No. 23-40094

In the United States Court of Appeals for the Fifth Circuit

JAMES ETHRIDGE,
Plaintiff-Appellant,

v.

SAMSUNG SDI CO., LTD., ET AL.,
Defendants-Appellees.

On Appeal from Civil Action No. 3:21-cv-306 in the
United States District Court for the Southern District of Texas

BRIEF OF AMICI CURIAE THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, THE AMERICAN TORT REFORM ASSOCIATION, AND THE NATIONAL ASSOCIATION OF MANUFACTURERS IN SUPPORT OF DEFENDANTS-APPELLEES

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CERTIFICATE OF INTERESTED PERSONS

No. 23-40094

James Ethridge,
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v.
Samsung SDI Co., LTD., et al.,
Defendants-Appellees.

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualification.

Amici Curiae:

The Chamber of Commerce of the United States of America. The Chamber of Commerce of the United States of America ("Chamber") is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber.

The American Tort Reform Association. The American Tort Reform Association ("ATRA") is a non-profit, tax-exempt organization incorporated in the District of Columbia. ATRA has no parent corporation, and no publicly held company has 10% or greater ownership in ATRA.

The National Association of Manufacturers. The National Association of Manufacturers ("NAM") is a non-profit, tax-exempt organization incorporated in New York. NAM has no parent corporation, and no publicly held company has 10% or greater ownership in NAM.

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INTEREST OF AMICI CURIAE

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents 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. An important function of the Chamber 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 curiae briefs in cases that raise issues of concern to the Nation's business community.

The American Tort Reform Association ("ATRA") is a broad-based coalition of businesses, corporations, municipalities, associations, and professional firms that have pooled their resources to promote reform of the civil justice system with the goal of ensuring fairness, balance, and predictability in civil litigation. For more than three decades, ATRA has filed amicus briefs in cases, such as this one, that involve important liability and jurisdictional issues.

The National Association of Manufacturers ("NAM") is the largest manufacturing association in the United States, representing small and large manufacturers in all 50 states and in every industrial sector. Manufacturing employs nearly 13 million men and women, contributes $2.91 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for over half of all private-sector research and development in

the nation. The NAM is the 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.[1]

Amici curiae have a substantial interest in ensuring that courts enforce the protections the Due Process Clause affords to out-of-state defendants. Predictable jurisdictional rules are essential for enabling businesses to make rational investment decisions, comply with applicable laws and regulations, and otherwise structure their affairs.

[1] No counsel for a party authored this brief in whole or in part, and no person or entity other than amici, their members, or their counsel contributed money intended to fund the preparation or submission of this brief. Fed. R. App. P. 29(a)(4)(E).

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This case is just one of dozens of suits pending around the country in which a consumer seeks to hale an out-of-state manufacturer into court in a state where the manufacturer never sold the product at issue to consumers, advertised it to consumers, or directed anyone else to sell or advertise it to consumers. Exercising personal jurisdiction in these circumstances would run afoul of the Due Process Clause of the Fourteenth Amendment because there is no "link" between "the defendant's *suit-related* conduct" and "the forum." *Johnson v. TheHuffingtonPost.com, Inc.*, 21 F.4th 314, 324 (5th Cir. 2021), *cert. denied*, 143 S. Ct. 485 (2022). For a court to exercise specific personal jurisdiction over an out-of-state defendant consistent with the Due Process Clause, the plaintiff's claims must "arise out of *or relate to* the defendant's contacts with the forum." *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1026 (2021). This relatedness requirement is critical for businesses, both large and small, because it ensures "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).

The theory of personal jurisdiction advanced by the plaintiff here would undermine these values to the detriment of businesses everywhere and would in practice closely resemble general jurisdiction. According to this theory, even where a company specifically decides *not* to sell or market

its product to a specific segment of the market in a forum, an individual in that segment of the market can sue in that forum if it purchases the (otherwise unavailable) product from an out-of-state third party.

The Due Process Clause demands more. Relatedness requires a "strong relationship" between "the defendant, the forum, *and* the litigation." *Ford*, 141 S. Ct. at 1028 (emphasis added) (internal quotation marks omitted). But there is no relationship—much less a strong one—between *all* three when a company does not sell, market, or advertise its product in the forum to individuals like the plaintiff. There may be a relationship here between Samsung SDI Co., LTD. ("Samsung" or "SDI") and Texas, because Samsung directly sells lithium-ion battery cells as component parts to industrial suppliers in Texas. And there may be a relationship between the plaintiff and Texas, because the plaintiff's injury occurred in Texas. But those relationships are *independent* of each other. There is no connection between Samsung selling component parts to industrial entities in Texas and the plaintiff, as an individual consumer, purchasing a lithium-ion battery from a Wyoming-based third-party seller. To conclude otherwise would for the first time permit the *unilateral* acts of plaintiffs or third parties to create personal jurisdiction over an out-of-state defendant.

Of course, where a defendant "extensively markets" and services a consumer product in a state, it may incur an obligation to ensure that product is "safe for [the forum State's] citizens to use there," even if the product was purchased in another state. *Ford*, 141 S. Ct. at 1029–30. But where, as

here, a defendant eschews entirely a particular market in the forum state, the same cannot be true. To ensure due process to defendants who limit their contacts with specific markets, the Court should affirm the district court's judgment dismissing plaintiff's suit against Samsung for lack of personal jurisdiction.

ARGUMENT

"'A federal court sitting in diversity may exercise personal jurisdiction over a nonresident defendant (1) as allowed under the state's long-arm statute, and (2) to the extent permitted by the Due Process Clause of the Fourteenth Amendment.'" *In re DePuy Orthopaedics, Inc.*, 888 F.3d 753, 778 n.35 (5th Cir. 2018) (citation omitted). "'[B]ecause the Texas long-arm statute extends to the limits of federal due process, the two-step inquiry collapses into one federal due process analysis.'" *Id*. (citation omitted).

The Supreme Court has recognized two types of personal jurisdiction consistent with due process: general jurisdiction and specific jurisdiction. *Bristol-Myers Squibb Co. v. Super. Ct. of Cal.*, 137 S. Ct. 1773, 1779-80 (2017). General jurisdiction allows a court to hear any claim against a defendant in states where that defendant is essentially at home, or where it has consented to general jurisdiction. *Id*. By contrast, specific jurisdiction "focuses on the relationship among the defendant, the forum, and the litigation." *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (internal quotation marks omitted). It arises only "when a defendant's minimum contacts with a forum state are *related*

to the pending lawsuit." *Seville v. Maersk Line, Ltd.*, 53 F.4th 890, 895 (5th Cir. 2022) (emphasis added) (citation omitted).

This case concerns only specific jurisdiction, which is lacking here. While Samsung concedes that it availed itself of the State of Texas for the specific purpose of selling battery cells as industrial component parts to a select group of laptop suppliers and power-tools manufacturers, the district court correctly determined that the plaintiff's injury does not "relate to" these limited contacts with the forum. And the plaintiff's *own* purchase as a non-industrial consumer from a Wyoming-based, third-party seller of the otherwise-unavailable battery does not broaden *Samsung*'s intentional contacts with the State of Texas. Exercising specific jurisdiction on these facts would therefore be neither fair nor reasonable. This Court should affirm.

I. Due Process Requires a "Strong Relationship Among the Defendant, the Forum, and the Litigation."

The "essential foundation" of specific personal jurisdiction "is a strong 'relationship among the defendant, the forum, and the litigation.'" *Ford Motor Co.*, 141 S. Ct. at 1028 (quoting *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)). This "strong relationship" does not exist where, as here, the defendant avails itself only of a *specific* market in the forum state and the suit is unrelated to that market. Moreover, neither the actions of the plaintiff nor of a third-party introducing the at-issue product into the market that the defendant specifically avoided can create that essential,

strong relationship. Were it otherwise, specific jurisdiction would, in practice, closely resemble general jurisdiction, exposing many corporations to litigation for any injury in any forum.

A. No "Strong Relationship" Exists Where a Claim Arises Independent of a Defendant's Deliberate Efforts to Serve a Market.

"A defendant may have meaningful ties to the forum, but if they do not connect to the plaintiff's claim, they cannot sustain [a State's] power to hear it." *Johnson*, 21 F.4th at 317–18. It is well-settled that "mere market exploitation will not suffice" to exercise jurisdiction. *Id.* at 324. The fact that a corporation conducts "continuous activity of *some sorts* within a state . . . is not enough to support the demand that the corporation be amenable to suits unrelated to that activity." *Bristol-Myers Squibb Co.*, 582 U.S. at 264 (emphasis added) (quoting *Goodyear Dunlop Tires Operations, S.A., v. Brown*, 564 U.S. 915, 927 (2011)). Instead, where the defendant sells a product within the forum state, the suit must "relat[e] to that in-state activity." *Walden*, 571 U.S. at 127.

In *Ford*, for example, two plaintiffs brought product-liability suits stemming from two separate car accidents, one in a Ford Explorer and the other in a Ford Crown Victoria. 141 S. Ct. at 1023. Although the plaintiffs in that case purchased their vehicles outside of the forum states, the Supreme Court found their claims sufficiently related to Ford's contacts with the forum states. The exercise of jurisdiction was proper, the Court explained, not

simply because *a Ford product* caused injury in the forum states, but because Ford "deliberately," "systematically," and "extensively" served a market in those states "for the very [products] that the plaintiffs allege malfunctioned and injured them[.]" *Id*. at 1027-28. Ford "urge[d]" consumers in the forum states to purchase those specific vehicles by "every means imaginable," including via "billboards, TV and radio spots, print ads, and direct mail." *Id*. at 1028. And Ford engaged in additional activities to make driving the vehicles "convenient" in those states, including by ensuring "that Ford dealers stand ready to service the car; that other auto shops have ample supplies of Ford parts; and that Ford fosters an active resale market for its old models." *Id*. at 1029. These contacts created the required "strong relationship among the defendant, the forum, and the litigation" that serves as the "essential foundation" of specific jurisdiction." *Id*. at 1028 (internal quotation marks omitted).

This "strong relationship" requirement ensures "real limits" on the exercise of specific jurisdiction. *Id*. at 1026. Indeed, in many cases, this relationship simply "proxies for causation, ensuring jurisdiction over a class of cases for which causation seems particularly likely but is not always easy to prove." *Yamashita v. LG Chem, Ltd.*, 62 F.4th 496, 505 (9th Cir. 2023). The *Ford* Court explained, for example, that Ford's "forum contacts may well have played a causal role in the introduction to the forum state of the particular vehicle causing the injury" because "the owner may have seen 'ads for the

[model] in local media,' or 'take[n] into account a raft of Ford's in-state activities designed to make driving a Ford convenient there.'" *Id*. (quoting *Ford*, 141 S. Ct. at 1029). In other words, while jurisdiction did not turn on whether the plaintiffs purchased their products within the forum states, it was relevant that the plaintiffs *could have* purchased the products there—or could have been influenced to purchase the products there—due to *defendant's* efforts to sell the same products to the same target consumers in the forum states.

The situation is altogether different when a defendant neither sells, markets, services, repairs, fosters a resale market, or otherwise takes any action to make using its product convenient in the forum state. The Supreme Court itself recognized this in *Ford.* The Court expressly excluded from its reasoning a situation in which a defendant did *not* "advertise[], [sell], and service[]" the product at issue to consumers in the forum state. *Ford*, 141 S. Ct. at 1028 ("Contrast a case, which we do not address, in which Ford marketed the models in only a different State or region."). And those are the facts here. Samsung has structured its business in a way that *avoids* selling, marketing, or advertising the battery cells at issue to individual Texas consumers for any use. ROA.644-47. SDI's sole act in "availing itself" of "the privileges of conducting activities within" Texas consists of specific, controlled distributions of its batteries to Stanley Black & Decker to be incorporated into sealed power-tool battery packs, and to HP and Dell for use in laptop repairs

in service centers. ROA.641-44.[2]

These limited sales to a handful of industrial purchasers, with no connection to the plaintiff consumer, cannot by themselves establish the constitutionally required "strong relationship." As the Ninth Circuit recently explained, "[t]he logic of *Ford* did not turn on the mere fact that Ford had introduced some Explorers and Crown Victorias into Montana and Minnesota, but on the fact that it marketed these models to consumers, sold them to consumers, and serviced them for consumers." *Yamashita*, 62 F.4th at 507.[3] Indeed, to find specific jurisdiction based solely on the fact that Samsung sold lithium-ion battery cells to power tool and laptop manufacturers in Texas, that have nothing to do with the product that allegedly injured the

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[2] The record also indicates that SDI has partnered with specific companies in Texas to install battery energy-storage systems for "ESS battery cells" rather than the lithium-ion battery cells at issue in this litigation. Brief of Appellee, at 8-9.

[3] The Northern District of Illinois aptly explained the distinction between *Ford* and facts similar to those presented here:

> A proper analogy between this case and *Ford* would require facts showing that LG Chem markets and sells its rechargeable batteries throughout Illinois, directly to consumers, for use in e-cigarettes; that LG Chem maintains a network of battery repair or reclamation shops within Illinois to help increase demand; and that despite all this, Mr. Richter just so happened to purchase his particular LG Chem batteries outside Illinois. None of this resembles reality.

Richter v. LG Chem, Ltd., No. 18 CV 50360, 2022 WL 5240583, at *3 (N.D. Ill. Sept. 27, 2022).

plaintiff, would contradict the long-established rule that "even regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to *those sales*." *Goodyear*, 564 U.S. at 930 n.6 (emphasis added); *see also Helicopteros*, 466 U.S. at 418 ("[M]ere purchases, even if occurring at regular intervals, are not enough to warrant a State's assertion of in personam jurisdiction over a nonresident corporation in a cause of action not related *to those purchase transactions."* (emphasis added)).

Specific jurisdiction demands more than a tangential relationship between the litigation, the defendant, and the forum—the relationship must be a "strong" one. That is not the case here, where Samsung purposefully availed itself only of an industrial market for component parts in Texas and the litigation arises instead from an individual consumer's purchase of a battery cell outside of Texas, for use in a product for which it was never sold, distributed, or marketed by Samsung in Texas or anywhere else.

B. Neither a Plaintiff's Actions Nor a Third-Party's Actions Can Create a "Strong Relationship" Between the Defendant and the Forum.

Acts by a plaintiff or third party—rather than a defendant—cannot create the "strong relationship" required for specific personal jurisdiction. The Supreme Court has repeatedly confirmed that "[t]he unilateral activity of [another person] is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction." *Helicopteros*, 466 U.S. at 417; *see also Walden*, 571

U.S. at 284. For purposes of specific personal jurisdiction, the location where a *plaintiff* suffers "an injury is jurisdictionally relevant only insofar as it shows that the *defendant* has formed a contact with the forum State." *Id*. at 290 (emphasis added); *see also Diece-Lisa Indus., Inc. v. Disney Enters., Inc.*, 943 F.3d 239, 250 (5th Cir. 2019) ("[T]he relationship must arise out of contacts that the 'defendant *himself*' creates with the forum State." (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985))). If the defendant's own activities fail to create the necessary connection between a forum and claim, the plaintiff cannot establish jurisdiction "by demonstrating contacts between the plaintiff (or third parties) and the forum." *Walden,* 571 U.S. at 284.

This case exemplifies the problem with a plaintiff-focused inquiry: Samsung does not advertise, market, or sell to, or repair its battery cells for, Texas consumers in any capacity. But Plaintiff argues that there is specific personal jurisdiction because *he* purchased an otherwise unavailable battery cell from an out-of-state third-party seller, brought it *to* Texas, and was injured in Texas.[4] That cannot be right. Consider again *Ford*: The fact that the plaintiffs purchased their vehicles outside of the forum state was irrelevant to specific jurisdiction where the defendant's activities aimed at the forum State were otherwise related to consumers' purchase, use, and support of

[4] The record indicates that Samsung has never sold its 18650 lithium-ion battery cells to Amazon.com, Inc., Amazon.com Services, Inc., or any other Amazon entity. ROA.644-47, 952-53, 1079-86.

those vehicles (including by advertising, marketing, and repairing those same vehicles). The inverse is also true. A plaintiff's unilateral choice to bring a product into a forum state where the defendant's activities aimed at the forum State are otherwise *unrelated* to consumers' purchase, use, and support of that product (not advertising, marketing, or repairing that product) cannot establish personal jurisdiction.

A jurisdictional inquiry that turns on the acts of an unauthorized third-party seller fares no better.[5] While a defendant who "enjoy[s] the benefits" of a market may be held to account "for *related* misconduct" in that market, *Ford*, 141 S. Ct. at 1025 (emphasis added) (quoting *Int'l Shoe Co. v. State of Wash. Office of Unemployment Comp. and Placement*, 326 U.S. 310, 319 (1945)), exercising jurisdiction over a defendant based on "benefits" an unauthorized *third-party* seller reaped is illogical and unjust. Indeed, the Supreme Court has consistently rejected assertions of specific personal jurisdiction predicated solely on the sale of a defendant's goods by third parties into a forum State. *See Asahi Metal Indus. Co. v. Super. Ct. of Cal.*, 480 U.S. 102 (1987) (plurality opinion); *see also J. McIntyre Mach. Ltd. v. Nicastro*, 564 U.S. 873, 891 (2011) (Breyer, J., concurring in judgment) (noting that the U.S. Supreme Court "has rejected the notion that a defendant's amenability to suit travels

[5] Because specific jurisdiction is analyzed in terms of the defendant's case-related conduct, the terms "unauthorized" and "unsanctioned" here mean that the sale was not authorized, sanctioned, or otherwise agreed to by Samsung.

with the chattel") (cleaned up); *World-Wide Volkswagen*, 444 U.S. at 296 (rejecting the idea that a product manufacturer "appoint[s] the chattel his agent for service of process," subjecting the manufacturer to specific jurisdiction wherever the product may chance to travel, foreseeable or not).

It is not enough that a defendant's "products are distributed through a nationwide distribution system that *might* lead to those products being sold in any of the fifty states" because this would "rest jurisdiction . . . upon no more than the occurrence of a product-based accident in the forum State." *Ainsworth v. Moffett Eng'g, Ltd.*, 716 F.3d 174, 178–79 (5th Cir. 2013) (quoting *Nicastro*, 564 U.S. at 891 (Breyer, J., concurring in judgment)). Instead, jurisdiction is proper only where a corporation "delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." *World Wide Volkswagon*, 444 U.S. at 297–98.

This principle is increasingly important in an era of global e-commerce, where third parties regularly sell and resell products across state and national lines, independent of any activity or intent of the manufacturer. Third-party sellers "account for more than 60% of Amazon sales" at present, and this proportion is projected to continue to rise.[6] Under the plaintiff's proposed approach, a consumer could force a manufacturer to entertain a prod-

[6] *See Amazon Stats: Growth, Sales, and More,* Amazon, (Mar. 31, 2022), https://sell.amazon.com/blog/amazon-stats#Amazon%20Seller%20Sale.s.

ucts-liability suit for any product in any forum, even if the manufacturer intentionally avoids selling the subject product to consumers in that forum, as long as the manufacturer engages in some activity in that forum. All a plaintiff would need is to find an unauthorized out-of-state third-party seller willing to ship the desired product to the forum.

This Court should reaffirm that jurisdiction does not turn on the unilateral decisions of a consumer or on the unsanctioned conduct of third-party sellers.

II. Exercising Specific Personal Jurisdiction in This Case Would Deny Fundamental Fairness and Would Create Unpredictability for the Business Community.

Allowing a defendant to be haled into court for an injury wholly unrelated to any act of its own is fundamentally unfair. Specific jurisdiction is grounded in the idea of reciprocity between a defendant and a State. "Where a defendant knowingly benefits from the availability of a particular state's market for its products, it is only fitting that the defendant be amenable to suit in that state." *Luv N' care, Ltd. v. Insta-Mix*, 438 F.3d 465, 470 (5th Cir. 2006). In *Ford*, for example, the Supreme Court explained that by "extensively market[ing]" the relevant vehicle models in the forum states, Ford incurred an obligation to ensure that those models were "safe for their citizens to use there." 141 S. Ct. at 1029–30.

By the same token, though, a business "may permissibly alter its behavior in certain ways to *avoid* being subject to suit." *Luv N' care, Ltd.*, 438

F.3d at 470. Samsung presumably *could* have concluded that the likely benefits—in revenue, brand recognition, or other intangibles—of selling and marketing products for use by consumers (in Texas or elsewhere) would outweigh any potential costs of engaging with a consumer market. But it did not. Samsung exclusively targets other businesses, selling and marketing the subject battery cells to sophisticated companies as components of other, finished products—not to consumers for use on a standalone basis. Samsung therefore incurred no reciprocal obligation to ensure those products were "safe for [Texas] citizens to use" in the manner that allegedly gave rise to the plaintiff's claims in this case. 141 S. Ct. at 1029–30.

Ignoring these reciprocity and mutuality concerns undergirding specific jurisdiction is particularly concerning in today's global economy. "Companies that sell multiple products to multiple types of customers are commonplace. A firm might mine for gold, which it refines and sells both to dentists in the form of fillings and to investors in the form of ingots. Or, a firm might drill for both oil and natural gas. Or a firm might make both ignition switches inserted into auto bodies and tires used for cars." *Ohio v. Am. Express Co.*, 138 S. Ct. 2274, 2298 (2018) (Breyer, J., dissenting). It cannot be the case that a company that avails itself of *one* market in a forum state automatically opens itself up to claims unrelated to that market activity. Indeed, extending specific personal jurisdiction this broadly risks "collaps[ing] the core distinction between general and specific personal jurisdiction." *Bernhardt v. Islamic Republic of Iran*, 47 F.4th 856, 866 (D.C. Cir. 2022).

Incorporating real limits into the relatedness inquiry is also important because it lends "a degree of predictability to the legal system that allows potential defendants to structure their primary conduct" to lessen or avoid exposure to certain State courts. *World-Wide Volkswagen*, 444 U.S. at 297. "Predictability is valuable to corporations making business and investment decisions." *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010). Only where a company has "clear notice" that it may be exposed to suit can it choose "to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are [still] too great, severing its connection with the State" altogether. *World-Wide Volkswagen*, 444 U.S at 297.

A defendant that *declines* to market its products in Texas cannot reasonably predict that it will nonetheless be subject to suit for alleged injuries resulting from the unanticipated and unsanctioned use of that product in Texas. Where a defendant does not knowingly benefit—and indeed, intentionally avoids—"the availability" of a particular "market for its products," it is not on "clear notice" that it may be subject to personal jurisdiction for claims related to that market, and the exercise of jurisdiction cannot comport with due process. *Id*.

CONCLUSION

This Court should affirm the district court judgment dismissing Plaintiff-Appellant's claim for lack of jurisdiction and reaffirm the importance of "real limits" in the relatedness inquiry.

Dated: September 22, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

On September 22, 2023, this brief was served via CM/ECF on all registered counsel and via email to all counsel listed in the Petition's service list and transmitted to the Clerk of the Court. Counsel further certifies that: (1) any required privacy redactions have been made in compliance with Fifth Circuit Rule 25.2.13; and (2) the document has been scanned with the most recent version of a commercial virus scanning program and is free of viruses. No paper copies were filed in accordance with the COVID-19 changes ordered in General Docket No. 2020-3.

/s/ Scott A. Keller
Scott A. Keller

CERTIFICATE OF COMPLIANCE

This brief complies with: (1) the type-volume limitation of Federal Rules of Appellate Procedure 5(c)(1) and 29(a)(5) because it contains 3,865 words, excluding the parts of the brief exempted by Rule 32(f); and (2) the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface (14-point Palatino Linotype) using Microsoft Word (the same program used to calculate the word count).

/s/ Scott A. Keller
Scott A. Keller

CERTIFICATE OF CONFERENCE

Counsel for amici conferred with counsel for Appellant and Appellee. Both parties consent to the filing of this brief.

/s/ Scott A. Keller
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