Nos. 19-1204

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

FLORENCE MUSSAT, M.D., S.C.,

Appellant,

v.

IQVIA INC. and JOHN DOES 1 - 10

Appellees.

On Appeal from the United States District Court
for the Northern District of Illinois
Civil Action No. 17-C-8841 (Hon. Virginia M. Kendell)

BRIEF OF WASHINGTON LEGAL FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF APPELLEES, URGING AFFIRMANCE

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Dated: April 19, 2019

APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 19-1204

Short Caption: Florence Mussat v. IQVIA, Inc.

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The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

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Attorney's Signature: s/ Richard A. Samp Date: 4/19/2019

Attorney's Printed Name: Richard A. Samp

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). Yes X No ____

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None

Attorney's Signature: s/ Marc B. Robertson Date: 4/19/2019

Attorney's Printed Name: Marc B. Robertson

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). Yes ____ No X

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INTERESTS OF *AMICUS CURIAE*

The Washington Legal Foundation (WLF) is a non-profit public-interest law firm and policy center with supporters in all 50 States.[1] WLF devotes substantial resources to defending free enterprise, individual rights, a limited and accountable government, and the rule of law.

To that end, WLF has appeared frequently in this and other federal courts in cases involving personal jurisdiction issues, to support defendants seeking to avoid being subject to a court's coercive powers when assertion of jurisdiction does not comply with traditional notions of fair play and substantial justice. *See, e.g.*, *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773 (2017); *BNSF Railway Co. v. Tyrrell*, 137 S. Ct. 1549 (2017); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011). WLF recently filed an *amicus* brief in the U.S. Court of Appeals for the District of Columbia Circuit in a case raising issues substantially similar to those raised here. *Whole Foods Market Group v. Molock*, No. 18-7162 (D.C. Cir., appeal docketed Oct. 31, 2018).

In its seminal *Bristol-Myers* decision, the Supreme Court held that the U.S. Constitution imposes strict limits on the personal jurisdiction of state courts over

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[1] Pursuant to Fed.R.App.P. 29(a)(4)(E), WLF states that no counsel for a party authored this brief in whole or in part; and that no person or entity, other than WLF and its counsel, contributed monetarily to the preparation and submission of the brief. All parties have consented to its filing.

nonresident defendants. 137 S. Ct. at 1779-81. It explained that specific jurisdiction over nonresidents "is confined to adjudication of issues deriving from, or connected with the very controversy that establishes jurisdiction." *Id.* at 1780 (quoting *Goodyear*, 564 U.S. at 919). It held further that these due-process requirements must be met as to the claims of each plaintiff; a court may not assert personal jurisdiction over a plaintiff's claim simply because it may constitutionally assert personal jurisdiction over similar claims filed by another plaintiff against the same defendant. *Id.* at 1781. The Court held in *Daimler AG v. Bauman*, 571 U.S. 117 (2011), that identical due-process considerations apply to *federal court* proceedings in which personal jurisdiction is invoked under a State's long-arm statute. 571 U.S. at 125.

WLF is concerned that Appellant seeks to nullify the protections granted by *Bristol-Myers*. Appellant argues that even though *Bristol-Myers* bars exercise of personal jurisdiction over an individual's claims that do not arise out of or relate to the defendant's contacts with Illinois, the district court may hear the same claims by including that individual as an absent member of a certified Rule 23 class.

WLF's brief explains why *Bristol-Myers* applies just as fully to class actions as it does to mass actions. WLF's brief focuses particular attention on an argument stressed by *amicus curiae* American Association for Justice (AAJ): that *Bristol-*

Myers is inapplicable to federal court proceedings. That argument fundamentally misconstrues the nature of a federal court's authority to exercise personal jurisdiction over claims asserted against nonconsenting defendants.

STATEMENT OF THE CASE

Appellant Florence Mussat, M.D., S.C. ("Mussat") appeals from the district court's October 26, 2018 Memorandum Opinion and Order ("Order"), which granted Defendant IQVIA, Inc.'s motion to strike the class definition included in Mussat's putative class action. Short Appendix (App.) 1-15.[2] The district court held that it lacked personal jurisdiction over the claims of those putative class members that are unrelated to IQVIA's litigation-related activities in Illinois. App. 12-13.

The Amended Complaint contends that IQVIA violated the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227, by sending two unsolicited faxes to Mussat in Illinois in 2017. App. 18, 22. Mussat seeks to represent a nationwide class consisting of all those to whom IQVIA sent faxes since February 2014 that did not comply with TCPA requirements. App. 22-23. The Amended Complaint seeks injunctive relief as well as actual and statutory damages on behalf

[2] WLF takes no position on whether Fed.R.Civ.P. 23(f) permits interlocutory review of the Order.

of all class members. App. 24.

IQVIA's motion to strike the class definition asserted that the district court "lack[ed] personal jurisdiction with respect to the unnamed putative class members who are not Illinois residents." App. 1. In granting the motion, the district court noted initially that the TCPA contains no provision "authoriz[ing] nationwide service of process," App. 9—a point not contested by Mussat. In the absence of such authorization, the court stated, it would "look[ ] to Illinois law and the Due Process Clause of the Fourteenth Amendment for the applicable limits on its exercise of personal jurisdiction." App. 10.

The court concluded that it lacked *general* jurisdiction over IQVIA because IQVIA is not "at home" in Illinois: it is incorporated in Delaware and maintains its principal place of business in Pennsylvania. *Id.* Nor could it exercise *specific* jurisdiction over IQVIA with respect to absent class members who received faxes outside of Illinois because their claims did not "arise out of or relate to the defendant's contacts with the *forum*." *Id.* (quoting *Bristol-Myers*, 137 S. Ct. at 1780 (emphasis in original)).

The court held that due process bars exercise of personal jurisdiction over claims lacking a connection to Illinois, regardless whether the claims of *other* plaintiffs possess the requisite connection or whether the plaintiffs seek to maintain

their lawsuit as a mass action (as in *Bristol-Myers*) or a class action under Rule 23 of the Federal Rules of Civil Procedure. App. 11-13. It held that interpreting Rule 23 in accord with due-process limitations "ensures that Rule 23—a rule of procedure subject to the [Rules Enabling] Act's limitations—does not violate the Act by extending the personal jurisdiction of the federal courts to 'abridge, enlarge or modify' a 'substantive right.'" *Id.* at 13 (quoting Rules Enabling Act, 28 U.S.C. § 2072(b)).

SUMMARY OF ARGUMENT

The U.S. Constitution prohibits district courts from exercising personal jurisdiction over the claims of unnamed putative class members in the absence of factual allegations that their claims "arise out of or relate to [IQVIA's] contacts with the forum." *Bristol-Myers*, 137 S. Ct. at 1780. Well-established due-process principles protect a defendant that is not "at home" in the forum from being haled into court there when, as here, a plaintiff raises claims that focus solely on events arising in other States. That is so, both because the Due Process Clause "act[s] as an instrument of interstate federalism" and because the burdens of being required to defend litigation under those circumstances are deemed constitutionally excessive. *Id.* at 1780-81.

Mussat asserts that those principles are inapplicable in the class-action

context. It argues that the due-process protections afforded to defendants by class-action procedures serve as an adequate substitute for the due-process protections recognized in *Bristol-Myers* and the long line of Supreme Court decisions governing specific personal jurisdiction, dating back to *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

But the due-process interests protected by Rule 23 are dissimilar to those protected by *Bristol Myers*. Rule 23—by limiting class certification to cases in which all class members are adequately represented and in which there are issues of fact and law common to all class members—protects a defendant's due-process interest in ensuring that absent class members will be bound by any judgment. It does not protect defendants from the burden of having to defend claims in a forum that lacks any meaningful relationship to the claims. Indeed, the burden of defending such claims is likely to be particularly acute in the class-action context. *Bristol-Myers* held that due process protects defendants against such burdens, and nothing in the decision suggests that the principles it laid down are inapplicable in the class-action context.

Mussat and *amicus* AAJ also assert that those due-process principles are inapplicable to a class action filed in federal court. They contend that the relevant "forum" for a federal court is the entire United States and thus that federal courts

are not subject to the state-specific due-process constraints articulated by *International Shoe*. That contention is belied by the numerous Supreme Court cases that have applied those due-process constraints to federal-court proceedings involving federal claims. *See, e.g., Daimler AG v. Bauman*, 571 U.S. at 125.

Federal courts' exercise of personal jurisdiction over nonconsenting defendants is limited, in the first instance, to the authority granted to them by Congress. Under eighteenth-century common law, a court could not exercise personal jurisdiction over a person located outside its district, and the first Congress adopted this limitation as the "general rule" for federal courts. *Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S. 97, 108-09 (1987). Thus, a federal district court needs congressional authorization before it may exercise personal jurisdiction over those located outside its district.

"Congress' typical mode of providing for the exercise of personal jurisdiction has been to authorize service of process." *BNSF Railway*, 137 S. Ct. at 1555. It has adopted a small number of provisions that expressly authorize nationwide service of process for specific federal statutory claims (thereby authorizing any federal court to exercise personal jurisdiction over a U.S.-based defendant sued under those statutes). But when (as here) no such federal statute is applicable, virtually the only means by which a federal court may obtain personal

jurisdiction over nonresident defendants is the long-arm statute adopted by the forum State. Fed.R.Civ.P. 4(k)(1)(A) (service of process is effective to establish personal jurisdiction over a defendant "who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located").

A federal court's exercise of personal jurisdiction under Illinois's long-arm statute is permissible only if it is consistent with the Fourteenth Amendment's Due Process Clause. *Mobile Anesthesiologists Chicago, LLC v. Anesthesia Associates of Houston Metroplex, P.A.*, 623 F.3d 440, 443 (7th Cir. 2010). *Bristol-Myers* held that the Fourteenth Amendment confines state courts' jurisdiction over nonresidents "to adjudication of issues deriving from, or connected with the very controversy that establishes jurisdiction." 137 S. Ct. at 1780. Because the court below is exercising jurisdiction over IQVIA pursuant to Rule 4(k)(1)(A), its jurisdiction is similarly confined. Nothing in *Bristol-Myers* suggests that those constraints are inapplicable in the class-action context.

Mussat and AAJ point out that *Bristol-Myers* involved a state-court lawsuit and that the Supreme Court "le[ft] open the question whether the Fifth Amendment imposes the same restrictions on the exercise of personal jurisdiction by a federal court." 137 S. Ct. at 1784. But the Fifth Amendment is not implicated by this case. The issue here, as it was in *Bristol-Myers*, is the extent to which the

Fourteenth Amendment "imposes due process limits on the exercise of specific jurisdiction" pursuant to a state long-arm statute. *Id.* at 1783-84. A Fifth Amendment issue would arise here only if Congress adopted a statute authorizing federal courts to exercise personal jurisdiction over TCPA claims arising anywhere in the Nation—and Congress indisputably has not done so.

Mussat can point to nothing in the text of Rule 23 as authorizing an expansion of federal court jurisdiction. *Bristol-Myers* teaches that individuals to whom IQVIA allegedly sent faxes at non-Illinois locations may not obtain personal jurisdiction over IQVIA in an Illinois court—even if they aggregate their claims with others, such as Mussat, who can establish personal jurisdiction in Illinois for substantially similar conduct. Nothing in Rule 23 suggests that those same individuals may nonetheless be included in Mussat's lawsuit as absent class members. *Amicus* AAJ argues that personal jurisdiction issues are irrelevant because Rule 23 does not require absent class members to personally serve a defendant with process. But the relevant personal-jurisdiction inquiry is whether the defendant is *amenable* to service of process; under *Bristol-Myers*, a nonresident defendant is *not* amenable to service on claims arising outside the State in which the court is located.

Indeed, if Rule 23 were interpreted as authorizing personal jurisdiction over

IQVIA for claims arising outside Illinois, it would violate the Rules Enabling Act. The Act expressly "forbids interpreting Rule 23 to 'abridge, enlarge, or modify any substantive rights.'" *Wal-Mart Stores v. Dukes*, 564 U.S. 338, 367 (2011) (quoting 28 U.S.C. § 2072(b)). Interpreting Rule 23 as authorizing the claims of nonresident absent class members to be heard by federal district courts in Illinois would constitute a major abridgement of IQVIA's rights.

Moreover, Mussat's jurisdiction-expanding interpretation of Rule 23 would apply not only to class actions raising federal questions but also to class actions raising state-law claims and filed in federal court based on diversity of citizenship. When applied to diversity cases, Mussat's Rule 23 interpretation creates serious federalism and forum-shopping problems. A federal rule authorizing nationwide service of process in diversity-jurisdiction cases would create divergent results depending on whether the plaintiffs file suit in federal or state court—an outcome at odds with the *Erie* doctrine. *See Guaranty Trust Co. v. York*, 326 U.S. 99, 109 (1945) ("[T]he nub of the policy that underlies *Erie R. Co. v. Tompkins* [304 U.S. 64 (1938)] is that for the same transaction the accident of a suit by a nonresident litigant in a federal court instead of a State court a block away, should not lead to a substantially different result."). For that reason, federal appellate courts have long rejected arguments that federal common law can trump specific-jurisdiction

limitations and authorize expanded service of process in diversity cases.

ARGUMENT

I. *BRISTOL-MYERS* BARS EXERCISE OF PERSONAL JURISDICTION OVER THE CLAIMS OF ABSENT CLASS MEMBERS WHOSE CLAIMS ARE UNRELATED TO IQVIA'S CONTACTS WITH ILLINOIS

As the Supreme Court has repeatedly reminded, the Due Process Clause imposes strict limits on the authority of a court to exercise personal jurisdiction over defendants who reside outside the forum. *See, e.g., J. McIntyre Machinery, Ltd. v. Nicastro,* 564 U.S. 873, 881 (2011) (plurality) ("[T]hose who live or operate primarily outside a State have a due process right not to be subjected to judgment in its courts as a general matter"). In re-affirming those limits, *Bristol-Myers* recognized no exceptions, stating categorically that a court may not exercise personal jurisdiction over a nonresident defendant unless the plaintiff's claims "arise out of or relate to the defendant's contacts with the forum." 137 S. Ct. at 1780. Mussat does not allege facts suggesting that putative class members who received faxes from IQVIA outside of Illinois have claims that relate to IQVIA's contacts with Illinois. It follows that the district court lacks personal jurisdiction over IQVIA with respect to those claims.

A. Due-Process Constraints Apply Fully in the Class-Action Context

Mussat argues that *Bristol-Myers*'s due-process principles are inapplicable

in the context of class actions. But the sweeping language of *Bristol-Myers* and similar specific-jurisdiction decisions dating back to *International Shoe* includes no hint that the Court recognizes an exception for class actions. Recognizing a class-action exception leads to anomalous results. For example, in the absence of factual allegations that individuals who received faxes in New York relate in any way to IQVIA's contacts with Illinois, all agree that those individuals are not permitted to join Mussat's lawsuit as named plaintiffs. Yet under Mussat's understanding of *Bristol-Myers*, any certified class could encompass the claims of those same individuals. If including them as named plaintiffs violates IQVIA's due-process rights, it is difficult to understand how the constitutional violations suddenly disappear when the very same claims are raised by means of a class action. *See, e.g., Shaffer v. Heitner*, 433 U.S. 186, 209 (1977) ("[I]f a direct assertion of personal jurisdiction over the defendant would violate the Constitution, it would seem that an indirect assertion of that jurisdiction should be equally impermissible.").

Mussat cites *Califano v. Yamasaki*, 442 U.S. 682 (1979), to supports its contention that the Supreme Court endorses nationwide class actions against a nonresident defendant without regard to whether the district court could assert personal jurisdiction over the defendant with respect to each class member's

claims. Appellant Br. 11-13. *Califano* held no such thing. It rejected the HEW Secretary's argument that Rule 23 categorically prohibits certification of a nationwide class of Social Security beneficiaries. 442 U.S. at 702. The Secretary argued that such nationwide classes were "unwise," "inconsistent with principles of equity jurisprudence," and overly burdensome to the Government. *Id.* The Court disagreed, stating that Rule 23 did not *mandate* rejection of nationwide classes on burdensomeness grounds, so long as "a class is otherwise proper" and "jurisdiction lies over the claims of the members of the class." *Id.* Thus, far from endorsing certification of nationwide classes in cases akin to Mussat's, *Califano* expressly conditioned certification on a demonstration that the district court could properly exercise jurisdiction over "the claims of the members of the class." Moreover, the HEW Secretary did not challenge personal jurisdiction, and the Court never addressed the issue.

Amicus AAJ asserts that the "pre-*Bristol-Myers* consensus" among federal court decisions was that specific jurisdiction over the defendant with respect to the claims of named plaintiffs obviates any due-process concerns about the claims of absent class members. AAJ Br. 6-7. But the only decision cited by AAJ in support of its supposed "consensus," *Al Haj v. Pfizer Inc.*, 338 F. Supp. 3d 815, 818 (N.D. Ill. 2018), is a post-*Bristol-Myers* decision, and *Al-Haj* cited *no* case law in support

of its "consensus" assertion.

In *Tyrrell*, the Supreme Court stated that due-process constraints on personal jurisdiction apply to "all" state-court assertions of personal jurisdiction over nonresident defendants and "do not vary with the type of claim asserted," 137 S. Ct. at 1558-59—*e.g.*, they apply regardless whether it is a claim on behalf of an individual or a claim on behalf of a class. Mussat has not explained why that same rule should not apply in federal court.

Refusing to apply due-process constraints to the claims of absent class members undercuts many of the essential purposes of those constraints. The Due Process Clause "gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). A rule that subjects a defendant to nationwide claims in a distant jurisdiction simply because it has directed its conduct at a single resident of the forum State deprives the defendant of any such assurances. Such "exorbitant exercises" of personal jurisdiction "would scarcely permit out-of-state defendants" to "structure their primary conduct" in a manner that would facilitate reasonable predictions regarding where claims are likely to be filed. *Daimler*, 571 U.S. at 139.

B. *Bristol-Myers* Applies to Federal Court Proceedings

Amicus AAJ essentially concedes that *Bristol-Myers* bars a state court's exercise of personal jurisdiction over an absent class member's claims that do not arise out of or relate to the defendant's contacts with the State. But it asserts that *Bristol-Myers* "does not apply to absent class members' claims in federal court" because the Court's decision was "a consequence of territorial limitations on the power of the respective States"—limitations that supposedly are irrelevant in federal court. AAJ Br. 7-10.

AAJ's assertion is demonstrably incorrect. The Supreme Court has repeatedly applied its Fourteenth Amendment personal-jurisdiction analysis to lawsuits filed initially in federal court, even when the plaintiff raises federal questions. *See, e.g.*, *Walden v. Fiore*, 571 U.S. 277, 283 (2014); *Daimler*, 571 U.S. at 125. As *Daimler* explained:

> Federal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons. See Fed Rule Civ. Proc. 4(k)(1)(A) (service of process is effective to establish personal jurisdiction over a defendant "who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located"). ... California's long-arm statute allows the exercise of personal jurisdiction to the full extent permissible under the U.S. Constitution. We therefore inquire whether the Ninth Circuit's holding comports with the limits imposed by federal due process.

Id. Accord, John Crane, Inc. v. Shein Law Center, Ltd., 891 F.3d 692, 695 (7th

Cir. 2018). *Walden*, *Daimler*, and *John Crane* each held that a federal district court's exercise of personal jurisdiction over a nonresident defendant violated the defendant's Fourteenth Amendment due-process rights.

Rule 4(k)(1)(A) is not the only yardstick for determining the bounds of district courts' jurisdiction over persons. They may also exercise personal jurisdiction "when authorized by a federal statute." Fed.R.Civ.P. 4(k)(1)(C).[3] Congress on occasion adopts statutes authorizing any federal district court in the United States to exercise personal jurisdiction over claims arising under specified federal laws, even if personal jurisdiction could not be effected under the local State's long-arm statute. *See, e.g.*, 18 U.S.C. § 1965(d) (authorizing service of process in civil actions filed under the Racketeer Influenced and Corrupt Organizations Act (RICO) "in any judicial district" in which the defendant "resides, is found, has an agent, or transacts his affairs").[4] But that additional

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[3] Federal law also authorizes exercise of personal jurisdiction in several other rarely applicable circumstances that are irrelevant to this case. *See, e.g.*, Fed.R.Civ.P. 4(k)(1)(B); Fed.R.Civ.P. 4(k)(2) (focusing on personal jurisdiction over foreign defendants not subject to personal jurisdiction in *any* state court).

[4] The Supreme Court interprets statutory language authorizing service of process as an indication that Congress is providing for expanded federal-court personal jurisdiction. *BNSF Railway*, 137 S. Ct. at 1555 (stating that "Congress' typical mode of providing for the exercise of personal jurisdiction has been to authorize service of process" and citing 15 U.S.C. § 22 (Clayton Act) and § 53(a) (Federal Trade Commission Act) as examples).

source of personal jurisdiction is irrelevant here, because Congress has not adopted a federal statute expanding federal-court personal jurisdiction over TCPA claims, and Mussat does not claim otherwise.

In the absence of such a federal statute, the Illinois federal district court must look solely to Rule 4(k)(1)(A) (and the Illinois long-arm statute) in determining its personal jurisdiction over IQVIA, and—as *Daimler* and *Walden* make clear—any such assertion of personal jurisdiction is subject to the constraints imposed by the Fourteenth Amendment Due Process Clause. *ISI International, Inc. v. Borden Ladner Gervais LLP*, 256 F.3d 548, 550 (7th Cir. 2001) ("Fed.R.Civ.P. 4(k)(1)(A) links personal jurisdiction in federal cases to the jurisdiction of the state courts.") As this Court recently explained:

> [Rule 4(k)(1)(A)] means, in essence, that federal personal jurisdiction is proper whenever the person would be amenable to suit under the laws of the state in which the federal court sits (typically under a state long-arm statute), subject *always* to the constitutional due process limitations encapsulated in the familiar "minimum contacts" test.

KM Enterprises, Inc. v. Global Traffic Technologies, Inc., 725 F.3d 718, 723 (7th Cir. 2013) (emphasis added) (citing *International Shoe*, 326 U.S. at 316).

Amicus AAJ argues that federal district courts are exempt from these constitutional constraints when exercising personal jurisdiction over nonresident defendants with respect to the claims of absent class members. AAJ Br. 12-16.

AAJ notes that absent class members can have their claims heard in a class action without being required to serve the defendant individually. *Id.* at 14. It asserts that because they are excused from serving process on a defendant that has been properly served by the named plaintiffs, they are also excused from demonstrating personal jurisdiction. *Id.* at 14-16.

That assertion fundamentally misconstrues the nature of a federal court's authority to exercise personal jurisdiction over claims asserted against a nonconsenting defendant. The relevant due-process issue is not whether the defendant has actually been served with process for a particular claim, but the defendant's "amenability" to service of process. *Omni Capital*, 484 U.S. at 103 n.6, 104. *International Shoe* and its progeny make clear that a federal-court nonresident defendant is not amenable to service of process from any plaintiff (whether a named plaintiff or an absent class member) whose claims do not arise from the defendant's contacts with the forum.

Omni Capital explained in detail the source of a federal district court's authority to exercise personal jurisdiction over nonconsenting defendants:

> At common law, a court lacked authority to issue process outside its district, and Congress made this same restriction the general rule when it enacted the Judiciary Act of Sept. 24, 1789, § 11, 1 Stat. 79. *See Robertson v. Railroad Labor Board*, 268 U.S. 619 622-23 (1925). Thus, *specific legislative authorization of extraterritorial service of summons*

> *was required for a court to exercise personal jurisdiction over a person outside the district.*

484 U.S. at 108-09 (emphasis added).

Federal district courts have been granted the requisite authority to exercise personal jurisdiction over nonresident defendants, to the extent that the forum State's long-arm statute permits such exercise. Congress has also adopted a handful of statutes that authorize federal courts to exercise nationwide jurisdiction in cases raising specified federal claims. But because Congress has not adopted such a statute with respect to TCPA claims and because (per *Bristol-Myers*) the Illinois long-arm statute does not provide for personal jurisdiction over claims of absent class members that do not arise from IQVIA's contacts with Illinois, IQVIA is not amenable to service of process for those claims.

Omni Capital explicitly rejected arguments that the federal courts could act unilaterally to expand their authority to exercise personal jurisdiction over nonconsenting defendants, citing two reasons:

> First, since Congress concededly has the power to limit service of process, circumspection is called for in going beyond what Congress has authorized. Second, as statutes and rules have always provided the measure of service, courts are inappropriate forums for deciding whether to extend them. Legislative rulemaking better ensures proper consideration of a service rule's ramifications within the pre-existing structure and is more likely to lead to consistent application.

484 U.S. at 110. The Court noted that "Congress knows how to authorize nationwide service of process when it wants to provide for it." *Id.* at 106. Congress's decision not to provide for nationwide service of process for TCPA claims is thus a strong indication that it did not seek to limit IQVIA's Fourteenth Amendment due-process right not to be haled into an Illinois court to defend TCPA claims lacking any connection to the forum.

C. Congress's Constitutional Authority to Expand District Courts' Personal Jurisdiction over Claims against Out-of-State Defendants Is Not at Issue Here

Mussat and AAJ point out that *Bristol-Myers* involved a state-court lawsuit and that the Supreme Court "le[ft] open the question whether the Fifth Amendment imposes the same restrictions on the exercise of personal jurisdiction by a federal court." 137 S. Ct. at 1784. But that observation is irrelevant here because IQVIA is asserting rights under the Due Process Clause of the Fourteenth Amendment, not the Fifth Amendment. The issue here, as it was in *Bristol-Myers*, is the extent to which the Fourteenth Amendment "imposes due process limits on the exercise of specific jurisdiction" pursuant to a state long-arm statute. *Id.* at 1783-84. As explained above, the only possible source of the Illinois district court's authority to exercise personal jurisdiction over IQVIA for the TCPA claims is Rule 4(k)(1)(A) and the Illinois long-arm statute. And case law is unanimous that federal courts

should look to the Fourteenth Amendment, not the Fifth Amendment, to ascertain whether application of a State's long-arm statute would violate the defendant's due-process rights. *Walden*, 571 U.S. at 283; *Mobile Anesthesiologists*, 623 F.3d at 443; *Philos Technologies, Inc. v. Philos & D, Inc.*, 802 F.3d 905, 912, 916 (7th Cir. 2015) (even if Illinois long-arm statute were interpreted as permitting exercise of personal jurisdiction over defendant, it would still be barred by the Fourteenth Amendment Due Process Clause).

The question that *Bristol-Myers* declined to answer is whether the Fifth Amendment imposes any limitations on Congress's authority to create nationwide service of process and thereby subject defendants to the personal jurisdiction of any federal district court chosen by the plaintiff. Courts and commentators generally agree that the Fifth Amendment protects defendants from congressionally authorized forums that are uniquely inconvenient. *See, e.g., Board of Trustees v. Elite Erectors, Inc.*, 212 F.3d 1031, 1036-37 (7th Cir. 2000); Robert A. Lusardi, *Nationwide Service of Process: Limitations on the Power of the Sovereign*, 33 VILL. L. REV. 1, 48 (1988). But this Court need not address the Fifth Amendment question because Congress has not adopted a statute that purports to expand personal jurisdiction in TCPA cases—and thus no Fifth Amendment question is raised.

II. RULE 23 DOES NOT EXPAND THE JURISDICTION OF FEDERAL COURTS

A. Rule 23 Would Violate the Rules Enabling Act if Interpreted as Authorizing an Abridgement of IQVIA's Rights

Mussat also argues that due-process concerns are simply irrelevant in a federal-court class action. Mussat asserts, "The scope of a federal question class action in federal court is governed *solely* by Rule 23 and not by due process, directly or through Rule 4." Appellant Br. 29 (emphasis added).

Yet Mussat can point to nothing in the text of Rule 23 as authorizing an expansion of federal court jurisdiction. *Bristol-Myers* teaches that individuals to whom IQVIA allegedly sent faxes at non-Illinois locations may not obtain personal jurisdiction over IQVIA in an Illinois court—even if they aggregate their claims with others, such as Mussat, who can establish personal jurisdiction in Illinois for substantially similar conduct. Nothing in Rule 23 suggests that those same individuals may nonetheless be included in Mussat's lawsuit as absent class members.

Indeed, if Rule 23 were interpreted as authorizing personal jurisdiction over IQVIA for claims arising outside Illinois, it would violate the Rules Enabling Act. The Act expressly "forbids interpreting Rule 23 to 'abridge, enlarge, or modify any substantive rights.'" *Wal-Mart Stores*, 564 U.S. at 367 (quoting 28 U.S.C.

§ 2072(b)). Interpreting Rule 23 as authorizing the claims of nonresident absent class members to be heard by federal district courts in Illinois would constitute a major abridgement of IQVIA's rights.

Mussat bases its interpretation of Rule 23 on an out-of-context quotation from *Shady Grove Orthopedic Associates, P.A. v. Allstate Ins. Co.*, 559 U.S. 393 (2010). Appellant Br. 31 (asserting that "Rule 23 unambiguously authorizes any plaintiff, in any federal civil proceeding, to maintain a class action if the Rule's prerequisites are met") (quoting *Shady Grove*, 559 U.S. at 406). But *Shady Grove* has nothing to say about personal jurisdiction and provides no support for Mussat.

Shady Grove involved a diversity-jurisdiction suit filed in federal court by a healthcare provider against an insurance company, alleging that the insurer violated New York law by failing to pay interest on overdue insurance benefits. The New York statute provided for a $500 statutory penalty for each violation, but it also prohibited lawsuits alleging violations of the statute to be filed as class actions. The Court held that the plaintiff could pursue class-wide relief under Rule 23, notwithstanding the state-law rule barring class actions. At issue was whether Rule 23, as applied to the plaintiff's claim, should be deemed "procedural" or "substantive"; if the latter, then application of Rule 23 would violate the Rules Enabling Act, which states that a federal rule shall not abridge, enlarge, or modify

any "substantive right." The Court concluded that Rule 23, as applied to the healthcare provider's claims, was purely procedural—and thus did not violate the Act; it noted that a Rule 23 class action would not alter "the rules of decision by which the court will adjudicate [the plaintiffs'] rights" and "merely enables a federal court to adjudicate claims of multiple parties at once, instead of in separate suits." 559 U.S. at 407, 408 (plurality opinion).

The context in which the Rule 23 issue arises here is entirely different from *Shady Grove*. It is not true here, as it was in *Shady Grove*, that the absent class members are entitled to file "separate suits" if a class is not certified. To the contrary, it is undisputed that absent class members who received faxes outside of Illinois are barred by *Bristol-Myers* from filing "separate suits" against IQVIA in the district court. So any application of Rule 23 that permits their claims to be heard in the district court as part of a class action constitutes an abridgment of IQVIA's "substantive right" (under the Fourteenth Amendment) not to be burdened by the need to defend those claims in Illinois.

Mussat quotes *Shady Grove* out of context when noting the Supreme Court's statement that Rule 23 "authorizes any plaintiff, in any federal civil proceeding, to maintain a class action if the Rule's prerequisites are met." 559 U.S. at 406. *Shady Grove*'s point was that federal courts should not base class-certification

decisions on criteria not set forth in Rule 23. But *Shady Grove* never suggested that Rule 23 can expand federal court jurisdiction so as to permit the adjudication of claims (asserted by absent class members) over which the court otherwise would have lacked personal jurisdiction.[5]

B. Rule 23 Is Not Intended as a Substitute for a Defendant's Due-Process Protections

Mussat cites *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985), in support of its claim that the *International Shoe* due-process limitations on specific jurisdiction are inapplicable to federal-court class-action defendants. Appellant Br. 13-15. Mussat asserts that "the due process implications [of the two cases] are virtually identical" because in each case certification of the proposed class would not impose "significant additional litigation burdens." *Id.* at 14.

Mussat misconstrues *Shutts*. The decision did not seek to minimize the burdens imposed on a defendant involuntarily drawn into a class action. Rather, its point was that an absent class plaintiff drawn involuntarily into a class action faces

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[5] This case has not reached the class-certification stage, so the Court need not confront the issue of whether Mussat could demonstrate that its proposed class meets the criteria specified in Rule 23. We note nonetheless that Mussat almost certainly could not satisfy Rule 23(b)(3)'s predominance requirement given the huge number of individual issues of fact and law that are sure to arise—*e.g.*, whether individual class members can demonstrate a relationship between their claims and Illinois.

burdens far *lighter* than those imposed on the defendant—and thus that such a plaintiff is entitled to a lesser degree of due-process protection. *Shutts*, 472 U.S. at 808. Far from suggesting that class-action defendants were entitled to fewer constitutional protections than defendants in other lawsuits, the Court stated, "These burdens [imposed on a class-action defendant] are substantial, and the minimum contacts requirement of the Due Process Clause prevents the forum State from unfairly imposing them upon the defendant." *Ibid.*

Indeed, *Bristol-Myers* expressly held that *Shutts* had "no bearing" on defendants' rights because it "concerned the due process rights of *plaintiffs*." *Bristol-Myers*, 137 S. Ct. at 1783 (emphasis in original). It added, "The Court [in *Shutts*] stated specifically that its 'discussion of personal jurisdiction [did not] address class actions where the jurisdiction is asserted against a *defendant* class.'" *Id.* (emphasis in original) (quoting *Shutts*, 472 U.S. at 812 n.3).

Amicus AAJ makes a similar (and similarly misguided) argument, citing this Court's decision in *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 672 (7th Cir. 2015), in support of its assertion that "'concern about protecting a [class-action] defendant's due process rights' is misplaced because those rights are 'protected by other features of the class device.'" AAJ Br. 17-18. The defendant in *Mullins* opposed certification of a Rule 23(b)(3) class based on a claim that the plaintiffs

failed to establish the "ascertainability" of class membership. The Court declined to add a free-standing ascertainability requirement to Rule 23, stating that the defendant's principal due-process concern (the right of "a fair opportunity to present its defenses when putative class members actually come forward") is already protected by other features of Rule 23. *Mullins*, 795 F.3d at 670, 672 (stating that "policy concerns identified by other courts ... are better addressed by a careful and balanced application of the Rule 23(a) and (b)(3) requirements"). The due-process concerns raised here (that a nonresident defendant should not be haled into a court to answer claims that are unrelated to its contacts with the forum) are wholly distinct from the due-process concerns discussed in *Mullins* and protected by Rule 23.

AAJ argues that permitting all potential claims against IQVIA to be litigated in a single class action would "promote efficiency and expediency." AAJ Br. 17. But the decision below does not prevent plaintiffs from obtaining certification of nationwide classes. As the district court noted, IQVIA is subject to general jurisdiction in Delaware and Pennsylvania courts, and thus nothing in *Bristol-Myers* prevents Mussat from seeking certification of a nationwide class in those courts. App. 15. Moreover, nationwide classes continue to be viable options in *any* federal court for suits raising federal claims for which Congress has authorized

nationwide service of process.

WLF notes in closing that although this case involves a federal claim, Mussat's jurisdiction-expanding interpretation of Rule 23 would also apply to class actions raising state-law claims and filed in federal court based on diversity of citizenship. When applied to diversity cases, Mussat's Rule 23 interpretation creates serious federalism and forum-shopping problems. A federal rule authorizing nationwide service of process in diversity-jurisdiction cases would create divergent results depending on whether the plaintiffs file suit in federal or state court—an outcome at odds with the *Erie* doctrine. *See Guaranty Trust Co. v. York*, 326 U.S. at 109 ("the nub of the policy that underlies *Erie R. Co. v. Tompkins* [304 U.S. 64 (1938)] is that for the same transaction the accident of a suit by a nonresident litigant in a federal court instead of a State court a block away, should not lead to a substantially different result."). Plaintiffs' lawyers seeking to maintain nationwide class actions within their favored jurisdiction would inevitably file suit in federal court, not state court. For that reason, federal appellate courts have long rejected arguments that federal common law can trump specific-jurisdiction limitations and authorize expanded service of process in diversity cases. *See, e.g., Arrowsmith v. United Press Int'l*, 320 F.2d 219, 226-27 (2d Cir. 1963) (*en banc*) (Friendly, J.).

CONCLUSION

The Court should affirm the decision below.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I am an attorney for *amicus curiae* Washington Legal Foundation. Pursuant to Fed.R.App.P. 32(a)(7)(C) and Seventh Circuit Rule 29, I hereby certify that the foregoing brief of *amicus curiae* is in 14-point, proportionately spaced Times New Roman type. According to the word processing system used to prepare this brief (WordPerfect X5), the word count of the brief is 6,337, not including the certificate as to parties, table of contents, table of authorities, glossary, certificate of service, and this certificate of compliance.

/s/ Richard A. Samp
Richard A. Samp

April 19, 2019

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of April, 2019, I electronically filed the brief of *amicus curiae* Washington Legal Foundation with the Clerk of the Court of the U.S. Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Richard A. Samp
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