No. 15-1151

IN THE

Supreme Court of the United States

FITCH RATINGS, INC., F/K/A FITCH, INC.,

Petitioner,

v.

FIRST COMMUNITY BANK, N.A.,

Respondent.

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

BRIEF OF *AMICUS CURIAE* THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*

The Chamber of Commerce of the United States of America is the world's largest federation of businesses and associations. The Chamber represents 300,000 direct members and indirectly represents an underlying membership of more than three million U.S. businesses and professional organizations of every size and in every sector and geographic region of the country. An important function of the Chamber is to represent the interests of its members before the courts, Congress, and the Executive Branch. To that end, the Chamber regularly files *amicus curiae* briefs in cases of vital concern to the nation's business community, including cases involving constitutional limits on the exercise of personal jurisdiction. *See, e.g.*, *Walden v. Fiore*, 134 S. Ct. 1115 (2014); *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014); *J. McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780 (2011); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846 (2011).[1]

The Chamber has a substantial interest in the correct and uniform application of jurisdictional principles. Resolving the constitutionality of so-called "conspiracy jurisdiction," by which forum-related contacts are imputed to all participants of an alleged conspiracy for purposes of establishing personal

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[1] No counsel for a party authored this brief in whole or in part. No one other than *amicus curiae*, its members, or *amicus*'s counsel made a monetary contribution intended to fund the preparation or submission of this brief. Letters from the parties consenting to the filing of this brief have been filed with the Clerk of the Court. Counsel of record for the petitioner and the named respondent received notice at least ten days prior to the due date of *amicus*'s intention to file this brief; the two nominal respondents were notified thereafter and granted consent.

jurisdiction, would provide essential guidance to American companies about the jurisdictional consequences of their business associations, which in turn affects how they organize their affairs. The Chamber's members have a direct interest in this issue because the theory of conspiracy jurisdiction undercuts this Court's recent Due Process precedents and effectively vitiates jurisdictional limits for businesses that operate nationwide. The Chamber submits this brief to explain the fractured application of the doctrine in the lower courts, the practical harms that result, and the need for this Court's immediate review.

SUMMARY OF ARGUMENT

As the petition explains, numerous state courts of last resort are intractably divided over the validity of "conspiracy jurisdiction," which the decision below categorized as an independent basis to assert personal jurisdiction over a nonresident defendant in cases where general and specific jurisdiction are absent. This novel but increasingly widespread theory contravenes the Court's seminal Due Process precedents. The conflict among lower courts is especially problematic for the business community because, in many cases, plaintiffs can exploit the division among courts by opting to bring lawsuits against companies that have nationwide business contacts simply by alleging a conspiracy, as this case vividly illustrates. In such cases, defendants like petitioner are forced to litigate the merits of their defense in a foreign forum and participate in extensive discovery at the outset of a case, losing the protections of the Due Process Clause.

This case is the proper vehicle at an opportune time to resolve the constitutionality of conspiracy jurisdiction. Litigation over conspiracy jurisdiction is poised

to increase as plaintiffs invoke alternative jurisdictional theories in an effort to sidestep the Court's recent holdings that limit general and specific jurisdiction. This Court's review is needed now to resolve an acknowledged conflict on an important constitutional question.

THE WRIT SHOULD BE GRANTED

I. The constitutionality of conspiracy jurisdiction is a question of growing national importance.

A. Courts have begun to apply conspiracy jurisdiction at an alarmingly frequent rate.

Conspiracy jurisdiction has a relatively short historical pedigree. Plaintiffs first attempted to impute the forum contacts of one alleged conspirator to another in the 1940s, but "it was not until the 1970's that this method of jurisdictional attribution became prevalent." Lea Brilmayer & Kathleen Paisley, *Personal Jurisdiction and Substantive Legal Relations: Corporations, Conspiracies, and Agency*, 74 Cal. L. Rev. 1, 19 (1986). Compared to traditional principles of *in personam* jurisdiction like general and specific jurisdiction, conspiracy jurisdiction "is a relatively new phenomenon." *Id*.

Courts fashioned the theory of conspiracy jurisdiction during an era "of unparalleled expansion for state judicial jurisdiction." Martin B. Louis, *The Grasp of Long Arm Jurisdiction Finally Exceeds Its Reach: A Comment on* World-Wide Volkswagen Corp. v. Woodson and Rush v. Savchuk, 58 N.C. L. Rev. 407, 407 (1980); *see also* Gene R. Shreve & Peter Raven-Hansen, Understanding Civil Procedure 55 (2d ed.

2002) ("[1945-1977] was the great, freewheeling period of extraterritorial jurisdiction."). During this period, courts rapidly expanded their jurisdictional grasp to reach foreign defendants who introduced products into a stream of commerce that indirectly reached the forum market or defendants who conducted business in the forum state but principally operated elsewhere. In recent years, this Court has reined in the expansive jurisdictional theories of this era that veered from "traditional practice," which is a "touchstone for constitutional analysis" under the Due Process Clause. *Honda Motor Co., Ltd. v. Oberg*, 512 U.S. 415, 430 (1994). *See Walden v. Fiore*, 134 S. Ct. 1115 (2014); *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014); *J. McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780 (2011); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846 (2011).

Scholars immediately criticized courts' use of conspiracy jurisdiction. One concluded that "[i]ts basic premise . . . is seriously flawed" because a conspiracy-based theory of jurisdiction requires courts to "look[] to the contacts of the conspiracy with the forum, rather than to the contacts of each conspirator." Stuart M. Riback, *The Long Arm and Multiple Defendants: The Conspiracy Theory of In Personam Jurisdiction*, 84 Colum. L. Rev. 506, 510 (1984). Another lamented courts' "unexamined acceptance" of the doctrine, which had become "a device to bypass due process analysis." Ann Althouse, *The Use of Conspiracy Theory to Establish In Personam Jurisdiction: A Due Process Analysis*, 52 Fordham L. Rev. 234, 235–36, 254 (1983). Professor Janet Cooper Alexander of Stanford Law School wrote that conspiracy jurisdiction "goes well beyond agency law because the co-conspirator's acts need not be within the defendant's contemplation. Such an attribution of contacts should violate due

process." Janet Cooper Alexander, *Unlimited Shareholder Liability Through A Procedural Lens*, 106 Harv. L. Rev. 387, 401 n.66 (1992). The Department of Justice likewise has argued that a court's exercise of jurisdiction over nonresident federal officials based on the conspiracy theory of jurisdiction "offends due process principles." Brief of Appellee at 6, *Deutsch v. U.S. Dep't of Justice*, 93 F.3d 986 (D.C. Cir. 1996) (No. 95-5122), 1995 WL 17204591, at *6.

Despite swift criticism, courts have continued to apply conspiracy jurisdiction at an alarmingly frequent rate. A conservative canvas of publicly available judicial decisions revealed over 600 opinions in state and federal courts discussing the application of conspiracy jurisdiction in civil cases. The actual number of cases that raise conspiracy jurisdiction is likely much higher when one accounts for unreported decisions, particularly in state trial courts. The volume of cases invoking conspiracy jurisdiction is particularly remarkable because, during the majority of the last three decades, courts already were applying unconstitutionally expansive theories of general and specific jurisdiction. Now that this Court has taken significant steps to restore general and specific jurisdiction to their traditional boundaries, the application of conspiracy jurisdiction likely will increase as plaintiffs seek to sidestep the Court's recent decisions. *See* Part II, *infra*.

B. Courts are intractably divided and confused over the viability of this new doctrine.

As the petition explains, "there is a split among the jurisdictions regarding the constitutionality of the conspiracy theory of jurisdiction." *Knaus v. Guidry*,

906 N.E.2d 644, 660 (Ill. App. Ct. 2009) (collecting authorities). But the numerical tally of conflicting state court decisions tells only part of the story.

To say that the doctrine "has been questioned" would be an understatement. *Green v. Advance Ross Elec. Corp.*, 427 N.E.2d 1203, 1208 (Ill. 1981). Courts have wrestled openly with the viability of conspiracy jurisdiction since its inception four decades ago. Brilmayer, *supra*, at 20. "Many courts and commentators have criticized the doctrine as an imprecise and sometimes inaccurate test for determining jurisdiction," but no consensus has emerged. *Knaus*, 906 N.E.2d at 660. Rather, there remains "substantial disagreement among courts . . . as to the validity of the conspiracy theory of personal jurisdiction as a general proposition and the requirements for invoking it." *Gognat v. Ellsworth*, 224 P.3d 1039, 1054 n.3 (Colo. App. 2009); *see also Lasala v. Marfin Popular Bank Pub. Co., Ltd.*, No. Civ. A. 09-968, 2010 WL 715482, at *3 (D.N.J. Mar. 1, 2010) (noting "widespread disagreement regarding whether the conspiracy theory of jurisdiction is consistent with due process"); *Stetser v. Tap Pharm. Prods., Inc.*, 591 S.E.2d 572, 575 (N.C. Ct. App. 2004) (expressing "reticence in implementing the theory" due to division among courts). As a result, "[t]here is a great deal of doubt surrounding the legitimacy of this conspiracy theory of personal jurisdiction." *Chirila v. Conforte*, 47 F. App'x 838, 842 (9th Cir 2002).

Judges and legal commentators have long called for this Court's guidance on the issue. *See, e.g.*, *Istituto Bancario Italiano SpA v. Hunter Eng'g Co.*, 449 A.2d 210, 225 (Del. 1982) ("[T]he United States Supreme Court, as yet, has not definitively examined the conspiracy theory of jurisdiction."); *Hercules, Inc. v.*

Shearson Lehman Bros., Inc., No. Civ. A. 86C-OC-88, 1991 WL 1179804, at *23 (Del. Super. Ct. Oct. 29, 1991) ("It's almost ten years later [since we noted the Supreme Court's silence] and it has not yet addressed the conspiracy theory of jurisdiction."); *SFRL, Inc. v. Galena State Bank & Trust Co.*, No. CIV. 10-4152, 2011 WL 4479065, at *4 (D.S.D. Sept. 22, 2011); *Cece-York v. Saturn of Stamford, Inc.*, No. X10-cv-95016395, 2013 WL 870343, at *6 (Conn. Super. Ct. Feb. 6, 2013). As early as 1998, commentators predicted that the question of conspiracy jurisdiction "seem[s] destined for Supreme Court review." Richard E. Donovan, *Conspiracy Jurisdiction Issue May Go To High Court*, Nat'l L.J., Nov. 9, 1998, at B8.

The persistent uncertainty over conspiracy jurisdiction derives from the fact that the doctrine is in tension with numerous decisions of this Court. The Court has recognized only "two categories of personal jurisdiction": specific and general, *Daimler*, 134 S. Ct. at 754, neither of which is present here. Pet. App. 25a, 38a–39a. This Court recently affirmed that "the relationship [between the defendant and the forum] must arise out of contacts that the defendant *himself* creates with the forum State." *Walden*, 134 S. Ct. at 1122; *see also Hanson v. Denckla*, 357 U.S. 235, 253 (1958) ("The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State."). Mere "foreseeability" that a defendant's acts could touch the forum "has never been a sufficient benchmark for personal jurisdiction." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980). Yet the decision below simply asserts jurisdiction-by-association without determining if petitioner purposefully availed itself of the benefits of

conducting activities in Tennessee and thereby subjected itself to suit in that jurisdiction.

The conspiracy theory of jurisdiction is particularly difficult to reconcile with *Rush v. Savchuk*, 444 U.S. 320 (1980). In that case, the Minnesota Supreme Court aggregated the forum contacts of the "defending parties" to establish jurisdiction over a co-defendant that had no ties to Minnesota. This Court reversed, holding that "[s]uch a result is plainly unconstitutional" because "[t]he requirements of *International Shoe* . . . must be met as to each defendant." *Id*. at 331–32. That the in-state and out-of-state defendants "were both potentially liable did not allow the imputation of jurisdictional contacts from one to the other." *Sher v. Johnson*, 911 F.2d 1357, 1365 (9th Cir. 1990).

The same limiting principle applies to conspiracy jurisdiction. Even though defendants may be jointly liable for the tortious acts of their co-conspirators, it does not follow that each alleged conspirator's jurisdictional contacts are automatically imputed to all participants in the alleged conspiracy. "Liability and jurisdiction are independent." *Id*. "A defendant's potential liability is not a factor in determining whether a court has personal jurisdiction over her." Alexander, *supra*, at 394. Thus, in the context of business partnerships, the jurisdictional contacts of one partner are not ordinarily imputed to her partners, even though each partner may be liable for the acts of others. "[A]ll for one does not necessarily mean one for all." *Sher*, 911 F.2d at 1360. "'Conspiracy jurisdiction' is in some ways even more troubling than jurisdiction based on agency or corporate law because the ties between the parties and the forum are even more attenuated and nuanced than in cases involving corporate or agency relationships." S.I.

Strong, *Jurisdictional Discovery in United States Federal Courts*, 67 Wash. & Lee L. Rev. 489, 539 (2010).

C. Conspiracy jurisdiction creates a host of practical problems for litigants by conflating jurisdictional and merits questions at the outset of a case.

This Court's guidance is especially crucial because of the unique threats conspiracy jurisdiction poses to a defendant's due process rights. The doctrine of personal jurisdiction "constrains a State's authority" over a nonresident defendant. *Walden*, 134 S. Ct. at 1121. The Due Process Clause thus is violated whenever a lower court asserts jurisdiction over a defendant who lacks minimum contacts with the forum. However, whenever a court applies conspiracy jurisdiction, there is a substantial risk of a due process violation even if the court ultimately concludes that it *lacks* jurisdiction. Because conspiracy is a liability principle as well as the jurisdictional hook, the theory of conspiracy jurisdiction inevitably "merges the jurisdictional issue with the merits." *Stauffacher v. Bennett*, 969 F.2d 455, 459 (7th Cir. 1992). Jurisdictional discovery as to conspiracy so overlaps with the merits that merely permitting discovery to uncover an alleged conspiracy is itself a substantial assertion of jurisdiction.

All jurisdictional discovery constitutes "an assertion of jurisdiction to some extent." *Socialist Workers Party v. Att'y Gen. of U.S.*, 375 F. Supp. 318, 325 (S.D.N.Y. 1974). But most jurisdictional discovery is bounded to basic questions, like the location of the defendant's business or where the acts alleged in the complaint took place. Althouse, *supra*, at 250. "When conspiracy

theory underlies the jurisdiction issue, however, that discovery may be coextensive with the discovery on the merits and may involve hotly contested issues central to the plaintiff's cause of action." *Id.* In this case, for example, the Tennessee Supreme Court's four-prong test for conspiracy jurisdiction turned on the merits of the conspiracy *claim* under the substantive law of Tennessee. Pet. App. 40a, 42a–56a.

Discovery in conspiracy cases can be voluminous and particularly intrusive. Plaintiffs often allege far-ranging and long-running conspiracies, and a great quantity of evidence could be relevant to the question whether a conspiracy existed. Courts permit "[b]road discovery" on the premise that "direct evidence of . . . conspiracy is often difficult to obtain." *In re Urethane Antitrust Litig.*, 261 F.R.D. 570, 573 (D. Kan. 2009). Further complicating discovery, conspiracy is a "chameleon-like" charge, its elements "so vague that it almost defies definition." *Krulewitch v. United States*, 336 U.S. 440, 446–47 (1949) (Jackson, J., concurring). In Tennessee, for example, a conspiratorial agreement "need not be formal, the understanding may be a tacit one, and it is not essential that each conspirator have knowledge of the details of the conspiracy." Pet. App. 43a.

All of that evidence will be recycled during the merits stage of proceedings, where the question will again be whether the defendants conspired. Yet, once documents have been searched and produced, once witnesses have testified, and once discovery disputes are decided, the damage is done. If the court concludes that it lacks jurisdiction, the court nonetheless will have rendered significant determinations that will drive the character of the litigation going forward. The court lacking jurisdiction will have decided what time

period and documents are relevant to the conspiracy allegation, which documents must be produced notwithstanding privilege claims, whether certain witnesses must testify and what they must testify about, and whether the overall scope of the discovery is "proportional to the needs of the case," Fed. R. Civ. P. 26(b)(1). All the while, the defendant's core due process rights will have been irreparably undermined.

Nor are the practical harms limited to discovery. Assessing whether the evidence supports a conspiracy allegation for purposes of jurisdiction "would require the district court to conduct an evidentiary hearing as extensive as, and in fact duplicative of, the trial on the merits—either that or permit a nonresident to be dragged into court on mere allegations." *Stauffacher*, 969 F.2d at 459. Accompanying that hearing, of course, would be extensive briefing on the conspiracy question, briefing that is again duplicative of the merits. The best a defendant can hope for is a determination that the court lacks jurisdiction—at which point the defendant could be forced to defend the suit anew in the correct forum, where any legal conclusions reached in the prior litigation would lack preclusive effect. *See Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1135 (9th Cir. 2010) (Reinhardt, J., dissenting) ("Clear rules are important in this area, because personal jurisdiction is a threshold issue in every lawsuit and the erroneous exercise of personal jurisdiction deprives all subsequent proceedings of legal effect.").

Plaintiffs, meanwhile, enjoy a no-lose situation following jurisdictional discovery. If the court finds there is personal jurisdiction, plaintiffs can proceed to litigate their claims. But if the court finds that it lacks personal jurisdiction, plaintiffs will have subjected the

defendant to the burden of discovery in a preferred jurisdiction and will retain documents produced and information gleaned during discovery—for there is no unwinding the clock. And plaintiffs are free to relitigate any adverse legal conclusions rendered in their first forum.

Compounding the problem are lenient standards by which courts assert threshold jurisdiction and grant jurisdictional discovery. In the First and Third Circuits, for example, "courts are to assist the plaintiff by allowing jurisdictional discovery unless the plaintiff's claim is 'clearly frivolous.'" *Toys 'R' Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 456 (3d Cir. 2003); *see United States v. Swiss Am. Bank, Ltd.*, 274 F.3d 610, 637 (1st Cir. 2001). The Tennessee Supreme Court required only a "colorable claim." Pet. App. 65a. And "it is all too easy for a plaintiff to append a bald allegation of conspiracy to the allegation that one of several co-defendants has acted in the forum state." Althouse, *supra*, at 248.

The Tennessee Supreme Court's decision in this case well illustrates the problem. The court held that the plaintiff's allegation that petitioner "had an incentive" to rate securities to maintain the issuers' business, coupled with a bare assertion that petitioner had "agreed to act in concert" with the issuers, "established a colorable claim for personal jurisdiction under the conspiracy theory." Pet. App. 70a–71a.

In another forum such allegations might be insufficient to proceed. Those same allegations would not state a plausible claim of conspiracy in federal court, for instance. The assertion that petitioner "agreed to act in concert," Pet. App. 71a, is the textbook "[t]hreadbare recital[] of the elements of a cause of action, supported by mere conclusory

statements, [and] do[es] not suffice." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). And while the "incentive" allegation may be "consistent with" a conspiracy claim, "[w]here a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Id.* (quoting *Bell Atlantic v. Twombly*, 550 U.S. 544, 557 (2007)). In New York—the jurisdiction where petitioner has its principal place of business—a "bare allegation" of conspiracy is not enough to get past the pleading stage. *Schwartz v. Soc'y of New York Hosp.*, 605 N.Y.S.2d 72, 73 (N.Y. App. Div. 1993). In other words, the same conspiracy allegation that would be dismissed in the forum that indisputably has jurisdiction over the petitioner (New York) nonetheless can support intrusive and expensive discovery to determine whether *Tennessee* can exercise jurisdiction. This backwards result is what the personal jurisdiction rules are designed to prevent.

II. This case is a proper and timely vehicle to consider the validity of conspiracy jurisdiction.

This petition is the right case at the right time for the Court to resolve the division among state courts over the constitutionality of conspiracy jurisdiction.

The petition offers a fitting vehicle to examine the doctrine. Some cases in which courts apply conspiracy jurisdiction might also satisfy this Court's specific jurisdiction test—for instance, if the defendant actually targeted the forum through the conspiracy. The same cannot be said here. After extensive examination of the relevant jurisdictional principles, the court below held that the "Plaintiff failed to allege

facts to show that [petitioner's] conduct giving rise to the controversy underlying the instant case was purposefully directed toward Tennessee or established sufficient minimum contacts with Tennessee necessary to justify specific personal jurisdiction." Pet. App. 38a. That holding, coupled with the undisputed lack of general jurisdiction over petitioner, should have ended the matter. Pet. 11–13.

The Tennessee Supreme Court left no doubt that jurisdiction over the petitioner could be established *only* under a theory of conspiracy jurisdiction, making the question presented dispositive. Pet. App. 70a. *See Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 482–83 (1973) (certiorari is warranted if disposition of the question presented in petitioner's favor "would be preclusive of any further litigation on the relevant cause of action"). In addition, the Tennessee Supreme Court's four-part test for conspiracy jurisdiction is identical to the formulation applied in other jurisdictions. *Compare* Pet. App. 40a *with, e.g.*, *Gibbs v. PrimeLending*, 381 S.W.3d 829, 832 (Ark. 2011); *Mackey v. Compass Mktg., Inc.*, 892 A.2d 479, 486 (Md. 2006).

The interlocutory posture of this case also favors review. Threshold questions of personal jurisdiction are particularly susceptible to evading appellate review. If a trial court allows a case to proceed on a dubious jurisdictional theory, subsequent events may obfuscate the issue later in the litigation. For example, "[i]f the plaintiff w[ins] on the merits, the jurisdictional issue would be automatically resolved in his favor, while if he lost the defendant would waive the defense of personal jurisdiction and take the judgment for its preclusive value in subsequent suits." *Stauffacher*, 969 F.2d at 459.

Statistics illustrate the point. Despite hundreds of reported cases addressing conspiracy jurisdiction, counsel could find only five other petitions for certiorari in the past decade squarely presenting the question for this Court's review.[2] This case presents a valuable opportunity to address a dispositive legal question at the stage in litigation when such issues *should* be resolved in the first instance. *See Calder v. Jones*, 465 U.S. 783, 488 n.8 (1984) (the Court regularly exercises review over "cases presenting jurisdictional issues in this posture").

Now also is the right time for this Court to resolve the constitutionality of conspiracy jurisdiction. The issue of personal jurisdiction has "become one of the most litigated issues in state and federal courts." Russell J. Weintraub, *A Map Out of the Personal Jurisdiction Labyrinth*, 28 U.C. Davis L. Rev. 531, 531 & n.5 (1995) (cataloguing more than 2,300 cases involving "minimum contacts" litigated between 1990 and 1995). Over the past five Terms, the Court has made substantial progress in restoring general and specific jurisdiction to their traditional contours. Plaintiffs desiring to revert to the pre-2010 status quo of broad personal jurisdiction can be expected to utilize alternative theories like conspiracy jurisdiction to elude the Court's recent precedents. Indeed, that is precisely what occurred in this case when the plaintiff amended its complaint to add allegations of civil conspiracy only *after* petitioner moved to dismiss the

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[2] *Fisher v. McCrary Cresent City*, 131 S. Ct. 637 (2010); *Szeliga v. New Jersey, Dept. of Treasury, Div. of Inv.*, 127 S. Ct. 2263 (2007); *Anschutz v. New Jersey, Dept. of Treasury, Div. of Inv.*, 127 S. Ct. 2262 (2007); *Reid v. Alenia Spazio, S.p.A.*, 127 S. Ct. 136 (2006); *Mackey v. Compass Mktg., Inc.*, 127 S. Ct. 34 (2006).

initial complaint for lack of specific or general jurisdiction. Pet. App. 7a.

Litigation over conspiracy jurisdiction is poised to increase. And because roughly two-thirds of states exercise personal jurisdiction to the full extent permitted by the Due Process Clause, questions of statutory jurisdiction and constitutional limits collapse. This Court's intervention is the only way to resolve the current split and restore uniformity to states' exercise of jurisdiction over nonresident defendants.

CONCLUSION

The Court should grant the writ of certiorari.

Respectfully submitted,

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