

No. 25-1106

IN THE
Supreme Court of the United States

JAMES ETHRIDGE,

Petitioner,

v.

SAMSUNG SDI CO., LTD.,

Respondent.

**On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit**

**BRIEF OF AMICUS CURIAE
AMERICAN ASSOCIATION FOR JUSTICE
IN SUPPORT OF PETITIONER**

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INTEREST OF AMICUS CURIAE¹

The American Association for Justice (“AAJ”) is a national, voluntary bar association established in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those who have been wrongfully injured. With members in the United States, Canada, and abroad, AAJ is the world’s largest plaintiff trial bar. AAJ members primarily represent plaintiffs in personal injury actions, employment rights cases, consumer cases, and other civil actions. Throughout its 80-year history, AAJ has served as a leading advocate for the right of all Americans to seek legal recourse for wrongful conduct.

This case is of acute interest to AAJ members who have represented and continue to represent plaintiffs in actions where private defendants have challenged personal jurisdiction. AAJ has participated as amicus curiae in a number of this Court’s cases resolving questions concerning personal jurisdiction, including *Fuld v. Palestine Liberation Organization*, 606 U.S. 1 (2025), *Mallory v. Norfolk Southern Railway Company*, 600 U.S. 122 (2023), *Ford Motor Company v. Montana Eighth Judicial District Court*, 592 U.S. 351 (2021), and *Bristol-Myers Squibb Company v. Superior Court of California*, 582 U.S. 255 (2017).

¹ Pursuant to Rule 37.6, amicus affirms that parties received timely notice of its intention to file, that no counsel for any party authored this brief in whole or in part, and that no person or entity, other than amicus, its members, or its counsel has made a monetary contribution to its preparation or submission.

In this case, the Fifth Circuit second-guessed itself to arrive at the conclusion that personal jurisdiction is lacking when a manufacturer purposefully avails itself of a market but intends to cover only a segment of that market that does not include the injured plaintiff. The approach taken in the operative opinion sharpens the conflict between appellate courts on this point, creates further disarray in personal jurisdiction jurisprudence, and undermines some of the clarity this Court provided to lower courts in *Ford*.

Personal-jurisdiction rules should be clear and not subject to guesswork about which submarkets in a State a manufacturer intends to service. Yet, that is exactly what the ruling below would require. This case provides an excellent vehicle to unravel the conundrum that lower courts face in understanding how to respect the due-process limits on personal jurisdiction while respecting the sovereign authority of a State to protect its populace from unsafe products that are marketed and sold within its territorial limits. Amicus urges this Court to grant the Petition.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Fifth Circuit's decision deepens a sharp split among the circuits and threatens to render this Court's efforts to clarify and simplify the rules governing personal jurisdiction a nullity. Litigants on both sides of a controversy, as well as the courts that entertain their lawsuits, deserve a clear understanding of which courts may hear an action against a named defendant. That quest for clarity is no doubt why both parties in this case support a grant of the underlying

Petition. Granting the Petition will also satisfy the many statements made in concurrences and dissents by Members of this Court that more is needed to make sense of personal jurisdiction.

The decision below exemplifies much of the confusion that the lower courts encounter. The same panel came to one conclusion and then, upon reconsideration, came to the opposite one. In both instances, as in other circuits that have taken opposing positions, the opinions claim to be faithful to this Court's recent opinion in *Ford Motor Company v. Montana Eighth Judicial District Court*, 592 U.S. 351 (2021), but that decision cannot support both contradictory outcomes. Therefore, there is high demand for clarification from this Court, and no amount of additional percolation can occur to provide this Court with additional views on the issue.

Perhaps of equal importance is that the prevailing view in the Fifth Circuit is wholly unworkable. It relies on a company's internal marketing intentions to determine who within a State's forums may hale the company into court. Those intentions will often be unfathomable to a potential plaintiff injured by the company's product and, thus, regularly require extensive jurisdictional discovery—after the fact of bringing a lawsuit where the plaintiff is located, the product was sold, and the injury occurred. That discovery will range widely, because it will need to take account of how assiduously the company implemented those intentions. Was its risk-management program sufficient to keep the product out of hands the company chose not to service? Did it take any actions when its product

became easily available to consumers when the company only intended to distribute it to large companies? Did the company subtly promote or acquiesce to off-market uses? These inquiries will render the personal-jurisdiction inquiry more searching than many merits questions.

Moreover, crediting the company's marketing intentions to restrict a State's exercise of personal jurisdiction will undermine the products-liability law that prevails in most States. In those States, a company remains liable for design and manufacturing flaws that cause injury, regardless of whether the product is used as intended. Where that use occurs and injures, this approach to personal jurisdiction would nullify State law intended to protect those very consumers. Yet, personal jurisdiction should not have that type of substantive impact.

Finally, the marketing-intention approach adopted by the Fifth Circuit and others unmoors personal jurisdiction from its historic roots, which hold that geographic limits provide the defining metric for purposes of due process. Because the Due Process Clause's application to personal jurisdiction is an instrument of interstate federalism, endorsing submarkets as the defining feature would have nothing to do with a State's interest in protecting its consumers or the overriding interest of another State in serving as the site of a lawsuit, but instead elevate corporate preferences over the interests of States and end this Court's reliance on a forum-by-forum analysis. For all these reasons, the decision below is wrong and requires this Court's exercise of discretion to hear it.

ARGUMENT

I. LITIGANTS AND COURTS SHOULD HAVE CLEAR AND STRAIGHTFORWARD RULES TO DETERMINE WHETHER PERSONAL JURISDICTION EXISTS.

Neither courts nor litigants should find determining whether personal jurisdiction exists to be an undertaking as difficult, costly, and technically challenging as locating deeply buried and hidden deposits of oil in the ground. Both plaintiffs and defendants should be capable of ready determination of an appropriate court to exercise personal jurisdiction in a dispute. When the litigants dispute personal jurisdiction, courts should not find the inquiry so challenging that the disagreement on that issue becomes a costly and time-consuming arena of litigation that overshadows presentation of the case's merits.

These considerations explain why both the Petitioner and Respondent in this case support a grant of the Petition. That confluence of interest in resolving the split and its likely frequent reoccurrence makes this matter one of exceptional importance.

In the decade or so since this Court placed even greater emphasis on specific jurisdiction and the due-process considerations underlying the personal-jurisdiction inquiry than ever before, disputes about a court's authority over defendants have grown in frequency. Recently, the Court undertook to unravel some of the conflicting strands confounding litigants and courts with its decision in *Ford*. It provided a straightforward rule: "When a company like Ford

serves a market for a product in a State and that product causes injury in the State to one of its residents, the State's courts may entertain the resulting suit." *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 592 U.S. 351, 355 (2021).

The revised Fifth Circuit decision that is the subject of this Petition—and other decisions on that side of the split ably described in the Petition—destroys the clarity that *Ford* seemingly advanced. No further percolation is needed, as the sharply split decisions have ventilated the issues thoroughly with quite different takes on the meaning of *Ford*. This Petition presents an excellent vehicle to resolve the conflict and restore some clarity to this particular issue. It is clearly needed, as the constitutional requirements for personal jurisdiction should not depend upon the circuit or the state in which the litigation commenced. This case, with its dueling opinions within the Fifth Circuit, presents a particularly apt vehicle to resolve the split.

In addition, the case presents an opportunity to provide the kind of clarity that members of this Court have indicated is badly needed. For example, although he agreed with the outcome in *Ford*, finding it a relatively simple case, Justice Gorsuch, joined by Justice Thomas, expressed some frustration more generally in "making sense of our personal jurisdiction jurisprudence." *Id.* at 384 (Gorsuch, J., concurring). Similarly, Justice Alito expressed the view "there are also reasons to wonder whether the case law we have developed since that time is well suited for the way in which business is now conducted." *Id.* at 372 (Alito, J., concurring).

These expressions of frustration are widely shared, as evidenced by the fractured opinions in *J. McIntyre Machinery, Ltd. v. Nicastro*, which highlights the “imprecision” occasioned by reliance on the “stream-of-commerce” rubric. 564 U.S. 873, 881 (2011). Justice Sotomayor described the Court’s new approach to general jurisdiction as “lead[ing] to greater unpredictability by radically expanding the scope of jurisdictional discovery.” *Daimler AG v. Bauman*, 571 U.S. 117, 155 (2014) (Sotomayor, J., concurring). *See also Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 163–80 (2023) (Barrett, J., joined by Roberts, C.J., Kagan, J., and Kavanaugh, J., dissenting).

II. THE LOWER COURTS STRUGGLE ON THIS ISSUE WITH WHAT CONSTITUTES A CLAIM THAT “ARISES OUT OF OR RELATES TO THOSE PURPOSEFUL CONTACTS WITH THE FORUM.”

The struggle among the circuits and state supreme courts in evaluating claims like the one at issue in this case is exemplified by the Fifth Circuit’s first and revised consideration. In the initial decision, the Court derived the relevant test, correctly, from *Ford* as involving three elements:

- (1) the defendant purposefully availed itself of the privilege of conducting activities in the forum State,
- (2) the plaintiff’s claim arises out of or relates to those purposeful contacts with the forum, and
- (3) the exercise of personal jurisdiction must be fair and reasonable.

Pet. App. 12a (citing *Ford*, 592 U.S. at 359).

The court needed little effort to hold that the first and third elements were satisfied. *Id.* The purposeful-availment question, it said, simply asks whether the defendant intentionally reached out to that State’s market. *Id.* (citing *Ford*, 592 U.S. at 359). Samsung plainly had. *Id.* at 13a.

The court found the third element “equally straightforward,” because

Texas has an interest in maintaining a forum for its citizens who are injured within the State. Ethridge has an interest in litigating in his home State. And a large company like Samsung has the ability to litigate in the forum.

Id.

To determine the second element, the Fifth Circuit originally found the necessary guidance in *Ford*. In the two cases consolidated in *Ford*, Ford did not “design, manufacture, or sell the relevant [vehicles in the forum States].” *Id.* at 14a. Still, the automobile manufacturer did substantial business in the States and the alleged defect that gave rise to the injuries and lawsuit took place in the forum States. *Id.* at 15a. In that manner, the original panel found sufficient similarity: “Texas can exercise personal jurisdiction over Samsung. Ethridge is a Texas resident, he used his 18650 battery in Texas, and he suffered an injury in Texas.” *Id.* at 21a.

The initial decision went on to reject Samsung’s different-markets argument, in which it contended that it would be liable to Texas companies who purchased the product intended for them but not Texas consumers for whom the product was not intended. *Id.* The panel found this distinction inconsistent with *Ford* and with other cases that emphasized the need for an “affiliation between the forum and the underlying controversy.” *Id.* at 22a (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). *See also id.* (citing *J. McIntyre Mach.*, 564 U.S. at 884 (plurality opinion) (“[P]ersonal jurisdiction requires a forum-by-forum, or sovereign-by-sovereign, analysis.”)).

The decision further found the distinction Samsung wished to draw unworkable:

Rule 12(b)(1) inquiries cannot turn on whether a defendant sells to government purchasers but not private ones; large businesses but not small ones; businesses in one industry but not another; purchasers in one link of the supply chain but not another; businesses in Austin but not Dallas; and so on.

Id. at 24a.

Upon reconsideration, the panel reversed course, heavily based on the “more fulsome explanation of Samsung’s business model after a remand for jurisdictional discovery” in a case decided by the Seventh Circuit, *B.D. ex rel. Myers v. Samsung SDI Company*, 143

F.4th 757 (7th Cir. 2025). Pet. App. 3a. The Fifth Circuit panel then found that Samsung’s restrictions on its sales fit the concept expressed in *Ford* that a company may “structure[] its primary conduct’ to lessen or avoid exposure to a given State’s courts.” *Id.* (quoting *Ford*, 592 U.S. at 360 (2021)). To that end, the court concluded that “Samsung affirmatively limited its contacts to approved manufacturers in Texas, and Ethridge has not shown that his injuries are related to those contacts.” *Id.* at 5a. *Cf. Yamashita v. LG Chem, Ltd.*, 62 F.4th 496, 506 (9th Cir. 2023) (rejecting personal jurisdiction because the plaintiff did not allege that the defendant shipped the kind of battery that exploded and injured him into the port of Honolulu).

On the other side of the ledger, decisions from the Sixth Circuit, two state supreme courts, and at least two lower appellate courts have reached the opposite conclusion. As the Texas Supreme Court put it, the defendant’s “proposed granulation of the forum—the State of Texas—into distinct market segments when evaluating personal jurisdiction,” improperly devalues “the forum—Texas—as a whole” while elevating “the defendant’s expectations about the course its product would follow after it entered Texas.” *LG Chem Am., Inc. v. Morgan*, 670 S.W.3d 341, 348, 344 (Tex. 2023). But there is no jurisdictional metric that “distinguish[es] between the market of sophisticated manufacturers [the company] targeted and the market of individual consumers,” the court added. *Id.* at 349.

The Sixth Circuit’s analysis found the submarket regime suggested by the defendant a “bold assertion,” “too narrow a framing, and one disguising the rejected causation analysis [from *Ford*].” *Sullivan v. LG Chem*,

Ltd., 79 F.4th 651, 672 (6th Cir. 2023). It struck the Sixth Circuit as illogical that personal jurisdiction could not exist when the “Plaintiff is a Michigan resident who was injured by Defendant’s product in Michigan—the same type of product that [Defendant] shipped into Michigan around this time period.” *Id.* at 673. It suggested that any other result would slice the salami too thinly because the defendant “directly shipped its 18650 batteries into the State of Michigan and entered into two supplier contracts with Michigan companies for 18650 batteries,” and it was an 18650 battery that caused the injury. *See id.* at 657.

Resolving these differences now remains of utmost importance to assure that our civil justice system meets its objective of providing “the just, speedy, and inexpensive determination of every action and proceeding.” Fed. R. Civ. P. 1.

III. THE “INTENDED” MARKET APPROACH IS UNWORKABLE.

A. Information about a Company’s Marketing Intentions Is Not Readily Available.

Consider the facts in the Sixth Circuit case filed by Plaintiff Michael Sullivan, a Michigan resident. His spouse went to a local store to purchase a vaping product for him, selecting a vaping device that had an internal circuit board to manage power output and provide certain safety protections (a “regulated mod”), a battery charger, and “four brown LG HG2 18650, 3000 mAh, rechargeable 3.7V batteries, which are allegedly manufactured by [the defendant].” *Sullivan*, 79 F.4th at 657. Several months later, two of the batteries, in

his left front pocket, exploded, catching Mr. Sullivan's pants on fire and causing severe second- and third-degree burns, which necessitated "hospitalization, skin-graft surgery, and debridement treatments." *Id.*

Mr. Sullivan filed suit in the Circuit Court of Genesee County, Michigan. *Id.* at 658. Presumably, he sued the battery manufacturer under traditional products liability law, which "establishes a classic and well known triumvirate of grounds for liability: defective manufacture, inadequate directions or warnings, and defective design." *Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 232 (2011). *See also* M.C.L. § 600.2946.

Mr. Sullivan could not be expected to know, nor could his counsel easily learn that the battery manufacturer intended to restrict sales of its product to large manufacturers and not consumers like him. Even if that had been the company's intention and that intention were of jurisdictional significance, jurisdictional discovery would be needed to determine what the company knew or should have known about the way its products were siphoned off to the consumer market, whether its risk management and control policies were adequate, what additional steps it took to prevent that from happening, and whether it somehow promoted or tolerated "off-label" uses as do drug manufacturers. *See, e.g., United States v. Caronia*, 703 F.3d 149, 166 (2d Cir. 2012) (stating that "off-label drug usage is not unlawful, and the FDA's drug approval process generally contemplates that approved drugs will be used in off-label ways").

Moreover, company marketing plans will not always duplicate information put in annual reports, such as 10-K and 10-Q forms, in which companies must disclose material pending or threatened litigation, *see, e.g., Indiana Pub. Ret. Sys. v. SAIC, Inc.*, 818 F.3d 85, 93 (2d Cir. 2016), or information about potential liabilities discussed in discoverable internal audits of a company's risks. *Cf. United States v. ISS Marine Servs., Inc.*, 905 F. Supp. 2d 121, 129 (D.D.C. 2012).

The inquiries that must take place at the initial jurisdictional stage to address an asserted intention to limit customers are searching, involved, and potentially costly. They require inquiries that go well beyond the type of jurisdictional discovery that grudgingly takes place, if at all, under other circumstances. When a district court denies jurisdictional discovery for ranging too far, that decision is reviewed only for abuse of discretion, *see, e.g., Toys "R" Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 455 (3d Cir. 2003), even though it would be essential under the Fifth Circuit's ruling.

B. Crediting a Company's Marketing Intentions Undermines Products Liability Law in Many States.

This approach to personal jurisdiction would also undermine products liability laws in many states. For example, under Minnesota law, a "manufacturer has a duty to design its product to avoid an unreasonable risk of harm when the product is used as intended or *in an unintended yet reasonably foreseeable manner.*"

Green Plains Otter Tail, LLC v. Pro-Env't, Inc., 953 F.3d 541, 546 (8th Cir. 2020) (citations omitted) (emphasis added).

Kansas law holds that a “manufacturer’s duty extends beyond the product’s intended use to any ‘reasonably foreseeable’ use—that includes foreseeable misuse.” *Messerli v. AW Distrib., Inc.*, 153 F.4th 1077, 1081 (10th Cir. 2025) (citations omitted). To avoid that liability, manufacturers must provide warnings for foreseeable misuses. *Richter v. Limax Int’l, Inc.*, 45 F.3d 1464, 1471 (10th Cir. 1995).

In another example, the Florida Supreme Court held that “a manufacturer has a duty to warn of dangerous contents in its product which could damage or injure even when the product is not used for its intended purpose.” *NBIS Constr. & Transp. Ins. Servs., Inc. v. Liebherr-Am., Inc.*, 93 F.4th 1304, 1312 (11th Cir. 2024) (quoting *High v. Westinghouse Elec. Corp.*, 610 So. 2d 1259, 1262 (Fla. 1992)). However, if the warning is in place, Florida, as in some other states, will not hold a manufacturer liable when the product is not used as intended. *See Jennings v. BIC Corp.*, 181 F.3d 1250, 1256 (11th Cir. 1999) (citing *High*, 610 So. 2d at 1262).

In other words, the regime that the Fifth Circuit adopted would upend the products liability law of many states, rendering enforcement problematic due to personal jurisdiction concerns that should not imperil a state’s ability to authorize a company to do business within its territory and the company’s acceptance of those requirements by sending its products into those states. *Cf. Mallory*, 600 U.S. at 146 (providing that a “variety of ‘actions of the defendant’

that may seem like technicalities nonetheless can ‘amount to a legal submission to the jurisdiction of a court’”) (quoting *Insurance Corp. of Ir. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 704–05 (1982)).

If a company wishes to avoid liability in a particular statewide market, it has the means to do so. However, where it “has continuously and deliberately exploited [a State’s] market, it must reasonably anticipate being haled into court.” *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 781 (1984).

IV. A METRIC THAT DEPENDS ON A COMPANY’S MARKETING INTENTIONS WOULD BE UNMOORED FROM THE TERRITORIAL CONSIDERATIONS THAT HAVE HISTORICALLY DEFINED MUCH OF PERSONAL JURISDICTION.

The idea that a company defines geography or who within a sovereign State may subject it to process has no basis in history or the concepts that have defined personal jurisdiction. Service of process has been the *sine qua non* of personal jurisdiction from the beginning. See *D’Arcy v. Ketchum*, 52 U.S. (11 How.) 165, 176 (1850) (recognizing that the international law of 1790 required service of process to bind a person to a judgment). That venerable historical concept was essential to this Court’s approval of tag jurisdiction:

The view developed early that each State had the power to hale before its courts any individual who could be found within its borders, and that once having acquired jurisdiction

over such a person by properly serving him with process, the State could retain jurisdiction to enter judgment against him, no matter how fleeting his visit.

Burnham v. Superior Ct., 495 U.S. 604, 610–11 (1990).

Pennoyer v. Neff, 95 U.S. 714 (1877), overruled by *Shaffer v. Heitner*, 433 U.S. 186 (1977), formalized the territorial principle in personal jurisdiction as a constitutionally based imperative. It plainly related to the authority of the State and did not allow a party to overrule the State’s prerogative.

Even after the canonical opinion in *International Shoe Company v. Washington*, 326 U.S. 310 (1945), opened the door to long-arm jurisdiction, this Court continued to emphasize that “restrictions” on personal jurisdiction “are a consequence of territorial limitations on the power of the respective States.” *Hanson v. Denckla*, 357 U.S. 235, 250–51 (1958).

It is the State’s power to render judgment and that power exists throughout the State and with respect to all eligible to call upon the State’s courts to render a judgment in a dispute. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980) (“States retain many essential attributes of sovereignty, including, in particular, the sovereign power to try causes in their courts.”). That power cannot be cabined by a company’s marketing intentions so that the State’s sovereign power is limited to some residents or some counties, as the Texas Supreme Court recognized. *See LG Chem Am.*, 670 S.W.3d at 348.

For that reason, this Court declared that the “primary focus of our personal jurisdiction inquiry is the defendant's relationship to the forum State,” *Bristol-Myers Squibb Co. v. Superior Ct.*, 582 U.S. 255, 262 (2017), not to particular customers or regions of the State.

Moreover, to the extent that the Due Process Clause constitutes “an instrument of interstate federalism” to assure that the sovereignty of another State “implie[s] a limitation on the sovereignty of all its sister States,” *World-Wide Volkswagen*, 444 U.S. at 294, 293, no other State’s interests are impinged by the exercise of personal jurisdiction in this or similar cases, where the product was distributed within the State and caused injury in the State. This limitation, this Court explained, “acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system.” *Id.* at 292.

Instead, this Court has held that personal jurisdiction requires a “sovereign-by-sovereign[] analysis.” *Fuld v. Palestine Liberation Org.*, 606 U.S. 1, 16 (2025). *See also J. McIntyre Mach.*, 564 U.S. at 884 (plurality opinion) (“[P]ersonal jurisdiction requires a forum-by-forum, or sovereign-by-sovereign, analysis”). In *J. McIntyre Machinery*, this Court straightforwardly held that if a “defendant has followed a course of conduct directed at the society or economy *existing within the jurisdiction of a given sovereign*, . . . that . . . sovereign has the power to subject the defendant to judgment concerning that conduct.” *Id.* The submarket approach approved by the Fifth Circuit ignores that clear understanding.

CONCLUSION

For the foregoing reasons, amicus curiae American Association for Justice urges this Court to grant the Petition.

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