with respect to causes of action not arising from an act enumerated in this section.

(d) Foreign defamation judgment. The courts of this state shall have personal jurisdiction over any person who obtains a judgment in a defamation proceeding outside the United States against any person who is a resident of New York or is a person or entity amenable to jurisdiction in New York who has assets in New York or may have to take actions in New York to comply with the judgment, for the purposes of rendering declaratory relief with respect to that person's liability for the judgment, and/or for the purpose of determining whether said judgment should be deemed non-recognizable pursuant to section fifty-three hundred four of this chapter, to the fullest extent permitted by the United States constitution, provided:

1. the publication at issue was published in New York, and

2. that resident or person amenable to jurisdiction in New York (i) has assets in New York which might be used to satisfy the foreign defamation judgment, or (ii) may have to take actions in New York to comply with the foreign defamation judgment. The provisions of this subdivision shall apply to persons who obtained judgments in defamation proceedings outside the United States prior to and/or after the effective date of this subdivision.

Under an enumerated long-arm statute, determining whether the court may exercise personal jurisdiction requires a two-step analysis: (1) Does the case fall within one (or more) of the circumstances enumerated in the statute? (2) If so, does the defendant have the requisite contacts with the forum state to satisfy the constitutional due process standard?

2.2 Constitutional Limit Statutes

Constitutional limit long-arm statutes grant a state's courts jurisdiction to the full extent permitted under the Constitution. California was the first state to adopt this type of long-arm statute:

Cal. Code Civ. Proc § 410.10

Jurisdiction exercisable.

A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.

Under this type of long-arm statute, the same analysis (i.e. does the defendant have minimum contacts with the forum state?) answers both the statutory and constitutional question.

Some enumerated long-arm statutes have been interpreted as authorizing the exercise of jurisdiction to the full extent permitted under the constitution. See, e.g., *Dillon v. Numismatic Funding Corp.*, 291 N.C. 674, 676 (1977). ("By the enactment of G.S. 1-75.4(1)(d), it is apparent that the General Assembly intended to make available to the North Carolina courts the full jurisdictional powers permissible under federal due process.")

3. Review Questions

Question 1

Mrs. Potter, a wealthy resident of Philadelphia, decides that the time has come to make provisions for her children after her death. She creates a trust, administered by the Delaware Bank & Trust Company (located, naturally enough, in Delaware). Under the terms of the trust, after Mrs. Potter's death, her daughter Dora will receive whatever money remains in the trust account. She also writes a will, leaving the remainder of her estate to her other daughter, Polly.

A year later, Mrs. Potter decides to move to Cocoanut Manor, a luxurious retirement community in Florida. There she meets Mr. Hammer, the genial grifter who developed Cocoanut Manor in the hopes of attracting a steady supply of wealthy victims for his cons. Mrs. Potter, smitten by Hammer's charm and believing he is the true love of her life, contacts the Delaware bank and directs them to make Mr. Hammer the trust beneficiary in place of her daughter Dora, who hasn't even bothered to write or call since Mrs. Potter moved to Florida.

A few months later, Mrs. Potter dies in a tragic shuffleboard accident. Dora Potter is chagrined to discover that the trust funds, now totalling $1.4 million, will go to Mr. Hammer instead of her. She brings a lawsuit in a Florida court, challenging the validity of the trust. Polly Potter, who despises her sister, also joins the suit as a co-plaintiff, arguing that the money in the trust should also go to her as part of Mrs. Potter's estate under the will. Because the Bank is in control of the trust account, it is named as a co-defendant in the suit.

Does the Florida court have personal jurisdiction over the Bank?

Question 2

Dan & Pat, both residents of Pennsylvania, are partners in a Delaware business. The business fails, and a disagreement arises between Dan & Pat over the division of the partnership's remaining assets. Deciding to get away from it all, Dan moves to Idaho. Pat now wants to sue Dan over the partnership dispute. Each state's long-arm statute provides for jurisdiction to the full extent permitted under the U.S. Constitution.

In which state(s) may Pat sue?

Question 3

Dan operates a gas station near U.S. Interstate 40 in Greensboro, north Carolina. The station is frequented by locals and by interstate travelers using I-40. last summer, Dan changed a tire on an automobile bearing Missitucky license plates. The car belonged to Vivian, who was driving through Greensboro on her way home from vacation in the Outer Banks. A few days later, after Vivian reached Missitucky, her car swerved out of control and his an embankment. Vivian sued Dan in Missitucky state court, alleging that the accident resulted in his negligence in changing the tire.

Assuming the Missitucky long-arm statute allows it, would the exercise of personal jurisdiction over Dan be permissible under the U.S. Constitution?

Question 4

If P sues D in a North Dakota court, claiming that D owes P $25,000 arising from their business partnership, may the North Dakota court assert jurisdiction?

a. No, because the case does not arise out of any activity in North Dakota

b. No, because P has no contacts with North Dakota

c. Yes, because D is subject to general jurisdiction in North Dakota

d. Yes, but only if D is personally served while present in North Dakota

Question 5

P has a vacation home on the Jersey shore. While P is spending the weekend there, D arranges to serve him with a complaint and summons in a suit D has filed in New Jersey court, claiming that P owes D $25,000 arising from their business partnership. May the New Jersey court assert jurisdiction?

a. Yes, because P owns property in New Jersey

b. Yes, because P is physically present in New Jersey when he is served

c. No, because D's suit does not arise from, and is unrelated to, P's contacts with New Jersey

d. No, because New Jersey is not P's permanent home