

IN THE
Supreme Court of the United States

MEAD JOHNSON & COMPANY, LLC AND
MEAD JOHNSON NUTRITION COMPANY,

Petitioners,

v.

CLARISSA GREEAR, ON BEHALF OF HERSELF
AND HER MINOR CHILD B.H., *et al.*,

Respondents.

**On Petition for a Writ of Certiorari to the
Illinois Appellate Court, Fifth District**

**BRIEF OF ATLANTIC LEGAL FOUNDATION
AND FEDERATION OF DEFENSE &
CORPORATE COUNSEL AS *AMICI CURIAE*
IN SUPPORT OF PETITIONERS**

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INTEREST OF THE *AMICI CURIAE* ¹

Established in 1977, the **Atlantic Legal Foundation** (ALF) is a national, nonprofit, nonpartisan, public interest law firm. ALF's mission for the past five decades has been to advance the rule of law and civil justice by advocating for individual liberty, free enterprise, property rights, limited and responsible government, sound science in judicial and regulatory proceedings, and effective education, including parental rights and school choice. With the benefit of guidance from the distinguished legal scholars, former government officials, corporate legal officers, private practitioners, business executives, and prominent scientists who serve on its Board of Directors and Advisory Council, ALF pursues its mission by participating as *amicus curiae* in carefully selected appeals before the Supreme Court, federal courts of appeals, and state supreme courts. See atlanticlegal.org.

The **Federation of Defense & Corporate Counsel** (FDCC) is a not-for-profit corporation with national and international membership of 1,550 defense and corporate counsel working in private practice, as in-house counsel, and as insurance

¹ Petitioners' and Respondents' counsel were provided timely notice of this brief in accordance with Supreme Court Rule 37.2. No counsel for a party authored this brief in whole or in part, and no party, counsel for a party, or person other than the *amici curiae* and their counsel made a monetary contribution intended to fund preparation or submission of this brief.

industry professionals. A significant number of FDCC members practice in the trial and appellate courts of the United States both at the federal and state level. Since 1936, FDCC's members have established a strong legacy of representing the interests of civil defendants, including publicly and privately owned businesses, public entities, and individual defendants. The FDCC seeks to assist courts in addressing issues of importance to its membership that concern the fair and predictable administration of justice. See thefederation.org.

* * *

Fairness, clarity, uniformity, and predictability concerning the circumstances under which an out-of-state corporation can be haled into a state trial court by an out-of-state plaintiff are critical to civil justice.

The need for fairness is especially evident in this case. It is one of thousands of product liability suits involving lifesaving nutritional products that the nation's neonatal intensive care units rely upon to care for preterm infants. The core allegation in these suits—despite federal agencies' scientific and medical consensus to the contrary—is that the nutritional products at issue cause necrotizing enterocolitis (“NEC”), a serious or fatal illness for preterm infants. Pet. at 2.

The petition explains that although the vast majority of the 12,500 plaintiffs in pending NEC suits reside outside of Illinois, 97% of them have filed in notoriously plaintiff-friendly St. Clair and Madison

Counties against the out-of-state Petitioners (collectively “Mead Johnson”). *Id.* at 8. Product manufacturer Mead Johnson was not “at home” in Illinois when the suits were filed, and the company had no case-specific ties to Illinois relevant to the multitude of out-of-state plaintiffs, including Respondents here. *See* Pet. at 13, 22.

The NEC product liability litigation is an egregious example of plaintiff-side forum shopping. The Court should grant certiorari to reaffirm and enforce its personal-jurisdiction principles, and in so doing, curb the abusive forum shopping that this case reflects.

SUMMARY OF ARGUMENT

For many decades, and in a variety of contexts, the Court has expressed concern about, and sought to deter, abusive forum shopping—a frequently utilized mass-litigation strategy fundamentally unfair to corporate defendants that are not “at home” in, and have no relevant contacts with, the forum state. State courts that tolerate, if not welcome, such forum-shopping defy this Court’s modern personal-jurisdiction principles established in cases such as *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351 (2021); *Bristol-Myers Squibb Co. v. Super. Ct. of Cal.*, 582 U.S. 255, 262 (2017); *BNSF Ry. Co. v. Tyrrell*, 581 U.S. 402, 405-06 (2017); *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014); and *Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915, 919, 924 (2011). Those personal-jurisdiction principles “derive from and reflect two sets of values—treating

defendants fairly and protecting ‘interstate federalism.’” *Ford*, 592 U.S. at 360.

Amici defer to, and do not repeat, Petitioners’ arguments as to why Illinois courts have violated personal-jurisdiction principles by entertaining this case and the NEC litigation. Instead, amici focus on why the Illinois state courts’ assertion of personal jurisdiction encourages rather than restrains abusive forum shopping. This is especially troubling since the present case is representative of a multitude of suits filed by thousands of out-of-state plaintiffs in the notoriously plaintiff-friendly courts of St. Clair and Madison Counties, Illinois against Mead Johnson, the out-of-state manufacturer of the lifesaving, preterm infant nutritional products at issue.

Lax enforcement of personal-jurisdiction principles not only encourages abusive forum shopping, but also impairs interstate federalism. The coequal sovereign status of each state is a pillar of the Constitution’s federalist structure. By flouting this Court’s well-established principles concerning general and case-specific personal jurisdiction, Illinois courts have attempted to extend that state’s sovereignty in a way that interferes with other states’ coequal sovereignty—such as the sovereignty of the state where a defendant corporation is incorporated or headquartered, or the state where a cause of action arose.

This case is an ideal vehicle for the Court to reaffirm that enforcement of the well-established

limits on the exercise of personal jurisdiction over out-of-state corporations is critical to curbing mass-litigation forum shopping by out-of-state plaintiffs.

ARGUMENT

The Court Should Grant Certiorari To Reaffirm and Enforce Its Personal-Jurisdiction Principles and Thereby Curb Abusive Forum Shopping

A. Plaintiff-side forum shopping in product liability litigation undermines the fairness of the civil justice system

1. Forum shopping is “[t]he practice of choosing the most favorable jurisdiction or court in which a claim may be heard.” Forum Shopping, Black’s Law Dictionary (12th ed. 2024). “U.S. forum shopping is broad in scope, widespread in practice, and quintessentially American in design.” Scott Dodson, *Civil Procedure: The Culture of Forum Shopping in Civil Litigation*, in *The Judges’ Book*, Vol. 9, Art. 5, at 34 (Berkeley Jud. Inst. ed., 2025). “Motive and opportunity breed forum shopping, which reflects the reality that a plaintiff who must initially choose between available forums is likely to choose one favorable to the plaintiff’s interests.” *Id.* at 26. Going at least as far back as *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), this Court has emphasized, however, that a plaintiff’s choice of forum must be to a court that can exercise personal jurisdiction without depriving a corporate defendant

of due process. Where, as here, a plaintiff chooses a court that actually cannot properly exercise personal jurisdiction within constitutional limits, forum shopping a case to such an *unavailable* court is unfair.

2. Forum shopping not only is unfair, but also abusive, where, as here, an out-of-state corporate defendant is confronted with class or mass product liability (or other types of litigation) in a demonstrably plaintiff-friendly court whose assertion of personal jurisdiction is dubious at best. “As a rule, counsel, judges, and academicians employ the term ‘forum shopping’ to reproach a litigant who, in their opinion, unfairly exploits jurisdictional or venue rules to affect the outcome of a lawsuit.” Friedrich K. Juenger, *Forum Shopping, Domestic and International*, 63 Tul. L. Rev. 553 (1989); *see also* Richard Maloy, *Forum Shopping – What’s Wrong With That?*, 24 Quinnipiac L. Rev. 25, 28 (2005) (“[F]orum shopping is the taking of an unfair advantage of a party in litigation.”).

Plaintiffs’ attorneys forum shop for a variety of reasons, and it is particularly rampant in the product-liability arena. For example, they file suits in courts with—

- plaintiff-friendly judges and juries;
- long statutes of limitations;
- favorable substantive law and receptivity to novel and expansive theories of corporate liability;

- discovery and trial-court procedures slanted toward plaintiffs;
- lax standards, or enforcement of standards, for admission of expert testimony; and
- high damages caps (if any), coupled with a reputation for “nuclear verdicts” or excessive damages awards.

See Dodson, *supra*, at 30 (summarizing reasons why plaintiffs forum shop); William G. Beatty, *The Relevance and Semantics of the Forum Shopping Factor in Illinois Forum Non Conveniens Jurisprudence*, 59 UIC L. Rev. 847, 850 (2026) (same).

There is no shortage of plaintiff-friendly state courts in the United States. See, e.g., Am. Tort Reform Found. (“ATR Found.”), *Judicial Hellholes 2025–2026*, at 87 (“Judicial Hellholes are known for being plaintiff-friendly and thus attract personal injury cases with little or no connection to the jurisdiction. Judges in these jurisdictions often refuse to stop this forum shopping.”).

As usual, St. Clair, Madison, and Cook Counties, Illinois are near the top of the ATR Foundation’s latest list of “judicial hellholes.” See *id.* at 49-55. One reason for this recurring designation is that “[t]his trio of counties is ground zero for baseless baby formula litigation based on junk science.” *Id.* at 2.

3. Forum shopping implicates a fundamental question: “Should plaintiffs’ lawyers be permitted to file cases in states that have no connection to the dispute in order to gain the benefit of a favorable jury pool, a plaintiff-friendly judiciary, or both?” Andrew J. Pincus et al., *Personal Jurisdiction After Mallory*, ILR Briefly (U.S. Chamber of Com. Inst. for Legal Reform, Nov. 16, 2023), at 1.

That sort of abusive forum shopping reduces respect for the judiciary, creating the appearance that outcomes are not based on the law or facts but instead result from picking a favorable decision maker. It produces overburdening, poor decision making, and increased costs in the courts that become the preferred “magnet jurisdictions,” to the detriment of businesses and consumers alike. It also imposes unfair burdens on defendants and violates basic federalism principles.

Id.

In today’s ultra-litigious climate, third-party litigation funding, targeted advertising to attract potential claimants and bias the jury pool, and widespread coordination within the plaintiffs’ bar, facilitate forum shopping to the detriment of corporate defendants. See James E. Pfander & Jackie O’Brien, *Realism, Formalism, and Personal Jurisdiction: Due Process after Mallory and Ford Motor*, 103 Tex. L. Rev. 65, 100 (2024). For example, “[r]esidents in St. Clair

and Madison Counties were exposed to nearly 549,000 ads with trial lawyers spending \$41 million on advertisements across all mediums during [January 2024 through June 2025].” ATR Found., *supra*, at 49.

4. Plaintiff-side forum shopping not only is unfair to corporate defendants, but also can undermine the impartiality and credibility of a state’s judiciary, especially in states such as Illinois where judges are elected. “[U]nrestricted forum shopping makes it almost impossible for defendants to get a fair trial in some of the magic jurisdictions favored by the plaintiffs’ bar, where trial lawyers have established relationships with the judges that are elected.” Pincus, *supra*, at 9 (internal quotation marks omitted).

The availability of forum shopping also “can lead to ‘forum selling,’ the creation of excessively pro-plaintiff law by judges who want to hear more cases.” Daniel Klerman, *Rethinking Personal Jurisdiction*, 6 J. Legal Analysis 245, 247 (2014).

“Loose jurisdictional rules that allow plaintiffs to choose among many potential courts give judges an incentive to be pro-plaintiff in order to attract litigation.” *Id.* “Without constitutional constraints on assertions of jurisdiction, some courts are likely to be biased in favor of plaintiffs in order to attract litigation and thus benefit themselves or their communities.” Daniel Klerman & Greg Reilly, *Forum Selling*, 89 S. Cal. L. Rev. 241, 243 (2016); *see, e.g.*, Cynthia L. Fountaine, “*Don’t Come Around Here No*

More”: *Narrowing Personal Jurisdiction Over Non-Resident Corporations in Illinois*, 42 S. Ill. U. L.J. 593, 594 (2018) (observing that “Madison County’s mass tort litigation industry” has become “an economic driver in the local community”). And of course, some state-court judges may want to attract high-profile cases to impose their own ideological views. This troubling forum-selling corollary to forum shopping “leads to inefficient distortions of substantive law, procedure, and trial management practices.” Klerman, *supra*, at 246.

5. At least since *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938), this Court, in many different contexts, has decried forum shopping. *See, e.g.*,

- *Berk v. Choy*, 607 U.S. 187, 191 (2026) (“A state law is substantive if . . . failing to apply it in federal court would promote forum shopping and the inequitable administration of the law.”);
- *Trump v. CASA, Inc.*, 606 U.S. 831, 899-900 (2025) (Sotomayor, J., dissenting) (“[U]niversal injunctions encourage forum shopping, by allowing preferred district judges in a venue picked by one plaintiff to enjoin governmental policies nationwide.”); *Labrador v. Poe*, 144 S. Ct. 921, 927 (2024) (mem.) (Gorsuch, J.) (“In universal-injunction practice. . . [j]ust do a little forum shopping for a willing judge and . . . you can win a decree barring the enforcement of a duly enacted law against anyone.”); *United States v. Texas*, 599 U.S. 670, 694 (2023) (“Universal injunctions . . .

encourage parties to engage in forum shopping”);

- *Great Lakes Ins. SE v. Raiders Retreat Realty Co., LLC*, 601 U.S. 65, 72 (2024) (“Choice-of-law provisions . . . discourage forum shopping, further cutting the costs of litigation.”);
- *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 370 (2021) (observing that the plaintiffs in *Bristol-Myers Squibb Co. v. Super. Ct. of Cal.*, 582 U.S. 255 (2017) “were engaged in forum-shopping—suing in California because it was thought plaintiff-friendly, even though their cases had no tie to the State”);
- *Williams-Yulee v. Florida Bar*, 575 U.S. 433, 454 (2015) (rejecting a state judge recusal rule “that would enable transparent forum shopping”);
- *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663, 670 (2014) (“The federal limitations prescription governing copyright suits serves . . . to prevent the forum shopping invited by disparate state limitations periods”);
- *Atl. Marine Constr. Co. v. U.S. Dist. Ct.*, 571 U.S. 49, 65 (2013) (federal change-of-venue statute “should not create or multiply opportunities for forum shopping” where parties have agreed to a contractual forum-selection clause) (internal quotation marks omitted);

- *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 415 (2010) (“We must acknowledge the reality that keeping the federal-court door open to class actions that cannot proceed in state court will produce forum shopping.”);
- *Southland Corp. v. Keating*, 465 U.S. 1, 15 (1984) (“The interpretation given to the Arbitration Act by the California Supreme Court would therefore encourage and reward forum shopping.”);
- *Hanna v. Plumer*, 380 U.S. 460, 468 (1965) (“discouragement of forum-shopping” is one of the *Erie* rule’s aims).

See also Note, *Forum Shopping Reconsidered*, 103 Harv. L. Rev. 1677, 1681 (1990) (“The Supreme Court has relied on the ‘danger of forum shopping’ in reaching many decisions.”); Anthony J. Gaughan, *The Unsettled State of Corporate General Personal Jurisdiction*, 103 Neb. L. Rev. 131, 181 (2024) (“[T]he *Goodyear* trilogy”—*Goodyear*, *Daimler*, and *BNSF*—“reduced forum shopping.”).

6. The Illinois Supreme Court has observed that “courts have never favored forum shopping.” *Dawdy v. Union Pacific R.R. Co.*, 797 N.E.2d 687, 695 (Ill. 2003). “The judiciary . . . has sought to protect its own good name as well as to protect defendants . . . against the practice of seeking out soft spots in the judicial system

in which to bring particular kinds of litigation.” *Id.* (cleaned up). Nonetheless, “[f]orum shopping . . . has become commonplace in Illinois jurisprudence.” Beatty, *supra*, at 847.

St. Clair and Madison Counties are especially infamous for welcoming forum-shopping plaintiffs, including in mass product liability litigation. For example, Madison County’s circuit court “has long been known as a judicial magnet for plaintiffs in asbestos litigation, FELA cases, medical malpractice actions, and product liability cases . . . for being friendly to all plaintiffs, regardless of residency, and hostile to corporate defendants, both domestic and foreign.” *Id.* at 871.

Relevant here, the ATR Foundation describes St. Clair, Madison, and Cook Counties as “Ground Zero for Harmful Baby Formula Litigation.” ATR Found., *supra*, at 49. Indeed, these counties have maintained their nationwide reputation as a plaintiffs’ forum-shopping haven for decades. *See, e.g.*, Victor E. Schwartz et al., *Asbestos Litigation in Madison County, Illinois: The Challenge Ahead*, 16 Wash. U. J.L. & Pol’y 235 (2004) (“The *Chicago Tribune* has called Madison County a ‘jackpot jurisdiction,’ a ‘hotbed of megabuck litigation,’ a ‘local slot machine,’ and ‘the most magic of all’ magic jurisdictions.”). Adjacent St. Clair County, along with Cook County (which includes Chicago), are no different.

“These three counties are home to a disproportionate amount of the state’s nuclear

verdicts®.” ATR Found., *supra*, at 49. In addition to bombarding residents of St. Clair, Madison, and Cook Counties with trial-lawyer advertising, forum shoppers are attracted to these counties because of the tens of millions of dollars in donations that the Illinois Trial Lawyers Association’s Legislative PAC makes to Illinois political candidates—including state appellate and circuit court judges, who initially run in partisan elections. See Illinois Judicial Elections, Ballotpedia, <https://perma.cc/2U82-N7RU> (last visited June 28, 2026). “When the three counties with the highest concentration of civil litigation also are the three counties that draw the biggest campaign contributions by trial lawyers, it’s fair to ask: ‘Is Justice for Sale in Illinois?’” Ill. Civ. Justice League, *Justice for Sale III* (2016), at 3.

The fact that this case was filed in St. Clair County presents the Court with an ideal and timely opportunity to address transparent, mass-litigation forum shopping in the context of state trial and appellate court rulings that, if left undisturbed, breach the well-defined boundaries of this Court’s personal-jurisdiction principles.

B. Lax enforcement of personal-jurisdiction principles impairs interstate federalism

Forum shopping not only is unfair to corporate defendants, but also upsets the balance of “interstate federalism.”

This term “refers to the relationship between the states within our federal system, their status as

coequal sovereigns, and the limits on state power that derive from that status.” A. Benjamin Spencer, *Jurisdiction to Adjudicate: A Revised Analysis*, 73 U. Chi. L. Rev. 616, 624, 637 (2006). “Interstate sovereign immunity is . . . integral to the structure of the Constitution.” *Franchise Tax Bd. v. Hyatt*, 587 U.S. 230, 246 (2019). The fifty States are “coequal sovereigns” within the unitary federal system. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980). “The sovereignty of each State . . . implie[s] a limitation on the sovereignty of all its sister States.” *Bristol-Myers Squibb*, 582 U.S. at 263 (quoting *World-Wide Volkswagen*, 444 U.S. at 293).

In her dissenting opinion in *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (2023), Justice Barrett, joined by Chief Justice Roberts and Justices Kagan and Kavanaugh, explained that

[t]he Due Process Clause protects more than the rights of defendants—it also protects interstate federalism. We have emphasized this principle in case after case.

Id. at 169 (Barrett, J., dissenting).

“[T]his Court has considered alongside defendants’ interests those of the States in relation to each other. One State’s sovereign power to try a suit . . . may prevent ‘sister States’ from exercising their like authority.” *Ford*, 592 U.S. at 360. Rather than respecting each state’s role as a coequal sovereign, a state court that defies this Court’s principles of

general and case-specific jurisdiction not only impairs the due process protections afforded to out-of-state corporations, but also violates interstate federalism by encroaching upon the sovereignty of the states where exercise of personal jurisdiction may be proper.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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