No. 16-405

IN THE SUPREME COURT OF THE UNITED STATES

BNSF RAILWAY COMPANY,
Petitioner,

v.

KELLI TYRRELL, as Special Administrator for the Estate of Brent T. Tyrrell; and ROBERT M. NELSON,
Respondents.

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

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MOTION FOR LEAVE TO FILE AND BRIEF OF *AMICUS CURIAE* NATIONAL ASSOCIATION OF MANUFACTURERS IN SUPPORT OF PETITIONER

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October 28, 2016

MOTION FOR LEAVE TO FILE

The National Association of Manufacturers (NAM) hereby moves, pursuant to Supreme Court Rule 37.2, for leave to file a brief as *amicus curiae* in support of the petition for a writ of certiorari to the Supreme Court of Montana. NAM is filing this motion because Respondents declined to consent to NAM's filing of its brief.[1] A copy of the proposed brief is attached.

As explained more fully in the attached brief under "Interest of *Amicus Curiae*," NAM is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states.

In the modern economy, manufacturers of all sizes regularly purchase materials, as well as make and sell their products, in markets across the country. Given the increasingly interconnected economic environment for manufacturers and other businesses, this Court placed a firm constitutional check on where corporations can be subject to liability in the event that its products or operations wrongfully cause injury. The Court concluded that, as a matter of due process, a state can exercise general personal jurisdiction over a business only where it is "at home," largely its place of incorporation or principal place of business. *See Daimler AG v. Bauman*, 134 S. Ct. 746, 760 (2014); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011).

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[1] NAM requested consent from Respondents, and Respondents declined to consent, on October 10, 2016. Petitioner granted consent to the filing of this brief.

NAM is concerned that courts are creating unwarranted exceptions to this constraint on general, all-purpose jurisdiction. The Supreme Court of Montana's decision, which limits this Court's due process safeguards to foreign disputes arising abroad, and exempts claims brought under Federal Employers Liability Act's (FELA), is an example. NAM members have a strong interest in faithful and consistent application of *Daimler* and *Goodyear* to domestic manufacturers and ensuring that constitutional protections that preclude improper forum shopping are not trumped by statute. If not reversed, the Supreme Court of Montana's decision, and others like it, will subject manufacturers to the jurisdiction of courts in states that have little or no relationship to the lawsuit and that unfairly subject them to liability exposure that is greater than other states.

NAM respectfully requests that the Court grant leave to file the attached brief as *amicus curiae*.

Respectfully submitted,

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Dated: Oct. 28, 2016

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INTEREST OF *AMICUS CURIAE* [1]

The National Association of Manufacturers (NAM) is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs more than 12 million men and women, contributes roughly $2.17 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for three-quarters of private-sector research and development in the nation.

NAM is the powerful voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States. NAM is concerned that courts are creating unwarranted exceptions to this Court's decisions constraining general, all-purpose jurisdiction. As a result, manufacturers may be subject to the jurisdiction of courts in states that have little or no relationship to the lawsuit and that unfairly subject them to liability exposure that is greater than other states.

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[1] Pursuant to Rule 37.6, counsel for NAM certifies that this brief was not authored in whole or in part by counsel for any party and that no person or entity, other than the NAM, its members, or its counsel made a monetary contribution to the preparation or submission of the brief. Petitioner has consented to the filing of this brief, but Respondents have withheld their consent.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This Court has ushered in a new era of general personal jurisdiction in the past five years that properly reflects the modern economy where even the smallest businesses engage in commerce throughout the United States. Given this new environment, the Court placed a firm constitutional check on where businesses can be subject to liability in the event that their products or operations wrongfully cause injury. The Court concluded that, as a matter of due process, a state can exercise general personal jurisdiction over a business only where it is "at home," largely its place of incorporation or principal place of business. *See Daimler AG v. Bauman*, 134 S. Ct. 746, 760 (2014); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). Some courts, including the Supreme Court of Montana in the case at bar, have not applied these constitutional limits.

This case provides the Court with an important opportunity to give full effect to its recent jurisprudence in *Daimler* and *Goodyear*. Here, Montana's Supreme Court created unsupported exceptions to *Daimler*, ruling that *Daimler*'s "at home" requirement applies only to foreign (outside the United States) defendants and that the Federal Employers Liability Act's (FELA) venue provision supersedes constitutional due-process limits on personal jurisdictional. As a result, Montana courts exercised personal jurisdiction over the defendant in a case where the defendant is not "at home" in Montana, the plaintiff does not reside in Montana, and the alleged injury and all events allegedly causing the injury oc-

curred outside Montana. This case presents the exact result this Court sought to prohibit in *Daimler*.

The Montana Supreme Court's ruling, if not reversed, will dissolve the significance of *Daimler* and *Goodyear*. U.S.-based companies, in particular, would be subject to improper forum shopping. Of relevance here, Montana has become a favored destination for certain FELA cases because its courts generously interpret FELA's statute of limitations, giving new life to claims that would be untimely in other jurisdictions. As discussed below, other courts have become jurisdictions of choice for other types of claims, such as asbestos litigation, prescription drug product suits, and consumer claims.

This Court should grant *certiorari* to resolve the inconsistency in the law embodied in the Montana Supreme Court's decision and make clear that the constitutional safeguards established in *Goodyear* and reaffirmed in *Daimler* apply to all claims. Manufacturers and other businesses should not be compelled to appear in jurisdictions when they have insufficient connection to the locale and when the incident, people, and evidence are hundreds or thousands of miles away.

ARGUMENT

I. GIVEN TODAY'S GLOBAL MANUFACTURING ECONOMY, THE COURT SHOULD GRANT *CERTIORARI* TO ENSURE THAT STATES ARE APPLYING *DAIMLER'S* "AT HOME" REQUIREMENTS FOR GENERAL PERSONAL JURISDICTION

Some courts are clearly struggling with, or refusing to follow, the constitutional due process stand-

ards for general jurisdiction that this Court set forth in *Daimler* and *Goodyear*. While this Court clearly set a high bar for general personal jurisdiction, courts have continued imposing a sprawling view of general jurisdiction by accepting such jurisdiction based solely on a company's presence in a state through offices, employees, agents for service of process, operations, or sales. That approach is untenable in an increasingly global marketplace for manufacturers. As the Petition demonstrates, the Montana ruling at bar is not isolated.

As a threshold matter, some courts may be confusing general and specific jurisdiction, and this Court should take this opportunity to reinforce that general jurisdiction comes into play only when there is an insufficient connection between the lawsuit at issue and the state in which it is filed to support personal jurisdiction. General jurisdiction is a fallback for when a plaintiff cannot establish specific jurisdiction where the action arose. *See Daimler*, 134 S. Ct. at 757 ("Although placement of a product into the stream of commerce may bolster an affiliation germane to *specific* jurisdiction, . . . such contacts do not warrant a determination that, based on those ties, the forum has *general* jurisdiction over a defendant.").[2] The Court can make clear that these rulings do not impact specific jurisdiction and that the two concepts are entirely distinct.

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[2] *See also International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945) (recognizing that when a lawsuit "arise[s] out of or [is] connected with the [corporation's] activities within the state," due process allows that state to exercise jurisdiction over the corporation).

In response to this specific case, the Court should grant *certiorari* to clarify that its tightened requirements for general jurisdiction apply to all companies, not just foreign entities, and its due process protections cannot be overridden by statute, as attempted here. *Goodyear* and *Daimler* properly embrace the manner in which manufacturers and other companies do business today and follow this Court's long tradition of tailoring constitutional general jurisdictional safeguards to the marketplace. *Cf. Burnham v. Super. Ct. of Cal., County of Marin*, 495 U.S. 604, 617 (1990) (recognizing that jurisdiction jurisprudence has historically reflected "changes in the technology of transportation and communication, and the tremendous growth of interstate business activity.").

Today, the marketplace is increasingly global, allowing small and medium-size manufacturers to purchase materials, as well as make and sell their products in markets across the country. Three-quarters of manufacturing firms have less than twenty employees. *See* Anthony Caruso, Statistics of U.S. Businesses Employment and Payroll Summary: 2012, at 7 (2015). Only about six percent of manufacturers exceed one hundred employees. *See id.* Further, the trend is for manufacturers to make products in America in small quantities in small facilities. *See* Dmitry Slepov, *Micromanufacturing the Future*, Tech Crunch, Apr. 3, 2016, *at* https://techcrunch.com/2016/04/03/micromanufacturing-the-future/. Although a manufacturer's operations may be centered in one or two states, in today's internet era, most manufacturers—large or small—buy parts and make volumes of sales throughout the country.

Thus, a manufacturer may well have "substantial, continuous, and systematic" activities in a state, but not be "at home" in that state. *Daimler*, 134 S. Ct. at 761. The critical question, as this Court explained, "is not whether a foreign corporation's in-forum contacts can be said to be in some sense 'continuous and systematic,'" but rather whether those contacts are "so 'continuous and systematic' as to render [it] essentially at home in the forum State." *Id.* (quoting *Goodyear*, 564 U.S. at 919). The Court properly concluded that a business's state of incorporation and principal place of business are the two "paradigm all-purpose forums." *Id.* at 760. "Those affiliations have the virtue of being unique—that is, each ordinarily indicates only one place—as well as easily ascertainable." *Id.*

Indeed, when manufacturers and other businesses consider where to incorporate and locate their principal place of business, the predictability of legal exposure and risks are becoming significantly growing factors. *See* U.S. Chamber Inst. for Legal Reform, 2015 Lawsuit Climates Survey: Ranking the States (2015), at 3-4, *at* http://www.instituteforlegalreform.com/uploads/sites/1/ILR15077-HarrisReport_BF2.pdf (finding 75 percent of respondents reported that a state's litigation environment is likely to impact important business decisions, such as where to locate or do business). As this Court has appreciated, businesses must be able "to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *Daimler,* 134 S. Ct. at 762 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)); *see also Shaffer v. Heitner*, 433 U.S. 186, 218 (1977) (Stevens, J., concurring in judgment) (stating due

process requires a defendant to have "fair warning" as to where it may be subject to jurisdiction).

Businesses that make computer and electronic equipment in Oregon, for example, should not be subject to general jurisdiction in New York simply because consumers purchase many laptops there. Companies that make airplanes in places such as Seattle, Washington, and Mobile, Alabama, should not be compelled to appear in an Illinois court based on planes regularly flying into Chicago. Food producers in Iowa and North Carolina should not be subject to jurisdiction in Florida merely because people ultimately buy food in supermarkets there. A pharmaceutical maker based in Indiana should not face lawsuits in Pennsylvania solely based on the quantity of prescriptions filled in the state. As in *Daimler*, companies that make cars in places such as Michigan, Indiana, and Tennessee should not face lawsuits in any state in which its cars are merely sold or driven. *See Daimler*, 134 S. Ct. at 762 n.20 ("A corporation that operates in many places can scarcely be deemed at home in all of them.").

As this Court has found, the "at-home" requirement lends predictability to the civil justice system and allows businesses to control, within reason, the laws under which they will operate and be subject to liability. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). This constitutional constraint is particularly critical to manufacturers who cannot afford the cost, business interruptions, and additional liability exposure of trying cases in faraway jurisdictions. The Court should grant *certiorari* to make sure that Montana and other states adhere to this Court's well-reasoned, modern jurisprudence

and do not subject American manufacturers and other businesses to litigation in places and under laws in violation of their due process rights.

II. STATES THAT DO NOT FOLLOW *DAIMLER* FACILITATE "MAGNET" JURISDICTIONS

If the Court does not grant *certiorari* in this case, it can greatly undermine the central purpose of this Court's general jurisdiction jurisprudence: to assure that the location of a lawsuit does not subvert "traditional notions of fair play and substantial justice." *Daimler,* 134 S. Ct. at 754 (quoting *Int'l Shoe Co.*, 326 U.S. at 316; *accord Asahi Metal Indus. Co. v. Superior Court of Cal.*, 480 U.S. 102, 114 (1987) (recognizing the "unique burdens placed upon one who must defend oneself in a foreign legal system").

Here, Mr. Nelson injured his knee in Washington State and Mr. Tyrrell died after exposure to carcinogenic chemicals in South Dakota, Minnesota, and Iowa. Yet, both filed their lawsuits against BNSF in Montana. Montana has become a destination for FELA claims because the Montana Supreme Court has adopted a more liberal interpretation of the statute of limitations than several federal circuits. *See, Anderson v. BNSF Ry.*, 354 P.3d 1248 (Mont. 2015), *cert. denied*, 136 S. Ct. 1495 (2016). Montana courts also have a reputation for "empathizing with injured railroad workers" compared with courts in other states. Paul Bovarnick, *On the Tracks: Helping Injured Railroad Workers*, Trial Lawyer, at 33 (Fall 2012), *at* http://www.rsblaw.net/beta/wp-content/uploads/2015/06/On-the-tracks_helping-injured-rr-workers.pdf. In the case discussed in this article, the attorney explained that finding an excuse to file his client's FELA claim in Montana, not Washington or

Oklahoma, where the client was injured, or Wyoming, where the client lived, generated "a most generous settlement." *Id.* Not surprisingly, BNSF faces at least 32 more FELA claims in Montana courts also brought by out-of-state railroad workers for injuries that have no connection to Montana. Pet. at 24.

Such forum shopping has become all too common. In violation of fair play and justice, manufacturers and other businesses are routinely sued in jurisdictions with little or no connection to the lawsuits. One prominent former plaintiffs' lawyer called these "magnet jurisdictions." Asbestos for Lunch, Panel Discussion at the Prudential Securities Financial Research and Regulatory Conference (May 9, 2002), in Industry Commentary (Prudential Securities, Inc., N.Y., New York), June 11, 2002, at 5 (quoting Richard Scruggs). A tort reform group is less diplomatic in naming these jurisdictions "Judicial Hellholes." *See* Am. Tort Reform Found., Judicial Hellholes (2015), *at* http://www.judicialhellholes.org/wp-content/uploads/2015/12/JudicialHellholes-2015.pdf.

The quintessential example of forum shopping is in asbestos litigation. Any manufacturer with a remote historic connection to an asbestos-containing product or workplace faces lawsuits in Madison County, Illinois, which hosts one-quarter of the nation's asbestos litigation. *See* KCIC, Asbestos Litigation: 2016 Mid-Year Update (2016), at 3, *at* http://riskybusiness.kcic.com/wp-content/uploads/2016/09/KCIC-Asbestos-Mid-Year-Report-2016-1.pdf. Very few of these claims, though, have any connection to Madison County. In 2015, only 75 of 1,224 asbestos cases filed there were on behalf of Illinois residents with only six cases involving Madison County

residents. *See* Heather Isringhausen Gvillo, *Madison County Asbestos Filings Total 1,224; Only 6 Percent Filed on Behalf of Illinois Residents,* Madison-St. Clair Record, Mar. 23, 2016. Warehousing of claims in chosen jurisdictions is a major reason asbestos litigation, which should have been in decline, is growing in scope and intensity and driving companies into bankruptcy. *See generally* Mark D. Plevin, et al., *Where are They Now, Part Six: An Update on Developments in Asbestos-Related Bankruptcy Cases*, 11-7 Mealey's Asb. Bankr. Rep. 24 (2012).

For a number of years, Philadelphia, Pennsylvania became the prime location to file lawsuits against pharmaceutical manufacturers. In 2009, the Common Pleas President Judge undertook a "public campaign to lay out the welcome mat for increased mass torts filings." Amaris Elliott-Engle, *Common Pleas Court Seeing More Diabetes Drug Cases*, Legal Intelligencer, Mar. 19, 2009, at 1; *see also* Amaris Elliott-Engle, *Philadelphia Courts May See Substantial Layoffs*, Legal Intelligencer, Jan. 29, 2009 (reporting the plan to make the Complex Litigation Center for mass torts more attractive to attorneys to "tak[e] business away from other courts"). In 2015, out-of-state plaintiffs accounted for 81 percent of new pharmaceutical cases filed in the Philadelphia courts, with that number dipping to 65 percent so far in 2016. *See* Max Mitchell, *Out-of-State Pharma Filings Dip as Phila. Mass Torts Remain Steady*, Legal Intelligencer, July 25, 2016, *at* http://www.thelegalintelligencer.com/latest-news/id=1202763506813/OutofState-Pharma-Filings-Dip-as-Phila-Mass-Torts-Remain-Steady. Local lawyers attribute this decrease to *Daimler*. *See id.* Refusing to grant *certiorari* here, therefore, could reverse these gains.

The City of St. Louis, notwithstanding *Daimler*, is emerging as a new jurisdiction of choice for lawsuits; this is in part due to the state's refusal to adopt the Court's gatekeeper standards for expert evidence. *See* Margaret Cronin Fisk, *Welcome to St. Louis, the New Hot Spot for Litigation Tourists*, Bloomberg Businessweek, Sept. 29, 2016, *at* http://www.bloomberg.com/news/articles/2016-09-29/plaintiffs-lawyers-st-louis (reporting that hundreds of out-of-state plaintiffs have brought claims against pharmaceutical and other companies in St. Louis, which has "developed a reputation for fast trials, favorable rulings, and big awards"). The Missouri Office of State Courts Administrator's statistics show that filings in St. Louis have increased from about 3,000 to more than 12,000 claimants from 2014 to 2015. *Compare* FY 2014 Profile 22nd Circuit, Missouri Courts, *at* http://www.courts.mo.gov/file.jsp?id= 83194 *with* FY 2015 Profile 22nd Circuit, Missouri Courts, *at* http://www.courts.mo.gov/file.jsp?id=96374.

In addition, a handful of states host most of the unfair trade practices claims against manufacturers. *See, e.g.*, Dana Herra, *Say Cheese: Class Actions Begin to Pile Up vs Kraft, Walmart over Parmesan Cheese Contents*, Cook County Record, Mar. 1, 2016 (reporting plaintiffs filed consumer lawsuits in New York, California, Missouri, Illinois, Minnesota, and Florida).[3] *Daimler* has proven effective in dismissing or narrowing claims where there is no connection to the state. *See*, *e.g.*, *Weisblum v. Prophase Labs, Inc.*, 88 F.Supp.3d 283 (S.D.N.Y. 2015) (dismissing con-

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[3] *Available at* http://cookcountyrecord.com/stories/510698243-say-cheese-class-actions-begin-to-pile-up-vs-kraft-walmart-over-parmesan-cheese-contents.

sumer class action fraud claims by California residents for lack of general jurisdiction over defendant while retaining such claims by New York residents).

A troubling consequence of stockpiling hundreds or thousands of claims in magnet jurisdictions, especially when a vast majority of the claims have no connection to the locale, is the increased pressure these filings create to shift a court's focus from dispensing justice to expeditiously disposing of cases. Even well-intentioned judges may take shortcuts to temporarily fix a clogged docket, but ultimately these shortcuts fuel more litigation. *See* Francis E. McGovern, *The Defensive Use of Federal Class Actions in Mass Torts*, 39 Ariz. L. Rev. 595, 606 (1997) ("Judges who move large numbers of highly elastic mass torts through their litigation process at low transaction costs create the opportunity for new filings. . . . If you build a superhighway, there will be a traffic jam."). These concerns of injustice go to the heart of the fair play and substantial justice reasons that this Court restricted general personal jurisdiction to the state in which a business is "at home."

Amicus appreciates that this Court cannot completely eliminate forum shopping or the resulting injustices that occur in these jurisdictions. But, there are clear cases, such as the one at bar, that have no connection to the forum state or where the defendant is "at home." This type of litigation tourism must be grounded. These lawsuits violate this Court's jurisdictional safeguards, and failure to grant *certiorari* will encourage this unconstitutional practice.

III. THE COURT SHOULD RESPOND TO RULINGS THAT IMPROPERLY LIMIT *DAIMLER*

The Court should also grant the Petition to ensure the constitutional protections this Court set forth in *Daimler* and *Goodyear* are not improperly denied to domestic companies or trumped by statute. These protections are rooted in the U.S. Constitution's due process clause and, therefore, must apply to domestic and foreign disputes alike and cannot be altered by federal law establishing concurrent subject matter jurisdiction over claims in state courts.

A. This Court Should Clarify That *Daimler* Applies to All Litigation, Not Just Disputes Arising Outside the United States

Manufacturers and other companies based outside the United States must not be given protections under the U.S. Constitution that are not provided to their domestic counterparts.

In this case, the Montana Supreme Court seized on the foreign nature of the disputes in *Goodyear* and *Daimler* to find the Court's "at home" limitation applies only to "a claim brought by foreign plaintiffs against a foreign defendant based on events occurring entirely outside the United States." *Tyrrell v. BNSF Ry. Co.*, 373 P.3d 1, 6 (Mont. 2016) (quoting *Daimler*, 134 U.S. at 750). *Goodyear* arose out of a bus accident in France where the allegedly defective tire was made and sold abroad. *Daimler* arose in the context of an Alien Tort Statute claim involving Argentinean plaintiffs against a German corporation. Yet, nothing in these opinions limits the application

of constitutional constraints on general jurisdiction to claims that arise outside the United States.

As the Petitioner shows, this unduly narrow reading of *Daimler*, which precludes its application in purely domestic cases, directly or implicitly conflicts with at least eleven other court decisions. Pet. Br. at 11-13. For example, the Delaware Supreme Court has properly found that "it is not tenable" after *Daimler* to exert personal jurisdiction over a manufacturer where the claims "had nothing to do with its activities in Delaware," merely because the corporation registered to do business and appointed a registered agent to receive service of process in that state. *Genuine Parts Co v. Cepec*, 137 A.3d 123, 125-26 (Del. 2016) (finding no personal jurisdiction over manufacturer incorporated in Georgia with principal place of business in Atlanta in asbestos claim brought by Georgia plaintiff who worked in Florida warehouse). Before *Daimler,* out-of-state plaintiffs with no meaningful connection to Delaware had increasingly filed asbestos claims there. *See In re Asbestos Litigation*, 929 A.2d 373, 378 (Del. 2006) (finding out-of-state asbestos claims filed in Delaware courts began in May 2005 and quickly reached 129 claims). *Daimler* reversed that trend. *See* KCIC, Asbestos Litigation, *supra*, at 5 (finding asbestos claims filed in New Castle, Delaware fell from 219 in 2014 to 124 in 2015, a decline of 43.4%).

The Montana Supreme Court's decision is also in conflict with a California Supreme Court decision that found that its courts did not have general jurisdiction over claims brought by out-of-state plaintiffs against a pharmaceutical manufacturer that was neither incorporated nor headquartered in Califor-

nia. *See Bristol-Myers Squibb Co. v. Super. Ct. (Anderson),* 377 P.3d 874, 879, 883-84 (Cal. 2016). There, the California Supreme Court applied a comparative approach to examining the manufacturer's contacts with the forum state, but nevertheless found specific jurisdiction over the claims. *See id.* (finding although the manufacturer registered to do business, maintained an agent for service, employed over 400 people, and sold 187 million of the pills at issue in California, its California operations were less extensive than its activities elsewhere in the United States).

If not corrected by this Court, *Tyrrell* will establish a beachhead for plaintiffs in their continued attempts to eviscerate *Daimler* by limiting it "to overseas, non-American plaintiffs, an overseas corporate defendant, or both." *See* William R. Hanlon & Richard M. Wyner, Commentary: *Daimler Turns Two: Personal Jurisdiction Over Out-Of-State Mass Tort Defendants in the Wake of Daimler AG v. Bauman*, Mealey's Litig. Rep.: Asbestos, vol. 31, no. 5, Apr. 13, 2016. Such a result has no legal basis and would put American businesses at a competitive disadvantage.

B. The Court Should Separate Concurrent Subject Matter Jurisdiction and Statutory Venue Requirements from the Constitutional Floor for General Jurisdiction

The Montana Supreme Court also created an exemption from the Court's personal jurisdiction jurisprudence for FELA claims. Its reasoning for doing so—that a federal statute broadly empowers state courts to decide certain cases, regardless of constitutional safeguards—is deeply flawed. If other courts follow this reasoning, then federal and state laws establishing venue for various types of claims could be

misread to overcome the lack of any connection among the claim, defendant, and state that is needed for personal jurisdiction.

It is a basic principle that plaintiffs must establish subject matter jurisdiction, personal jurisdiction over the defendant, and venue—customarily, though not necessarily, in that order. *See Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 578 (1999). "[P]ersonal jurisdiction, which goes to the court's power to exercise control over the parties, is typically decided in advance of venue, which is primarily a matter of choosing a convenient forum." *See Leroy v. Great Western United Corp.*, 443 U.S. 173, 180 (1979) (citing C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 3801, pp. 5-6 (1976)).

FELA merely provides that state courts have concurrent subject matter jurisdiction with the federal courts in deciding cases involving injuries to railroad workers. *See* 45 U.S.C. § 56. The statute broadly provides that a FELA action "may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action." *Id.* This language provides a venue rule as to where such claims may be heard in federal court. *See Baltimore & O.R. Co. v. Kepner*, 314 U.S. 44, 52 (1941) (recognizing Section 56 "establishes *venue* for an action in the federal courts") (emphasis added)); *see also Imm v. Union R. Co.*, 289 F.2d 858, 859 (3d Cir. 1961) (agreeing with railroad that 45 U.S.C. § 56 "is a venue provision and does not have anything to do with jurisdiction"). The statute also provides concur-

rent subject matter jurisdiction over FELA claims in federal and state courts. *See* 45 U.S.C. § 56.

Due process rights cannot be reduced or eliminated by statute. This principle is universally understood in the context of state long-arm statutes. *See, e.g., Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 413-14 (1984) (considering whether Texas long-arm statute reached beyond what the Due Process Clause of the Fourteenth Amendment permits). A statute, such as FELA, cannot be read to broadly establish personal jurisdiction over defendants in state court, which requires a case-by-case constitutional inquiry. *See J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 884 (2011) ("[P]ersonal jurisdiction requires a forum-by-forum, or sovereign-by-sovereign, analysis."). Congress's grant of subject matter jurisdiction also cannot be seen as an excuse to "enlarge or regulate the jurisdiction of state courts." *Mondou v. New York, New Haven & Hartford R.R. Co.*, 223 U.S. 1, 56-57 (1912). No precedent of this Court has ever held that Congress has the power to affect the personal jurisdiction of state courts at all. FELA and other statutes can authorize states to exercise jurisdiction only when consistent with the U.S. Constitution.

"As a general rule, neither statute nor judicial decree may bind strangers to the state." *Nicastro*, 564 U.S. at 880. In products liability cases against manufacturers, for example, "it is the defendant's purposeful availment [of the benefits and protections of state law] that makes jurisdiction consistent with 'traditional notions of fair play and substantial justice.'" *Id*. (quoting *Int'l Shoe*, 326 U.S. at 316). As the Court found in *Goodyear* and reinforced in *Daimler*, a cor-

poration submits to general or all-purpose jurisdiction only in the states in which it is incorporated or establishes its principal place of business (or a surrogate principal place of business). It is not subject to personal jurisdiction everywhere its goods routinely flow. *See Nicastro*, 564 U.S. at 882; *Daimler*, 134 U.S. at 760-61.

By denying *Daimler* safeguards to U.S. businesses and exempting certain statutory claims, the Montana Supreme Court's ruling creates exceptions to this Court's general jurisdiction jurisprudence that would overtake the Court's rule of law. The Court should grant *certiorari* here to make sure that its rulings are applied properly and to their full extent.

CONCLUSION

For the foregoing reasons, *amicus curiae* respectfully requests that this Court grant the Petition for Writ of Certiorari.

Respectfully submitted,

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