

No. 10-76

In the Supreme Court of the United States

GOODYEAR LUXEMBOURG TIRES, S.A., *ET AL.*,

PETITIONERS

v.

EDGAR D. BROWN, *ET AL.*,

RESPONDENTS

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE NORTH CAROLINA COURT OF APPEALS*

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

ROBIN S. CONRAD
AMAR SARWAL
*National Chamber
Litigation Center
1615 H Street, N.W.
Washington, D.C. 20062
(202) 463-5337*

LINDA T. COBERLY
*Winston & Strawn LLP
35 W. Wacker Drive
Chicago, IL 60601
(312) 558-5600*

GENE C. SCHAERR
Counsel of Record
STEFFEN N. JOHNSON
ANDREW C. NICHOLS
*Winston & Strawn LLP
1700 K Street, N.W.
Washington, D.C. 20006
(202) 282-5000
gschaerr@winston.com*

Counsel for Amicus Curiae

QUESTION PRESENTED

Under federal due process standards, can *general* personal jurisdiction properly be exercised on the sole ground that the forum State could have exercised *specific* jurisdiction in a different, hypothetical case involving the same corporate defendant?

TABLE OF CONTENTS

| | Page |
|---|-------------|
| QUESTION PRESENTED | i |
| TABLE OF AUTHORITIES | iii |
| MOTION FOR LEAVE TO FILE BRIEF <i>AMICUS CURIAE</i> | v |
| INTRODUCTION AND INTEREST OF <i>AMICUS CURIAE</i> | 1 |
| STATEMENT OF THE CASE..... | 4 |
| REASONS FOR GRANTING THE PETITION..... | 6 |
| I. The decision below threatens to upset settled due process principles and precedent requiring that companies be allowed to decide where to establish the kind of contacts that subject them to general jurisdiction..... | 6 |
| II. The decision below undermines principles of federalism and federal supremacy in the conduct of foreign relations..... | 13 |
| CONCLUSION | 17 |

TABLE OF AUTHORITIES

| | Page(s) |
|---|---------------------|
| CASES | |
| <i>ALS Scan, Inc. v. Digital Serv. Consult., Inc.</i> , 293 F.3d 707 (4th Cir. 2002) | 14 |
| <i>Asahi Metal Indus. Co., Ltd. v. Super. Ct.</i> , 480 U.S. 102 (1987) | 3, 5, 11, 15 |
| <i>Burger King Corp. v. Rudzewicz</i> , 471 U.S. 462 (1985) | 7 |
| <i>Hanson v. Denckla</i> , 357 U.S. 235 (1958) | 3, 14 |
| <i>Helicopteros Nacionales de Colombia, S.A. v. Hall</i> , 466 U.S. 408 (1984) | 7, 9-10, 12, 16 |
| <i>Int’l Shoe Co. v. Washington</i> , 326 U.S. 310 (1945) | 1, 9, 12, 14 |
| <i>Johnston v. Multidata Sys. Int’l Corp.</i> , 523 F.3d 602 (5th Cir. 2008) | 9 |
| <i>Michelin Tire Corp. v. Wages</i> , 423 U.S. 276 (1976) | 16 |
| <i>Pennoyer v. Neff</i> , 95 U.S. 714 (1878) | 7 |
| <i>Perkins v. Benguet Consol. Mining Co.</i> , 342 U.S. 437 (1951) | 1, 6-10, 12 |
| <i>World-Wide Volkswagen Corp. v. Woodson</i> , 444 U.S. 286 (1980) | 2-3, 5-6, 11, 13-15 |

OTHER AUTHORITIES

- Gary B. Born, *Reflections on Judicial Jurisdiction in International Cases*, 17 Ga. J. Int'l & Comp. L. 1 (1987)..... 16
- 16 James W. Moore, Moore's Federal Practice § 108.41 (Matthew Bender 3d ed.) 8
- Mary Twitchell, *The Myth of General Jurisdiction*, 101 Harv. L. Rev. 610 (1988) 10
- Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. L. Rev. 1121 (1966) 10
- 4 Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure § 1067.5 (3d ed. 2002)..... 8

**MOTION FOR LEAVE TO FILE
BRIEF *AMICUS CURIAE***

Pursuant to Rule 37.2(b), the Chamber of Commerce of the United States of America respectfully moves for leave to file the attached *amicus* brief in support of petitioners. Petitioners have consented to the filing of the brief. Respondents have not responded to a request for consent.

As we explain more fully in the brief, the nature of the Chamber's interest is as the world's largest business federation, representing member companies of every size, from every industry, in every region of the United States. As such, the Chamber is concerned that the decision below will work an unwarranted and ill-advised revolution in the law of personal jurisdiction—to the detriment of businesses, and ultimately consumers, nationwide. The law of personal jurisdiction lies at the foundation of all litigation; and the decision below threatens to demolish the most well-established principle in the law of personal jurisdiction. Thus, it makes sense to allow the leading representative of businesses in the United States to explain why this change is not only unlawful, but harmful to the business community.

This brief is offered for filing within 30 days of docketing, and therefore is timely under Rule 37.2(a). Moreover, although respondents did not receive the full ten days' notice of the Chamber's intent to file before respondents were originally due to file their response (see *infra* note 1), that failure did not prejudice them. To the contrary, on July 30, 2010—before the date on which notice should have been provided (August 3)—respondents sought an extension of time to file their response to the petition, a request that this Court granted on August 5. Res-

pondents' opposition is now due on September 13. Accordingly, respondents will have a full month to respond, not only to the petition, but to this brief.

For all of these reasons, this motion should be granted, and the Chamber should be permitted to file the attached brief.

Respectfully submitted,

ROBIN S. CONRAD
AMAR SARWAL
*National Chamber
Litigation Center
1615 H Street, N.W.
Washington, D.C. 20062
(202) 463-5337*

GENE C. SCHAERR
Counsel of Record
STEFFEN N. JOHNSON
ANDREW C. NICHOLS
*Winston & Strawn LLP
1700 K Street, N.W.
Washington, D.C. 20006
(202) 282-5000*

LINDA T. COBERLY
*Winston & Strawn LLP
35 W. Wacker Drive
Chicago, IL 60601
(312) 558-5600*

Counsel for Amicus Curiae

AUGUST 13, 2010

INTRODUCTION AND INTEREST OF *AMICUS CURIAE*¹

No issue is more basic to determining a company's litigation risk than where it can be sued. The more forums where a business can be haled into court, the less the business can predict what law will apply, and therefore what conduct may lead to liability.

Unfortunately, for nearly 25 years, the lower courts have been in a state of upheaval over whether a company is subject to a State's jurisdiction simply because the "stream of commerce" carried the company's products into the state and a cause of action arose involving those products. But amidst the confusion, one bedrock principle stood firm: the distinction between specific and general jurisdiction. That is, whatever "minimum contacts" were required to subject a company to suits arising out of specific contacts with a forum State, businesses knew they could not be haled into court for *all* purposes unless they conducted "continuous corporate operations" there. *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 446 (1951) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 318-319 (1945)).

The decision below warrants this Court's review because it threatens to obliterate that fundamental distinction. In what can only be described as a re-

¹ Counsel for petitioner has consented to the filing of this brief, and the letter is on file with the Clerk. Counsel for respondents has not responded to a request for consent. Notice to the parties was provided seven days before filing, rather than the ten days required under Rule 37.2. No counsel for any party has authored this brief in whole or in part, and no person or entity, other than *amicus*, has made a monetary contribution to its preparation or submission.

markable power-grab, the court below subjected petitioners, European corporations, to general jurisdiction in North Carolina for alleged injuries incurred in Europe and based on a product concededly sold only in Europe. And what is the connection between petitioners and North Carolina? Just this: the distribution by petitioners' corporate affiliate of a limited number of *different* products, unrelated to respondents' alleged injury. Because the stream of commerce swept those *unrelated* products into North Carolina, the court below held, petitioners can now be haled into court in North Carolina on *any* cause of action, arising *anywhere* in the world, related to *any* of petitioner's products.

Not only does this mistaken decision set up a split with every other court to have considered this issue (as petitioner has shown), it holds grave ramifications for business. After all, "[t]he Due Process Clause, by ensuring the orderly administration of the laws, gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). So much for that. The decision below renders it next to impossible for defendants to structure their conduct to prevent liability from suit. Now, whether a company is large or small, if its products are distributed in North Carolina, that will be the company's "home state" for litigation purposes. The toll on the corporate economy of this jurisprudential misadventure promises to be substantial.

But the decision below does more than attack the corporate economy: It assaults federalism and federal supremacy as well. As this Court has recognized,

“restrictions on the personal jurisdiction of state courts” “are more than a guarantee of immunity from inconvenient or distant litigation”; “[t]hey are a consequence of territorial limitations on the power of the respective States.” *Hanson v. Denckla*, 357 U.S. 235, 251 (1958). The decision below ignores this principle, extending the long arm of North Carolina’s courts around the globe. Under the decision below, it does not matter whether a business conducts “continuous corporate operations” in Chapel Hill, in California, or in China—it can be haled into court in North Carolina for any reason so long as some of its products are distributed by others in North Carolina. This Court, however, has “never accepted the proposition that state lines are irrelevant for jurisdictional purposes, nor could [it], and remain faithful to the principles of interstate federalism embodied in the Constitution.” *World-Wide Volkswagen*, 444 U.S. at 293. Nor has the Court allowed States to trump “the Federal Government’s interest in its foreign relations policies.” *Asahi Metal Indus. Co., Ltd. v. Super. Ct.*, 480 U.S. 102, 103 (1987).

As we will explain, that is exactly what the decision below does—with the foreseeable result of retaliation from foreign governments and forum-shopping by foreign plaintiffs. This Court’s review is urgently needed to address this split-creating, breathtakingly broad decision. Indeed, the lower court’s rewriting of settled personal jurisdiction law is a prime candidate for summary reversal.

As the world’s largest business federation, representing 300,000 direct members and indirectly representing the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region

of the country, the Chamber of Commerce of the United States of America is profoundly interested in this crucial case. One of the Chamber's important functions is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus* briefs in cases of vital concern to the Nation's business community. The Chamber is well situated to brief the Court on the importance of the issues presented in the petition to the many businesses now exposed to all types of suits in North Carolina merely because some of their products were distributed in the State.

STATEMENT OF THE CASE

This case involves the North Carolina courts' exercise of personal jurisdiction over petitioners, three European corporations. Pet. 2a. Those corporations—Goodyear Luxembourg Tires SA (“Goodyear Luxembourg”), Goodyear Lastikleri T.A.Ş. (“Goodyear Turkey”), and Goodyear Dunlop Tires France SA (“Goodyear France”)—were sued for the alleged failure of a tire in a fatal accident outside Paris, France. *Ibid.* The tire that allegedly failed was manufactured by Goodyear Turkey and was never shipped into the United States. Pet. 4-5 & n.2, 2a. Moreover, the record was “devoid of evidence that Defendants took any affirmative action to cause tires which they had manufactured to be shipped into North Carolina.” Pet. 22a.

Nevertheless, the Superior Court of Onslow County, North Carolina, asserted *general* personal jurisdiction over all three European corporations because they manufactured *other* tires that their *affiliates* distributed into North Carolina. The North Carolina

Court of Appeals affirmed, acknowledging that “[t]he present dispute is not related to, nor did it arise from, Defendants’ contacts with North Carolina. As a result, the issue raised in this case involves general rather than specific jurisdiction.” Pet. 12a-13a. Thus, the court said, the “relevant question * * * is whether Defendants’ activities in the forum are sufficiently continuous and systematic[.]” Pet. 13a.

But then, attempting to apply this classic test for general jurisdiction, the Court turned at length to this Court’s *specific* jurisdiction cases and announced the following rule of decision: “[W]e conclude that the appropriate question that must be answered * * * is whether Defendants * * * have purposefully injected [their] product into the stream of commerce without any indication that [they] desired to limit the area of distribution of [their] product so as to exclude North Carolina.” Pet. 20a; see *id.* at 14a-16a (discussing, *inter alia*, *World-Wide Volkswagen* and *Asahi*).

To avoid precisely this conclusion, the European corporations had explained that, under federal law, “‘stream of commerce’ analysis simply does not apply in instances involving general, as compared to specific, jurisdiction.” Pet. 28a. But the Court of Appeals responded that petitioners “have not cited a North Carolina case to this effect, and we know of none.” *Ibid.* “Instead of adopting a general rule precluding the use of stream of commerce analysis to support a finding of general personal jurisdiction,” the court declared, “*we believe that the real issue is the extent to which Defendants’ products were, in fact, distributed in North Carolina markets.*” *Ibid.* (emphasis added). In other words, the Court of Appeals held, the “real issue” in general jurisdiction cases is whether defen-

dants' contacts meet the "stream of commerce" standard for *specific* jurisdiction.

The Supreme Court of North Carolina declined discretionary review. Pet. 38a. The European corporations' petition followed.

REASONS FOR GRANTING THE PETITION

The decision below single-handedly erases the law's fundamental distinction between general and specific jurisdiction. This was a profound mistake requiring this Court's immediate attention—and not only because, as petitioner showed, the court below created a split of authorities. As we show in Part I, by opening corporations to all-purpose jurisdiction when they have no contacts with the forum State, the decision below will deprive corporations of the "fair and orderly administration of the laws which it was the purpose of the due process clause to ensure." *Perkins*, 342 U.S. at 447. And as we show in Part II, the decision below will prevent the Due Process Clause, in the vast majority of cases, from protecting the jurisdictions of the several States by "acting as an instrument of interstate federalism." *World-Wide Volkswagen*, 444 U.S. at 294. At the same time, the decision will undermine *federal* control over foreign relations.

I. The decision below threatens to upset settled due process principles and precedent requiring that companies be allowed to decide where to establish the kind of contacts that subject them to general jurisdiction.

For more than a century, the Due Process Clause of the Fourteenth Amendment has "limit[ed] the power of a State to assert *in personam* jurisdiction

over a nonresident defendant.” *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 413-414 (1984) (citing *Pennoyer v. Neff*, 95 U.S. 714 (1878)). “By requiring that individuals have fair warning that a particular activity may subject [them] to the jurisdiction of a foreign sovereign, the Due Process Clause 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.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (citations omitted).

1. What constitutes “fair warning,” in turn, depends on whether a court exercises specific or general jurisdiction. “Where a forum seeks to assert *specific* jurisdiction over an out-of-state defendant * * * this ‘fair warning’ requirement is satisfied if the defendant has purposefully directed his activities at residents of the forum, and the litigation results from alleged injuries that arise out of or relate to those activities.” *Id.* at 472 (footnote and internal citations omitted; emphasis added). By contrast, “[w]hen a State exercises personal jurisdiction over a defendant in a suit not arising out of or related to the defendants’ contacts with the forum, the State has been said to be exercising ‘*general* jurisdiction’”—for which fair warning requires “continuous and systematic general business contacts” such as “maintain[ing] an office in [the forum State],” “ke[eping] company files” there, and “h[olding] directors’ meetings” there. *Helicopteros*, 466 U.S. at 415, 416 & n.9 (citing *Perkins*, 342 U.S. at 438, 445) (emphasis added).

Lower courts have come to rely heavily on these principles—which companies invoke with great fre-

quency. “This general-specific jurisdiction distinction is an extremely significant one,” explains the leading federal practice treatise, “because in order to assert general jurisdiction over an out-of-state defendant, there must be substantial forum related activity on the part of the defendant.” 4 Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1067.5 (3d ed. 2002) (citing cases across the circuits). Moreover, “the threshold for satisfying the requirements for general jurisdiction before considering convenience or more general fairness concerns is substantially higher than in specific jurisdiction cases.” *Ibid.* “Perhaps because of the higher level of contacts required,” another leading treatise declares, “the Supreme Court has upheld general jurisdiction only once [in *Perkins*], and lower courts have evinced a reluctance to assert general jurisdiction over nonresident individual defendants or foreign corporations even when the contacts with the forum State are quite extensive.” 16 James W. Moore, *Moore’s Federal Practice* § 108.41 (Matthew Bender 3d ed.) (citing cases across the circuits).

The court below, however, ignored these hornbook principles and held that general jurisdiction could be established by meeting the test for specific jurisdiction. With this categorical error, the court took away the right of companies whose products are distributed in North Carolina to any “fair warning” as to when they might be subject to suits of any kind—thus depriving them of due process.

2. If anything is clear from this Court’s general jurisdiction decisions, it is that a corporation may *not* reasonably expect to be haled into court *for all purposes* anywhere the stream of commerce may sweep its products. To the contrary, general jurisdiction re-

quires an actual physical presence in the State—and not a sporadic one.

As noted above, this Court has found general jurisdiction to exist exactly once—where the president of the company at issue “returned to his home” in the forum State, set up an office, employed two secretaries, established company bank accounts, and “carried on * * * a *continuous and systematic supervision* of the * * * activities of the company.” *Perkins*, 342 U.S. at 447-448 (emphasis added). The “essence of the issue” at stake, this Court explained, was “one of general fairness to the corporation.” *Id.* at 445. And under these circumstances, it was both “reasonable and just” to subject the corporation to the jurisdiction of the State, even for dealings distinct from its activities there, because it conducted in the State “continuous corporate operations.” *Id.* at 445-446 (quoting *Int’l Shoe*, 326 U.S. at 318-319).

The terms “activities” and “operations”—which first appeared in *International Shoe* (326 U.S. at 316, 318)—reveal the kind of active participation in the economy that is required to establish general jurisdiction. And both terms connote extended physical “presence in the state.” *Id.* at 318. That is why *Perkins* found that setting up a managing office in the State was sufficient to establish general jurisdiction, and it is why *Helicopteros* required “the kind of continuous and systematic general business contacts the Court found to exist in *Perkins*.” 466 U.S. at 416 & n.9 (finding no general jurisdiction where contract forming the relationship giving rise to the tort suit at issue was negotiated in forum State); see also *Johnston v. Multidata Sys. Int’l Corp.*, 523 F.3d 602, 611 (5th Cir. 2008) (to confer general jurisdiction, defendant must have a business presence in forum, not

merely do business with forum); Mary Twitchell, *The Myth of General Jurisdiction*, 101 Harv. L. Rev. 610, 635 (1988) (the “traditional indicia” of general jurisdiction are “a home base, an agent for the service of process, a local office, or the pursuance of a business from a tangible locale within the state”); Arthur T. von Mehren & Donald T. Trautman, *Jurisdiction to Adjudicate: A Suggested Analysis*, 79 Harv. L. Rev. 1121, 1141-1142 (1966) (“From the beginning in American practice, general adjudicatory jurisdiction over corporations * * * could be exercised by the community with which the legal person had its closest and most continuing legal and factual connections. The community that chartered the corporation and in which it has its head office occupies a position somewhat analogous to that of the community of a natural person’s domicile and habitual residence.”).

3. As this history confirms, the mere fact that a company’s *products* are eventually distributed in a forum State does not come close to justifying general jurisdiction. Such contacts do not amount to physical presence in the State—much less “the kind of continuous and systematic general business contacts the Court found to exist in *Perkins*.” *Helicopteros*, 466 U.S. at 416 & n.9. And this makes sense. As a matter of “general fairness to * * * corporation[s],” it is neither “reasonable [nor] just” to subject corporations to the jurisdiction of a State for *all* purposes merely because some of their products were distributed in the State. *Perkins*, 342 U.S. at 445.

Here, lacking direct contacts of any kind with North Carolina, companies such as Goodyear Turkey, Goodyear Luxembourg, and Goodyear France will now be treated as if they were full-fledged Tar Heels—and hence subject to suit on any cause of action

arising anywhere in the world. Because due process requires a “degree of predictability”—to “allow[] potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit” (*World-Wide Volkswagen*, 444 U.S. at 297)—the result below is patently unreasonable, and calls out for review, if not summary reversal.

4. The unreasonableness of the decision below is especially clear given that the “primary conduct” at issue here was manufacturing tires that were *not* involved in the underlying accident, but which were distributed by a corporate affiliate into North Carolina. Perhaps under the “stream of commerce-only” plurality opinion in *Asahi*, such conduct might have led to a lawsuit arising out of the distribution of tires into North Carolina. See *Asahi*, 480 U.S. at 119-120. But even under that opinion, stream-of-commerce distribution of *one* product into a State does not allow petitioners reasonably to anticipate being sued on causes of action arising out of *another* product that was never sold in the State. To the contrary, petitioners here structured their primary conduct to avoid lawsuits in North Carolina: they did not sell the tires at issue there. But under the decision below, apparently the only way to avoid being sued in North Carolina on causes of action arising from European tires was to attempt to prevent mere *distribution* of *any* tires in North Carolina. That makes no economic sense.

The decision below, moreover, does not enable petitioners to predict what other lawsuits *unrelated to tires* may now be brought in North Carolina. General jurisdiction is just that—general. Thus, Goodyear Turkey can now be sued in North Carolina on con-

tracts, say, with parts manufacturers in Taiwan. And Goodyear France, to take another example, can be sued in North Carolina for tortious interference with business relations of a firm in Dubai. The possibilities are endless.

5. Further, nothing in the analysis of the court below limits it to large public companies. Indeed, the court's explicit reliance on a minuscule percentage of tires flowing into North Carolina (thousands out of some 90 million; see Pet. 4-5 & n.2, 2a) will have the perverse effect of subjecting many small businesses to jurisdiction in North Carolina.

Consider, for example, a firm of 50 employees making precision tools in Washington State. If that corporation distributes some products in North Carolina, it too can be subjected to all lawsuits in North Carolina on torts, contracts, whatever—all unrelated to those products. It is both unreasonable and unfair to expect corporations to bear these burdens. That is, it is a violation of due process—and a violation that demands review by this Court, as it has implications for thousands if not millions of businesses nationwide. *Perkins*, 342 U.S. at 445 (“The essence of the issue here, at the constitutional level, is * * * one of general fairness to the corporation.”).

* * * * *

As this Court's cases make abundantly clear, and as the lower courts until now have fully understood, subjecting a corporation to general jurisdiction is fair only if its “continuous and systematic operations” include, as in *Perkins*, a physical “presence in the State.” *Int'l Shoe*, 326 U.S. at 318; *Helicopteros*, 466 U.S. at 416. This Court should grant the petition to prevent the inequities threatened by the North Caro-

lina courts' conclusion that *general* jurisdiction turns on "the extent to which Defendants' products were, in fact, distributed" generally in the forum State's markets. Pet. 28a.

II. The decision below undermines principles of federalism and federal supremacy in the conduct of foreign relations.

The Court should grant the petition for two further reasons. *First*, the decision below threatens to render North Carolina the "courtroom to the world"—a result contrary to settled principles of federalism. *Second*, by reaching so far to exercise jurisdiction over three European corporations having no contacts with North Carolina, the decision will tend to confuse and stoke the frustration of foreign corporations—which in turn will undermine the federal government's role of speaking with one voice for the United States.

1. As we have shown, North Carolina has arrogated to itself a very broad power—to summon into court corporations from around the globe, on any cause of action arising anywhere, simply because a corporate *affiliate* sold *unrelated* products into the State. In our federal system, a State cannot do that. Time and again, this Court has emphasized that limits on personal jurisdiction "act[] to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system." *World-wide Volkswagen*, 444 U.S. at 291-292. Conversely, the Court has "never accepted the proposition that state lines are irrelevant for jurisdictional purposes, nor could [it], and remain faithful to the principles of in-

terstate federalism embodied in the Constitution.” *Id.* at 293.

To be sure, this Court has noted that, as “technological progress has increased the flow of commerce between States, the need for jurisdiction over nonresidents has undergone a similar increase.” *Hanson*, 357 U.S. at 250-251. Moreover, “progress in communications and transportation has made the defense of a suit in a foreign tribunal less burdensome.” *Id.* at 251. And “[i]n response to these changes, the requirements for personal jurisdiction have evolved * * * to the flexible standard of *International Shoe*.” *Ibid.*

At the same time, however, “it is a mistake to assume that this trend heralds the eventual demise of all restrictions on the personal jurisdiction of state courts.” *Ibid.* After all, “[t]hose 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.” *Ibid.*; see also *World-Wide Volkswagen*, 444 U.S. at 294 (same). Thus, “[h]owever minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the ‘minimal contacts’ with that State that are a prerequisite to its exercise of power over him.” *Hanson*, 357 U.S. at 251.

And consider the alternative. In many cases, if distribution of a corporation’s products in a State subjects that corporation to personal jurisdiction, “then the defense of personal jurisdiction, in the sense that a State has a geographically limited judicial power, would no longer exist. The [corporation] * * * would be subject to personal jurisdiction in every State.”

ALS Scan, Inc. v. Digital Serv. Consult., Inc., 293 F.3d 707, 713 (4th Cir. 2002) (declining to adopt a “structural arrangement in which each State has unlimited judicial power over every citizen in each other State who uses the Internet”). As “an instrument of interstate federalism,” *World-Wide Volkswagen*, 444 U.S. at 294, the Due Process Clause prevents this obliteration of the defense of personal jurisdiction.

In short, by upholding general jurisdiction on a basis at once so insubstantial and easy to satisfy, the court below adopted a regime that will make the inquiry into personal jurisdiction unnecessary for a large class of defendants. This is not merely an affront to their due process rights, as shown above; it is an affront to the limitations that the Framers placed on the extraterritorial reach of individual States in our federal system—limits that protect the States as a group from improper incursions by individual States.

2. By forcing non-U.S. corporations to submit to the general jurisdiction of one of the United States, the decision below also implicates “the procedural and substantive policies of other *nations*” in adjudicating the dispute at issue. *Asahi*, 480 U.S. at 115 (portion of opinion joined by eight Justices) (emphasis in original). Because the management of those sensitive interests is the province of the federal government—not the States—“[g]reat care and reserve should be exercised when extending our notions of personal jurisdiction into the international field.” *Ibid.* (citation and quotation omitted).

The Court of Appeals failed to show such “great care and reserve.” To the contrary, without mentioning the ramifications of its decision for the United

States, the court below forced three European corporations—Goodyear Turkey, Goodyear France, and Goodyear Luxembourg—to litigate in Onslow County, North Carolina the design of tires never sent into North Carolina, based upon an accident in Paris, France. Such vast extraterritorial reach cannot help but encourage retaliation from foreign countries whose citizens are forced to submit to jurisdiction in North Carolina. *Cf. Helicopteros*, 466 U.S. at 425 n.3 (Brennan, J., dissenting) (noting Solicitor General’s concern that broad interpretation of general jurisdiction would cause foreign companies to refrain from making purchases in the United States).

But the chief problem posed by the decision below may not be foreign offense; foreign corporations may now struggle even more with sheer confusion. As this Court has repeatedly said, the Nation “must speak with one voice when regulating commercial relations with foreign governments.” *Michelin Tire Corp. v. Wages*, 423 U.S. 276, 285 (1976). Unfortunately, “the United States speaks with many inconsistent voices about the reach of United States judicial jurisdiction in international cases.” Gary B. Born, *Reflections on Judicial Jurisdiction in International Cases*, 17 Ga. J. Int’l & Comp. L. 1, 11 (1987). Although this problem was identified more than two decades ago (see *ibid.*), the decision below proves that it has not been solved. Indeed, by subjecting foreign corporations to general jurisdiction based on mere “stream of commerce” distribution of products, the Court of Appeals’ decision is likely the most discordant and confusing note to emerge from our federal system in some time.

* * * * *

Rather than exercising any restraint in the exercise of jurisdiction, the Court of Appeals extended its reach to three European corporations with no direct contacts with North Carolina. And it did so, not merely for this-case-only specific jurisdiction, but for all purposes from this day forward. By threatening to undermine U.S. foreign relations, that lack of restraint improperly trenches on federal prerogatives.

CONCLUSION

The decision below urgently demands review. The decision gets the extremely important law of personal jurisdiction flat wrong—mistaking general jurisdiction for specific jurisdiction. And in so doing, the decision will inevitably produce doctrinal chaos, economic inefficiency and unfairness, and foreign relations problems. Accordingly, the petition should be granted and the decision below reversed, either summarily, or after full briefing and argument.

Respectfully submitted,

ROBIN S. CONRAD
 AMAR SARWAL
*National Chamber
 Litigation Center
 1615 H Street, N.W.
 Washington, D.C. 20062
 (202) 463-5337*

GENE C. SCHAERR
Counsel of Record
 STEFFEN N. JOHNSON
 ANDREW C. NICHOLS
*Winston & Strawn LLP
 1700 K Street, N.W.
 Washington, D.C. 20006
 (202) 282-5000*

LINDA T. COBERLY
*Winston & Strawn LLP
 35 W. Wacker Drive
 Chicago, IL 60601
 (312) 558-5600*

Counsel for Amicus Curiae

AUGUST 2010