No. 19-0381

In the Supreme Court of Texas

CESSNA AIRCRAFT COMPANY and TEXTRON AVIATION INC.,
Petitioners,

v.

JORGE GARCIA, et al.,

Respondents.

On Petition for Review from the Court of Appeals for the Thirteenth Judicial District, Corpus Christi, Texas, No. 13-17-00259-cv

BRIEF FOR *AMICUS CURIAE* WASHINGTON LEGAL FOUNDATION IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[*]

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide, including many in Texas. WLF promotes free enterprise, individual rights, limited government, and the rule of law. It often appears as an *amicus curiae*, in state courts across the country, to defend these values. *See*, *e.g.*, *Frlekin v. Apple Inc.*, 457 P.3d 526 (Cal. 2020); *Burningham v. Wright Med. Tech., Inc.*, 448 P.3d 1283 (Utah 2019); *DeLisle v. Crane Co.*, 258 So. 3d 1219 (Fla. 2018).

WLF has also appeared as an *amicus curiae* before the U.S. Supreme Court to stress the important due-process limits on a state 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 WLF's Legal Studies division, the publishing arm of WLF, has published many articles on personal jurisdiction by outside experts. *See*,

[*] No counsel for a party authored this brief in whole or in part, and no counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, and its counsel made a monetary contribution to this brief's preparation or submission. *See* Tex. R. App. P. 11.

e.g., Mark Moller, *Contra Plaintiffs' Bar, Registering to Do Business Does Not Create General Jurisdiction*, 25 WLF Legal Op. Ltr. (June 10, 2016); Gary A. Isaac, *Does* Daimler v. Bauman *Portend an End to Madison County's Reign as a Top "Magnet Jurisdiction"?*, WLF Legal Backgrounder (June 19, 2015).[1]

[1] Available online at https://s3.us-east-2.amazonaws.com/washlegal-uploads/upload/legalstudies/legalopinionletter/061016LOL_Moller.pdf, and https://s3.us-east-2.amazonaws.com/washlegal-uploads/upload/legalstudies/legalbackgrounder/061915LB_Isaac.pdf, respectively.

INTRODUCTION

When a plaintiff suffers an injury in a foreign land and sues a nonresident defendant for alleged defects in a product designed and manufactured outside Texas, it is critical that the plaintiff and the defendant alike know with certainty if a Texas court can, consistent with due process, adjudicate that claim. The Fourteenth Amendment limits the ability of Texas courts to render a valid personal judgment against a nonresident defendant. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980); *CSR Ltd. v. Link*, 925 S.W.2d 591, 594 (Tex. 1996). And this Court has scrutinized—and consistently rejected—any attempt to expand the bounds of personal jurisdiction beyond what the U.S. Constitution permits.

In cases like *Old Republic National Title Insurance Co. v. Bell*, 549 S.W.3d 550 (Tex. 2018), and *M & F Worldwide Corp. v. Pepsi–Cola Metropolitan Bottling Co.*, 512 S.W.3d 878 (Tex. 2017), this Court has declined to expand general jurisdiction over defendants who are not truly "at home" in Texas. And in cases like *Searcy v. Parex Resources, Inc.*, 496 S.W.3d 58 (Tex. 2016), and *Moncrief Oil International, Inc. v. OAO Gazprom*, 414 S.W.3d 142 (Tex. 2013), the Court has strictly limited

specific jurisdiction to cases in which a plaintiff's claims arise from the defendant's Texas contacts.

While purporting to apply the "substantial-connection" test set forth in *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569 (Tex. 2007), the Thirteenth Court did not follow these important precepts. It exercised specific jurisdiction over petitioners even though their contacts with Texas have nothing to do with the events giving rise to respondents' claims. 2018 WL 6627602, at *1–4 (Tex. App.—Corpus Christi Dec. 19, 2018, pet. filed) (finding substantial connection between respondents' defective crankshaft claim and petitioners' Texas contacts even though the "engine came from Pennsylvania," the "crankshaft came from Ohio," and the plane was manufactured in Kansas); *see* Petitioners' Merits Br. 28–29.

The Thirteenth Court's anachronistic approach to specific jurisdiction—finding a substantial connection even though all of the conduct giving rise to respondents' claims occurred outside Texas—implicates serious federalism concerns, conflicts with U.S. Supreme Court precedents, and yields unpredictable results.

Federalism interests strongly countenance limiting specific jurisdiction to cases in which the defendant's forum contacts are causally

connected to the plaintiff's claims. Preserving each State's independence from the others was critical to the Framers' efforts to "secure[] to citizens the liberties that derive from the diffusion of sovereign power." *New York v. United States*, 505 U.S. 144, 181 (1992). Limits on personal jurisdiction serve that goal. *See World-Wide Volkswagen*, 444 U.S. at 292 (substantial-connection requirement prevents States from "reach[ing] out beyond the limits imposed on them by their status as coequal sovereigns in a federal system").

Indeed, the U.S. Supreme Court has made clear that "federalism interest[s] may be decisive" in analyzing personal jurisdiction. *Bristol-Myers*, 137 S. Ct. at 1780 ("The sovereignty of each State . . . implie[s] a limitation on the sovereignty of all its sister States."). Those interests are best served by ensuring that no State can encroach on the others by regulating the conduct of non-resident defendants simply because they happen to conduct unrelated business in the State.

That is why a plaintiff, to establish specific jurisdiction over a defendant, must show a causal connection between the defendant's Texas activities and the plaintiff's claims. When no such connection exists, "specific jurisdiction is lacking regardless of the extent of a defendant's

unconnected activities in the State." *Id.* at 1781. Failing to ensure that a causal connection exists—as the lower courts did here—transforms specific jurisdiction into "a loose and spurious form of general jurisdiction." *Id.*

Requiring a causal connection between the defendant's Texas contacts and the plaintiff's claims not only preserves federalism, but also promotes predictability. Predictable jurisdictional rules promote fairness and the "orderly administration of the laws," *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)—to the benefit of plaintiffs and defendants alike. *See Hertz Corp. v. Friend*, 559 U.S. 77, 94–95 (2010). Limiting a court's exercise of specific jurisdiction to those injuries caused by a defendant's Texas contacts "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*, 444 U.S. at 297.

This Court should grant review and reject the Thirteenth Court's anachronistic approach to specific jurisdiction, which fundamentally misapplies controlling precedents, trammels on vital due-process protections, and imposes unnecessary costs and uncertainty on litigants throughout the State and across the Nation.

ARGUMENT

I. Limits on personal jurisdiction are grounded in federalism concerns.

Federalism protects against tyranny by diffusing power not only between the States and the federal government, but also among the fifty States. Limits on personal jurisdiction ensure that no single State, through its courts, can reach outside its proper sphere of influence and encroach on the others. Federalism thus constitutes an independent check on a state court's exercise of personal jurisdiction, preventing a State's overreach no matter the weight of a defendant's convenience concerns.

A. The Framers of the U.S. Constitution feared the accumulation of power in any single person or political body. *See Printz v. United States*, 521 U.S. 898, 919–22 (1997); The Federalist No. 47 (Madison). They knew well that power, if left unchecked, tends to consolidate. *See* Harvey C. Mansfield Jr., *America's Constitutional Soul* 122 (1991) (discussing the Framers' concerns about the "'encroaching' . . . nature of power"). And they understood that with consolidated power comes arbitrary laws divorced from the consent of the governed. *See* The Federalist No. 47 (Madison) ("The accumulation of all powers legislative, executive and judiciary in the same hands, whether of one, a few or many,

and whether hereditary, self appointed, or elective, may justly be pronounced the very definition of tyranny.").

The Framers created "the compound republic of America" as a bulwark against tyranny, in which "the power surrendered by the people, is first divided between two distinct governments, and then the portion allotted to each, subdivided among distinct and separate departments." The Federalist No. 51 (Madison) (quoted in *Davenport v. Garcia*, 834 S.W.2d 4, 14 (Tex. 1992)). That first-level division of power—between the States and the federal government—was only part of the Framers' design. Just as important were the second-level divisions—among the States and among the three federal branches. *See id.* ("Hence a double security arises to the rights of the people. The different governments will controul each other; at the same time that each will be controuled by itself.").

These overlapping spheres of sovereignty work together to advance the common good, but they also compete with one another for influence. *See Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991) ("a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front"). Preserving each State's independence from the others was critical to the Founders' efforts to

"secure[] to citizens the liberties that derive from the diffusion of sovereign power." *New York*, 505 U.S. at 181; *see also Pennoyer v. Neff*, 95 U.S. 714, 722 (1878) ("The several States are of equal dignity and authority, and the independence of one implies the exclusion of power from all others."), *overruled in part on other grounds*, *Shaffer v. Heitner*, 433 U.S. 186 (1977).

A federal, multi-State system is "more sensitive to the diverse needs of a heterogeneous society." *Gregory*, 501 U.S. at 458; *see also* Michael W. McConnell, *Federalism: Evaluating the Founders' Design*, 54 U. Chi. L. Rev. 1484, 1493–94 (1987). While each citizen of Texas is part of the United States, he or she is also a member of smaller, distinct political communities, each with its own identity and values. Thus, every Texan can influence political decision-making at the local, State, and federal levels. These added layers of political influence allow for more responsive and better tailored self-governance.

B. Federalism works only if no State may unduly expand its influence at the expense of other States. *See* The Federalist No. 51, at 351 (Madison) (explaining the importance of breaking society "into so many parts, interests and classes of citizens, that the rights of

individuals or of the minority, will be in little danger from interested combinations of the majority"); Lynn A. Baker & Ernest A. Young, *Federalism and the Double Standard of Judicial Review*, 51 Duke L.J. 75, 117–20 (2001) (describing the problem of "horizontal aggrandizement"). One way a State regulates conduct, and thus exerts influence, is through its courts. *World-Wide Volkswagen*, 444 U.S. at 291–92 ("The concept of minimum contacts . . . acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system.").

The Framers "intended that the States retain many essential attributes of sovereignty, including, in particular, the sovereign power to try causes in their courts." *Id*. at 293. "The sovereignty of each State, in turn, implied a limitation on the sovereignty of all of its sister States—a limitation express or implicit in both the original scheme of the Constitution and the Fourteenth Amendment." *Id.* So when a Texas court exercises jurisdiction over a Kansas company (like petitioners), Texas effectively reaches beyond its borders to regulate the Kansan's conduct. That offends Kansas's sovereign prerogative to regulate the conduct of its own citizens. *See J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 879

(2011) (plurality op.) (the Due Process Clause concerns "the power of a sovereign to prescribe rules of conduct for those within its sphere").

A Texas court's exercise of personal jurisdiction also offends the Kansan's interest in representative government, as the Kansan must submit to regulation by a government that is not accountable to him. *See* Brutus Essay I (1787), *in The Essential Antifederalist* 105, 114 (W.B. Allen & Gordon Lloyd eds., 2d ed. 2002) ("The confidence which the people have in their rulers in a free republic arises from their knowing them, from their being responsible to them for their conduct, and from the power they have of displacing them when they misbehave.").

As an important check on such encroachments, "restrictions on personal jurisdiction . . . are a consequence of territorial limitations on the power of the respective States." *Bristol-Myers*, 137 S. Ct. at 1780 (quoting *Hanson v. Denckla*, 357 U.S. 235, 251 (1958)). Personal jurisdiction limits the power of state courts to regulate non-residents and thereby intrude on the sovereignty of other States. *See World-Wide Volkswagen*, 444 U.S. at 292; James Weinstein, *The Federal Common Law Origins of Judicial Jurisdiction: Implications for Modern Doctrine*, 90 Va. L. Rev. 169, 196–98 (2004) (explaining that the earliest

jurisdiction cases sought to ensure that States did not encroach on the authority of other States).

To be sure, Kansas's interest in regulating the conduct of its citizens is not absolute. The States comprise a political union, and citizens may travel freely across state lines. Texas may regulate the conduct of Kansans in appropriate cases. By delineating those cases, personal jurisdiction limits the reach of Texas courts, balancing Texas's and Kansas's competing interests in regulating the relevant conduct. *See World-Wide Volkswagen*, 444 U.S. at 292 (personal jurisdiction "acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system").

C. Federalism is no mere afterthought in personal jurisdiction analysis. Limits on a State's jurisdiction are "express or implicit in both the original scheme of the Constitution and the Fourteenth Amendment." *Id.* at 293; *see also Franchise Tax Bd. of Cal. v. Hyatt*, 139 S. Ct. 1485, 1498 (2019) ("There are many other constitutional doctrines that are not spelled out in the Constitution but are nevertheless implicit in its structure and supported by historical practice."). And that "original scheme" is rooted in federalism.

Whereas the "individual liberty interest preserved by the Due Process Clause" often turns on the convenience of out-of-state litigation for a particular defendant, *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 n.13 (1985) (quoting *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702–03 n.10 (1982))—federalism interests are not tied to convenience:

> Even if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment.

World-Wide Volkswagen, 444 U.S. at 294.

Nor do federalism interests dissipate simply because a defendant conducts business nationwide. To compete in the modern marketplace, many companies have developed at least some contacts in nearly every State. In the general jurisdiction context, those contacts cannot subject national and international entities to suit anywhere they happen to operate. *See Daimler AG v. Bauman*, 571 U.S. 117, 137–38 (2014); *Old Republic*, 549 S.W.3d at 565. Federalism demands nothing less of specific

jurisdiction. *See Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915 (2011); *Searcy*, 496 S.W.3d at 67–71.

Were it otherwise—if federalism did not independently limit personal jurisdiction in both its general and specific forms—one State could aggrandize its regulatory power at the expense of the others, just because a nationwide business has some operations within that State. But if a State, through its courts, can regulate the conduct of a nationwide manufacturer—even if that manufacturer is not subject to general jurisdiction and its contacts with the forum State are unrelated to the suit—one State could effectively regulate manufacturing in every State. *See* John S. Baker Jr., *Respecting a State's Tort Law, While Confining Its Reach to That State*, 31 Seton Hall L. Rev. 698, 704 (2001) ("A federal problem arises then when some states apply their laws beyond their own borders, resulting in increased costs in other states.").

True, uniform regulation has its benefits and provides certainty in many contexts. That is why the Founders, anticipating the rise of national markets, granted Congress the sole power to regulate interstate commerce. *See* U.S. Const. art. I, § 8, cl. 3. But when, as here, Congress has not exercised its power to regulate the relevant national market, the

Founders never envisioned that an individual State could simply step in to fill that gap.

The "essential attributes of sovereignty" retained by each State imply "a limitation on the sovereignty of all of its sister States." *World-Wide Volkswagen*, 444 U.S. at 293. And as the U.S. Supreme Court has explained "we have never accepted the proposition that state lines are irrelevant for jurisdictional purposes, nor could we, and remain faithful to the principles of interstate federalism embodied in the Constitution." *Id.*

II. Specific jurisdiction requires a causal connection between a defendant's Texas contacts and the plaintiff's claims.

The Texas long-arm statute reaches only so far as the Fourteenth Amendment's Due Process Clause allows. That is why this Court relies "on precedent from the United States Supreme Court and other federal courts, as well as our own State's decisions, in determining" questions of personal jurisdiction. *BMC Software Belg., N.V. v. Marchland*, 83 S.W.3d 789, 795 (Tex. 2002). Specific jurisdiction can be exercised consistent with due process only if there is a causal connection between the defendant's forum contacts and the plaintiff's claims. That bright-line rule easily resolves this case: Because petitioners' Texas contacts have nothing to do with respondents' claims, specific jurisdiction is lacking.

A. "Where a forum seeks to assert specific jurisdiction over an out-of-state defendant who has not consented to suit there, [the Due Process Clause's] 'fair warning' requirement is satisfied if the defendant has 'purposefully directed' his activities at residents of the forum, and the litigation results from alleged injuries that 'arise out of or relate to' those activities." *Burger King*, 471 U.S. at 472–73 (internal citation omitted) (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984), and *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)).

Put simply, "the *suit* must arise out of or relate to the defendant's contacts with the *forum*." *Bristol-Myers*, 137 S. Ct. at 1780 (internal quotation marks and alterations omitted). Under *Bristol-Myers*, specific jurisdiction "is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction." *Id.* Without that connection, "specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." *Id*. at 1781.

Thus, a "corporation's 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." *Goodyear*, 564 U.S. at 927

(quotation marks omitted) (quoting *Int'l Shoe*, 326 U.S. at 318). Indeed, "[e]ven regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales." *Bristol-Myers*, 137 S. Ct. at 1781 (quoting *Goodyear*, 564 U.S. at 930 n.6). Instead, to support an assertion of specific jurisdiction, a corporation's in-forum activities must themselves cause the plaintiff's injury.

The causal-connection requirement is especially crucial for preserving the distinction between general and specific jurisdiction. The former covers "instances in which the continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit . . . on causes of action arising from dealings entirely distinct from those activities." *Daimler*, 571 U.S. at 138 (alterations in original; emphasis omitted) (quoting *Int'l Shoe*, 326 U.S. at 318). The latter "is confined to adjudication of 'issues deriving from, or connected with, the very controversy that establishes jurisdiction.'" *Goodyear*, 564 U.S. at 919; *see also Bristol-Myers*, 137 S. Ct. at 1780 (specific jurisdiction requires "an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation.") (alteration in original).

This Court's review is needed to prevent specific jurisdiction in Texas from becoming "a loose and spurious form of general jurisdiction." *Bristol-Myers*, 137 S. Ct. at 1781.

B. In *Walden v. Fiore*, the U.S. Supreme Court clarified that specific jurisdiction turns on "the relationship among the defendant, the forum, and the litigation." 571 U.S. 277, 283–84 (2014) (quoting *Keeton*, 465 U.S. at 775). "For a State to exercise jurisdiction consistent with due process, the defendant's *suit-related* conduct must [itself] create a substantial connection with the forum State." *Id*. at 284 (emphasis added); *see also Nicastro*, 564 U.S. at 881 (plurality op.) (a defendant's "contact with and activity directed at a sovereign may justify specific jurisdiction 'in a suit arising out of or related to the defendant's contacts with the forum'").

That is, if the plaintiffs "would have experienced th[e] same [injury] . . . wherever else they might have traveled," specific jurisdiction cannot be exercised. *Walden*, 571 U.S. at 290. So if "the effects of [the defendant's] conduct" would be the same anywhere, then its conduct is "not connected to the forum State in a way that makes those effects a proper basis for jurisdiction." *Id.*

These principles highlight the fundamental error below. Respondents' tort claims concern activities—the design, manufacture, and assembly of an aircraft and its components—***all*** of which occurred outside Texas. Petitioners designed and manufactured the aircraft in Kansas, then sold the aircraft to a dealer in Florida. The aircraft was later repossessed and sold to a dealer in Iowa that, in turn, sold it to a buyer in Mexico, who owned it when the accident occurred—in Mexico. Petitioners' Texas contacts—including sales, advertising, and servicing jet aircraft—bear no causal connection whatsoever to respondents' claims. *See id*.

These jurisdictional facts are much like those in *Walden*. As in *Walden*, "the reality [is] that none of petitioner[s'] challenged conduct had anything to do with [Texas] itself." *Id.* at 289. And as in *Walden*, "the mere fact that [petitioners'] conduct affected plaintiffs with connections to the forum State does not suffice to authorize jurisdiction." *Id*. at 291; *see also Daimler*, 571 U.S. at 131 (no specific jurisdiction where defendant's "contacts bore no apparent relationship to the accident that gave rise to the suit").

It is not "sufficient—or even relevant—that" petitioners sold aircraft or sent advertisements to, performed maintenance for, or

contracted with third parties in Texas. *Bristol-Myers*, 137 S. Ct. at 1781 ("a defendant's relationship with a . . . third party, standing alone, is an insufficient basis for jurisdiction") (alteration in original); *see also Walden*, 571 U.S. 284 ("We have consistently rejected attempts to satisfy the defendant-focused 'minimum contacts' inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State."). "What is needed—and what is missing here—is a connection between the forum and the specific claims at issue." *Bristol-Myers*, 137 S. Ct. at 1781. Respondents would have "experienced this same [injury] . . . wherever else they might have" been. *Walden*, 571 U.S. at 290.

In holding otherwise, the Thirteenth Court erased the critical distinction between general and specific jurisdiction. As the U.S. Supreme Court emphasized in *Bristol-Myers*, a "corporation's '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.'" 137 S. Ct. at 1781 (alteration in original). "For specific jurisdiction, a defendant's general connections with the forum are [simply] not enough." *Id*.

III. Improper application of the causal-connection requirement deprives litigants of much-needed certainty.

"[W]hen judges must decide jurisdictional matters, simplicity is a virtue." *Mississippi ex rel. Hood v. AU Optronics Corp.*, 571 U.S. 161, 172–73 (2014). "Complex jurisdictional tests complicate a case, eating up time and money as the parties litigate, not the merits of their claims, but which court is the right court to decide those claims." *Hertz Corp.*, 559 U.S. at 94. Businesses "crave certainty as much as almost anything: certainty is what allows them to make long-term plans and long-term investments." Alan Greenspan & Adrian Wooldridge, *Capitalism in America: A History* 258 (2018). By drawing a bright line between general and specific jurisdiction, the U.S. Supreme Court has given litigants fair notice of when their "conduct and connection with the forum State are such that [they] should reasonably anticipate being haled into court there." *World-Wide Volkswagen*, 444 U.S. at 297.

Simplicity is the chief virtue of the U.S. Supreme Court's general-jurisdiction test—a company is "at home" in no more than two places: its principal place of business and its State of incorporation. Those forums are both "unique—that is, each ordinarily indicates only one place—as well as easily ascertainable." *Daimler*, 571 U.S. at 137. This bright-line

rule affords "plaintiffs recourse to at least one clear and certain forum in which a corporate defendant may be sued on any and all claims." *Id*.

Outside its "home" State, a defendant is subject to suit only if a plaintiff's claim "arises from" the defendant's *in*-State activities. *See Bristol-Myers*, 137 S. Ct. at 1780. The U.S. Supreme Court has rejected, as "unacceptably grasping," the "exercise of general jurisdiction in every State in which a corporation 'engages in a substantial, continuous, and systematic course of business.'" *Daimler*, 571 U.S. at 138.

Yet as the decision below unfortunately reveals, faithful application of the causal-connection requirement is imperative to avoid blurring the line between general and specific jurisdiction. Rather than ask whether petitioners' contacts with Texas caused respondents' injuries, the Thirteenth Court emphasized petitioners' generic contacts with Texas. 2018 WL 6627602, at *1–2, 4. True, petitioners sell aircraft in Texas, have employees in Texas, and operate service centers in Texas. But none of those contacts is relevant to respondents' claims here.

By contrast, when specific jurisdiction is limited to cases in which defendant's forum contacts caused the plaintiff's injury, "potential defendants [can] 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*, 444 U.S. at 297. Just as important, individuals and entities can take full account of the unique laws of each State in which they choose to operate and "act to alleviate the risk of burdensome litigation" and potential liability "by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State." *Id*.

The Thirteenth Court's minimum-contacts analysis is a relic of a bygone era. To provide "desired predictability," courts "must first banish the frequent misconception that the distinction between general and specific jurisdiction depends on the number of contacts." Charles W. "Rocky" Rhodes, *The Predictability Principle in Personal Jurisdiction Doctrine: A Case Study on the Effects of a "Generally" Too Broad, But "Specifically" Too Narrow Approach to Minimum Contacts*, 57 Baylor L. Rev. 135, 160 (2005); *see also Bristol-Myers*, 137 S. Ct. at 1781 (rejecting approach to specific jurisdiction that relaxes "the strength of the requisite connection between the forum and the specific claims at issue" and noting that "[o]ur cases provide no support for this approach, which resembles a loose and spurious form of general jurisdiction").

By upholding an "excessively grasping" exercise of specific jurisdiction based on a defendant's generic business contacts, the Thirteenth Court embraced a jurisdictional rule that is anything but simple. And just like the approach rejected in *Bristol-Myers*, it conflicts with precedent and would blur the clear line the U.S. Supreme Court has drawn between specific and general jurisdiction.

PRAYER

For the foregoing reasons, the Court should grant the petition for review and reverse the court of appeals' decision.

Dated: May 11, 2020

Respectfully submitted,

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[*] Motion for admission *pro hac vice* pending.

CERTIFICATE OF COMPLIANCE

In compliance with Texas Rule of Appellate Procedure 9.4(i)(2), I certify that this brief contains 4,583 words, excluding the portions of the brief exempted by Rule 9.4(i)(1).

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CERTIFICATE OF SERVICE

I certify that, on May 11, 2020, a true and correct copy of the foregoing Brief for *Amicus Curiae* was served via electronic service on all counsel of record.

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