NO. 05-1525

IN THE
Supreme Court of the United States

R.J. REYNOLDS TOBACCO COMPANY, PETITIONER

v.

NILO D. TUAZON

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

DEEPAK GUPTA
BRIAN WOLFMAN
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street, NW
Washington, DC 20009
(202) 588-1000

PETER K. STRIS
RADHA A. PATHAK
WHITTIER LAW SCHOOL
3333 Harbor Boulevard
Costa Mesa, CA 92626
(714) 444-4141

JEAN-CLAUDE ANDRÉ
Counsel of Record
IVEY, SMITH & RAMIREZ
2602 Cardiff Avenue
Los Angeles, CA 90034
(310) 558-0932

SHAUN P. MARTIN
UNIVERSITY OF SAN DIEGO SCHOOL OF LAW
5998 Alcalá Park
San Diego, CA 92110
(619) 260-2347

November 2006

QUESTION PRESENTED

Whether a court's exercise of general jurisdiction offends due process where the defendant's contacts with the forum state include a permanent physical office and workforce of 45 full-time employees; extensive political activity in the state, including organizing local opposition to proposed city and state regulation; funding of medical research; advertising in purely local publications; substantial in-state business, including $145-240 million in annual net sales and a nearly one-third market share; and a license to do business in the state for over 60 years.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

TREATISE

RESPONDENT'S BRIEF IN OPPOSITION

The fact-bound interlocutory ruling below—that the exercise of general jurisdiction over petitioner R.J. Reynolds in Washington State does not offend due process—was based on the combination of *all* of Reynolds' in-state activities, including its physical and political contacts, and not only its sales activities. "It is abundantly clear," the court of appeals explained, "that a corporation does not necessarily submit to general jurisdiction in every state in which it merely sells a product. But, jurisdiction here is not predicated on sales, or even the notion of substantial sales, alone. The minimum contacts are established by the confluence of Reynolds' physical, economic, and political presence and the company's myriad of other activities in the state." Pet. App. 16a-17a.

Reynolds' petition, however, is premised on a distinction between "sales-related activities," which Reynolds contends are never sufficient to support general jurisdiction, and activities that are "unrelated to sales." Pet. 12. The petition urges the Court to "announce[] a 'bright-line' jurisdictional rule" that a defendant's activities, no matter how extensive, will always be insufficient if they happen to relate to sales. *Id.* at 23. Reynolds never argued for such a categorical rule in the court below, and the question presented is therefore not properly preserved for review by this Court. Moreover, because the court of appeals' decision was expressly based in part on Reynolds' non-sales contacts with Washington, the question whether sales alone may support general jurisdiction is not even implicated by this case.

In an attempt to make the question presented fit the facts, Reynolds employs a nebulous term, "sales-related activities," that apparently encompasses everything from sporadic sales or purchases in the forum state to the wide-ranging combination of contacts at issue here: a permanent office and workforce of

45 full-time employees; substantial political activity at both the state and local level; the funding of medical research; advertising in purely local publications; hundreds of millions of dollars in annual revenue; a nearly one-third share of the local market; and a continuous license to do business in the state for over 60 years. Terminology aside, the bottom line is that Reynolds can point to no appellate decision, state or federal, that has either rejected general jurisdiction on the basis of contacts as substantial and continuous as these or embraced the bright-line rule that Reynolds advocates.

There is no conflict concerning the question presented. All that remains, therefore, is Reynolds' disappointment with the court of appeals' eminently sensible application of the settled law of personal jurisdiction to the particular facts demonstrating Reynolds' presence in Washington State. This Court should deny the petition.

STATEMENT

1. R.J. Reynolds' Contacts with Washington State. R.J. Reynolds manufactures and markets cigarettes worldwide. Reynolds is incorporated and has its principal place of business in North Carolina, and its cigarettes are manufactured at Reynolds' facilities in Tobaccoville, North Carolina, and Winston-Salem, North Carolina. Pet. App. 4a; CA9 Excerpts of Record (ER) 10.

Reynolds has had a continuous presence in Washington State for over half a century and has been licensed to do business there since 1940. Pet. App. 4a. Since at least 1949, Reynolds has advertised in local publications, including the *Seattle Times*, the *Spokane Spokesman Review*, and the *Tacoma News-Tribune*. *Id.* The district court found that Reynolds has

consistently identified Seattle, Washington, as a "key market" or "emphasis market." *Id.* at 33a. For example, in promoting its Camel brand in 1998, Reynolds identified Seattle as one of only four priority markets. *Id.* Since 1998, Reynolds' marketing activities in Washington have been subject to a consent agreement with Washington's Attorney General—part of a global settlement between the tobacco companies and the states—that prohibits practices such as the use of cartoon characters in cigarette packaging and paid endorsements in movies or live concerts. ER 73-74. Even after the global settlement, Reynolds participated in a court challenge in Washington involving state regulation of smoking, Pet. App. 16a (citing *Aviation West Corp. v. Dep't of Labor & Indus*., 980 P.2d 701 (Wash. 1999)), and Reynolds has both initiated and defended numerous actions in the Washington state and federal courts.[1]

Reynolds maintains a permanent physical presence in the state. Since at least 1998, the company has maintained an office in Redmond, Washington, and a workforce of as many as 45 full-time employees dedicated to promoting its business in the state. *Id.* at 33a. In addition, Reynolds uses warehouse facilities in Washington State to store and facilitate distribution of its products. ER 11.

---

[1] *See, e.g., Regence Blueshield v. Philip Morris Inc.*, 5 Fed. Appx. 651 (CA9 2001); *Ass'n of Washington Pub. Hosp. Districts v. Philip Morris Inc.*, 241 F.3d 696 (CA9 2001); *R.J. Reynolds Tobacco Co. v. McKenna*, 445 F. Supp. 2d 1252 (W.D. Wash. 2006); *Kimball ex rel. Kimball v. RJ Reynolds Tobacco Co.*, No. C03-664JLR, 2006 WL 1148506 (W.D. Wash. April 26, 2006); *Northwest Laborers-Employers Health & Sec. Trust Fund v. Philip Morris, Inc.*, 58 F. Supp. 2d 1211 (W.D. Wash. 1999).

Reynolds' activities in Washington State also go well beyond standard business activities. In the 1990s, Reynolds organized local opposition to city and state legislation that would have banned or limited smoking and cigarette advertising. Pet. App. 5a. For instance, in 1997, when the Seattle-King County Board of Health was considering proposals to restrict indoor and outdoor advertising of tobacco products, including self-service store displays, Reynolds distributed bulletins to Washington businesses describing the proposals as a "misguided attempt at reducing access to youth tobacco," and urged retailers and "smokers' rights groups" to "speak out" against them. Supp. ER 1:142-45. Since the 1970s, Reynolds has also funded medical research at the University of Washington about the health-related effects of smoking. *Id.* at 1:164.

In both absolute and relative terms, Reynolds' business in the State of Washington is substantial. Reynolds has a nearly one-third share of the Washington market, significantly better than its national market share of approximately 23%. Pet. App. 4a. From 1998 through 2002, Reynolds sold between 2.5 and 3 million cigarettes in Washington annually, achieving annual net sales of $145-240 million. *Id.* at 4a, 33a. Over that same time period, Reynolds paid approximately $7.96 million in taxes to the State of Washington, including "property use, cigarette excise, corporate income and franchise taxes." *Id.*; ER at 11.

2. Proceedings Below. Respondent Nilo Tuazon was diagnosed with chronic obstructive pulmonary disorder in 2003 after smoking Salem cigarettes, which are marketed worldwide by Reynolds, for more than forty years. Pet. App. 4a. After moving to Washington State from the Philippines, Mr. Tuazon sued Reynolds in the U.S. District Court for the District of

Washington, alleging that Reynolds participated in a global conspiracy to suppress information regarding the addictive and health-related effects of cigarettes. *Id.* at 5a. Jurisdiction over Reynolds was premised on the corporation's extensive contacts with the state.

Reynolds filed a motion to dismiss the suit based on lack of personal jurisdiction and forum non conveniens. The district court denied the motion. Reynolds sought and obtained permission to pursue an interlocutory appeal. The court of appeals, in a unanimous decision, affirmed on both grounds. Because the forum non conveniens issue is not presented in the petition, that issue is not further addressed here.

The court of appeals began by reiterating that "[t]he standard for general jurisdiction is high; contacts with a state must 'approximate physical presence.'" *Id.* at 7a (quoting *Bancroft & Masters, Inc. v. August Nat'l Inc*., 223 F.3d 1082, 1086 (CA9 2000)). The court of appeals also recognized that "[n]avigating the territory" of this Court's general jurisdiction jurisprudence "requires * * * balanc[ing] the facts of each case." *Id.* at 12a (citing *Kulko v. Superior Court of Cal.*, 436 U.S. 84, 92 (1978)). In concluding that Reynolds' contacts with Washington were sufficient to justify general jurisdiction under the state jurisdiction statute, which requires that a defendant "participate[] continuously and substantially in the state's markets," *id.* at 7a-8a, the court observed that "[c]lose cases exist, but this is not one of them," *id.* at 9a.

Turning to the due process "minimum contacts" analysis, the court offered a thorough survey of the case law and a discussion of the "breadth and depth of Reynolds' contacts with Washington." *Id.* at 15a. Because Reynolds did not advocate a categorical rule barring sales or sales-related activities from

the minimum contacts analysis, the court neither rejected nor adopted such a rule. Indeed, in dicta, the court speculated that "limited sales and licensing arrangements alone may be insufficient to establish jurisdiction" and observed that "a corporation does not necessarily submit to general jurisdiction in every state in which it merely sells a product." *Id.* at 16a. The court instead found general jurisdiction based on the combination of Reynolds' contacts with Washington, including its physical presence, its political activity, its long history in the state, its local advertising, and other activities. *Id.* at 10a-17a. It made clear that "jurisdiction here is not predicated on sales, or even the notion of substantial sales, alone. The minimum contacts are established by the confluence of Reynolds' physical, economic, and political presence and the company's myriad of other activities in the state." *Id.* at 16a-17a. The court also concluded that the exercise of jurisdiction was reasonable—a holding that Reynolds does not contest here—because, among other things, Reynolds had "not identif[ied] any specific hardship" to it of litigating in Washington. *Id.* at 18a.

Reynolds sought rehearing en banc. No judge on the court of appeals requested a vote on whether to hear the matter en banc, and the petition was denied. *Id.* at 1a.

REASONS FOR DENYING THE WRIT

I. The Question Presented Was Neither Raised Nor Decided Below.

Reynolds asks this Court to grant certiorari to decide whether "sales-related activities" in the forum state may ever constitute sufficient minimum contacts to support general jurisdiction. Reynolds urges the Court to "announce[] a

'bright-line' jurisdictional rule" that a corporation's activities, no matter how extensive, will always be insufficient if those activities happen to be related to sales. Pet. 23. But Reynolds did not raise this issue in the court of appeals and, accordingly, it is not properly before this Court. *See TRW Inc. v. Andrews*, 534 U.S. 19, 34 (2001) ("We do not reach this issue because it was not raised or briefed below."). The court of appeals, moreover, did not pass on the question and, in fact, even speculated in dicta that "sales and licensing arrangements alone may be insufficient to establish jurisdiction." Pet. App. 16a; *Youakim v. Miller*, 425 U.S. 231, 234 (1976) ("Ordinarily, this Court does not decide questions not raised or resolved in the lower court.").

Instead of advocating the novel bright-line rule that it now seeks, Reynolds simply argued in the court of appeals, based on existing law, that "its activities in Washington are not so substantial and of such a nature as to justify suit against it on unrelated causes of action." Pet. CA9 Opening Br. at 11. To be sure, Reynolds contended that general jurisdiction is not justified "merely because a defendant's products are routinely sold" in the forum or because of "sales personnel located in the forum state." *Id.* at 15-16. But nowhere did Reynolds ask the court of appeals to adopt a categorical rule placing any activity that might be regarded as "sales-related"—including even political activity—outside the purview of the minimum contacts analysis altogether. *See United States v. United Foods*, 533 U.S. 405, 417 (2001) (declining "to allow a petitioner to assert new substantive arguments attacking, rather than defending, the judgment when those arguments were not pressed in the court whose opinion we are reviewing, or at least passed upon by it." (citations omitted)). Far from advocating a categorical rule, Reynolds acknowledged in its reply brief to the court of appeals that "the Supreme Court has emphasized time and again that the

test for personal jurisdiction is not a mechanical one, but rather demands a case by case examination of whether the exercise of jurisdiction is reasonable." Pet. CA9 Reply Br. at 9. Tellingly, the term "sales-related activities"—a term that Reynolds now uses to lump together a sweeping range of corporate activity—never appeared in any of Reynolds' merits briefs in the court of appeals.

II. There Is No Conflict Over the Question Whether "Sales-Related Activities" May Support General Jurisdiction.

In an attempt to manufacture a conflict, the petition places a large range jurisdictional of contacts under the vague label of "sales-related activities" and contends that there is a "substantial and growing split in the federal circuits on the question whether such sales-related activities in the forum State are sufficient minimum contacts to support general jurisdiction." Pet. 18. There is no split.

The petition never defines "sales-related activities," but, as used by Reynolds, the term apparently encompasses everything from an individual musician's "sporadic concert performances" and "sales of records," *Madara v. Hall*, 916 F.2d 1510, 1516 n.7 (CA11 1990) (cited at Pet. 14), to Reynolds' permanent in-state office and workforce, extensive in-state political activity, and funding for medical research (Pet. App. 4a, 15a). In this manner, Reynolds improperly characterizes cases involving defendants with few jurisdictional contacts as falling on one side of a "split," when in reality, those cases simply represent one end of a continuum that flows from this Court's personal jurisdiction jurisprudence, which depends on the substantiality, frequency, and permanence of the defendant's contacts with the forum state. Thus, the only thing that accounts for the different

outcomes in these cases is their very different facts. No court of appeals has rejected general jurisdiction where the contacts are as substantial as they are here.

Moreover, none of the cases cited by the petition adopted the bright-line rule that Reynolds seeks in its petition. To the contrary, these cases all take the same basic approach as the decision below: They weigh the various contacts—including, for example, such sales-related contacts as whether the defendant has a physical salesroom or sales office, the level of advertising, a license to do business in the state, the number of employees and their sales-related duties, and the payment of sales taxes—and compare them to the contacts in prior cases.

The First and Fourth Circuit cases cited in the petition (at 12-13) were all suits against drug manufacturers in which those courts found general jurisdiction inappropriate based on the manufacturers' very minimal promotional activities in the forum states. In *Glater v. Eli Lilly & Co.,* 744 F.2d 213 (CA1 1984), the First Circuit rejected general jurisdiction because the defendant had no offices in New Hampshire, was not registered to do business in New Hampshire, had only "limited advertising" in professional trade journals that circulated in New Hampshire, and had only three nonexclusive sales representatives who lived in New Hampshire. *Id.* at 214-15. Moreover, the court noted that "[n]either the sales representatives nor Lilly directly sells products in New Hampshire; rather sales are made to wholesale distributors." *Id.* at 215. In *Seymour v. Parke Davis & Co.*, 423 F.2d 584 (CA1 1970), on which *Glater* relied, the First Circuit reached the same conclusion on nearly identical facts:

> The defendant * * * maintains no office or salesroom [in New Hampshire]. It has no

> bank account, is not registered to do business, has designated no agent to receive process, and has engaged in no litigation except the present. Its nearest regional office is in Massachusetts.

Id. at 584.

The Fourth Circuit cases are no different. In *Nichols v. GD Searle & Co.*, 991 F.2d 1195 (CA4 1993), the court found general jurisdiction in Maryland inappropriate because the defendant "ha[d] never maintained an office in Maryland" and its "only activity in the state in the years prior to these suits" was that it employed representatives to promote its products; sales orders, however, "were not placed through them but were made directly through the company." *Id.* at 1198. And in *Ratliff v. Cooper Labs*, 444 F.2d 745 (CA4 1971), the court rejected general jurisdiction in South Carolina over two drug companies, one of whose "activities in South Carolina [were] limited to solicitation by mail," while the other employed only five representatives whose primary duties in South Carolina were "the promotion of drugs, not the actual sale of them." *Id.* at 746. Rather than adopt a categorical rule excluding such contacts because they were sales-related, the court stressed that "[n]either [defendant] maintains an office in South Carolina, and neither warehouses goods there * * * * Nor does either maintain a bank account in the state or advertise in directories there (although advertisements do appear in national medical journals which subsequently find their way into the state)." *Id.* at 748 (relying on *Seymour*, "a case of remarkable similarity to the one before us.").

Notably, each of these First and Fourth Circuit cases emphasized the lack of contacts that are present here—an in-

state office or warehouse, a license to do business in the state, purely local advertising, direct sales by in-state representatives—activities that Reynolds seeks to place under the umbrella of "sales-related" contacts. These cases thus provide no support for Reynolds' categorical rule.

The "sales-related" contacts in the Fifth and Eleventh Circuit cases cited in the petition were even less significant. In one, the Fifth Circuit rejected general jurisdiction in Texas over Beech Aircraft because "Beech has never qualified to do business nor maintained an agent for service of process in Texas. Beech has no telephone listing in Texas; it has no warehouse or manufacturing facilities and has never had a bank account in Texas, nor has it insured any person in Texas; it owns no real estate in Texas; it has not paid taxes to the State of Texas; it has no employees or directors who are permanently assigned to work in Texas." *Bearry v. Beech Aircraft Corp.*, 818 F.2d 370, 372 (CA5 1987). In another, the Fifth Circuit emphasized the isolated nature of the defendant's sales activities rather than the fact that they were related to sales. *See Alpine View Co. v. Atlas Copco AB*, 205 F.3d 208, 218 (CA5 2000) (the evidence "show[ed], at best, that [the defendant] sold, on isolated occasions, products to entities located in Texas, that it was party to an agreement to provide Mexican mines with products that were shipped to Texas before being shipped to Mexico, that companies used [the defendant's] products for projects in Texas, and that [the defendant's] personnel made field service visits to Texas between December 1992 and December 1993."). In *Madara*, the Eleventh Circuit held that a New York musician's "sporadic concert performances" and "sales of records" in Florida were insufficient to support general jurisdiction over a libel action, 916 F.2d at 1516 n.7, and in *Associated Transp. Line, Inc. v. Productos Fitosanitarios Proficol El Carmen, SA*, 197 F.3d

1070, 1075 (CA11 1999), it held that a Colombian herbicide manufacturer's "nine sales to the United States during a four-year period" were not "constitutionally sufficient to support general jurisdiction."

Such isolated contacts pale in comparison to Reynolds' contacts with Washington and refute Reynolds' claim that those courts would have decided this case differently. More importantly, each of the cases supposedly supporting the claimed conflict all emphasized the absence of sales-related contacts that are present in this case and made clear that the *extent* of the defendants' sales activities was relevant to the jurisdictional analysis. Both points are inconsistent with Reynolds' categorical rule and demonstrate that no court has given the question whether certain contacts may or may not be characterized as "sales-related activities" dispositive significance in assessing whether a court has general jurisdiction.

Because there is no conflict over the question presented, the petition should be denied.

III. The Rule That Reynolds Advocates Is Unsupported By This Court's Cases and Would Be Unworkable In Practice.

1. Due process is satisfied when personal jurisdiction is asserted over a nonresident corporate defendant that has "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Intn'l Shoe v. Washington*, 326 U.S. 310, 316 (1945). When the particular controversy before the court does not arise out of the corporation's activities in the forum state, due process requires that the defendant's

"continuous corporate operations within a state [be] thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." *Id.* at 318.

The twin guideposts for determining whether general jurisdiction satisfies constitutional limits remain this Court's decisions in *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), and *Helicopteros Nacionales de Colombia v. Hall,* 466 U.S. 408 (1984). In *Perkins*, a Philippine corporation "ha[d] been carrying on in Ohio a continuous and systematic, but limited, part of its general business"—essentially running a kind of office-in-exile in Ohio—such that the exercise of general jurisdiction by an Ohio court was deemed "reasonable and just." 342 U.S. at 438. In *Helicopteros*, by contrast, the Court concluded that a Colombian corporation's contacts with Texas—purchases of helicopters combined with other isolated contacts—were insufficient to justify general jurisdiction where the corporation had never "been authorized to do business in Texas * * * sold any product that reached Texas * * * signed any contract in Texas * * * had any employee based there * * * [or] maintained an office or establishment there." 466 U.S. at 411.

As the decision below explained, in cases that fall between these guideposts, courts must consider whether the contacts discussed in *Helicopteros* and *Perkins* are present and, to determine whether the contacts are "substantial" or "continuous and systematic," must assess their longevity, continuity, volume, and economic impact, and the defendant's physical presence in the state. Pet. App. 12a. The lower courts adhere "to the principles set out as bookends by the Supreme Court" and "fill[] in the middle ground through a case-by-case review," based on comparison with other cases. *Id.* at 14a n.3; *see also*

Charles A. Wright & Arthur R. Miller, *Federal Practice & Procedure*: *Civil 3d* § 1067.4 (2002) (citing a "wealth of illustrative cases" on general jurisdiction and explaining that the circuits uniformly require that "the defendant must be engaged in longstanding business in the forum state, such as marketing or shipping products, or performing services or maintaining one or more offices there; activities that are less extensive than that will not qualify for general in personam jurisdiction.").

2. Although Reynolds purports to identify a split in authority in the application of these guideposts, the real thrust of Reynolds' petition is a thinly-veiled attack on this Court's time-honored general jurisdiction jurisprudence. The petition argues, for instance, that "[t]here are substantial reasons to foreclose litigation in fora that lack any connection to the subject matter of the lawsuit," Pet. at 20, and decries the consequences of a doctrine under which corporations that "engage in a systematic and ongoing array of advertising, marketing, and distribution activities" may be subject to suit in jurisdictions in which those activities occur, *id.* at 6; *see also id.* at 7 (criticizing decisions finding general jurisdiction as "contrary to the common practice in our courts, under which litigation is most commonly brought in the jurisdiction in which the harm occurs.").

But this Court's cases support neither the categorical rule that Reynolds seeks nor its broad-based attack on the doctrine of general jurisdiction. To the contrary, the Court has made clear that "[t]he victim of any * * * tort, may choose to bring suit in *any* forum with which the defendant has" the requisite minimum contacts. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 780-81 (1984) (emphasis added). Reynolds' attempt to identify support for its "sales-related" contacts exception in this

Court's modern personal jurisdiction jurisprudence is thus unavailing. *See* Pet. at 10 (citing *Keeton* and *Helicopteros*). In *Keeton*, the defendant's *only* contacts with the forum were monthly sales of 10,000 to 15,000 magazines. 465 U.S. at 779 & n.11. The Court speculated that these contacts "may not be so substantial as to support" general jurisdiction, but did not suggest a per se rule excluding sales or sales-related contacts. The most natural reading of this statement is that the contacts were simply insufficient as a matter of degree, not as a matter of kind. And in *Helicopteros*, the defendant had made *no* sales in the forum state, a fact that the Court emphasized in finding that general jurisdiction was unwarranted. 466 U.S. at 411. Because these decisions treated the quantum of sales as a factor in the general jurisdiction analysis, if anything, they undermine, rather than support, Reynolds' case for a per se exception for "sales-related" contacts. It should not be surprising, therefore, that no lower court has embraced such a rule.

More broadly, this Court has repeatedly emphasized that "talismanic jurisdiction formulas" and "clear-cut jurisdictional rules" are ill-suited to the minimum contacts analysis. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 485-86 & n.29 (1985). "The 'minimum contacts' test * * * is not susceptible to mechanical application; rather the facts of each case must be weighed to determine whether the requisite 'affiliating circumstances' are present * * * * [T]his determination is one in which few answers will be written 'in black and white. The greys are dominant and even among them the shades are innumerable.'" *Kulko v. Superior Court of Cal.*, 436 U.S. 84, 92 (1978) (internal quotations omitted). Reynolds' insistence on a bright-line rule with respect to "sales-related activities" cannot be reconciled with these statements.

3. Particularly because Reynolds failed to raise the question presented in the courts below and because no court has adopted its position, it is unclear precisely what rule Reynolds seeks and how that rule might apply to the facts of this case. At some points in its petition, Reynolds appears to advocate a sweeping rule that would exempt any activity other than manufacturing or corporate management from the general jurisdiction minimum contacts analysis. *See* Pet. 6, 12. Under such a rule, Reynolds would apparently be subject to general jurisdiction only in the courts of North Carolina. It is also unclear how such a rule would operate in suits against other types of defendants—such as large retailers—whose business consists almost entirely of sales. In such cases, general jurisdiction could apparently only be established in the states in which those businesses are headquartered. With respect to both manufacturing corporations and retailers, then, an expansive version of Reynolds' rule would all but scrap the doctrine of general jurisdiction.

At other points in the petition, however, Reynolds appears to ask this Court to grant review to decide a narrower question: "whether sales of a product are the sort of actions that afford jurisdiction over a foreign corporation for all purposes." *Id.* at 23. But if that is the question presented, then it is not presented in this case at all because the court of appeals' decision was expressly based on contacts other than sales alone, Reynolds' contacts extend well beyond sales, and the answer to the question would not affect the outcome of the case.

As this case illustrates, Reynolds' categorical rule, however formulated, would create uncertainties and obstacles in cases in which the alleged injury—such as the health effects of a particular product or exposure to a chemical—is one that may develop over time. A plaintiff like Mr. Tuazon, who is a

resident of Washington State but whose disease matured while he was elsewhere, would have no real choice but to file his suit in North Carolina or in the state where the injury arose. But for people who have used a dangerous product such as Reynolds' over a long period of time and have moved from one state to another, it may be unclear where the injury arose. In these circumstances, precluding a plaintiff from filing suit in a state in which the defendant has continuous and substantial sales-related contacts—and where the exercise of jurisdiction is thus both foreseeable and poses no hardship to the defendant—would create needless satellite litigation over where the injury arose. As the decision below observed, Reynolds "ignores the fact of our mobile society." Pet. App. 19a.[2]

---

[2] The petition, without saying so explicitly, suggests (at 2) that Mr. Tuazon may have moved to the United States to sue Reynolds. *See also* Pet. App. 19a (observing that Reynolds "impugns Tuazon's motives for moving to Washington, despite the long immigration process and the presence of his family in Washington."). Mr. Tuazon's residence, however, is irrelevant. Indeed, for due process purposes—which concerns the fairness of the forum for the *defendant*—this Court has already made clear that a plaintiff need not have any contact with the forum state, and Washington would thus have been a proper forum even had Mr. Tuazon continued to reside in the Philippines. *See Keeton,* 465 U.S. at 779-80 ("[W]e have not to date required a plaintiff to have 'minimum contacts' with the forum State before permitting that State to assert personal jurisdiction over a nonresident defendant. On the contrary, we have upheld the assertion of jurisdiction where such contacts were entirely lacking."). To be sure, the plaintiff's residence is "not completely irrelevant to the jurisdictional inquiry," but that is only because the plaintiff's residence may in some cases "*enhance* defendant's contacts with the forum." *Id.* at 780 (emphasis added). In any event, "Reynolds does not identify any specific hardship" it suffers from litigating in

(continued...)

Reynolds' rule would also inevitably lead to litigation and uncertainty about another issue: whether a particular defendant's activities are properly characterized "sales-related." This case offers a good illustration. The court below found general jurisdiction based not only on Reynolds' sales activities, but also on such factors as the company's extensive political and lobbying activity and its funding of medical research. Yet Reynolds apparently views all of these contacts as "sales-related activities."

Although litigation concerning jurisdictional questions can be wasteful and create uncertainty, as Reynolds acknowledges (at 24-25), those facts strongly counsel in favor of denying the petition. Reynolds advocates a thoroughly untested categorical rule, the contours of which are unclear and which, if adopted, would work a radical change in the American law of personal jurisdiction. A change of this magnitude would be guaranteed to disrupt the settled expectations of businesses, parties to contracts, and consumers. Before this Court entertains such a path-breaking proposal, the lower courts should be given an adequate and meaningful opportunity to test it. And because no court has adopted the bright-line rule that Reynolds seeks or considered contacts as substantial as Reynolds' contacts in this case, the lower courts have not been given that opportunity. This Court's intervention would, therefore, be unwarranted.

* * * * *

(...continued)
Washington, Pet. App. 18a, which is not surprising given its repeated appearance in Washington's state and federal courts, *see supra* note 1, and "has not seriously argued that litigating in Washington is more of a burden than being in the Philippines," Pet. App. 19a.

Even assuming some need to clarify aspects of the law of general jurisdiction, this case offers a particularly poor vehicle for doing so. Because Reynolds did not preserve its position below, because the question presented is not implicated by the facts of this case, and because the lower courts are not in conflict, review by this Court is unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

DEEPAK GUPTA
BRIAN WOLFMAN
PUBLIC CITIZEN
LITIGATION GROUP
1600 20th Street, NW
Washington, DC 20009
(202) 588-1000

PETER K. STRIS
RADHA A. PATHAK
WHITTIER LAW SCHOOL
3333 Harbor Boulevard
Costa Mesa, CA 92626
(714) 444-4141

JEAN-CLAUDE ANDRÉ
Counsel of Record
IVEY, SMITH & RAMIREZ
2602 Cardiff Avenue
Los Angeles, CA 90034
(310) 558-0932

SHAUN P. MARTIN
UNIVERSITY OF SAN DIEGO
SCHOOL OF LAW
5998 Alcalá Park
San Diego, CA 92110
(619) 260-2347

November 2006