Case No. 20-5947

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LAURA CANADAY, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Plaintiffs – Appellants,

v.

THE ANTHEM COMPANIES, INC.,

Defendant – Appellee.

On Appeal from the United States District Court
for the Western District of Tennessee (Case No. 1:19-cv-01084)
The Honorable S. Thomas Anderson

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TABLE OF CONTENTS

INTRODUCTION 1

ARGUMENT 7

I. *BRISTOL-MYERS* DID NOT ESTABLISH A CATEGORICAL RULE REQUIRING A CLAIM-BY-CLAIM ANALYSIS ACROSS ALL TYPES OF LITIGATION 7

II. RULE 4 DOES NOT IMPORT ANTHEM'S PROPOSED CATEGORICAL RULE INTO FEDERAL COURT 20

III. ANTHEM'S ARGUMENTS, IF ACCEPTED, WOULD SERIOUSLY DISRUPT DECADES OF SETTLED INTERPRETATION AND PRACTICE 25

CONCLUSION 26

CERTIFICATE OF COMPLIANCE ....

CERTIFICATE OF SERVICE..........

TABLE OF AUTHORITIES

CASES

Action Embroidery Corp. v. Atlantic Embroidery, Inc.,
368 F.3d 1174 (9th Cir. 2004). 8

Bostock v. Clayton Cty.,
140 S. Ct. 1731 (2020) 7

Bristol-Myers Squibb Co. v. Superior Court of Cal.,
137 S. Ct. 1773 (2017) .... *passim*

Burger King Corp. v. Rudzewicz,
471 U.S. 462 (1985) 11

Carrier Corp. v. Outokumpu Oyj,
673 F.3d 430 (6th Cir. 2012) 3, 20

Childress v. Emory,
21 U.S. (8 Wheat.) 642 (1823) 13

Coal Co. v. Blatchford,
78 U.S. (11 Wall.) 172 (1870) 13

Conn. Nat'l Bank v. Germain,
503 U.S. 249 (1992) 4

Devlin v. Scardelletti,
536 U.S. 1 (2002) 14

Garber v. Menendez,
888 F.3d 839 (6th Cir. 2018) 13, 25

Goodyear Dunlop Tires Operations, S.A. v. Brown,
564 U.S. 915 (2011) 11

Hager v. Omnicare, Inc.,
No. 5:19-cv-00484, 2020 WL 5806627 (S.D. W. Va. Sept. 29, 2020) 22

Hall v. Hall,
138 S. Ct. 1118 (2018) 10

Hansberry v. Lee,
311 U.S. 32 (1940) 14

Hoffmann-La Roche, Inc. v. Sperling,
493 U.S. 165 (1989) 12, 19

Howard v. Sulzer Orthopedics, Inc.,
382 F. App'x 436 (6th Cir. 2010) 16–18

Hunter v. S. Indem. Underwriters,
47 F. Supp. 242 (E.D. Ky. 1942) 22

In re "Agent Orange" Prod. Liab. Litig.,
818 F.2d 145 (2d Cir. 1987) 17

In re Bair Hugger Forced Air Warming Devices Prods. Liab. Litig.,
MDL No. 15-2666, 2019 WL 4394812 (D. Minn. July 31, 2019) ... 18

In re FMC Corp. Patent Litig.,
422 F. Supp. 1163 (J.P.M.L. 1976) 16–17

Int'l Shoe Co. v. Washington,
326 U.S. 310 (1945) 8, 26

J. McIntyre Machinery, Ltd. v. Nicastro,
564 U.S. 873 (2011) 8

Kloeckner v. Solis,
568 U.S. 41 (2012) 21

Knepper v. Rite Aid Corp.,
675 F.3d 249 (3d Cir. 2012) 14

Knowledge Based Sols., Inc. v. Dijk,
No. 16-cv-13041, 2017 WL 3913129 (E.D. Mich. Sept. 7, 2017) 8, 12

Mexican Cent. Ry. v. Eckman,
187 U.S. 429 (1903) 13

Milliken v. Meyer,
311 U.S. 457 (1940) 8

Molock v. Whole Foods Mkt. Grp., Inc.,
952 F.3d 293 (D.C. Cir. 2020) 18

Monroe v. FTS USA, LLC,
860 F.3d 389 (6th Cir. 2017) 15

Morgan v. U.S. Xpress, Inc.,
No. 3:17-CV-00085, 2018 WL 3580775 (W.D. Va. July 25, 2018) . 10

Mussat v. IQVIA, Inc.,
953 F.3d 441 (7th Cir. 2020) 13

Nat'l Prescription Opiate Litig.,
1:17-MD-2804 (N.D. Ohio) 17

N.Y. Tr. Co. v. Eisner,
256 U.S. 345 (1921) 25

Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co., Ltd.,
484 U.S. 97 (1987) 23

Pennoyer v. Neff,
95 U.S. 714 (1877) 13

Robinson v. Fed. Hous. Fin. Agency,
876 F.3d 220 (6th Cir. 2017) 21

Ruhrgas AG v. Marathon Oil Co.,
526 U.S. 574 (1999) 2, 10–11, 18

United States v. Botefuhr,
309 F.3d 1263 (10th Cir. 2002) 10

United Mine Workers v. Gibbs,
383 U.S. 715 (1966) 6, 26

Wal-Mart Stores, Inc. v. Dukes,
564 U.S. 338 (2011) 15

Walden v. Fiore,
571 U.S. 277 (2014) 11

Zachman v. Erwin,
186 F. Supp. 681 (S.D. Tex. 1959) 12

STATUTES AND RULES

28 U.S.C. § 1407... 16–18

29 U.S.C. § 216.. *passim*

29 U.S.C. § 217... 16

Fed. R. Civ. P. 4 .... *passim*

OTHER AUTHORITIES

2 J. Moore & J. Friedman, Moore's Federal Practice § 23.04 (1938) ....
.... 12–14

4A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1069.7 (3d ed. 2010) 9–10, 12

5B Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1351 (3d ed. 2010) 9

7 W. Rubenstein, Newberg on Class Actions § 23.36 (5th ed. 2011) 14–15, 22

INTRODUCTION

Anthem asks this Court to adopt a novel, unsupported personal-jurisdiction rule that would mark a revolutionary change to our legal system.

Anthem's submission bears all the hallmarks of a strong brief pressing a losing cause. It stacks one bad premise atop the next, each one extending and compounding the previous error. It casts aside statutory text and ignores doctrinal rules fatal to its position. It turns its back on history and precedent. And it proposes a series of unthinking, unyielding, and unbending rules that stand fundamentally at odds with the fairness and federalism interests that animate the personal-jurisdiction inquiry.

By its own terms, *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773 (2017), was not the watershed event that Anthem claims it was. Far from revolutionizing the rules governing judicial authority, the Supreme Court's decision was the result of a "straightforward application…of settled principles of personal jurisdiction." *Id.* at 1782. The Court explained that "a variety of interests," including federalism and the attendant limits on each state's sovereign authority, must be "consider[ed]" when "determining whether personal jurisdiction is present." *Id.* at 1780. "[A]t times," *Bristol-Myers* told us, "this federalism interest may be decisive." *Id.* *Bristol-Myers* was an example of just such a case.

But to hear Anthem tell it, none of the considerations that drove the Court's decision in *Bristol-Myers* matter. In Anthem's view, *Bristol-Myers* fashioned a new one-size-fits-all rule for personal jurisdiction applicable to *all courts*, *all claims*, and *all types of actions*. Under this rule, "[a]ll claimants must show the court has personal jurisdiction over the defendant as to [each of] their claims." Anthem Br. at 13. "This rule," Anthem maintains, "has no exceptions." *Id.* Statements like this should always raise a judicial eyebrow. Occam's razor suggests a simpler explanation: no such categorical rule exists.

The fallacy of Anthem's argument can be reduced to a single observation: just because something is true *some* of the time does not mean it must be true *all* of the time.

At the most basic level, personal jurisdiction concerns the court's "authority over...*parties*"—not *claims*. *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 577 (1999) (emphasis added). To be sure, there are instances where a court has jurisdiction over a party to decide Dispute A but not Dispute B. *Bristol-Myers* was one such case. But once a court asserts jurisdiction over a party via service of process, it may validly assert jurisdiction over the entire constitutional case—that is, the claims arising out of the core nucleus of operative fact—so long as doing so does not force the defendant to "submit[] to the coercive power of a [sovereign] that…ha[s] little legitimate interest in the claims in question." *Bristol-*

Myers, 137 S. Ct. at 1780. Federal courts may also do so when Congress has adopted a mechanism for representative or group litigation. These factors cut decisively against exercising personal jurisdiction in *Bristol-Myers*. They pose no barrier here.

Anthem's problems only get worse from there. Anthem concedes, as it must, that the Fifth Amendment Due Process Clause, applicable in federal court, requires only that the relevant claims relate to the United States as a whole. *Carrier Corp. v. Outokumpu Oyj*, 673 F.3d 430, 449 (6th Cir. 2012). And there is no doubt that the Fifth Amendment is satisfied here. To win this case, then, Anthem needs to ground its proposed rule in a limitation explicitly approved by Congress. Its attempts to do so come up short.

Anthem first looks to Rule 4 to do the job. But Rule 4 does not support Anthem's position. Rule 4(k)(1) establishes the rules for serving process. The text of the rule does not require every possible beneficiary in every type of litigation to serve additional process or continually demonstrate that the original process covers his claims. Anthem half admits this, conceding that "FLSA opt-in plaintiffs need not complete Rule 4 service." Anthem Br. at 39. But Anthem insists that "Rule 4(k) still limits when the named plaintiffs' service is effective to establish personal jurisdiction over a defendant as to opt-in plaintiffs' claims." *Id.*

The text of Rule 4 does not say this. Worse, Anthem's atextual reading of Rule 4 is based entirely on the flawed premise that all claimants in all types of actions must separately establish specific personal jurisdiction under state law unless Congress has authorized nationwide service of process. But that's not self-evidently true either. Anthem's proposed tautology doesn't make it so. On top of these errors, Anthem reads—misreads—Rule 4 as a sort of super-rule that, through its unwritten penumbras and emanations, runs roughshod over every explicit contrary congressional command, including the FLSA's collective-action mechanism, Rule 23, and the multi-district litigation ("MDL") statute, among many others. Anthem argues, in essence, that Congress created all these tools to facilitate representative and group litigation, but, through Rule 4, made them close to impossible to use.

There's a better way here. Rule 4 "says…what it means and means…what it says." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992). Any party responsible for "[s]erving a summons" "establishes personal jurisdiction over a defendant…who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located." Fed. R. Civ. P. 4(k)(1)(A). That's it. From there, if Congress wishes to authorize group or representative litigation, it may do so, using whatever mechanism it chooses within the confines of the Fifth

Amendment. Congress need not beat a dead horse, pronouncing that Rule 4, already fully satisfied, doesn't have to be satisfied again and again.

These same points show why Anthem's discussion of nationwide service of process misses the mark, too. On Anthem's view, the *only way* that Congress can save group litigation in federal court from splintering into a 50-state ground war is by authorizing nationwide service of process. Anthem Br. at 36. But this argument builds on the same failed premises. It presupposes—wrongly—that represented parties must separately establish personal jurisdiction on a claim-by-claim basis in all types of group litigation. And it assumes—incorrectly—that Rule 4 categorically imports this requirement into federal court. Neither premise withstands scrutiny. Congress authorizes nationwide service of process when it wants to expand the territorial reach of a summons. When Congress wants to authorize group litigation, it enacts legislation (or approves rules) contemplating group litigation. It need not do the former to effectively accomplish the latter.

In any event, Anthem's arguments about *Bristol-Myers* and Rule 4 wouldn't carry the day even if they were correct. *Even if* each opt-in plaintiff had to separately establish personal jurisdiction under state law, they could do so. Where, as here, an employer implements a single, nationwide employment policy that violates federal law, the claims of any

would-be opt-in plaintiffs relate to the same conduct giving rise to the named plaintiff's claims in the state where she happened to work.

It is difficult to overstate just how massive a change Anthem is proposing. For hundreds of years, federal courts have endeavored to "entertain[] the broadest possible scope of action consistent with fairness to the parties." *United Mine Workers v. Gibbs*, 383 U.S. 715, 724 (1966). Anthem's proposed rule would turn this principle on its head. Without any appreciable unfairness to defendants, it would bar most nationwide, multi-defendant Rule 23 class actions and FLSA collective actions. And perhaps even more significantly, MDL litigation—which accounts for more than fifty percent of the federal civil caseload[1]—would also be imperiled.

The massive upheaval Anthem seeks to impose would perhaps be more palatable if Anthem invoked a new federal statute or constitutional provision. But it does not. All the legal sources Anthem claims to interpret have been around for 70 years or longer. Pressed to explain why not a single defendant appeared to advance these claims through all these decades, Anthem offers only a glib response: "[T]hey did not think of it." Anthem Br. at 37. The better answer: the law doesn't support it.

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[1] https://www.jpml.uscourts.gov/sites/jpml/files/JPML_Statistical_Analysis_of_Multidistrict_Litigation-FY-2018.pdf; https://www.jpml.uscourts.gov/sites/jpml/files/JPML_Calendar_Year_Statistics-2018.pdf; https://www.jpml.uscourts.gov/statistics-info.

Fortunately for courts and parties alike, neither *Bristol-Myers* nor Rule 4 mandates such sweeping changes to our judicial system. Like Congress, the Supreme Court does not hide elephants in mouseholes. *See Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1753 (2020). And the Court did not do so in *Bristol-Myers*, where it made clear that it was applying "settled principles of personal jurisdiction" to state-court authority. 137 S. Ct. at 1782–84.

At day's end, neither *Bristol-Myers* nor Rule 4—nor any other legal source—constrains a court's power to exercise jurisdiction in the drastic way that Anthem proposes. To the contrary, historical practice and precedent, the FLSA and the Rules of Civil Procedure, and the Constitution and common sense, all lead to the opposite conclusion: the district court can exercise personal jurisdiction over defendants like Anthem in cases like this one in their entirety.

ARGUMENT

I. *BRISTOL-MYERS* DID NOT ESTABLISH A CATEGORICAL RULE REQUIRING A CLAIM-BY-CLAIM ANALYSIS ACROSS ALL TYPES OF LITIGATION.

The linchpin of Anthem's argument is its claim that "[e]very person who asks a federal court to adjudicate a claim must show that personal jurisdiction exists as to their claims." Anthem Br. at 13. By this, Anthem means that *each separate claimant*, however defined, must separately demonstrate, *for each individual claim*, that: (1) each defendant has

minimum contacts with the forum, *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945); (2) absent general jurisdiction, each claim "aris[es] out of or [is] related to the defendant's contacts with the forum," *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 881 (2011); and (3) adjudicating the claim in the chosen forum will "not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe*, 326 U.S. at 316 (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

Anthem's claim is far too categorical. The doctrine of pendent personal jurisdiction holds that a court can maintain "jurisdiction over a defendant with respect to a claim for which there is no independent basis of personal jurisdiction so long as it arises out of a common nucleus of operative fact with a claim in the same suit over which the court does have personal jurisdiction." *Action Embroidery Corp. v. Atlantic Embroidery, Inc.*, 368 F.3d 1174, 1180 (9th Cir. 2004). But even if the claims arise out of a common nucleus of operative fact, courts may not exercise pendent personal jurisdiction when doing so would unreasonably burden the defendant or raise serious federalism concerns. S*ee Knowledge Based Sols., Inc. v. Dijk*, No. 16-cv-13041, 2017 WL 3913129, at *9–11 (E.D. Mich. Sept. 7, 2017).

Anthem's citation to Wright & Miller's treatise exemplifies Anthem's tendency to distort the law. According to Anthem, "as the leading treatise on federal procedure put[s] it, 'specific personal

jurisdiction must independently exist for each claim and the existence of personal jurisdiction for one claim will not provide the basis for another claim." Anthem Br. at 11 (quoting 5B Wright & Miller, Federal Practice & Procedure Civil 3d ("Wright & Miller") § 1351, at 299 n.30 (2004)). But this is half the story, at best.

Wright & Miller's treatise goes on to endorse the doctrine of pendent personal jurisdiction, which applies "when a defendant is subject to personal jurisdiction for one or more claims asserted against it, but not as to another claim or claims." 4A Wright & Miller § 1069.7. Far from embracing Anthem's formalistic approach, Wright & Miller says that in such circumstances "fairness to the individual nonresident defendant usually is balanced against considerations of judicial efficiency, the federal policy against piecemeal litigation, and the plaintiff's convenience and need for a forum." *Id.* Where both claims "arise from the same common nucleus of operative fact…they involve the same constitutional case." *Id.* In such cases, "a defendant who already is before the court" is "unlikely to be severely inconvenienced" by being required to litigate the second claim "whose issues are nearly identical or substantially overlap" with the first claim. *Id.* "Notions of fairness to the defendant simply are not offended in this circumstance." *Id.* Wright & Miller explains that where, by contrast, the second claim *does not* arise from the same nucleus

of operative fact, exercising personal jurisdiction over the defendant as to both claims "might be thought to offend principles of federalism." *Id.*

The foregoing explains why courts describe the personal-jurisdiction analysis as occurring "at the level of the suit." *Morgan v. U.S. Xpress, Inc.*, No. 3:17-CV-00085, 2018 WL 3580775, at *5 (W.D. Va. July 25, 2018). It does not mean that one valid claim necessarily opens the floodgates to all others. Many legal proceedings actually encompass multiple constitutional cases. *See, e.g.*, Fed. R. Civ. P. 18(a) ("A party asserting a claim…may join, as independent or alternative claims, as many claims as it has against an opposing party."); *Hall v. Hall*, 138 S. Ct. 1118, 1128 (2018) (cases consolidated under Rule 42 remain distinct). *Bristol-Myers*, a single proceeding amalgamating hundreds of tort cases, was a prime example. But where, as here, multiple claims arise from the same constitutional case—or suit—"[n]otions of fairness to the defendant simply are not offended." 4A Wright & Miller § 1069.7.

Anthem doesn't contend with any of this. It does not argue that pendent personal jurisdiction is wrong or that it conflicts with *Bristol-Myers* (or any other Supreme Court precedent). Nor could it. The doctrine has been accepted by "every circuit court of appeals to address the question." *United States v. Botefuhr*, 309 F.3d 1263, 1273 (10th Cir. 2002). At its foundations, personal jurisdiction still concerns a court's "authority over...*parties*"—not *claims*. *Ruhrgas AG*, 526 U.S. at 577

(emphasis added). And even in the context of specific jurisdiction, the Supreme Court has repeatedly framed the question as whether the defendant's forum activities relate to "the underlying controversy," *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 918 (2011), the "case," *Walden v. Fiore*, 571 U.S. 277, 284 n.6 (2014), or "the litigation," *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985). *Bristol-Myers* reinforces the commonsense conclusion that the concept of a constitutional case can only be stretched so far. It does not endorse shattering single constitutional cases into fifty pieces.

Anthem's proposed rule conflicts with *Bristol-Myers* in a more fundamental way: it eliminates the consideration of federalism principles altogether. Anthem's proposed methodology is 100 percent mechanical: take out a piece of paper, list every claim against every defendant, and separately determine whether each claim arises out of or relates to each defendant's forum contacts. But this mode of analysis leaves no room to "consider a variety of interests" "[i]n determining whether personal jurisdiction is present," including the "federalism interest[s]" that may be "decisive." *Bristol-Myers*, 137 S. Ct. at 1780. Anthem's interpretation, in other words, expunges consideration of the federalism interest that *Bristol-Myers* identified as a key ingredient in the analysis. The pendent personal jurisdiction rule, by contrast, explicitly accounts for federalism

interests, consistent with *Bristol-Myers*. 4A Wright & Miller § 1069.7; *Knowledge Based Sols.*, 2017 WL 3913129, at *9–11.

Anthem's proposed rule is too categorical in a second relevant way: it does not apply when Congress has authorized representative litigation, as it has done here.

Anthem maintains that when Congress authorizes representative litigation, each represented party must separately demonstrate that his claim arises out of or relates to the defendant's forum-state contacts. Anthem Br. at 23–24. Both history and precedent show that the opposite is true. As explained in Canaday's principal brief, Congress adopted the opt-in representative action (or spurious class action) for the express purpose of overcoming such jurisdictional hurdles. "The ability of other persons similarly situated to intervene without regard to jurisdictional limitations applicable to the original parties is the raison d'etre of the spurious class suit." *Zachman v. Erwin*, 186 F. Supp. 681, 689 (S.D. Tex. 1959); 2 J. Moore & J. Friedman, Moore's Federal Practice ("Moore's Federal Practice") § 23.04, pp. 2241–42 (1938). And as cases like this one make clear, streamlining the jurisdictional analysis was crucial to Congress' goal of providing for "efficient resolution in one proceeding." *Hoffmann-La Roche, Inc. v. Sperling*, 493 U.S. 165, 170 (1989).

The same rule obtains in other types of representative suits. In cases involving administrators, trustees, and guardians, for example,

courts engage in the jurisdictional analysis by reference to the fiduciaries rather than the beneficiaries. *E.g.*, *Childress v. Emory*, 21 U.S. (8 Wheat.) 642, 668–69 (1823) (administrators); *Coal Co. v. Blatchford*, 78 U.S. (11 Wall.) 172, 172 (1870) (trustees); *Mexican Cent. Ry. v. Eckman*, 187 U.S. 429, 429 (1903) (general guardians). Anthem's proposed rule contravenes these authorities as well.

Anthem complains that many of the historical cases address subject-matter jurisdiction—not personal jurisdiction. Anthem Br. at 24. There are several responses to this. First, there is "no reason why personal jurisdiction should be treated any differently from subject-matter jurisdiction." *Mussat v. IQVIA, Inc.*, 953 F.3d 441, 447 (7th Cir. 2020). In representative litigation, only "the named representatives must be able to demonstrate either general or specific personal jurisdiction." *Id.* Second, most historical cases do not examine personal jurisdiction on a claim-by-claim basis because the physical presence of a defendant in the forum was considered sufficient to support jurisdiction. *See Garber v. Menendez*, 888 F.3d 839, 841 (6th Cir. 2018) (citing *Pennoyer v. Neff*, 95 U.S. 714, 733 (1877)). And third, the historical materials in no way limit themselves to subject-matter jurisdiction. Opt-in class actions were created because "effective joinder of certain interested persons was impossible because *they were not subject to the jurisdiction of the court*." Moore's Federal Practice § 23.02, pp. 2224–25 (emphasis added);

Hansberry v. Lee, 311 U.S. 32, 41 (1940) (in a class action, each class member need not be "within the jurisdiction" of the court).

Anthem and its amici attack the premise that FLSA collective actions are representative actions, but the relevant text and history roundly foreclose that argument. As to the text, the FLSA plainly authorizes representative suits, by a named plaintiff on "behalf of himself…and other employees similarly situated." *See* 29 U.S.C. § 216(b). Anthem points out that even opt-in plaintiffs are labeled "parties." *Id.* But the party label does not change the representative nature of collective actions. The spurious class suit was always considered a "permissive joinder device"—that is, a mechanism to add additional parties. Moore's Federal Practice § 23.04, pp. 2241. But unlike traditional joinder, only the claims of the representative plaintiff were counted for jurisdictional purposes. *Id.* at 2241–42. In any event, "[t]he label 'party' does not indicate an absolute characteristic, but rather a conclusion about the applicability of various procedural rules that may differ based on context." *See Devlin v. Scardelletti*, 536 U.S. 1, 9–10.

And as to the history, the record is similarly clear. Congress enacted the FLSA's opt-in provision to codify "existing rules governing" "spurious class actions"—opt-in representative actions recognized by the contemporaneous version of Rule 23. *Knepper v. Rite Aid Corp.*, 675 F.3d 249, 257 (3d Cir. 2012); 7 W. Rubenstein, Newberg on Class Actions

("Newberg") § 23.36 (5th ed. 2011). By the time Congress enacted the FLSA in 1938 and amended it in 1947, the rules regarding spurious class actions were firmly rooted in equity practice and under the Federal Rules. Congress acted in view of these background principles. Anthem's ahistorical argument—that Congress failed to do all it needed to do to make the FLSA's collective-action mechanism effective—would have baffled the legislators who framed the FLSA. The jurisdictional status of opt-in plaintiffs was already well settled.

Anthem also ignores the practical reasons for relaxing the jurisdictional rules in representative litigation. In class actions, the claims of all similarly situated individuals can typically be unified into a cohesive factual and legal whole. Class proceedings "generate common answers apt to drive the resolution of the litigation." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). The same is true in FLSA collective actions, where "the use of representative testimony to establish class-wide liability has long been accepted." *Monroe v. FTS USA, LLC*, 860 F.3d 389, 408 (6th Cir. 2017). This case is a perfect example. Canaday claims that Anthem made a single decision to classify employees in her position as overtime exempt and then implemented that policy nationally. In situations like this one—that is, in cases that are most suitable for class treatment—the relationship between the employer's conduct and any given forum is immaterial. The location where the

employees worked is not relevant to their claims. It makes sense, then, that Congress would use a device that does not get bogged down in such artificial considerations.

Anthem's position creates another serious problem in the administration of the FLSA. Private parties like Canaday are not the only ones authorized to bring representative actions to recover unpaid minimum wages and overtime. The Department of Labor may also sue an employer directly on behalf of the aggrieved employees. *See* 29 U.S.C. § 217. And when it does so, the right of any employee to bring or join a representative action terminates. *Id.* § 216(b). Yet no one—Anthem included—suggests that the Department of Labor may only recover lost wages on behalf of employees who worked in the forum state (or that only in-state employees are restrained from filing their own actions). Congress did not intend for representative actions brought by private employees to be treated any differently.

Finally, Anthem's proposed rule is too categorical in a third relevant way: it conflicts with the settled understanding of the jurisdictional rules for MDL cases.

As Canaday explained in her principal brief, "[t]ransfers under Section 1407 are…not encumbered by considerations of in personam jurisdiction." *See Howard v. Sulzer Orthopedics, Inc.*, 382 F. App'x 436, 442 (6th Cir. 2010) (quoting *In re FMC Corp. Patent Litig.*, 422 F. Supp.

1163, 1165 (J.P.M.L. 1976)). Although the MDL statute does not authorize nationwide service of process, 28 U.S.C. § 1407, courts nevertheless read it to "authoriz[e] the federal courts to exercise nationwide personal jurisdiction." *Howard*, 382 F. App'x at 442 (quoting *In re "Agent Orange" Prod. Liab. Litig.*, 818 F.2d 145, 163 (2d Cir. 1987)).

This settled understanding is essential to MDL litigation—which accounts for more than fifty percent of the federal civil caseload.[2] Take, for example, the National Prescription Opiate Litigation currently pending in the Northern District of Ohio. *See Nat'l Prescription Opiate Litig.*, 1:17-MD-2804 (N.D. Ohio). That litigation involves thousands of unique state- and federal-law claims asserted against dozens of defendants who manufactured, marketed, prescribed, and distributed opioid pain medication. Only a tiny fraction of the total claims arose in Ohio, invoke a federal law contemplating nationwide process, or concern a defendant at home in Ohio.

Under Anthem's proposed rule, then, the opiate litigation—along with most MDL litigation—would be unlawful. Remember: Anthem's rule is categorical. Each claim must arise from or relate to the defendant's

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[2] https://www.jpml.uscourts.gov/sites/jpml/files/JPML_Statistical_Analysis_of_Multidistrict_Litigation-FY-2018.pdf; https://www.jpml.uscourts.gov/sites/jpml/files/JPML_Calendar_Year_Statistics-2018.pdf; https://www.jpml.uscourts.gov/statistics-info.

forum activities. This is always true unless Congress has explicitly authorized nationwide service of process for a claim. This rule has "no exceptions." Anthem Br. at 13.[3]

MDL proceedings, however, are not illegal. This Court (among others) has sensibly interpreted 28 U.S.C. § 1407 to reflect Congress' wish to consolidate litigation to the full extent of its authority under the Fifth Amendment. *Howard*, 382 F. App'x at 442.

Anthem has offered no persuasive reason that the FLSA's collective-action statute should be interpreted any differently. Congress

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[3] Judge Silberman, who would require Rule 23 class members to individually establish personal jurisdiction, stated that his "views do not call into question the use of multidistrict litigation, since cases subject to that process are eventually returned to their original courts for trial purposes." *Molock v. Whole Foods Mkt. Grp., Inc.*, 952 F.3d 293, 309 (D.C. Cir. 2020) (Silberman, J., dissenting). Putting to the side the problems with Judge Silberman's conclusion about Rule 23, his analysis of MDL litigation is not persuasive. Transferee courts are empowered to adjudicate claims on the merits before trial, including through 12(b)(6) motions and summary-judgment proceedings. *See, e.g.*, *In re Bair Hugger Forced Air Warming Devices Prods. Liab. Litig.*, MDL No. 15-2666, 2019 WL 4394812 (D. Minn. July 31, 2019) (transferee court entering summary judgment in favor of defendants in over 5,000 cases). Transferee courts do so in almost every case; only about three percent of transferred cases are returned to the transferor court for trial. https://www.jpml.uscourts.gov/sites/jpml/files/JPML_Statistical_Analysis_of_Multidistrict_Litigation-FY-2018.pdf. Personal jurisdiction encompasses more than a court's power to try cases. It embraces the totality of the court's "authority over the parties." *Ruhrgas AG*, 526 U.S. at 577. Transferee courts therefore must have personal jurisdiction to bind parties through their pretrial rulings.

granted the right to similarly situated employees—no matter their location—to opt into a collective action. *See* 29 U.S.C. § 216(b). Just as it did with the MDL statute, Congress sought to provide a mechanism for "efficient resolution in one proceeding." *Hoffmann-La Roche*, 493 U.S. at 170. And in both cases, Congress' legislation was not a secret suicide pact. It was enacted to authorize group litigation, as written, to the full extent of Congress' constitutional authority.

In sum, what Anthem tries to pass off as a one-size-fits-all personal-jurisdiction rule is no such thing. While courts must have personal jurisdiction over defendants, the manner in which that jurisdiction can be asserted is both functional and contextual. It depends on the nature of the claims, the federalism interests at stake, and the wishes of Congress. In cases like this one, the FLSA's collective-action mechanism sets forth the sum total of the procedures opt-in plaintiffs must satisfy before a court can decide their claims against a defendant who is already before the court.[4]

[4] For the reasons stated in Canaday's principal brief, even if the opt-in plaintiffs' claims must relate to Anthem's conduct in Tennessee, they can make that showing. Canaday Br. at 54–56.

II. RULE 4 DOES NOT IMPORT ANTHEM'S PROPOSED CATEGORICAL RULE INTO FEDERAL COURT.

It is not enough for Anthem to articulate its categorical personal-jurisdiction rule. It also needs a mechanism to bring that rule into federal court. Anthem's argument fails there, too.

Anthem agrees that the Fifth Amendment, which applies in federal court, requires only that the relevant claims relate to the United States as a whole. *Carrier Corp.*, 673 F.3d at 449. Anthem insists, though, that Rule 4 imports its claimed requirement that all types of claimants, across all types of cases, must demonstrate that each claim arises out of or relates to each defendant's forum-state activities.

Rule 4 does not do this. Instead, Rule 4 establishes the procedures for serving process. The rule does not require every possible beneficiary in every type of litigation to serve additional process or continually demonstrate that the original process covers his claims. Anthem concedes this in part, agreeing that "FLSA opt-in plaintiffs need not complete Rule 4 service." Anthem Br. at 39. But Anthem insists that "Rule 4(k) still limits when the named plaintiffs' service is effective to establish personal jurisdiction over a defendant as to opt-in plaintiffs' claims." *Id.*

The text of Rule 4 does not say this. Rather, the rule requires that "[a] summons must be served with a copy of the complaint." Fed. R. Civ. P. 4(c)(1). "Serving a summons" in turn, "establishes personal jurisdiction over a defendant who is subject to the jurisdiction of a court of general

jurisdiction in the state where the district court is located." *Id.* 4(k)(1)(A). Canaday completed both these steps.

Anthem never really tries to mount a textual argument. Instead, it insists that its gloss on Rule 4 must be true because of the "precept that courts must have personal jurisdiction over a defendant as to [each] claim." Anthem Br. at 39. But as discussed in the prior section, there is no such categorical precept. Courts must have personal jurisdiction over *parties*; the analysis of specific *claims* is highly context specific. Anthem cannot bootstrap its non-existent categorical rule into existence on the back of Rule 4.

In a similar vein, Anthem seeks refuge in "Rule 4(k)'s purpose." Anthem Br. at 38. But Anthem forgets that "even the most formidable argument concerning the statute's purposes [cannot] overcome the clarity [of] the statute's text." *Robinson v. Fed. Hous. Fin. Agency*, 876 F.3d 220, 235 (6th Cir. 2017) (quoting *Kloeckner v. Solis*, 568 U.S. 41, 55, n.4 (2012)). And Anthem's argument here is far from formidable. Anthem claims that "Rule 4(k)…limits when the named plaintiffs' service is effective to establish personal jurisdiction over a defendant as to opt-in plaintiffs' claims." Anthem Br. at 39. Nothing in the text of Rule 4 says this. And in terms of Rule 4's purpose, that omission was no accident. The drafting history of the FLSA and Portal Act reveals that the purpose behind the FLSA's collective-action mechanism was to allow similarly

situated employees to "to participate by intervention without independent grounds of jurisdiction." *Hunter v. S. Indem. Underwriters*, 47 F. Supp. 242, 243–44 (E.D. Ky. 1942); 7 Newberg § 23.36. It's logical, then, that Rule 4 would be written to allow just that.

Anthem even looks to Rule 4 to diminish the role of federalism in the personal-jurisdiction analysis. It writes that "federalism concerns" are "moot" in cases like this one because "Rule 4(k)(1)(A) imposes the same 'territorial limitations on the power' of states on federal district courts hearing FLSA claims." Anthem Br. at 43 (quoting *Bristol-Myers*, 137 S. Ct. at 1780). This is wrong. Rather than focusing on the "consequence of territorial limitations on the power of the respective States," *Bristol-Myers*, 137 S. Ct. at 1780, Anthem claims that in cases like this one, federal courts must, through Rule 4, *presume* the existence of nonexistent federalism concerns in order to make all cases come out the same way *Bristol-Myers* did. This is not a plausible interpretation of Rule 4 or a faithful reading of *Bristol-Myers*. Assuming the Fourteenth Amendment applies, any court, state or federal, must evaluate the federalism concerns in the case before them. And in cases like this one, the federalism concerns that proved decisive in *Bristol-Myers* are "wholly inapplicable." *Hager v. Omnicare, Inc.*, No. 5:19-cv-00484, 2020 WL 5806627, at *6 (S.D. W. Va. Sept. 29, 2020).

Anthem cites *Omni Capital International, Ltd. v. Rudolf Wolff & Co., Ltd.*, 484 U.S. 97, 104 (1987), for the point that "a procedural mechanism for [the] assertion [of personal jurisdiction] must also exist" for each discrete claim. Anthem Br. at 39. This argument, too, relies on the same old mistaken premise. *Omni* held that federal courts may not exercise personal jurisdiction over a defendant who is not affirmatively subject to service of process under the Rules—a very straightforward holding. *Omni*, 484 U.S. at 104. But Anthem concededly *is* subject to service of process under the Rules. Canaday served her complaint on Anthem under Rule 4. Anthem essentially asks this Court to extend *Onmi* beyond its moorings to hold that Rule 4 must establish a separate procedural mechanism for service with respect to each *claim*. But as discussed in the prior section, personal jurisdiction does not work so categorically. Neither does Rule 4.

To the extent that Anthem is complaining that courts in FLSA collective actions must have "a procedural mechanism" to assert jurisdiction over a defendant with respect to opt-ins' claims, Congress has provided one: it's the opt-in provision in § 216(b). Anthem doggedly avoids the most logical and harmonious reading of the various legal sources here. Under the FLSA, the named plaintiff serves process and establishes the court's personal jurisdiction over the defendant. Any similarly

situated employees may join without separately serving process or establishing the prerequisites of personal jurisdiction.

This interpretive error illuminates another: Anthem reads Rule 4 as a sort of super-rule that, through its unwritten strictures, runs roughshod over every explicit contrary congressional command, including the FLSA's collective-action mechanism, Rule 23, and the MDL statute, among others. Anthem argues, in essence, that Congress created all these tools to facilitate representative and group litigation, but, through Rule 4, made them close to impossible to use.

Canaday advances a far more harmonious reading of Rule 4. Any party responsible for "[s]erving a summons" "establishes personal jurisdiction over a defendant…who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located." Fed. R. Civ. P. 4(k)(1)(A). Nothing more is required. From there, if Congress wishes to authorize group or representative litigation, it may do so, using whatever mechanism it chooses—within the confines of the Fifth Amendment. Congress need not use any magic words or talismanic phrases to accomplish that goal.

One final point bears mentioning. In Anthem's view, the *only way* that Congress can save group litigation in federal court from its categorical claim-by-claim jurisdictional rule is by authorizing nationwide service of process. Anthem Br. at 36. But this argument

builds on the same failed premises. It assumes that represented parties must separately establish personal jurisdiction on a claim-by-claim basis in all types of group litigation. And it presupposes that Rule 4 categorically imports this requirement into federal court. Neither of these premises withstands scrutiny. Congress authorizes nationwide service of process when it wants to expand the territorial reach of a summons. By contrast, when Congress wants to authorize group litigation, it enacts legislation (or approves rules) contemplating group litigation. Anthem's argument that Congress must do the former to effectively accomplish the latter is a red herring.

III. ANTHEM'S ARGUMENTS, IF ACCEPTED, WOULD SERIOUSLY DISRUPT DECADES OF SETTLED INTERPRETATION AND PRACTICE.

Anthem concedes that the rule it seeks to impose contravenes over 80 years of settled practice. "[P]ast misunderstandings," Anthem tells us, "cannot govern current practice." Anthem Br. at 37. Fair enough. But settled practice more often reflects a consensus on the correct application of legal norms than past misunderstandings. That is particularly true when it comes to personal jurisdiction, where this Court, echoing Justice Holmes, has observed that "a page of history is worth a volume of logic." *Garber*, 888 F.3d at 841 (quoting *N.Y. Tr. Co. v. Eisner*, 256 U.S. 345, 349 (1921)). In this case, Anthem has neither history nor logic in its column.

And make no mistake: the change Anthem seeks to impose is enormous. For hundreds of years, federal courts have endeavored to "entertain[] the broadest possible scope of action consistent with fairness to the parties." *Gibbs*, 383 U.S. at 724. Anthem's proposed rule would turn this principle on its head. Without any hint of unfairness to defendants, Anthem's rule would bar most nationwide, multi-defendant Rule 23 class actions and FLSA collective actions. And perhaps even more significantly, MDL litigation would also be gravely endangered.

Even more striking, all the legal sources Anthem claims to interpret have been around for 70 years or longer. The Fifth Amendment was ratified in 1791. The Fourteenth Amendment in 1868. Congress passed the FLSA in 1938 and added the opt-in provision in 1947. The operative provisions of the Federal Rules of Civil Procedure have been in place since 1938. *International Shoe*, which ushered in our current contacts-based personal-jurisdiction regime, was decided in 1945. And yet: not a single defendant appears to have made the claim that Anthem raises here until 2017. This alone is reason to be skeptical of Anthem's position.

Fortunately, neither *Bristol-Myers* nor any other legal source mandates such sweeping changes to our judicial system.

CONCLUSION

The district court's judgment should be reversed.

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Respectfully submitted,

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This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B)(ii) because the brief contains 5,895 words, as determined by the word-count function of Microsoft Word for Office 365, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and this Court's Rule 32(b)(1).

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Date: March 19, 2021

s/Adam W. Hansen
Adam W. Hansen

CERTIFICATE OF SERVICE

I hereby certify that, on this 19th day of March, 2021, I caused the foregoing brief to be filed electronically with the Court, where they are available for viewing and downloading from the Court's ECF system, and that such electronic filing automatically generates a notice of electronic filing constituting service. I certify that all parties required to be served have been served.

s/Adam W. Hansen
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