No. 19-1204

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

FLORENCE MUSSAT, M.D., S.C.,
on behalf of itself and all others similarly situated,
Plaintiff-Appellant,

v.

IQVIA, INC.,
Defendant-Appellee.

On Appeal from the United States District Court
for the Northern District of Illinois
(Case No. 1:17-cv-8841)

BRIEF OF WASHINGTON LEGAL FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF APPELLEE'S PETITION FOR REHEARING *EN BANC*

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April 15, 2020

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Appellate Court No: 19-1204

Short Caption: Florence Mussat, M.D., S.C. v. IQVIA, Inc.

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Attorney's Signature: /s/ Cory L. Andrews Date: 4/15/20

Attorney's Printed Name: Cory L. Andrews

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

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N/A

Attorney's Signature: /s/ Corbin K. Barthold Date: 4/15/20

Attorney's Printed Name: Corbin K. Barthold

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

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES:

Page(s)

RULES:

OTHER SOURCES:

INTEREST OF *AMICUS CURIAE*[*]

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. WLF promotes free enterprise, individual rights, limited government, and the rule of law. It often appears as *amicus curiae* to stress that due process limits a court's exercise of personal jurisdiction. *See, e.g.*, *Bristol-Myers Squibb Co. v. Superior Ct.*, 137 S. Ct. 1773 (2017); *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549 (2017). And it filed an *amicus* brief with the panel here.

INTRODUCTION

The petition presents an issue of exceptional importance. The burden on someone forced to defend a lawsuit in a far-flung forum is the same no matter who owns the courthouse. Subject to narrow exceptions inapplicable here, a court may exercise personal jurisdiction over a nonresident defendant only for a claim that "arise[s] out of or relate[s] to the defendant's contacts with the forum." *Bristol-Myers*, 137 S. Ct. at 1780. Because an Illinois state court may not exercise personal jurisdiction over any claim arising from IQVIA's *non*-Illinois contacts, neither may the district court.

[*] No party's counsel authored any part of this brief. No one, apart from WLF and its counsel, contributed money intended to fund the brief's preparation or submission.

The plaintiff does not dispute that IQVIA, a Delaware corporation headquartered in Pennsylvania, is not subject to general jurisdiction in Illinois. Nor does it deny that the proposed nationwide class likely includes thousands of absent class members whose claims have no connection to Illinois. Recognizing that it may exercise personal jurisdiction over IQVIA for only claims arising from IQVIA's Illinois contacts, the district court struck all class claims unconnected to Illinois.

But the panel disagreed. It decided that the Fourteenth Amendment's limits on personal jurisdiction, clarified in *Bristol Myers*, do not apply to a federal court action arising under federal law. (Op. 8) The panel held that Rule 4(k) "governs service of process" but imposes no "independent limitation on a federal court's exercise of personal jurisdiction." (*Id.* 10) Rather than scrutinize a given claim's relationship to IQVIA's Illinois activity, the panel obsessed over the "party status of absent class members" under Rule 23. (*Id*. 9) And it focused on the unnamed plaintiffs' "affiliation" with Illinois, while ignoring IQVIA's lack of relevant contacts. (*Id*. 5) At every turn, the panel erred.

The panel's deeply flawed analysis contravenes Supreme Court precedent and upends this Court's long-settled case law. Riddled with doctrinal blunders, the panel's opinion, if left to stand, would transform specific jurisdiction in a class action into "a loose and spurious form of general jurisdiction." *Bristol-Myers*, 137 S. Ct. at 1781. That would be a calamity.

The full Court should grant review, vacate the panel's opinion, and affirm the district court's well-reasoned order.

REASONS FOR GRANTING THE PETITION

THE PANEL'S DECISION CONTRAVENES SUPREME COURT AND SEVENTH CIRCUIT PRECEDENT.

A. The Fourteenth Amendment Governs the Due-Process Analysis.

The panel held that the Fourteenth Amendment does not limit a district court's exercise of personal jurisdiction in a suit arising under federal law. The panel even purported to correct the district court's invocation of the Fourteenth Amendment: "Actually, in federal court it is the Fifth Amendment's Due Process Clause that is applicable." (Op. 8) Actually, we submit, the district court had it right.

"Federal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons." *John Crane, Inc. v. Shein Law Ctr.*, 891 F.3d 692, 695 (7th Cir. 2018). Even when a plaintiff sues in federal court for a claim arising under federal law, the typical "question presented is whether the Due Process Clause of the Fourteenth Amendment precludes the District Court from exercising jurisdiction" over the defendant. *Daimler AG v. Bauman*, 571 U.S. 117, 121 (2014) (federal court assessing claims under the Alien Tort Statute and the Torture Victim Protection Act of 1991); *accord Walden v. Fiore*, 571 U.S. 277, 283 (2014) (federal court assessing *Bivens* claims). As the district court rightly recognized, that is the same question here.

To be sure, the Fifth Amendment's Due Process Clause is satisfied, in principle, if the defendant has "sufficient contacts with the United States as a whole rather than any particular state." *United States v. DeOrtiz*, 910 F.2d 376, 382 (7th Cir. 1990). But that untested principle has no relevance here. In the mine-run case, the Fifth Amendment does not fix the bounds of a district court's personal jurisdiction over a nonresident defendant unless Congress has authorized nationwide service of process for a plaintiff's claim. *See* Fed.

R. Civ. P. 4(k)(1)(A). When, as here, "no federal statute authorizes nationwide service of process, personal jurisdiction is governed by the law of the forum state." *Tamburo v. Tworkin*, 601 F.3d 693, 700 (7th Cir. 2010). The "law of the forum state," in turn, is bound by the Fourteenth Amendment.

Because a federal court trying a claim under federal law "acquire[s] personal jurisdiction only to the extent the state law authorizes service of process," *United Rope Distribs. v. Seatriumph Marine Corp.*, 930 F.2d 532, 536 (7th Cir. 1991), the district court must look to the Fourteenth Amendment to determine whether subjecting IQVIA to jurisdiction under Illinois's long-arm statute would pass constitutional muster. *Bristol-Myers* thus provides the proper test for assessing the bounds of the district court's specific jurisdiction.

B. The Panel Badly Misconstrued Rule 4(k).

In its perfunctory analysis of Federal Rule of Civil Procedure 4(k), the panel accused IQVIA of "mixing up the concepts of service and jurisdiction." (Op. 11) The panel dismissively stated that "IQVIA reads Rule 4(k) broadly, as not requiring merely that a plaintiff comply with state-based rules on the service of process, but also establishing an

independent limitation on a federal court's exercise of personal jurisdiction." (*Id.* at 10) Once again, we suggest that it was the panel, not IQVIA, who got "mixed up."

A district court's authority to exercise personal jurisdiction over a defendant "may be created only by statute or federal rule with the force of statute." *United Rope*, 930 F.2d at 534. At common law, "a court lacked authority to issue process outside its district." *Omni Capital Int'l v. Rudolph Wolff & Co.*, 484 U.S. 97, 108 (1987). Congress, therefore, "made this same restriction the general rule" in the first Judiciary Act. *Id.* As a result, "specific legislative authorization of extraterritorial service of summons was required for a court to exercise personal jurisdiction over a person outside the district." *Id.* at 109. Congress's "typical mode of providing for the exercise of personal jurisdiction has been to authorize service of process." *Tyrrell*, 137 S. Ct. at 1555.

No matter the basis for a district court's subject-matter jurisdiction, Rule 4(k) supplies the rule anytime a district court exercises personal jurisdiction over a defendant. Under Rule 4(k)(1)(A), service of process (or filing a waiver of service) "establishes 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." Fed. R. Civ. P. 4(k)(1)(A).

True, subsections (B) and (C) provide alternative bases for jurisdiction over a party joined under Rule 14 or 19, or when a federal statute authorizes nationwide service of process. *See* Fed. R. Civ. P. 4(k)(1)(B) & (C). And Rule 4(k)(2) provides jurisdiction "consistent with the United States Constitution and laws"—but only if the defendant is outside the jurisdiction of any state court. Fed. R. Civ. P. 4(k)(2). None of these alternatives to Rule 4(k)(1)(A) applies here. "Rule 4(k)(1)(A)," therefore, is "virtually the only rule setting forth the jurisdictional reach of a district court presented with a class action." A. Benjamin Spencer, *Out of the Quandary: Personal Jurisdiction Over Absent Class Member Claims Explained*, 39 Rev. of Litig. 31, 42 (2019).

Rule 4(k) does more than require service of process; it also supplies a lawful basis for subjecting the defendant to the court's jurisdiction in the first place. Rule 4(k)(1)(A) gives the district court the same in personam jurisdiction as "a court of general jurisdiction in the state where the district court is located." Fed. R. Civ. P. 4(k)(1)(A). Simply put, "jurisdiction is proper" only if the defendant "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." *KM Enters., Inc. v. Global Traffic Techs., Inc.*, 725 F.3d 718, 723 (7th Cir. 2013).

As WLF reminded the panel, Rule 4(k)(1)(A) asks not merely whether the defendant received a summons for a given claim; it also asks whether the defendant is *amenable* to service of process. "Personal jurisdiction is conditioned on *both* a court's ability to assert jurisdiction over a defendant *and* a defendant's receipt of notice and opportunity to be heard." *Emp'rs Ins. of Wausau v. Banco De Seguros Del Estado*, 199 F.3d 937, 943 (7th Cir. 1999) (emphasis added).

If that take on Rule 4(k) constitutes, in the panel's view, a "broad reading" of the rule, then this Court has consistently endorsed that broad reading. *See Waeltz v. Delta Pilots Ret. Plan*, 301 F.3d 804, 807 (7th Cir. 2002) (holding, under Rule 4(k), that "service establishes a district court's personal jurisdiction only if a court of the state in which the district court sits would have personal jurisdiction over the defendant"); *ISI Int'l, 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."); *Janmark, Inc. v. Reidy*, 132 F.3d 1200, 1201 (7th Cir. 1997) (holding, under Rule 4(k), that "the current litigation can proceed only if [the defendants] also are subject to the jurisdiction of the State of Illinois"). In other words, "the state statutory and federal constitutional inquiries merge." *Tamburo*, 601 F.3d at 700.

No federal law relaxes these limits on a district court's personal jurisdiction in a class action. And the Supreme Court has rejected any suggestion that a federal court may, unilaterally, expand the scope of personal jurisdiction over a non-consenting defendant beyond that provided by rule or statute. *Omni Capital*, 484 U.S. at 110. First, "since Congress concededly has the power to limit service of process, circumspection is called for in going beyond what Congress has authorized." *Id.* Second, "as statutes and rules have always provided the measure of service, courts are inappropriate forums for deciding whether to extend them." *Id.* In short, the district court's exercise of personal jurisdiction is "strictly bound by the letter of state law"; the panel is "without authority to fill whatever interstitial gaps a given case may illuminate." *Swaim v. Moltan Co.*, 73 F.3d 711, 720 (7th Cir. 1996).

Contrary to the panel's view, any "territorial limits on a federal district court's authority to adjudicate the claims of absent members of a certified class in a way that binds the defendants * * * must emanate from Rule 4(k)." Spencer, *supra*, at 44.

C. Personal Jurisdiction Limits Claims, Not Parties.

The panel devoted much of its analysis to discussing the party status of absent class members under Rule 23. The panel emphasized that, after class certification, an unnamed plaintiff is no less a real party in interest than is a named plaintiff. (Op. 9-10) No one disputes that. But due process, this Court has explained, focuses not on a party's legal status but "on 'the relationship among the defendant, the forum, and the litigation.'" *Brook v. McCormley*, 873 F.3d 549, 552 (7th Cir. 2017) (quoting *Walden*, 571 U.S. at 291). The panel simply ignored that relationship.

Contrary to the panel's contention, it is an unnamed plaintiff's *claims*, not its unique party status, that matter for due-process purposes. Regardless of a party's status or the procedural device used, specific jurisdiction requires "a connection between the forum and the specific *claims* at issue." *Bristol-Myers*, 137 S. Ct. at 1781 (emphasis

added). That is why this Court always "evaluate[s] specific personal jurisdiction by reference to the particular conduct underlying the *claims* made in the lawsuit." *Tamburo*, 601 F.3d at 702 (emphasis added). Here, IQVIA's contacts with Illinois must be "directly related to the conduct pertaining to the *claims* asserted." *Brook*, 873 F.3d at 552 (emphasis added). The panel refused even to undertake that inquiry.

Phillips Petroleum Co. v. Shutts, 472 U.S. 797 (1985), cited by the panel, changes nothing. *Shutts* explicitly said that its "discussion of personal jurisdiction [did not] address class actions where the jurisdiction is asserted against a *defendant*." *Shutts*, 472 U.S. at 812 n.3. If anything, *Shutts* suggests that an absent class plaintiff involuntarily drawn into a class action faces a far lighter due-process burden than does a nonconsenting defendant. *Id.* at 808. *Shutts* has "no bearing," however, on a defendant's due-process rights. *Bristol-Myers*, 137 S. Ct. at 1783.

The Fourteenth Amendment's limits on personal jurisdiction "do not vary" based on procedural niceties. *Tyrrell*, 137 S. Ct. at 1559. After all, "if 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." *Shaffer v. Heitner*, 433 U.S. 186, 209 (1977). Here, because due process would preclude an Illinois court from exercising specific jurisdiction over any claim divorced from IQVIA's Illinois activities, the district court also lacks specific jurisdiction over such a claim.

D. A Plaintiff's "Affiliation" With the Forum State Is Irrelevant.

Citing *Payton v. Cnty. of Kane*, 308 F.3d 673, 680-81 (7th Cir. 2002), a case that neither raised nor considered the court's personal jurisdiction over the defendant, the panel declared that a certified class's "affiliation with a forum depends only on the named plaintiffs." (Op. 5) That no doubt is true. But it remains unclear why, when assessing a district court's personal jurisdiction over a defendant, a plaintiff's "affiliation" with the forum makes any difference at all. Under a due-process analysis, a plaintiff's contacts are irrelevant.

Personal jurisdiction protects a defendant's, not a plaintiff's, due-process rights. It restricts judicial power "not as a matter of sovereignty, but as a matter of individual liberty." *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703 (1982). So "however significant the plaintiff's contacts with the forum may be,

those contacts cannot be 'decisive in determining whether the defendant's due process rights are violated.'" *Walden*, 571 U.S. at 285 (quoting *Rush v. Savchuck*, 444 U.S. 320, 332 (1980)). No matter what the panel says, a plaintiff "cannot be the only link between the defendant and the forum." *Walden*, 571 U.S. at 285.

Despite the panel's preoccupation with "out-of-state unnamed class member[s]" (Op. 5) and "absentee litigants" (*Id.* 9), the whereabouts of a plaintiff, named or unnamed, are beside the point. What matters is whether a plaintiff's claim "'arise[s] out of or relate[s] to the defendant's contacts with the forum.'" *Daimler*, 571 U.S. at 127 (quoting *Helicopteros Nacionales de Columbia, SA v. Hall*, 466 U.S. 408, 411 n.8 (1984)). Even if every absent class member resided in Illinois, that would not give the district court personal jurisdiction over IQVIA for a claim arising solely from IQVIA's *non*-Illinois contacts. The panel's approach thus "impermissibly allows a plaintiff's contacts with the defendant and forum to drive the jurisdictional analysis." *Walden*, 571 U.S. at 289.

CONCLUSION

The petition should be granted.

April 15, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify:

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April 15, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of April, 2020, a copy of the foregoing brief was filed with the Clerk of the United States Court of Appeals for the Seventh Circuit through the Court's CM/ECF system, which will send notice of the filing to all counsel who use CM/ECF.

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