16-705

No. 16-

IN THE

Supreme Court of the United States

MONEYMUTUAL LLC,

Petitioner,

v.

SCOTT RILLEY, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF MINNESOTA

PETITION FOR WRIT OF CERTIORARI

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Dated: November 22, 2016

BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

QUESTION PRESENTED

Petitioner MoneyMutual LLC operates an automated website that allows potential borrowers to electronically submit loan applications for consideration by independent third-party lenders. MoneyMutual is not a lender and is not a party to any loans, including the short-term "payday" loans that form the crux of Respondents' claims. MoneyMutual is not involved in setting loan terms and is not informed of whether a loan agreement is ultimately completed or the terms of any such agreement.

Respondents are four Minnesota residents who used MoneyMutual's website. The Minnesota Supreme Court held that MoneyMutual was subject to specific personal jurisdiction in Minnesota, even in the absence of any proximate causal nexus between its electronic communications and the actual harm upon which Respondents base their claims: loan transactions between Respondents and third-party lenders, the terms of which allegedly violate Minnesota law. The Minnesota Supreme Court acknowledged that the state and federal courts have adopted conflicting legal standards for determining the requisite causal nexus to establish specific personal jurisdiction, and conflicting positions as to whether electronic communications, without more, can be sufficient "minimum contacts" for specific personal jurisdiction in a non-defamation, tort context.

The Question Presented is whether a proximate causal nexus between a defendant's forum contacts and a plaintiff's claim is required as part of the "relatedness" test for specific personal jurisdiction as

a matter of due process, and whether that standard is met by the electronic contacts here.

PARTIES TO THE PROCEEDING

Petitioner, defendant-appellant below, is MoneyMutual LLC. Respondents, plaintiffs-appellees below, are Scott Rilley, Michelle Kunza, Linda Gonzales, Michael Gonzales, and a putative class of all other similarly situated persons.

CORPORATE DISCLOSURE STATEMENT

MoneyMutual LLC is a Nevada limited liability company. Its sole member is Selling Source LLC. No publicly held corporation owns 10 percent or more of an interest in either MoneyMutual LLC or Selling Source LLC.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

OTHER AUTHORITIES:

PETITION FOR A WRIT OF CERTIORARI

Petitioner MoneyMutual LLC ("MoneyMutual") respectfully petitions this Court for a writ of certiorari to review the judgment of the Supreme Court of Minnesota in this case.

OPINIONS BELOW

The opinion of the Minnesota Supreme Court (Pet. App. 1a) is reported at 884 N.W.2d 321 (2016). The opinion of the Minnesota Court of Appeals (Pet. App. 33a) is reported at 863 N.W.2d 789 (2015). The order and memorandum of the Minnesota District Court (Pet. App. 47a) are unreported.

JURISDICTION

The Minnesota Supreme Court issued its decision on August 24, 2016. Pet. App. 1a. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Due Process Clause of the Fourteenth Amendment provides in relevant part "nor shall any state deprive any person of life, liberty, or property, without due process of law."

STATEMENT

The traditional principles of personal jurisdiction are familiar. The Due Process Clause of the Fourteenth Amendment prohibits a state court from exercising personal jurisdiction over a nonresident defendant unless that defendant has "minimum contacts" with the state and maintaining the lawsuit "does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotation marks omitted). "Minimum contacts" exist when the

defendant "purposefully avails itself" of the privileges, benefits, and protections of the forum state, such that the defendant "should reasonably anticipate being haled into court there." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474–75 (1985) (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958); *World–Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)).

To demonstrate "specific" personal jurisdiction, a plaintiff must demonstrate that the plaintiff's claims "arise out of or relate to" the defendant's contacts with the forum state. *Burger King*, 471 U.S. at 472 & n. 15 (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)); *see also Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011).

However, the precise nature of the requisite causal nexus between the plaintiff's claims and the defendant's forum contacts is uncertain. *What sort of tie* must the plaintiff's claims have to the defendant's contacts with the forum in order for a court to conclude that the plaintiff's claims "arise out of or relate to" the defendant's forum contacts? The lower courts have offered three different answers to this question, with some adopting a "proximate cause" standard, others a broader "but for" standard, and still others (including the Minnesota court below) a malleable "substantial connection" test. Only a proximate cause test supplies the necessary clarity and predictability to allow a defendant reasonably to anticipate its jurisdictional exposure based on its own actions.

This case represents an ideal vehicle for this Court to address a fundamental question of law and

to do so in the important and timely context of electronic communications in the Internet age.

1. Background.

MoneyMutual is a Nevada limited liability company. Pet. App. 59a. It has no employees or operations but exists only to maintain the *www.moneymutual.com* website. *Id.* at 59a-60a. It has no office, P.O. box, or telephone number in Minnesota, no employees or agents in Minnesota, no bank or financial accounts in Minnesota, and no real property in Minnesota. *Id.* at 60a. It is not a lender and has never been a party to any of Respondents' loans. *Id.* at 61a. It owns no interest in any lender, and no lender owns any interest in MoneyMutual. *Id.* Respondents have not alleged that MoneyMutual is a party to any loan transaction with them or the putative class, or that MoneyMutual is in privity with any of the parties to the subject loans.

Rather, MoneyMutual is a marketing and advertising "lead generator" and maintains its *www.moneymutual.com* website for that purpose. *Id.* at 59a-60a.[1] Individuals can use the website by submitting information to MoneyMutual and requesting that their application be transmitted to

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[1] Lead generation is a widespread, indeed pervasive, marketing technique used across the spectrum of American business. It has grown exponentially with the dramatic expansion of e-commerce. *See* James B. Oldroyd, Kristina McElheran, & David Elkington, *The Short Life of Online Sales Leads*, HARVARD BUSINESS REVIEW, March 2011 ("Companies in financial services, automobiles, education, software, health care, professional services, and many other industries have increasingly turned to the internet to generate sales leads.") (available at https://hbr.org/2011/03/the-short-life-of-online-sales-leads).

prospective third-party lenders. *Id.* at 62a. Through its affiliate PartnerWeekly, MoneyMutual circulates the application in real-time to lenders who may (in their discretion) accept and pay MoneyMutual for a "lead." *Id.* at 62a-63a. MoneyMutual is compensated by lenders on the basis of such "leads" accepted, without regard for whether a loan is consummated and regardless of the terms of any loan. *Id.* at 63a. If a lender buys the "lead," MoneyMutual then emails the applicant to advise that a prospective lender is interested in discussing a loan with him or her. *Id.* at 62a. MoneyMutual provides the lender's contact phone and website information. *Id.*

Thereafter, the lender and the consumer may (at their respective discretion) enter into an entirely separate transaction in the form of a loan agreement. *Id.* at 62a-63a. MoneyMutual itself has nothing further to do with, or any knowledge of, any such loan transaction. *Id.* at 63a. It has no involvement in deciding whether the loan is offered to the consumer or in setting any of the terms of the loan. *Id.* It is not informed of whether a loan agreement is reached, the terms of any agreement, or whether the loan is repaid. *Id.*

2. The Decisions of the Minnesota District Court and Court of Appeals.

Respondents filed a putative class-action complaint alleging that MoneyMutual introduced respondents to "payday" lenders that were unlicensed in Minnesota. *Id.* at 3a. The complaint also alleged that the terms of the loans Respondents ultimately entered into were illegal under Minnesota law. *Id.*

MoneyMutual moved to dismiss the complaint for lack of personal jurisdiction. In response, Respondents submitted affidavits and exhibits alleging three categories of contacts with Minnesota. First, Respondents alleged that MoneyMutual sent emails to Minnesota residents in connection with its website. *Id.* at 4a-5a. Second, Respondents alleged that MoneyMutual bought television advertisements that appeared in Minnesota. *Id.* at 5a. Third, Respondents alleged that MoneyMutual conducted a Google AdWords campaign, and they submitted an affidavit purporting to show that MoneyMutual purchased online ads that would appear when an individual searched Google for the terms "payday loan Minnesota" and "payday loan Minneapolis." *Id.* at 5a-6a.

The District Court denied MoneyMutual's motion to dismiss. *Id.* at 6a. The Court of Appeals affirmed the decision of the District Court, noting "the increased tendency for commerce to take place via the Internet." *Id.* at 43a-44a.

3. The Minnesota Supreme Court's Decision.

The Minnesota Supreme Court affirmed. It acknowledged that "MoneyMutual never extended a loan" and that "respondents in this case never paid MoneyMutual." *Id.* at 14a n.8. It further acknowledged that "MoneyMutual's website and email-solicitation systems are automated and depend solely on unilateral activity by users." *Id.* at 19a n.12. The court nonetheless held that MoneyMutual was subject to specific personal jurisdiction in Minnesota.

The Minnesota Supreme Court noted "the 'connection' requirement for specific jurisdiction" and

the requirement that "the harm resulting in litigation 'arise out of or relate to' the defendant's contacts with the forum." *Id.* at 27a. The court acknowledged that "[c]ourts disagree about how to apply this connection requirement (also referred to as the 'relatedness' or 'nexus' requirement) for specific personal jurisdiction." *Id.* at 27a-28a (citing *Myers v. Casino Queen, Inc.*, 689 F.3d 904, 912–13 (8th Cir. 2012)).

The Minnesota court identified "three major approaches": "a strict 'proximate cause' standard; a 'but for' standard; and a more lenient 'substantial connection' standard." *Id.* at 28a. It explained that, "[i]n many courts, the connection requirement does not require proof that the litigation was strictly caused by or '[arose] out of' the defendant's contacts; rather, it is sufficient to show that the contacts are 'substantially connected' or 'related to' the litigation." *Id.*

The Minnesota Supreme Court applied this third standard – whether a defendant's forum contacts "are 'substantially connected' or 'related to' the litigation" (*id.* at 28a) – to find specific personal jurisdiction on the basis of two types of forum contacts: (1) MoneyMutual's email communications – which, the court held, were sufficient in and of themselves to find specific personal jurisdiction – and (2) as also relevant, MoneyMutual's alleged Google AdWords campaign.[2]

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[2] The Minnesota Supreme Court concluded that MoneyMutual's television advertisements not targeted at Minnesota could not be a basis for specific jurisdiction pursuant to *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 886 (2011) (plurality opinion). Pet. App. 20a-25a.

First, the Minnesota Supreme Court considered MoneyMutual's email communications to Minnesota residents. The court noted a conflict of authority in the lower courts on the weight (if any) to be accorded to emails in the personal jurisdiction analysis and explained that "three approaches to email-based contacts have developed in federal courts." *Id.* at 16a. The court observed that "some courts reject any consideration of email-based contacts," while others "hold that email communications alone are insufficient but that emails are 'secondary' contacts that can be added to other types of contacts to support personal jurisdiction." *Id.*

The Minnesota Supreme Court rejected both those approaches: "Having considered the body of persuasive authority on this point, we conclude that the third approach, which considers emails just like any other contact with the forum, is the appropriate rule of law." *Id.* at 18a. It added that "[t]he most reasonable approach" is to ask "whether those contacts establish a '*substantial connection*' between the defendant, the forum, and the litigation, such that the defendant 'purposefully availed' himself of the forum and 'reasonably anticipate[d] being haled into court' there." *Id.* (emphasis added and citations omitted).

The court held that, under this standard, MoneyMutual's email communications by themselves established specific personal jurisdiction:

> MoneyMutual sent over 1,000 emails to known Minnesotans, soliciting them to apply for payday loans. These emails were the culmination of transactions between MoneyMutual and Minnesota residents

> through which Minnesota residents provided their personal information to MoneyMutual in return for being matched with a payday lender.

Id. at 30a.

The Minnesota Supreme Court also deemed relevant a Google "AdWords" campaign in which MoneyMutual had allegedly engaged: "Respondents submitted an affidavit purporting to show that MoneyMutual purchased online ads that would appear when an individual searched Google for the terms 'payday loan Minnesota' and 'payday loan Minneapolis.'" *Id.* at 5a. The court acknowledged that "none of the respondents or class members indicated that they actually came into contact with MoneyMutual's website as a result of a Google search or one of MoneyMutual's AdWords advertisements." *Id.* at 6a. Nonetheless, the court opined that, under the malleable causation standard it was adopting (whether a defendant's forum contacts "are 'substantially connected' or 'related to' the litigation" (*id.* at 28a)), the Google AdWords campaign could support a finding of personal jurisdiction: "Although at this early stage of the litigation there is no evidence that the Google Ads actually *caused* any of the claims, the Google Ads are sufficiently *related* to the claims of respondents to survive a motion to dismiss." *Id.* at 29a (emphasis in original). "MoneyMutual's use of Google AdWords . . . further buttress[es] the conclusion that sufficient minimum contacts exist for the exercise of personal jurisdiction over MoneyMutual." *Id.* at 30a-31a.

Accordingly, the Minnesota Supreme Court affirmed the denial of MoneyMutual's motion to dismiss for lack of personal jurisdiction.

REASONS FOR GRANTING THE WRIT

This case presents an important legal question under the test for "specific" personal jurisdiction: What is the requisite degree of *causal nexus* between a defendant's jurisdictional contacts and a plaintiff's claim? The lower courts are divided on this question, with some adopting a "proximate cause" standard, others a "but for" standard, and still others (including the Minnesota court below) a less predictable "substantial connection" or "related to" standard. The Minnesota Supreme Court held that a jurisdictional contact is relevant to the "minimum contacts" analysis for specific personal jurisdiction even in the absence of any evidence that the contact "actually *caused* any of the claims," so long as that contact is "sufficiently *related*" to the plaintiff's claims. *Id.* at 29a (emphasis in original).

This Court should grant review to establish that the proper jurisdictional test is the proximate cause standard. Only that standard provides the requisite predictability and reliability to allow a defendant reasonably to foresee its jurisdictional exposure based on its own actions, which is an essential purpose of the "relatedness" element of the specific jurisdiction inquiry. This Court's review is warranted for the additional reason that this case arises in an important and timely context: electronic communications in the modern Internet age. This Court should ensure that due process protections for nonresident defendants, as well as fundamental limits on the extraterritorial projection of state

authority, are not eliminated by technological advances and new means of electronic communication that have become a prevalent, if not dominant, personal and commercial choice for interstate communications.

This Court has recognized the need to address the application of traditional rules of personal jurisdiction in the information economy. In *Walden v. Fiore*, 134 S. Ct. 1115, 1125, n.9 (2014), this Court cited and reserved for future decision the "questions whether and how a defendant's virtual 'presence' and conduct translate into 'contacts' with a particular State." Similarly, in *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873 (2011), Justice Breyer, joined in a concurring opinion by Justice Alito, identified key questions raised by the intersection of cutting-edge technologies and familiar jurisdictional principles:

> [W]hat do those standards mean when a company targets the world by selling products from its Web site? And does it matter if, instead of shipping the products directly, a company consigns the products through an intermediary (say, Amazon.com) who then receives and fulfills the orders? And what if the company markets its products through popup advertisements that it knows will be viewed in a forum?

Id. at 890 (Breyer, J., concurring). The instant case represents an ideal vehicle to address such questions.

I. This Court Should Grant Review To Make Clear That The Specific-Jurisdiction Test Requires A Proximate Causal Nexus Between Forum-Targeted Conduct and the Plaintiff's Claims.

The Minnesota Supreme Court held that MoneyMutual was subject to specific personal jurisdiction in Minnesota, even though its jurisdictional contacts were not the proximate cause of Respondents' claims. MoneyMutual is not a lender and is not a party to any loans, including the short-term "payday" loans that form the crux of Respondents' claims. MoneyMutual is not involved in setting any of the terms of the loan and is not even informed of whether a loan agreement is ultimately completed or the terms of any such agreement. It does not receive any payment or other compensation from loan applicants such as Respondents.

In fact, the Minnesota court acknowledged that:

- "MoneyMutual never extended a loan," Pet. App. 14a n.8;
- "[R]espondents in this case never paid MoneyMutual," *id.*;
- "MoneyMutual's website and email-solicitation systems are automated and depend solely on unilateral activity by users," *id.* at 19a n.12; and
- Emails were sent only after contact was initiated by persons submitting information through the website; the emails either (a) informed applicants of the interest expressed by a lender; (b) advised a website user that they had not completed

the form; or (c) invited a prior applicant to submit a new application. *Id.* at 11a-12a.

Nevertheless, the court opined that MoneyMutual was subject to specific personal jurisdiction in Minnesota, even in the absence of any proximate causal nexus between its communications and the actual harm upon which Respondents base their claims: the culmination of a loan transaction whose terms allegedly violate Minnesota law.

The Minnesota Supreme Court opined that the nexus requirement of the "specific" personal jurisdiction test "does not require proof that the litigation was strictly caused by or '[arose] out of' the defendant's contacts; rather, it is sufficient to show that the contacts are 'substantially connected' or 'related to' the litigation." *Id.* at 28a.

Thus, with respect to MoneyMutual's email communications, the Minnesota Supreme Court asked "whether those contacts establish a '*substantial connection*' between the defendant, the forum, and the litigation." *Id.* at 18a. Similarly, the court applied the same "substantial connection" standard to the Google "AdWords" campaign, rather than a "proximate cause" or "but for" standard. The Minnesota court acknowledged that "none of the respondents or class members indicated that they actually came into contact with MoneyMutual's website as a result of a Google search or one of MoneyMutual's AdWords advertisements." *Id.* at 6a. But the Minnesota court insisted that a causal nexus was not necessary: "Although at this early stage of the litigation there is no evidence that the Google Ads actually *caused* any of the claims, the Google Ads are sufficiently *related* to the claims of

respondents to survive a motion to dismiss." *Id.* at 29a (emphasis in original).

This Court should grant review to decide whether a proximate causal nexus is required as part of the "relatedness" test for specific personal jurisdiction.

A. This Court Has Twice Noted And Reserved The Question Of The Precise Causal Nexus Required To Establish Specific Personal Jurisdiction.

This Court has instructed that, to establish specific personal jurisdiction over a nonresident defendant, a plaintiff must establish "minimum contacts" resulting from the defendant's conduct "targeting" the forum state (and not just its residents), and also that the plaintiff's claims "arise out of or [be] connected with the activities within the state." *Int'l Shoe*, 326 U.S. at 319.

In *Walden v. Fiore*, 134 S. Ct. 1115 (2014), this Court affirmed three essential limits on specific jurisdiction. First, the defendant must have established "contacts with the *forum State* itself, not . . . contacts with persons who reside there." *Id.* at 1122 (emphasis added). Thus, "a defendant's relationship with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction." *Id.* at 1123.

Second, the contacts between the defendant and the forum state must be "contacts that the 'defendant himself' creates." *Id.* at 1122 (quoting *Burger King*, 471 U.S. at 475). Conversely, specific jurisdiction may not be based on the "'unilateral activity'" of persons other than the defendant. *See id.*

at 1123 (quoting *Burger King*, 471 U.S. at 475). This Court has "consistently rejected attempts to satisfy the defendant-focused 'minimum contacts' inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State." *Id.* at 1122.

Third, the contacts upon which specific jurisdiction is based must be "suit-related." *Id.* at 1121. Contacts that have nothing to do with the "underlying controversy" in the litigation are irrelevant to specific jurisdiction. *Id.* at 1121 n.6. Indeed, this requirement is the core of what distinguishes specific jurisdiction from general jurisdiction. *Id.* at 1121 n.6.

However, this Court has never defined the precise nature of the requisite causal nexus between a plaintiffs' claims and a defendant's jurisdictional contacts. Numerous lower courts have noted the need for clarification by this Court. *See, e.g., Tamburo v. Dworkin*, 601 F.3d 693, 708 (7th Cir. 2010) ("The Supreme Court has not elaborated on this [arise out of or relate to] requirement, and the occasional difficulty in applying it has led to conflict among the circuits."); *O'Connor v. Sandy Lane Hotel Co., Ltd.*, 496 F.3d 312, 318 (3d Cir. 2007) ("Unfortunately, the Supreme Court has not yet explained the scope of this requirement. State and lower federal courts have stepped in to fill the void, but their decisions lack any consensus."); *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 579 (Tex. 2007) ("To support specific jurisdiction, the Supreme Court has given relatively little guidance as to how closely related a cause of action must be to the defendant's forum activities.").

In *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984), this Court noted the issue but declined to resolve it:

> The dissent suggests that we have erred in drawing no distinction between controversies that "relate to" a defendant's contacts with a forum and those that "arise out of" such contacts. . . .
>
> We do not address the validity or consequences of such a distinction because the issue has not been presented in this case. Respondents have made no argument that their cause of action either arose out of or is related to [defendant's] contacts with the State of Texas. Absent any briefing on the issue, we decline to reach the questions (1) whether the terms "arising out of" and "related to" describe different connections between a cause of action and a defendant's contacts with a forum, and (2) what sort of tie between a cause of action and a defendant's contacts with a forum is necessary to a determination that either connection exists. *Nor do we reach the question whether, if the two types of relationship differ, a forum's exercise of personal jurisdiction in a situation where the cause of action "relates to," but does not "arise out of," the defendant's contacts with the forum should be analyzed as an assertion of specific jurisdiction.*

Id. at 415 n. 10 (emphasis added). The instant Petition presents the very question raised by the italicized language in *Helicopteros*.

Seven year later, in *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585 (1991), this Court again declined to decide the meaning of the "relatedness" test for specific personal jurisdiction, even though it had granted certiorari on the issue. *Id.* at 589.

The instant case presents the ideal vehicle for resolving the question twice reserved by this Court.

B. The Lower Courts Are Divided On The Question, and the Minnesota Supreme Court's Decision Conflicts With Cases In Numerous Other Jurisdictions.

1. The Minnesota Supreme Court Recognized The Conflict Among The Lower Courts.

The Minnesota Supreme Court acknowledged that "[c]ourts disagree about how to apply this connection requirement (also referred to as the 'relatedness' or 'nexus' requirement) for specific personal jurisdiction." *Id.* at 30a. The court identified "three major approaches": "a strict 'proximate cause' standard; a 'but for' standard; and a more lenient 'substantial connection' standard." *Id.* The Minnesota court adopted the third approach, explaining that, "[i]n many courts, the connection requirement does not require proof that the litigation was strictly caused by or '[arose] out of' the defendant's contacts; rather, it is sufficient to show that the contacts are 'substantially connected' or 'related to' the litigation." *Id.*

Other decisions have identified the same division in the lower courts and the emergence of the three different approaches described by the Minnesota court. In *Myers v. Casino Queen, Inc.*, 689 F.3d 904

(8th Cir. 2012), for example, the Eighth Circuit explained that "[t]he various circuits interpret the 'arise out of or relate to' requirement differently, and three domina[nt] approaches have emerged." *Id.* at 912.

> The first interpretation is referred to as the proximate cause standard. This standard requires the defendant's contacts with the forum state to be the "legal cause," (i.e., proximate cause) of the plaintiff's injuries. The second interpretation is more relaxed and "requires only 'but for' causation. As the name indicates, this standard is satisfied when the plaintiff's claim would not have arisen in the absence of the defendant's contacts." The third standard, referred to as the "substantial connection" standard, examines "whether the tie between the defendant's contacts and the plaintiff's claim is close enough to make jurisdiction fair and reasonable."

Id. (citations omitted).[3] Other cases affirm the existence of a circuit split. *E.g.*, *Chew v. Dietrich*,

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[3] See *also O'Connor v. Sandy Lane Hotel Co., Ltd.*, 496 F.3d 312, 318-20 (3d Cir. 2007) ("Three approaches predominate. The most restrictive standard is the 'proximate cause' or 'substantive relevance' test. . . . A second, more relaxed test requires only 'but-for' causation. As the name indicates, this standard is satisfied when the plaintiff's claim would not have arisen in the absence of the defendant's contacts. . . . A third standard looks for a 'substantial connection' or 'discernible relationship.' Unlike the but-for test, causation is of no special importance. The critical question is whether the tie between the defendant's contacts and the plaintiff's claim is close enough to make jurisdiction fair and reasonable."); *Nowak v. Tak How Invs., Ltd.*, 94 F.3d 708, 713–

143 F.3d 24, 29 (2d Cir. 1998) ("[T]here appears to be a split in the Circuits on the standard to be applied in determining if a tort claim 'relates' to the defendant's activities within the state. Some Circuits have held that in order for the defendant to be subject to the jurisdiction of a state the conduct within the state must be a proximate cause of the plaintiff's injury. Others have held that it is sufficient if the defendant's conduct in the state is a 'but for' cause of the plaintiff's injury."); *Tamburo v. Dworkin*, 601 F.3d 693, 708 (7th Cir. 2010) ("The First Circuit has held that at least with respect to intentional tort claims, the defendant's contacts with the forum must constitute both the cause in fact and the proximate cause of the injury. The Ninth and Fifth Circuits, on the other hand, require only that the contacts constitute a but-for cause of the injury.").

2. The Minnesota Supreme Court's Decision Conflicts With Judgments In The First and Sixth Circuits.

The Minnesota Supreme Court's judgment conflicts with decisions in the First and Sixth Circuits adopting a proximate cause test.

The First Circuit has opined that the defendant's contacts must be the "legal cause" of the plaintiff's injury "i.e., the defendant's in-state conduct [must] g[i]ve birth to the cause of action." *Mass. Sch. of Law*

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715 (1st Cir. 1996) (same); *Moki Mac River Expeditions*, 221 S.W.3d at 579–86) (same); Charles W. 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, 201-07 (2005) (same).

at Andover, Inc. v. Am. Bar Ass'n, 142 F.3d 26, 35 (1st Cir. 1998) (quotation marks omitted). The First Circuit has explained that, to determine "relatedness," a court "must probe the causal nexus between the defendant's contacts and the plaintiff's cause of action" and the "relatedness requirement is not met merely because a plaintiff's cause of action arose out of the general relationship between the parties; rather, the action must directly arise out of the specific contacts between the defendant and the forum state." *Phillips Exeter Academy v. Howard Phillips Fund*, 196 F.3d 284, 289-290 (1st Cir. 1999).

The First Circuit has explained that "proximate or legal cause clearly distinguishes between foreseeable and unforeseeable risks of harm. Foreseeability is a critical component in the due process inquiry, particularly in evaluating purposeful availment, and we think it also informs the relatedness prong." *Nowak*, 94 F.3d at 715. In addition, "[a]dherence to a proximate cause standard is likely to enable defendants better to anticipate which conduct might subject them to a state's jurisdiction than a more tenuous link in the chain of causation." *Id.* (citation omitted). The First Circuit continued: "we think the proximate cause standard better comports with the relatedness inquiry because it so easily correlates to foreseeability, a significant component of the jurisdictional inquiry." *Id.*

Similarly, in *Sawtelle v. Farrell*, 70 F.3d 1381 (1st Cir. 1995), the First Circuit rejected the assertion of jurisdiction over a nonresident defendant, opining that "[t]he relatedness requirement is not met merely because a plaintiff's cause of action arose out of the general relationship between the parties; rather, the action must directly

arise out of the specific contacts between the defendant and the forum state." *Id.* at 1389. The court acknowledged that "[t]he transmission of information into New Hampshire by way of telephone or mail is unquestionably a contact for purposes of our analysis," but found that it would be "illogical to conclude that those isolated recommendations constituted the negligent conduct that caused the [plaintiff's] injury and thus were in-forum acts sufficient to establish specific personal jurisdiction in New Hampshire." *Id.* at 1389-90. *See also Fournier v. Best Western Treasure Island Resort*, 962 F.2d 126, 127 (1st Cir. 1992) (where plaintiff had made vacation arrangements in Massachusetts but was injured out-of-state, cause of action did not "arise from" the defendant resort operator's contacts with Massachusetts within the meaning of the state long-arm statute); *United Elec. Workers v. 163 Pleasant Street Corp.*, 960 F.2d 1080, 1089 (1st Cir. 1992) (forum contacts must be both cause in fact and legal cause of plaintiff's injury in order to support specific jurisdiction and "the defendant's in-state conduct must form an 'important, or [at least] material, element of proof' in the plaintiff's case"); *Pizarro v. Hoteles Concorde Int'l, C.A.*, 907 F.2d 1256, 1259 (1st Cir. 1990) (no personal jurisdiction where defendant's "contacts with Puerto Rico are not the legal or proximate cause of the personal injury suffered by" plaintiff); *Marino v. Hyatt Corp.*, 793 F.2d 427, 430 (1st Cir. 1986) (no jurisdiction because in-state conduct "would hardly be an important, or perhaps even a material, element of proof" in the cause of action).[4]

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[4] The Minnesota Supreme Court miscited (Pet. App. 28a-29a n.18) the First Circuit's decision in *Ticketmaster-New*

In addition, the Sixth Circuit has held that "only consequences that *proximately* result from a party's contacts with a forum state will give rise to jurisdiction." *Beydoun v. Watamiya Restaurants Holding, Q.S.C.*, 768 F.3d 499, 508 (6th Cir. 2014) (emphasis in original). In *Beydoun*, the Sixth Circuit held that a nonresident defendant (a Qatari corporation operating restaurant franchises in the Middle East and North Africa) was not subject to personal jurisdiction in Michigan. The plaintiff alleged several contacts with the state, including the defendant's targeting the Detroit area for its CEO candidates, corresponding with the plaintiff to be its CEO, selecting plaintiff to be its CEO, and subsequently making more than ten business trips to Michigan and numerous purchases of equipment from Michigan companies. *Id.* at 506. The Sixth Circuit opined that, under the proximate cause standard, such contacts were insufficient to establish jurisdiction in Michigan:

> Essentially, plaintiffs argue that their causes of action arose from [defendant's] initial contact with Michigan because but for the initial contact with Michigan, [plaintiff] would never have moved to Qatar, and if [plaintiff] had never moved to Qatar, he could not have been wrongfully blamed for

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York, Inc. v. Alioto, 26 F.3d 201 (1st Cir. 1994), which did not reach the relatedness issue as part of its holding. *Id.* at 207 ("we do not have occasion today to give fuller content to the relatedness requirement"). Moreover, the First Circuit emphasized that "relatedness is the divining rod that separates specific jurisdiction cases from general jurisdiction cases [and] ensures that the element of causation remains in the forefront of the due process investigation." *Id.*

> [defendant's] financial losses and wrongfully detained for them.
>
> We disagree because more than mere but-for causation is required to support a finding of personal jurisdiction. To the contrary, the plaintiff's cause of action must be *proximately caused* by the defendant's contacts with the forum state.

Id. at 507-08 (emphasis added); *see also Pickens v. Hess*, 573 F.2d 380, 386 (6th Cir. 1978) (no personal jurisdiction over defendants under state long-arm statute which extends to limits of due process when "the cause of action between the parties did not arise from any acts of the defendants in [the forum state]").[5]

3. The Minnesota Supreme Court's Decision Departs From Other Cases In The Lower Courts.

The standard adopted by the Minnesota Supreme Court departs from the approaches of other courts. It differs from the "but-for" causation test adopted by the Fifth and Ninth Circuits.[6] It differs from the approach of other circuits, which have refrained from choosing between the "proximate cause" and "but for" causation standards, because

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[5] In *City of Virginia Beach v. Roanoke River Basin Assn.*, 776 F.2d 484, 487 (4th Cir. 1985), the Fourth Circuit held that jurisdiction was lacking because "the activities that support the jurisdictional claim must coincide with those that form the basis of the plaintiff's substantive claim."

[6] *E.g.*, *Mattel, Inc. v. Greiner and Hauser GmbH*, 354 F.3d 857, 867 (9th Cir. 2003); *Shute v. Carnival Cruise Lines*, 897 F.2d 377, 385 (9th Cir. 1988); *Prejean v. Sonatrach, Inc.*, 652 F.2d 1260, 1270 n. 21 (5th Cir. 1981).

the courts have found that the defendant's contacts with the forum were both a cause-in-fact and proximate cause of the plaintiff's claim.[7]

Further, the Minnesota Supreme Court's judgment conflicts with decisions of other courts flatly rejecting the "substantial connection" or "related to" test – even if those courts have not definitively settled on an alternative test:

• *O'Connor v. Sandy Lane Hotel Co., Ltd.*, 496 F.3d 312, 321 (3d Cir. 2007) ("[W]e must state that the 'sliding scale,' 'substantial connection,' and 'discernible relationship' tests are not the law in this circuit. By any name, these 'hybrid' approaches allow courts to vary the scope of the relatedness requirement according to the 'quantity and quality' of the defendant's contacts. . . . General and specific jurisdiction merge, and the result is a freewheeling totality-of-the-circumstances test. Our cases, however, have always treated general and specific jurisdiction as analytically distinct categories, not two points on a sliding scale.");

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[7] *E.g.*, *Employers Mutual Casualty Co. v. Bartile Roofs, Inc.*, 618 F.3d 1153, 1160-1161 (10th Cir.); *Tamburo*, 601 F.3d at 708; *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1078-1079 (10th Cir.); *see also Advanced Tactical Ordnance Systems, LLC v. Real Action Paintball, Inc.*, 751 F.3d 796, 801-802 (7th Cir. 2014) (plaintiff failed to connect in-forum sales to defendant's litigation-specific activity of alleged trademark infringement, in absence of evidence that in-state purchasers actually saw internet post at issue; even large number of sales to Indiana residents inadequate to show specific jurisdiction: "Specific jurisdiction must rest on the litigation-specific conduct of the defendant in the proposed forum state.").

- *Employers Mutual Casualty Co. v. Bartile's Roofs, Inc.*, 618 F.3d 1153, 1161 (10th Cir. 2010) ("we have rejected the substantial-connection approach outright");

- *Dudnikov v. Chalk & Vermillion Fine Arts, Inc.*, 514 F.3d 1063, 1078-1079 (10th Cir. 2008) ("We agree with our sister circuit that the 'substantial connection' test inappropriately blurs the distinction between specific and general personal jurisdiction. . . . A relatedness inquiry that varies the required connection between the contacts and the claims based on the number of the contacts improperly conflates these two analytically distinct approaches to jurisdiction. By eliminating the distinction between contacts that are sufficient to support any suit and those that require the suit be related to the contact, it also undermines the rationale for the relatedness inquiry: to allow a defendant to anticipate his jurisdictional exposure based on his own actions.") (internal citations omitted).

- *Robinson v. Harley-Davidson Motor Co.*, 316 P.3d 287, 298 (Or. 2013) ("[W]e conclude that the amount of flexibility [the substantial connection test] allows fails to provide the 'degree of predictability to the legal system' that the Due Process Clause requires. As a result, nonresidents are less able to 'structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.' Moreover, that approach tends to reduce itself to 'a freewheeling totality-of-the-circumstances test' that conflates the separate analyses required for general and specific jurisdiction.") (citations omitted).

• *Moki Mac River Expedition*, 221 S.W. 3d at 583 ("Most significantly, deciding jurisdiction based on a sliding continuum blurs the distinction between general and specific jurisdiction that our judicial system has firmly embraced and that provides an established structure for courts to analyze questions of in personam jurisdiction. . . . In sum, 'this tradeoff does not fulfill the underlying goals of either general or specific jurisdiction' and 'may raise far more difficult questions than it resolves.'") (citations omitted).

Other jurisdictions have adopted Minnesota's approach of dispensing with some form of causal nexus to connect a defendant's jurisdictional-relevant contact with the plaintiff's claim.[8]

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[8] *See Bristol-Myers Squibb Company v. Superior Court*, 1 Cal 5th 783, 802-06 (Cal. 2016) (using "sliding scale" approach to find California could exercise specific personal jurisdiction over defendant on behalf of non-resident drug product liability plaintiffs because of defendant's numerous purposeful contacts with state, including California manufacturing, distribution, and marketing, notwithstanding no evidence that the product used by non-resident plaintiffs was manufactured in California or distributed from California, or that they saw advertising or were exposed to marketing in or from California); *Vons Companies, Inc. v. Seabest Foods, Inc.*, 14 Cal.4th 434, 467-468 (Cal. 1996) (opining that this Court "has not been concerned with causation in this context" but instead "has spoken of a relationship between the cause of action and the contacts in the forum, and has used relatively broad terms to describe the necessary relationship"); *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 336 (D.C. 2000) (holding that "extensive and repeated" advertising activity had a "discernible relationship" to plaintiff's slip and fall accident at store despite no evidence plaintiff shopped at store in response to advertising, because defendant could foresee being sued on a similar claim).

C. The Question Presented Is An Important Issue Of Federal Law.

This Court should grant review to resolve the circuit split and division in the lower courts regarding the "casual nexus" requirement for specific personal jurisdiction. This issue is an important question of federal constitutional law that governs the due process analysis in both state and federal courts.

The Minnesota Supreme Court's standard – that specific personal jurisdiction "does not require proof" that a plaintiff's claim was "strictly caused by or '[arose] out of' the defendant's contacts; rather, it is

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Further, the legal standard in the Second Circuit is unclear. In *Gelfand v. Tanner Motor Tours, Ltd.*, 339 F.2d 317 (2d Cir. 1964), the Second Circuit held that personal jurisdiction was lacking where plaintiffs sued a tour bus company for injuries sustained during a motor vehicle crash. *Id.* at 318. The court held that the sale of bus tickets in New York was an insufficient basis to establish personal jurisdiction over the non-resident defendant because the claim did not arise from the sale. *Id.* at 321–22. However, in *Chew v. Dietrich*, 143 F.3d 24 (2d Cir. 1998), the Second Circuit sustained personal jurisdiction and opined "[w]here the defendant's contacts with the jurisdiction that relate to the cause of action are more substantial, however, it is not unreasonable to say that the defendant is subject to personal jurisdiction even though the acts within the state are not the proximate cause of the plaintiff's injury." *Id.* at 29. Subsequent courts have explained that Second Circuit cases "upholding specific personal jurisdiction on the basis of limited contacts with the forum have involved no less than a 'but for' connection between the defendant's forum-directed activities and the claim. We are not aware that any federal appellate court has upheld specific personal jurisdiction on the basis of a lesser showing of relationship." *In re Libor-Based Financial Instruments Litigation*, No. MDL 2262 NRB, 2015 WL 4634541, *22-23 (S.D.N.Y. 2015).

sufficient to show that the contacts are 'substantially connected' or 'related to' the litigation," Pet. App. 28a – improperly expands the forums in which nonresident defendants are subject to suit. Such expansion violates this Court's instruction in *Walden* that "[d]ue process limits on the State's adjudicative authority principally protect the liberty of the nonresident defendant — not the convenience of plaintiffs or third parties." 134 S. Ct. at 1122.

Further, the Minnesota Supreme Court's test conflates general and specific jurisdiction and substitutes a subjective standard for what ought to be a predictable test. Asking whether contacts are "related to" the litigation provides little practicable guidance; as this Court has observed, a "related to" standard "would never run its course, for '[r]eally, universally, relations stop nowhere.'" *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655 (1995) (citation omitted).

This Court should establish a "proximate cause" standard for specific personal jurisdiction.

II. The Online Nature Of The Electronic Contacts In This Case Heightens The Need For This Court's Review.

This Court's review is particularly warranted because the Question Presented arises in an important and timely context: electronic commerce and online communications. In *Walden v. Fiore*, 134 S. Ct. 1115 (2014), this Court went out of its way to pose the "questions whether and how a defendant's virtual 'presence' and conduct translate into 'contacts' with a particular State." *Id.* at 1125 n.9.

Similarly, in *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873 (2011), Justice Breyer, joined in a concurring opinion by Justice Alito, asked, "[W]hat do those standards [of personal jurisdiction] mean" in the context of e-commerce? *Id.* at 890 (Breyer, J., concurring). This case provides an excellent vehicle to address that question.

A. The Minnesota Supreme Court's Decision Conflicts With Seventh Circuit And Other Precedent.

In the decision below, the Minnesota Supreme Court noted a conflict of authority in the lower courts on the significance of email contacts for assessing specific personal jurisdiction and explained that "three approaches to email-based contacts have developed in federal courts." Pet. App. 16a. The Minnesota Supreme Court refused to follow the first two approaches, under which "some courts reject any consideration of email-based contacts" and other courts "hold that email communications alone are insufficient but that emails are 'secondary' contacts that can be added to other types of contacts to support personal jurisdiction." *Id.*

Thus, the Minnesota Supreme Court recognized that it was departing from precedent in other courts, in particular the Seventh Circuit. *Id.* at 16a-17a nn.9, 10. The Minnesota court cited (as a decision it was rejecting) the Seventh Circuit's decision in *Advanced Tactical Ordnance Sys., LLC v. Real Action Paintball, Inc.*, 751 F.3d 796 (7th Cir. 2014).[9]

[9] The Minnesota Supreme Court also cited other decisions it was declining to follow, including: *KG Funding, Inc. v. Partridge*, No. 12–2155, 2012 WL 5904439, at *2 (D.Minn. Nov.

In *Advanced Tactical Ordnance Sys.*, the Seventh Circuit held that a California company was not subject to personal jurisdiction in Indiana even though it operated an interactive website accessible from Indiana and sent two allegedly misleading emails to a list of subscribers that included Indiana residents. The Seventh Circuit held that the interactive website did not create personal jurisdiction:

> The interactivity of a website is also a poor proxy for adequate in-state contacts. We have warned that "[c]ourts should be careful in resolving questions about personal jurisdiction involving online contacts to ensure that a defendant is not haled into court simply because the defendant owns or operates a website that is accessible in the forum state, even if that site is 'interactive.'" This makes sense; the operation of an interactive website does not show that the defendant has formed a contact with the forum state. And, without the defendant's

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26, 2012) ("[T]he [email] receivers' location alone should not determine specific jurisdiction. Partridge purposefully communicated with a resident who lived in Minnesota, but there is no evidence that Partridge purposefully availed himself of the Minnesota legal forum."); *Hearst Corp. v. Goldberger*, No. 96 CIV. 3620, 1997 WL 97097, at *12 (S.D.N.Y. Feb. 26, 1997) (holding that "e-mails are analogous to letters to or telephone communications with people in New York," which "are not sufficient to establish personal jurisdiction"); *Yellow Brick Rd., LLC v. Childs*, 36 F. Supp. 3d 855, 872 (D.Minn.2014) ("[E]mail/telephone/fax communications may only be used to support the exercise of personal jurisdiction—'they do not themselves establish jurisdiction.'") (quoting *Digi-Tel Holdings, Inc. v. Proteq Telecomms. (PTE), Ltd.*, 89 F.3d 519, 523 (8th Cir. 1996)).

> creating a sufficient connection (or "minimum contacts") with the forum state itself, personal jurisdiction is not proper.

Id. at 803 (quoting *be2 LLC v. Ivanov*, 642 F.3d 555, 558 (7th Cir. 2011) (in turn citing *Illinois v. Hemi Grp., LLC*, 622 F.3d 754, 760 (7th Cir. 2010))).

Next, the Seventh Circuit held that the email contacts were insufficient to establish minimum contacts:

> The fact that [the defendant] ... shower[ed] past customers and other subscribers with company-related emails does not show a relation between the company and Indiana.... [E]mail ... bounces from one server to another ... it winds up wherever the recipient happens to be at that instant. The connection between the place where an email is opened and a lawsuit is entirely fortuitous.

Id.

The decision in *Advanced Tactical Ordnance Sys.*, followed Seventh Circuit precedent. In *be2 LLC v. Ivanov*, 642 F.3d 555 (7th Cir. 2011), the Seventh Circuit held that Illinois could not exercise personal jurisdiction over an online dating service based on an interactive website on which Illinois residents had registered. *Id.* at 559 ("All that [plaintiff] submitted regarding Ivanov's activity related to Illinois is the Internet printout showing that just 20 persons who listed Illinois addresses had at some point created free dating profiles on be2.net. The printout shows only the nickname and age of each user, the city the user then called home, and the type of relationship the user was seeking. Even if

these 20 people are active users who live in Illinois, the constitutional requirement of minimum contacts is not satisfied simply because a few residents have registered accounts on be2.net. To the contrary, these are attenuated contacts that could not give rise to personal jurisdiction without offending traditional notions of fair play and substantial justice.").

The Minnesota Supreme Court's decision holding personal jurisdiction proper based on emails to Minnesota residents generated by an automated website after plaintiffs initiated contact thus conflicts with Seventh Circuit precedent. It also conflicts with decisions by other courts of appeals holding email communications and interactive websites to be an inadequate basis for personal jurisdiction:

• *Fastpath, Inc. v. Arbela Technologies Corp.*, 760 F.3d 816, 823 (8th Cir. 2014) ("'[T]he plaintiff cannot be the only link between the defendant and the forum.' To find otherwise would 'improperly attribute[] a plaintiff's forum connections to the defendant and make[] those connections decisive in the jurisdictional analysis.' . . . Arbela directed some emails and phone calls to Fastpath in Iowa, but the district court correctly determined that this activity was insufficient to establish personal jurisdiction.") (quoting *Walden*, 134 S. Ct. at 1125);[10]

• *Ackourey v. Sonellas Custom Tailors*, 573 Fed. Appx. 208, 212 (3d Cir. 2014) (interactive website listing a travel schedule and allowing potential

[10] The conflict between the approaches of the Eighth Circuit and Minnesota Supreme Court mean that a litigant could receive a different jurisdictional result depending on whether it is in state or federal court.

customers to email requests for appointments did not support personal jurisdiction);

• *Toys "R" Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 454 (3d Cir. 2003) (interactive commercial website did not support jurisdiction because it was not directed at New Jersey and only two sales were consummated);

• *Carefirst of Maryland v. Carefirst Pregnancy Centers*, 334 F.3d 390, 400 (4th Cir. 2003) (no jurisdiction over "semi-interactive" website that accepted donations from Maryland because it "must have acted with the 'manifest intent' of targeting Marylanders") (citation omitted);

• *Revell v. Lidov*, 317 F.3d 467, 475 (5th Cir. 2002) (post on "interactive" site did not support jurisdiction in Texas because "the post to the bulletin board here was presumably directed at the entire world, or perhaps just concerned U.S. citizens . . . it was not directed especially at Texas");

• *Shrader v. Biddinger*, 633 F.3d 1235, 1240 (10th Cir. 2011) (no jurisdiction where defendant does not "*intentionally direct[]* his/her/its activity or operation *at* the forum state rather than just having the activity or operation accessible there") (emphasis added).

B. Specific Personal Jurisdiction Based On Electronic Contacts Presents An Important Legal Question.

There is an urgent need for this Court to address the rules of personal jurisdiction as they apply to Internet contacts. Scholars have identified "vast inconsistencies in the way that online activities are analyzed for purposes of determining personal

jurisdiction," pointing out that "a split exists among the circuits."[11] The uncertainty is debilitating for companies doing business on the Web, which cannot predict when and where they will be haled into remote jurisdictions based on tenuous connections. "[C]ourts, including the U.S. Courts of Appeals and state supreme courts, regularly interpret purposeful availment expansively to envelop a wide range of contacts," so that "would-be defendants — particularly those using the Internet — cannot rely on [purposeful availment] to protect them from excessive exercise of jurisdiction."[12]

Jurisdictional rules should be clear and predictable. The law of Internet personal jurisdiction has proven to be neither. As Judge Nancy Gertner observed:

> In the era of Facebook, where most websites now allow users to "share" an article, choose to "like" a particular page, add comments, and e-mail the site owners, the ... reasoning may now extend to moderately interactive sites as well. If virtually every website is now interactive in some measure, it cannot be that every website subjects itself to litigation in any forum - unless Congress

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[11] Yasmin R. Tavakoli & David R. Yohannan, *Personal Jurisdiction in Cyberspace: Where Does it Begin, And Where Does it End?* 23 INTELL. PROP. & TECH. L.J. 3 (Jan. 2011).

[12] Note, *No Bad Puns: A Different Approach to the Problem of Personal Jurisdiction and the Internet*, 116 HARV. L. REV. 1821, 1832 (2003).

dictates otherwise. Interactivity alone cannot be the linchpin for personal jurisdiction.[13]

This case presents an excellent vehicle to examine the personal jurisdiction question. The Minnesota Supreme Court acknowledged that "MoneyMutual's website and email-solicitation systems are automated and depend solely on unilateral activity by users." Pet. App. 19a n.12. But this Court has made clear that "it is the *defendant's* conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him." *Walden*, 134 S. Ct. at 1122 (emphasis added) (citing *Burger King*, 471 U.S. at 478)). Specific jurisdiction may not be based on the "'unilateral activity'" of persons other than the defendant. *Id.* at 1123 (quoting *Burger King*, 471 U.S. at 475). An interactive website whose operations depend on the user's input does not meet this test.

Further, the decision below threatens to create "universal" jurisdiction for websites that are widely available throughout the U.S. Such a sweeping result would chill e-commerce and run afoul of the fundamental limits on personal jurisdiction

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[13] *Sportschannel New England, LLP v. Fancaster, Inc.*, 2010 WL 3895177, *5 (D. Mass., Oct. 1, 2010); *see also* Jonathan Spencer Barnard, Note, *A Brave New Borderless World: Standardization Would End Decades of Inconsistency in Determining Proper Personal Jurisdiction in Cyberspace Cases*, 40 SEATTLE U. L. REV. 249, 266-67 (2016) ("[W]ith the advent of the Internet, confusion emanated from how to handle purposeful availment in cyberspace (i.e., interactive versus passive websites). It is necessary to define a contemporary set of actions that are sufficient to satisfy the 'purposeful availment' prong of the minimum contacts requirement for personal jurisdiction.").

established by this Court. *See J. McIntyre Machinery, Ltd.*, 564 U.S. at 889 (rejecting a "stream of commerce" theory that would have led to universal jurisdiction). Mere awareness that a nonresident's activities will inevitably touch a forum state should not be a sufficient basis for the exercise of specific personal jurisdiction. *See Asahi Metal Industry Co. v. Superior Court of Cal., Solano Cty.*, 480 U.S. 102, 105 (1987) (Japanese company's "mere awareness . . . that the components it manufactured, sold, and delivered outside the United States would reach the forum State in the stream of commerce" held insufficient to support personal jurisdiction).

This Court's review is necessary to establish greater uniformity and certainty in determining specific personal jurisdiction with respect to Internet contacts in the Information Age and allow businesses to reasonably predict where they can be haled into court.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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